

Decision Pathway – Report Template



PURPOSE: Key decision

MEETING: Cabinet

DATE: 14 July 2020

TITLE	Revised City Leap Energy Partnership		
Ward(s)	City-wide		
Author: David White	Job title: Head of Energy Services		
Cabinet lead: Cllr Dudd	Executive Director lead: Stephen Peacock		
Proposal origin: BCC Staff			
Decision maker: Cabinet Member Decision forum: Cabinet			
Purpose of Report: To seek approval to recommence the City Leap Energy Partnership procurement following extensive feedback from Bidders.			
Evidence Base:			
<p>Bristol City Council was the first local authority in the UK to declare a ‘climate emergency’ and has brought forward its internal and city-wide targets for carbon neutrality to better reflect the short window of opportunity that remains to reduce the city’s carbon emissions to zero. Bristol enjoys a global reputation as a leading energy city and has made significant progress in reducing its carbon emissions; however, despite having invested over £50m in low carbon energy infrastructure and projects over the last decade, the pace of delivery must significantly increase if we are to play our full part in addressing the climate emergency and meet our 2030 goal for carbon neutrality.</p> <p>City Leap aims to build on the innovative leadership the council has shown in energy and sustainability over almost three decades to strategically co-ordinate the delivery of a local interconnected, low carbon, smart energy system in Bristol that provides long-term social, environmental and economic benefits for its residents, communities and businesses.</p> <p>This transformation will involve the build out of significant low carbon energy infrastructure, such as heat networks, renewable energy generation, battery storage and energy efficiency measures, which will require substantial levels of capital investment; levels that the council cannot deliver alone. Therefore, one of City Leap’s main aims is to attract, facilitate and deliver at least £1bn of low carbon and smart energy infrastructure investment in Bristol’s energy system.</p> <p>To assist with attracting this investment, in May 2018, the council published the City Leap Prospectus, which set out the council’s past successes, current programme of low carbon energy projects and future investment opportunities in relation to low carbon energy infrastructure within the council’s estate and across the city. The Prospectus invited Expressions of Interest from organisations that wished to work with the council and the response exceeded the council’s expectations with 180 Expressions of Interest being submitted containing a wide range of proposals.</p> <p>The council subsequently undertook an extensive soft market testing phase, meeting with over 160 organisations that submitted Expressions of Interest and completing its own comprehensive options appraisal. This led to the council selecting a preferred model to deliver City Leap involving the setting up of a joint venture with a City Leap Strategic Partner.</p> <p>Establishing this joint venture will merely be the start of the City Leap journey, as the partnership required to deliver</p>			

Bristol's future low carbon, smart energy system will need to be flexible and inclusive in its approach, bringing in new projects, innovation and partners over time as Bristol progresses towards carbon neutrality.

Following approval of the Cabinet Report, 'City Leap Energy Partnership', in April 2019, a comprehensive programme of work was undertaken to develop an extensive and robust suite of procurement documentation, running to some 500 pages. Upon completion and approval of the procurement documentation, the council commenced the procurement of the City Leap Strategic Partner for the joint venture in September 2019, including hosting a Bidders' Day event at City Hall, which attracted over 70 organisations.

Following the initial selection stage of the procurement, eight Bidders were selected to proceed to the next stage. Due to the innovative nature of City Leap, this second stage was designed to obtain feedback from Bidders on key points of the procurement to ensure the market could provide a high quality response and consisted of three rounds of face-to-face meetings with Bidders held over a period of six weeks, finishing on 5 March 2020. This enabled the council to gain valuable and extensive feedback across a range of topics from Bidders, with strong interest being shown by all Bidders in the low carbon energy infrastructure investment opportunities available under City Leap. Bidders also complimented the council on the quality of the procurement documentation, which reflected the significant level of original thinking and effort that had gone into their preparation.

