



## Environment and Climate Change Committee

25 January 2023

**Title**

### Highways Term Maintenance Contract Negotiation Outcomes

**Report of**

Chair of Environment and Climate Change Committee

**Wards**

All

**Status**

Public

**Urgent**

No

**Key**

Yes

**Enclosures**

Appendix A - Industry Financial Assessment

**Officer Contact Details**

Ian Edser, Director of Highways and Transportation,  
Customer and Place

[ian.edser@barnet.gov.uk](mailto:ian.edser@barnet.gov.uk)

### Summary

The Highways Term Maintenance Contract with Tarmac Kier JV is currently due to end on 30 September 2023. The contract was awarded to Tarmac Kier JV for an initial two (2) years and six (6) months period through the TfL Highway Maintenance and Projects Framework (“HMPF”) through the completion of the Call-Off Contract arrangements as defined in the TfL HMPF contract documentation.

The Call-Off Contract with Tarmac Kier JV has the potential to extend beyond the initial two (2) years and six (6) months aligned to the TfL HMPF by five (5) years and six (6) months with a total contract period of eight (8) years through to 31 March 2029. In addition, the contract has the potential to extend beyond 31 March 2029 for a further four (4) years giving a maximum duration of twelve years (12).

In line with the recommendation from the 13 January 2022 Environment Committee, officers have undertaken negotiations with Tarmac Kier JV to develop the terms of a potential future service provision post September 2023. The outcomes of these negotiations are set out in this report.

The contract arrangements under the extension include a range of activities that will increase the sustainability of operations these are set out in more detail in Section 2.8 of this report.

## **Officers Recommendations**

- 1. That the Environment and Climate Change Committee notes the outcome of the negotiations with Tarmac Kier JV regarding an extension of the current contractual arrangements and agrees to authorise the award of an extension of contract for a further period of five (5) years and six (6) months through to 31 March 2029 subject to completion of the Call-Off Contract arrangements as defined in the TfL HMPF contract documentation.**
- 2. That the Environment and Climate Change Committee agrees to the inclusion of a mutual break point mechanism on 30 September 2026 to enable both the Council and Tarmac Keir JV to terminate the contractual arrangement if required for economic, technical, operational or performance reasons.**
- 3. That the Environment and Climate Change Committee authorises officers to notify Tarmac Kier JV of the Council's intention to extend the current contract subject to completion of the Call-Off Contract arrangements as defined in the TfL HMPF contract documentation.**
- 4. That the Environment and Climate Change Committee delegates authority to the Director of Highways and Transportation to settle the final contractual terms and to enter into the contract extension with Tarmac Kier JV to enable an effective extension of the contract from 1 October 2023.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 This report is needed to provide appropriate Council authorisation to award an extension for the Highways Term Maintenance contract with Tarmac Kier JV for a further period of five (5) years and six (6) months to 31 March 2029 from the current contractual end date of 30 September 2023.
- 1.2 The proposed extension will align with the HMPF term through which the Council's Term Maintenance contact with Tarmac Kier JV has been procured under a Call-Off Contract arrangement.
- 1.3 It is proposed to include an agreed mutual break point mechanism on 30 September 2026 i.e., three (3) years from the point of proposed extension of 1 October 2023; this forms an appropriate midterm point in the proposed extension to enable both the Council and Tarmac Kier JV to terminate the contractual arrangement if required for economic, technical, operational or performance reasons.
- 1.4 There is the potential that the contract, subject to necessary performance, could be extended for a further four (4) years beyond 31 March 2029, however this would be the

