

Cabinet

Report Title:	Extension to the Highways Services Contract
Meeting Date:	18 October 2016
Lead Councillor(s):	Councillor James Finch, Cabinet Member for Highways and Transport
Local Councillor(s):	All Councillors
Director:	Geoff Dobson, Director for Resource Management
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Brief summary of report

1. This report reviews the Highways Services Contract since its commencement on 1 October 2013 and suggests how the requirement that the contractor, Kier, be advised not less than 100 weeks prior to the end of the contract period of any desire of the County Council to extend the contract duration, can best be met.

What is Cabinet being asked to decide?

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| <ol style="list-style-type: none"> 2. The Cabinet is asked to support that: <ol style="list-style-type: none"> (a) The Highway Services Contract with Kier be extended by five years to its maximum 10-year duration; (b) Such extension be conditional on clarifying and formally agreeing the detail of the financial investment and other commitments broadly indicated in the business case submitted by Kier; (c) The responsibility for finalising such clarification and agreement be delegated to the Director of Resource Management, in consultation with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage; (d) An assessment of adequacy of overall achievement of the outcomes in the Suffolk Highways performance management framework is developed by the end of December 2016 so as to determine whether there shall be any time deductions in the five-year extension for underperformance; (e) The Director of Resource Management, in consultation with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage, shall (on an annual basis) thereby determine any time deductions that should be made from the overall contract period (and notify Kier accordingly) until such time as two years remain of the contract, at which point it shall naturally expire. |
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Reason for recommendation

3. The County Council's contractual relationship with Kier is now beginning to yield positive outcomes following the resolution of a number of key issues over the last 12 months. The return on any investment on new equipment and plant (purchased or leased) is optimised by spreading the costs over as long a period as possible. The potential seven years to the end of the contract is consistent with the period of time over which a typical highways contractor would ordinarily spread the cost of equipment and plant.
4. The County Council should nevertheless retain some capability to determine whether the performance of Suffolk Highways (the highways partnership between the County Council and Kier) is sufficient to warrant the contract continuing to run for its full duration or, if not, reduce the contract period. Since 1 April 2016, Suffolk Highways has been assessed against a new outcomes-based performance management framework. That framework draws significantly on the results of the annual National Highways and Transport (NHT) public opinion survey, the results of which are made available each October/November. This could provide a suitable framework around which an annual assessment of overall performance could be conducted.

What are the key issues to consider?

5. Whether the contract period should not be extended (and thus come to a natural end on 30 September 2018), be partially extended (by one, two, three or four years) and consider further extensions later or be fully extended by the maximum period of five years.
6. There is no contractual requirement to annually review the performance of the highways service. However, given the level of importance attached to 'highways' by the general public, there should be greater transparency of the performance management framework, particularly as it so strongly reflects public opinion.

What are the resource and risk implications?

7. The estimated cost of a highways procurement process for Suffolk would be in the order of £1,000,000 – with a similar sum required for a combination of the incumbent contractor's 'demobilisation' and for the incoming contractor's 'mobilisation'. There is no guarantee that, at the end of any such procurement process, the successful tenderer would provide a highway service that is either of a higher standard than that which could be delivered by Kier; or one that is at a lesser price and/or higher quality. However, every new contractual relationship has a 'bedding in' period which tends to be a less effective period than the rest of the contract – so successive bedding in periods should be as far apart as possible.
8. The bedding in period of the contract with Kier ran for the first two years, during which the relationship was particularly strained. However, the Highways Transformation Programme has been effecting positive change during the third year of the contract to create a far more collaborative contractual relationship with Kier. The focus is now on jointly delivering a much improved local highway service through Suffolk Highways. No or a short-term contract extension would significantly impair the ability to drive through sustainable innovation or enhanced, efficient and effective work practices.

9. The highway depots at Rougham and Halesworth are in particular need of investment (by both the County Council and Kier) to capitalise on their respective potential, which can be part-funded from the release of depots jointly considered as surplus to requirements. The longer the extension period, the greater the incentive for the private sector investment from Kier to optimise service delivery potential (and thus generate profitability for Kier and efficiency savings for the County Council).
10. A shared investment approach (underpinned by a depot strategy and separate business cases to ensure a return on investment and liability minimisation) will help create added functionality and value to these depots that will continue well beyond the potential full ten-year contract period – and which the County Council will derive full direct benefit from. However, that investment is far less likely to happen with a shorter extension and highly unlikely if there is no extension. The risk is that the realisation of this potential would therefore remain untapped for a number of years if no long-term extension was awarded.
11. Due to financial matters not being resolved in a timely way during the first two years of the contract, there was no incentive for Kier to look beyond a delivery model that was built round the use of supply chain partners. However, a long period over which plant and equipment costs can be spread provides the potential for a service provision model more heavily geared towards ‘self-delivery’. Such a delivery approach would enable Suffolk Highways to:
 - (a) have direct accountability for services that are not currently performing at an acceptable or contract-compliant standard;
 - (b) reduce costs - such as the removal of subcontractor fee-on-fee charges in the order of 3-5% subcontracted value (secured by removed subcontracted net overheads and profit);
 - (c) aid resource flexibility - as subcontracted resource cannot be readily deployed on other activities at short notice;
 - (d) give more control over the management of and any enhancement in the service delivery;
 - (e) use directly owned/leased vehicles with the ability to deploy these more extensively, drive down cost and consider greater off-peak/out-of-normal-hours utilisation;
 - (f) control over the effective management of waste and its recycling;
 - (g) elimination of the delays associated with multiple party handling of works instructions; and
 - (h) enable greater resilience (particularly for dealing with resource deployment in severe weather conditions).
12. By addressing the contractual issues (particularly financial) that adversely impacted on the relationship between the County Council and Kier, there is now great confidence in the executive management of Kier in the potential for this contract for both parties. This confidence is demonstrable in the business case submitted by Kier in support of a five-year extension (as set out in Appendix A).
13. A significant proportion of the outcome measures that are set out in the performance management framework rely upon the findings of the annual NHT public opinion survey. Suffolk County Council has participated in this survey for

