

## ABERDEEN CITY COUNCIL

---

COMMITTEE	Council
DATE	4 April 2012
LEAD OFFICER	Chief Executive
TITLE OF REPORT	Union Terrace Gardens Referendum
REPORT NUMBER:	OCE/12/004

---

### 1. PURPOSE OF REPORT

At its meeting on 14 December 2011 the Council considered a report from the Chief Executive on a possible referendum as a means of gauging public opinion with regard to the proposed City Garden Project (OCE/11/017). The Independent Counting Officer's report on the referendum is now brought to Council along with a final account for the spending incurred on the delivery of the poll.

### 2. RECOMMENDATIONS

That the Council resolves:

- i) to note the content of this report; and
- ii) to forward the Independent Counting Officer's report to the Scottish Government for its interest.

### 3. FINANCIAL IMPLICATIONS

At its meeting on 14 December 2011 the Council resolved i) to accept the offer made by Sir Ian Wood on behalf of the Wood Family Trust of 80% of the costs of the referendum up to a total of £200,000 payable by the Trust and ii) to allocate up to £50,000 from the Council's contingency budget to meet the costs not met by the Trust or any other available source.

The final account of spend on the delivery of the referendum is a total of £218,500. 80% of this figure gives £174,800 to be claimed from the Wood Family Trust. The remaining £43,700 will be met from the Council's contingency budget.

### 4. OTHER IMPLICATIONS

The Independent Counting Officer's report deals with the other implications of the referendum.

5. BACKGROUND/MAIN ISSUES

At its meeting on 14 December 2011 the Council resolved to agree the appointment of Crawford Langley as Independent Counting Officer responsible for the delivery of the referendum on the possible redevelopment of Union Terrace Gardens.

Attached is his report on the referendum.

6. IMPACT

The report deals with matters relating to the proposed City Garden Project and as such is likely to be of interest to the public.

7. BACKGROUND PAPERS

None

8. REPORT AUTHOR DETAILS

Ciaran Monaghan  
Head of Service, Office of Chief Executive  
01224 522293  
[cmonaghan@aberdeencity.gov.uk](mailto:cmonaghan@aberdeencity.gov.uk)

## **Referendum on Possible Development of Union Terrace Gardens Report by Independent Counting Officer**

### **1 Introduction**

- 1.1 I was commissioned by Aberdeen City Council at its meeting on 14 December 2011 to conduct, independently of the Council, a referendum on the possible development of Union Terrace Gardens and to report the result to the City Council.
- 1.2 This report is submitted in fulfilment of that commission.

### **2 Result of Referendum**

- 2.1 My formal declaration of result and statement of rejected votes is attached as an appendix to this report. Briefly stated, there was a majority of 4126 in favour of the City Garden Project Design on a 52% poll with 92 spoiled papers.
- 2.2 In addition I was obliged to reject 643 responses from voters at the stage of opening returned postal votes on the grounds that no ballot paper was enclosed, no Declaration of Identity was enclosed or the Declaration of Identity was unsigned. This is standard practice, required by legislation in an election. These responses are not included in the result.
- 2.3. 335 "B" envelopes were returned by Royal Mail on Friday 2<sup>nd</sup> March. As they were delivered to me after Close of Poll, I was, in accordance with standard election practice, unable to accept these.

### **3 Factors Possibly Affecting Result**

- 3.1 At the time I was commissioned, I undertook in intimating the result, to comment on any factors which, in my opinion, may have had an impact on the result. While I comment below on various aspects of the referendum and the desirability of establishing a statutory framework for local referenda in Scotland, I certify that, in my opinion, there were no factors which may have had an impact on the result.

### **4 Timing**

- 4.1 It is a fundamental point of electoral administration, re-emphasised in the Gould Report of 2007, that the interests of voters must be paramount. Given the proximity of the local government elections on 3<sup>rd</sup> May, with the Notice of Election being published on 13<sup>th</sup> March, it was imperative to avoid possible confusion in the minds of voters, that the referendum should be concluded by early March. It would have been illegal to combine the non-statutory referendum with the statutory

election and any overlap would have given rise to possible challenge by candidates.

