

ABERDEEN CITY COUNCIL

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| COMMITTEE | Enterprise, Planning and Infrastructure |
| DATE | 14 November 2011 |
| DIRECTOR | Gordon McIntosh |
| TITLE OF REPORT | City Garden Project – Possible Referendum |
| REPORT NUMBER: | EPI/11/335 |

1. PURPOSE OF REPORT

This report was requested by EP&I Committee following acceptance of a motion submitted by Councillor Kevin Stewart at the last Committee meeting on 13 September. In supporting this motion, Committee asked officers to produce a report to inform Committee of:

- the practicalities and costings associated with holding a postal ballot of all Aberdeen electors, to gauge public support for the City Gardens Project,
- the possibility of being able to source funding for the referendum from bodies other than the Council, and
- the possibility and practicality of young people, below the age of 18, being included in the referendum.

2. RECOMMENDATION(S)

That Committee:

- (i) Notes the contents of the report
- (ii) Agrees to:
 - a) hold a public referendum, in accordance with Section 5.3 (i) – (xxi) of this report, to gauge public support for the City Garden Project, and
 - b) instruct officers to produce a further report for submission to Finance and Resources Committee requesting that a budget

of up to £250,000 be allocated, from the Council's contingency budget¹, to pay for the referendum.

- c) instruct officers to produce a report form submission to Council on 14 December, seeking approval for the wording of any referendum question, should Finance and resources agree to allocate the necessary funding.

3. FINANCIAL IMPLICATIONS

Approval of the recommendations in this paper will result in a request being made to Finance and Resources Committee asking for the allocation of a £250,000 budget from the Council's contingency budget. Should Finance and Resources Committee agree to make such an allocation, the financial impact on the Council will be limited to £250,000 (unless it is decided to make provision for electronic voting, which will increase the financial impact).

4. OTHER IMPLICATIONS

There will be implications associated with the recommendations included in this paper in terms of the allocation of staff time to preparing and planning for the referendum, managing and implementing the referendum and the use of public buildings required for running the referendum.

5. BACKGROUND/MAIN ISSUES

5.1 Introduction

The last meeting of our Enterprise, Planning and Infrastructure Committee approved the following motion:

“That this Council agrees, in principle, that a referendum on the future of Union Terrace Gardens be held after the City Garden design competition is completed, calls on officers to produce a report about the practicalities and costings of holding a postal ballot of all Aberdeen electors and asks officers to investigate sourcing funding for the referendum from bodies other than the Council.”

¹ The Council budgets annually for a level of contingency to meet one off or exceptional items of expenditure that arise within a financial year. This cost would fall within this category and could be met from this corporate provision.

Committee asked for the report to also explore the possibility and practicality of young people, below the age of 18, being included in the referendum, and for the report to be submitted to the next meeting of the Enterprise, Planning and Infrastructure Committee on 15 November, 2011.

5.2 Referendum Practicalities

In terms of the practicalities of holding the referendum, the Council's Legal team have identified no legal impediments to holding a local referendum. There appears to be no governing legislation on this matter in Scotland (unlike in England). Nonetheless, the use of the full electoral register for local referendums is permitted by the Representation of the People (Scotland) Regulations 2001. This would suggest that there is no legal impediment to holding a local referendum per se. However, in the absence of statutory guidance, it is advisable for best practice in respect of local elections/ other comparable democratic processes to be followed for any local referendum.

In relation to the question to be asked, our legal team advise that the question needs to be framed in a yes/no fashion. Further, in their view the ballot paper should not include the preferred design as this may be seen as attempting to influence the outcome (regardless of the fact that voters are being asked whether or not they wish to support the City Garden Project on the basis of a preferred design). Rather, it is suggested that a copy of the design be included in a separate sheet.

Our Legal team have also highlighted that it must be made very clear that the referendum process is separate from any subsequent planning process and cannot be seen to influence this process. This will help protect the legitimacy of the referendum and reduce the risk of challenge or criticism - whether legal or in terms of public opinion/press comment, thereby ensuring that the exercise is valid and worthwhile.

Officers are aware that concerns have already been raised regarding the relationship between any referendum and the planning process. As mentioned above, it is critical that the Council distinguishes its role as Planning Authority from any decision to proceed with a referendum. It must be made absolutely explicit to voters as to the purpose of the referendum (i.e. to gauge public opinion) and that it sits entirely separate from the planning function, and would not prejudice nor influence any planning decision which would require to be taken in accordance with planning matters.

It also needs to be clear to the public that the referendum is one part in a very long process, and any result shall remain subject to the usual planning procedures. There should be an indication that if the result of the referendum is in favour of the design, this will be taken forward to the planning stage.

