

## **APPENDIX 1 – SCOPE AND RECOMMENDATIONS OF THE INVESTIGATION REPORT**

### **1. Background**

- 1.1 Following an incident in relation to Wellington Brae and the subsequent press coverage an investigation was instigated by the Interim Director for Communities, Housing & Infrastructure. The Corporate Investigation team undertook the investigation on her behalf.
- 1.2 For transparency, the full scope of the investigation is included within this Appendix. There then follows the full recommendations from the investigation report. The investigation report is included as Appendix 2 and is confidential.
- 1.3 Extracts of the findings from the report relating to each of the recommendations are also included, where appropriate, to facilitate discussion in public. The paragraph numbering is taken from the full report.
- 1.4 The confidential information contained within Appendix 2 is personal information – i.e. information relating to individuals who can be identified from that information. This personal information cannot be placed in the public domain as doing so would breach data protection law.

<b>Details of Operation</b>	
Name	Operation Arthur
Purpose	To investigate the circumstances and events which led to Council officers approving more than £200,000 of remedial works at Wellington Brae in 2017 without the scrutiny and oversight expected of a public authority. Further, to identify any issues of potential misconduct by the officers involved in the above process, including unauthorised information disclosure to third parties.
Allegations/queries received	It is alleged ACC officers have authorised work without the proper scrutiny and without regard to the correct processes. This work might have financially benefitted a third party. This investigation is likely to highlight staff misconduct and/or negligence, and may uncover evidence of criminality.
Details	<p>The cycle path at Wellington Brae is part of a national network. In financial year 2015/16 storm damage led to land slippage and damage to that section of the path.</p> <p>Funding was sought, presumably by officers of CH&amp;I, from Sustrans, a national cycling charity. Sustrans provided an initial outlay of just over £21,000 for preliminary work, with up to a further £200,000 approved for subsequent work.</p> <p>Proposals for both the work and the Sustrans grant money ought to have seen scrutiny by the CH&amp;I Committee. This did not happen.</p> <p>Land Registry checks indicated a third party might own some of the land affected. There was no written correspondence received from the land owner to authorise the work.</p> <p>Officers received a verbal authorisation from a third party to commence the work. This third party may not actually have been the lawful owner of that land, nor authorised to act on behalf of the true owner. It is suggested that this verbal authorisation was accepted as sufficient to begin work.</p> <p>A procurement exercise was undertaken and on 01/03/2017 tenders were invited to complete the work. This process ended the same month.</p> <p>In April 2017 local press carried stories linking the work at Wellington Brae to former Councillor Young, and raising questions about why his interest had not been disclosed to the Council, and why there had been no oversight of the decision. Emails from Council Officers to former Councillor Young also appeared in the press.</p>

	<p>This investigation is intended to:</p> <ol style="list-style-type: none"> <li>1. Examine the full circumstances from beginning to end;</li> <li>2. Investigate where and why actions by specific Officers deviated from that expected;</li> <li>3. Confirm that the information contained within the Sustrans funding application was correct, and that subsequent awards were within the scope of their accepted practice;</li> <li>4. Determine what data breaches occurred and their extent.</li> </ol> <p>This investigation will build on these findings and report on any officer misconduct or fraudulent activity. A recommendation will be provided on the following outcomes</p> <ol style="list-style-type: none"> <li>1. Internal disciplinary action</li> <li>2. Civil response</li> <li>3. Criminal prosecution</li> <li>4. Proceeds of Crime action</li> </ol> <p>Per current policy, any allegation or evidence relating to potential misconduct by elected members will be passed to the Monitoring Officer.</p>
Local knowledge used (including observations on individual cases that raised suspicion)	<p>Press reports, including statements made by former Councillor Young.</p> <p>Information received from Eric Owens, interim Head of Planning, ACC.</p>
Trade/Business/Customer/Landlord suspected	<p>Aberdeen City Council employees. Aberdeen City Council elected members.</p>
Scale of operation	<p>Following an initial assessment of information this operation has been deemed a high priority. There is a high level of public interest; a political dimension; a potential failure of ACC to correctly manage funds; likely extensive documentary evidence.</p>
Methodology	<p>To identify and secure or preserve sufficient evidence to determine whether there has been any misconduct or criminality on the part of Aberdeen City Council staff. It is vital to take control of any evidence, physical or electronic, before the opportunity arises for any more of it to be removed or deleted. It is likely that access will be required to internally held ICT and telecommunications data. Initial information suggests that it may be necessary to obtain such data from elected (or formerly elected) members. This is solely on the basis that these members are potential witnesses; any evidence of alleged misconduct or impropriety on the part of elected</p>