The feedback received from Bidders required consideration and discussion with Cabinet Members and senior officers to determine whether any changes should be made to the procurement. These discussions had to be delayed given the absolute priority for the council to fully focus on its response to the emerging coronavirus pandemic. Accordingly, the decision was taken in mid-March to delay the third stage of the procurement, when Bidders would have been invited to submit initial bids, for an unspecified period of time.

Having now considered the feedback received from Bidders, the council intends to make a number of changes to the City Leap Energy Partnership procurement in order to deliver the best possible outcome for Bristol. Whilst a degree of change was always anticipated, given the complexity of the procurement exercise, some of these changes materially affect the nature of the procurement and, following legal advice, the council decided to formally bring the procurement exercise to an end and seek Cabinet approval to recommence with a revised version of the procurement. Bidders were notified to this effect on 26 May 2020.

Separately a decision was made at Cabinet on 02 June 2020 regarding the sale of Bristol Energy. Irrespective of this decision, feedback received from Bidders indicates that there continues to be strong interest in the low carbon energy infrastructure investment opportunities available under City Leap.

The revised and accelerated procurement exercise will recommence as soon as practicably possible, once all changes to the procurement and the associated documentation are agreed and finalised. Given the robustness of the original procurement documentation, these revisions are anticipated to be completed in a relatively short period of time and the procurement remains on track to complete within a similar timescale to that originally envisaged. Consequently, the cost to complete the City Leap Energy Partnership procurement is expected to be contained within the overall funding allocation.

Cabinet Member / Officer Recommendations:

That Cabinet:

- Authorises the Executive Director: Growth & Regeneration, in consultation with the Cabinet Member for Energy, to take all steps necessary to revise, recommence and carry out the City Leap Energy Partnership procurement.
- Approves the draw-down of the £1.5m earmarked reserve set aside for the City Leap Energy Partnership procurement within the 2020/21 budget approved by Full Council on 26 February 2020.
- Notes that the forecast cost to complete the City Leap Energy Partnership procurement is within the overall funding allocation.

- Notes that a further report will be brought back to the Cabinet to approve the appointment of the Preferred Bidder. This report will include consideration and approval for any legal structures and the establishment of such governance arrangements as may be required for the City Leap Energy Partnership, any investments in or transfer of assets into the City Leap Energy Partnership corporate structure, along with the financial and legal terms therein.

Corporate Strategy alignment:

The City Leap Energy Partnership is intended to deliver the £800m to £1bn investment referenced under the second Wellbeing Key Commitment in the Corporate Strategy 2018-23, which was approved by Full Council in February 2018, 'Keep Bristol on course to be run entirely on clean energy by 2050 whilst improving our environment to ensure people enjoy cleaner air, cleaner streets and access to parks and green spaces.'

City Benefits:

- Keep Bristol on course to be run entirely on clean energy by 2050 by delivering up to £1bn of investment in the city's low carbon, smart energy system.
- Improve our environment to ensure people enjoy cleaner air through supporting the further deployment of renewable energy generation and electric vehicles.
- Improve physical and mental health and wellbeing by making residents' homes warmer and cheaper to heat, reducing inequalities and the demand for acute services.
- Tackle food and fuel poverty by reducing energy bills.
- Create jobs, contributing to a diverse economy that offers opportunity to all and makes quality work experience and apprenticeships available to every young person.

Consultation Details:

50+ briefings provided to the Mayor, Cabinet Member Briefings, Oversight & Scrutiny Management Board, Growth and Regeneration Scrutiny Commission and Senior Officers from July 2018 to present.

Background Documents:

- The April 2019 Cabinet Report: <https://democracy.bristol.gov.uk/ieDecisionDetails.aspx?AllId=15747>
- The City Leap Prospectus: www.energyservicebristol.co.uk/cityleap

Revenue Cost	£2.3m	Source of Revenue Funding	Earmarked Reserves
Capital Cost	N/A	Source of Capital Funding	N/A
One off cost <input checked="" type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input checked="" type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice:

This proposal seeks approval to modify and restart City Leap procurement taking into account bidder feedback and recent changes made to the Council's commercial holdings.