Keeping the procedures separate from the planning process is vital, since the risk of challenge to our planning process may be high. This will involve being very clear of the purpose of the referendum in any instruction to the public and underlining the precise purpose and function of the referendum and what uses the Council will make of the results.

The Head of Service, Office of Chief Executive on behalf of the Council's Elections Team has advised as follows:

- In the absence of statutory rules to follow, the ballot should be conducted in line with the principles of best practice and should follow statutory procedures where practicable.
- Whether the result of the referendum is to be advisory or binding is something that should be determined in advance, made explicit and communicated to voters. . Indeed, it is something which the Committee may wish to give initial consideration to.
- The question posed is of vital importance to the conduct of the referendum and would therefore need to fit the objective of the referendum, be easy to understand and be unambiguous. It is good practice to carry out testing and it is suggested that the Plain English Campaign be consulted.
- It is recommended that the ballot paper be accompanied by a simple declaration of identity. The declaration of identity would involve the voter signing to confirm that they are the voter to whom the paper has been sent. Checking of personal identifiers would be carried out at the discretion of the Returning Officer.
- The declaration of identity should be separate from the ballot paper in order to keep the vote anonymous.
- Information to voters included in the postal packs should include the following:

- Why the referendum is being held
 - What is being asked
 - How the result will be used
 - Details of each option being proposed
 - A clear statement that the referendum is part of a long complex process and cannot and will not influence any subsequent planning process which may be necessary
- Voting information within the postal packs should be presented in a neutral style without favouring a particular voting response. However, thought should be given to including information from each side of the debate.
 - It is recommended that consideration be given to supplementing the all postal vote with the option of voting via the internet. Preliminary discussions with one potential supplier indicate that in order to do this securely voters would be issued with pass codes for internet voting at the same time as their postal vote documents. (This model of paper or internet response is currently employed by the Electoral Registration Officer conducting the annual canvass.) Offering internet voting as an option would increase convenience for voters and could boost turnout.
 - The full electoral register can be made available, under Regulation 106 of the 2001 amended Representation of the People Regulations, which grants councils the right to request a free copy of the full register for conducting a local referendum that is to be supervised by the Returning Officer.
 - In terms of the franchise, it would be most appropriate for this to be local government electors only i.e. those electors who are legally entitled to vote in local government elections should be entitled to vote on this local issue. The current register includes 158,505 voters.
 - With regard to consideration being given to extending the franchise to those below the age of 18, it can be confirmed that the electoral register only includes details for those people who will become 18 within the lifetime of the register. This means that, within the normal constraints of the accuracy of the register, it will include details of all 17 year olds but only a proportion of 16 year olds.
 - A means might be identified through working with schools to “register” individuals below the age of 18 for the referendum, but it

is suggested that any deviation from the local government register as it stands runs the risk of compromising the poll.

- With regard to campaigning prior to the referendum date, the established practice of the Electoral Commission is to register campaigning organisations and set spending limits. The objective of this is to provide each side of the debate with a level playing field on which to persuade voters. This may well be difficult to set up and administer for this referendum, but would nevertheless still need to be considered.
- The logistics and costings associated with an electronic count of the votes should be obtained to determine if this would offer advantages over counting manually.

The cost of holding a referendum, using the current electoral register, is estimated at £250,000, in accordance with the following table.

| Item | Breakdown | Qty | Unit Cost (£) | Total (£) |
|--|--|------------|----------------------|------------------|
| Accommodation | Beach Ballroom/Council Premises (postal opening and the count) | 12 | 850 | 10,200 |
| Postal Pack Production (158,755 packs) | Estimate prior to ITQ process | | | 98,500 |
| Count Staff | Count Staff | | | 18,350 |
| Postal Opening | Estimate | | | 32,000 |
| Royal Mail | Estimate | | | 83,450 |
| Equipment and Stationery | Basic stationery budget | | | 2,500 |
| Advertising (including Notices) | Basic advertising budget | | | 5,000 |
| Total Est. Cost | | | | 250,000 |

Note: The above estimate does not include the costs of providing an internet voting option.

- It is unlikely that we would obtain necessary consent to hold a second poll, for whatever purpose, on the date of the local elections and, even if this were permitted, combining the referendum with the local government elections in May 2012 would create unnecessary complications relating to the holding of the local elections. It is therefore recommended that any referendum be held on a date different by some months from that of the May 2012 elections.

Our Planning and Sustainable Development team has pointed out that, since the City Garden Project must comply with the normal planning process, careful consideration should be given to the potential impact of any referendum, or associated debate, on this process. In particular, members will need to avoid making comments on any preferred design, which may potentially be viewed as prejudicial to the planning process.

