

Electric Vehicle Charging Stations: Governance and Procurement Considerations

Disposal of land, public amenity and contract management

Federal and State Government funding has been provided to commercial operators to install Electric Vehicle (EV) charging stations in identified localities throughout the State.

WALGA has received Member enquiries regarding licence agreements offered by operators seeking to install EV charging stations on Local Government property, raising the prospect that the disposal of land provisions under s.3.58 of the *Local Government Act* may be triggered.

The following is a non-exhaustive list of elements that Local Governments may consider when dealing with an approach from, and potentially negotiating agreements with, operators for installation of EV charging stations on Local Government land.

Disposal of Land [s.3.58]

Local Governments considering entering into an agreement to allow an operator to install, operate and maintain an EV charging station on land under the care control and management of the Local Government will involve a **disposal of property** in accordance with s.3.58 of the *Local Government Act 1995*.

If planning a disposal activity involving EV charging stations, there are a range of matters Local Governments may consider prior to entering into an agreement:

- Ensure the operator consults with Local Government on the development of the agreement, and that Local Government is provided relevant applications for approval prior to installation.
- Ensure the operator is responsible for reinstatement, to the Local Government's satisfaction, of Local Government assets disturbed, impacted, damaged, removed and/or replaced through the operator's installation and maintenance of charging station infrastructure.
- Ensure on expiry of the agreement the operator must remove the EV charging station infrastructure, unless the Local Government has resolved to accept an offer by the operator to gift EV charging infrastructure to the Local Government.

Any such offer should be subject to the operator providing the Local Government with relevant asset condition reports, as-constructed plans, maintenance records, maintenance programs and cost estimates, operator manuals and warranties.

Local Governments should not agree to accept a 'gifted' asset unless the Local Government has evidence that the asset has been properly maintained, is not at the end (or near the end) of its asset life or is superseded technology (that may be difficult to maintain) and may therefore become quickly redundant, resulting in the Local Government acquiring liability for removing and disposing of the infrastructure and reinstating the surrounding area.

- Prescribe the circumstances of when and then how relocation or upgrade of EV charging infrastructure may be initiated, approved and works undertaken, if required:
 - by the Local Government (i.e. to facilitate capital works or redevelopment of Local Government facilities, or where demand on charging infrastructure negatively impacts public safety or amenity, pedestrian or traffic movements or surrounding land uses); or
 - by the operator

This may trigger an exit clause in the agreement and if required, a new agreement (disposal) relevant to the land area for a relocation.

Public Amenity

Does the agreement include provisions that ensure the operator is responsible for:

- Repair, maintenance and the keeping in good order of the EV charging station infrastructure, within maximum response times for maintenance; public amenity issues or other matters relevant to the operation of the site; and
- Reimbursing the Local Government for costs incurred in removing litter from the land that is subject to the agreement or installing safety barriers if the charging station is damaged or vandalised. Such costs may be factored into the annual remuneration arrangements provided in the agreement.

Local Governments may also consider:

- Potential Local Law implications (such as Parking Local Law controls and ensuring the parking period closely aligns with the time necessary to charge a vehicle; prohibition of non-electric vehicles from designated EV charging stations).
- How potential increases in demand for EV charging facilities may impact surrounding land uses and availability of parking bays.

Contract Management

Does the agreement include provisions that:

- Ensure the operator is required to evidence current and appropriate insurances (i.e. public liability) for the term of the agreement. Advice can be sought from LGIS at admin@lgiswa.com.au.
- Prescribe the circumstances and terms by which Local Government or the operator may terminate the agreement and the consequences of such action.
- Ensure the Local Government and operator provide and keep current contact information for their respective relevant personnel.

Local Governments may also wish to consider:

- Negotiating terms that maximise revenue opportunities for Local Government. As a minimum Local Governments should seek to recover incidental costs that may be incurred (e.g. periodic site clean-up/litter removal, contract management administration costs, and costs arising from managing public safety and amenity issues).
- Some operators are providing their agreements with a caveat of 'commercial in confidence' and Local Governments will need to consider how this may conflict with public accountability/disposal of land obligations under s.3.58.

For more information, please contact WALGA Governance and Procurement on governance@walga.asn.au or phone 08 9213 2514.