

Forward Plan reference number: FP/136/08/21

Report title: Extension and Tender of local bus contracts	
Report to: Cabinet	
Report author: Councillor Lee Scott - Cabinet Member for Highways Maintenance and Sustainable Transport	
Date: 24 November 2021	For: Decision
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County Divisions affected: All Essex	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Everyone's Essex

- 1.1 Everyone's Essex sets out four strategic aims and twenty commitments for the Council to deliver over the next 4 years. As part of the 'High Quality Environment' strategic aim, a key commitment is to deliver a step change in sustainable travel across the county, by growing passenger transport and connecting people and places with economic opportunity to create sustainable and healthy communities.
- 1.2 This report proposes the renewal of contracts for local bus services (as shown in Appendix A), subsidised by Essex County Council, which are due to expire over the course of 2022 and 2023.
- 1.3 Extending, tendering, and awarding of these local bus contracts to maintain a strong bus network is a crucial foundational part of delivering our organisational goals, and supporting people to switch to a more sustainable travel option- such a bus journey instead of a car - will also help us achieve our targets for net zero carbon emissions. Enabling connectivity to places that the market may not be able to deliver without subsidy also supports our ambitions to level up outcomes for residents across the county. It supports our high streets, local employers and enables those accessing training and looking for work.
- 1.4 The Government has published a national bus strategy entitled 'Bus Back Better' which has been the subject of previous Cabinet reports and which is the mechanism by which Government and ECC will seek to recover and improve the bus network to improve sustainability. The work we will carry out for Bus Back Better, will include reviewing the local bus network in Essex , - including

interchange points, introduction of an enhanced bus partnership with bus operators, working with Operators on marketing and promoting services

- 1.5 It is anticipated that the new network arrangements, which will include the new shape of the local bus network for Essex, will be on stream by 1 August 2024.

2. Recommendations

- 2.1 Agree that, subject to 2.2, arrangements are made to continue the local bus network in its current form until 31 July 2024 by:
- (a) undertaking a procurement exercise using the ECC Dynamic Purchasing System to competitively tender 47 contracts (set out in Appendix A, Part I);
 - (b) Extending those contracts which allow for extension until 31 July 2024;
 - (c) Undertaking a procurement exercise using the ECC dynamic purchasing system for those contracts which cannot lawfully be extended or where the operator will not agree to them being extended.
- 2.2 Agree that the contracts for services in the Uttlesford area as listed in part (iv) of Appendix A are consulted on and re-tendered, commencing on 31 January 2023 with the possibility of extension for up to two years in total.
- 2.3 Agree that nothing in this decision allows the cost of the local bus network to exceed the budget as set out in the medium term resource strategy, or the sum in the confidential appendix.
- 2.4 Agree that the Director, Highways and Transportation is authorised to extend contracts where possible, retender if extension is not possible and award contracts is delegated to the Director, Highways and Transportation.

3 Background and Proposal

- 3.1 ECC is a significant investor in local bus services which support safer, greener and healthier alternatives to the car. The Council provides the local bus network of supported bus services which provide public transport for communities who otherwise would not have a service, or at times when services cannot be provided commercially. Good bus networks help people live all aspects of their lives. They also support the renewal of the local economy, enable people to access work, improve the environment and support communities by enabling people to access a wide range of services. Bus services support equality, as they are disproportionately used by those on lower incomes, women, older and younger people and people with a disability.
- 3.2 We tender for these bus services to make sure we get the best value for the taxpayer. In normal times, when a contract is approaching its expiry date officers will review passenger usage data and, provided the route is performing with a subsidy of less than £5 per passenger journey the contract will be re-tendered or, if allowed within the terms of the contract, extended. If a bus route fails the '£5 test' then we will seek to re-configure the service to bring it below or if that is not possible to consult on withdrawing the route.

- 3.3 The impact of the pandemic means that bus usage is significantly lower than previously, meaning that applying the £5 figure would result in withdrawal of a significant number of services. We do not yet know when or if passenger numbers will recover to pre-covid levels.
- 3.4 The Government has published a national bus strategy entitled 'Bus Back Better' which has been the subject of previous Cabinet reports and which is the mechanism by which Government and ECC will seek to recover and improve the bus network. As part of this we are seeking to introduce an enhanced bus partnership and review the network across Essex.
- 3.5 This is consuming the resources of the Passenger Transport Team and there is limited merit in reviewing the local bus network until we have a clearer picture of the future of bus services and how the local bus network will fit in with them.
- 3.6 The proposal is to put measures in place to continue with all current ECC commissioned services, either by extending contracts or where that's not possible - either because the contract doesn't allow for the extension or because the operator doesn't agree to an extension - tendering them on the same basis as the current contract. With the exception of the Uttlesford services (see next paragraph), we will put arrangements in place so that contracts will expire on 31 July 2024.
- 3.7 With respect to services relating to the Uttlesford district which are listed in part (iv) of Appendix A we propose to take a slightly different approach. This is because in 2023 we anticipate receiving funding from planning agreements section 106 agreements which, we believe, will enable us to redesign the local bus network across the district. It is therefore proposed that these contracts will be re-tendered with a break clause in January 2023 to give us the opportunity to make any changes to the network that we wish to make. Should any routes be unaffected by the proposed redesign then we will be able to extend the contracts for a further period of up to 2 years.
- 3.8 It is anticipated that the new network arrangements, which will include the new shape of Local Bus will be on stream by 1 August 2024.
- 3.9 Detailed information about the contracts which are the subject of this report are in Appendix A.

