

## Procurement of Legal Advice on the Guided Busway

To: Highways and Transport Committee

Meeting Date: 5 March 2024

From: Executive Director for Place and Sustainability

Electoral division(s): n/a

Key decision: Yes

Forward Plan ref: 2024/051

Executive Summary: This report seeks authority to procure legal advice, through an appropriate framework, for the Council in relation to the Cambridgeshire Guided Busway.

Recommendation: a) It is recommended that Committee delegates authority to the Executive Director Place and Sustainability in consultation with the S151 Officer to award and execute a contract(s) and any other associated legal agreements or documents for the provision of legal advice and extension periods.

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# 1. Creating a greener, fairer and more caring Cambridgeshire

- 1.1 The Cambridgeshire Guided Busway provides a key sustainable link between our communities and key health, employment and leisure opportunities. The ongoing safe and efficient operation of the busway supports multiple Cambridgeshire County Council ambitions.
- Ambition 1: Net zero carbon emissions by 2045.
  - Ambition 2: Travel across the county is safer and more environmentally sustainable.
  - Ambition 3: Health inequalities are reduced.
  - Ambition 6: Places and communities prosper because they have a resilient and inclusive economy, access to good quality public services and social justice is prioritised.

## 2. Background

- 2.1 The Health and Safety Executive (HSE) publicly announced its intention to prosecute the County Council on 11 May 2023<sup>1</sup> in connection with three fatal incidents, and one serious incident on the Cambridgeshire Guided Busway.
- 2.2 The Health and Safety Executive indicated that the County Council will face a charge under s3(1) of the Health and Safety at Work etc. Act 1974. At the time of writing this report, the County Council awaits further detail on the nature of the prosecution.
- 2.3 Until the matter concludes, there is an ongoing requirement for legal advice. To date, this advice has been provided to the County Council by Weightmans LLP. The choice of legal representation in relation to the HSE investigations was made by the Council's insurer's Zurich and there is not a requirement to undertake a full, open procurement.
- 2.4 A delegation is required from the Highways and Transport committee for the Key Decision to spend over £500k with Weightmans for the required legal services.

## 3. Main Issues

- 3.1 In the case of a complex, high value, serious injury or fatal incident that may give rise to a claim, the Council's insurers will require that the Council appoints legal representation that it deems to be suitable to the risks of the case.
- 3.2 Furthermore, legal advice given in preparation of legal proceedings or "where there is a tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings", is exempt from Public Contracts Regulations 10(d) and under the Contract Procedure Rules (as amended) there is now no requirement to tender this type of legal services.
- 3.3 A Key Decision is sought in respect of future expenditure on the case, which will exceed £500,000. Whilst it is difficult to forecast with certainty, anticipating a trial, the total cost is estimated to be an additional £1,000,000.

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<sup>1</sup> [HSE to prosecute Cambridgeshire County Council over busway deaths | HSE Media Centre](#)

## 4. Alternative Options Considered

- 4.1 Alternative option – no legal support. There is significant risk associated with a lack of appropriate legal advice and representation at any prosecution. It is a requirement of our insurers that we use Weightmans.

## 5. Conclusion and reasons for recommendations

- 5.1 It is concluded that legal advice through Weightmans is required to assist the County Council in appropriately responding to the prosecution.

## 6. Significant Implications

### 6.1 Finance Implications

The financial implications are set out in this paper. Current costs incurred amount to £617,000, paid for through the County Council's insurance fund. Further work is being undertaken to identify funds that will potentially be recoverable from the Council's insurance, and this matter will require further exploration when the details of the prosecution are known. Future costs are predicted to be £1,000,000.

### 6.2 Legal Implications

The legal implications are set out in the paper.

### 6.3 Risk Implications

The risk implications are set out in paragraph 4.1 of this paper.

### 6.4 Equality and Diversity Implications

There are no equality and diversity implications.

### 6.5 Climate Change and Environment Implications

There are no climate change and environment implications.

## 7. Source Documents

- 7.1 None