



Notice of Non-key Executive Decision

Subject Heading:	HTP COVID Programme Review
Cabinet Member:	Councillor Osman Dervish, Cabinet Member for Environment
SLT Lead:	Barry Francis Director of Neighbourhoods
Report Author and contact details:	Spencer Gray, Highways Manager Spencer.gray@havering.gov.uk
Policy context:	Highways and Parking Strategy December 2018, LIP 2019/20
Financial summary:	Delay in the delivery of capital spend and safety critical schemes. Risk of requirements for payment to contractor in advance of works as per Cabinet Office Procurement Policy Note (March 2020). The pausing of all TfL LIP funded schemes as per advice from TfL.
Relevant OSC:	Environment
Is this decision exempt from being called-in?	The decision is exempt as these are guidelines highlighting delays and the reprioritisation of work load to be agreed by the Director of Neighbourhoods due to Covid 19

The subject matter of this report deals with the following Council Objectives

Communities making Havering	<input type="checkbox"/>
Places making Havering	<input type="checkbox"/>
Opportunities making Havering	<input type="checkbox"/>
Connections making Havering	<input checked="" type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This paper is a revision of the priority list which was agreed in April 2020 and includes new and additional work and the removal of completed and or no longer funded items.

It is recommended to the Cabinet Member for Environment to agree;

1. That all Highways works are reprioritised as follows:

High Priority – where funding is already available	Road and pedestrian safety including access for emergency and council vehicles
	Disabled access
	Strategic Priority
	Works with high residential support
	Works for which residents or political support is high
Low Priority	TfL LIP funded work

1. That the Highways Capital Investment Programme continues as scheduled with the addition of 10 new roads, based on the risk ratings applied within the document.

Note as follows:

- all TfL LIP funded work has been stopped as instructed by TfL;
- that all highways policies are under review, (including the Highways Investment Programme (HIP) Resurfacing Programme) and will be brought before Members for consideration in July 2020.

AUTHORITY UNDER WHICH DECISION IS MADE

3.3 Powers of Members of the Senior Leadership Team

General powers

- (a) To take any steps necessary for proper management and administration of allocated portfolios.

Financial responsibilities

- (b) To oversee the delivery of programmes agreed by the Council and Cabinet.

STATEMENT OF THE REASONS FOR THE DECISION

Due to the recent pandemic outbreak of Covid-19 across the world, measures have been taken by the Government which are being actioned by the London Borough of Havering to protect the Council's workforce and residents. These measures have meant that officers cannot work in their normal operating conditions. These include restricted access to office buildings, restricted contact with other officers and members of the public as a result of social distancing, restricted access to materials and equipment, and restrictions on non-essential travel.

The Council does not wish it's directly employed or contracted employees to make unnecessary trips or undertake non-essential works during these times. Therefore it is proposed that the approach to programmed works is based on the introduction of a Covid 19 policy ensuring high priority works are undertaken. Main arterial routes and trunk roads will be prioritised over smaller residential roads to ensure that free movement of traffic can take place as the country returns to normal traffic habits.

There is an opportunity to carry out works on our busier routes and link access roads whilst the roads are quieter as motorists follow government guidance to stay at home. Roads and footway schemes are considered to be safety critical projects and it is important that roads selected for the Highways Investment Programme are key local access roads with a known higher usage as these routes are important for emergency services and other essential services.

These changes mean that officers have to re-prioritise highways, traffic and parking schemes ensuring that key high priority schemes are still being delivered, these can be seen in Appendix A. Since the previous paper new schemes have been added and prioritised based on the above criteria, these are seen in Appendix B. New roads have also been added on the HIP which can be seen in Appendix D and completed schemes can be seen in Appendix E. One such change is to pause non-emergency works until such time that non-essential travel may continue. The updated priority list since the last report which includes new schemes and the removal of LIP funding schemes due to funding being withdrawn from TfL, can be seen in Appendix C.

Since the previous report TfL have announced that all LIP funded work should stop immediately as funding for these schemes has been withdrawn. TfL have agreed to cover spend on these schemes until May and officers are pulling these costs together and submitting them to TfL for payment.

It is suggested that consideration be given to the current schemes under the LIP programme in Appendix C for alternative funding from the Council.

The Government has been clear on what is regarded as essential works and services which include the Transport network and Infrastructure, (such as Utilities and telecommunications). The Government has made it clear in a joint statement along with HAUC UK, that our roads remain open and they expect works, including emergency and essential street and road works to maintain utility and highway services to continue, thereby ensuring that life-saving medicine, equipment, supplies and healthcare staff can travel across the country to where they are needed most. The Government has made it clear that highway improvement schemes that are already in place, and schemes where external funding could be lost if not delivered on time are also regarded as essential works.

