

## Report to Cabinet

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| <b>Title:</b>                    | <b>Highway Services Policy</b>                    |
| <b>Date:</b>                     | 22 October 2018                                   |
| <b>Date can be implemented:</b>  | 30 October 2018                                   |
| <b>Author:</b>                   | Deputy Leader & Cabinet Member for Transportation |
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| <b>Local members affected:</b>   | (All Electoral Divisions);                        |
| <b>Portfolio areas affected:</b> | [Portfolio areas]                                 |

*For press enquiries concerning this report, please contact the media office on 01296 382444*

### Summary

The Well Managed Highway Infrastructure Code of Practice (WMHI) was published on 28 October 2016 by the UK Roads Liaison Group (UKRLG), promoting an integrated asset management approach to highway infrastructure maintenance. This means establishing levels of service through evidence-led, risk-based assessments which reflect local needs and priorities. Authorities have until October 2018 to adopt the WMHI's risk-based approach. This Policy will benefit residents through TfB targeting highway services to areas with greatest need having taken account of risk to all members of society using the highway, including those with mobility impairments.

The WMHI is guidance only and does not have statutory effect, but non-compliance with it could mean Buckinghamshire County Council (BCC) is unable to successfully mount a defense under section 58 Highways Act 1980 in the event of a claim. The Service has developed this overarching Highway Services Policy (the Policy) which adopts the guidance in the WMHI, and sets out the approach for delivering Highway Services in support of the Council's aims as set out in the Strategic Plan 2017–20.

Two detailed, supporting policies on Network Safety & Management currently in preparation, and any future detailed policies sitting under this Highways Services Policy, can be progressed through key decisions by the Cabinet Member.

## Recommendation

**Cabinet APPROVES the Policy, which outlines the guiding principles for the development of service levels based on local needs, priorities and affordability.**

### A. Narrative setting out the reasons for the decision

1. The WMHI was published on 28 October 2016 promoting an integrated asset management approach to highway infrastructure, based on establishing local levels of service through an evidence-led, risk-based assessment to reflect local needs and priorities. Authorities have until October 2018 to adopt the WMHI's risk-based approach, replacing the current Well-maintained Highways, Management of Highway Structures and Well-lit Highways. The WMHI is intended to apply throughout the United Kingdom.
2. The major change with the WMHI is that no prescriptive or minimum standards have been set, as they have been previously. This requires authorities to set their own standards and levels of service based on risk-assessment, and evidence the reasons for those standards. There is an ongoing project to review and implement all of the Code's 36 recommendations, however the Service's main focus is on recommendation seven: *"A risk based approach should be adopted for all aspects of highway infrastructure maintenance, including setting levels of service, inspections, responses, resilience, priorities and programmes."* It is this approach to safety inspections, defect repairs and recording and monitoring of information which is perhaps the most critical with regards to highway liability risk management.
3. There are a number of things that might reasonably be expected in an authority's evidence base to demonstrate a risk-based approach, such as the actions described in paragraph 7 below. This includes a formally approved Highway Services Policy to confirm the authority's adoption of the WMHI.

4. The Policy links the Council's corporate objectives with the specific service policies, complimenting TfB's Asset Management Policy and Strategy as shown in the diagram. This Policy covers the approach to running the highway network, whilst the Asset Management Policy and Strategy set out BCC's approach to investing in its highway infrastructure.



5. The Policy sets out the risk-based approach that the Council have been developing and describes how highways service levels are mapped against our obligations as highway authority and our Strategic Aims and Objectives:
  - Safeguarding our vulnerable
  - Creating opportunities and building self-reliance
  - Ensuring Buckinghamshire is thriving and attractive
6. Since 2016, the Council has taken steps to implement a risk-based approach to service delivery. For example, the establishment of a comprehensive Maintenance Hierarchy in early 2017 taking account of the importance of the road to the user, rather than just road classification, was used to determine appropriate inspection frequencies set out in the 2017 Safety Inspection Policy. The Maintenance Hierarchy has undergone review

with Members through annual Capital Maintenance Programme (CMP) meetings, and the Safety Inspection Policy itself will undergo further review during 2018.

The effect of the change has not resulted in any direct savings, however it has allowed the Service to focus its attention on roads that carry more traffic, and therefore present more risk, than would normally be expected when the road's classification is taken into account.