- 4.2 I chose to fix 1<sup>st</sup> March 2012 as “Referendum Day” with the poll closing at 17.00 hours on that day. Voting packs were issued on 16<sup>th</sup> February and were delivered by Royal Mail over the following two days. (I was advised by Royal Mail that, due to the high volume of items (c166,000), involving delivery to virtually every residential address in Aberdeen, this staggering of deliveries was essential). It should be noted that, for an election, the number of postal votes is roughly 30,000.

## **5. Franchise**

- 5.1. In view of the provisions of Regulation 106 of the Representation of the People (Scotland) Regulations 2001, the only complete Register of Electors to which I could legally have access was that for voters having a qualifying address within the City of Aberdeen. This meant that the franchise was necessarily restricted to those registered as local government electors at a qualifying address within the City boundary.
- 5.2 I was made aware of the desire of the Council and a prospective funding party that young people should be involved in the referendum as far as possible. In acceding to this desire, I chose to extend the franchise to “attainers” i.e. those included on the current Register of Electors and who would attain the age of 18 during the life of the Register, viz by 30<sup>th</sup> November 2012. This arrangement, while perhaps less extensive than some would have wished, had the advantage of logic and security and put all voters on exactly the same footing. It was also practicable within the time available.

## **6 Structure of the Referendum**

- 6.1 While Regulation 106 of the 2001 Regulations allows the City Council to use the full (as opposed to the edited) Register of Electors for the conduct of a local referendum, there is no other statutory provision applicable to such a referendum. It is also to be noted that no further alteration was made to the Regulations regarding the supply of the full Register to take account of the circumstances of a referendum. As members will be aware from a note already circulated on my behalf, I am of the opinion that this has resulted in me being unable to fulfil the reasonable expectations of certain campaigning organisations that they would be able to obtain copies of the marked Register in the way that they could in an election. This is a point which might usefully be addressed by the Scottish Parliament.
- 6.2 In the absence of legislation, it fell to me to devise a set of rules for the conduct of the referendum and, so far as possible; I modelled these on those applicable to a local government election in Scotland. Significantly, however, without legislative backing, I had no power of

enforcement in relation to anyone other than registered campaigning organisations, with whom I had a contractual relationship.

- 6.3. The decision to conduct the referendum by post had effectively been taken by the Council prior to my appointment but, in my opinion, this was by far the most secure method of proceeding in a non-statutory poll. I deal with this in greater detail under "Security of the Poll" below.
- 6.4 The absence of legislation allowed the opportunity to introduce certain innovations for the convenience of voters without compromising the security of the poll. I chose to provide a facility to vote online or by telephone. Again, this is covered in further detail below.

## **7 Independence**

- 7.1. As indicated above, I was commissioned at the instance of the City Council's Chief Executive to conduct the referendum independently to avoid any allegation that the Council's position in relation to the City Garden Project might have led to improper manipulation of the poll.
- 7.2. In keeping with this intention, I chose to commission Democracy Counts, a well established and experienced supplier of election systems to undertake, under my supervision, most of the work associated with the Referendum. The choice of Democracy Counts was made after a rigorous tendering process. While I had to be satisfied with the outcome, I am pleased to acknowledge the hard work that was undertaken within the Council, primarily by David Gow and Helen Castle in preparing the documentation and conducting the tendering process. This was fundamental to the referendum timetable. In addition I deemed it prudent to appoint David Gow and Lauren Kennedy, two of the Council's Depute Returning Officers, and consequently accustomed to acting with the utmost impartiality, as Depute Counting Officers, in case I should be unavoidably absent.
- 7.3 The systems supplied by Democracy Counts were devised and supervised by the former Depute Returning Officer from a large Scottish authority, whose experience in electoral matters is very similar to my own. The final approval of the systems was by me.
- 7.4 All staff for the opening of postal votes and for the count were provided by Democracy Counts - the majority from the Manchester area, with some from the Central Belt of Scotland. None therefore had any direct interest in the outcome of the referendum.
- 7.5 The facilities for online and telephone voting were supplied and managed by Democracy Counts.
- 7.6 The Voting Packs were designed to my specification by Democracy Counts and printed under their, and my, supervision by a security

printer in Manchester. The packs were loaded on to a Royal Mail truck in Manchester and driven direct to Aberdeen for delivery.