subject of a future report to this Committee and so is not included in the recommendations set out in this report.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Barnet's highway network is our largest, most valuable and most visible community asset and is probably the most used of all our services, by nearly all residents daily. It is vital to the economic, social, and environmental well-being of our residents and wider community.
- 2.2 The Highways Act 1980 ("**HA 1980**") sets out the main duties of highway authorities in England and Wales. Highway maintenance policy is set within a legal framework. Section 41 of the HA 1980 imposes a duty to maintain highways which are maintainable at public expense. The HA 1980 sits within a much broader legislative framework specifying powers, duties and standards for highway maintenance.
- 2.3 The Council has a duty to ensure that the statutory functions and responsibilities in relation to those highways for which the local authority is responsible are discharged. The Council also has a duty to ensure a safe passage for the highway user through the effective implementation of the legislation available to it, principally the HA 1980, with reference to Section 41, of the HA 1980.
- 2.4 The current Term Maintenance Contract provider, Tarmac Kier JV, was procured through a Call-Off Contract arrangement under the TfL HMPF commencing 1 April 2021 for an initial period of two (2) years and six (6) months. The current arrangement is set to terminate on 30 September 2023. The contract has the potential to be extended for a further five (5) years and six (6) months to 31 March 2029 to its full eight (8) year term. In addition, there is the potential to extend for a further four (4) years beyond 31 March 2029, however this would be the subject of a future assessment regarding economic, technical, operational and performance aligned to discussions with TfL nearer the time as to their stance on extending the core HMPF contract arrangements across London.
- 2.5 At the meeting of this Committee held on 13 January 2022 it was resolved that Officers enter into negotiations with Tarmac Kier JV to develop the terms of a potential future service provision post September 2023. The outcomes of these negotiations are set out in this report.
- 2.6 From the outset of the negotiations Tarmac Kier JV wanted to put on record their recognition that the contract with LB Barnet is seen from both Tarmac and Kier main boards (the JV partners) as an exemplar within London. Both Officers and Tarmac Kier JV feel that solid foundations have been formed since the contract commencement on 1 April 2021 and these foundations would enable, subject to Committee approval, the delivery of a long-term partnership arrangement delivering value for money, continuous improvement, innovation, and associated service excellence especially at the current time with tough fiscal challenges being faced by the industry and the wider UK economy.
- 2.7 In the negotiation discussions Tarmac Kier JV have, however, recognised that there have been times where the contract has not worked as effectively for the Council as they anticipated in relation to service responsiveness and flexibility. These matters and ultimately the experience of our residents have been factored into the negotiations conducted during 2022.

2.8 **Quality Proposals:** The negotiations undertaken with Tarmac Kier JV have resulted in a set of quality proposals being submitted, in summary:

- **Reactive Maintenance Service** ~ implementation of refreshed processes, governance, and performance measures, coupled with improved utilisation of the Councils Confirm IT Asset Management system, to deliver reactive maintenance i.e., safety critical repairs in line with the Council's pledge of 'quicker and better'. If the recommendations of this report are approved, Tarmac Kier JV have committed to put this new arrangement in place from 1 April 2023.
- **Refreshed Governance Arrangements** ~ Tarmac Kier JV have recognised with the Council that the current governance arrangements would benefit from a review, aligned to any extension, to deliver a strong partnership ethos to foster positive working relationships and behaviours. The proposed governance arrangement ensures the delivery of clear lines of reporting and effective relationship management at all levels between Tarmac Kier JV and LB Barnet officers.
- **Introduction of Design Capability** ~ The HMPF contract includes the potential to access design capability from Tarmac Kier JV which has only been used in a limited way to date. However, in line with the Highways Future Service Delivery Strategy, as approved at this Committee on 8 March 2022, the proposal from Tarmac Kier JV would enable the Council to access professional design services from Tarmac and Kier as a secondary delivery provider to the Council's own in-house design teams for any works that come within the scope of the HMPF contract. On specialist and large-scale schemes, this would be able to be extended to a design and build approach with the associated liability sitting with Tarmac Kier JV.
- **Social Value for our Residents** ~ Tarmac Kier JV have committed through their proposals to review their delivery methodologies in relation to the management of their supply chain and associated self-delivery, subject to an agreed set of commitment and obligation metrics that will be reported to the Council through the contracted reporting mechanisms. Examples include:
  - Creating new jobs and skills to tackle economic inequality in the borough
  - Improving local supplier capacity and resilience
  - Supporting resident involvement and development in schemes
- **Sustainability of the Operation** ~ Tarmac Kier JV have already been proactive in the delivery of sustainability and carbon reduction initiatives including supporting the Council in the introduction of a dedicated Highway Material Palette, introduction of recycled materials into the operation, and driving efficiency through value engineering one pass practices. We will agree with Tarmac Kier JV the introduction of a dedicated carbon reduction plan with associated refreshed KPIs to enable effective measurement.
- **Innovation, Continuous Improvement and Behavioural Change** ~ Tarmac Kier JV are well placed to deliver innovation and continuous improvement in the operation, with clear demonstratable examples already in place through the current operation e.g:

- Changing the rubber crumb material supplier to a new product that uses a higher % of recycled car tyres.
- Expanding the portfolio of vehicle refuelling stations used by Riney/TKJV to reduce vehicle movements, and therefore a reduction in emissions.
- Introducing new integrated helmet and safety glasses units to reduce the number of plastic glasses being lost and wasted.
- Centralising the grab fleet management to a centralised hub/system/ software allowing for more efficiency and reduced emissions.
- Moving towards solar powered welfare units instead of using fossil fuels.
- Introducing electric powered whacker plates and small tools.

