

REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Corporate Resources

SUBJECT: Financial Review – Quarter 1, 2010/11

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1 PURPOSE

- 1.1 To inform Cabinet of the financial position at the end of the 1st quarter of the financial year 2010/2011.

2 RECOMMENDATIONS

Cabinet is recommended to:

- 2.1 Note the financial performance of services at the end of June 2010.
- 2.2 Approve the 2010/11 budget adjustments outlined at section 3.19 including the release of £14,000 from the Chief Executive's departmental reserve for two 2009/10 projects which will complete after the closure of the Capital Development Grants scheme.

3 BACKGROUND

General Services Summary

- 3.1 A summary of the financial position across each of the Business Groups at the end of June 2010 is presented at Appendix 1a. The overall picture at the end of June is a surplus for the period of £1.07 million.
- 3.2 The main factors leading to this position were as follows;
- Lower than expected spending within certain service departments;
 - Steps taken across the Council in relation to the non-filling of certain vacancies and the management of other staff costs.
- 3.3 Based on the information available, it is forecast that the under-spend noted for the first quarter of the year will continue and result in a smaller demand on the Council's reserves than planned for 2010/11. This is a continuation of the picture seen in 2009/2010. We have come to this opinion in the light of;

- The vacancy management steps noted above;
 - A windfall receipt into the Education budget relating to energy overpayments;
 - A continuation of the debt charges saving noted in 2009/10;
 - The likelihood of ongoing under-spends with Adult Social Care as changes are made to the structure of this service.
- 3.4 At the end of August the Head of Finance reported to the Council on the financial prospects for the Council in the period beyond 2011. In particular, he outlined the possible scenarios where government grant income for 2011/12 could fall in cash terms by between £7.0 million - £13.0 million. The likely result for 2010/11 must be seen in this context.
- 3.5 A common feature to expect across all Council budgets during 2010/11 however will be a significant increase in the costs of non-domestic rates. Although there has been a reduction in the national poundage rate, this has been more than outweighed by increases in the assessed rateable values. There is no transitional relief scheme and this increase will affect certain services more than others – especially those services that occupy buildings with significant rateable values - particularly schools, council offices and community facilities.

Corporate Budgets

- 3.6 At the end of June all corporate budgets were broadly in line with expectations.
- 3.7 The current position on council tax is the generation of £5,000 less income than anticipated. This may change as the year progresses and as the new Council tax and benefits systems continues to bed in.
- 3.8 Net expenditure on the central support departments such as Human Resources, IT were all under budgeted levels. This was mainly due to the non-filling of vacancies and the final payment of a VAT refund.
- 3.9 As part of the 2010/11 budget the Council agreed to end the Capital grants Scheme/Capital Development Fund. The majority of existing commitments were met and work carried out by the end of the 2009/10 financial year. However, there are two projects which were not complete by the year-end. These are;
- Gullane Skate Park
 - Dunbar Townhouse Noticeboard
- 3.10 The Council's award for these projects was £12,000 and £2,000 respectively. To allow these projects to progress £14,000 will be released from the Chief Executive's departmental reserve.

Community Services

- 3.11 At the end of June the financial position for the Community Services Department was a combined under-spend of £837,000 (5.5%). The main factors here were under-spends on the Adult Social Care (ASC) and Housing Revenue Account Groups.
- 3.12 In the past two years the ASC budget has increased by £4.3m (10%) – largely in anticipation of new care packages for young people. As in 2009/10 spending is less than anticipated, largely because the speed of young adults coming into care has been slower than expected.
- 3.13 The majority of Groups within The Community Services Department were within budget – this includes the Landscape & Countryside Group which has experienced budget difficulties over the past few years. Managers have worked to remedy this and we will continue to monitor the progress made in 2010/11.
- 3.14 The exception to the generally positive picture within Community Services is the Community Development Group. As a result of the winding up of the East Lothian Community Development Trust, two community centres (Port Seton & Prestonpans) have come back into the ownership of the Council. This means that rates of £126,000 are now payable unless alternative management arrangements under discussion are soon implemented and effective.

Education & Children's Services

- 3.15 The financial results for the Education & Children's Services Department at the end of the quarter show a deficit of £184,000 (0.8%). Performance is much as expected at this point of the year and we would not expect this over-spend to continue as the year progresses. We make this forecast based on the following;
- Likely under-spends on debt charges;
 - A further refund of utilities costs;
 - Ongoing staff vacancies;
 - An increase in the number of probationer teachers allocated to the Authority - each of these teachers generates an additional payment of grant;
 - Reductions in the number of children/pupils within residential/independent schools compared to 2009/2010.
- 3.16 There are however a number of risks which could impact upon the final year-end position.
- An ongoing dispute with a supplier relating to network connections. If the dispute is settled in their favour then there could be a significant additional, unbudgeted cost;

- The cost of new rules for additional maternity, paternity and sickness leave for teachers;
- Accurate identification of the level of probationer/teacher induction grant income due to the Authority;
- Possible increases in the number of children/pupils placed in either residential or secure accommodation.

Environment Department

- 3.17 The Environment Department has ended the quarter with a budget surplus of £283,000 and good progress has been made in achieving the efficiency savings required in the 2010/11 budget.
- 3.18 Making forecasts for the whole of the Environment Departments is especially difficult in the early part of the financial year before the extent of winter maintenance work becomes clearer. Although income within the Development Control unit is currently under-budget and there are risks of incurring additional unbudgeted costs relating to planning enquiries there are also compensating under spends elsewhere and at this stage we would expect the Environment Department to end the year with a balanced budget.

BUDGET ADJUSTMENTS

- 3.19 As in previous months there are a number of budget adjustments that require to be reported to Cabinet. These have been listed below;
- £72,000 has been transferred from the Pre School to the Children & Families Group so that the payment of grant for East Lothian Playschemes can be rationalised.
 - £86,000 has been transferred from Adult Social Care to Customer Services to reflect the transfer of calls to the Contact Centre.
 - Budgets for the rental of Haddington Town House and Brunton Hall have been transferred from Facility Services (£208,000) to debt charge budgets as a result of the amended way in which these assets are accounted for.
 - £36,000 has been transferred from the Primary Schools Group to Pupil Support to rationalise the payment of grant for the Place 2 Be project.
 - Adjustments totalling £131,000 have been carried out among the various Education & Children's Services Groups to reflect updated internal transport charges.
 - £40,000 has been transferred between from Corporate Finance to Human Resources to reflect amended management arrangements for the management of the Employee Benefits scheme.

- £400,000 has been transferred from the Primary Schools Group to Property to adjust for the increased property budgets approved as part of the 2008/09 budget.
- Various transfers, totalling £262,000, have been carried out between the various Education & Children's Services Groups in order to transfer the budget for nursery staff costs.
- £14,000 will be released from the Chief Executive's departmental reserve to allow for the completion of two specific projects delayed from 2009/2010.

