

The City of Edinburgh Council

Edinburgh, Thursday 17 September 2015

Present:-

LORD PROVOST

The Right Honourable Donald Wilson

COUNCILLORS

Elaine Aitken
Robert C Aldridge
Norma Austin Hart
Nigel Bagshaw
Jeremy R Balfour
Gavin Barrie
Angela Blacklock
Chas Booth
Mike Bridgman
Steve Burgess
Andrew Burns
Steve Cardownie
Maureen M Child
Bill Cook
Nick Cook
Gavin Corbett
Cammy Day
Denis C Dixon
Marion Donaldson
Karen Doran
Paul G Edie
Catherine Fullerton
Nick Gardner
Paul Godzik
Joan Griffiths
Bill Henderson
Dominic R C Heslop

Lesley Hinds
Sandy Howat
Allan G Jackson
Karen Keil
David Key
Richard Lewis
Alex Lunn
Melanie Main
Mark McInnes
Adam McVey
Eric Milligan
Joanna Mowat
Gordon J Munro
Jim Orr
Lindsay Paterson
Ian Perry
Alasdair Rankin
Vicki Redpath
Lewis Ritchie
Keith Robson
Cameron Rose
Frank Ross
Jason G Rust
Stefan Tymkewycz
David Walker
Iain Whyte
Norman Work

1. Minutes

Decision

To approve the minute of the Council of 20 August 2015 as a correct record.

2. Questions

The questions put by members to this meeting, written answers and supplementary questions and answers are contained in Appendix 1 to this minute.

3. Leader's Report

The Leader presented his report to the Council. The Leader commented on:

- Councillors Marion Donaldson and Lewis Ritchie – Congratulations and welcome
- Thanks to ex Councillors Maggie Chapman and Deirdre Brock
- Sincere thanks to all parties for support and quick response to Syrian Refugee crisis
- City Region Deal - submission

The following questions/comments were made:

- | | |
|----------------------|---|
| Councillor Gardner | - Attitude of utilities companies across the City to taking responsibility for work on roads and pathways |
| Councillor Lunn | - Thanks to Council officers for report on the Syrian crisis to Communities and Neighbourhoods Committee |
| Councillor Balfour | - Welcome to Councillors Donaldson and Ritchie
- Refugees – Edinburgh Groups aiding refugees at Calais – temporary accommodation for storage of goods
- Transformation programme – no redundancy policy |
| Councillor Day | - Schemes at Pennywell and Castle Mills – Round 2 of the Scottish Government Capital Regeneration Fund
- Jeremy Corbyn - congratulations |
| Councillor Griffiths | - Refugee crisis at Calais – request for donations of toiletries |
| Councillor Orr | - Welcome to Councillors Donaldson and Ritchie
- Transient Visitor Levy |

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|----------------------|---|---|
| Councillor Cardownie | - | Condolences to the family of the late Kenny Waugh and request for a fitting tribute |
| | - | Dave Mackay – update on tribute |
| | - | Reinforcement of commitment to Capital Coalition pledges |
| Councillor Heslop | - | Natural Neighbourhoods |
| Councillor Edie | - | Welcome to Councillors Donaldson and Ritchie |
| | - | Concern at fall in police beat numbers since 2007 |
| | - | Refugees – way to tap into the generosity of spirit of Edinburgh residents |
| Councillor Tymkewycz | - | City of Edinburgh Basketball Club – successful work |
| Councillor Nick Cook | - | Referendum anniversary |
| Councillor Rose | - | Welcome to Councillors Donaldson and Ritchie |
| | - | Loss of 100's of potential posts over the course of the next three years within the Council |
| Councillor Ross | - | Fire at Corstorphone Public Hall Company 2 years ago –thanks to Councillors Edie and Balfour and members of the local organisations active in fundraising |
| Councillor Aldridge | - | Health and Social Care budget – impact on people and jobs and plans to monitor vulnerable groups and report back |
| Councillor Whyte | - | Council Transformation Programme - savings |
| Councillor Burgess | - | Welcome to Councillors Donaldson and Ritchie |
| | - | Refugee crisis – welcome the action taken by the Council - speed of overall national reaction |

4. By-election – No 12 Leith Walk Ward

Decision

To note that Marion Donaldson and John Lewis Ritchie had been elected as Councillors for No 12 Leith Walk Ward.

