

Report to Cabinet

22nd July 2021

By the Cabinet Member for the Local Economy



DECISION REQUIRED

Not exempt

EV Charge Point Network – Concession Contract

Executive Summary

Cabinet approved an Electric Vehicle (EV) Charge Point Strategy on 26th March 2020. One aspect of this is to support the installation of charge points on Council owned land to encourage the take up of electric vehicles. The main focus is to provide charge points for residents that do not have access to off-street parking and are, therefore, unable to charge their vehicles at home. Supporting the take up of electric vehicles would make a significant contribution to reducing carbon emissions across the District, as well as assisting with improving air quality.

A fully compliant OJEU tender process was undertaken last year to secure a concessionaire that would purchase, install, and operate a countywide network of Electric Vehicle Charge Points. The overall aim of the project is to install hundreds of charge points on publicly owned land to form a cohesive and comprehensive network but at no net cost to the Council's involved. West Sussex County Council led the procurement process, but the Council had significant input. Cabinet approved the award of a concession contract in November 2020. Sadly, the procurement process had to be abandoned, but following a review and market testing, a new above threshold tender process is currently underway.

This report seeks approval to delegate the contract award and agreement to enter into any related leases (and serve any notices required to exclude the security of tenure provisions in respect of such leases) to the Cabinet Member for the Local Economy, so that the project commences as soon as a supplier has been identified.

Recommendations

That the Cabinet is recommended:

- i) To delegate authority to the Cabinet Member for the Local Economy to award and enter into the contract to secure a supplier to purchase, install, maintain, and operate a network of Electric Vehicle Charge Points to the preferred supplier.
- ii) To delegate authority to the Director of Place in consultation with the Cabinet Member for the Local Economy to grant any leases required under the contract terms (and serve any notices required to exclude the security of tenure provisions in respect of such leases).

Reasons for Recommendations

A fully compliant above threshold tender process is underway, and a preferred supplier should be identified in August. However, the next Cabinet meeting is not scheduled until 23 September 2021. Therefore, delegated approval is sought to ensure there is no delay in starting the project.

Background Papers

Electric Vehicle Charge Point Strategy - Cabinet Report dated 26th March 2020
EV Charge Point Network – Concession Contract. Cabinet report dated 26th November 2020

Wards affected: All

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Background Information

1 Introduction and Background

- 1.1 The Government has set a challenging target for the take up of EV; that from 2035 new cars should not be petrol, diesel, or hybrid. This approach supports the UK's mandatory target to become net zero carbon by 2050.
- 1.2 Increasing the take up of Electric Vehicles (EV) can contribute to reducing carbon emissions across the District, as well as improving air quality. One of the barriers to the take up of EV's is the lack of charging infrastructure. Studies confirm that most EV users charge their vehicles at home. However, this is difficult for residents without off-street parking. The Council has been collaborating with most of the councils in West Sussex (with the exception of Chichester District Council) to deliver a network of Electric Vehicle Charge Points (EVCP), primarily to support residents without off-street parking. The charge points would be installed on public land.
- 1.3 All of the councils involved required a net no cost solution for providing the network. This would be delivered by procuring a supplier via a concession contract. A fully compliant OJEU procurement was carried out last year. Cabinet approved the award of contact in November 2020. Sadly, the procurement had to be abandoned after a supplier had been identified. A new procurement process is currently underway. This is also above threshold.
- 1.4 The purpose of this report is to seek delegated approval to award and enter into the contract and to grant any leases required under the contract terms once a supplier has been identified. This will ensure that this is no delay in starting the project.

2 Relevant Council policy

- 2.1 The installation of a EVCP network across the County contributes to several activities/projects in the 2019-2023 Corporate Plan: -
 - "Work with partners to become a carbon neutral District"
 - "Work with partners to increase the number of electric vehicle charging points across the District"
 - "Target improvements of our air quality management areas".

3 Details

- 3.1 The councils listed in the contract are Key Delivery Organisations. Each Organisation is putting forward land assets for charge point installation which have been included in the contract. The Council has submitted some of its car parks. Once the contract has been awarded other public sector organisations (including Parish Councils) will be able to join the contract (known as Collaborating Organisations) and offer sites for charge point installations.
- 3.2 Due to the high value of the contract (to the supplier) a fully compliant above threshold procurement process is being followed. A single procurement process is

being undertaken, led by West Sussex County Council and the following organisations are listed as named delivery authorities:

- Horsham District Council
- Crawley Borough Council
- Adur District Council
- Worthing Borough Council
- Arun District Council
- Mid Sussex District Council

- 3.3 Following the abandonment of the first procurement all of the Key Delivery Organisations confirmed that they were still committed to securing a supplier to install and run an EVCP network and that a no net cost solution was required. Research was undertaken to confirm if a concession contract was the best way to proceed. Further market testing and discussions with suppliers took place to understand why the procurement had to be abandoned.
- 3.4 It was concluded that a concession contract was still the best way forward to achieve the aims of the project. One of the main reasons for this is that the project is taking a portfolio approach to the EVCP, where financially viable EVCP's support the installation of less viable sites but which have value to the local community, for example, providing EVCP for residents without off-street parking in smaller villages.
- 3.5 Market testing confirmed that a concessionaire requires a longer contract length to obtain a sufficient return on investment. The most significant change from the previous procurement process is the length of the contract. This is now 15 years plus the option to extend for a further five years. It was previously seven years plus extensions, to a maximum of ten years. Given this change in contract length, the list of car parks that the Council put forward for inclusion in the project was reviewed. Any that might have development potential have been excluded from the list.
- 3.6 Full details of the procurement process and its outcome are set out in section 10 of this report.

