

**Forward Plan reference number:** FP/479/07/19

<b>Report title:</b> Extension of the Essex Highways Partnership Contract with Ringway Jacobs	
<b>Report to:</b> Cabinet	
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<b>Date:</b> 25 February 2020	<b>For:</b> Decision
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<b>County Divisions affected:</b> All Essex	

### **Confidential Appendix**

This report has a confidential appendix which is not for publication as it includes exempt information falling within information relating to the financial or business affairs of any particular person (including the authority holding that information) paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

## **1. Purpose of Report**

- 1.1 In order to facilitate the continued operation of the Essex Highways Partnership for the delivery of highway services in Essex, Cabinet is asked to consider the extension of the existing contract with Ringway Jacobs until 2027.
- 1.2 This report makes a recommendation to extend the existing Essex Highways Partnership contract with Ringway Jacobs for a period of 5 years commencing 1 April 2022.

## **2. Recommendations**

- 2.1 To agree to the commitments for the Contract extension period set out in the confidential appendix and paragraphs 3.11 to of this report which include a change to the payment mechanism and agreeing a new process for Red Claims ("the Commitments")
- 2.2 To agree, subject to the prior completion of the deeds identified in recommendation 2.3 and 2.4, to extend the Essex Highways Contract (the Contract) with Ringway Jacobs for a period of five years until 31 March 2027 with a break clause taking effect at the end of year thirteen of the contract by giving two year's notice.

- 2.3 To delegate authority to the Director for Highways to enter into a Deed of Variation to the Contract to implement the Commitments, including changes to the payment Mechanism and implementing a revised process for Red claims, the terms of which shall be agreed in consultation with the Monitoring Officer. Completion of both red claims and payment mechanism changes are pre-conditions of the extension.
- 2.4 To agree to settlement of Red Claims which have been notified to or settled by ECC before 31 March 2019, with Ringway Jacobs on the terms and for the figure contained in the Confidential Appendix to this Report and to delegate authority to the Director for Highways to enter into a Settlement Agreement the terms of which shall be agreed in consultation with the Monitoring Officer.
- 2.5 To agree to draw down from the Transformation Reserve of £105,955 in 2020/21 and £60,000 in 2021/22 to the Deputy Leader and Infrastructure portfolio for Highways and Transportation and to note that future requests will come through over the contract duration that cover the remaining values as detailed in the confidential appendix.

### **3. Summary of issue**

#### **Background**

- 3.1.1 Ringway Jacobs are ECC's highways partner enabling ECC to fulfil its statutory requirements as the local highway authority for Essex. The contract with Ringway Jacobs commenced in February 2012 (the Contract). The scope of the Contract includes but is not limited to reactive repairs footway and carriageways, winter services, white lining, gully maintenance, capital structure maintenance. The contract services 5000 miles of highway, 4000 miles of footways, 4000 miles of public rights of way, 127,000 streetlights, 1500 structures. By 2018, 2002 miles of carriageway had been surface treated, 24,000 km's per year of carriageway is inspected, an average of 37,000 street lighting defects are dealt with p.a., an average of 70 miles of footways surfaced p.a., 65,000 driver improvement courses delivered annually, and an average of 100,000 gullies cleaned p.a.
- 3.1.2 The Contract is for an initial period of 10 years which expires on 31 March 2022. The Contract allows for an extension up to a maximum of 5 years until 31 March 2027. An extension to the contract is at ECC's discretion and is based on performance of Ringway Jacobs on the contract Key Performance Indicators in the preceding two years of the contract. RJ have met the performance Targets required and ECC is able to consider an extension.
- 3.1.3 The annual capital and revenue expenditure on the Contract in the last four years is currently between £137m - £155m per annum. The forecast for capital and revenue expenditure for the next five years is estimated at £130m per annum. The value of the five-year extension is estimated to be in the region of approx. £700m subject to continued levels of capital budgets, grant funding, and revenue budgets. The total forecast spend over the 15-year life of the

contract is within the original limits published in the original 2011 procurement documentation