3. Options

Option 1 – recommended

- 4.1 Procure arrangements so that all current local bus services continue until 31 July 2024 as set out above with the exception of the Uttlesford contracts which will be dealt with as set out above.

- 4.2 Approving the recommendations in this report will have the following impact on the Council's ambition to be net carbon neutral by 2030:
- maintain the existing passenger transport services after an unstable 18 months,
 - allow ECC the necessary time to consider options and undertake reviews surrounding these services as part of our wider network review following publication of the DfT "Bus Back Better: National Strategy for England" published on 15 March 2021.
 - Ensure communities retain access to key services such as employment, education, shopping and health services reducing the need for car travel
 - Maximise funding opportunities to develop sustainable travel across the county
- 4.3 Although final prices cannot be known, the proposal to award these contracts will result in an annualised cost increase (£1.784m) and estimated net budget pressure to ECC (£1.011m 2022/23 and £1.651m, 2023/24) however, this is a more cost-effective option than retendering all contracts as in option 3.

Option 2 – Do nothing – Not recommended

- 4.4 Local Bus Services are discretionary and there is an opportunity for savings if the contracts are not extended or tendered as proposed. If the proposals set out in this report are not agreed, services (as set out in Appendix A) would cease as and when existing contracts reach the date of expiry. This would result in many communities having no access to key services. Whilst there would be a potential cashable budget saving of £9.121m from 2022/23 if this option were taken forward, these local bus services would cease to operate.
- 4.5 In addition:
- removal of services in an unplanned way would be likely to be contrary to the aims of Bus Back Better, making it more difficult to attract funding from Department for Transport (DfT) to progress other improvements
 - ECC have not consulted on any potential withdrawal of these services and therefore this option does not meet the objectives of the current ECC Passenger Transport Strategy
 - there is a risk of legal challenge if services are withdrawn without consultation.

Therefore this option is not recommended.

Option 3 – Tender all contracts – Not recommended

- 4.6 If ECC were to tender all contracts without extending those which may be extended, there could be an increase in costs. Although tendering the contracts may attract more competition from bus operators, there is still the risk of no bids being received, service withdrawals and increased costs.
- 4.7 Although it cannot be known, it is considered unlikely that there will be a cashable budget saving by tendering all contracts rather than just those which

cannot be extended, indeed, due to the high cost increase expected we could be in a position where these local bus services would cease to operate.

Therefore this option is not recommended.

5. Links to our Strategic Ambitions

5.1 This report links to the following strategic priorities in 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

5.2 This also aligns with the wider Essex objectives in Essex Vision

6. Issues for consideration

6.1 Financial implications

6.1.1 The existing budget provision included in the Medium Term Resource Strategy (MTRS) for local bus is set out in the table below:

	MTRS	
	2022/23 £	2023/24 £
Bus Fare income (including concessionary fares fixed pot allocation)	(664,277)	(664,277)
Bus Service Operators Grant	(1,120,991)	(1,120,991)
Expenditure	10,906,832	10,906,832
Net Expenditure	9,121,564	9,121,564

6.1.2 The current annual contract price for the contracts listed in Appendix A is £10.9m. A number of assumptions have been made in order to calculate the equivalent new total annual contract price for these contracts:

- All contracts are assumed to either be re-tendered or extended on the same basis as the current contracts. There is no expectation that there will be contract conversion on re-tender. If any contracts are converted from 'net cost' to 'gross cost', ECC will take on the financial risk of variances to patronage and ticket sales.
- On bus revenue and English National Concessionary Travel Scheme (ENCTS) income applies to gross contracts only.

- Concessionary fare income revenue has been estimated on the basis that payments for concessions remain at the level distributed in 2020/21.
- Annual on bus revenue assumptions have been extrapolated from the average on bus revenue per service received between March and August 2021.

6.1.3 Under the most likely scenario incorporating the income assumptions set out in paragraph 6.1.2, a net budget pressure of £1.011m in 2022/23 and £1.651m in 2023/24 against the existing MTRS. Under the worst case, albeit unlikely, scenario whereby zero income is received, a net budget pressure of £1.962m in 2022/23 and £2.602m in 2023/24. This pressure is not containable within the existing MTRS and mitigations would have to be sought elsewhere within the sustainable transport budget or the wider organisational budget.

6.1.4 If contracts extensions cannot be negotiated within the agreed parameters and are re-tendered, there is a risk that the tender would result in a contract being awarded on a 'gross cost' basis whereby ECC bears the financial risk of the service rather than paying a fixed subsidy. If this happens there would be transference of significant financial risk to ECC.

6.1.5 The income risk that ECC currently holds in relation to gross contracts in addition to baseline contracts costing more with no additional outcomes being delivered for that investment means that value for money is being eroded. In the short term at least, contract costs for many services will likely exceed £5 per passenger journey (which represents the current policy threshold for intervention). However, the impact of COVID has meant that no services are currently able to operate within the £5 policy threshold. Maintaining the current network for the next two years will allow for strategic development and consultation to be undertaken in line with the Bus Back Better Strategy whilst providing continuity of the existing service to communities in the intervening period.

6.2 Legal implications

6.2.1 It is lawful to extend and procure contracts as set out in this report. It should be noted however that the Council will be maintaining the network at a time when the 'value for money' criterion of £5 per passenger journey is not currently being met. That does not affect the lawfulness of the decision but clearly this may be more difficult to justify in the longer term.

7. Equality and Diversity Considerations

7.1 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.
- 7.2 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).
- 7.3 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.

8. List of appendices

- Appendix A – List of all local bus contracts
- Appendix B - EQIA
- Appendix C - Confidential appendix

9. List of Background papers

Bus Back Better Strategy