The Cabinet Office published a Procurement Policy Note in March 2020 (PPN 02/2020) relating to payments to public sector contractors until 30th June 2020. In order to ensure the survival of businesses during this period, the PPN outlines circumstances where payments would continue

to be made to contractors even though works were paused or suspended. It should be noted in taking a decision to suspend the Highways Investment Programme for a specific period that payments will be required to be made to the contractor (Marlborough Highways Ltd) and will be held to cover the costs of the work post-suspension. This is in line with the guidance set out in the PPN 02/2020, attached at Appendix B. However, post-suspension, Marlborough may not have the resources to complete this work and there is a risk that the weather in the latter end of the year will affect works and the Programme for this year may not be completed. It is proposed that this is mitigated by outlining to Marlborough Highways Ltd that any payments are for works to be completed and that the onus is on them to ensure works are carried out and materials paid for are used within the Council's programme. Additionally, it is recommended that a Change Control Note is drafted to the effect that at the start of the next financial year the initial three invoices, or up to, may be withheld should works not be satisfactorily completed.

Roads and footway schemes are considered to be safety critical projects to ensure that the network is available to emergency services and is reliable for freight journeys, particularly essential journeys such as medicine deliveries and other essential goods such as deliveries to supermarkets.

The Environment Service area provides various services which falls within the Government's Covid 19 guidelines and the Council's essential public services. For example, maintenance and upkeep of the public highway, including all infrastructure within it (Street Lighting, Drainage, footpaths, carriageways etc.) and as such Havering needs to continue to maintain them.

It is expected that post-Covid 19, when the UK returns to business as usual, the highway network will see an unprecedented increase in requests for permits to continue with pre-planned & new works on the highways. This would potentially lead to increased traffic flows and congestion, increased travel time for residents/commuters, TfL buses & emergency services with the knock-on effect that the Council would receive an increased level of complaints about this and additional resources would be required to co-ordinate such. The London Borough of Havering, like all other local authorities has a duty to co-ordinate under the Network Management Duty and Traffic Management Act, something of which will be a massive strain & impact on the section to comply with if works are postponed due to Covid.

Thus if works have not been carried out during the Covid 19 pandemic, we could see issues of over demand on our road network, resulting in congestion, higher pollution outputs and the overall network not performing.

With regards to the traffic and parking schemes which have been prioritised in the programme due to Covid; the Council have prioritised the disabled bays due to the needs of the vulnerable and disabled during Covid and also single and double yellow lines, as these have been requested by the waste service where their vehicles cannot get through due to parked vehicles. It is very likely that if a waste vehicle cannot get through neither would an emergency vehicle such as an ambulance or fire engine and therefore these have been classed as a priority. Low priority roads will be considered in August 2020 and an assessment of the emergency situation will be made.

OTHER OPTIONS CONSIDERED AND REJECTED

Suspend the Highways Investment Programme for financial year 2020/2021.

(Failure of the Council to perform its statutory duty to maintain the network and protect the health and safety of the public)
Suspend all highway works for an agreed period
(Failure of the Council to perform its statutory duty to maintain the network and protect the health and safety of the public)

PRE-DECISION CONSULTATION

NA

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Spencer Thatcher-Gray

Designation: Highways Service Unit Manager

Signature: Date: 28/05/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

1. This report seeks approval to re-prioritise some of the highways works forming part of the Council's Highways Capital Investment Programme (HIP) as High Priority in order to authorise the continued payment of Marlborough Highways Limited's invoices for the reprioritised works.
2. The UK Government's guidance provided in PPN 02/20 (the Guidance) seeks to provide guidance on advance payments and encourages contracting authorities to support 'at risk' suppliers during the COVID-19 pandemic by keeping up and/or expediting their payments even if service delivery is disrupted or temporarily suspended.
3. In accordance with this guidance, Cabinet approved the Covid -19 Supplier Support Offer (the Offer) permitting the Council to pay some key and "at risk" suppliers and providers in advance to support likely instances of significant service disruption and possible revisions to the payment profile of their contracts so as to support their cash flow positions. Also in keeping with the guidance, such arrangements are to last till the end of June 2020, in the first instance.
4. The Council by a previous report had approved the classification of Marlborough Highways Limited as an "at risk" supplier and certain elements of their HIP contract as High Priority for the duration of the COVID 19 pandemic. In keeping with the Guidance, the approval granted is now up for review which has necessitated the proposals in this report.
5. Implementation of any relief given to Marlborough:
 - will require Marlborough to continue to pay employees as well as its supply chain and to do so promptly within any specified time scale;
 - will potentially require Marlborough to warrant that it will not be in breach of any financial covenants by accepting the relief and ensure that it does not enforce any security against a third party after receiving the relief;
 - is subject to the Council being able to take all action necessary to recover any relief payments made if Marlborough fails to apply the relief for the purposes agreed by the Council, fails to act transparently and with integrity, or takes an undue advantage of the relief; and
 - is provided on the basis that Marlborough is prevented from claiming contractual relief from the Council as well as claiming separate relief from the Government to the effect that Marlborough gains an undue advantage by claiming relief twice for the same hardship (save where separate relief from the Government is in relation to recovery of costs (e.g. furloughed staff costs under the Coronavirus Job Retention Scheme) which are distinct from any other relief available under the PPN and have been properly incurred by Marlborough).
6. The payment of relief anticipated above would be on the basis of the average of Marlborough's last 3 months' invoices as prescribed in the Guidance and may be