many years and thus has data that can reveal trends. It has never properly used this data in the past but can do so now in a constructive manner at an annual cost of £4,000. The performance management framework can be used as a public demonstration of performance, a driver for Suffolk Highways service delivery monitoring and improvement and a tool by which overall contract performance can be assessed. In addition, there is a requirement for such a performance management framework in the self-assessment questionnaire for the Department for Transport's asset management-based Incentive Fund highways maintenance capital allocation process. The County Council attained Band 2 status for 2016/17 (ensuring an Incentive Fund financial allocation of £1.222m, slightly enhanced through reallocation from local authorities only achieving Band 1) and is on course to secure Band 3 status (to secure £1.82m in 2017/18 and £3.65m in subsequent years, setting aside a proportional receipt of extra funding from those local authorities only at Band 1 or Band 2 status).

What are the timescales associated with this decision?

14. If the Cabinet agrees to support the recommendation that the contract is extended by the full five years, then work can immediately commence on jointly developing a detailed depot strategy to optimise utilisation and Kier can secure the best prices for plant and equipment to enable enhanced levels of self-delivery. In turn, this will result in the County Council being able to optimise the efficiency savings realisable through more cost-effective service delivery, as outlined above.

Alternative options

15. There is no statutory or legal requirement to extend the contract beyond its current five-year span. However, in order to ensure that there is a replacement contract in place by October 2018, work would need to commence straight away on its procurement – at a time when Suffolk Highways is implementing the 'integrated team' aspiration set out in the contract document and being delivered by the Highways Transformation Programme. The net effect would be a focus on the next contract rather than optimising the potential of the existing contract with Kier. A new team would need to be established to develop the new contract whilst existing teams would need to address the added activity of organising demobilisation.
16. Alternatively, the contract could be extended by one, two, three or four years and further consideration given in the future to an additional extension or extensions. A multitude of extensions would merely promote uncertainty and thereby discourage Kier from investment in long-term benefits. Anything less than a full five-year extension would inflate the costs to Kier (which would result in either additional costs being referred to the Council or, if not agreed, could raise conflict over financial management within Suffolk Highways) because either:
 - a) the plant and equipment per annum lease costs would be higher; or
 - b) the per annum cost of purchase would be higher due to a shorter timescale over which to gain financial recovery of the capital investment.

Who will be affected by this decision?

17. By extending the contract with Kier, other contractors will be denied the opportunity to bid for working for Suffolk County Council on highway maintenance and improvements. However, they would equally be concerned that

the County Council had been unable to work successfully with the private sector on this first-time outsourcing contract of 'white collar' highway services and the externalisation of the operational workforce as a replacement model to the former operational top-up of services. Consideration of risk is a key factor for senior estimators in the pricing of any highways-related contract. For large-scale projects, a highways contractor will price against a 'risk register' whereas, for highways term maintenance contracts, the tendered rates are inflated to reflect a higher level of risk.

18. If the contract with Kier were to continue for the maximum available time period (i.e. for the next seven years), the improvements in service being realised during the contract's third year (through the Highways Transformation Programme) would be able to run their full course and be developed even further. The more effective the contract at the re-procurement stage, the more confident those same contractors would be that contractual risk had been minimised – encouraging keener pricing.
19. The Equalities Lead Advisor was consulted regarding this report. As the report seeks an extension to the current 5-year period of the existing Highways Services Contract, it is not considered to need an Equality Impact Assessment (EIA). However, any significant changes arising from the Highways Transformation Programme (which is looking at improving the entire highways service) that might have an equalities impact will require an EIA.

Main body of report

Background

20. At its meeting on 8 November 2011, the Cabinet authorised the commencement of the formal procurement process for the appointment of a private sector provider of an integrated highways service. This was set out in a report entitled 'Procurement of Highways Services'.
21. On 11 December 2012, the Cabinet received a report of the same title. However, the purpose of this second report was to award the contract to Balfour Beatty Living Places. The contract was due to commence on 1 April 2013
22. On 26 February 2013, a third report of the same title was presented to the Cabinet. This was to advise that the contract would no longer be awarded to Balfour Beatty Living Places but to the second-placed tenderer, an incorporated joint venture between May Gurney Limited and WSP UK Limited. As the joint venture was unincorporated and not a legal entity in its own right, the contract was to be between the County Council and May Gurney Limited. WSP UK Limited would then provide services to May Gurney Limited under a sub-contract agreement.
23. On 24 April 2013, Kier announced that it was acquiring May Gurney Limited and 8 July 2013 was the first day on which former May Gurney employees became part of Kier. On 1 October 2013, the current highways services contract commenced with services being provided by 'Kier MG' after a rapid mobilisation period.
24. In March 2016, the name 'Kier MG' ceased to exist. The County Council's contract is now with Kier Integrated Services Limited (abbreviated to just 'Kier' for the purpose of this report).