	<p>members will be passed to the Head of Legal for consideration.</p> <p>In consultation with CH&amp;I and HR, consideration may have to be given to re-assigning or suspending staff in line with the managing discipline policy to allow the investigation to proceed unimpeded.</p> <p>Senior management to be kept advised of findings at regular intervals or where a significant event occurs. The actions of the interim Director of CH&amp;I and interim Head of Planning are to be reviewed as a priority. The final report will be delivered to the interim Director of CH&amp;I and Head of Finance.</p> <p>Communications team manager to be advised to allow a measured response to be provided in the event of media interest.</p> <p>Where there is evidence of criminality this will be referred, subject to the agreement of the authorising officer(s), to Police Scotland.</p> <p>Necessary actions:</p> <ol style="list-style-type: none"> <li>1. Compile a list of all persons involved in the process;</li> <li>2. Secure email data on each of these individuals;</li> <li>3. Secure ICT evidence relating to individuals of interest;</li> <li>4. Obtain all copies of reports, risk assessments and proposals and funding paperwork;</li> <li>5. Obtain documentation explaining the correct governance procedure for work of this type, in local policy and in law;</li> <li>6. Interview of all relevant persons. This may involve officers, including at a senior level, as well as elected and former-elected members. In order to efficiently facilitate the investigation process, audio recorded interviews will be offered to interviewees.</li> <li>7. Ongoing analysis of information and evidence secured by the investigation, including correct cataloguing.</li> <li>8. This will culminate in a report to the Service, which will likely require further action by same.</li> </ol>
<p>Estimated period of the operation</p>	<p>Report to be made available to CH&amp;I Committee on 29/08/2017.</p>
<p>Other Departments/Agencies which may become involved</p>	<p>Potentially ICT; Central Procurement Unit; Members; Member Services; Legal; Internal Audit; Audit Scotland; Police Scotland; the office of the Commissioner for Ethical</p>

	Standards in Public Life Scotland
Is CIT the appropriate team to investigate? (YES/NO)	Yes. CIT have the authority under the provisions of the Financial regulations and authority of CMT to request information from Services and access data. Where additional authority is required this will be sought from the Head of Finance under the authority granted to him by the Local Government (Scotland) Act section 95.  CIT staff are qualified investigators, trained to a high standard in evidence gathering and are authorised to submit cases direct to the Crown Office Prosecution Fiscal Service.
Details on resources to be used	Existing resources will be used. Where technical input is required eg, ICT, services will be asked to provide assistance.
Are there sufficient resources to undertake the investigation? (YES/NO)	Yes. Existing operational duties will be re-assessed to give this operation priority.
Is investigation an effective use of resources? (YES/NO)	Yes. Due to the potential risk of misconduct/fraud CIT are the appropriate team to undertake the investigation support.
Explain why the operation is considered reasonable and proportionate	There is substantial public interest in this matter. The Council will wish to communicate to the public that it is committed to good governance and open to scrutiny.  As a Local Authority the Council has a statutory duty to ensure it provides best value and as such is required to review and/or investigate allegations where this has not been met.
Is there any risk of adverse publicity?	Yes. Any statements made will be under the direction of senior management, communications team and elected members.
Are there any health and safety considerations? If so, what are they?	Yes. Whilst site visits are unlikely, they are possible. Risks will be assessed on a case-by-case basis. Also, as this is a major enquiry, it can be expected that extended working hours will be required.

## RECOMMENDATIONS

## Finance/Funding

The investigation highlighted issues with the way in which funding was recorded and tracked. Therefore work should continue in ensuring uniform standards and practices are in place across services, particularly with regard to financial matters. It is specifically recommended that financial and funding documents are easily retrievable, and are clearly attributable to a particular project or purpose. This would be facilitated by the introduction of forms to record the officers involved in requesting and approving funding; the conditions attached to the funding; the purpose of the funding; officers authorised to disburse those funds, and what authority they are empowered by.

Funding agreements should follow a standard process across the Council for approval and governance. This includes gateway stages and sign-off of the relevant funding agreement requirements as specified by either the Council or the finding body.