(Reference –report by the Returning Officer, submitted)

5. Appointments to Committees etc

The Lord Provost ruled in terms of Standing Order 27(1), that this item, which included recommendations which if accepted, would require a change to Act of Council No 8 of 25 June 2015, should be considered due to a material change in circumstances, namely the result of the by-election on 10 September 2015, as previous decisions on this had been made within the preceding six months.

The Council had approved its appointments to Committees, Boards and Joint Boards for 2015/16 on 25 June 2015.

Details were provided on the result of the Council by-election on 10 September 2015 which affected the political balance of the Council and the Council was asked to make the necessary appointments.

Decision

- 1) To note the report by the Deputy Chief Executive advising of vacancies on a number of Committees and note three further resignations, as follows:
 - Governance, Risk and Best Value Committee – Councillor Blacklock
 - Petitions Committee – Councillor Redpath
 - Culture and Sport Committee – Councillor Tymkewycz.
- 2) To note the update report from the Deputy Chief Executive concerning the result of the Leith Walk by-election on 10 September 2015 which changed the political composition of the Council and had a potential impact on the political balance of five of the Council's Committees.
- 3) To agree to continue consideration of the political balance of the committees affected by the change in the political composition of the Council for one cycle. In the meantime to leave the political balance on those Committees as agreed on 25 June 2015.
- 4) To agree to appoint members to Committees as follows:
 - (i) Communities and Neighbourhoods Committee – Councillor Ritchie
 - (ii) Corporate Policy and Strategy Committee – Councillor Main
 - (iii) Culture and Sport Committee – Councillor Cairns
 - (iv) Education, Children and Families Committee – Councillor Ritchie
 - (v) Finance and Resources Committee – Councillor Bill Henderson
 - (vi) Governance, Risk and Best Value Committee – Councillors Howat and Redpath
 - (vii) Health, Social Care and Housing Committee – Councillor Booth
 - (viii) Personnel Appeals Committee – Councillor Burgess
 - (ix) Petitions Committee – Councillor Donaldson

- (x) Planning Committee/Development Management Sub-Committee – Councillor Ritchie
 - (xi) Planning Local Review Body Panel 1 – Councillor Ritchie
 - (xii) Lothian Valuation Joint Board/Lothian Electoral Joint Committee – Councillor Lunn.
- 5) To agree to appoint Councillor Booth as Convener of the Petitions Committee.
- 6) To appoint Councillors Donaldson and Ritchie to the Leith Neighbourhood Partnership.

(References - Act of Council No 8 of 25 June 2015; report by the Deputy Chief Executive (circulated)

6. Appointments to the Convention of Scottish Local Authorities (COSLA)

The Council had made appointments to outside bodies for 2012-2017.

Councillor Cardownie and ex-Councillor Chapman had now resigned from the Convention of Scottish Local Authorities (COSLA) and the Council was invited to appoint members in their place.

Decision

To appoint the Councillors Burgess and Howat to COSLA.

(References – Act of Council No 2 of 24 May 2012; report by the Deputy Chief Executive, submitted.)

7. Resignation from the Board of Marketing Edinburgh Ltd

The Council had made appointments to outside bodies for 2012-2017.

Councillor Nick Cook had now resigned from the Board of Marketing Edinburgh Ltd and the Council was invited to appoint member in his place.

Decision

To appoint the Councillor Mowat to the Board of Marketing Edinburgh Ltd.

(References – Act of Council No 2 of 24 May 2012; report by the Executive Director, City Strategy and Economy, submitted.)

8. Appointment to Head of HR and Organisational Development

Details were provided on the Recruitment Committee's recommendation for the appointment to the post of Head of HR and Organisational Development.

Decision

To agree to the appointment of Katy Miller to the post of Head of HR and Organisational Development subject to any necessary pre-employment checks.

(References – Corporate Policy and Strategy Committee of 24 March 2015 (item 5); report by the Deputy Chief Executive, submitted.)

9. Revenue Monitoring 2014/15 – Outturn report – referral from the Finance and Resources Committee

The Finance and Resources Committee had referred a report on the provisional 2014/15 revenue outturn position for the Council based on the unaudited financial statements.

