

Governance, Risk and Best Value Committee

10am, Tuesday, 28 November 2023

Response to the Edinburgh Tram Inquiry

Executive/routine
Wards

1. Recommendations

- 1.1 To note the actions outlined in appendix one and appendix three to the Chief Executive's report in regard to the recommendations made by Lord Hardie in the Inquiry Report;
- 1.2 To note the financial information contained in appendix two.
- 1.3 To note the response to the motion in regard to any action to be taken regarding employees as a result of the Inquiry's findings and to officer candour, including Arm's Length External Organisations (ALEOs).
- 1.4 To note the update on possible legal action as outlined in appendix four.
- 1.5 To refer the report to the Council of 14 December 2023;

Andrew Kerr

Chief Executive

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Response to the Edinburgh Tram Inquiry

2. Executive Summary

- 2.1 The report addresses the motion agreed by the Council in September 2023 detailing the Council's response to the Edinburgh Tram Inquiry and in particular outlines the actions taken or proposed to be taken in regard to the Inquiry's recommendations. The report also includes information on the financial cost of the initial tram project, providing a breakdown of costs highlighted by the Inquiry. Assurance is provided on how the Council would approach breaches of the Employee Code of Conduct or instances of misleading behaviour by Arm's Length External Organisations and contractors. Finally, an update is provided on any possible legal action connected to the initial Tram Project.

3. Background

- 3.1 Following the opening to revenue service of the tramline in Edinburgh from Edinburgh Airport to York Place on 31 May 2014, the Scottish Government indicated that it intended to commission a public inquiry to understand why the construction of the line had been delivered over time and budget and delivered an incomplete line. In July 2014 the Inquiry was formally established by Scottish Ministers, with Lord Hardie appointed as the Inquiry chair. The Inquiry Report was published on 19 September 2023. It provides a detailed account of the progress of the project and identifies themes and factors that contributed to difficulties in project delivery.
- 3.2 On 28 September 2023, the Council considered a motion on the Tram Inquiry findings and agreed the following:
- 3.2.1 To approve the following adjusted motion by Councillor Day:
- 1) To note Lord Hardie had published his Tram Inquiry findings.
 - 2) To note its extensive nature, cost and lengthy timescale.
 - 3) To request a report on these findings and implications to the November Transport and Environment Committee, then to the December Full Council meeting as a matter of urgency.

- 4) To agree that the Chief Executive's report should include, but not be limited to, implications for future project management practices, and information and/or proposed actions on the following topics:
 - a) A briefing on why the final cost of the initial tram project was reported to councillors at a far lower sum than evidenced by Lord Hardie and who is responsible for this inaccurate information being reported to councillors;
 - b) A copy of the Council's Corporate response to the Maxwellisation process for Lord Hardie's draft report be provided to all councillors;
 - c) An update on the possibility of recourse for the Council to recoup public funds through legal action, either through currently sisted actions or otherwise, against corporations or individuals (including through individuals' professional indemnity insurance);
 - d) The outcome of any action to be taken regarding any individuals still in the employ of the Council as a result of the findings;
 - e) Given recommendations 20-24 inclusive regarding officer candour (notwithstanding any future resulting statutory process by the Scottish Government and regardless of whether this was likely to happen in other Councils to ask the Chief Executive to provide assurance that there were robust arrangements in place to deal with allegations of breaches of the Employee Code of Conduct. In addition, the Chief Executive should provide assurance of any arrangements in place for ALEOs and contractors.
- 5) To note that the subsequent report might contain confidential information about individuals or be subject to legal privilege and recognise that the report may have to be addressed in private. However, for the sake of public transparency, a public report should be provided with any necessary private material published for councillors in a confidential annex.

3.3 This report was considered by Transport and Environment Committee on 16 November 2023, then considered by Governance, Risk and Best Value Committee (GRBV) on 28 November 2023 and the Council on 14 December 2023.

3.4 On 16 November 2023, the Transport and Environment Committee agreed the following:

3.4.1 To note the actions outlined in Appendix one to the Chief Executive's report in regard to the recommendations made by Lord Hardie in the Inquiry Report;

3.4.2 To request appendices are added to the Council report on the recommendations of the Hardie Inquiry which had been addressed in the

Trams to Newhaven project, and on the arrangements agreed by GRBV Committee regarding monitoring the delivery of major projects.