- 3.1.4 The Contract performance is managed through a set of Key Performance Indicators. The contract has achieved 94 - 99% performance against these indicators from year 4. The partnership between ECC and Ringway Jacobs is an award-winning partnership and recognised nationally among ECC's peers and with the Department for Transport for its achievements.
- 3.1.5 The Contract is managed through a robust governance structure comprising monthly contract and board meetings, bi-monthly strategic meetings and quarterly Strategic Partnership Board meetings.
- 3.1.6 Ringways Jacobs deliver some of the works and services under the contract through directly employed resources with approximately 75% of delivery being managed through their supply chain and through shareholder relationships with Eurovia and Jacobs. Ringway Jacobs is a wholly owned joint venture company between Jacobs and Eurovia which has been in place since 2005. The ECC contract represents just under 50% of Ringway Jacobs business.
- 3.1.7 In the most recent years of the contract through its collaborative approach, the contract has delivered a number of improvements and innovative solutions including: -
- Developing an enhanced Report-it tool to improve customer experience.
  - Introduction of new communication channels including Highway Highlights newsletter.
  - A significant reduction in outstanding defect numbers.
  - A continued LED conversion programme for street lighting and illuminated signs.
  - Exemplar in securing external funding.
  - Creation of a series of taskforces to tackle the most challenging schemes (A120, A12, A127, Army & Navy, Beaulieu Park Station).
  - Achieving BS11000 collaborative business relationship accreditation.
  - In excess of 51,000 people now interface with the Essex traffic control centre's daily traffic updates
- 3.1.8 Customer service and communication for the highway function is managed jointly between ECC and Ringway Jacobs. A joint review has looked to improve areas of the service to reduce complaints for example, Ringway Jacobs has positively changed to way it operates when delivery Local Highway Panel (LHP) schemes to reduce cost and speed up delivery times by creating an in-house direct delivery team for implementation of small Local Highway Panel schemes, reducing the time spent on design and contracting the supply chain. Direct-delivery gangs can be involved earlier and start delivery on the ground sooner. Overall this has resulted in works being delivered more quickly and at lower overall cost. In addition, where potholes need repair, the broader carriageway area surrounding it has been assessed to see whether larger-scale patching can combine deterioration repairs and prevent repeat visits, thus reducing complaints

Additionally, relationships have been developed with lay assessors acting as community volunteers, as well as Parish clerk representatives. ECC has assigned each County Member a person within Essex Highways to whom they can escalate Highways issues.

- 3.1.9 Ringway Jacobs deliver a number of social value initiatives in support of Essex and its residents including apprenticeship schemes, recruitment of ex Armed Forces personnel, fundraising for local charities, volunteering and environmental projects. Ringway Jacobs have their head office located in Chelmsford employing local people in support of the Essex economy.

## **Evidence Based Decision**

- 3.2 Officers embarked on an extensive programme of evidence gathering in order to inform the options for the future delivery of Highways services and whether to extend the Contract. Details of this process is set out in the below paragraphs

### **Cranfield University Proving Services**

- 3.3.1 Six workshops were held between Ringway Jacobs and ECC Officers, led by Proving Services. Proving Services are a research body associated with Cranfield University who work closely with The Association of Directors of Environment, Economy, Planning and Transport (ADEPT) to deliver benchmarking services for their membership.
- 3.3.2 The workshops focused on value for money on Highways service delivery, mutuality (the relationship between ECC and Ringway Jacobs), value for money on Major Infrastructure Schemes, communications, and commercial income generating opportunities.
- 3.3.3 In terms of benchmarking for value for money highways services, ECC scored 7<sup>th</sup> highest out of 21 authorities assessed and through the development of a range of commercial opportunities, this position is likely to improve. In terms of Major Infrastructure Scheme design for capital works, Jacobs in its capacity as an independent professional service provider scored 45% each for effectiveness and economy, which is equal to the performance of other professional service supplier's in the Major Infrastructure Scheme design arena despite the relatively low percentage.
- 3.3.4 Proving Services also conducted a workshop analysing alternative service delivery models available in the market. The models included single provider, multiple providers, use of frameworks, ECC entering into a corporate joint venture with a partner, ECC operating a wholly owned trading company, PFI, and bringing the service back for delivery by ECC and 'top up' of delivery through the supply chain. The analysis considered attractiveness, achievability and political appetite for each model. The results were highly in favour of continuation of the current style of Integrated model, followed by a model of single provider for highways and single provider for design as the best fit for ECC.