Decision

- 1) To approve the allocation of the capital receipt of £1.183 million in respect of the former East Market Street Garage to the Council's Common Good account.
- 2) To refer the report to the Governance, Risk and Best Value Committee for consideration as part of its workplan.

(References – Finance and Resources Committee 27 August 2015 (item 11); report by Finance and Resources Committee, submitted)

10. Revenue Monitoring 2015/6 – Month 3 Position – referral from the Finance and Resources Committee

The Finance and Resources Committee had referred a report on the projected month three revenue monitoring position for the Council, based on period two data.

Approval was sought for the Spend to Save application for the Edinburgh Leisure web development project and the £9.8million of savings referenced in paragraph 3.6 of the report by the Deputy Chief Executive, to offset, in part, the forecasted overspend in Health and Social Care.

Decision

- 1) To approve of the Spend to Save application for the Edinburgh Leisure web development project and the £9.8 million of savings referenced in paragraph 3.6 of the report by the Deputy Chief Executive, to offset, in part, the forecasted overspend in Health and Social Care.
- 2) To note the very significant budget pressure in Health and Social Care and the range of mitigating actions set out, which imply direct service impacts; and in that light to request that the Leader make further urgent representation to Scottish Ministers about the extent to which demand for health and social care services was adequately reflected in the local government settlement.
- 3) To refer the report to the Governance, Risk and Best Value Committee for consideration as part of their workplan.

(References – Finance and Resources Committee 27 August 2015 (item 13); report by Finance and Resources Committee, submitted)

Declaration of Interests

Councillor Edie declared a financial interest as Chair of the Care Inspectorate and left the meeting during the Council's consideration of the above item.

11. Treasury Management: Annual Report 2014/15 – referral from the Finance and Resources Committee

The Finance and Resources Committee had referred a report on Treasury Management activity in 2014/15.

Decision

- 1) To approve the Treasury Management activity
- 2) To refer the report by the Deputy Chief Executive to the Governance, Risk and Best Value Committee for scrutiny.

(References – Finance and Resources Committee 27 August 2015 (item 18); report by Finance and Resources Committee, submitted)

12. Accelerating House Building – referral from the Health, Social Care and Housing Committee

The Health, Social Care and Housing Committee had referred a report on the delivery of the National Housing Trust (NHT) Programme and proposed further development of the model for the purpose of accelerating house-building in the city.

The Council was asked to approve the establishment of a Limited Liability Partnership (LLP) to acquire and manage housing for affordable rent and market rent.

Decision

To agree to the establishment of a Limited Liability Partnership (LLP) to acquire and manage housing for affordable rent and market rent.

(References – Health, Social Care and Housing Committee 8 September 2015 (item 10); report by Health, Social Care and Housing Committee, submitted)

13. Challenging Poverty – Motion by Councillor Hinds

The following motion by Councillor Hinds was submitted in terms of Standing Order 16.1:

“The Council and the Edinburgh Partnership have a strong track record in tackling poverty but acknowledge that more needs to be done. Council recognises the often hidden nature of poverty in Edinburgh, with around a fifth of households living on low incomes, with many households having at least one person in work and experiencing in-work poverty.

Council welcomes that the Council Leader recently signed a pledge in support of the Church of Scotland's 'Food Justice Movement' which includes commitments:

- To continue to work alongside those with lived experience of poverty to identify solutions.
- To encourage the Scottish and UK governments to work in partnership with local government, communities and the third sector to tackle food poverty and develop a plan to tackle its causes.

Council also welcomes and endorses the third annual Challenge Poverty Week which will take place from 17 to 23 October and asks the Chief Executive to consider ways the Council can contribute to the 2015 Challenge Poverty Week, including:

- organising events and activities to mark the week;
- promoting the week through the Council website, facebook pages, twitter, etc;
- encouraging partner organisations to get involved.

Council agrees to adopt the Poverty Alliance pledges detailed at http://povertyalliance.org/policy_campaigns/syl/syl_pledges.”

Decision

To approve the motion by Councillor Hinds.

