

# Report to Environment & Economy Overview and Scrutiny Panel

Agenda  
Item:  
**A.2**

Meeting Date: 3<sup>rd</sup> July 2014  
Portfolio: Environment and Transport  
Key Decision: Not Applicable:  
Within Policy and  
Budget Framework YES  
Public / Private Public

Title: CLAIMED RIGHTS UPDATE  
Report of: The Director of Local Environment  
Report Number: LE 11/14

## Purpose / Summary:

The existing arrangements for Claimed Rights Highways Maintenance which had been in place since 2001 were terminated on the 31st March 2013 when all relevant staff and services transferred back to the County Council. This report has been prepared to advise and update members on issues related to this former service. The Appendices to this report give information regarding a range of related issues.

## Recommendations:

It is recommended that members note the contents of this report and consider what comments they may wish to make regarding highway related services following the termination of Claimed Rights.

## Tracking

Executive:	
Overview and Scrutiny:	
Council:	

## **1. BACKGROUND**

- 1.1 The Executive made a decision at its meeting on the 29th October 2012 to hand the Highways Claimed Rights service back to the County Council on the 31st March 2013. The full Council endorsed this decision at its meeting on the 13th November 2012.
- 1.2 Following these decision officers began to prepare detailed plans in consultation the County Council for the handover of this service on the 31<sup>st</sup> March 2013. In order to progress the issue a Joint Members Group was set up to consider the range of issues and this was supported by an Officer Group. Appendix 1 details the various issues discussed and shows how most issues have now been satisfactorily resolved. Work is still ongoing on a number of issues given in the updates in Appendix 1 and also on section 2 of the report where details of the unresolved issues are discussed.

## **2. PROPOSALS**

- 2.1 As mentioned earlier, and as detailed in Appendix 1, there are a number of issues that have not yet been resolved. To try and resolve the issues a meeting between relevant City and County officers was held on the 9<sup>th</sup> May 2014, chaired by the Deputy Chief Executive, Darren Crossley. A note of the issues discussed at this meeting is attached as Appendix 2.
- 2.2 The main issues to not are: -
  - Residual Agreement - Despite them initially working with us to prepare a residual agreement the County Council have now decided such an agreement is not necessary. The City still consider that an agreement would be helpful to define who does what. To try and reach a compromise on this issue the City Solicitor has offered to prepare a simplified agreement or draft a memorandum of understanding. We await a response from the County Council on whether they will accept these proposals.
  - Weed Control - after the difficulties last year when weed control was late in taking place it was expected that this year there would be no issues as a contractor had been appointed to carry out the spraying. The mild winter, and a delay in the contractor being available has meant that weed growth has become established in some areas. The situation is nothing like as bad as last year and the County Council took some emergency action to spray the worst areas prior to the contractor becoming available. The spraying programme started on the 19<sup>th</sup> May and should be completed within 2 weeks. City Council officers are doing all they can to deal

with the situation and will endeavour to remove excess weed growth. The County have been advised that they may have to remove excessive dead growth.

### **3. CONSULTATION**

- 3.1 There are no current plans for further consultation on this issue.

### **4. CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The transfer of the Claimed Rights service has been carried out with little, if any, impact on the residents of Carlisle. Most of the issues and potential problem areas have been resolved as detailed in Appendix 1 to this report, however there are a few issues that are proving more difficult to close down. Regular Officer Liaison Meetings are now taking place and opportunity also exists through the Highways and Transport Working Group (HTWG) to raise and discuss issues jointly with County Council Members. Members of this Scrutiny Panel may have highway related issues which they wish to raise either with officers or through the HTWG and these can be raised at any time.

### **5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 5.1 The transfer of the Claimed Right service has involved a considerable number of Liaison Meetings with County Council Members and Officers to ensure a smooth transition of the service. It is proposed to continue with this partnership working and develop the partnership further to ensure that residents of Carlisle receive the best possible highway service.