Contract procurement

25. The 8 November 2011 report indicated that the estimated cost of procuring a private sector provider for the highways service would be about £1.5 million. The report of 11 December 2012 indicated that *'expenditure to date is approximately £500,000'*. Although the discussions/negotiations with Balfour Beatty Living Places would have been quite lengthy, the report of 26 February 2013 still only indicated that *'expenditure to date is around £500,000'*. Irrespectively, additional costs would have been incurred by the County Council with resourcing the period leading up to the start of the contract (the 'mobilisation period'). The County Council's total costs would therefore have been in the order of £1,000,000.
26. In the May Gurney/WSP tender submission, the mobilisation and demobilisation costs were in the order of £1.175 million. 50% of this sum (i.e. the mobilisation) has now been paid to Kier (who agreed to abide by the prices set out in the May Gurney/WSP tender submission). The balance will have to be paid to Kier towards the end of the contract period as Kier demobilises from the contract.
27. The total cost, therefore, of switching from one private sector provider to another through a procurement process will be in excess of £2 million. The longer the contract period, the less impact this sum essentially has on service delivery costs.
28. The 11 December 2012 report identified that internal and external advice was that *'use of the Competitive Dialogue procedure is best suited to procurements where the client's requirements cannot be clearly defined and that derivation of the best solution is best served by discussion with potential providers. Feedback from the market was also that, should the Competitive Dialogue procedure be used, it should focus on those areas most pertinent to the procurement and be time limited.'*
29. In spite of using Competitive Dialogue, the procurement process encountered difficulties in negotiations with Balfour Beatty Living Places. Existing contracts were due to expire on 31 March 2013 and either had to be hurriedly extended until 30 September 2013 or alternative arrangements put in place. A procurement exercise of this magnitude should therefore only be entered into when it is clear what is required and there is some potential to recover the significant capital expenditure through savings from tendered prices. There is financial advantage in spreading such capital costs over as long a period as possible.

Procurement aspirations in 2013

30. Paragraph 45 of the report from 11 December 2012 set out a number of quality issues that the procurement process sought to achieve. However, the first two years of the contract saw little progress on a number of these, most of which are addressed and assessed in the following paragraphs.
31. Property: the use of depots and offices were to align with 'efficient service provision and environmental aspirations'. The depots at Rougham and Halesworth (in particular) are heavily underutilised, can provide notable efficiency savings (some environmentally based) and significant opportunities for integrated working. There is no evidence that this was explored prior to the current Highways Transformation Programme.
32. ICT: the ICT solution was to contribute to 'service quality and efficiency and the provision of timely information'. In reality, the County Council and Kier have

different ICT operating platforms, with two versions of the same software programs and effort has hitherto gone into trying to make software systems intercommunicate – rather than focus on shared single system applications.

33. Innovation and improvements: the suggested innovations in the quality submission were either not considered or given very little encouragement due to there being a greater focus on financial issues. Attempts at creating integrated teams (such as joint occupancy in the operational control hub at Phoenix House) were short-lived, even though that was a clear aspiration of the contract.
34. Mobilisation: this related to the effective takeover of the services (including transferring staff). The services (and staff) were taken over by Kier but issues regarding the handover of work, a drop in productivity and systems not being fully operational resulted in financial under-recovery of costs – a situation that was not properly addressed until the Highways Transformation Programme was implemented in the third year of the contract.
35. Emergency incidents and winter service: in both cases, emergencies and winter maintenance have both been dealt with well by Kier.
36. Asset management: the expectation was that Kier would make best use of data about the county's assets to ensure the right maintenance treatments were carried out at the right place at the right time. Scant attention was paid to an asset management approach, though. The adherence to contractual targets had unintended consequences – the punitive approach of the operational performance measures drove a high-cost reactive maintenance approach. This only began to change through the Highways Transformation Programme with the Cabinet endorsing a 'Highways Infrastructure Asset Management (HIAM) Policy' and a 'HIAM Strategy' at its meeting on 10 November 2015 and a 'HIAM Plan' on 12 July 2016. The adoption of a revised Highway Maintenance Operational Plan on 12 July 2016 has also enabled a migration away from a reactive maintenance approach. Operational workforce gangs have only relatively recently been focusing effort where it is actually needed – at the right place at the right time. A backlog of essential routine and cyclic highway maintenance work has consequently developed over time but, as this has not previously been fully developed into appropriate programmes, it is only now being scheduled and delivered in a cost-effective manner.
37. Customer care: the expectation was that the successful bidder would provide information about programmes of work. However, as the County Council had not taken an appropriate asset management approach prior to the aforementioned Cabinet report on 10 November 2015, major forward programmes of work (such as resurfacing, surface dressing, drainage/flooding and schemes funded from County Councillors' Local Highway Budgets) were not fully prepared. As such they could not be shared in advance with councillors and service users before the works were delivered on the ground. Through the Highways Transformation Programme with 'communications' a key workstream, programmes of work are now available on the County Council's website on Suffolk Highways webpages and the level of information available continues to grow.
38. Paragraph 53 of the 11 December 2012 report indicates that 'the management and co-ordination of the services (including asset management) and structures inspections would be best delivered by the formation of joint teams, with Council and contractor employees working closely together. This did not happen to any great extent until the Highways Transformation Programme created 'permanent'

integrated teams for street lighting and intelligent transport systems and interim integrated teams for:

- a) the delivery of 2.5 million square metres of surface dressing between April and August 2016 (compared to 1 million square metres in previous years);
 - b) the delivery of schemes funded from Local Highway Budgets but which had failed to properly progress;
 - c) priority (internal flooding of properties) drainage schemes.
39. The most effective way of working together is through co-location. However, highways area office staff have been based at West Suffolk House, Saxmundham and Riverside rather than being co-located at either Rougham depot or Halesworth depot. The Highways Transformation Programme is seeking to correct this situation – and this is a programme that is fully supported by the Highways Services Contract Strategic Board, chaired by the Director of Resource Management and attended by the Cabinet Member for Highways and Transport, senior County Council officers and senior directors from Kier.