14. Motion by Councillor Burns – Trades Union Bill

The Lord Provost ruled that the following item, notice of which had been given at the start of the meeting, be considered as a matter of urgency in order that it be considered timeously.

The following motion by Councillor Burns was submitted in terms of Standing Order 16.2:

“Council notes the Conservative Government are proposing a Trade Union Bill that will restrict the ability of this Council to engage in good industrial relations practices with our workforce and their representatives.

Council believes the collection of union dues through the check-off arrangement, from which the Council receives income, is part of our collective and contractual arrangements with the trades unions and one which we will defend and support.

Council commits not to use agency staff to break or weaken industrial action and to continue to support arrangements that afford trade union representatives sufficient resources to enable them to carry out their functions to ensure the continuation of good industrial relations.

The Leader of the Council commits to write to:

- the Secretary of State for Business, Innovation and Skills stating the Council’s opposition to this Bill and our resolve not to co-operate with any attacks on facility time or check off; and

- the First Minister calling on the Scottish Government to stand with Edinburgh and other local authorities in opposing the proposals in this Bill.”

Motion

To note that the Conservative Government were proposing a Trade Union Bill that would restrict the ability of this Council to engage in good industrial relations practices with their workforce and their representatives.

To note that the collection of union dues through the check-off arrangement, from which the Council received income, was part of the Council’s collective and contractual arrangements with the trades unions and one which the Council would defend and support.

To commit not to use agency staff to break or weaken industrial action and to continue to support arrangements that afforded trade union representatives sufficient resources to enable them to carry out their functions to ensure the continuation of good industrial relations.

To agree that the Leader of the Council commits to write to the Secretary of State for Business, Innovation and Skills stating the Council’s opposition to this Bill and the Council’s resolve not to co-operate with any attacks on facility time or check off.

- moved by Councillor Burns, seconded by Councillor Howat

Amendment

To take no action on the matter.

-moved by Councillor Rose, seconded by Councillor Nick Cook

Voting

For the motion	-	44 votes
For the amendment	-	11 votes

Decision

To approve the motion by Councillor Burns.

Appendix 1

(As referred to in Act of Council No 2 of 17 September 2015)

QUESTION NO 1

**By Councillor Bagshaw for answer
by the Convener of the Planning
Committee at a meeting of the
Council on 17 September 2015**

On 26 August 2015 the Development Management Sub-Committee considered an application for a site 80 Metres West of 4 Ferrymuir, South Queensferry (Application No 14/04172/FUL).

In the relevant report the Director of Children and Families assessed the impact of the proposed development on the existing school estate and calculated the financial contribution required to support the provision of essential infrastructure to accommodate the additional pupils at £845,480.00.

The developer stated that the requirement to commit to the full £845,480.00 contribution being sought would seriously prejudice its ability to provide a community facility for the residents of South Queensferry and a reduced financial contribution of £495,480.00 to the provision of education infrastructure was agreed, leaving the Council to make up the £350,000 shortfall.

Question

- (1) Please list all cases since 2009 of shortfalls between the cost of additional education requirements caused by developments and the amount provided by developers to meet those requirements.

Answer

- (1) **Background:** The circumstances behind the recommendation of the Acting Head of Planning & Building Standards to the Development Management Sub-Committee to accept a reduced level of contribution towards the provision of education infrastructure in South Queensferry were exceptional and justified in planning terms. The landowner had previously entered into a legal agreement with the Queensferry & District Community Council (QDCC) to provide land and build a community facility at Ferrymuir estimated at a cost of circa £350,000.

The landowner indicated that payment of the full contribution sought by the Director of Children and Families would render the delivery of the community facility unviable.

The proposal to offset the level of education contribution by the cost of providing the community facility was discussed with the relevant officers of Children and Families and QDCC.

Developer Contributions: the application at Ferrymuir South Queensferry is only one of three applications out of a total of 78 considered since 2009 that a sum less than that sought by the Director of Children and Families (or where agreement on the basis on which a contribution should be calculated) has been requested and secured through a Section 75 Agreement; the others being a mixed use development proposed by EDI at 199 Fountainbridge (application ref: 14/02814/PPP) and a residential development of 81 dwellings on the site of the former Trinity Park House, South Trinity Road (Application ref: 11/00387/FUL).

