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| Report To: | EXECUTIVE CABINET |
| Date: | 28 November 2018 |
| Executive Member / Reporting Officer: | Councillor Allison Gwynne – Executive Member (Neighbourhoods) Emma Varnam - Assistant Director (Operations & Neighbourhoods) |
| Subject: | UPDATE TO HIGHWAYS RISK MANAGEMENT POLICY DOCUMENT |
| Report Summary: | <p>The Department for Transport commissioned a review and the updating a number of previous Codes of Practice with regards to the maintenance of the key assets that make up the highway network.</p> <p>The new Code of Practice, <i>Well managed Highway Infrastructure</i> (WmHI), was published on 28 October 2016.</p> <p>The new WmHI Code of Practice recommends changing from reliance on specific guidance and recommendations in the previous codes, to a risk-based approach determined by each highway authority.</p> <p>Across Greater Manchester a framework was produced giving due regard to all council highway duties and has adopted the guidance that reflects the recommendations from the new WmHI Code of Practice.</p> <p>Based on the new code and the GM Highway Safety Inspection Framework, officers in the Risk Management, Highways Maintenance and Traffic sections have produced a new Tameside MBC Highways Risk Management Inspection Code of Practice.</p> <p>The two year implementation period for introducing a new local code ends on 27 October 2018.</p> |
| Recommendations: | <ol style="list-style-type: none"> 1. That the Risk Management Policy for the inspection and repair of Tameside’s highway assets be approved. 2. That the budget requirements for Risk Management Repairs, to ensure that repairs are completed in a timely basis, are allocated annually through the budget setting process. |
| Links to Community Strategy: | <p>Prosperous Tameside</p> <p>Attractive Tameside</p> <p>Supportive Tameside</p> |
| Policy Implications: | Replacement of previous Policy with new Policy to reflect the updated national Code of Practice. |
| Financial Implications: (Authorised by the Section 151 Officer) | <p>The expected impact on spend of changes to this policy is an additional £0.200m per annum.</p> <p>In 18/19 there is a combined capital and revenue budget of £2.155m meaning there is enough budget to carry out the estimated £2.000m works based on the new inspection regime and including the £0.200m additional works relating to damage over a particularly harsh winter.</p> |

In 19/20 and future years, no capital funding has yet been confirmed and the revenue budget is due to reduce by £0.500m to £0.500m. As ongoing costs are projected to be £1.800m per annum, this could result in a budget pressure of £1.300m. However, without this change in policy, there is still a possible pressure of £1.100m.

Any pressure would be partially mitigated by the costs of any claims against the council that were avoided as a result of having a robust policy in place (previously £1.300m over 2 years).

**Legal Implications:
(Authorised by the Borough
Solicitor)**

'*Well-managed highway infrastructure*' was published on 28 October 2016 and supersedes the previous Codes '*Well-maintained Highways*', '*Well-lit Highways*' and '*Management of Highway Structures*'. Changing from reliance on specific guidance and recommendations in the previous Codes to a risk-based approach determined by each Highway Authority which requires appropriate analysis. Some authorities have been able to implement a full risk-based approach immediately. Others have required more time and consequently continued with existing practices for an interim period, in which case the previous Codes have remained valid for a period of two years from the date of publication of the Code (October 2018).

Risk Management:

Not updating our Policy to reflect the new national Code of Practice will leave the Council unable to robustly defend claims with regards to injury or damage by users of the highway network.

Similarly, not undertaking identified repairs within identified response times would leave to Council liable to third party claims.

Access to Information:

The background papers relating to this report can be inspected by contacting the report writer, Alan Jackson, Head of Transport & Highways by:



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1. BACKGROUND

- 1.1 Under Section 41 of the Highways Act 1980, Tameside Metropolitan Borough Council has a statutory duty with regards to highways maintainable at public expense. Neglecting this duty can lead to claims against the Council for damages resulting from a failure to maintain the highway. Under Section 58 of the Highways Act 1980, the highway authority can use a “*Special Defence*” in respect of action against it for damages for non-repair of the highway if it can prove that it has taken such care as was reasonable. Part of the defence rests upon:-

“Whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway”.

- 1.2 This means that highway authorities have to show that they carry out Highway Risk Management Inspections in accordance with their policies and national guidance. Highway Risk Management Inspection reports are part of the evidence used to show that the highway authority has acted reasonably.
- 1.3 Tameside’s Risk Management Policy contains details of policies for inspections and procedures related to the general operational activities in the Risk Management of the Highway. It contains details of the measures undertaken by Tameside MBC to ensure the safety of users of the highway. This is achieved through a variety of repairs and maintenance regimes, together with comprehensive planned and ad-hoc inspections of adopted highways, linked to a prioritised programme of remedial works.

2. UPDATING OF POLICY

- 2.1 Tameside’s Risk Management Policy was last updated in 2014. The Department for Transport commissioned the UK Roads Liaison Group to review and update a number of previous national Codes of Practice with regards to the maintenance of the key assets that make up the highway network.
- 2.2 The new national Code of Practice, *Well managed Highway Infrastructure (WmHI)*, was published on 28 October 2016.
- 2.3 The new WmHI Code of Practice recommends changing from reliance on specific guidance and recommendations in the previous codes, to a risk-based approach determined by each highway authority and are based on the appropriate risk, functionality or usage of the highway.
- 2.4 Across Greater Manchester a framework was produced giving due regard to all council highway duties and has adopted the guidance that reflects the recommendations from the new WmHI Code of Practice.
- 2.5 Based on the new code and the GM Highway Safety Inspection Framework, officers in the Risk Management, Highways Maintenance and Traffic sections have produced a new Tameside MBC Highways Risk Management Inspection Code of Practice.
- 2.6 The two year implementation period for introducing a new local code ends on 27 October 2018.
- 2.7 Accordingly, a review of risk management operations has been carried out and a renewed policy document drafted.