- 3.3.5 To determine relative provider performance, Proving Services undertook a survey of 18 ADEPT members on the performance of their Highways provider. The results compared to a previous survey in 2015. The survey concluded that Ringway Jacobs was the 2<sup>nd</sup> highest performing supplier of those reviewed and the most improved since 2015. Their overall score was within 2% of the top performer and the improvement trajectory suggests they will continue to close this gap.

### **Market Testing**

- 3.4.1 Officers conducted independent market testing during 2018 and 2019 and tendered packages of works worth £2.3 million through the Eastern Highways Alliance framework, while at the same time instructing delivery of similar packages of works through Ringway Jacobs.
- 3.4.2 The results demonstrated that 75% (3 of 4 packages) of the areas tested delivered better value for money through the existing Contract as further detailed in the confidential appendix. The Contract makes provision where a benchmarking/market testing exercise shows that the Authority is paying prices which exceed those payable for the same goods, works or services under other contracts, this will be taken forward in the supply chain joint review workstream
- Inlay being 6% cheaper
  - Footways being 30% cheaper
  - Road Markings 13% more expensive
  - Gullies being 36% cheaper
- 3.4.3 In all cases these comparisons are made between works delivered through Ringway Jacobs, and the Eastern Highways Alliance Framework
- 3.4.4 Due to the size of the Essex Highways contract, Ringway Jacobs can negotiate long-term deals with their own suppliers which reduces the impact of future cost increases to ECC. For example, negotiating multi-year contracts with set rates, shields ECC from unmanaged inflationary increases. Furthermore, due to the length of the contract that Ringway Jacobs will be able to offer to their suppliers, longer-term discounts can be negotiated which pass directly back to ECC.

### **Market Intelligence**

- 3.5.1 Similar suppliers in the market to Ringway Jacobs were invited by ECC to discuss their approach to a contract of this size. These suppliers included Amey, Balfour Beatty, Colas, Costain, Skanska and Kier. Following this, it was determined that all were interested in integrated contracts rather than separate contracts being let for single specific elements such as surfacing, street lighting gully cleansing. This analysis confirmed the Service Delivery model approach for ECC.
- 3.5.2 All alternative suppliers in paragraph 3.5.1 confirmed that they were exploring innovation in their delivery of highways services but no one provider appeared

to have an innovative edge. Due to the size of ECC's highways contract, ECC's contract is always likely to be a large part of any supplier's business, as ECC's is with Ringway Jacobs, therefore this risk of proportionality would always be apparent.

- 3.5.3 The market has seen recent instability with the collapse of Carillion and profit warnings from other major suppliers. This is a risk for consideration in the event of re-procurement. There is no guarantee that a re-procurement would deliver the level of savings sought in the shorter term, or that a better commercial arrangement was obtainable.
- 3.5.4 Peers from other highways authorities have reported that recent procurements have resulted in a lack of bidders which may be due to suppliers being selective about the cost and resources they deploy to tender for large contracts. As a result, reduced competition for contracts due to market conditions has seen a consequential increase in fee margins significantly above that which ECC is currently paying.

### **Engagement with Other Local Highway Authorities**

- 3.6.1 Officers engaged with over 20 large authorities including Suffolk, Norfolk, Leicestershire, Kent and Warwickshire who have been or are in the process of procuring their Highways Services. The source of these contacts came from Public sector market insight (PORGE). Experience from other Local Authorities suggested that the market required contracts for at least seven years duration to achieve the maximum return on initial investment costs.
- 3.6.2 It is apparent from those Local Authorities who moved away from integrated contracts such as this Contract, that they needed to increase the size of their in-house commissioning teams. It was also apparent from the engagement that co-location with a provider was generally seen as a good enabler for better collaboration.
- 3.6.3 Most local Authorities operated a Contract based on NEC3 or NEC4 with a mix of payment methods, and some had incentivisation, and some did not. The engagement confirmed that innovation was seen to be generally lacking in the highways sector. Many have used Proving Services consultancy to aide their decision making.