### **Findings 1:**

- 4.80 Committee approval should have been timeously sought for both Sustrans funding applications. The bulletin notification was inappropriate and did not allow scrutiny by members.
- 4.81 Redacted.
- 4.82 Redacted.
- 4.83 There were a number of points where the funding could have been reported to Committee. Each of these opportunities was missed.
- 4.84 The initial £50,000 funding application would have required Committee approval in May 2016, which would have conflicted with the expectation of Sustrans that the initial work be completed by the end of May 2016. Funds should either not have been accepted or, as the Monitoring Officer has advised the investigation, an Urgent Business Committee could have been called.
- 4.85 Despite notification to [names redacted], it is unclear why the initial funding was not reported. None of the witnesses could recall a decision to remove it from the Committee report, and there is no email detailing such a decision.
- 4.86 There was an opportunity to report the second tranche of funding [wording redacted] but this was missed.
- 4.87 [Redacted]
- 4.88 There was a lack of clarity over reporting expectations and potential changes to protocols. [Sentences redacted]
- 4.89 Whilst the failure to report to Committee is undoubtedly a serious matter, it has not been possible to obtain sufficient evidence which would allow specific officer(s) to be held accountable for any inaction or negligence. [Sentence redacted]

### **Findings 2:**

- 6.18 Sustrans funding would have been made available irrespective of who owned the affected land. There was no requirement to seek costs from the landowner first. As the funding was not part of an ongoing programme, and that the funds were provided by the Scottish Government for a specific purpose, there were few requirements specified by Sustrans, outside the general framework of the MOU [i.e. the Memorandum of Understanding between Sustrans and grantees].
- 6.19 Funding was arranged solely through email. This was in largely due to the urgency of the situation. However, not having financial records securely stored and available as official documents for later retrieval by line managers presents a number of potential ramifications for the Council. These include non-compliance to FOI/EIR requests as the information is not stored in an obvious location; the lack of central recording of such income presents an inherent risk of fraud, theft and embezzlement; and there is the reputational damage caused by the Council handling applications and funds outside of a recognisable corporate structure.
- 6.20 Funding was implicitly conditional on meeting the terms of the MOU, including securing necessary permissions. In the absence of documentary evidence, the council is unable to demonstrate that it had these permissions in place during the first phase of work. This has potential implications in terms of claims against the Council, and reputational damage to the Council and, by extension, Sustrans. It is therefore plausible that other MOU expectations were not met.

Project Management
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<p>The investigation highlighted that project delivery across [redacted] was amorphous. The Council has an opportunity to implement a standard operating procedure which can be tailored to the various types of projects which it undertakes. A common operating model should ensure a uniformly acceptable methodology for project delivery. A common model also means that a large number of staff can be trained in project delivery, with less reliance on specialist training which would likely cost more per head.</p>
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<p>This methodology should ensure that Project Managers are identified at the inception of a project, as well as a clear understanding of who is the project owner. Paperwork (or electronic versions thereof) should be an integral part of the project. Decisions need to be made by the most appropriate person and reviewed by a suitably senior and qualified manager. Officers joining an existing project need to be able to see that the actions taken thus far are complete and the authorisations for further work are in place.</p>
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<p>It is recommended that the Council obtains a project management software solution which allows the scanning and retention of all documents connected to a project (plans, emails, minutes, letters, applications, etc.). These records can allow us to demonstrate that the various aspects of external funding agreements, e.g. land ownership checks, have been complied with. This mechanism should also allow an authorised person to easily retrieve details of all funding, without the need to check trackers held by different teams.</p>
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<p>Project risk assessments should include consideration of political or public interest factors.</p>
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<p>Guidance and refresher material should be readily available to all project staff. It is suggested that</p>
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this should be via the Council intranet pages.