CAPITAL INVESTMENT AND BORROWING

- 3.20 One of the features of the 2009/2010 financial year was the under-spend on debt charges. These under-spends were the result of three factors;
- A fall in the 'pool' rate of interest payable on Council loans from an estimated level of 5% to 3.8%;
 - The cumulative debt brought forward into the 2009/2010 financial year being lower than expected levels; and
 - Slippage within some Departmental capital budgets.
- 3.21 We forecast that, for the 2010/11 financial year, the first two factors are likely to re-occur – leading to under-spends on debt charges.
- 3.22 Initial work has been carried out on the potential size of this under-spend in 2010/11. Assuming that the 'pooled' rate falls to 4% and that the full capital programme for 2010/11 is carried out during the year, we would expect the following charges to apply to Departments.

Department	Original Budgeted Debt Charges for the year (£m)	Revised Charge for the year-end (£m)	Difference/Saving (£m)
Community Services	7.7	6.7	1.0
Education & Children's Services	6.0	5.4	0.6
Environment	2.1	1.8	0.3
Corporate Resources	0.6	0.5	0.1
TOTAL			2.0

- 3.23 Details of performance relating to capital budgets at end of Q1 are included at Appendix 2. At this stage of the financial year the Council has spent approximately 15% of the gross capital budget for the year. We would expect this rate of spend to increase as the year progresses and as bills start to be received for the larger projects such as the John Gray Centre and the new Dunbar Community facility.

4 POLICY IMPLICATIONS

None.

5 EQUALITIES IMPACT ASSESSMENT

This Report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – as described above
- 6.2 Personnel - none
- 6.3 Other – none

7 BACKGROUND PAPERS

- 7.1 Council 25 August 2009 – Budget Options – Future Financial Prospects
- 7.2 Council 9 February 2010 – All Papers
- 7.3 Council 21 August 2010 – Financial Prospects 2011 Onwards
- 7.4 Government Finance Circular 1/2010 - Local Government Finance Settlement: 2010-11
- 7.5 Council 24 August 2010 – 2009/10 Financial Review

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REVENUE BUDGET PERFORMANCE at 30 June 2010

	Budget for the year £000	Actual to 30/06/10 £000	Budget for the period £000	(Surplus) / Deficit for period £000	(Surplus) / Deficit %	Financial Risk Assessment	Change since last assessment
Education & Children's Services							
Children & Families	11,308	2,679	2,786	(107)	(3.8%)	Low	Decrease
Pre-school Education & Childcare	5,628	3,773	3,779	(7)	(0.2%)	Low	No change
Pupil Support	7,812	4,320	4,230	90	2.1%	Low	Decrease
Schools - Primary	29,820	4,047	4,012	35	0.9%	High	No change
Schools - Secondary	35,435	7,612	7,406	206	2.8%	Low	No change
Schools Support Services	9,312	1,178	1,211	(33)	(2.7%)	Low	No change
	<u>99,315</u>	<u>23,609</u>	<u>23,425</u>	<u>184</u>	<u>0.8%</u>		
Community Services							
Adult Social Care	45,485	11,517	12,122	(605)	(5.0%)	High	No change
Community Housing	3,427	695	614	81	13.2%	Low	No change
Property Maintenance	1,926	898	887	11	1.2%	Medium	No change
Housing Revenue Account	0	(1,365)	(1,060)	(305)	28.8%	Low	No change
Community Partnerships	6,713	1,149	1,153	(5)	(0.4%)	Low	No change
Culture	3,852	792	803	(11)	(1.4%)	Low	Decrease
Community Development	3,277	621	543	77	14.2%	High	Increase
Facility Support	3,122	(1,295)	(1,237)	(58)	4.7%	Low	No change
Healthy Living	4,355	51	52	(2)	(3.1%)	Low	Decrease
Landscape & Countryside Mgt	6,177	1,313	1,332	(20)	(1.5%)	Medium	Decrease
	<u>78,335</u>	<u>14,375</u>	<u>15,211</u>	<u>(837)</u>	<u>(5.5%)</u>		
Chief Executive's Office	3,779	977	993	(16)	(1.6%)	Low	No change
Environment							
Economic Development	1,020	94	102	(8)	(7.5%)	Low	No change
Planning & Environmental Services	3,961	926	989	(63)	(6.4%)	Low	Decrease
Transport & Waste Services	13,041	1,313	1,518	(205)	(13.5%)	Medium	No change
	<u>18,022</u>	<u>2,333</u>	<u>2,609</u>	<u>(276)</u>	<u>(10.6%)</u>		
Corporate Resources							
Human Resources	1,838	440	469	(30)	(6.3%)	Low	No change
Financial Services	2,458	1,040	955	85	8.9%	Low	No change
Revenues & Benefits	1,243	188	217	(29)	(13.4%)	Low	No change
Customer Services	1,542	468	510	(42)	(8.3%)	Low	No change
Law & Licensing	630	170	174	(4)	(2.4%)	Low	No change
IT Services	1,891	490	511	(21)	(4.1%)	Low	No change
	<u>9,602</u>	<u>2,796</u>	<u>2,836</u>	<u>(40)</u>	<u>(1.4%)</u>		
Total All Departments	<u>209,053</u>	<u>44,556</u>	<u>45,247</u>	<u>(691)</u>	<u>(1.5%)</u>		
Corporate Management							
Revenue Support Grant (inc. NNDR)	(172,038)	(41,555)	(41,555)	0	0.0%	Low	No change
Council Tax	(45,455)	(42,244)	(42,249)	5	(0.0%)	Low	No change
Joint Board Requisitions	10,817	2,731	2,704	27	1.0%	Low	No change
Other	1,102	(52)	362	(414)	(114.4%)	Low	No change
HRA Transfer	(494)	0	0	0	0.0%	Low	No change
Use of Reserves	(2,985)	0	0	0	0.0%	Low	No change
	<u>(209,053)</u>	<u>(81,120)</u>	<u>(80,738)</u>	<u>(382)</u>	<u>0.5%</u>		
Total All Council	<u>0</u>	<u>(36,564)</u>	<u>(35,491)</u>	<u>(1,073)</u>			

Financial Risk	Factors	Implications
High	<ul style="list-style-type: none"> - The Business Group has been assessed as likely to overspend in the financial year - There has been a history of overspending within Units / Groups - There are new or revised funding arrangement and / or legislature changes with financial significance - Trading Accounts are in deficit for the year. -Grant schemes, on which the Council is reliant are either unconfirmed or have not been confirmed -The service is demand led and the Council has restricted control over the level and form of service - New Services are planned 	<ul style="list-style-type: none"> -Cabinet & Members Library reports with financial implications are not passed under delegated powers -Directors / Heads of Service will be asked to prepare a financial recovery plan -The Head of Finance may take enforcement action to ensure budgetary control
Medium	<ul style="list-style-type: none"> - There is significant potential that Business Group could overspend in the financial year - There have been previous incidences of some overspending within Units / Groups - There are new or revised funding arrangement and / or legislature changes with financial significance - Trading Accounts are having difficulty meeting financial targets -Grant schemes, on which the Council is reliant are either unconfirmed or have not been confirmed 	<ul style="list-style-type: none"> -Members library reports are only passed when financial implications are addressed -Directors / Heads of Service will be asked to identify actions necessary to ensure expenditure is within budget by the year-end.
Low	<ul style="list-style-type: none"> -Finances are generally under control for the current financial year -Stable legislature, trading and funding environment -The service is supply led - i.e. the Council can decide the level and form of service -Finances in previous financial years have been controlled -Grant schemes are stable and not anticipated to change significantly 	<ul style="list-style-type: none"> -Members library reports are approved promptly under delegated powers