Tarmac Kier JV are proposing to move beyond this to work with the Council to develop, implement and monitor a suite of KPIs that drive further commercial innovation in the service with aligned behaviours to ensure that it is embedded and maintained.

- **Confirm IT Asset System Workflow Review** ~ Tarmac Kier have committed to supporting the Council in a full end to end workflow review of the Confirm Asset Management system utilising the Tarmac Kier JV in-house Confirm asset management specialists. This review will have the purpose of enhancing the current utilisation of Confirm across both Tarmac Kier JV and LB Barnet. This will be coupled with the development and implementation of a joint rolling training and plan utilising Tarmac Kier JV specialists.
- **LB Barnet Utilities and Highways Charter** ~ Tarmac Kier JV recognise the benefits of the Councils Utilities and Highways Charter, and even though they are not a utility company they have agreed to sign up to the charter and work to the defined objectives set out within the charter.

2.9 **Financial Stability:** Regarding the financial sustainability of the operation, the negotiations were entered into by both parties mindful of the economic climate experienced during 2022 and beyond. Through the current contractual arrangement with Tarmac Kier JV the Council has been able to benefit from:

- Base contract rates that were set on 1 April 2021, pre the current economic climate, with an inflation mechanism that has resulted in rate increases below the current industry average as reported by the Office for National Statistics (ONS).
- Continuity of material, plant and equipment supply due to both Tarmac Kier JV's production and buying power in the market.
- Flexibility of operational delivery through direct workforce and selected supply chain partners ensuring efficiency of spend on the network.

For information Appendix A summarises the current industry financial position.

2.10 **Summary** ~ In summary the contractual arrangement entered with Tarmac Kier JV on 1 April 2021 has enabled the Council to maintain stability of service during a challenging financial period from pandemic response through to economic turbulence within the approved financial envelope. This arrangement has enabled Officers to maintain focus on operational reactive and planned maintenance programmes for our residents.

- 2.11 Through an extension of the contract the Council would continue to benefit from the contractual arrangements set in 2021 with the assurance of an industry partner that is looking for a sustainable long-term partnership to deliver service quality, value for money and delivery. Having a partner with the capacity and capability to work in partnership with the Council to smooth the economic and environmental impact of the highways market now and into the future is critical, especially without the need to go to the market with the associated procurement costs attributable to such an exercise.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 The Council has a range of potential short-term options available; these include:

- Haringey (LCP) Construction Framework (Lot 5.1)
- Crown Commercial Services public works framework (Lot 1.2)
- Use of the Council's resilience framework, which is currently out to market, due to go live 1 April 2023.

The above options have been discounted as they do not offer the level of long-term service quality and value for money when compared with that offered by Tarmac Kier JV in their extension proposal.

In addition, the Council could undertake a market exercise to secure a new Term Maintenance Contract supplier, however this has been discounted as it would divert resources from the Re JV insourcing exercise, incur procurement expense and would not be in place for the 1 October 2023, necessitating a period of short-term extension with Tarmac Kier JV.

### **4. POST DECISION IMPLEMENTATION**

- 4.1 If the Environment and Climate Change Committee approves the recommendations in this report, HB Public Law will be instructed to conclude the contract extension aligned to the TfL HMPF Call Off Contract arrangements with Tarmac Kier JV.
- 4.2 The Council will follow the guidance set out in the TfL HMPF contract Call-Off Contract arrangements with Tarmac Kier JV.
- 4.3 Officers will undertake the final commercial and legal processes, to enable a seamless extension to be put in place from the 1 October 2023.

### **5. IMPLICATIONS OF DECISION**

#### **5.1 Corporate Priorities and Performance**

- 5.1.1 The extension of the Term Maintenance Contract will contribute to the Council's sustainability strategy through the promotion of sustainable practices and continuous improvement within the operation.
- 5.1.2 A well-functioning sustainable Term Maintenance Contract will ensure efficient and effective improvements to the highway network, which in turn will contribute to improving the local environment and the quality of life for the residents and help create conditions for a vibrant economy.

5.1.3 The proposed contract extension will contribute to the Council's Health and Wellbeing Strategy by making Barnet a great place to live and enable the residents to keep well and independent.

5.1.4 The Highway network is the Council's most valuable asset and is vital to the economic, social, and environmental wellbeing of the Borough as well as the general image perception. The Highways provide access for business and communities, as well as contribute to the area's local character and the resident's quality of life. Highways really do matter to people and often public opinion surveys continually highlight dissatisfaction with the condition of local roads and the way they are managed.