- 2.8 Inspection frequencies, investigatory levels and response times have been amended to ensure our standards are appropriate in terms of national recommendations and local (Greater Manchester) practise but are deliverable within available staff resources.
- 2.9 Failing to deliver our published response times is seen as a key concern. Accordingly the new standard is seen as proportional and deliverable.

3. RESOURCE IMPLICATIONS

- 3.1. A business case was produced as part of the Council's Tameside Asset Management Plan for highways, which successfully secured the increased number of Risk Management Inspectors to deliver the new inspection regime and frequencies.
- 3.2 However, an increase in inspection frequencies and revised, risk-based intervention criteria will inevitably lead to an increase in repairs identified and further pressures on a demand-led budget for risk management (pot hole) repairs.
- 3.3 Under the existing inspection regime, a combined total of 1,435km is inspected annually. For the new regime, this combined total will rise to 2,642km, an increase of 84%. This increase keeps Tameside in line with the new national code and reflects the revised frequency within it.
- 3.4 The spend on work identified by the Risk Management section has increased significantly year on year over the past four years: 2014/15 £696,253, 2015/16 £998,313, 2016/17 £1,109,159 and 2017/18 £1,476,556. This increase is mainly due to the fact that financial constraints have meant that the amount of programmed, non-urgent minor maintenance has drastically reduced over the last five to ten years. This trend alone would indicate that the spend in 2018/19 would be in the region of £1,800,000, if the existing regime continued.
- 3.5 However, the Council has made a significant investment in the highway infrastructure via the TAMP and as a result this trend should start to show a slow-down in the rate of increase to a figure of around £1,600,000
- 3.6 The 84% increase in inspections under the new risk based regime will result in considerably more defects being identified over the course of an inspection year.
- 3.7 However, it is not expected to show a corresponding 84% increase in spend. This can be estimated at approximately £200,000, as shown in Table 1 below.

Table 1

| | Old Regime (km) | New Regime (km) | % Increase (km) | Increase (£) (on old regime) |
|--------------------|------------------------|------------------------|------------------------|-------------------------------------|
| 12 Monthly | 617 | 593 | -4.0 | 25,000 |
| 6 Monthly | 156 | 31 | -80.0 | 75,000 |
| 4 Monthly | 132 | | -- | 50,000 |
| 3 Monthly | 300 | 218 | -27.0 | 30,000 |
| 1 Month | 0 | 1548 | -- | |
| Town Centre | 230 | 252 | 9.5 | 20,000 |
| TOTAL | 1,435 | 2,642 | | 200,000 |

Note on the figures above. The estimated increase spend is based on the increased inspection frequency. Although there is a decrease in streets inspected at 6 monthly intervals, as these are now inspected more frequently, either 3 monthly (twice as often) or

monthly (6 times as often), we are expecting more defects to be found and hence an increase in costs. The estimated cost increase in these instances is shown against the old regime, where inspections are now more frequent.

- 3.8 A further resource implication to take into account is the state of the roads throughout Tameside after the prolonged, severe winter. The winter of 2017/2018 has had an unprecedented impact on the older carriageways in the borough, leaving them in a very poor condition. This will inevitably result in larger areas of carriageways being identified for repair than in previous years. This can be estimated at a further £200,000 throughout the inspection year.
- 3.9 Taking all the relevant considerations into account, the projected spend to enable Risk Management to effectively comply with the new national code of practice would be £2,000,000.
- 3.10 If Tameside don't effectively comply with new national code, it would lead to highway claims against the council being very difficult to defend. In the years 2016 and 2017 the combined value of claims against the Council was reserved at over £1,476,000. On these claims Tameside have currently paid out £167,729. This demonstrates the value of having a robust Risk Management regime when defending claims. Without adequate resources to support the new inspection regime, the amount paid out would be much closer to the reserved figure.
- 3.11 Tameside Council has built up a reputation in defending highway claims. This reputation results in many solicitors choosing not to pursue claims against Tameside. If this reputation is lost, the number of claims will vastly increase. Tameside dealt with 220 claims in 2016 and 223 claims in 2017. In 2011 this figure was 365 and in 2012 it was 379. Going back as far as 2003, this figure peaked at 938. This demonstrates that even in today's environment and claims culture, the number of claims received by Tameside is on a downward trend as a result of the Council's continued focus to provide a robust risk management regime.

4. CONSULTATION

- 4.1 The revised Policy has been circulated for comment and discussion to a number of internal and external contacts. These include; the council's Internal Audit and Risk Management section, the Council's insurers, Forbes Solicitors etc.
- 4.2 Their comments have been reviewed and incorporated where appropriate.
- 4.3 The revised policy document: **HIGHWAY RISK MANAGEMENT INSPECTION CODE OF PRACTICE**, - A Guide to Highway Policies & Procedures: April 2018, is attached.

5. RECOMMENDATIONS

- 5.1 As set out at the front of the report.