Capital Investment Plan 2010/11 - Position at 30th June 2010

<i>Asset</i>	<i>Project</i>	<i>Budget for Year</i>		<i>Actual Spend</i>	<i>Remaining</i>
		<i>£000</i>	<i>£000</i>	<i>£000</i>	<i>spend for year</i>
					<i>£000</i>
COMMUNITY SERVICES					
Expenditure					
<i>Adult Social Care</i>					
Fa'side, Tranent	New residential home and Day Centre (ASC005)	1,500	-	(1,500)	
Gullane Day Centre		-	346	346	
Mobile Working		17	11	(6)	
<i>Culture & Community</i>					
Brunton Hall	Theatre & Main Hall Refurbishment	2,200	17	(2,183)	
Dunbar Community Facility	New Community Facility	1,300	22	(1,278)	
Dunbar Town House	Refurbishment	860	-	(860)	
Haddington Corn Exchange	Extension and internal alterations	8	3	(5)	
John Gray Centre	New facility	2,850	241	(2,609)	
Musselburgh Museum	New facility	200	4	(196)	
Musselburgh Racecourse	New stables & community building (HC033)	50	487	437	
North Berwick Harbour		-	53	53	
North Berwick Museum	Refurbishment	700	-	(700)	
Ormiston Community Centre	New facility	718	12	(706)	
Tranent Library		500	2	(498)	
<i>Facilities Management</i>					
Gullane Toilets		50	2	(48)	
Offices - Penston House		-	5	5	
Toilets East Beach Nth Berwick		25	-	(25)	
<i>Healthy Living</i>					
Meadowmill Centre of Excellence		356	-	(356)	
Pavillions	New facilities	67	625	558	
Sports Centres	Refurbishment	375	2	(373)	
<i>Landscape & Countryside Management</i>					
Cemeteries Extensions		410	-	(410)	
Coastal Car Parks		600	4	(596)	
Coastal Path Plan	Implementation	131	-	(131)	
Demolition of Winton Place Depot		50	-	(50)	
Golf Course Machinery & Equipment	Replacement	50	178	128	
Depot, Nth Berwick	Relocation of depot from Lime Grove	680	152	(528)	
Peppercraig Depot Haddington	Extension for staff welfare required by H & S	150	-	(150)	
Fees	(included within actual asset costs)	1,104	-	(1,104)	
		14,951	2,166	(12,785)	
Income					
Scottish Government	General Grant	(443)	(230)	213	
Asset Sales		(2,865)	-	2,865	
Lottery Grant	John Gray Centre	(500)	-	500	
Historic Scotland Grant	John Gray Centre	(150)	-	150	
SNH	Path Network	(56)	-	56	
		(4,014)	(230)	3,784	
EDUCATION & CHILDREN'S SERVICES					

Capital Investment Plan 2010/11 - Position at 30th June 2010

Asset	Project	Budget for Year		Actual Spend	Remaining
		£000	£000	£000	spend for year £000
Expenditure					
Cockenzie PS			-	1	1
Dunbar PS (new)	New Primary School		9,220	570	(8,650)
Dunbar PS	Transportable Units		600	-	(600)
Innerwick PS			-	18	18
Macmerry PS	Extension		10	35	25
Musselburgh Burgh PS			-	1	1
Ormiston PS			-	4	4
Pinkie St Peters	Extension		985	2	(983)
Prestonpans IS	New nursery, classrooms and refurbishment (EC041)		150	274	124
Prestonpans PS	New Sports Hall, Classrooms and refurbishment (heating, rewire etc)		4	16	12
Sandersons Wynd PS	Additional classrooms		411	105	(306)
SEN Equipment	Specialised equipment for pupils (ECS047)		30	6	(24)
Stenton PS	Accoustic Improvements		25	-	(25)
West Barns PS	Upgrade Work		15	22	7
Windygoul PS	Additional classrooms		13	899	886
Pathways			-	32	32
IT Equipment	Phoenix Gold and Central Replacement Project	115			
	Schools IT - Refresh of curricular hardware	398			
	Schools IT - Replacement of 20 Primary & Nursery School Servers	45			
	Schools IT - Replacement Mail Server	10			
	Schools IT - SMS Servers & Licences	5			
	Schools IT - Local Area Networking including Switch Replacement	50			
	Schools IT - Wireless Base Station Replacements	10			
	New schools IT - Improve access to technology Secondary Schools	100			
	New schools IT - Improve ratios of Computers to Children in Primary Schools	120			
	New schools IT - Macmerry PS	10			
	New schools IT - Pinkie St Peters	20			
	New schools IT - Extending Wireless for Secondary Schools	20			
	New schools IT - Miscellaneous Cables, Hard discs etc	20			
	New schools IT - Replacement UPS Batteries	3			
	New schools IT - School Wide Area Network Upgrade	500			
	New schools IT - Additional Domain Controller Server	10	1,436	57	(1,379)
			12,899	2,041	(10,858)

Capital Investment Plan 2010/11 - Position at 30th June 2010

<i>Asset</i>	<i>Project</i>	<i>Budget for Year</i>		<i>Actual Spend</i>	<i>Remaining</i>
		<i>£000</i>	<i>£000</i>	<i>£000</i>	<i>spend for year</i>
Income					<i>£000</i>
Scottish Government Grant	Schools Fund/Gneral Grant		(1,923)	(997)	926
Developers Contributions	Various Schools		(1,960)	-	1,960
			(3,883)	(997)	2,886
ENVIRONMENT					
Expenditure					
Flood Prevention			-	4	4
Economic Development	Leased Properties		-	1	1
Kinwegar Recycling Plant, Wallyford	New Provision (ENV010)		180	68	(112)
Roads	Roads	5,600			
	Safety Hotspot Improvements	250			
	Cycling Walking Safer Streets (Ring-fenced grant funded)	170			
	Eskmills Access Road	100			
	Windygoul Turnaround	125	6,245	983	(5,262)
Vehicles	Replacement (ENV002)		1,607	-	(1,607)
Refuse Lorry	Additional vehicle		120	-	(120)
Waste Bins	Purchase of New Bins		70	1	(69)
Fees			28	-	(28)
			8,250	1,057	(7,193)
Income					
Grants	Cycling Walking Safer Streets		(170)	-	170
	General Grant		(196)	(101)	95
	Contaminated Land		(200)	-	200
	Strategic Waste Fund		(223)	-	223
	Zero Waste Fund		(90)	-	90
	Transportation/Roads		(913)	-	913
	Air Quality Monitoring		(5)	-	5
Vehicle	Recharges		(1,607)	(18)	1,589
			(3,404)	(119)	3,285
CORPORATE					
Expenditure					
Contact Centre Telephony			25	-	(25)
CCTV			-	109	109
IT Software	Internal recharge from Revenue Account	54			
	Identity Management	75			
	Homeworking Infrastructure Security	100			
	Office Software Licences	35			
	Corporate firewall replacement	30			
	Server Refreshment Program	25			
	Network Storage Update	50			
	PC Remote Management Development	10			