With regard to the funding of a referendum, some initial efforts have been made, separately from the election team, to determine possible sources of non-Council funding for the referendum.

Both Scottish Enterprise and Aberdeen City Gardens Trust Ltd. (whose members include the Wood Family Trust) have been asked whether they would consider making a contribution towards the cost of a referendum.

In response to our request, Scottish Enterprise has already confirmed that they would be unable to make any contribution.

Aberdeen City Garden Trust has, informally, indicated that they are unlikely to make any contribution towards the cost of a referendum. However, we have been informed that they will discuss this at their next Board meeting and provide formal confirmation as to their position immediately thereafter (it is expected that officers will be able to confirm the Board's position at the Committee meeting).

No other, additional sources of funding have yet been identified.

Finally, with regard to the relationship between any referendum and any proposed Tax Increment Financing scheme, it should be noted that the Council's Chief Executive received a letter from Alex Neil MSP, the Scottish Government's Cabinet Secretary for Infrastructure and Capital Investment, on 1st November relating to a preliminary TIF proposal recently submitted to the Scottish Futures Trust.

This letter thanks Aberdeen City Council for submitting an outline proposal to the Scottish Futures Trust (SFT) for one of the remaining TIF pilot projects and goes on to state the following;

“As you will note, we should like to invite you to develop further your plans to use TIF for the Union Terrace Gardens project if public support for the project can be demonstrated.

I look forward to considering your fully developed case in due course.”

It is therefore clear that the Scottish Government are only willing to consider supporting a TIF for the proposed City Centre Regeneration Project (which is more than just the Union Terrace Gardens project, referred to in Mr Neil’s letter), “if public support for the project can be demonstrated”.

However, no mention is made of how public support should be demonstrated or what level of public support is required. Therefore, it appears to be up to Council to determine the best means to “demonstrate” public support.

Nevertheless, should the Committee decide that a referendum is the best way to do this, rather than some other means of gauging public opinion (such as a statistically representative opinion poll, for example), it seems likely that the Council will need to meet the whole cost of this process.

Since EP&I has not budgeted for this expenditure and is unable to identify any possible source of funding from within EP&I’s current, extremely tight, budget, the cost of any referendum would therefore need to be found from other Council sources.

5.3 Referendum Proposals

Further to the advice received from our Legal Team, our Elections Team, our Planning officers and likely funders, as set out above, it is recommended that:

- (i) The purpose of any referendum should be to gauge public support for the City Garden Project, on the basis of a preferred design proposal arrived at by means of the international design competition organised by Aberdeen City Gardens Trust Ltd.

- (ii) Since the referendum has been proposed as a mechanism for advising Councilors, it should be non-binding. However, it must be recognised that this runs the risk of compromising the credibility of the referendum exercise.
- (iii) It should be made clear that the outcome of the referendum will not prejudice any consideration of a planning application and that voting yes does not mean that the design will get planning permission.
- (iv) The ballot paper would be printed on a single sheet of paper, with the question on the front page.
- (v) Since the question will refer to “a preferred design” details of this will need to be provided but this should be on a separate piece of paper.
- (vi) The ballot paper be accompanied by a simple declaration of identity. The declaration of identity would involve the voter signing to confirm that they are the voter to whom the paper has been sent. Checking of personal identifiers would be carried out at the discretion of the Returning Officer.
- (vii) The declaration of identity should be separate from the ballot paper in order to keep the vote anonymous.
- (viii) Information to voters included in the postal packs should include the following:
 - Why the referendum is being held
 - What is being asked
 - How the result will be used
 - Details of each option being proposed
 - A clear statement that the referendum is part of a long complex process and cannot and will not influence any subsequent planning process which may be necessary
- (ix) Voting information within the postal packs should be presented in a neutral style without favouring a particular voting response. However, thought should be given to including information from each side of the debate.
- (x) Consideration be given to supplementing the all postal vote with the option of voting via the internet. Preliminary discussions with

one potential supplier indicate that in order to do this securely voters would be issued with pass codes for internet voting at the same time as their postal vote documents. (This model of paper or internet response is currently employed by the Electoral Registration Officer conducting the annual canvass.) Offering internet voting as an option would increase convenience for voters and could boost turnout.