## 5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

### 5.2.1 Finance & Value for Money

5.2.1.1 The annual spend for the current contract is £10.957m based upon the 2022/23 contractual budget outturn, and this is the financial envelope that the contract is operating within as set in the Council's annual budget. There is no planned increase in budget above that already set because of this report.

5.2.1.2 The underlying financial principles will continue as per the award of the contract on 18 January 2021 ensure that the Council's interests are protected in relation to the continued delivery of a value for money solution, specifically in relation to:

- Performance
- Payment Mechanisms
- Delivery Volumes

5.2.1.3 Under Article 7 of the Constitution, the Environment and Climate Change Committee has responsibility for all borough-wide or cross-constituency matters relating to the street scene including, parking, road safety, lighting, street cleaning, and can receive reports on relevant performance information and risk on the services under the remit of the Committee.

### 5.2.2 Procurement

5.2.2.1 The current contract commenced on 1 April 2021 by way of a Call-Off Contract under the TfL HMPF. The current arrangement is due to continue to 30 September 2023.

5.2.2.2 The TfL HMPF contract has within it a clause enabling the Council to extend the Call-Off Contract with Tarmac Kier JV.

5.2.2.3 The procurement of highway services, including related supplies and works, must be done in compliance with the public procurement rules, including the Public Contracts Regulations 2015 (PCR).

5.2.2.4 The use of the extension arrangement in accordance with the terms of the TfL

HMPF is a recognised route to market for the provision of Highways Term Maintenance Contract Services. The approach is PCR compliant and in accordance with the Council's Contract Procedure Rules at paragraph 11.1

### 5.2.3 Staffing

There are no direct staffing implications for the Council as a result of extending the current contractual arrangements.

### 5.2.4 IT

There are no direct IT implications for the Council as a result of extending the current contractual arrangements. Tarmac Kier JV will continue to maintain existing IT systems and connectivity to enable the contracted reporting and data sharing requirements during the period of extension.

### 5.2.5 Property

Tarmac Kier JV have confirmed that they will continue to utilise depot facilities, set up at contract commencement, to service the contract during the period of extension.

### 5.2.6 Sustainability

The contract arrangements under the extension include for sustainability of operations including those detailed in Tarmac Kier JV proposals set out in Section 2.8 of this report.

## 5.3 Legal and Constitutional References

5.3.1 As a highway authority Barnet has a duty under section 41(1) of the Highways Act 1980 to maintain the public highway.

5.3.2 In addition, Section 30 of the Greater London Authority Act 1999 confirms that the highways authority has the general power to, amongst other things, promote the improvement of the environment, and economic and social development.

5.3.3 The Call-Off Contract commenced on 1 April 2021 and will continue until 30 September 2023.

5.3.4 The TfL HMPF was lawfully procured under the PCR 2015 and the Council, by way of the Call-Off Contract, appointed Tarmac Kier JV under the HMPF as the North Area contractor. The extension to the Call-Off Contract is permissible under clause 4.5 of the HMPF as long as the Council ensures that:

***The service period specified in a Call-Off Contract does not extend beyond the end of the Framework Term, save in respect of any instructed Task.***

The end of the Framework Term of the TfL HMPF is 31 March 2029; therefore, the Council can utilise the full Framework Term of the TfL HMPF and extend the *service period* (the term of the Call-Off Contract) to 31 March 2029. The Council remains compliant with public procurement law as the extension adheres to the terms of the



TfL HMPF and any amendments required to the Call-Off Contract pursuant to the extension must not and will not be substantial. Further, Contract Procedure Rule 11.1 is adhered to whereby:

***Contracts that have been originally advertised with extension options and which contain clear extension options can be extended subject to acceptance under Article 10 Table B of the Constitution.***

Acceptance under Article 10 Table B of the Constitution occurs in that this Committee Report is the appropriate document to authorise the extension.

HB Public Law will work with Tarmac Kier JV to document the extension in a suitable legal document.

5.3.5 Under Barnet's Constitution the Environment and Climate Change Committee is responsible for "all borough-wide or cross-area matters relating to the local environment".

## 5.4 **Insight**

5.4.1 Not applicable to this report, however the revised delivery plan will be informed by strategic insight data provided by TfL and other sources in due course.

## 5.5 **Social Value**

5.5.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Social Value is covered in paragraph 2.8 (Social Value for our residents) of this Committee Report.

## 5.6 **Risk Management**

5.6.1 The Council, as Highway Authority, has various responsibilities and duties. To address these responsibilities and duties, the Council has established policies, systems and processes that are regularly audited, reviewed, and amended where necessary to reflect current policy and guidance and provide the Council with a robust defence against insurance claims on the public highway.