### **Scrutiny Committee**

- 3.7 ECC Place and Corporate Scrutiny Committee panel created a Task and Finish Group comprised of cross-party members, to extensively review the Contract. Officers presented contractual requirements and data over a period of several months on a number of key themes which were determined by the Scrutiny committee including performance, and benchmarking with other authorities. Their overall recommendation was to renew the contract for 5 years with some suggested improvements which are being taken forward and tracked and reported through the usual contract governance meetings. The full report is appended to this report.

## **Supply Chain**

- 3.8 ECC undertook a review of Ringway Jacobs supply chain, through a deep dive into the ordering process for, and invoicing of, selected key suppliers which resulted in several recommendations arising from it. It has been agreed with Ringways Jacobs that a joint review of the supply chain will be conducted by ECC and Ringway Jacobs.

The supply chain review recognised the good work already in practice in this area but also made the following recommendations for continuous improvement: -

- Introducing more robust contract management and key performance indicators to drive performance
- A more robust procurement process to drive best value
- Developing the supply chain for greater market competition
- More frequent auditing of subcontractors
- Closer management of subcontractor risk
- Seeking further continuous improvement and efficiencies from the supply chain

## **Bid Pledges**

- 3.9 ECC officers undertook a review of the original tender submission made by Ringway Jacobs at procurement in 2012, and the 900 pledges within it. These pledges have been analysed against delivery and the majority have been delivered by Ringway Jacobs. There are very few minor items outstanding which will be progressed through the usual contract governance channels, excepting development of the productivity tracker which is a milestone delivery requirement.

## **Ringway Jacobs Proposals**

- 3.10.1 Having determined through the evaluation work detailed in this report that continuation of the existing Contract was a viable option for ECC, Ringway Jacobs were invited to make a series of proposals to ECC for improvements to the Contractual service offer.
- 3.10.2 Ringway Jacobs were specifically tasked with developing ideas to facilitate a 20% reduction in revenue expenditure at ECC for the Contract which equates to £5.029m per annum. ECC, like most authorities, has reducing budgets and increasing demand and as such collaborate with our strategic partners to support the authority to deliver services within the financial envelope. In addition to revenue savings, Ringway Jacobs were also asked to realise further efficiencies in the delivery of capital schemes. Ringway Jacobs provided a range of options made up of service reductions, efficiencies, service cuts and income generation. Please see confidential appendix.

3.10.3 Ringway Jacobs have also developed a forward plan for innovation in service delivery to demonstrate that the contract remains abreast of industry developments, with a commitment to delivery which covers four themes: - Carbon Neutrality, Materials, Communications and Customer, and Technology Enablers.

Innovation during the contract to date includes: -

- Introducing drone surveys
- 3D mapping for underground services
- Introduction of MultiHog and Entyre machinery
- Introduction of the Technology and Innovation working group and delivery of the Essex Technology Strategy for Transport
- Implementing Vehicle Informed Asset Management (VIAM) studies which gathers real time data from vehicles to report on road conditions
- Access to leading R&D centre to inform the materials working group on appropriate and cost-effective materials

## **Discussion with Ringway Jacobs**

### **Contract Mechanism Changes**

3.11.1 ECC officers have been working with Ringway Jacobs to jointly review and streamline the payment mechanism for the contract and agree the interpretation of the contract. A solution for a streamlined and workable payment mechanism has now been finalised and will assist with prompt closure of year end accounting. Completion of the payment mechanism contract changes are a prerequisite to the proposed 5-year contract extension. Further details are set out in the Confidential appendix to this Report.

### **Red Claims**

3.11.2 Red Claims are insurance claims bought against ECC in relation to damage or accidents on the highway network (Red Claims). There has been an extended disagreement between ECC and Ringway Jacobs in relation to liability for payment of Red Claims.