Capital Investment Plan 2010/11 - Position at 30th June 2010

Asset	Project	Budget for Year		Actual Spend	Remaining
		£000	£000	£000	spend for year £000
	PC Refreshment Program	90			
	Networks Equipment refresh	150			
	Networks IP Telephony	30			
	Network Management tool	5			
	Server Virtualisation	40			
	Service Desk	5			
	Vista/Server 2007 development	5			
	Business Continuity Infrastructure	20	724	233	(491)
			749	342	(407)
Income					
Scottish Government Grant	General Grant	(29)		(15)	14
		(29)		(15)	14
TOTAL - General Services					
Expenditure		36,849		5,606	(31,243)
Income		(11,330)		(1,361)	9,969
Net Expenditure		25,519		4,245	(21,274)
HOUSING REVENUE ACCOUNT					
Expenditure					
	Improve Existing Stock	11,000		1,550	(9,450)
	New Affordable Housing	17,400		5,670	(11,730)
	Accelerated New Build	20,000		-	(20,000)
	Mortgage to Rent	500		328	(172)
		48,900		7,548	(41,352)
Income					
	House Sales	(1,799)		(288)	1,511
	Scottish Government Grant Receipts	(4,275)		(254)	4,021
		(6,074)		(542)	5,532
Net Expenditure		42,826		7,006	(35,820)

REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Corporate Resources

SUBJECT: Annual Pensions Report - 2009/10

2

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2009/10, in accordance with External Audit requirements and Council Policy.

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in the financial year 2009/10.

3 BACKGROUND

3.1 Council's Retirement Activity in Financial Year 2009/10

- 3.1.1 There are currently four types of pensionable retirements available to the Council for all employees excluding Teaching employees (see paragraph 3.1.2), they are:

- **Due to Efficiency or Redundancy at the discretion of the Council** - This allows the individual, aged over 50, at the discretion of the Council to retire early with a maximum of 10 added years' service. In this case the additional strain costs relating to the enhanced pension costs resulting from early retirement are borne by the Council. With effect from 1 April 2009, strain costs, i.e. the cost of the early release of the pension, must be paid by the Council in full at the date of retirement; previously this was repaid to the pension fund over a maximum period of five years.
- **Ill-health retirement** - This occurs where an employee is confirmed by Occupational Health as being permanently unfit to work and is permitted early access to enhanced pension reckonable service pre-defined within the Superannuation regulations and requiring no exercise of Council discretion. The costs are fully borne by the pension fund.

- **Rule of 85** - This is where an individual aged between 50 and 60 can ask to be considered for voluntary retirement if their service and age combined comes to 85 or over. In this instance there is no enhancement to the pension the individual receives. However, there are costs to the Council for the early release of the pension. The final decision rests with the Council. The Council bears the cost to the pension fund for the early payment of the benefits.
 - **Flexible Retirement** – This is a discretionary element of the pension regulations which allows employees who meet certain criteria to draw their pension and continue working on a reduced hours' basis.
- 3.1.2 Cabinet approved a report on 9 March 2004 establishing the Policy for Retirement of Teaching Staff within the Council encompassing the “Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996 for Teaching pensions.
- 3.1.3 A summary of the pension retirements in the financial year 2009/10 is as follows:
- **Voluntary Early Retirement/Severance** – There were no Voluntary Early Retirement/Severances in the financial year 2009/10.
 - **Medical Retirement** – There were 8 superannuated medical retirements in the financial year 2009/10 including 4 teaching posts, across the Council departments.
 - **Rule of 85** – There were no Rule of 85 retirements in the financial year 2009/10.
 - **Flexible Retirement** – There were no flexible retirements actioned in the financial year 2009/10.
 - **Teaching Retirement Policy** – in the financial year 2009/2010 there were no voluntary early retirements under the teacher's retirement policy.
- 3.1.4 Details of the Council's financial commitments relating to pensions are included in the Abstract of Annual Accounts. Due to ongoing pension costs arising from decisions taken in earlier years, during 2009/10, the Council spent £785,000 on early retirements for Local Government Workers and £440,000 on early retirements for teachers.
- 3.1.5 The Council has a liability to pay pension costs in the future. At 31 March 2010 this liability was actuarially assessed at £22,973,000 (and in 2009 at £18,613,000). As this liability is unfunded, it is a liability to be met from future Council Tax and grant income.
- 3.1.6 In addition to the above figures, the Council also makes 'ex gratia' pension payments to approximately (141) ex-employees who worked less than 16 hours per week and were aged under 50 at 31 December 1993 and were unable to join the LGSS pension scheme under the statutory rules at the time. The value of these payments during 2009/2010 was £64,200 (and in 2008/09 it was £66,600). The Council took the decision to remove this discretion at

Cabinet on 9 June 2009. No new ex gratia pension payments will arise and the existing liability will therefore reduce over time.

4 POLICY IMPLICATIONS

- 4.1 The Council is required to report its pension activity annually to elected members.

5 EQUALITY IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - Early retirement decisions taken in earlier years have created a significant liability for current and future Council Tax payers. In the future it may be necessary to make provisions against the liability.
- 6.2 Human Resources - Finance and Human Resources continue to ensure that any retirements are in accordance with Council Policy and that managers are aware that any pensionable retirement meets the strict efficiency or redundancy requirements and generates the necessary savings.
- 6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 External Audit requirements and Council Policy in relation to Local Government Pension Scheme - Policy & Resources Committee 7 April 1998
- 7.2 Premature Retirement of Teaching Staff approved - Cabinet on 9 March 2004.
- 7.3 The Local Government Pension Scheme Changes and East Lothian Council Retirements and Pensions Interim Policy – East Lothian Council 16 January 2007
- 7.4 Annual Pensions Report – Cabinet 9 June 2009
- 7.5 Lothian Pension Fund Website: www/lpf.org.uk

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REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Community Services

SUBJECT: Social Work Complaints and Feedback Annual Report 2009-2010

3

1 PURPOSE

- 1.1 To give a report on the use of the Council's Social Work Complaints and Feedback Policy for the year 2009/10.

2 RECOMMENDATIONS

- 2.1 Cabinet is asked to note the report.

3 BACKGROUND

- 3.1 Section 52 of the NHS Community Care Act 1990 and the Social Work (Representations Procedure) (Scotland) Directions 1996 requires every Local Authority Social Work Service to develop and implement a complaints procedure. The legislation also requires that the Council considers, in public business, an annual report on the use made of the procedure and the outcome of complaints.
- 3.2 During this year, work to publicise the Council's feedback process to members of the public and raise awareness amongst staff has continued. A new feedback module on the Council's Customer Relationship Management System (CRM) is also now being used to record social work feedback. This will improve recording, monitoring and reporting capabilities.
- 3.3 In line with its statutory requirements, the Council operates a 3 stage social work complaints procedure:

Stage 1 – Complaint dealt with a point of service

Stage 2 – Formal complaint requiring investigation and response

Stage 3 – Referral to independent Complaint Review Committee (CRC)

Thereafter, there is a legal right of referral to the Scottish Public Services Ombudsman (SPSO).

3.4 BREAKDOWN OF FEEDBACK

3.4.1 In the year 2009/10, East Lothian Council received **78** complaints about its Social Work services, overall a significant decrease (37%) on the number of complaints received last year (123). A breakdown of complaints by subject is attached at Appendix 1.