4 Next Steps

- 4.1 The procurement process is likely to be completed in September, with the service commencing in October to allow for mobilisation. The first stage in progressing the project is to establish the Strategic Management and Tariff Setting Board and the Partnership Board. Horsham District Council will have representation on both of these. The Boards will oversee the production of a Network Plan and an associated Delivery Plan. Some priority sites have been identified to be delivered early in the contract. These include some charge points in the Horsham District.

5 Views of the Policy Development Advisory Group and Outcome of Consultations

- 5.1 The Local Economy and Parking Policy Development Advisory Group received a presentation on the draft Electric Vehicle Charge Point Strategy and the principle of joining a collaborative approach with other Council's in West Sussex to procure a supplier in March 2020. The Group supported these. At its meeting on 2nd November 2020 the Advisory Group also supported awarding the contract to the preferred supplier from the first open tender procurement process.
- 5.2 The comments from the Monitoring Officer and The Director of Corporate Resources have been incorporated into the report.

6 Other Courses of Action Considered but Rejected

- 6.1 The main alternative course of action is not to enter into the contract with a third-party supplier. However, this would mean that the Council would not be part of the collaborative approach to install a cohesive and comprehensive network of charge points across West Sussex.

7 Resource Consequences

- 7.1 The approach outlined in the report to Cabinet in March 2020 is that the installation of the charge points should be via a no net cost solution to the Council. This is being achieved by using a concession contract to procure the supplier. The supplier will work collaboratively with the councils in West Sussex to produce a network plan identifying potential EV charge point sites. The supplier will then purchase and install the charge points, be responsible for maintaining them, as well as operating the back office support for the whole network.

8 Legal Considerations and Implications

- 8.1 Section 1 of the Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available assets or services for the purposes of, or in connection with, the discharge of the function by the local authority.
- 8.2 The Council has a wide general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals generally may do. The existence of the general power is not limited by the existence of any other power of the Council which (to any extent) overlaps the general power. The Council can therefore rely on this power, where appropriate, to undertake the proposals contained in the Electrical Vehicle Charge Point Strategy.
- 8.3 The Local Government Act 2000, supplemented by Local Government & Public Involvement in Health Act 2007 and Sustainable Communities Act 2007, provides the principal statutory powers by means of which local authorities are currently engaged directly in helping to tackle climate change.

- 8.4 Under the Public Contract Regulations 2015 where a Public Authority is to enter into a contract for the supply of goods & services, and the value of those goods and services exceed a financial limit of £189,330 any procurement exercise to contract for those goods and services must be conducted in accordance with the Regulations and any failure to do so may be declared as anti-competitive and in breach of the Regulations.
- 8.5 Although the chosen contract arrangement falls under the definition of a 'concession', there is a risk that the contract could be deemed a public services contract. Therefore, the contract is being procured in compliance with both the Concession Contract Regulations 2016 and the Public Contracts Regulations 2015.
- 8.6 A draft of the template lease to be used has been prepared by the property lawyer at WSCC in conjunction with the property lawyers of the delivery authorities. Horsham District Council's property lawyers will be responsible for undertaking the work to facilitate the grant of the required leases in that form subject to any required revisions. The EV charge point provider tenant will be responsible for all outgoings associated with its use and occupation of any charge point site for the term of the lease. In the event that a charge point provider tenant is required to relocate the charge point (owing to redevelopment), relocation costs will be paid to the EV charge point provider tenant by the relevant delivery authority. If relocation proves to be unviable, compensation will be paid by the relevant delivery authority to the EV charge point provider tenant. The precise value of such costs/compensation is unknown but does include financial caps.

9 Risk Assessment

- 9.1 The procurement process has been robust with a review and market testing prior to the decision to proceed and legal teams from all of the councils involved in reviewing and agreeing the documentation. There is a risk that a preferred supplier will not be identified but due diligence has been completed to minimise this risk. Risks to delivery will be managed by the appointed Governance Board. The arrangements for establishing and running the Board are included in the contract. Horsham District Council will have representation on the Board.

10 Procurement implications

- 10.1 As the value of the contract (to the contractor) is above threshold, a fully compliant above threshold tender process is currently being undertaken. West Sussex County Council is leading the procurement process for the concession contract. Horsham District Council had significant input to drawing up the procurement documentation.
- 10.2 A Contract Notice was issued on Contracts Finder on 2nd June 2021 (ref CF1dcae6c5-fbce-4750-974d-2ddfd86fca7b) in relation to the concession procurement process. Further promotion of the requirement was made for both procurements through the West Sussex e-Sourcing Portal and Contracts Finder. The tender process closes on 11 July 2021 and the bids will be evaluated during July and August by a multi partner (including Horsham District Council) and multi-disciplinary panel.

11. Equalities and Human Rights implications / Public Sector Equality Duty

- 11.1 The public sector equality duty will apply to the delivery of the services which fall within the contract, and the terms of the contract will ensure that they enable the County Council to fulfil its obligations through the delivery of the contract, and provide sufficient assurance that the duty will be complied with.

12 Environmental Implications

- 12.1 The proposed contract will ensure that charge points are installed across the County as part of a cohesive and comprehensive network. This will assist with improving air quality and contribute to reducing carbon emissions, which is the main contributor to climate change.

13 Other Considerations

- 13.1 Data Protection requirements were incorporated into the specification and contract.