- Question** (2) How much has that shortfall amounted to in each case?
- Answer** (2) The position in respect of each site is:
- a) **Ferrymuir:** the legal agreement in respect of residential development has yet to be concluded. The sum specified in the draft legal agreement is £350,000 less than that sought by the Director of Children and Families. However it is £495,480 more than would have been secured under the extant PPP application for the site;
 - b) **199 Fountainbridge:** there is not a shortfall as such in this instance as the advice of the Director of Children and Families in December 2014 was that a suitable level of contribution should be determined by establishing a Fountainbridge education contribution zone, as promoted in the Proposed Local Development Plan Action Programme for other parts of the city. At the time of the application's assessment this approach was not considered to be appropriate at Fountainbridge and a suitable level of contribution was determined by using a formula based on a contribution per unit with sums uprated in line with the

relevant construction price index. The agreement has yet to be concluded. The sum to be secured is £356,116 – a sum that is likely to be less than that which might have been secured through a contribution zone approach. A Fountainbridge contribution zone is not a feature of the Proposed LDP Action Programme;

c) **South Trinity Road:** in May 2011 the Director of Children and Families sought the sum of £329,290 towards the improvement of education infrastructure at Wardie Primary School and Trinity Academy, £179,000 and £150,290 respectively. The sum specified in the legal agreement is £175,587 i.e. £154,603 less than that originally sought and is to be used in respect of improvements at Wardie Primary School only. The agreement was concluded in March this year, almost 4 years after the advice of the Director was received. The reduced sum was determined through a recalculation of the impact of the development on the school estate.

On 8 June 2011 the Asset Planning Manager in Children and Families instructed the Senior Solicitor to waive the contribution to Trinity Academy on the basis that any works there were quite far off in terms of time-scales.

- Question** (3) What measures are being taken to ensure that in future the Council secures the complete and necessary financial contribution towards education arising from new developments?
- Answer** (3) Through the preparation of the Local Development Plan (LDP), its associated Action Programme and revised Developer Contribution guidelines the Council, as planning authority, will have in place an up-to-date suite of development plan policies, known and costed actions described in an Action Programme (which will be kept under review) and guidance that will form a strong basis on which to secure an appropriate level of contribution towards the provision of essential infrastructure, including that required for education purposes. The LDP is presently the subject of Examination by Scottish Ministers, An Action Programme has been prepared and will be agreed following the adoption

of the LDP sometime in 2016 and the developer contribution guideline has been approved, made available for consultation purposes and will be presented to the Planning Committee in final form in December for approval.

Supplementary Question

I thank the Convener for his reply. The question I asked followed on from a planning application for a site at Ferrymuir in South Queensferry and had £350,000 funding shortfall to Education. It called for a list of all cases since 2009 of shortfalls between additional educational requirements caused by developments and the amount provided by developers to meet those requirements and asked how much that shortfall amounted to in each case and what measures are being taken to ensure that in future the Council secures the complete and necessary financial contribution towards education arising from new developments.

Now I appreciate the particular circumstances of Ferrymuir and the application as set out in the Development Management Sub-Committee report and the answer to my question, however, the fact remains that the Council is left with a shortfall of £350,000 in terms of education provision necessary for this site and the shortfall in relation to other sites too, and here we're just looking at Education contributions. If you look at the broader picture of developer contributions which includes affordable housing, public transport and public realm there's a significant underfunding of public infrastructure at a time when public budgets cannot make up the gap.

So can the Convener give an assurance that developers will be required to make a full and appropriate contribution in future.

Supplementary Answer

In relation to the question itself rather than the speech, if you look at answer 3, what we've done in the new process is develop action programmes for each of the development areas and that should give us a long term view on what infrastructure's required. However, a word of caution, in South Edinburgh for instance the last planning application that went through, we refused it on the basis of the developer couldn't meet the infrastructure cost, he could

only meet half the infrastructural cost on the basis that if he met that cost the development would be uneconomic. That has now gone to the Reporter to make a judgement.

If the Reporter agrees with the developer then that's a signal to us saying that if a site is deemed not to be economically viable then the developer doesn't have to pay the full cost.