## **8 Online and Telephone Voting**

- 8.1 Some have questioned whether a poll which offered voters the opportunity to vote online or by telephone can properly be described as an “all postal” poll. I would defend my decision so to describe it on the basis that every voter received a voting pack through the post and it was receipt of this pack which enabled the individual to vote by any of the three channels and which was fundamental to the security of the referendum.
- 8.2 The pack, in addition to details of the referendum and statements by registered campaigning organisations, contained a ballot paper and simple Declaration of Identity for use if voting by post and two, randomly generated, security codes for use in voting online or by telephone.
- 8.3 These codes were available for single use only on the electronic channels and were cross referenced electronically to a bar code on the Declaration of Identity. These bar codes were scanned on receipt of the postal vote and the electronic channels blocked for that individual.
- 8.4. This system ensured that any attempts at multiple voting were readily identified. A total of 74 cases where an individual had voted both electronically and by post were identified. I took the view that, given the geographical dispersion of these instances and the fact that in a number of them, the voter had written on the ballot paper that he/she had also voted electronically but was submitting the paper version to make sure that the vote was counted, there was no indication of a serious attempt at fraud and that it would be churlish to disenfranchise the individuals. In all 74 cases, therefore, I accepted the postal vote and rejected the electronic version.
- 8.5 The systems used for online and telephone voting were provided and administered by Democracy Counts. They met industry standards for secure sites and, in addition to tests to which I subjected them, they were independently audited by a company specialising in “penetration testing” or “ethical hacking”. No flaws were found. No problems were experienced in the operation of the systems and there was no downtime during the period over which they operated.
- 8.6. A number of individuals contacted my office to complain that they could not access the online voting site. In all cases it transpired that they had been trying to access it through a search engine, rather than by typing the web address in the address bar of the browser. As a security measure, the site had been designed in such a way that it would not be picked up by any search.

## **9 Security of the Poll**

- 9.1 As indicated above, the use of postal packs to initiate the process, allowed allegations of theft to be investigated. Two such cases, where an individual claimed to have stolen his neighbours' voting packs and used them were brought to my attention. These were referred to the Police and, following investigation, it was established that the individuals had not done that to which they had confessed. Furthermore, it was open to any voter who had not received a voting pack to apply to my office for a replacement. A total of 88 individuals, from addresses widely spread across the City applied for replacements. This figure compares favourably with that experienced in recent elections where the number of postal votes is roughly one fifth of that issued in the referendum. Naturally, the codes on the original pack were invalidated prior to the issue of a replacement.
- 9.2 The absence of legislation imposed limitations on the extent to which the identity of voters could be checked. In an election, statute requires that those voting by post provide in advance to the Electoral Registration Officer, "Personal Identifiers" in the form of date of birth and specimen signature which are used as a control against which are checked the details provided by the voter on the "Postal Voting Statement" accompanying the ballot paper. Since all voters, whether normally in receipt of postal votes or not, were to receive postal votes in the Referendum, it was impossible to obtain personal identifiers and I chose to simply require a signature confirming that the voter was the person to whom the ballot paper was issued.
- 9.3 While this arrangement was not ideal, it did produce sufficient of a paper trail to allow proceeding for forgery to be pursued if necessary and it was no less secure than the Declarations of Identity used in statutory elections until very recently.
- 9.4. Similarly, while it would have added to the security of the online and telephone systems to have separated the codes and sent one with a poll card and the other with the voting pack (or even, with suitable legislation, to use the individual's date of birth as one), this was not practical in the time and budget available. I do not regard this as in any way undermining the security of the system used for the referendum since it was the exact equivalent of the signature required on the Declaration of Identity. In theory, anyone gaining possession of a postal pack could have used either the codes or the postal vote but, voters must be credited with taking reasonable precautions to protect their votes and, as indicated above, only 88 individuals alleged that, at some point in the process, their votes had gone missing.