**Contact Officer:** Angela Culleton

**Ext:** 7325

**Appendices** Update/Progress report on Claimed Rights issues  
**attached to report:**

**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:**

- None

**CORPORATE IMPLICATIONS/RISKS:**

**Chief Executive's -**

**Community Engagement –**

**Economic Development –**

**Governance –**

**Local Environment –**

**Resources -**

## Appendix 1

### INITIAL DISCUSSIONS & UPDATE ON PROGRESS

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
1	Highway Maintenance	Highway Maintenance works would transfer including the dedicated staff who deal with this work in line with TUPE agreements.	Need to identify the staff eligible to transfer and liaise with the County Council on implementing transfer and advising staff concerned.	<b>Accepted.</b> Need to identify staff, clarify skills and training and understand existing terms & conditions. Need to agree how the transferring staff will be managed within the current Highways restructuring exercise.  Note that CPE Parking will stay with the City
	Update 12/03/13		The details of the staff that will be transferring have now been agreed. Three existing members of highway staff have been appointed to provide the Residual Highways Service and will remain at the City, their names will be removed from the TUPE list. <b>Issue resolved</b>	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/UPDATE	COUNTY COUNCIL COMMENTS
2	City (Footway and Amenity) Lighting	It makes both economic and operational sense to transfer this function including staff to the County Council. The City Council would then commission this work through the County Council at agreed rates.	City wishes to include Amenity and Parish Lighting in a residual agreement.	Check out present manning and Emergency Response arrangements. City wish to include Amenity & Parish lighting in a residual agreement
	Update 12/03/13		Details of the lighting service which the City Council would like the County Council to carry out on their behalf have been passed to the County Council. Cost estimates are awaited from County.	
	Update 22/07/13		Cost estimates have been received from the County. The 15% admin fee which they wish to charge is considered too high and needs to be discussed further.	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 31/10/13		Specification and charge rates have been agreed with the County Council. Works Agreements to be have been signed for each type of work to be carried out. <b>Issue resolved</b>	
	Update 29/5/14		The County experienced difficulties in raising invoices at the end of 2013/14 for work carried out. Assurances have been received that this issue should not recur.	
3	City Winter Maintenance	Carlisle has two small gritters which are well suited to unclassified roads. It is proposed that this service moves to the County Council and is included within their normal winter gritting operations. The extent of coverage to be agreed with any added work to be commissioned through the County Council at agreed rates.	The City would like the option of commissioning additional winter maintenance if required.	These “60 Reg” vehicles, whilst demountable, are not used by the City for other general operations. City to commission extra pre-salting and winter coverage. Extent of extra coverage, on top of the County Priority routes, needs to be clearly agreed and costed.

	Update 12/03/13		No detailed discussions have yet taken place on this issue, neither has it been resolved if the County wish to acquire the City gritting vehicles.	
	Update 22/07/13		The City may wish the County to provide a gritting service in our car parks when requested, It is assumed the County will provide the same level of gritting on city roads as that carried out under Claimed Rights.	
	Update 31/10/13		The County to carry out trial on the footways in the pedestrian area using a sprayed liquid which is applied weekly. If this works it should reduce the need for our street cleaning staff to apply grit when conditions are bad. Our staff can then help in other areas such as the pedestrian routes into the City particularly from the car parks. County will supply us with free salt to grit footways. City staff to advise County when grit bins need refilled so that salt is always available. County may want to encourage members of the public to be Snow	



			Champions in the community where they live. City /County have still to agree gritting of City Car Parks.	
	Update 29/5/14		The County were unable to complete the trial application of de-icing sprays. This issue is the subject of ongoing discussions between City/County officers.	
4	Highway Verges and Tree Maintenance	It is proposed that these elements are retained and undertaken by the City Council Green Spaces teams. There could also be an opportunity to increase the amount of this type of work they could undertake on behalf of the County Council.	The City wishes to include highway verge maintenance in a residual agreement. Providing that there is funding available, the City would also wish to include highway tree maintenance.	At present the work on Highway Trees is funded by the verge maintenance budget (£30k). No other funding is available.
	Update 12/03/13		The County Council have agreed to carry out highway tree maintenance and repairs to verges. The cutting of grass on verges will be carried out by the City Council. The County have indicated they will have a reduced budget for this work. Details will be incorporated in the Residual Agreement.	