**Findings:**

- 4.59 No consideration was given to requiring the landowner to repair the damage to the retaining walls, possibly due to the urgent nature of the work, or that funding had already been secured. It is not known whether it is normal Council practice to seek to funding from landowners. [Sentence redacted] Had Legal been involved at the outset, this might have been possible. The option to recoup some of the project costs from the landowner was presented at the May 2017 CHI Committee. Officers had not recommended this course of action as it could have required legal action through the court system; that the timing of such an action would be detrimental to the Council as funding had already been secured; and that the delay would add additional cost as contractors were already on site.
- 4.60 There was a lack of effective project governance. At no point was it determined which team owned the project, or which individual was ultimately responsible. This represents risks in terms of financial and resource management, with the potential for inefficiency and duplication.
- 4.61 The lack of specific project management training means that the project was undertaken by officers whom the Council may struggle to prove were sufficiently qualified to perform their work. Any lack of training increases the chance that mistakes will be made, and thereafter that the Council is vicariously liable for these mistakes.
- 4.62 There is no record kept of what actions were taken and why. There is no record of the dates and attendance of meetings, or what was agreed. This means that the Council is unable to prove due diligence, placing it at legal and reputational risk, and leaving it defenceless against claims. It further means that when reviewing a project the Council has no means by which to identify points at which its processes failed.
- 4.63 An engineering project delivered between two teams will be faced with various challenges. One would therefore expect that regular meetings would be held, so that action points could be agreed, and the team members were aware of all relevant factors. Proper records would ensure that all team members have a point of reference. This could be facilitated by even basic minute-keeping. It is surprising that the project teams did not keep minutes; even more so when those involved work for a local authority expected to account for its decisions.
- 4.64 Based on interviews with officers and the email records available, it seems obvious that emergency work was undertaken as there was an immediate and identifiable health and safety risk. Officer testimony is reliant upon their memory of events, and email availability on their individual administration skills. Should either of those things be deficient, the Council is unable to prove that officer actions were proportionate, that other options were considered, and that relevant factors had been taken into account.
- 4.65 Not all pieces of the project were in place at the right times, for instance written authorisation from all landowners prior to the commencement of work.

- 4.66 [Sentences redacted] With hindsight it would have been beneficial if the officers had sought advice from LDS as soon as they believed Councillor Young to be the landowner, so that a legal opinion could be obtained.
- 4.67 It was appropriate for Councillor Young to seek advice from the Monitoring Officer in order to address any perception that he was conflicted in his interests.
- 4.68 The Monitoring Officer has stated that based on the information available to him at the time, Councillor Young did not require to declare a conflict of interest because he had not been asked to make a decision as a Councillor on the works or the grant, but rather to provide his consent as a landowner.
- 4.69 The initial misidentification of the landowner was by Registers of Scotland which led Legal Services to state that [name redacted] owned the land. This misidentification did not come to light until a further land registry search was undertaken in 2017. ACC could not have done anything to avert this.
- 4.70 Ascertaining the correct landowner in this case was dependent on the information contained in the Register of Sasines, which requires a process of deduction, and frequently cross-checking of titles. [Sentence redacted]
- 4.71 When [redacted] became aware that the landowner was not [name redacted], as had been advised, the search should have been re-referred to Legal. As it happens, the second search request was not made until 16 March 2017, the requesting officer describing this as “urgent-ish.”
- 4.72 [Redacted]
- 4.73 [Redacted]
- 4.74 [Sentence redacted] This risked the Council performing work for which it could not demonstrate it had permission (as there was no supporting documentation). More significantly, the Council did not actually have permission as the land owner had not been correctly identified. In such a situation the Council could find itself defending legal claims for interfering with property without the landowner’s permission. This would also be in contravention of the MOU with Sustrans, thereby jeopardising funding. Should the work on site lead to accident or injury, the lack of appropriate permission could potentially invalidate any supposed insurance cover. Finally there is the reputational damage involved [remainder of sentence redacted].
- 4.75 [redacted] identified potential issues regarding planning permission and management of work around the Tree Preservation Order. They sought advice from suitably qualified officers and obtained this in writing. It was determined that no planning permission was required as the estimated cost of works amounted to £250,000 or less, and there was no suggested change of use, as per schedule 1, part 12, Town and Country Planning (General Permitted Development)(Scotland) Order 1992.

- 4.76 Subsequently, the proposed work on the Brae was correctly opened to public consultation for the statutory period on the planning register. [Sentence redacted]
- 4.77 [Redacted]
- 4.78 [Sentences redacted] However, the sheet piling work was later found to be unnecessary.
- 4.79 The tender was managed by [names redacted] in accordance with advice from Central Purchasing Unit. The amounts involved in the tender and the procedures followed comply with the Council's Procurement Regulations 2016, and hence the procurement legislation. The phase 1 work was completed internally for just over £20,000. The phase 2 work was open to tender as a works contract, considerably under the EU threshold.

