

The City of Edinburgh Council

10.00am, Thursday, 5 February 2015

Edinburgh Tram Inquiry – Waiver of Confidentiality

Item number	8.3
Report number	
Executive/routine	
Wards	All

Executive summary

This report asks Council to note action taken under the urgency procedures set out at paragraph A4.1 of the Committee Terms of Reference and Delegated Functions, to provide assistance to the public inquiry by Lord Hardie in relation to the Edinburgh Tram Project.

Links

Coalition pledges

Council outcomes

CO24 – The Council communicates effectively internally and externally and has an excellent reputation for customer care.

CO25 – The Council has efficient and effective services that deliver on objectives.

Single Outcome Agreement

Edinburgh Tram Inquiry – Waiver of Confidentiality

Recommendations

- 1.1 The Council is recommended to note the action taken under the urgency procedures set out at paragraph A4.1 of the Committee Terms of Reference and Delegated Functions, as set out in this report.

Background

- 2.1 On 26 June 2014 the Council resolved that, in order to assist Lord Hardie's inquiry ("Inquiry") into the Edinburgh Tram Project, where any former employee, who has been in any way associated with the project, and whose departure has been associated with a compromise or similar agreement containing a confidentiality undertaking, the Council will not rely on and will waive any such undertaking to the extent necessary to enable each such person, should they chose to do so, fully and freely to give evidence and provide any material or information to the Inquiry notwithstanding undertakings given in any such agreement.
- 2.2 Subsequent to this resolution the Inquiry has been converted to a statutory inquiry.

Main report

- 3.1 In December 2014 the Inquiry requested confirmation that the Council would further extend the waiver of duties of confidentiality owed to the Council and its subsidiary undertakings, to allow those owing such duties to co-operate with the Inquiry.
- 3.2 There was an urgent requirement for the Council to deal with this request, as the Inquiry team advised the Council that without the Council's assistance in this matter, the Inquiry's investigation would be unable to proceed in an efficient and effective manner. This would be inconsistent with the Council's agreed approach to assist the Inquiry.
- 3.3 Paragraph A4 of the Council's Committee Terms of Reference and Delegated Functions provides that if a decision which would normally be made by a Committee requires to be made urgently between meetings of the Committee, the Chief Executive or appropriate Director, in consultation with the Convener or

Vice-Convener, may take action, subject to the matter being reported to the next meeting of the Committee.

- 3.4 Appendix 1 sets out the terms of the decision made on 23 December 2014 by Alastair Maclean as Acting Chief Executive, in consultation with the Lord Provost, as the Convener of the City of Edinburgh Council, given that the next meeting of Council was not until 5 February 2015, and in light of the considerations noted above at paragraphs 3.1 and 3.2.

Measures of success

- 4.1 This decision should assist the public inquiry's investigation to proceed in an efficient and effective manner.

Financial impact

- 5.1 There are no direct financial impacts as a result of this report.

Risk, policy, compliance and governance impact

- 6.1 Any delay in this decision would have impeded the progress of the Inquiry and would be inconsistent with the Council's agreed approach to assist the Inquiry.

Equalities impact

- 7.1 There are no direct equalities impacts as a result of this report.

Sustainability impact

- 8.1 There is no direct sustainability impact as a result of this report.

Consultation and engagement

- 9.1 In accordance with the Council's Committee Terms of Reference and Delegated Functions, the decision was made in consultation with the Lord Provost.

Background reading/external references

[Minutes of the City of Edinburgh Council 26 June 2014](#)

Alastair D Maclean

Director of Corporate Governance

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Links

Coalition pledges

Council outcomes CO24 – The Council communicates effectively internally and externally and has an excellent reputation for customer care.
CO25 – The Council has efficient and effective services that deliver on objectives.

Single Outcome Agreement

Appendix Copy resolution under urgency powers by the Acting Chief Executive in consultation with the Lord Provost, dated 23 December 2014.