If the Reporter agrees with us that it doesn't matter the economic viability of a site, they have to pay infrastructural costs, then clearly there will be no cost to the Council – the difficulty is of course no houses will be built. So we're in between a rock and a hard place here in terms of what we are doing.

We've taken a decision on that site to say to the developer you must meet the costs, it's now with the Reporter – we will need to wait to see how the Reporter views that and clearly if the Reporter does not agree with our interpretation of it, then we're in a difficult place.

QUESTION NO 2

**By Councillor Rust for answer by the
Convener of the Transport and
Environment Committee at a meeting
of the Council on 17 September 2015**

Question (1) Please advise if there is a penalty clause in any contracts in relation to waste collection between the Council and private contractors.

Answer (1) No. Penalty clauses are not enforceable under Scots Law. However, clauses relating to liquidated damages (i.e. reimbursement of costs actually incurred by the Council in remedying any deficiency) are included in the Council's contract regarding third-party waste collection.

Question (2) If there is such a clause has it ever been invoked?

Answer (2) Please see Answer (1) above.

Question (3) How are complaints of failure in service regarding waste collection by private contractors monitored and reviewed?

Answer (3) Complaints are logged electronically and where these relate to collections undertaken by a contractor on the Council's behalf, they are passed to the contractor for remedial action to be taken. Complaint numbers are collated on a weekly basis.

Performance is reviewed at fortnightly operational review meetings with the contractor.

Any examples of under-performance from our contractors are challenged robustly and in a timely manner. Such issues are also discussed at the operational review meetings as and when required.

Supplementary Question (1) I note the answers from the Convener. I would like to know really three points:-

Firstly, why it's taken from the 26 July until effectively yesterday to get a response on this matter from her Department.

Secondly, I do thank her for the legal education but as a Scottish Law Commission report says in normal speech many lawyers and lay persons would probably refer to a

penalty clause, intending to mean the clause which is usually liquidated damages, but which might exceptionally be unenforceable. Penalty clause is usually used in its widest sense, but conveniently with the semantics of the answer to number 1, we don't actually have an answer to number 2. So could she now answer, has a liquidated damages clause ever been invoked.

Thirdly, in terms of the situation which I think she may be aware about in West Mill and I appreciate she may want to follow this up and not answer today, but we've had 16 or 18 non collections, we've had countless visits by Community Waste Officers, visits by supervisors, hours of Council time spent on this, so can she advise in relation to that specific incidence, what the operational review said and what was robustly challenged.

Supplementary Answer (1) First of all Councillor Rust, unlike you I'm not a lawyer and probably as a lawyer you fine know that depending on what the question is and depending on the lawyer depends on what answer you might get to your question. So you've asked three questions.

Your question you've asked me is the penalty clause. You've given me no details in terms of what issue or what incident you're talking about, and then you come today and your question is about penalty clause in any contracts in relation to waste collection between the Council and the private contractors and you have got a response to that.

I think it's slightly unfair Councillor Rust to then turn up this morning without any indication at all of the incident or the issue that you're trying to raise regarding the response to the 26 July. You've asked me the question, I've answered your question if you've got any other details as usual Councillor Rust I'd be happy to get a response as quickly as I can.

Supplementary Question (2) Just a follow up Lord Provost. In terms of the quickness of response could you answer that particular question as to why it's taken since the end of July to get an answer, thank you.

- Supplementary Answer** (2) Sorry, I've got a question that's here today which I've answered today which is under the process. If Councillor Rust has an issue about the 26 July which he hasn't had the decency to even suggest before today of what that question is, you'll know Councillor Rust there are many many.....
- Interjection by Councillor Rose** Sorry Lord Provost, on a point of order Lord Provost.....
- Councillor Hinds** Councillor Rust it's me that's answering if you don't mind, maybe you don't like the answer Councillor Rust.
- Councillor Rust** I would suggest you check your e-mails Councillor Hinds.
- Councillor Hinds** It would have been quite polite of you if there has been an incident or issue that you have and you want me to address as a Convener, I'd be happy to do that as you know I will respond to you and if you've got that issue, happy to take it outwith this meeting and get a response as quickly as possible.
- Lord Provost** On a point of order Councillor Rust, you ask your question and you get your answer – that was your answer.