

The City of Edinburgh Council

10.00am, Thursday, 19 November 2015

Edinburgh Tram Inquiry – progress update - Supplementary Report

Item number	8.5(a)
Report number	
Executive/routine	
Wards	All

Executive summary

This report is supplementary to the Edinburgh Tram Inquiry - Progress Update report at item 8.5(a), to update Council on the status of the legal action by the Council against tie Limited (now CEC Recovery Limited) (“tie”).

Links

Coalition pledges	
Council outcomes	CO24; CO25
Single Outcome Agreement	

Edinburgh Tram Inquiry – progress update - Supplementary Report

Recommendations

- 1.1 The Council is recommended to note this supplementary report.

Background

- 2.1 This report is supplementary to the Edinburgh Tram Inquiry - Progress Update report (the “Report”) at item 8.5(a).

Main report

- 3.1 As detailed at paragraph 3.24 of the Report, protective court actions were raised and served in May 2013 following a decision of the Finance and Resources Committee, as follows:
- By the Council against DLA Piper Scotland LLP (“DLAP”);
 - By tie against DLAP; and
 - By the Council against tie.
- 3.2 The Report notes that the actions are suspended temporarily (sisted), with the agreement of the Court.
- 3.3 On 13 November 2015, the sist in the action by the Council against tie was due to expire and came before the Court for consideration as to whether it should continue. Sisting (suspension) of a court action requires the permission of the court. In this case the Court decided that the sist should not be extended for a further period of time.
- 3.4 As explained at paragraph 3.30 of the Report, the purpose of raising the action against tie was to avoid the Council irretrievably losing any rights of action through the operation of time bar (known as prescription). tie has no independent means with which to meet a claim by the Council. However, there might be circumstances in which if the Council were successful in the action against tie, tie could seek a contribution from other related persons.

- 3.5 As the suspension in the action against tie has not been continued, the Chief Executive, under delegated powers, will now take the option available to the Council of discontinuing the action. That will still allow proceedings to be brought again in the future because the time bar has successfully been interrupted. Discontinuing the action in the meantime will avoid incurring unnecessary costs to the public purse, whilst the Council's right to pursue claims to recover losses in the future has been preserved.
- 3.6 The possibility of bringing a future action will be considered at the appropriate time in light of the evidence brought out by the Edinburgh Tram Inquiry, and the final report and findings of Lord Hardie.
- 3.7 The legal actions by the Council and tie respectively against DLAP are currently sisted (suspended) until April 2016, and further investigation and preparatory work has been ongoing.

Measures of success

- 4.1 The City of Edinburgh Council continues to play a central role in the Edinburgh Tram Inquiry and continues to participate in an open and transparent manner whilst minimising the expenditure of public funds.

Financial impact

- 5.1 The Council has allocated up to £2 million of funding from the Council's reserves.

Risk, policy, compliance and governance impact

- 6.1 The Chief Executive and/or Deputy Chief Executive have delegated authority to take all decisions or actions in relation to the Council's involvement in the Inquiry, provided the financial consequences of such decisions or actions do not exceed £2 million and subject to regular reporting.
- 6.2 The Chief Executive has delegated authority to take the decision to discontinue the legal action in accordance with the Council's Scheme of Delegation.

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 There has been extensive consultation and engagement with elected members on the decisions taken which are referred to in the Edinburgh Tram Inquiry - update report.

9.2 The appropriate elected members have been consulted on the decision to discontinue the legal action against tie, in accordance with the Council's Scheme of Delegation.

Background reading/external references

[City of Edinburgh Council, Edinburgh Tram Inquiry - Progress Update](#), 19 November 2015

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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