THE CITY OF EDINBURGH COUNCIL
RESOLUTION IN RESPECT OF AN URGENT DECISION UNDER PARAGRAPH A4 OF THE
COUNCIL'S COMMITTEE TERMS OF REFERENCE AND DELEGATED FUNCTIONS

Considering that:

- a) On 26 June 2014, pursuant to a motion by Councillor Rose entitled "Tram Inquiry - Lifting of Compromise Agreement Restrictions", the City of Edinburgh Council (the "Council") resolved that, in order to assist the inquiry, where any former employee, who has been in any way associated with the project, and whose departure has been associated with a compromise or similar agreement containing a confidentiality undertaking, the Council will not rely on and will waive any such undertaking to the extent necessary to enable each such person, should they chose to do so, fully and freely to give evidence and provide any material or information to the inquiry notwithstanding undertakings given in any such agreement (the "June 2014 Decision").
- b) Since the June 2014 Decision, Lord Hardie's Edinburgh Tram Inquiry (the "Inquiry") has been converted to a statutory inquiry.
- c) The Inquiry has requested immediate confirmation that the Council shall waive any rights of confidentiality owed to the Council and its subsidiary undertakings by their current or former employees, and current and former contractors, consultants, solicitors and advocates engaged by or on behalf of the company to the extent that such persons are asked to co-operate with the Inquiry. The Council has agreed to co-operate in so far as it is reasonably able to do so with the Inquiry.
- d) There is now an urgent requirement for the Council to resolve that it shall relieve certain persons of any duty of confidentiality owed to the Council. Without this resolution, the Inquiry team have advised the Council that the Inquiry's investigation will be unable to proceed in an efficient and effective manner. Any delay in this resolution could impede the progress of the Inquiry and would be inconsistent with the Council's agreed approach to assist the Inquiry.
- e) The June 2014 Decision is not being changed, and the terms of Standing Order 27 (of the Council's Procedural Standing Orders for Council and Committee Meetings) do not apply in respect of this matter.
- f) Paragraph A4 of the Council's Committee Terms of Reference and Delegated Functions provides that if a decision which would normally be made by a Committee requires to be made urgently between meetings of the Committee, the Chief Executive or appropriate Director, in consultation with the Convener or Vice-Convener, may take action, subject to the matter being reported to the next meeting of the Committee. The next meeting of the full Council, being the relevant Committee, will not be until 5 February 2015.
- g) Given the considerations noted above, the acting Chief Executive in consultation with the Lord Provost, as the Convener of the City of Edinburgh Council, hereby resolves:
 - i. that current and former employees, and current and former contractors, consultants, solicitors and advocates engaged by or on behalf of the Council be and are hereby relieved of any duty of confidentiality owed to the Council (whether through contract of employment or otherwise)

but only to the extent that they are requested by Lord Hardie or a member of his Inquiry team to provide evidence to the Inquiry and subject to maintaining confidentiality, and in the case of solicitors and advocates also preserving legal advice and litigation privilege, in respect of any matter relating to existing litigation regarding the subject matter of the Inquiry. Such waiver shall not extend to any other matter and (for the avoidance of doubt) shall not extend to matters relating to existing litigation regarding the subject matter of the Inquiry; and

- ii. that current and former employees and current and former contractors, consultants, solicitors and advocates engaged by or on behalf of any subsidiary of the Council be relieved of any duty of confidentiality owed to such subsidiary (whether through contract of employment or otherwise) but only to the extent that they are requested by Lord Hardie or a member of his Inquiry team to provide evidence to the Inquiry and subject to maintaining confidentiality, and in the case of solicitors and advocates also preserving legal advice and litigation privilege, in respect of any matter relating to existing litigation regarding the subject matter of the Inquiry. Such waiver shall not extend to any other matter and (for the avoidance of doubt) shall not extend to matters relating to existing litigation regarding the subject matter of the Inquiry.

..... (Please sign here)

Donald Wilson, Lord Provost

23 December 2014

..... (Please sign here)

Alastair Maclean, Acting Chief Executive

23 December 2014