#### Governance

The investigation has shown there to be failures in governance, including insufficient supervision and record keeping. It is recommended that the Director of CHI should review processes and procedures, culture and practice within the Directorate and determine if any management action is required regarding the failure to report to Committee, instructing work without sufficient authorisation or the absence of documents or minutes connected to projects. It is further recommended that she ascertains whether any work is required to improve communication through the service hierarchy; whether there is a current satisfactory arrangement for staff to escalate concerns and ensure they are addressed; whether the Service is adequately staffed for the functions it delivers; whether the Service processes could benefit from greater involvement with staff of LDS, for instance with advice on when Committee reports are required, when a legal opinion should be sought, etc..

The issue of data breaches raises wider questions on how the Council uses email, including whether staff/members should be prohibited from sending emails relating to official business to their private email addresses; and also whether it is necessary or desirable to have a framework or approval process which covers the disclosure of internal emails to a third party.

#### **Findings:**

- 5.1 It has not been possible to determine a single point of failure in relation to how officers managed the Wellington Brae Project. This chapter is intended to list the points at which alternative actions might have positively impacted the project.
- 5.2 There was a failure to report external funding to Committee, and thereby obtain the appropriate authorisation from members. [Sentences redacted]
- 5.3 [Redacted]
- 5.4 Further, the information on project funding was held over separate documents, depending on the nature of the funding, which increased the chances of omission.
- 5.5 [Redacted]

- 5.6 [Redacted]
- 5.7 [Redacted]
- 5.8 The lack of a coherent project management plan detailing specific responsibilities means that it has not been possible to identify individual members of staff accountable for specific actions. [Sentence redacted]
- 5.9 [Redacted]
- 5.10 [Redacted]
- 5.11 [Redacted]
- 5.12 [Redacted]
- 5.13 [Redacted]
- 5.14 [Redacted]
- 7.7 Due to the intense public interest and ongoing risk of reputational damage, it was proportionate to lock down the email accounts of the relevant staff and investigate further. Had the emails been released by a member of staff it could have constituted a deliberate data breach, possibly resulting in a financial penalty from the Information Commissioner.
- 7.8 There is no evidence to suggest that Council officers were responsible for unauthorised disclosure of the emails to Councillor Young.
- 7.9 [Sentence redacted] Councillor Young's actions did not contravene the ICT Acceptable Use Policy as the emails did not concern any confidential information, were not protectively marked, and had been addressed to Councillor Young.
- 7.10 The logs from ICT were passed to the investigation. It is noted that some staff forwarded emails (not those of interest as part of this investigation) concerning Wellington Brae from their work email address to their private Gmail and Hotmail addresses, which is contrary to Council policy, creating risks around information management and security.

Elected Members
The Member-Officer Relations Protocol is due for revision before Full Council in March 2018. It is recommended that the Monitoring Officer provides guidance in the protocol on a number of issues raised in this report, such as escalation procedures when a response is needed from a member; and principles and procedures on how officers conduct business with a private citizen who happens to be a Councillor, particularly with regards to how the public and private roles are delineated.

**Findings:**

- 4.90 As the interim Head of Service and Director were relatively new to the organisation, they had no prior knowledge of Wellington Brae, and an incomplete knowledge of custom and practice within the Directorate. As such the initial decisions taken to review, not only Wellington Brae, but other projects, was wholly correct.
- 4.91 Options to allow the work to proceed were investigated; for instance, whether the work could be authorised through delegated powers.
- 4.92 The decision to halt the work on Wellington Brae was not taken lightly, and it was made with due regard to the various risks, pressures and cost implications.
- 4.93 The halting of the work was the only realistic option available as it was unsanctioned by Committee. It also allowed some time for internal reviews to take place.
- 4.94 At the time the media statement was issued, there had been no full investigation, so the statement that there had been a serious failing by Council officers relied on the information available at the time, i.e. the absence of a Committee report, and it had not yet been ascertained who held title to the land. [Sentence redacted] However, Paul Smith states that this reference was to demonstrate that the project had not been requested by a third party.
- 4.95 Councillor Young was involved in the Wellington Brae project so far as he was believed to be the landowner, not in his capacity as an elected member.

Bernadette Marjoram has said that her interactions with Councillor Young were entirely on the basis of him being an elected member, as opposed to a private landowner. The officer witnesses have been clear that Councillor Young was informed of the media enquiries and content of the media statements in line with the provision on enquiries relating to individual elected members contained within the Council's Communications Policy. Councillor Young had no role in contributing to or authorising media statements made by the Council on the issue. The Monitoring Officer has stated that he did not consider it inappropriate for Councillor Young to be made aware of the Council's response.