3.4.2 The following is a breakdown by service:

Adult Social Care: **59** (decrease of 55% from last year)

Children's Services: **19** (increase of 5% from last year)

Criminal Justice: **0**

3.4.3 In addition 133 complaints were received about external care providers. These were dealt with separately through contract monitoring processes, with a focus on the service provider resolving issues at source, wherever possible.

3.4.4 Social work services also receive positive feedback about the services they provide, as well as about individual social workers. It is important to provide a balanced view of services and so staff are actively encouraged to report good feedback and this has had a positive impact, with **73** compliments recorded this year. This continues the upward trend reported last year, with an increase of 48%. Extracts of some of the positive comments received from clients and their families are attached as Appendix 2.

3.4.5 Out of the 74 complaints that could be responded to (3 were anonymous and 1 was not accepted, as the complainant did not have any parental rights), acknowledgement and response times were as follows:

88% acknowledged within 5 days:

85% responded to, or an update provided, within statutory timescale (28 days): *(69% received a full response within timescale)*

3.4.6 The new feedback module on the CRM system, with automatic email prompts, should help to continually improve performance in this area in the long term.

3.4.7 21% of complaints received could have been resolved by the service area and were referred back with a proposed resolution. Stage 1 of the feedback process encourages members of the public to raise any concerns directly with the service they have been dealing with in the first instance, so it is important that managers and staff take measures to actively resolve concerns at the frontline, wherever possible, to prevent complaints escalating.

- 3.4.8 78% of complaints were considered closed following an investigation and formal response from the service (Stage 2 of the Feedback Process)
- 3.4.9 Only 1 complaint was referred to the final stage (Stage 3) of the statutory complaints process (Complaints Review Committee) because the complainant remained dissatisfied with the response at Stage 2. The complaint (about deprivation of capital) was not upheld.
- 3.4.10 The SPSO received 2 complaints about East Lothian Council's Social Work Services. One is currently under investigation (the deprivation of capital case referred to as above).
- 3.4.11 The aim is to proportionately reduce the number of complaints progressing through the feedback process.
- 3.4.12 The top 5 subjects of complaint (in order) were:
- 1) Staff Attitude / Conduct
 - 2) Community Care Finance
 - 3) Funding (including FPC & Kinship Care) *(6 relating to Adult Social care, 2 to Children's Services and 1 general funding situation)*
 - 4) Delay in receiving OT Assessment
 - 5) Domiciliary Care / Home Help
- 3.4.13 For the complaints closed at Stage 1 or Stage 2 of the feedback process, resolutions included:
- Arranging for OT assessment to take place
 - Arranging for member of staff / appropriate manager to contact complainant to discuss concerns directly
 - Providing additional information / clearly explaining policies and procedures
 - Giving an apology, where appropriate
 - Providing funding
 - Acknowledging mistakes and taking action to correct any errors
 - Providing required service
- 3.4.14 In particular, the following issues were highlighted more than once:
- Difficulty in understanding financial information (contributions towards care etc)
 - Difficulty in contacting social workers / Access Service *(a new team has now been set up in the Council's Contact Centre to take calls for Adult Social Care)*
 - Funding for care / support package agreed in principle but could not be provided (long wait)

- 15 minute Domiciliary Care visits not sufficient to undertake required tasks
- Direct Payment arrangements are too complicated
- OT assessment delays
- Missed Domiciliary Care visits – family members not notified of changes to timetable
- Disagreements with / challenges to decisions taken by Children's Services regarding Child Protection matters
- Concerns raised about the accuracy and content of Children's Services reports and the sharing of information in reports with other interested parties

3.4.15 Points to note from analysis of complaints:

- There has been significant decrease from last year in the number of complaints received about delays in receiving OT assessments, however it still remains an issue for some clients
- Complaints about Community Care Finance have proportionately increased from last year. Most common was a difficulty in understanding financial processes. The service is currently addressing this and exploring ways to provide clearer information for clients on how financial contributions / charges for care services are calculated.
- Complaints about the Domiciliary Care service have increased from last year. In particular, concerns have been raised about missed visits (following staff absence and rescheduled rotas). Family members / carers should be informed, wherever possible, if a regular service is to be amended.
- A number of parents/family members are challenging decisions taken under Child Protection processes. Best practice in informing people of unwelcome decisions /dealing with challenges to decisions should be developed.
- Complaints about staff attitude appear to be linked to difficult situations/challenging clients. Specific training on dealing with difficult situations may be beneficial for front line staff in conjunction with any wider customer services training.

3.5 Action Plan for 20010/11

- 3.5.1 A number of initiatives will be progressed in 2009/10 to make sure that East Lothian Council's social work feedback procedure is fit for purpose and reflects the improvements being made to the corporate feedback procedure:

- Complaints handling and complaints investigation training will be carried out for relevant managers / social workers
- Staff briefings will be carried out to raise awareness of the Feedback Procedure and to provide advice on complaint handling, accompanied with updated guidance
- Regular statistical reports will be provided for Service Managers / Heads of Service
- There will be a focus on increasing the number of complaints being actively resolved by managers / staff at the point of service. The new CRM module will record the proportion of complaints dealt with at service level.
- The Customer Feedback Manager will continue to work with external agencies such as the ADSW Complaints Sub-Group and SPSO regarding the implementation of a model complaints handling process in the public sector (proposals currently under consultation)

4 POLICY IMPLICATIONS

4.1 None.

5 EQUALITY IMPACT ASSESSMENT

5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

6.1 Financial – None.

6.2 Personnel - None.

6.3 Other – None.

7 BACKGROUND PAPERS

7.1 Appendix 1 - Complaints Breakdown (Social Work) 2009/2010.

7.2 Appendix 2 - Extracts of compliments received about social work services in East Lothian 2009/2010.

7.3 SPSO Consultation document – can be viewed at www.spsso.org.uk

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Complaints Breakdown (Social Work) 2009/2010

Main Subject of Complaint	1 April – 30 June 2009	1 July – 30 September 2009	1 October – 31 December 2009	1 January – 31 March 2010	Overall Total
Staff attitude / conduct	3	2	2	3	10
Community Care Finance issues e.g. charges / financial assessments	4	4	1	0	9
Funding (including Free Personal Care & Kinship Care)	2	1	2	4	9
Delay for OT Assessment	2	4	2	0	8
Domiciliary Care / Home Help service	3	3	2	0	8
General service delivery issues e.g. difficulties contacting staff, unhappy with policies/ procedures	4	2	0	1	7
Child Protection issues (disagreements with decisions / sharing of information)	2	1	3	0	6

Main Subject of Complaint	April – June 2009	July – September 2009	October – December 2009	January – March 2010	Total
Quality of information provided	2	1	1	1	5
Resource centres	0	0	0	3	3
Procurement process	1	2	0	0	3
OT Equipment / Panel decisions re: adaptations	1	1	0	0	2
Respite Care	1	0	1	0	2
Reduction / withdrawal of service following review	0	1	0	1	2
Delayed Discharge	1	0	0	0	1
Recruitment & selection procedures	1	0	0	0	1
Council run care homes	0	0	1	0	1
Data Protection	1	0	0	0	1
Total Number	28	22	15	13	<u>78</u>
External Providers					133 (dealt with through contract monitoring processes)