	Update 22/07/13		Officers still need to agree the full extent of the verges to be maintained on a small number of locations where highway boundary is not clearly defined.	
	Update 29/5/14		This issue is still to be resolved and it was agreed at joint meeting on 9/5/14 that officers would arrange a meeting to resolve. County Council will shortly present a tree maintenance strategy to Highways and Transport Working Group for approval.	
5	Weed Control	This discreet piece of work is currently outsourced and commissioned by the City Council to include City Council and County Council responsibilities. This could transfer to the County Council or be commissioned by the City Council Green Spaces team if funded by County.	City could carry out this work or procure it. It is key to success that there is alignment with street cleansing schedules.	The County Council funded element of this is £30k. We could procure the work through our framework arrangements.
	Update 12/03/13		The County Council will carry out weed control on the highway.	
	Update 22/07/13		County using a contractor appointed by them. Work on site is late in the season and	

			has just started but there is now an issue regarding who will remove the excess weed growth that has been allowed to take place.	
	Update 31/10/13		County have now resolved the outstanding issues and have arrangements in place for next year. <b>Issue resolved</b>	
	Update 29/5/14		The mild weather over the winter has accelerated weed growth. The County spraying programme only commenced on 19/5/14 by which time substantial weed growth had occurred. County plan only two sprays per year which may not prove sufficient. County has undertaken some emergency spraying in early May to try and address bad locations ahead of main spray.	

6	Plant Vehicles and Equipment	All dedicated Plant, Vehicles and Equipment would form part of the transfer agreement.	Agreed	Need to assess assets and decide on our needs. It is expected that a number of new vehicles will need to be purchased. City estimate a need for 11 replacements
	Update 12/03/13		Plant, vehicles and equipment will reside with the City Council. Discussions are ongoing regarding the transfer of some equipment/vehicles to the County Council upon agreement of suitable terms.	
	Update 22/07/13		Some equipment/vehicles have transferred to the County Council on suitable terms. The City is selling any surplus vehicles and equipment. <b>Issue resolved</b>	
7	Training & Development	Carlisle City Council committed to providing opportunity to staff to realise their full potential through structured training and development. County Council urged to adopt the same philosophy to transferred staff.		County have similar policy.

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 12/03/13		No problems anticipated as County is committed to developing staff. <b>Issue resolved</b>	
8	Festive Lighting	This work is currently undertaken by transferring staff involved with Claimed Rights. The service would benefit from a revisit in regard to scale, cost and delivery options for 2013 and beyond.	County unlikely to do this work. Will need to seek alternative delivery mechanism	Review required. County unlikely to want to undertake this work
	Update 12/03/13		The County Council have been asked to quote for doing this work. Quotes have also been obtained from specialist contractors. A decision will need to be made on this issue during the summer.	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 22/07/13		The County have declined this work. A tender is now being prepared for a contractor to carry out this work for a period of 3 years.	
	Update 31/10/13		Contractor appointed to do this work for 3 years. Work is ongoing, switch-on 17th Nov. <b>Issue resolved</b>	
9	Gulley Maintenance	It is proposed that this service and dedicated staff, plant, equipment and vehicles be transferred to the County Council. The City Council also provides a sewer blockage clearance service to social housing partners. This could continue through a service level agreement with the County Council similar to that in place now with the City Council.	The City would not be able to continue with 3 <sup>rd</sup> party work if the claimed rights service transfers.	Our routine gulley maintenance activity is managed through the framework contract by a contractor. Sewer related work should not form part of transfer arrangements