expedited where necessary. The Guidance also prescribes that the contractor (Marlborough) should indicate on their invoice that such payments are attributable to COVID-19 and also that staff deployed to the delivery of the works for the London Borough of Havering specifically are not furloughed during this period.

7. The suspension of the requirement of assessment of works carried out before payment as well as the prescribed obligation for Marlborough to act on an open book basis for the duration of the COVID-19 period should be evidenced by a variation to the current Term Service Contract between the Council and Marlborough. Said variation should also include the requirement that staff working on the project during this period must not be furloughed.
8. From a Procurement Law perspective, the proposed variations would be permitted under the exception provided by Reg. 72(1) (c) of the PCR, on the basis that the COVID-19 outbreak is an unforeseeable circumstance which is responsible for the proposed variations; the overall nature of the contract will not change and any increase in the contract value shall not exceed 50% of the original value of the contract. The Council must publish an OJEU Notice notifying the Commission of this variation.
9. In keeping with the Guidance requirement for contracting authorities to take necessary steps to mitigate risks occasioned by its decision to adopt Supplier relief, the Council proposes a further amendment to the contract to the effect that the Council may withhold payment of the 3 initial invoices submitted by Marlborough in the 2020/21 financial year. In the absence of sighting the actual NEC3 Term Service Contract terms, this proposal would be subject to agreement by Marlborough and the Council is also not precluded from taking advantage of all the other contractual remedies available to it under the HIP Contract.

FINANCIAL IMPLICATIONS AND RISKS

Financial risk to the highways capital programme.

Procurement Policy note PPN 02/20 (Appendix F) refers to supplier relief during the COVID-19 pandemic for which the Highways Investment Programme is estimated at £745k-£930k per month if suspended. Should the Programme become live at a later date these funds will be utilised for the highways investment programme and seen as a credit with no further cost, it is a "nil cost" to the authority should the programme continue as planned.

The contractor is heavily committed to delivering the capital works programme which has been a key operational, financial and political priority in the Borough for the past 12 months. To date this programme has been continuous and uninterrupted, leading to the potential for efficiency and cost savings to be made. If Marlborough were to be instructed by LBH to come off site, there may be additional costs as a result of the cancellation of the agreed programme, such as demobilisation, remobilisation and the material price changes. It may also be challenging to pause some schemes for safety reasons.

Should the Highways Investment Programme be stopped or delayed significant additional revenue spend will be likely in the winter months of 2020/21 and beyond as the highway network will continue to deteriorate. Revenue budget for 2019/2020 decreased by £100k and the AD had reduced spend by a further £200k. The risk to the authority is an increase in revenue spend of c£300k plus per annum which will increase as the networks deteriorates. Furthermore, there is the potential risk in increase of personal claims against the authority may be seen as statutory duty to maintain the highway will not have been fulfilled. The total outstanding personal claim amount for 2019/2020 is £390,929.79 and it is highly likely without the continued works a similar or increased amount can be expected for 2020/21.

The Highways Investment Programme generates c£200k in revenue from vehicle crossing installations within roads where footways are renewed which frees up the network and improves safety by removing more vehicles from the public highway. A quarter of this could be lost should the Highways Programme be suspended for three months.

Any delay in the Highways Investment Programme would not incur additional costs regarding interest rates and borrowing costs and any saving as a result of the slippage to the expenditure would be minimal and reported corporately through the Council's treasury budgets.

In summary, the financial implications are in the region of

- Continued payments to Marlborough £2.5m
- Loss of income from Crossing Instalments £0.050m
- Increase in personal claims –unknown at this stage

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

Given the Coronavirus outbreak, the paramount consideration of the Council is the health and wellbeing of Members and officers. Council employees directly affected by the proposals contained in this report will be managed in accordance with the Council's published COVID-19 Managers Guidance.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed

to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Those members of the public with disabilities will have schemes delivered based on the above priority.

Failing to maintain the Highway may reduce social inclusion as persons with disabilities may not be so easily able to move around the borough.

An EQIA has not been carried out as these changes will affect all members of the public other than disabled persons whose schemes will still continue as normal

BACKGROUND PAPERS

NA

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Proposal NOT agreed because

Details of decision maker

Signed

Name: Barry Francis, Director of Neighbourhoods

Date:

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____