As at 31st March 2020, the Council had spent £4.2m on procurement of a City Leap partnership since its first cabinet approval in November 2018. It is estimated a further £2.3m will be required leading up to Contract Award, which brings the total estimated spend to £6.5m by December 2021 including 10% contingencies on future cost estimates.

Table below illustrates the actual and forecast expenditure and funding streams of the procurement. The scope of the City Leap Energy Partnership procurement and operating model are still in the process of being refined, taking into account feedback from bidders and the intended changes in the Council's commercial holding in Bristol Energy. The financial and operational model and scope are expected to change to the extent that a new process will be triggered albeit much of the progress from the previous exercise is not lost and the new process is anticipated being simpler. Note that these necessary revisions are currently proposed to be carried out by delegated authorities to Senior Officers listed under the Recommendations.

	ACTUAL	ACTUAL	FORECAST	FORECAST (to Dec '21)	
	2018/19	2019/20	2020/21	2021/22	TOTAL
Core team - BCC staff	115,908	204,986	170,551	119,734	611,179
Core team - Agency	37,142	255,022	164,258	129,832	586,253
Core team - Internal professionals	129,093	407,018	314,642	241,023	1,091,775
Advisors - Financial	67,000	559,163	315,000	150,000	1,091,163
Advisors - Legal	50,016	401,434	225,000	150,000	826,450
Advisors - Commercial Energy	55,280	627,921	11,127	-	694,328
Marketing & Travel	20,628	81,200	50,000	25,000	176,828
Internal recharges - other	-	3,025	5,000	5,000	12,161
Energy innovation services		1,187,000			1,187,000
Contingency - 10%			125,558	82,059	207,617
TOTAL	474,203	3,726,769	1,381,136	902,647	6,484,755

Balance Brought forward		(288,863)	(813,000)	(931,864)	
Nov '18 Cabinet Approval	(763,066)				(763,066)
Apr '19 Cabinet Approval		(4,000,000)			(4,000,000)
20/21 Budget			(1,500,000)		(1,500,000)
In year Energy Service Revenue Budget		(250,905)			(250,905)
TOTAL FUNDING	(763,066)	(4,250,905)	(1,500,000)	-	(6,513,971)
Over/(Under) spend	(288,863)	(813,000)	(931,864)	(29,217)	(29,217)

Most of the costs had been funded by the Council's Revenue Budget and Earmarked Reserves, except for the first Cabinet approval in November 2018 where approval was given to utilise capital funds. This should be reviewed as the project continues and potential revenue reversion may occur. Also note that City Leap has spent c£1.2m of the approved innovation funding thus far (part of the approved £4m funding by April 2019 Cabinet), the remainder (£0.8m) will continue to be used to support the procurement process including engaging resources and revising the target operating model.

A further decision is proposed to be brought back to the Cabinet for the appointment of preferred bidder(s). This will include considerations for legal structures, governance arrangements, any transfers of assets and further investments requirement along with the financial and legal terms and conditions in forming the City Leap Energy Partnership.

Further risks and considerations include risk on the procurement timescale, costs associated with any further delays in procurement and potential changes in investment appetite under the wider economic conditions.

Finance Business Partner: Tian Ze Hao, Senior Finance Business Partner, advice given 01 July 2020

2. Legal Advice:

Whenever the Council materially amends a procurement that is subject to the Concession Contracts Regulations 2016, it is required to re-commence the procurement to ensure any bidder interested in the materially different procurement is given the opportunity to submit a tender. The decision to recommence the procurement will ensure this requirement is complied with.

The legal advice given in the cabinet report dated April 2019 granting authority to commence the initial City Leap procurement applies equally to this procurement, and is summarised below.