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 12/03/13		The City Council would transfer gully cleaning to the County Council. The blockage service no longer provided for social housing partners who now make their own arrangements for this service.	
	Updated 22/07/13		Gully Cleaning Service transferred. <b>Issue resolved</b>	
	Update 29/5/14		The county Council have now appointed a contractor to carry out all gully cleaning. The contractor has been asked to provide a schedule of gullies cleaned but nothing has been provided as yet.	
10	Emergency Callouts	Callout service for Highway Emergencies to be integrated into the County Council arrangements.	Agreed	Agreed
	Update 31/10/13		Non highway emergency issue have been discussed by working group of City Council Officers. Relevant call-out arrangements agreed. <b>Issue resolved</b>	

	Update 29/5/14		Further work has been identified as necessary to better define call out arrangements.	
11	Relocation of staff	Preferred options for relocation would be Dalston/ Brampton.	To be explored further quickly	Members may wish us to investigate other alternatives within the City. Table of pros and cons of various options is being prepared
	Update 12/03/13		Office Staff who transfer will initially be located at Parkhouse pending a possible move to Dalston. Operatives will be based at Dalston or Brampton if this is more convenient for particular staff. <b>Issue resolved</b>	
12	Land Drainage / Flooding	Land drainage remains a District Council function however any physical works would be commissioned through the County Council or Contractor.	Drainage responsibilities will remain with the City and City will need to retain some expertise to meet statutory responsibility.	Member of City staff already working 2 days a week with County team. However City may well require residual level of technical service provision



	Update 12/03/13		City will retain the responsibility for this service. Details still to be discussed of what support the County may be willing to provide. Details would be incorporated in the Residual Agreement.	
	Update 22/07/13		Under new national legislation the County are now the Lead Flood Authority. Officers of both authorities are liaising to deal with problems on a prioritised basis. <b>Issue resolved</b>	
	Update 29/5/14		Defra grant available to any properties that suffered internal flooding between 1 <sup>st</sup> December 2013 and 31 <sup>st</sup> March 2014. 2 properties are known to qualify and have been advised of the grant.	
13	Flooding	In times of flood, the Highways staff play key role in assisting communities with protection of premises and associated signage. If the remaining staff in other sections such as Green Spaces and Waste Services were unable to cope the City would wish to supplement	Further develop resilience plan	City presently provide sandbags, would this continue?  Our County teams are trained to manage some of the flood relieve assets i.e. barriers at Etterby Close.

		those resources through the County Council.		
	Update 12/03/13		The risk of flooding is reduced due to EA Flood works, as a consequence the response likely to be required is reduced. It is not considered necessary to continue to provide sandbags. Further discussions are ongoing with a number of Partner Organisations to define the flood response that residents can expect from all organisations. <b>Issue resolved</b>	
14	Highways & Transport Working Group	The City Council currently has one representative to this group. In order to enable the City to better contribute to the direction and development of the service it is proposed to amend the constitution to include two representatives from the City.	Agreed	Agreed