Scrutiny Committee's recommendations

40. On 29 October 2015, Scrutiny Committee assessed the progress made with the Highways Services Contract with Kier. It made a number of recommendations which are as set out in Appendix B to this report. Without repeating each of those recommendations in full, the following paragraphs seek to summarise their content and clarify the actions subsequently taken. A more detailed follow-up report will be presented to Scrutiny Committee at its meeting on 3 November 2016.
41. At that meeting, the Committee received an extensive and detailed report on a number of issues related to the contract. However, the concern of the Committee as a whole was that, up to that point, the procurement aspirations were not materialising and they sought clarification on what, if anything, could be done to change this. Much of the meeting thereafter involved the Assistant Director Operational Highways setting out his assessment of what problems were acting as obstacles to progression and providing a broad outline of how the existing Highways Transformation Programme needed radical change.
42. The Committee identified that an action plan to underpin the proposed improvements should be developed, supported by a communications plan. The Highways Transformation Programme was subsequently developed in some detail and presented to senior highways managers of Suffolk County Council and Kier on 17 December 2015 with the aspiration of completing the transformation by the end of March 2017.
43. The Highways Transformation Programme was segregated into six workstreams that comprised contract management, integration, programme management, finance, asset management and communications. Through the communications workstream, progress with elements of the Highways Transformation Programme have been widely conveyed through messages to all county, district, borough, town and parish councillors from the Cabinet Member for Highways and Transport. One of these 'Message from James' ('Highways Matters') communications included an overview of the Highways Transformation Programme and this also appeared in the Suffolk Association of Local Councils'

newsletter in August 2016 (albeit that it had been created at the beginning of April 2016).

44. That particular communication clarified that a new outcomes-based 'performance management framework' had been created – and has been in operation since 1 April 2016. This framework draws information from a number of sources (such as data submitted to Central Government bodies) as well as primarily focusing on the results of the annual National Highways and Transport (NHT) public satisfaction surveys. The NHT survey (undertaken in June/July each year) provides three levels of comparative benchmarking - at national, regional and county council levels.
45. As Suffolk Highways has endeavoured during 2016 to make the highways service as transparent as possible, it intends providing the contents of the framework and the action plan (which will respond to areas where performance is less than satisfactory) on the Suffolk Highways webpages on the County Council's website. To further this transparency, it is considered entirely appropriate to provide an annual performance update to Scrutiny Committee. As the NHT survey results are not released until the end of October each year, reporting to Scrutiny Committee in December would work best.
46. A particular emphasis of the Highways Transformation Programme was that it would be jointly delivered through an equal involvement of Suffolk County Council and Kier personnel. Whilst the Committee welcomed '*greater collaboration between Kier and the County Council through the development of an integrated team*', the integration workstream of the Highways Transformation Programme intends to ensure that the entire Suffolk Highways arrangement is formed from integrated teams. These already exist on a permanent basis for the street lighting and intelligent transport systems (traffic signals) functions and temporary integrated teams have also been created to considerable levels of success – achieving outcomes that were inconceivable a mere 12 months ago.
47. The time taken to effect designs for highways improvement was of concern. However, at the beginning of the contract, a gold-plated 'fit-for-purpose' design requirement had been imposed by the County Council that placed all risk on Kier but, in the process, automatically overly complicated the design process. This was therefore changed to a more pragmatic design process but, rather than perpetuate the repeated communication cycle between client and contractor and back again, the formation of integrated teams has enabled far swifter decision-making over the simplicity/complexity of designs. Work is ongoing on standard drawings and specifications.
48. The gold-plated design requirement had slowed down the design process considerably. Its removal meant there was far greater scope for design to be undertaken locally (as required by Scrutiny Committee). This has particularly been the case where an integrated team for surface dressing formed in February 2016 has delivered 2.474 million square metres of surface dressing across Suffolk – immensely more than the 1 million square metres delivered in previous years. With work on the ground constrained to April to August, this was a significant achievement.
49. Much of the concern round design delays was linked to schemes being funded from County Councillors' 'Local Highways Budget' allocations either in isolation or with contributory funding from parish councils. An integrated team was established in May 2016 when there were 103 identifiable schemes, none of

which had been completed. By mid-September, there were 180 identifiable schemes of which 82 were completed, 15 cancelled or awaiting further consideration by those funding their delivery, 40 for which works are ordered and the remaining 43 undergoing design (which includes awaiting consultation on traffic regulation orders). Virtually all of these will be delivered by the end of March 2017 – again, an inconceivable prospect at Scrutiny Committee’s meeting.

50. A significant proportion of customer contact was to highways officers direct, even though the Council’s preferred method of communication was via the highways online reporting tool. This was partly down to a lack of progress with reported defects (so there was an element of chasing from customers - i.e. repeat calls), a lack of clarity about whether Suffolk Highways would respond or not, a lack of information on the Suffolk Highways webpages and a lack of customer feedback.
51. Changes have been made to the intervention levels for highway defects – for example, Suffolk Highways will now attend to smaller potholes than previously, in line with its risk-based asset management approach. That is as a consequence of a much-changed ‘Highway Maintenance Operational Plan (or ‘HMOP’), as approved by the Cabinet on 12 July 2016. A lot more information is now available on the website, including forward programmes of work – these have never previously been shared. Due to those HMOP changes, Suffolk Highways’ operational workforce has been reconfigured to ensure greater compliance with completion timescales.
52. The online reporting tool, however, has also been amended to reflect the aforementioned changes in intervention levels and to provide greater clarity about what will be done and by when. Its usage has grown significantly as well (another outcome identified as necessary by Scrutiny Committee), reflective of clarification as to how to report defects, thereby enabling a reduction in direct communication with officers. These changes have resulted in the highways online reporting tool being ‘highly recommended’ in the V3 Digital Technology Leaders Awards 2016 and being shortlisted for the O2 NextGen Digital Champions Award 2016 (to be announced on 13 October 2016).
53. Scrutiny Committee sought reassurance on recruitment, training, morale and sickness levels within Kier. A particular focus on health and safety resulted in the Suffolk contract changing from one of the worst health and safety records (including for subcontractors) to one of the very best. Sickness levels are also better than the industry standard. Morale amongst the Kier personnel has significantly improved because of the changes brought about by the Highways Transformation Programme, including the exploration of innovative techniques – part of the ‘quality’ submission at the procurement stage but never subsequently considered until now.
54. The Committee was also concerned about financial issues with the contract. At one point, there was a significant difference in the sums claimed by Kier and that paid by the County Council. This acted as a significant inhibitor to partnership working and significantly discouraged investment in personnel, plant and equipment by Kier. This single issue threatened to totally undermine the potential of the contract. Through considerable effort by both parties, this issue has now been satisfactorily resolved to the extent that it could no longer be construed that Kier is indirectly financing a proportion of the County Council’s highways maintenance and improvement work.

55. This has been achieved by dispensing with punitive financial measures (which were heavily geared to an undesirable 'reactive maintenance' approach rather than an asset management approach), resolving a number of longstanding claims, recognising the challenges of cashflow for a commercial organisation, simplification of financial processes, more supporting information being available as evidence of price changes and better, more controlled decision-making over works commissioning.
56. The Committee was concerned that finance would act as too strong a driver over the selection of surface finishes in conservation areas and locations where listed buildings existed. An example of where this suggestion has been accommodated is on the Princes Street/Queens Street scheme in Ipswich where concrete paving has been laid in areas where York stone paving had previously existed but where the most cost effective solution would be an asphalt finish. This accommodating pragmatism has resulted in no significantly determinable difference in quality of appearance to the general public but has nonetheless saved a capital sum in excess of £30,000 in just one location. Additional savings can also be derived from the ongoing maintenance costs and, with a more readily available material, repair response times are also enhanced.
57. Scrutiny Committee welcomed the County Council's developing approach to highways asset management. A new Highways Infrastructure Asset Management (HIAM) Policy and new HIAM Strategy were presented to Cabinet on 10 November 2015 and a new HIAM Plan (to replace the former Transport Asset Management Plan) was approved for public consultation by Cabinet on 12 July 2016.
58. In essence, each of Scrutiny Committee's recommendations have been acted upon. The partnership approach envisaged at the procurement stage is now becoming an embedded approach within Suffolk Highways and all parties (the County Council, Kier and the public in general) are beginning to see positive outcomes. Suffolk Highways fully acknowledges that restoring confidence in the local highways service will not be immediate because of the time that is needed to clear backlogs of work, particularly with the likes of drainage/flooding remediation, worn road markings and insufficiently attended vegetative growth.
59. The relationship between the County Council and Kier within Suffolk Highways is now on an entirely different footing from 12 months ago. The completion of the existing Highways Transformation Programme will take the partnership to a point where it can start to be held in high regard nationally. Both the HMOP and the performance management framework have been shared with the Department for Transport and have been positively received. The performance management framework is one of a small number being used to create a national standard framework.
60. An indication of the partnership's potential is that, setting aside the success with the highways online reporting tool (a cross-Suffolk County Council success), Suffolk Highways has now secured its first formal award. A footway renewal scheme at Elveden was completed on a carbon-neutral basis – and the result was a 'Green Apple Award for Commerce and Industry' in the Environmental Best Practice category. The award ceremony is in November at the House of Lords.