- (xi) The full electoral register can be made available, under Regulation 106 of the 2001 amended Representation of the People Regulations, which grants councils the right to request a free copy of the full register for conducting a local referendum that is to be supervised by the Returning Officer.
- (xii) In terms of the franchise, this should only include local government electors i.e. those electors who are legally entitled to vote in local government elections should be entitled to vote on this local issue.
- (xiii) With regard to consideration being given to extending the franchise to those below the age of 18, it can be confirmed that the electoral register only includes details for those people who will become 18 within the lifetime of the register. This means that, within the normal constraints of the accuracy of the register, it will include details of all 17 year olds but only a proportion of 16 year olds.
- (xiv) A means might be identified through working with schools to “register” individuals below the age of 18 for the referendum, but it is suggested that any deviation from the local government register as it stands runs the risk of compromising the poll. Any deviation from the electoral register is therefore not recommended
- (xv) With regard to campaigning prior to the referendum date, the established practice of the Electoral Commission is to register campaigning organisations and set spending limits. The objective of this is to provide each side of the debate with a level playing field on which to persuade voters. This may well be difficult to set up and administer for this referendum, but would nevertheless still need to be considered.
- (xvi) The proposed wording for any ballot paper be placed on the Council’s website for a period of at least two weeks, so the public

have a chance to comment on this, or propose alternatives. The Council would take account of these comments before determining the final question and the agreed final wording would then need to be subject to a “plain English check” prior to any referendum.

(xvii) A suggested form of wording could be as follows:

The recent City Garden International Design Competition has provided Aberdeen City Garden Trust Ltd with a preferred design for redeveloping an area of land bounded by Rosemount Viaduct, Union Terrace, Union Street and the rear of Belmont Street, which includes Union Terrace Gardens. Details of the site and the preferred design are included in the voter information pack issued with your ballot paper.

Please indicate whether or not you support redevelopment of Union Terrace Gardens, in accordance with the Aberdeen City Garden Trust Ltd’s preferred design proposal, by ticking one of the following boxes:

YES, I support the proposed City Garden Project

NO, I want to retain the existing Union Terrace Gardens

(xviii) Should members agree to proceed with a referendum, a further report will be presented to the Council Meeting on 14 December, summarizing the public’s comments and suggestions and recommending the final wording to be used for the referendum question.

(xix) To avoid any potential impact upon the planning process, a protocol governing member’s involvement in the referendum campaign should be agreed with the Council’s Planning and Sustainable Development and Legal and Democratic Services to avoid any suggestion that the result of the referendum, or comments made during the campaign, have any undue influence on the normal planning process.

(xx) Members take into account the fact that Council has already agreed that a report should be submitted to full Council on 14th

December, to decide whether the Council wishes to support the City Garden Project beyond the international design competition stage. Should Council agree to this, it is to be expected that such support will be subject to many conditions. Therefore, in the event that:

- a. EP&I Committee agree to hold a referendum
- b. Finance and Resources Committee agree to allocate the necessary funding
- c. Council agree to conditionally support the City Garden Project beyond the international design competition

it is recommended that one of the conditions attached to future Council support for the City Garden Project should be the need to obtain public support for the project by means of a referendum.

- (xxi) The referendum be held towards the end of February 2012 since:
- a. The date needs to be after the Council Meeting on 14 December, so Council can approve the wording of any question, and
 - b. Holding the referendum beyond 1 March 2012 would unduly delay the City Garden Project, and would not leave enough time between the referendum and the local elections in May, thereby creating potential, additional complexities associated with running a referendum so close to the local elections. .

6. IMPACT

Corporate

The City Garden project is seen by ACGT as a critical project with regard to the future attractiveness, vitality and connectivity of the City Centre and links to both the **Single Outcome Agreement** and **Community Plan 2008**, which outlines a vision for Aberdeen City which is wealthier, greener and safer.

The project also contributes to the City's **Vibrant, Dynamic & Forward Looking: policy document**, since a fully functioning and well utilised City Gardens represents a vital piece of social, cultural and leisure infrastructure that can contribute to the delivery of the Aberdeen City and Shire Economic Future's '**Building on Energy - An Economic Manifesto for Aberdeen City and Shire**'. This in turn supports the

strategic vision of Aberdeen City and Shire, which is to be recognised as one of the most robust and resilient economies in Europe with a reputation for opportunity, enterprise and inventiveness that will attract and retain world-class talent of all ages.

Public

It is anticipated that the project will have a positive impact in terms of the Equalities and Human Rights Impact Assessment, as a direct result of linkages to the Economic Development theme of **Vibrant Dynamic and Forward Looking** and it's expected impact on the future sustainable development of the Aberdeen City and Shire economy, by making a major contribution to Aberdeen's business and social infrastructure that supports local businesses and provides a venue for major social, leisure and cultural events for all Aberdeen citizens. An EHRI assessment will be carried out to confirm this view, once the preferred design is known and the various uses of the space within the development scheme have been confirmed

7. BACKGROUND PAPERS

None

8. REPORT AUTHOR DETAILS

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