Extracts of compliments received about social work services in East Lothian 2009/2010

"It is a very good service that East Lothian Council runs and well managed too. I am extremely grateful for it. Thank you for making my recovery period much more manageable." (April 2009)

"Thanks for all your help. It was and is very much appreciated, to know that there are lifelines out there has made things so much easier for us both mentally and emotionally. I can only say THANK YOU for all the hard work you have done on my behalf." (August 2009)

"Thank you for the assistance given by the Discharge Team, they are marvellous and wonderful people." (August 2009)

"My whole family wished to make you aware of our appreciation of both the day to day management of this service by Michelle McLeod based at Tranent and the team of individual carers. In the present economic climate when terms such as best value are quoted, the service my mother has received has shone out." (October 2009)

"Thank you and everyone for the kind and helpful support after Bill has his accident." (October 2009)

"This is a short note of appreciation thanking you and everyone involved in the conversion of the bathroom to my Mother's house. This is much appreciated by her as it has made life so much easier for her. Will you please thank everyone involved from us." (November 2009)

"I have been very satisfied with all the help given." (January 2010)

"Keep up the good work, care homes like Greenfield Park are essential in the care and well being of Dementia sufferers." (February 2010)

"The help and advice given to us has been invaluable. All staff have been very friendly and could not do enough to help whether it be a phone call or a home visit. Thank you again for the help and guidance and the continued support." (March 2010)

"I am writing to thank you for all the care and kindness which you showed mum. I would like to say how much you added to the care which my Mother received and to say that we appreciated it." (March 2010)

"Many thanks for your care received and even more for your care and assistance to my Father over the last 5 years." (March 2010)

REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Environment

4

SUBJECT: Consultation by the Scottish Government on an Addendum to a Section 36 Application for Wind Turbine Development at Wester Dod/Aikengall II

1 PURPOSE

- 1.1 To advise Cabinet that the Council has been consulted by the Scottish Government on an addendum to the Section 36 application for a wind farm at Wester Dods/Aikengall II and to recommend a response to this further consultation.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Scottish Government's Energy Directorate be advised that:
- (i) The Council does not object to the Addendum to the Section 36 application for a wind turbine development at Aikengall II/Wester Dod, subject to the same conditions and requirements previously agreed in response to the initial consultation, all as detailed in Appendix One to this report;
 - (ii) On the advice of the Council's Environmental Protection Manager, the two additional noise conditions detailed in paragraph 3.8 of this report be added to the Council's recommended conditions.

3 BACKGROUND

- 3.1 The applicant, Community Windpower, has previously submitted an application under Section 36 of the Electricity Act 1989 to the Scottish Government Energy Consents Unit (ECU) for 30 turbines at Wester Dod/Aikengall II. The applicant proposed 30 x 3.6 MW turbines (22 in East Lothian and 8 in Scottish Borders) of hub height of up to 85 metres

and a rotor diameter of up to 120 metres giving a total height of up to 145 metres.

- 3.2 The Council was consulted as a planning authority by the Scottish Government's Energy Consents Unit and, on 12th January 2010, Cabinet agreed the terms of the Council's consultation response. Cabinet agreed not to object to the proposed application subject to a number of conditions and requirements: these are detailed in Appendix One of this report.
- 3.3 Contrary to their officer's recommendations, Scottish Borders Council objected to the proposed development. An unresolved objection by a planning authority to a Section 36 application would normally lead to a public inquiry.
- 3.4 However, in this case, the applicant has submitted an Addendum to the Section 36 application and supporting Environmental Statement (ES). The Addendum reduces the number of turbines to 22 by removing all eight that were to be located within Scottish Borders Council's area. The Scottish Government has accepted the Addendum to the original Section 36 application and ES and has re-consulted on the reduced number of turbines.
- 3.5 The Section 36 application remains largely unchanged within East Lothian from that previously reported on, other than a further potential site for the substation, an increase in the micro-siting allowance from 100m to 200m and a slight increase in the height of the anemometer mast.
- 3.6 The Council's Corporate Legal Adviser and the Development Management Manager advise that this variation to the Section 36 application does not in itself raise any substantial new planning issues. In addition, it does not open substantial new grounds of planning objection that were not available against the original. They are of the view that, were this a planning application, it would be treated as a variation rather than requiring a new application. While the proposal has a cross-border element, the Council's Corporate Legal Adviser sees no reason why this principle would not apply here.
- 3.7 On the matter of the planning merits of the Addendum, the Council's Environmental Protection Manager (EPM) confirms his previous concerns over the lack of cumulative noise impact modelling for the existing Crystal Rig and Aikengall wind farms together with the proposed development in relation to Upper Monynut, and also the potential noise impact of the closest Wester Dod/Aikengall II turbine to this property. It was his understanding that the applicant was to install active noise control in the turbine closest to Upper Monynut and that cumulative noise impact modelling would also be undertaken. The EPM advises that neither of these have been addressed in the Addendum.
- 3.8 The EPM would prefer that the turbine closest to Upper Monynut be removed from the scheme. Failing this, his advice is that active noise

control of this turbine be attached as a condition of any consent. He also requests a condition to the effect that, prior to the commencement of wind farm construction, the cumulative noise impact of Wester Dod and Crystall Rig wind farms be undertaken and results sent to the EPM for comment and approval. The following additional noise conditions are therefore recommended:

- (i) *Prior to the commencement of the construction of the wind farm permitted by this consent, an assessment of the cumulative noise impact on Upper Monynut of the proposed development, together with the existing wind farms at Crystal Rig and Aikengall, shall be undertaken and the results sent to East Lothian Council's Environmental Protection Manager for comment and approval.*

If the proposed wind turbine currently closest to Upper Monynut is retained, then

- (ii) *Prior to the commencement of construction of the wind farm permitted by this consent, the applicant shall demonstrate to the satisfaction of the planning authority that the turbine closest to Upper Monynut (turbine no. 15) shall incorporate active noise control, and thereafter it shall be constructed and maintained with such control operational for the life of the wind farm.*

3.9 As noted in the 12th January 2010 Cabinet report on the original Section 36 application and Environment Statement, the blades of three of the turbines will break the skyline above Oldhamstocks and its conservation area. The applicant had suggested that it may have been possible to secure land on which to undertake woodland planting to screen this impact (albeit it would take time to establish itself). There is no indication in the Addendum of this planting, or of any relocation of these turbines (if that were possible). While this is not considered to be sufficient reason for objection, the terms of the Council's previous response to this issue (Recommendation 2.2a and b, Appendix One of this report) of the 12th January 2010 Cabinet report are re-iterated.

3.10 The further potential site for the substation, the increase in the micro-siting allowance from 100m to 200m and the slight increase in the height of the anemometer mast do not raise any issues of concern. There are no other substantive differences between the original Section 36 application and the current Addendum as far as their impacts on interests within East Lothian are concerned.