## **10 Campaigning**

- 10.1 Unlike an election, where statute imposes strict limits on who can campaign and how much they can spend, there were no such limits for the referendum.
- 10.2. In an effort to instil some discipline, I adopted the model used by the Electoral Commission in the recent referendum on the voting system and made provision for "Registered Campaigning Organisations". In return for registration with my office and acceptance of certain basic rules, notably an expenditure limit on the local government election scale of around £8,000, I undertook to circulate a brief campaigning statement on behalf of these organisations.
- 10.3 Ten organisations availed themselves of this facility, seven advocating retention of the Gardens and three the City Garden Project Design.
- 10.4 The time limit for the return of financial statements has not yet expired. I have however, already received some and these give no cause for concern.
- 10.5 I received a number of complaints concerning campaigning and, on investigation, I established that, in every case, the activity was by an unregistered organisation over which I had no jurisdiction. It was obvious that at least one of these organisations had incurred expenditure in excess of that permitted to a registered organisation. In one case where it was alleged that there was a link between a registered and unregistered organisation, I contacted the registered organisation and received assurances that all concerned were aware of the rules and would abide by them. I have no reason to doubt the honesty of that response.
- 10.6 While I would welcome legislation to regulate campaigning, I have a fairly high regard for the intelligence of voters and their ability to make up their own minds independently of, or perhaps despite, a constant barrage of propaganda. Overall the number of complaints was small and, significantly, they tended to come from registered groups rather than voters.
- 10.7 It is proper to record two matters relating to the issue of campaigning statements with voting packs. In the first, the printed statement on behalf of the Aberdeen and Aberdeenshire Green Party was truncated in the booklet issued in the voting packs. This was raised with me by the organisation concerned shortly after the packs were issued and I arranged for a full version to be issued on various websites and in the media. Significantly, the only complaint I received from a voter was to the effect that the corrective action was giving undue prominence to the Green Party. In the other case, while the full text was included, the spacing on the online version was faulty and two different statements ran into each other. While it was corrected immediately it was drawn to



my attention, this was far less serious since only online voters could have seen the error and there were relatively few of those by the time it was corrected. In addition these two statements were correctly reproduced in the printed booklet which every voter would have before going online. It is a matter of conjecture whether anyone referred to the online statements – no voter raised the issue.

## **11 Opening of Postal Votes**

- 11.1 The opening of postal votes was undertaken by Democracy Counts staff at daily sessions at the Beach Ballroom from 21<sup>st</sup> February to 1<sup>st</sup> March inclusive. Agents of registered campaigning organisations were notified of these sessions and invited to attend. I was disappointed in the response to this invitation. Only two organisations sent representatives and only one of them on more than one occasion. While this can be construed as a massive vote of confidence, I regard the attendance of agents and the need to answer their questions as a useful part of ensuring public confidence in a poll.
- 11.2 In a departure from normal practice in an election (but still in conformity with the Election Rules) votes were split according to preferences at the opening sessions but not counted.

## **12 The Count**

- 12.1 The count took place at the Beach Ballroom on the morning of 2<sup>nd</sup> March. Again the proceedings were undertaken by Democracy Counts staff who used banknote counting machines to count the bundles of pre-sorted papers. Prior to the commencement of the paper count, I declared the results of the online and telephone voting.
- 12.2 While the count was open to agents of the campaigning organisations, I was again disappointed both in the attendance and in the general lack of interest in the process. Although I regard it as an expression of confidence, it is unusual, to say the least for the Counting Officer to have to make a public announcement, advising agents of their rights and pleading with them to request that they be shown the contents of a random selection of bundles of votes.
- 12.3 The result was declared around 13.00 hours after 3 hours of counting.

## **13 General**

- 13.1 I wish to express my thanks to Aberdeen City Council for entrusting the conduct of the referendum to me. While it was an interesting and enjoyable experience in being able to conduct a ballot in the interests of voters free from outside constraints, I am strongly of the opinion that there are certain aspects of the referendum process which would benefit from a legislative framework and would suggest that representations to that effect might be made to the Scottish

Government. That is not to suggest that the current referendum was other than fair. As I have indicated above, I have no reason to doubt that the result of the referendum accurately reflected the will of the 52% of eligible voters who chose to vote.

**Crawford Langley**  
**Independent Counting Officer**  
**21 March 2012**

(The formal declaration of result and statement of rejected votes is attached as an appendix to this report. The figures in brackets at *number of votes* refer to the votes cast by post.)