The mechanism for contract extension

61. The Cabinet minutes of the meeting of 11 December 2012 record that
- The contract is expected to run for a minimum of five years, with the possibility of extensions up to a maximum of 10 years. The awarding of extensions to the contract period will be at the discretion of the Council. Decisions regarding contract extensions will be informed by business cases made by the contractor and will take into account the contractor's performance as measured by the Strategic and Operational Performance Measures.*
62. The contract documents provide further clarification, however. Whilst the contract is based upon the standard New Engineering Contract (NEC), a client/employer of a prospective service provider can stipulate additional clauses known as 'z-clauses'. Z-clause 1 to the contract is entitled 'Extended Service Period' and the following are additional to the context stated immediately above and are extracts from that clause:
- Z1.3 The Employer notifies the Contractor not less than 100 weeks prior to the end of the latest agreed Service Period of his wish to extend the Service Period.*
- Z1.4 The Contractor either accepts the offer to extend the Service Period or provides reasons for not doing so within two weeks of the date of the Employer's notification. If the Contractor accepts, the Contract shall remain in force during the extended Service Period.*
- Z1.5 In making his decision whether to extend the Service Period the Employer takes into account the Contractor's business case, the Contractor's performance against the Performance Measures and other relevant factors at that time including the prevailing market conditions. The Employer acts reasonably in making the decision and in accordance with the principles of Appendix 6 (Strategic Board and Operations Board).*
- Z1.6 The Service Period may not be extended by more than 5 years to give a total Service Period of more than 10 years from the Starting Date.*
63. The contract with Kier formally commenced on 1 October 2013 for an initial period of five years with an expiry date of 30 September 2018. 100 weeks prior to that initial end date is the end of October 2016.
64. It should be noted that the Strategic and Operational Performance Measures referred to at the beginning of the contract no longer apply, following the introduction of the new outcomes-based performance management framework, as recommended by Scrutiny Committee on 29 October 2015.

Consideration of the business case for a 5-year extension of contract

65. Kier (through its Operations Manager and Contract Manager) submitted a 'Contract Extension Project Plan' comprising 70 issues for consideration to the Assistant Director Operational Highways on 2 July 2016. The Assistant Director replied with his views on these issues on 4 July 2016.
66. A draft business case was submitted by the Kier Contract Manager to the Assistant Director on 31 August 2016. It was the subject of extensive discussion between the Assistant Director and three senior directors of Kier that day and the

principles of a contract extension were discussed at the Highways Services Contract Strategic Board on 1st September 2016.

67. The Strategic Board (chaired by the Director of Resource Management and attended by the Cabinet Member for Highways and Transport) reviewed the progress that had been made with the Highway Services Contract since the Scrutiny Committee meeting on 29 October 2015 and the disclosure of the revised Highways Transformation Programme to managers of both the County Council and Kier on 17 December 2015.
68. The Strategic Board was content that the direction of travel for Suffolk Highways was good. It recognised that Kier felt that the Suffolk contract could become a flagship contract on the basis of the progress made as a consequence of the implementation of the revised Highways Transformation Programme. The Strategic Board collectively recognised that an extension of contract for five years was the most appropriate way forward on the basis that:
 - (a) The intended move towards self-delivery by Suffolk Highways and less reliance on the support of a series of supply chain partners will: drive down cost; increase resource resilience; improve flexibility and responsiveness; increase overall reliability;
 - (b) The greater the shift to self-delivery, the greater the scope for eliminating multiple layers of management and the current 'fee-on-fee';
 - (c) The longer the period of the extension, the more that unit prices for plant and equipment for self-delivery can be driven down as either capital costs can be defrayed more effectively or lease costs can be minimised;
 - (d) There will be greater capacity and opportunity to optimise the residual value and operational effectiveness of the depots at Rougham, Halesworth and Phoenix House. As Kier only leases these depots, the County Council will be the beneficiary of any enhanced residual value;
 - (e) The greater the opportunity there will be to trial innovative work practices and embed them into standard practice to effect optimum value, particularly from an environmental sustainability perspective;
 - (f) Suffolk Highways will be a far more attractive provider of local highways services to the private sector (such as developers) if it has a degree of permanence, thereby enabling the potential to generate external income and spread overhead costs more widely (thereby further reducing unit costs);
 - (g) The prospect of a longer-term, integrated partnership with the County Council will encourage Kier local investment in broader community issues (of which the replacement of a boardwalk at Lound Lakes near Lowestoft is an example, achieved through Kier's 'volunteering days');
 - (h) Kier's broader portfolio of activities can provide additional assistance (such as in any surplus depot disposal through a comprehensive depot strategy);
 - (i) Shorter extension periods will not provide the same level of investment benefits or cost optimisation but impede progress through uncertainty over further potential extensions;

- (j) The Highways Transformation Programme can be adapted to pursue other longer-term objectives than the current objective of getting the local highways service back on the right footing and performing more effectively;
 - (k) Greater consideration can be given to identifying what the optimum service delivery model might be against a backdrop of reducing budgets and changing legislative requirements;
 - (l) No or limited extension would cause reputational harm to the County Council (over its apparent inability to create effective outsourcing) and to Kier (for an inability to convince a key client of its full capabilities);
 - (m) No or limited extension would necessitate earlier initiation of a repeat procurement process which would be costly to both parties at an earlier juncture than either would desire;
 - (n) The net annual cost of such a large procurement process would increase significantly as the extension period lessened;
 - (o) The most difficult period of the first-time outsourcing has now been endured by both parties with excellent future prospects.
69. On that basis, the Strategic Board was unanimous on 1st September 2016 that an extension of the contract for a full five years was the most appropriate course of action, subject to the finalisation of the business case.
70. The Strategic Board received the final version of the business case on 30 September 2016. This is as attached at Appendix A. The Strategic Board agreed that the content of this business case was entirely appropriate to the extension of the Highways Services Contract for the full remaining five years.
71. However, whilst the business case is viewed as a positive commitment to Suffolk County Council from Kier, the document is not entirely clear on the level of financial commitment that Kier would contribute, for example, to the optimisation of the depots at Rougham and Halesworth or its local investment in broader community issues (be this financial or allocation of resource through a further, more comprehensive and targeted programme of 'volunteering days').
72. In the absence of this clarification, it seems appropriate that the extension be conditional on the clarification of this commitment. The responsibility for ensuring that agreement is reached on this with senior representatives of Kier would be best placed with the Director Resource Management, in agreement with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage.