Risks have been assessed in terms of:

- Delivering a safe and resilient network
- Delivering works activities and achieving value for money
- Pursuing continual improvement
- Achieving consistency and best practice
- Developing Levels of Service (Asset Management Objectives)
- Implementing Asset Management System
- Communicating Asset Management approach effectively
- Assessing progress towards meeting objectives (asset performance)
- Maintaining integrity of necessary data

7. The Council's risk-based approach is included in Appendix B and sets out how the Service determines its highway services, which includes setting levels of service, inspections, responses, resilience, priorities and programmes. The approach is comprehensive and wide-reaching, influencing such things as gritting routes, safety inspection frequencies, and the priorities for road surfacing schemes.
8. The Council will continue to review its risk-based approach against emerging guidance, by monitoring outcomes and implementing findings, benchmarking with other authorities, consulting industry experts and through its governance procedures.
9. In order to build the evidence base that the WMHI has been adopted it is imperative that the Service delivers what it says it will and achieves its service levels. This is implemented by the comprehensive Performance Management Framework (PMF), that records both output and outcome performance indicators for all its services as described in its Service Principles. All indicators are aligned with the Service's Asset Management objectives which are in turn aligned with the Council's Strategic Objectives.
10. The PMF reports on whether the Service is delivering the principles set out in this Policy through the output indicators, and whether it's achieving its Service Levels through its outcome indicators.

### **Highways Liability Risk Management**

11. The main aim of the WMHI is to ensure that the funding available for the maintenance of our highways is spent in a way that maintains the overall safety of the network whilst supporting the Council's duty under the Traffic Management Act to "ensure the expeditious movement of traffic". Government recognise that in doing this there will be times when an individual damages themselves or their property on the highway network. Section 58 of the Highways Act 1980 provides a statutory defence for a highway authority, in respect of damage resulting from their failure to maintain a highway. Under Section 58(1) it is a defence to prove that the authority had taken such care, as in all the circumstances was reasonably required, to ensure that the part of the highway to which the action relates was not dangerous for traffic.

Section 58(2) provides that, for the purposes of a defence under subsection (1), the court shall have regard to the following matters:

- (a) The character of the highway, and the traffic which was reasonably to be expected to use it;
- (b) The standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) The state of repair in which a reasonable person would have expected to find the highway;
- (d) 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;
- (e) Where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

But for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

12. On 14th March 2017, the Institute of Highway Engineers (IHE) launched a revised guidance document: Well Managed Highway Liability Risk (WMHLR) that makes many significant changes to current guidance. This document aims to provide a reference source and practical guidance on best practice in the management of highway liability risk exposures, and describes how to apply the principles of risk management and a risk-based approach to highway liability claims exposure which will be beneficial to all levels of performance.
13. The outcome of highway claims will remain highly 'fact sensitive' and the courts' view on what constitutes a dangerous defect will not have changed because of the introduction of the WMHI. To defend a claim an authority will still need to demonstrate (and evidence) that it had taken reasonable care to identify and respond appropriately to a defect presenting a danger to road users.
14. The WMHI requires Service Levels to be based on local needs and priorities and requires authorities to manage their service and network risks. WMHI also highlights the need for authorities to have staff within their organisation with the necessary skills and competencies to take risk-based decisions. This applies across all levels of the organisation from senior management to inspectors and Local Area Technicians (LATs).
15. Liability risk guidance (WMHLR) suggests third party claims are likely to be challenged successfully by evidencing:
  - How the authority has determined what it is doing;
  - How the authority demonstrates it is doing what it says it is (output performance);
  - How the authority achieves its service levels (outcome performance);
  - Who within the authority is making risk-based decisions (skills and competencies)?

This Policy sets the framework that provides the evidence and justification for standards and levels of service, against which claims will be assessed and defended.

## **B. Other options available, and their pros and cons**

16. The implication of failing to adopt the Policy is that the Council will not have the evidence base required to demonstrate its risk-based approach to service delivery, and therefore will be vulnerable to third party claims.

## **C. Resource implications**

17. Currently the Council sets its budgets through the Mid Term Financial Plan (MTEP) process, and reviews and resets its levels of service through its annual business planning process to align with those budgets. This process, undertaken for all the highway services, takes account of local needs and priorities by reviewing a number of key datasets that describe and evidence risk to users of the network. The balance between levels of service and affordability is agreed through the business planning process. Therefore, there are no specific resource implications associated with the approval of the Policy, as the necessary resources are embedded in the organisation.
18. The business planning process includes a “Cost Model Challenge” to determine the balance between levels of service and affordability. The service leaders individually build up their budget requirement for each of their service areas. Each proposal is then challenged by the Service’s Management team to assess affordability. A process of review and revision is followed until it is agreed that the desired levels of service are affordable, as approved by Strategic Board and the Cabinet Member. Finally, agreed levels of service are published each year on the BCC website.