5.6.2 The preparation of annual programmes of work for both footways and carriageways in the borough demonstrates the necessary use of asset planning and risk management principles for the distribution of available funding and resources on an agreed, clear, and auditable basis utilising a prioritisation process and governance arrangements overseen by members and approved by the Environment and Climate Change Committee.

5.6.3 The extension of the current contract with Tarmac Kier JV will be subject to a legally binding agreement between the Council and Tarmac Kier JV. This agreement will be the subject of a formal commercial settlement with Tarmac Kier JV, the terms of which will ensure that the Council's interests are protected in relation to core

contractual requirements.

## **5.7 Equalities and Diversity**

5.7.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

5.7.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy, and maternity; race; religion or belief; sex and sexual orientation.

5.7.3 To assist in meeting the duty, the Council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

5.7.4 The broad purpose of this duty is to integrate considerations of equality into day-to-day business and keep them under review in decision making, the design of policies and delivery of services.

5.7.5 Good roads and pavements benefit all sectors of the community by removing impediments and assisting quick, efficient, and safe movement to access school, work and leisure facilities. This is particularly important for the elderly, people caring for children and those with mobility difficulties and sight impairments. The condition of roads and pavements is regularly at the top of concerns expressed by residents and the Council is listening and responding to those concerns by committing funding and resources to its planned highway maintenance programmes across the borough on a prioritised basis.

5.7.6 The physical appearance and the condition of the roads and pavements also have a significant impact on the quality of life of residents and visitors to the borough. A poor-quality street environment will give a negative impression of an area, impact on people's perceptions and attitudes as well as increasing feelings of insecurity.

## **5.8 Corporate Parenting**

No direct or indirect impacts on looked after children or care leavers identified beyond those applicable to the population as a whole.

## **5.9 Consultation and Engagement**

This section does not apply to this report.

## **6. ENVIRONMENTAL IMPACT**

Implementing the recommendations in the report will lead to a positive impact on the Council's carbon and ecology impact aligned to the Council's emerging Sustainability Strategy in relation to supply chain operations and material selection including use of low carbon and recycled materials.

## **7. BACKGROUND PAPERS**

- 7.1 Environment Committee Meeting 30 June 2020  
<https://barnet.moderngov.co.uk/documents/s59143/Procurement%20of%20Highways%20Term%20Maintenance%20Contractor%20-%20Public.pdf>
- 7.2 Environment Committee Meeting 11 September 2020  
<https://barnet.moderngov.co.uk/documents/s55126/Procurement%20of%20Highways%20Term%20Maintenance%20Contractor.pdf>
- 7.3 Environment Committee Meeting 18 January 2021- Main report  
<https://barnet.moderngov.co.uk/documents/g10158/Public%20reports%20pack%2018th-Jan-2021%2018.00%20Environment%20Committee.pdf?T=10>
- 7.4 Environment Committee Meeting 18 January 2021- Supplemental Report  
<https://barnet.moderngov.co.uk/documents/s62877/Environment%20Committee%20LoHAC%20Replacement%20Supplemental%20report.pdf>
- 7.5 Environment Committee Meeting 13 January 2022  
[https://barnet.moderngov.co.uk/documents/s69480/Environment%20Committee%20Report%20Highways%20Service%20Future%200040122%20Final\\_.pdf](https://barnet.moderngov.co.uk/documents/s69480/Environment%20Committee%20Report%20Highways%20Service%20Future%200040122%20Final_.pdf)

## Appendix A – Industry Financial Assessment

- **Increased base costs** ~ attributable to staff, fuel and material costs which have seen construction output price growth increase on a monthly average of between 10% and 11% in 2022. The latest ONS reported figure is 10.9% in October 2022.
- **Construction Material hyperinflation** ~ Considering construction materials in isolation, ONS have reported that these have been subject to an average increase of 16.7% between September 2021 and September 2022 fed by huge increases in specific materials, for example:
  - Gravel, sand, clays and kaolin ~ circa 60% increase (Sept 21 to Sept 22)
  - Precast Concrete paving / kerb products 32% increase (Oct 21 to Sept 22)
  - Natural Stone 23% increase (Jan 22 to May 22)
  - Ready mix concrete 14% increase (April 22 to September 22)
- **Predictions for 2023** ~ The financial forecast is that base costs will continue to rise, however it is anticipated that material price increases will reduce to pre-pandemic levels for 2023 and beyond potentially off the back of a reduction in demand due to the economic climate.