4 POLICY IMPLICATIONS

4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - none
- 6.2 Personnel - none
- 6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Section 36 Application and Environmental Statement for Aikengall II/ Wester Dod Windfarm
- 7.2 Addendum to Section 36 Application and Environmental Statement for Aikengall II/Wester Dod wind farm
- 7.3 Consultation by the Scottish Government on a Section 36 Application for Wind Turbine Development at Wester Dod, Report by Executive Director of Environment to 12th January 2010 Cabinet

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Appendix One

Consultation by the Scottish Government on a Section 36 Application for Wind Turbine Development at Wester Dod: recommendations agreed by East Lothian Council's Cabinet, 12th January 2010

- 1 Cabinet is recommended to advise the Scottish Government's Energy Consents Unit that it does not object to the Addendum to the Section 36 application for a wind turbine development at Wester Dod/Aikengall 2, subject to the imposition of conditions as detailed in Appendix One to this report (i.e. *the 12th January 2010 Cabinet report*) on the following:
 - (i) The provision of a financial bond and provision for decommissioning
 - (ii) The production of a Construction Method Statement
 - (iii) Roads and Traffic
 - (iv) Design and Siting
 - (v) Archaeology
 - (vi) Ecology
 - (vii) Noise
 - (viii) Provision of access plan
- 2 In addition, while not formally objecting, there are two issues of detail that Scottish Ministers are requested to pay particular attention to if minded to approve the proposal. These are:
 - a) The visual impact on Oldhamstocks Conservation Area. Consideration should be given to minimising or removing any visual impact of the turbines by micro-siting, height restriction or removal of three of the turbines that currently would have the potential to impact on Oldhamstocks Conservation Area. Consideration should also be extended to the relocation;
 - b) restriction in height or removal of a further 6 turbines which have the potential to impact on Oldhamstocks Conservation Area should a mature shelter belt outwith the control of the applicant be felled; and
 - c) The background level at, and the cumulative effect of, noise on the residents of Upper Monynut (a dwelling) and the consented Monynut Forest Cottage. This consideration should extend to the removal or relocation of Turbine No. 15, failing which active noise control of this turbine should be attached as a condition of any consent.

REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Environment

SUBJECT: Proposed Extraction of Coal by Surface Mining Methods at Airfield, near Cousland, Midlothian: assessment of addendum to Environmental and Planning Application Statements

5

1 PURPOSE

- 1.1 To recommend the response that East Lothian Council should make as adjoining planning authority to Midlothian Council's request for comments on the additional information submitted by the Scottish Coal Company Limited in respect of their planning application for the extraction of coal by surface mining methods at Airfield, near Cousland, Midlothian.

2 RECOMMENDATIONS

- 2.1 It is recommended that Midlothian Council be advised that:
- (i) the additional information submitted by the Scottish Coal Company Limited does not change the position agreed by Cabinet on the 13th October 2009, namely that planning application 09/00349/FUL should be refused planning permission for the reasons previously stated, and
 - (ii) if Midlothian Council is minded to grant planning permission, then the appointment of a **independent compliance assessor**, funded by the applicant, should be a requirement, that it should be a joint appointment and that its remit should be subject to the agreement of this Council.

3 BACKGROUND

Context

- 3.1 East Lothian Council was consulted by Midlothian Council on an application for opencast coal extraction at Airfield, near Cousland. While

wholly within Midlothian Council's area, the eastern edge of the application site lies almost adjacent to East Lothian's western boundary.

3.2 The Council's consultation response, to recommend refusal of the application, was agreed by Cabinet on the 13th October 2009 (Item 5 refers). The reasons for this recommendation were as follows:

- (i) Airfield is not defined as an area of search for opencast coal extraction in the Midlothian Local Plan (MLP) and therefore the application is contrary to MLP Policy MIN1 and Edinburgh and the Lothians Structure Plan 2015 (ELSP) Policy ENV10;
- (ii) The proposed development will harm the setting of nearby listed buildings and the special scenic qualities and integrity of the Area of Great Landscape Value within which the application is located. This is contrary to MLP Policies MIN1, RP6 and RP18 and to ELSP Policies ENBV1c, ENV1d and, in the absence of clear local or community benefits which would outweigh any adverse impacts, to Policy ENV8;
- (iii) The proposed development does not meet the requirements of PAN50 Annex A, The Control of Noise at Surface Mineral Workings, at noise sensitive receptors within both East Lothian and Midlothian;
- (iv) The applicant has not demonstrated that the application is, or can be made, environmentally acceptable or that there are demonstrable local or community benefits that would clearly outweigh the likely impacts of extraction. Consequently, the application does not meet the two tests of SPP16, Opencast Coal (*now part of Scottish Planning Policy*).

3.3 While not formal objections, the Cabinet report also expressed concerns about the practicality and effectiveness of the enforcement of noise, vibration, dust and air quality within East Lothian in a situation where it was not the responsible authority. In addition, the report drew attention to the deteriorating road surface approaching the coal handling plant at Cockenzie (the destination for the extracted coal) and suggested that a maintenance scheme, partially funded by the applicant, was required.

The Additional Information

3.4 The applicant, Scottish Coal Company Ltd, has submitted further information in response to the issues raised by the planning authorities, consultees and objectors. This information is in the form of an addendum to the Environmental Statement and the Planning Application Statement submitted with the application. While this addresses a range of issues, this Cabinet report focuses on the further information and/or commentary relevant to the objections and comments made by East Lothian Council in its previous consultation response.

Planning Policy: area of search

- 3.5 The addendum acknowledges that the application site does not lie within the current broad areas of search for extraction of coal and other minerals identified in the Midlothian Local Plan (MLP). However, the addendum argues that the terms of paragraph 3.9.14 of the MLP override this position insofar as Airfield will substitute for an existing area of search in Midlothian which the applicant submits is not viable.
- 3.6 This policy interpretation is not accepted. It is worth noting that Midlothian Council's own policy planners, in acknowledging the terms of MLP para 3.9.14, consider that this reference does not confer status on Airfield as an area of search. They note that the MLP does advise that the Airfield area has some potential for opencast coal extraction: however, they further note that there remain clear provisos which would have to be addressed in bringing forward any proposals for consideration as an area of search. This includes a requirement that any proposals should reflect a reduced area, with those parts considered to be sensitive in landscape terms removed.
- 3.7 The applicant's assertion that Airfield's inclusion within the adopted Midlothian Local Plan demonstrates that the area of search at Airfield has already been subject to public consultation is simply not accepted. Its inclusion as a pre-public local inquiry amendment was at an advanced stage in the local plan preparation process, allowing for minimum public involvement. In addition, there is no plan indicating the detailed extent of the area of search such that would have facilitated public comment.
- 3.8 Thus, while the applicant submits that the Mountskip/Stobs area of search is not viable, it does not follow that Airfield, and specifically the site of the application, should automatically qualify as a replacement area of search. As noted in the Executive Director of Environment's report to ELC Cabinet on 13th October 2009, the MLP clearly requires that further work be undertaken before Airfield could be considered for area of search status. There is nothing in the applicant's additional information that suggests that this development plan position has changed.