Other factors for consideration

73. On 17 May 2016, the Cabinet received a report regarding the potential delivery of new river crossings at Ipswich (The Upper Orwell Crossings) and Lowestoft (Lake Lothing Third Crossing). Both of these projects have received substantial central government funding (amounting to a combined total contribution of around £151 million).
74. To align with the availability of this funding from central government's Local Majors Fund, both projects are programmed for delivery to commence in the 2019/20 financial year.

75. A significant amount of consultancy support to the County Council for these two projects is being provided through the Kier contract. The timetable for delivery of the two projects takes no account of any change in the provision of the consultancy support. If the Highway Services Contract is not extended beyond the 2019/20 financial year, this may jeopardise the County Council's ability to deliver these two key projects for Suffolk within what is already a tight timeframe.
76. Furthermore, there is potentially a significant amount of contract preparation work that will be required to deliver these two projects. To undertake procurement exercises for the two projects and a replacement of the Highway Services Contract would be an extremely challenging task for the Corporate Procurement Team and other County Council officers (particularly those who would need to be involved in both sets of procurement).
77. From a service delivery perspective, a number of local authorities round the country are pursuing re-internalisation of previously externalised highways services. There is no single driver for this change in service delivery but the financial pressure of reducing budgets is often a key factor in this decision.
78. Other local authorities are struggling to afford the current contracts due to the demands on the service, exhaustion of implementable efficiency savings and the decreasing funds available for highway maintenance. Highways contractors are thus likely to want to have some degree of surety that any contract for which they tender will provide a suitable return. They may therefore be dissuaded from submitting tenders for any re-procured contract for Suffolk County Council at a more competitive level than the current contract with Kier (which is considered by both parties to now be on a sound financial footing). By contrast, there is considerable scope to generate efficiency savings under the existing contract with Kier that can be readily explored through providing certainty through a long-term contract extension.
79. By pursuing a shift to self-delivery, the impact on any retained supply chain partners to changes effected by Kier will reduce. Changes to Kier's financial system over the last six months has resulted in late subcontractor payments (for which clarification was sought via the Crown Commercial Services). Kier accepted that it had experienced difficulties in agreeing accounts but affirmed the organisation's commitment to pay its subcontractors in accordance with the contract timescales. Kier confirmed that it is a signatory to the 'Prompt Payment Code' (as administered by the Chartered Institute of Credit Management) and complies with this for undisputed accounts. A greater reliance on self-delivery (which will take a short period to put into effect) will reduce the need for third party contractual, financial and performance management and make service delivery management far easier.
80. In 2015, HM Treasury produced a document entitled 'Improving Infrastructure Delivery: Alliancing Code of Practice'. In its preface, it states that "This document provides accessible and valuable support to those embarking on an alliance journey and to those who are already developing an alliance." Reference to this document is therefore entirely valid in order to achieve the County Council's aspiration that, under the Highway Services Contract, a 'one team' delivery model could be put in place.
81. The document goes on to clarify that:
"An alliance is:

- A collaborative and integrated team brought together from across partners and owners to deliver a programme or project;
 - Shared commercial goals, aligned directly with customer or project outcomes;
 - Integrated teams, developed on a best for task basis;
 - Underpinned by a commitment to key working principles and trust based relationships;
 - An emphasis on creating the right culture and behaviours, including no-blame;
 - Strong, collective and unanimous leadership.”
82. The Highways Transformation Programme is the mechanism being deployed to bring the County Council and Kier together as Suffolk Highways to deliver the County Council’s corporate priority of ‘Maintaining roads and improving Suffolk’s infrastructure’ in the most effective way to achieve optimum value for money. It is doing so by creating integrated teams that are focused on a consistent function-based, asset management driven approach rather than the random, geographically based model present at the start of the contract. Those most heavily involved in leading the Highways Transformation Programme rely and trust one another and are committed to creating the best partnership/alliance possible, driving the right culture and behaviour into Suffolk Highways.
83. Under the Highways Transformation Programme, Suffolk Highways is working towards accreditation for BS11000 Collaborative Relationship Management. The Alliancing Code of Practice identifies that “BS11000 represents a strategic framework through which organisations can develop, implement and sustain their approach to collaborative business relationships. Alliancing currently represents perhaps the most sophisticated form of collaborative contracting undertaken in the design and construction of infrastructure projects. In this sense, alliancing can be viewed as being entirely complementary with BS11000 insofar as it sits at the more developed end of collaborative contracting”.
84. By extending the Highway Services Contract by five years, the County Council (and Kier) will not only provide the opportunity for a collaborative relationship to fully develop but to also secure the optimum benefits that an alliance can bring. By contrast, not extending the contract will in essence provide no encouragement to continue this collaborative relationship development. It would therefore put on hold the opportunity to work on this for a minimum of two years - until such time as the relationship with any incoming contractor has reached the point at which such a relationship could begin to be worked upon. Any relationship goes through a ‘form, storm, norm, perform’ routine – it has taken three years to get close to the ‘norm’ stage of the contractual relationship with Kier and the opportunity now exists to reach the ‘perform’ stage.
85. It is also worth noting that the service changes effected by the Highways Transformation Programme will yield service delivery efficiencies. However, without joint exploration of innovative practices and further enhancements to the alliance over time, the scope for further efficiencies will diminish.