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/UPDATE	COUNTY COUNCIL COMMENTS
	Update 12/03/13		This decision has still to be actioned.	
	Update 22/07/13		There are now 2 city representatives. Issue resolved	
15	Bridleways and Footpaths and Public Rights of Way	The capital maintenance costs of these services only are included in HCR payments. They do not include for staff, management and overheads. This service should, for those reasons, transfer to the County Council.	Officer to transfer and capital budget	Area of activity to be checked with Countryside Access team. Funding not from local Highways budget
	Update 12/03/13		Officer engaged on this work is to transfer to County under TUPE. Issue resolved	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/UPDATE	COUNTY COUNCIL COMMENTS
16	Street Name Plates / Bus Stops	These are statutory City Council responsibilities, however the service could be commissioned from County.	County doesn't want this service.	We would not wish to take on the statutory Street Name Plates work.  Need to consider alongside Clear Channel Contract for Bus Shelters
	Update 12/03/13		Street Nameplates to remain with City Council who will arrange for contractor to carry out any works needed. <b>Issue resolved.</b> Bus Shelter maintenance is not a statutory function, decision made by City to withdraw funding. County Council have been requested to take on and fund this service. A response is awaited and further consideration of this issue may be needed.	
	Update 31/10/13		County Council /City Council have agreed to jointly share costs in 2013/14, County to provide £5,000 funding. Further meetings to take place with Bus Company to seek support for maintenance of shelters.	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
17	Retained Engineering Resources	The City Council to retain a core resource to provide expert advice to officers and members and manage retained work. This will consist of an engineer with drainage expertise along with one or two Technical Assistants. Further work is required in order to determine the actual resource requirements.	Further work required to establish ongoing need for technical expertise at the City Council	City need to determine residual requirements
	<b>Update 12/03/13</b>		<b>3 members of existing City Council staff have now been appointed to provide the retained Highway Service. Posts funded for 2 years.</b> <b>Issue resolved</b>	
18	Capital Works	Existing Claimed Rights staff undertake little Highways Capital Work, most is undertaken by sub contractors. This work is not part of HCR funding. It would be economic to commission any capital work through the County Council workforce or through the County Council Framework Agreement.	In future work would be commissioned from County, from Framework or tendered.	Agreed

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/UPDATE	COUNTY COUNCIL COMMENTS
	Update 12/03/13		Future City Capital works would be procured by the City Council. <b>Issue resolved.</b>	
19	Non-HCR Work	Non-HCR work required by the City Council should be undertaken through the County Council, by Framework contract or by Contractor.	Work would be commissioned	Such works could be commissioned directly or through County frameworks
	Update 12/03/13		Work would be commissioned from Contractors or County as appropriate. <b>Issue resolved</b>	
20	Insurance	After transfer the highway insurance costs would become the responsibility of the County Council. On-going claims liabilities at the time of transfer would remain with the City. New claims will be County responsibility.	Legal agreement will be required to define the arrangements.	<p>City would prefer a clean break i.e. Any claims received up to 31<sup>st</sup> March 2013 to be dealt with by City council. Any claims brought after to be responsibility of the County. However Para 7 of Part 1 to Schedule 7 of the Highways Act states that the City continues to be responsible for any claims that relate to the time when they exercised the powers.</p> <p>City will need to take this ongoing responsibility into account following transfer.</p>

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 12/03/13		Insurance arrangements during the transition period of 3 years for which the City will be responsible for claims arising during claimed rights have been discussed and a procedure agreed. <b>Issue resolved</b>	
21	Service Standards	The City currently provides a rapid response to potential highway hazards and operates a Find It Fix It approach. Members would wish to see no reduction to the current level of service.	Maintain standards in line with the rest of the County.  Already agreed standards at maintenance need to reference in any agreement	Need to fully understand the approach taken by the City so that any potential risk from differing approaches can be managed.
	Update 12/03/13		Future service standards are a matter for the County Council and it is expected that the Better Highways procedures will be used as elsewhere in the County. <b>Issue resolved</b>	

No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/UPDATE	COUNTY COUNCIL COMMENTS
22	Support Services	The dedicated staff involved in the management, supervision and administration of the Claimed Rights function will transfer. Finance, IT, Personnel and Payroll also support the operational staff. These elements would be analysed in detail in order to agree further potential TUPE entitlements.	To identify the staff eligible to transfer and liaise with the County Council,	City to provide evidence of entitlement. Unlikely that County would require extra support services.
	Update 12/03/13		The Staff transferring under TUPE have been agreed. <b>Issue resolved</b>	
23	Contact Centre	City request financial support for continuing to take complaints calls during transfer period.	Additional calls will be generated during a transition period, any funding would be to support the extra cost to the City Council as a result of the transition. The demand will taper off with time. Suggest funding from the County for a 2 year period to cover this cost.	It is suggested that, in a non-unitary situation such calls will always have to be fielded by city and passed on to County.