Under City Leap, the Council will procure a City Leap Strategic Partner to form a joint venture company (JV) with. The JV will then enter into a number of agreements to provide services to the Council and it is envisaged provide substantial investment in, and delivery of, low-carbon infrastructure in the City. The Council has the power to establish trading companies under s4 Localism Act 2011 and s95 Local Government Act 2003, and legal advice must be sought to ensure all applicable conditions are met when exercising these powers.

State resources will be transferred to the JV, which if transferred at less than the market value, could constitute State

aid (which is prohibited under competition law). The procurement process should ensure that the JV pays the market rate for such resources, but again legal advice will need to be sought throughout the procurement process to ensure no state aid is present.

The exact commercial terms of the JV and the agreements between the JV and the Council will be subject to negotiation during the procurement of the City Leap Strategic Partner. For the purposes of designing the procurement the Council will need to identify any matters that are absolute requirements of the Council within the structure, and so are not open for negotiation, and those matters which may be negotiated. An internal governance structure to manage the negotiation process has been established.

The proposed City Leap structure envisages that the joint venture and other entities within the City Leap Partnership structure sitting below it will not be “bodies governed by public law” and so will not be subject to Procurement Regulations. However, this position will need to be monitored and considered carefully during the City Leap Strategic Partner procurement negotiations to ensure that the detailed shareholder arrangements in relation to those entities does not alter the analysis.

The Council must comply with the requirements of the Public Sector Equality duty when making any decisions. The duty requires the decision maker to consider the need to promote equality for persons with “protected characteristics” and to have due regard to the need to i) eliminate discrimination, harassment, and victimisation; ii) advance equality of opportunity; and iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. In order to do this, the decision maker must have sufficient information about the effects of the proposed decision on the aims of the Duty.

The Equalities Impact Assessment is designed to assist with compliance with this duty. Its purpose is to assess whether there are any barriers in place that may prevent people with a protected characteristic using a service or benefiting from a policy. The decision-maker must take into consideration the information in the assessment alongside the general Public sector equality duty before taking the decision.

Further Legal advice on the agreements to be entered into and any other legal issues that arise will be provided when a report is brought to cabinet prior to the appointment of the preferred bidder.

Legal Team Leader: Sinead Willis, Commercial and Governance Team Leader, advice given 4 June 2020

3. Implications on IT: Minimal anticipated impact on IT Services

IT Team Leader: Simon Oliver, Director: Digital Transformation, advice given 5 June 2020

4. HR Advice:

There are minimal additional HR implications associated with the revised proposal in light of the decision to sell Bristol Energy. There remains the potential for transfer of the council’s in-house Energy Service into the City Leap structure, subject to Cabinet approval. Any such proposals will form part of detailed proposals made by potential City Leap Strategic Partners and negotiations with them during the procurement process. The BCC City Leap project team will remain in place until the completion of the procurement exercise.

HR Partner: Celia Williams, HR Business Partner – Growth & Regeneration, advice given 10 June 2020

5. Procurement Advice:

As highlighted in the report, due to material changes in respect of the scope from the original competitive process for City Leap, the Council took the decision to abort the process with a view to assessing options. Based on the reassessment around the changes and revised business case, it is noted that the Council now plans to undertake a new competitive process to select a partner to deliver the City Leap aspirations. In order to ensure due diligence, the process should be conducted in line with public sector competitive process and therefore recommended that this process is in line with the Concessions Contracts Regulations 2016.

Furthermore, it is highlighted in the report the necessary governance and associated resourcing to be put in place

with the aim of ensuring that any risks associated from the competitive process are duly managed and mitigated.

Category Manager: Steve Sandercock, Interim Head of Strategic Procurement and Supplier Relations, advice given 9 June 2020

EDM Sign-off	Stephen Peacock	4 June 2020
Cabinet Member sign-off	Cllr Dudd	8 June 2020
For Key Decisions - Mayor's Office sign-off	Mayor's Office	15 June 2020

Appendix A – Further essential background / detail on the proposal	NO
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	NO
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO