

# The City of Edinburgh Council

10.05am, Thursday, 13 December 2012

## Council companies

Item number	8.3
Report number	
Wards	All

### Links

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Coalition pledges	
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Single Outcome Agreement	

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# Executive summary

## Council companies

### Summary

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This report sets out officer recommendations following a review of Council companies and the proposals of the Capital Coalition working group of elected members set up to consider the recommendations (“Members’ Working Group”).

### Recommendations

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Council is asked to note the contents of this report, consider whether to approve the proposals of the Members’ Working Group, and if thought fit:

1. instruct the Director of Services for Communities to take the actions assigned to him in this report and report back to Council on implementation within six months;
2. instruct the Director of Corporate Governance to take the actions assigned to him in this report and report back to Council on implementation within six months; and
3. instruct the Head of Economic Development to take the actions assigned to him in this report and report back to Council on implementation within six months.

### Measures of success

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Each Council company contributes effectively to delivery of the Council's outcomes and provides a measurable return on the investment of public funds.

### Financial impact

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The rationalisation of the current companies’ structure may lead to savings in operational/administration costs, including audit fees.

### Equalities impact

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There are no equalities implications arising from this report.

### Sustainability impact

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There are no sustainability implications arising from this report.

## Consultation and engagement

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Consultation has taken place with officers and elected members in relation to the review of Council companies.

## Background reading / external references

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### [Audit Scotlands ALEO report](#)

Invercap report (Draft) – Arms-Length External Organisations (ALEOs). This report is available from Sally Hamilton [Sally.Hamilton@edinburgh.gov.uk](mailto:Sally.Hamilton@edinburgh.gov.uk)

## Council companies

### 1. Background

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- 1.1 The City of Edinburgh Council has a significant interest in or provides significant funding to a large number of companies. The companies were established for a variety of reasons and currently provide services across a diverse range of activities.
- 1.2 The Council is responsible for ensuring that any company it sets up or funds can demonstrate best value in its use of public money. It is therefore critical that sound governance arrangements are in place for these organisations. Recent experience has shown how poor governance of Council companies can contribute to significant financial and reputational cost to the Council and an adverse impact on delivery.
- 1.3 It is also important that the Council is clear about the anticipated benefits from using an arm's length company to deliver services, rather than retaining service delivery in-house, or contracting or partnering directly with a third party provider in the public, private or voluntary sector. In some cases, an arm's length company can offer financial benefits, for example charitable companies currently qualify for business rates relief. In other cases, the rationale for a separate corporate vehicle may be less clear. In order to ensure optimal and efficient delivery of services and Council objectives, it is important that the overall company structure is rationalised.
- 1.4 With these risks and challenges in mind, the Director of Corporate Governance recently carried out a review of the existing Council companies, and consultation with officers and elected members has taken place over a number of months.
- 1.5 As part of the consultation process, the Director of Corporate Governance made a number of key recommendations. They include:
  - 1.5.1 Elected members should not be directly involved in operational decision-making of Council companies. Given the potential for conflict of interest between their roles as councillors and as directors (where there is a statutory duty to act in the best interests of the company and not the shareholder), it is recommended that elected members do not act as directors on company boards, but carry out a strategic direction-setting, oversight and challenge role as members of the relevant Council committees.
  - 1.5.2 In light of the same potential conflicts of interest, council officials should not sit on company boards. As an alternative to acting as company directors, it is recommended they have observer right on boards of Council companies.
  - 1.5.3 Council companies should recruit and appoint executive and non-executive directors with the appropriate skills and experience. The boards should meet at

regular intervals, with a minimum of five meetings every year. Each board should, where appropriate, have properly constituted audit, remuneration and nominations committees.

- 1.5.4 For each Council company, the relationship with CEC should be set out in a funding agreement or shareholders' agreement as the case may be and also, where appropriate, a service level agreement.
- 1.5.5 The agreements referred to above should set out the objectives of the company linked to the outcomes the Council wishes to achieve, and specify the services and any other return the Council expects in exchange for funding. They should also set out the financial and performance reporting and accounting and audit requirements. Appropriate KPIs should be put in place to ensure the efficiency of the company's operations and demonstrate best value. The Council should receive monthly information from Council companies providing a level of detail which is appropriate. Existing agreements should be reviewed in line with these recommendations and monitoring rights should be rigorously enforced by the Council.
- 1.5.6 Given the large number of companies delivering a range of services, there is the need to determine whether these organisations still have a role to play and demonstrate the rationale for this, or whether an alternative delivery model (including bringing the service back in-house) would be more appropriate.

## **2. Main report**

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### **2. Proposed revised arrangements for Council companies**

A Capital Coalition working group of elected members ("Members' Working Group") has considered the officer recommendations and set out the arrangements that members wish to put in place in relation to Council companies. The proposals of the Members' Working Group are summarised below:

#### **2.1 Governance**

- 2.1.1 Elected members have indicated their wish to participate directly in decision-making as directors of Council companies.. It is proposed that (save as set out in paragraph 2.2.3) three elected members will sit on the board of each Council company; one member from each of the Capital Coalition groups and one from an opposition group. It is recognised that the members appointed should have the appropriate skills and experience to be involved in the running of the company in question. It is proposed that one of the councillor directors should act as chair of the company. Officers will not sit on the board of any Council company but one officer from the appropriate service area will attend board meetings as an observer.
- 2.1.2 The director of the relevant service area will be responsible for the relationship between the Council and each Council company delivering services in his or her service area,

ensuring appropriate financial and performance monitoring and oversight. The director will keep the Corporate Management Team of the Council and the relevant Convener apprised of performance at least quarterly throughout the financial year.

- 2.1.3 The director of the relevant service area will require to put in place the appropriate funding and service level agreements together with shareholder agreements where applicable and where suitable arrangements do not presently exist. It is proposed that these include requirements for Council companies to comply with Council policy on the living wage and that companies should support the Council's Edinburgh Guarantee scheme and modern apprenticeships where possible. Each Director should be instructed to report to Council within six months to confirm suitable arrangements are in place.
- 2.1.4 Officer recommendations in relation to paragraphs 1.5.2 – 1.5.6 are agreed. In addition, in relation to financial and performance reporting members have proposed that each company should be required to produce full audited accounts and reports to a standard at least that of a medium sized company with no reporting exemptions applying.
- 2.1.5 The director of the relevant service area will be responsible for ensuring that the company recruits and appoints directors with the appropriate skills and experience. Again each Director should be instructed to report to Council within six months to confirm suitable arrangements are in place.
- 2.1.6 It is proposed that each company should report to the relevant executive committee as detailed below. The director of the relevant service area will be responsible for ensuring this.
- 2.1.7. The Directors responsible for each category of Council company and the relevant executive committee are as follows:

<b>Sector</b>	<b>Service area</b>	<b>Committee</b>
Property	Services for Communities	Economy
Transport	Services for Communities	Transport and Environment
Culture and sport	Corporate Governance	Culture and Sport
Exhibition and conference centre	Corporate Governance	Economy
Employability	City Development	Economy
Destination Marketing	City Development	Economy

## 2.2 Rationalisation of Council Companies

The Members' Working Group has set out its proposals for CEC's companies, which fall broadly into six categories, as follows:

### 2.2.1 Property Companies

- (a) It is proposed that the Council should retain two property companies to deal with regeneration and redevelopment.
- (b) In order to achieve this it is proposed that the Director of Services for Communities be instructed (subject to taking separate tax and accounting advice) to consolidate the main existing property companies (EDI Group Limited, Waterfront Edinburgh Limited and Parc Craigmillar Limited) leaving only two legal entities directly owned by the City of Edinburgh Council. This legal entity would achieve the controlled rationalisation of each of the subsidiary entities and joint venture arrangements over time.
- (c) The Directorate of Services for Communities would be responsible for the consolidated companies which should report in to the shareholder through the Economy Committee.
- (d) The Director of Services for Communities should be instructed to put in place the governance arrangements set out in paragraph 2.1 above in relation to these companies.

### 2.2.2 Transport companies

- (a) The Council has previously stated its intention to achieve an integrated bus and tram transport service, with Lothian Buses as the operator. Discussions are ongoing with the board of Lothian Buses plc in relation to the appropriate corporate structure for the integrated service. Details are set out in the appendix to this report.
- (b) It is agreed that the board of the new transport holding company should incorporate directors who have experience of businesses with similar challenges, including some with experience of both trams and buses. The company's strategy should be focused on meeting the Council's objectives of an integrated transport system.
- (c) It is also agreed that CEC needs to be more rigorous in the implementation and use of its monitoring rights in relation to Lothian Buses.
- (d) The transport companies will be the responsibility of the Director of Services for Communities, but in light of his present role in relation to the tram project and involvement in discussions around preparation for operations with Lothian Buses, it is proposed that the Director of Corporate Governance should be instructed to put in place the new shareholder agreement with the transport holding company and other governance arrangements as set out in paragraph 2.1.
- (e) The transport companies will report in to CEC as shareholder through the Transport and Environment Committee.

### 2.2.3 The Culture and Sport Companies

The Council has a number of culture, sport and leisure related companies as follows:

#### Edinburgh Leisure

- (a) Edinburgh Leisure is a company limited by guarantee and was established in 1998 to run the Council's sport and leisure services. This is a commonly used structure for delivery of leisure related services. The structure allows the company to benefit from business rates relief, as well as potentially accessing additional grant funding.
- (b) The corporate governance arrangements in relation to the objectives of the company and the monitoring of performance against those objectives are believed to be good and there is an effective framework in place for the Council to challenge and be updated on issues.
- (c) There is a funding agreement in place in terms of which the company generally prepares good quality management information setting out progress against a number of objectives, including customer satisfaction, health and safety, staffing issues, asset management as well as financial performance and risk. The management information appears to be appropriately focused towards the overall objectives of the company.
- (d) It is proposed that the existing arrangements with Edinburgh Leisure are retained, with any changes necessary to put in place the governance arrangements set out in paragraph 2.1, save that there will be no changes to the councillor directors of Edinburgh Leisure.

#### Culture companies

- (a) A number of arm's length companies have been set up to deliver cultural objectives, specifically in relation to promotion of the arts in Edinburgh. These companies are generally companies limited by guarantee and registered charities, as follows:
  - Edinburgh Festival Centre Limited
  - Edinburgh International Festival Society Limited
  - Edinburgh Science Foundation Limited
  - Edinburgh International Science Festival Limited
  - Festival City Theatre Trust
  - Festival City Theatre Trading Limited
- (b) As part of the consultation process, it was proposed that members consider a proposal for the Council to simplify its relationship with these companies through the creation of a single new culture company limited by guarantee. The purpose of the company would be as the central grant funding entity for the festival, science festival and theatre companies and directors could be appointed to that



board with appropriate business, financial and cultural experience.

- (c) The Members' Working Group did not wish to change the existing arrangements save that a funding agreement should be put in place for those companies who do not presently have one and the necessary changes should be made to put in place the governance arrangements set out in paragraph 2.1, save that there will be no changes to councillor directors of the culture companies. The Director of Corporate Governance should be instructed to take this forward.
- (d) The culture and leisure companies should continue to be the responsibility of the Director of Corporate Governance and should report in to CEC through the Culture and Leisure Committee.

#### **2.2.4 Exhibition and conference centre company**

- (a) Edinburgh International Conference Centre Limited ("EICC") was set up to be the operator of the Edinburgh International Conference Centre and the developer of the surrounding 10 acre site in Morrison Street and Lothian Road.
- (b) EICC has a development and operating agreement in place. There is presently no shareholders' agreement. The company prepares detailed operating budgets for each financial year and submits a detailed business plan and a rolling five year plan to the board for review and authorisation each year. Performance is monitored against these plans and relevant action is taken throughout the year as required. The plan sets out a number of KPIs and performance against these triggers a bonus payment to members of staff (currently set at achievement of 80% of operational targets). The board has identified the need to set more rigorous and measurable objectives in certain instances and a process is underway to review these.
- (c) The Members' Working Group believes this company should be retained. The Director of Corporate Governance should review the existing arrangements and make the necessary changes to comply with the governance arrangements set out in paragraph 2.1.
- (d) The Director of Corporate Governance should be responsible for monitoring the provision of services. The company should report in to CEC as shareholder through the Economy Committee.

#### **2.2.5 Destination Marketing company**

- (a) Marketing Edinburgh Limited was set up as a company limited by guarantee by CEC in 2011. Its objectives are to increase the economic activity within Edinburgh and its environs by promoting Edinburgh as a destination to live, work, study, pursue leisure activities, do business, visit or select as a film location.
- (b) As there is currently no funding/services agreement in place between the company and CEC, the Head of Economic Development should be instructed to put in place an annual funding agreement and other governance arrangements set out in paragraph 2.1.
- (c) The Head of Economic Development should be responsible for the company

which should report in to CEC through the Economy Committee

### 2.2.6 Employability company

- (a) Capital City Partnership is a company limited by guarantee. In December 2011, the Council mandated the company with the delivery of the local employability strategy.
- (b) A Service Level Agreement was put in place between the company and CEC in April 2012 for a three year period. The Agreement tasks the company with “the operational development, management and support of local employability and poverty reduction measures in the city” and sets out a number of agreed deliverables, including such matters as “the negotiation, agreement and sign off on Council funded or facilitated employability contracts and grants” as well as working “in conjunction with City Development Department on strategic and policy development issues”.
- (c) The Members’ Working Group has proposed that this company be retained. The Head of Economic Development should be instructed to review the existing arrangements and to make any necessary changes to implement the new governance arrangements set out in paragraph 2.1.

## 3. Recommendations

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- 3.1 Council is asked to note the contents of this report, consider whether to approve the proposals of the Members’ Working Group, and if thought fit:
  - 3.1.1 instruct the Director of Services for Communities to take the actions assigned to him in this report and report back to Council on implementation within six months;
  - 3.1.2 instruct the Director of Corporate Governance to take the actions assigned to him in this report and report back to Council on implementation within six months; and
  - 3.1.3 instruct the Head of Economic Development to take the actions assigned to him in this report and report back to Council on implementation within six months.

**Alastair D Maclean**

**Director of Corporate Governance**

## Links

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**Coalition pledges**

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

**Single Outcome Agreement**

**Appendices** Appendix 1 -Lothian Transport Proposed Structure

**Appendix 1**