3.11.3 ECC and Ringway Jacobs have worked to resolve the disagreement between the parties and terms of settlement for the backlog of liability has been agreed subject to drafting. Further detail on the Red Claims disagreement and the terms of settlement are contained in the confidential appendix

3.11.4 A Settlement Agreement in relation to all claims notified to or settled by ECC, is required between ECC and Ringway Jacobs to formalise the settlement, and the Deed of Variation to the Contract to formalise the extension Commitments contained in this report includes a new contractual process and clear allocation of responsibility for future claims. The recommendations in this report make completion of the payment mechanism contract changes a prerequisite to the proposed 5-year contract extension



## **Commitments Agreed**

- 3.11.5 As a result of this extensive range of evidence and the proposals received from Ringway Jacobs, discussion commenced with Ringway Jacobs on details for an extension
- 3.11.6 A group of ECC Members, led by the Cabinet Member for Infrastructure, set pre-requisites to these discussions, that the savings put forward were to be delivered by year 10 (2021/22) of the contract and a stretch target into year 11 (2022/23). The stretch target enables Ringway Jacobs to continue to find further savings opportunities through the full life of the contract. The 5-year extension term is conditional on delivery of these savings and implementation of the innovation plan to keep abreast of industry developments, with progress review at commencement of year 11.
- 3.11.7 Formal discussion commenced between Ringway Jacobs and a cross directorate ECC team comprised of Commissioning, Finance, and Procurement.
- 3.11.8 The parties agreed to a set of Commitments for delivery of the highways service during any extension period and such commitments include the following which will need to be formalised in a change to the Contract by way of Deed of Variation.
- Commitment from Ringway Jacobs to a sustained programme of planned innovation to keep abreast of developments in the industry over the remainder of the contract with clear deliverable benefits for ECC.
  - Commitment from Ringway Jacobs to the delivery of a 20% reduction in the revenue cost of the service
  - Confirmation of a five-year extension with contractual provision to manage performance against the Commitments and reduce the length of the extension from five years to three if Ringway Jacobs fail to meet the Commitments. ECC will review the performance at the end of year 10 of the original contract. If the Commitments are not being met, we can shorten the extension and have sufficient time to scope and go out to the market to procure an alternative provider at the end of the shortened extension period. Further details are contained in the confidential appendix
  - Ringways Jacobs to make additional savings on ECC's capital spend to improve the efficiency of this significant investment.
  - A reduction in Ringway Jacobs profit and corporate overhead charges at volumes beyond those envisaged in the original bid once a level of throughput has been reached which is based on historic work levels. Therefore, increased throughput will result in lower costs being charged to ECC.
  - Commitment to fund 50% of the investment costs required to reduce the cost of service delivery
  - Ringway Jacobs wage increases capped no greater than 1% above local authority pay awards
  - Commitment to a joint review of the supply chain to drive efficiency and address the findings from the benchmarking exercise set out in paragraph 3.4.2.

- Agreement to an amended process for red claims. Red Claims are claims by third parties against the ECC arising out of the condition of the Area Network or the performance of Ringway Jacobs services
  - Agreed changes to the Payment Mechanism of the contract designed to streamline the elongated year end accounts closure process.
  - Continued delivery by Ringway Jacobs of the existing annual cashable efficiency targets.
  - Delivery of a productivity tracker for capital delivery, to monitor output and cost for benchmarking purposes, as a key milestone priority.
- Further details are set out in the confidential appendix.

3.11.9 The delivery progress against these commitments will be monitored through the usual governance of Essex Highways Board, Strategic Essex Highways Board and Strategic Partnership Board as established in the existing contract. Milestone metrics will also be put in place to monitor progress at key junctures to ensure delivery is on track to confirm the full 5-year extension beyond the initial 3 years milestone delivery period.

## **4. Options**

4.1 Three options were considered: -

### **4.2 No Extension (Do Nothing)**

- The option to do nothing would result in the current contract expiring at the end of year 10 in March 2022, requiring an alternative provision to be procured to enable ECC to continue to deliver its statutory duty as the Highways Authority for Essex.
- The extensive evidence undertaken suggests that not extending is not the best option as the current contract has demonstrated that it provides appropriate value for money.
- Ringway Jacobs have made a number of delivery commitments for the coming 5 years which would not be delivered if no extension was given
- The cost of re-procurement would be significant, estimated at £1 - 1.5m in our work with Proving Services.
- There are no guarantees ECC would obtain a better commercial offer at the current time – in fact market intelligence suggests the opposite.