No	ITEM / SERVICE	PROPOSAL	CITY COUNCIL COMMENTS/ <b>UPDATE</b>	COUNTY COUNCIL COMMENTS
	Update 12/03/13		The Residual Agreement will set out work each organisation will be responsible for and details of any financial remuneration agreed. <b>Issue resolved.</b>	
	Update 29/5/14		The County council have refused to enter into a Residual Agreement which would have set out the responsibilities of both parties. This issue is now being discussed with the Deputy Chief Executive (See Appendix 2)	

Draft Discussion Document Strictly P&C

8<sup>th</sup> September 2012 - Les Tickner – Revised section 14 on 11<sup>th</sup> September 2012

City Council comments by Angela Culleton on 13<sup>th</sup> September 2012

Comments added by Kevin Walsh 23 September 2012.

Amended 12<sup>th</sup> March 2013 by Keith Poole

Amended 22<sup>nd</sup> July 2013 by Keith Poole

Amended 31<sup>st</sup> Oct 2013 by Keith Poole

Ammended 29<sup>th</sup> May 2014 by Keith Poole

## Appendix 2

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### Highways Agreement Meeting

9<sup>th</sup> May 2014

**Purpose of the meeting:** To discuss any issues associated with the termination of claimed rights.

**Present:** Darren Crossley, Angela Culleton, Keith Poole, Mike Foster, Jonathan Smith, Claire Liddle

#### 1. Claimed Rights Agreement

It was agreed that this document was acceptable and the City Solicitor will now make arrangements for it to be signed.

**Action CL**

#### 2. Residual Highways Agreement

The County view is that a residual agreement is not necessary as each party will simply carry out the activities for this they are responsible. The City disagree and consider that such an agreement is necessary as previously agreed in joint member / officer meetings. An agreement would help to clarify who does what and so will aid response to customers and will also cover tasks such as verge maintenance that the City undertakes for the County Council for a fee and permissive tasks that the City carries out at its own cost but requires permission from the Highways Authority to carry out. One agreement would facilitate smoother working together which can only benefit residents of Carlisle.

The City Solicitor offered to either further simplify the Agreement or draft a Memorandum of Understanding to replace the formal agreement. JS agreed to consult with colleagues regarding an MOU or simplified Residual Agreement and would advise of his views.

**Action JS**

The City Council sought confirmation of a number of issues contained in the schedules to the draft agreement. In particular;-

- Confirmation of the annual fee for grass cutting which was confirmed as £13,050. A 13% reduction from 2013/14 to reflect the general reduction in budgets. MF to confirm in writing.

**Action MF**

- The County council is willing to enter into specific works agreements with the City to cover specific work. A number of further agreements relating to highways are in hand.

**Action MF/KP**

### **3. Claimed Rights Update**

Good progress has been made in addressing the outstanding issues arising at the time of claimed rights transfer. Four issues remain to be resolved as detailed below:

#### **Quarterly liaison meetings**

Due to pressure on officer time these meetings have lapsed. It was agreed that a programme of meetings would be agreed an range of relevant officers invited to attend.

**Action JS/KP**

#### **Verge and tree maintenance**

The County Council will be able to provide a tree maintenance strategy for consideration by HTWG. There is also further liaison needed to agree the boundaries between City and County regarding tree and verge maintenance.

**Action County/ Green Spaces**

#### **Winter maintenance**

It was agreed that further liaison was needed prior to next winter to agree joint working during periods of severe weather and to agree how they might contribute towards the provision of bus facilities.

**Action MF/KP/Liam Gallagher**

#### **Bus Shelter Maintenance**

KP has still to contact the bus companies regarding how they might contribute towards the provision of bus facilities.

### **4. Weed Control**

5. MF outlined the actions that the County are taking to control the weeds which have taken hold early due to the mild weather. It is planned to carry out two sprays annually but further action will be taken if required.