Actions following Cabinet's decision regarding the extension to contract

86. In the event that Cabinet determines that there shall be no extension of contract, Kier will need to be formally notified of this. With immediate effect, the County Council would need to commence the procurement of a replacement contract. This would require a financial allocation in the order of £1 million to cover the procurement costs that will be spread over the 2016/17, 2017/18 and 2018/19 financial years. If this sum is to be sacrificed from the existing highways revenue budget, there will be a consequential reduction in the level of service. To avoid such a reduction in service, funding would need to be made available from an alternative source. The new contract would need to commence on 1 October 2018.
87. A further allocation in the order of £590k will be required during this period for the demobilisation of Kier from the contract. The incoming contractor will need to be paid mobilisation costs which, at this stage, cannot be accurately predicted but are likely to be in the same order as Kier's demobilisation costs. These demobilisation and mobilisation costs will only be avoided in the event that Kier is successful in the procurement of the replacement contract.
88. If the decision is taken to only extend the contract by one year, pending a subsequent consideration of a further extension of contract, there would be no real motivation for Kier to invest heavily in new plant or equipment as there could potentially be only three years in which to recover any capital cost. This would be extremely disadvantageous to the County Council as well as it could potentially need to reimburse Kier at a far higher level (through either negotiated unit rates or a target priced approach applied to any commissioned work) than would otherwise be necessary.
89. A decision to extend the contract by only two years would still only mean that a potential four years of the contract would remain – still an insufficient time over which to reasonably defray capital costs. It is only marginally better than a one-year extension in that the reimbursement rates for plant and equipment would be slightly less for the County Council.
90. Extending the contract at this stage by three or four years would make further marginal improvement to contract prices but the County Council would still not be extracting the optimum outcome that could potentially be derived from a five-year extension.
91. Given that the Strategic Board is fully supportive of a five-year extension, there is a potential incentivised safeguard against any future tailing off in performance by Suffolk Highways. The extension could be made subject to satisfactory performance assessed, in broad terms that will need clear definition, against the outcomes set out in the recently adopted performance management framework. Through annual assessment, it could be readily determined whether or not it was appropriate to deduct time from the approved five-year extension. This deduction could be in full or part-year time periods, depending upon the severity of any under-performance.
92. In making any such time deductions, the County Council (in its role as the client for the contract) would still need approximately 100 weeks prior to the end of the contract in order to organise a replacement contract.
93. This approach would require separate development as it clearly does not exist under the current terms of the contract. However, the principle of time deductions

for under-performance is a model that has been endorsed by the Highway Term Maintenance Association. It is a process that provides a safeguard for a client organisation and an incentive for a service provider to perform to an appropriate standard. Such a performance model could be mutually agreed by the County Council and Kier – perhaps through external facilitation.

94. It is suggested that a time limit of the end of December 2017 is set for the development and adoption of this Highway Services Contract performance assessment model. Responsibility for the development, adoption and use of such a model would be best placed with the Director Resource Management, in agreement with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage.
95. A decision by Cabinet to qualify any extension in this way would still need the agreement of Kier, as set out in contract clause Z1.4 set out above.
96. If the Cabinet determined to extend the contract by the full five years, then:
 - (a) Kier would need to be notified of this decision by the end of October 2016;
 - (b) The detail of the financial investment and other commitments broadly indicated in the business case submitted by Kier will need to be clarified and confirmed with the Director of Resource Management, in consultation with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage;
 - (c) An assessment of adequacy of overall achievement of the outcomes in the Suffolk Highways performance management framework will need to be developed by the end of December 2016 so as to enable the Director of Resource Management, in consultation with the Cabinet Member for Highways and Transport and the Cabinet Member for Finance and Heritage, to thereafter (on an annual basis) determine any time deductions that should be made from the overall contract period until such time as two years of the contract remain.

Sources of further information

Other documents referred to in the drafting of this report:

Cabinet report entitled 'Procurement of Highways Services' dated 8 November 2011: [Procurement of Highways Services/Cabinet/8 November 2011](#)

Cabinet report entitled 'Procurement of Highways Services' dated 11 December 2012: [Procurement of Highways Services/Cabinet/12 December 2012](#)

Cabinet report entitled 'Procurement of Highways Services' dated 26 February 2013: [Procurement of Highways Services/Cabinet/26 February 2013](#)

Cabinet report entitled 'Highway Infrastructure Asset Management Policy and Strategy' dated 10 November 2015: [Highway Infrastructure Asset Management Policy and Strategy/Cabinet/10 November 2015](#)

Cabinet report entitled 'Highway Infrastructure Asset Management Plan' dated 12 July 2016: [Highway Infrastructure Asset Management Plan/Cabinet/12 July 2016](#)

Cabinet report entitled 'Highway Maintenance Operation Plan' dated 12 July 2016: [Highway Maintenance Operation Plan/Cabinet/12 July 2016](#)

Scrutiny Committee report entitled 'Highways Contract' dated 29 October 2015: [Highway Contract/Scrutiny Committee/29 October 2015](#)

[Evidence Set 1](#)

[Evidence Set 2](#)

Appendix A – Kier business case for a 5-year extension of contract

Appendix B – Extract of the Confirmed Minutes of the Scrutiny Committee on 29 October 2015

