

Sue This is a note prepared
by Fitchie & Abigail
on next steps for Council
approval. *Dave*

Decision Making Process and Timeline

Purpose: To explain what decisions, it is current believed, will be required to allow for the implementation of the Mediation resolution by the City of Edinburgh Council, in its role as client and funder.

Decisions Required: There are two authorities required and an informative:

- 1) The Council will be required to give tie Ltd authority to allow for spend and commitments that will exceed the current £546M cap. This is not the same as saying that they will spend more than £546M, but rather that potential commitments exceed that figure;
- 2) In relation to the previous commitments that the Council has agreed, specifically those in the Council Tram Report (24 June 2010), there is a requirement to inform Council of any changes to the scope, programme, or cost of the Project, and;
- 3) An update on the mediation process and outcome.

Approach proposed: The approach proposed is to prepare a Committee report that sets out the broad outcomes of mediation, seek authority to temporarily relaxes the provision of the Operating Agreement (Scope; Price; Programme), and either approves indicative potential spend from now to September (Operation Phoenix) or seeks agreement to Project Phoenix and all the related issues associated with this.

Process proposed: It is necessary to take the report to an Executive Committee of the Council, or Full Council itself. There are a number of issues associated with this. The Pre-Election Period begins as early as the 11 March 2011 and runs until the election on the 6 May 2011. This politicises the context for decisions, and leads to a need to consider whether to delay progressing a formal request for authority until after this period.

In light of the above there are two options for consideration.

The first is to take a report to Transport, Infrastructure and Environment (T,I&E) Committee on Tuesday 10 May 2011. This would allow the initial authority to come from the Committee with the remit for Transport.

There are issues associated with this approach. It is expected that the Convenor of the T,I&E Committee, Councillor MacKenzie, will stand for election to the Scottish Parliament. It may be necessary to have the report tabled at the meeting, rather than go through the normal APM process. The APM is likely to be in the week commencing 18 April 2011, due to the Easter recess. It goes without saying that this will be a fairly intense period of the Scottish Parliament election campaign. The Administration, particularly Gordon Mackenzie, may, therefore, have some reservations about this. However, the Committee is after the election date and the issue, therefore, may be slightly depoliticised, particularly if only tabled at the meeting.

For the purposes of decision making the T,I&E Committee has authority to make commitments on behalf of the Council, but it should not be underestimated that the T,I&E Committee could then remitted the report on to Full Council on the 2 June.

40 An issue for consideration is that a number of other elected members are understood to be considering standing for election to the Scottish Parliament. If they are successful, whilst there is precedent for them maintaining both roles for a short period of time (e.g. Cllr Tymkewycz and former Cllr Murray) this tends not to be sustainable, therefore, local by-elections may be required. It is worth remembering that the current Administration has no working majority other than by virtue of the Lord Provost's casting vote.

If a local by-election, or elections, were called and the situation tips in the direction of another party, the whole Administration's position, or indeed the Administration itself, could change. This could then affect the ability to achieve a decision at Full Council. We might find, therefore, ourselves reliant on the Scottish Government ruling on the future of the project, on a cost/benefit basis.

50 A second option is to take the report to Full Council on the 28 April 2010. This is bang in the middle of the Pre-Election Period. It would be necessary to establish the Administration's appetite and willingness to table a report at the meeting. On the positive side, the current Administration would still have 'in principle' certainty of its working majority, by virtue of the Lord Provost's casting vote. However, some elected members seeking election to the Scottish Parliament could see this as an opportunity to set out their own position, independent of their local government party stance.

Standing Orders: Standing Order 63 does provide for the situation where a decision is urgent. It states: *"If a decision which would normally be made by a Committee requires to be made urgently between meetings of the Committee, the appropriate Head of Department, or the Chief Executive, in consultation with the Convener or Vice-Convener can take action subject to the matter being reported to the next meeting of the Committee for information."* It would not be recommended to pursue authority through this route.

60 **Conclusion:** There is risk associated with whichever of these options we pursue. Subject to more detailed consideration, the balance of risk would suggest that we progress irrespective of the Pre-Election Period. This would give an earliest reporting date of the 28 April to Full Council. The 10 May T,I&E Committee and the 2 June Full Council are your next key dates. After this we are into the summer recess.

Version 2: Thursday, 10 March 2011 @ 1:58 PM

RGS/10.03.11/v2