## **D. Value for Money (VfM) Self-Assessment**

19. The Service is taking steps to implement a risk-based approach for all aspects of highway infrastructure maintenance, including: setting levels of service, inspections, responses, resilience, priorities and programmes. The Service adopts this risk-based approach and takes account of local needs, priorities and affordability in order to:
  - Demonstrate benefits and value for money of the integrated delivery model, by identifying efficiencies through comparison of the contract with other similar contracts, benchmarking services, and undertaking reviews to promote continuous improvement.
  - Deliver best value by identifying efficiencies and revenue opportunities, complying with business processes, governance, and management systems to balance cost, risk and performance.
  - Undertaking independent service reviews by outside Bodies (i.e. the Highways Maintenance Efficiency Programme strategic review and the Future Highways Research Club service assessment)
20. An example is the relaxation of defect repair times in the 2017 Inspection Policy, whilst still maintaining a safe network. Delaying responses from next working day to 2 or 5 days enabled schedulers to plan and group repairs in the most efficient way.

## **E. Legal implications**

21. The Policy is likely to be a key piece of evidence used to demonstrate the risk based approach being adopted by the Council in the event of third party claims.
22. The courts will look to the WMHI as an example of good practice, and there will be an expectation on highway authorities to comply with the WMHI as a minimum

requirement. A lack of resources is not justification for failing to take such care as was reasonably required to make the highway safe.

#### **F. Property implications**

23. There are no property implications in approving this policy.

#### **G. Other implications/issues**

24. The Policy has been reviewed by BCC insurers, who are satisfied that it points to an organisation which is committed to the full adoption of the principles laid out in the WMHI.

#### **H. Feedback from consultation, Local Area Forums and Local Member views**

25. The implications of the WMHI have been discussed at length in the Service's Asset Management Board meetings, which are attended by the Cabinet Member for Transportation and his Deputy. Both have contributed towards the development of this Policy in the full understanding of its aims and objectives.
26. Levels of service have been reviewed during workshops held at annual Stakeholder Conferences, and so the risk-based approach has been well tested with County, District and Parish Councillors. Workshops undertaken at the Stakeholder Conferences included: "Be a Highways Inspector for a day" where intervention thresholds and response times for a range of defects were evaluated, and "Be a Highway Authority for a day" where competing demands for levels of service were evaluated against affordability. Feedback from these workshops now influences the annual business planning process.
27. The Service holds regular Parish Focus Group meetings, chaired by the Deputy Cabinet Member for Transportation, and the group's views are fed into the annual business planning process. A key theme arising from a recent meeting addressed the impact on public satisfaction with the service from activities that affect the aesthetics of the street scene.
28. Finally, annual individual meetings are held with Members to discuss programmes of work within the Capital Maintenance Programme (CMP) and the Service's approach to risk-based setting of levels of service. For example, at these meetings, Members are given the opportunity to review the Maintenance Hierarchy to ensure it reflects the needs of the roads in their areas.

#### **I. Communication issues**

29. A Communications Strategy ensures relevant information is provided to key stakeholders, in order to inform the setting of performance targets, budgets and in making key decisions. The strategy outlines how the Service promotes two-way communication, both providing information to key stakeholders and receiving feedback. It covers communication inside the service, across the Service and with external parties such as the public and Parish and Town Councils. The strategy lists the key Stakeholders, the channels of communication used, and contains an annual communications action plan. Once this policy is approved the communication strategy will be used to explain to stakeholders the implications of its adoption. This may include the annual stakeholder events or the individual annual member meetings.

## **J. Progress Monitoring**

30. Progress is managed through the Performance Management Framework (PMF) that includes both output and outcome indicators to demonstrate the Service is meeting its activity targets (outputs) and its service levels (outcomes).
31. Progress will also be monitored through the Service's governance system that will escalate risks, as required, through the Operations Management Board and up into the Strategic Board.

## **K. Review**

32. It is anticipated that significant changes to the Policy will not need to be made even if major changes in available budget occur, as it simply describes the guiding principles. The policy will be reviewed regularly.
33. Review may be needed following a significant change in case law, or changes or amendments to the WMHI.

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## **Background Papers**

The Highway Services Policy – Appendix A  
TfB's Comprehensive Approach to Assessing Risk – Appendix B  
Executive Summary

[Well Managed Highway Infrastructure](#)  
[Well Managed Highway Liability Risk](#)

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## ***Your questions and views***

*If you have any questions about the matters contained in this paper, please get in touch with the Contact Officer whose telephone number is given at the head of the paper.*

*If you have any views on this paper that you would like the Cabinet Member to consider, or if you wish to object to the proposed decision, please inform the Democratic Services Team by 5.00pm on 19 October 2018. This can be done by telephone (to 01296 382343), or e-mail to [democracy@buckscc.gov.uk](mailto:democracy@buckscc.gov.uk)*