### **4.3 Full Extension with Break Clause (Preferred Option)**

- Ringway Jacobs have made commitments that ECC consider will improve the current delivery performance.
- The commitments made by Ringway Jacobs require milestone delivery measures which enables ECC to curtail the full extension period should there be underperformance.
- The current contract demonstrates value for money.
- Provides the maximum term to amortise required investment costs required for innovation and reduction in service delivery costs.
- Provides consistent and continuous service delivery.

- Avoids the immediate re-procurement allowing ECC to adequately plan and prepare for a full re-procurement in 2027.
- Provides longer for ECC to prepare the future requirements for re-procurement.

#### **4.4 Partial Extension**

- A partial extension is a possibility, however good progress has been made through discussions with Ringway Jacobs that could enable a full 5-year extension with the flexibility to reduce that if milestones were not achieved.
- Avoids immediate cost of re-procurement
- The current contract evidences value for money
- A shorter extension period does not provide as long to amortise investment costs, reducing commercial attractiveness.
- This extensive assessment would need to be revisited again to evidence a further extension.
- Provides consistent and continuous service delivery.

### **5. Next steps**

- 5.1 Subject to agreement to this recommendation, ECC will need to work with Ringway Jacobs to formalise the commitments made in extension discussions into a formal contract change.

### **6.0 Financial implications**

- 6.1 The financial implications associated with this decision are commercially sensitive and as such are contained within the confidential appendix. The £5.029m of savings reflected within ECC's future years budgets result in one off investment costs which are requested to be funded from the transformation reserve. Approval is sought to request drawn down from the Transformation Reserve of £105,955 in 2020/21 and £60,000 in 2021/22 to fund officer resources to support the project to facilitate the delivery of the £5.029m savings. Further requests for a draw down will be made over the contract period to support the workstreams as detailed in the confidential appendix.
- 6.2 In relation to Red Claims ECC and Ringway Jacobs have worked to resolve the disagreement between the parties, and terms of settlement for the backlog of liability have been agreed subject to drafting. Further detail on the financial terms of the settlement are contained in the confidential appendix.
- 6.3 The below provides an overview of the draft Revenue and Capital budgets for the Deputy Leader and Infrastructure Portfolio for future years. Within the below budgets there is sufficient funding to meet the obligations which may arise under this contract in these years beyond the one-off investment costs explained above. The service will manage within these budget allocations, seeking to secure external funding to support delivery of outcomes for Essex residents. Both the revenue and capital budgets detailed below also fund

activities outside of the Ringway Jacobs contract, which include but are not limited to areas such as the A130 PFI, BDUK, and Major Capital Projects.

	£,000			
	Budget 2020/21	Draft Budget 2021/22	Draft Budget 2022/23	Draft Budget 2023/24
Revenue - Deputy Leader & Infrastructure Portfolio	44,257	48,364	47,568	48,494

  

	£,000			
	Budget 2020/21	Aspirational 2021/22	Aspirational 2022/23	Aspirational 2023/24
Capital - Deputy Leader & Infrastructure Portfolio	143,098	168,354	251,619	303,449

## 7.0 Legal implications

- 7.1.1 The Contract provides for an extension of the terms for five years and provided that the processes are followed to extend the Contract, an extension can be given to Ringway Jacobs
- 7.1.2 ECC are a contracting authority for the purposes of the Public Contract Regulations 2015. The extension is permitted by the terms of the contract and the proposed changes to the contract are relatively minor compared to the value of the contract and would not have allowed for different tenders to bid for the original contract and do not change the balance of the contract in favour of the contractor.
- 7.1.3. Given the history of red claims it is important that this is resolved before any commitment to an extension is given. Therefore in the unlikely event that the Council is unable to agree the terms of the settlement agreement a further report to the Cabinet will be needed to determine the future of the service.

## 8 Equality and Diversity implications

- 8.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

8.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

8.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

## **9 List of appendices**

- Equality impact assessment
- Confidential appendix
- ECC Place and Corporate Scrutiny Committee Task and Finish Group Report