3.4.3 To include in the Trams to Newhaven Lessons learned report an assessment of utilities works and why the chosen approach was taken.

3.4.4 To refer the report to the Council of 14 December 2023.

4. Main report

4.1 Due to the complexity of the Inquiry report and the differing responsibilities of the committees considering it, to address the actions agreed by the Council, each element is summarised in a separate Appendix, with this covering report explaining the different elements.

4.2 Appendix one details the Council's understanding of the failures in delivery of the first phase of the tram project and how that can be used to ensure future delivery of tram infrastructure projects can avoid similar issues. Transport and Environment Committee and the Council have the power within their remits to consider this information.

4.3 GRBV Committee has the power to look across at all aspects of Council performance and there will be matters across the report it may wish to scrutinise. However, to avoid duplication of scrutiny, it is recommended that it focusses on appendices two, three and four and any matters involving governance or risk.

4.4 Appendix two of the report details the financial cost and reporting of the tram project. This is primarily for the consideration of GRBV and the Council.

4.5 Appendix three details the response to the motion in regard to any action to be taken regarding employees as a result of the Inquiry's findings and to officer candour, including Arm's Length External Organisations (ALEOs). This Appendix is for the consideration of GRBV and the Council.

4.6 Appendix four is a confidential appendix and updates the Council on any possible legal action. This is for the consideration of GRBV and the Council.

4.7 The recommendations of the Tram Inquiry are addressed in the appendices in the report as follows:

4.7.1 Recommendations 5 – 7, 9, 10 and 13-19 are considered in appendix one.

4.7.2 Recommendations 20 (misleading statements and independent advice) and 21 (accuracy of reporting), are considered at Appendix 3

4.8 The following recommendations are not for the Council to consider and as such are not covered within the Appendices to this report:

4.8.1 Recommendations 1 to 4 of the Inquiry Report relate to the conduct of public inquiries and are therefore for the Scottish Government to consider.

4.8.2 Recommendations 8 (Optimism Bias), 11 (assurance on grant funding) and 12 (Minutes) 22 (sanction in damages), 23 (criminal offence) and 24 (duty to disclose) are for the Scottish Government to consider.

4.9 In advance of GRBV and the Council meeting, this covering report will be supplemented by any recommendations the Committees make to the Council.

5. Next Steps

5.1 The report is due to be considered by Transport and Environment Committee on 16 November 2023, Governance, Risk and Best Value Committee on 28 November 2023 and the Council on 14 December 2023.

6. Financial impact

6.1 Details of the financial cost of the Initial Tram Project are outlined in Appendix two of this report.

6.2 Details of the costs associated with litigation are outlined in Appendix four of the report.

7. Equality and Poverty Impact

7.1 Integrated Impact Assessments have been carried out as part of the Tram Project phases and would be an integral part of any future tram or light rail projects.

8. Climate and Nature Emergency Implications

8.1 There are no additional climate or nature emergency implications as a result of this report.

9. Risk, policy, compliance, governance and community impact

9.1 Risk management is outlined in Appendix one of the report in paragraphs 2.4.8 – 2.4.11.

9.2 Risk, and how it was applied in the project, was examined extensively within the Inquiry report. The management of risk and the governance surrounding it is detailed in recommendations 6, 7 and 9 included in Appendix one.

9.3 Governance is also detailed in Appendix one in paragraphs 2.4.15 – 2.4.18. Arm's Length External Organisation governance and how that is to be strengthened is included in Appendix three.

10. Background reading/external references

- 10.1 [Act of Council No 22 of 28 September 2023 – Minute](#)
- 10.2 [Edinburgh Tram Inquiry Report](#)

11. Appendices

- 11.1 Appendix One – Response on the Tram Inquiry’s findings on the Tram Project
- 11.2 Appendix Two – Reporting on the financial cost of the Initial Tram Project
- 11.3 Appendix Three – Officer Candour and ALEOs
- 11.4 Appendix Four – Legal Recourse (B Agenda)