Planning Policy: consistency with SPP

- 3.9 In response to criticism of the lack of a robust assessment of local economic and community impacts with which to set against the environmental costs (as required by Scottish Planning Policy), the applicant has submitted a further assessment of the economic impact of the proposed development (*Economic Impact of Airfield Surface Mine, Biggar Economics, January 2010*). Within the 'study area' (it is not clear if this is restricted to the whole of East Lothian and Midlothian) Biggar Economics conclude that:

- The proposed development would employ 50 people fully for five years on site
- 31 (63%) of these employees would be likely to reside in the study area
- In addition, during the 6 month start up phase and the one year restoration phase, 25 jobs 'for residents in the study area' and 40 jobs for residents of Scotland will be provided
- Over the 6.5 year start-up, operation and restoration period, the Airfield mine would generate a total Gross Added Value impact of £1.9 million in the study area and a total GVA impact of £28.7 million in the Scottish economy (including the study area)
- it would increase the earnings of 31 potential workers above the local average
- it would contribute a community fund of £500,000 over the duration of the project (*note: there is no indication that this would be available to projects and groups within East Lothian*)
- the Coal Authority would receive a payment of about £200,000 to put towards activities such as mine water remediation schemes
- there would be an annual business rate payment of £100,000 to Midlothian Council

3.10 The Council's Economic Development Manager has reviewed the Biggar Economic study. She notes that there is no guarantee that the additional jobs could or would be taken up by local residents in view of labour market competition and therefore the income benefits could be diluted. In addition, she highlights that tourism is the single largest private sector employer in East Lothian with visitors attracted by its tranquillity, attractions and opportunities for outdoor pursuits, both coastal and inland. This could be impacted on by perceptions of a poor environment.

3.11 It is also worth noting that the perceived economic benefits that might arise from the Airfield mine are unlikely to be of any greater benefit/importance within the study area than they would be in many other areas of Scotland. For example, neither East Lothian nor Midlothian has excessive rates of unemployment such that there would be a particular justification for the mine here. This is significant since Scottish Planning Policy, para 243, advises that local or community benefits will only arise where the extraction generates employment which is *particularly beneficial* in the area and jobs are genuinely available to local communities.

3.12 Accordingly, there is nothing in the applicant's additional economic impact information to suggest that the proposed mine would provide sufficient local or community benefits that clearly outweigh the likely impacts of the extraction. Indeed, the applicant's response to representations on planning policy matters advises that 60% of direct

employees would reside within 20 kms (12 miles) of the site, with over 80% within 25 kms (15 miles). In both cases, this definition of local could include people living in Edinburgh, hence could hardly be termed a local benefit.

Noise

- 3.13 The Council has previously indicated that the application did not demonstrate to its satisfaction that the proposed development met the requirements and criteria of PAN50 Annex A, *The Control of Noise at Surface Mineral Workings*. Accordingly, it was submitted that the application was contrary to its provisions and to MLP Policy MIN1 and ELSP Policy ENV8.
- 3.14 The Council's Environmental Protection Manager has reviewed the applicant's additional information. He notes that it is stated that properties within East Lothian will be the subject of a single operational standard based on being an exceptionally quiet rural area, the most onerous standard applicable. He emphasises that on this basis any introduced noise source will become more noticeable.
- 3.15 The Environmental Protection Manager continues to dispute the applicant's assertion that the formation of protective screening mounds on overburden mounds is a temporary activity which does not affect properties in ELC. He is of the view that all operational work relating to the construction/removal of overburden mounds should be subject of a lower noise limit. He notes that in operational scenarios 1 and 2, which includes overburden mound excavation and backfill, the noise levels at Melvin Hall and Tynemount Cottages are close to the 45db_{LAeq 1hr} limit. This assumes the bulldozer is only operational for 50% of the time and that there is noise attenuation from perimeter bunds. As the height of the overburden mounds increases then the effectiveness of perimeter mounds will decrease until they are not effective: thus, the noise levels at noise sensitive receptors will increase.
- 3.16 Accordingly, the Environmental Protection Manager remains of the view that the operational noise scenarios are not worst case and the required site noise limits in ELC and MLC will not be met at all stages of work. Should these be exceeded then noise mitigation will be very difficult: modelling already assumes attenuation due to perimeter mounds, temporary screening mounds, silenced plant and plant only operating for 50% of the time. In short, he believes there is no room for manoeuvre.
- 3.17 There is nothing in the applicant's additional information that suggests that the Council's previous concerns regarding noise impacts from the various stages of the proposed development has changed. On that basis, the Council should continue to submit that the proposed development is contrary to SPP and to MLP Policy MIN1 and ELSP Policy ENV8.

Landscape and Visual Impact

- 3.18 The applicant's further information does clarify some of the matters raised by this Council about the proposed development's landscape and visual impact, particularly within an Area of Great Landscape Value. These relate in particular to landscape management, maintenance and aftercare matters. If the development were to be permitted then there would be support for the intended retention and protection of the established tree belts along the north-eastern boundary of the site and to the north and south of the Sawmill, and the two woodland strips in the south-eastern part of the site. It is recommended that the protection of the tree belts and wooded areas be in accordance with BS 5837: 2005 ~ *'Trees in relation to construction'*. The positioning of the protective barriers should also safeguard the retained trees from the construction and temporary storage of material within the bunds.
- 3.19 However, as previously stated by this Council and responded to within the addendum, new/replacement hedgerow and tree planting post-excavation and ground restoration is a long term project. The addendum response *'concludes that the whole development is a short term change to the landscape'*. While this might more accurately reflect the earthworks reinstatement, this is not the case for the new hedgerows and tree planting that are a significant feature of the site as existing and contribute to its AGLV status. The timescale for hedgerows and trees to visually replace those existing is dependent on the size and species of hedging and trees when planted, environmental conditions, ground conditions and soil quality, exposure and climatic conditions. It would not be unrealistic for the hedgerows and groups of new trees to take up to 10 years to reasonably establish and become visible within the scale of the site from distant views. However, in respect of individual trees, these are likely to take in excess of 30 years to visually punctuate the landscape, at which time the landscape should be satisfactorily replaced, albeit young in comparison to what will be lost by the extraction operations.
- 3.20 While the addendum's photomontages depicting restoration appear to accurately depict the landform restoration, they do not appear to address a realistic timeframe in depicting the replacement landscape planting of hedgerows and trees.
- 3.21 It remains a particular concern that no detailed topographic plan identifying the site's main physical landscape features, including hedgerows, individual trees, groups of trees and woodlands, has been prepared before any works commence. Such a plan could be used as the baseline for securing an accurate, if not improved, landscape plan on completion of the individual phases to mitigate and in time replace the landscape that would be lost should the proposed development be granted permission. This would ensure the accuracy and reliability of the aftercare scheme, using the baseline plan as a reference to restore and improve the landscape to meet with planning conditions. It would also be a helpful reference document to compare and contrast with the proposed

aftercare scheme before granting any approval, thus ensuring that the restoration work was to the satisfaction of the Planning Authority.

- 3.22 Concerns over the timescale and impacts on the historic environment aside, the proper reinstatement of the landscape features, together with the landscape management and maintenance, if correctly implemented, could in time rejuvenate the area giving completeness to these hedgerows, woodlands and individual specimen trees. The lack of a detailed topographic plan compromises this. This, together with the extended timescale for full reinstatement of important landscape features, suggests that the further information supplied has not demonstrated that the objectives and overall integrity of the AGLV within which the site is located will not be compromised. Accordingly, it remains the view that the proposed development is contrary to Structure Plan Policy ENV1d and ENV8 and to MLP Policies RP18, RP6 and MIN1.

Built Heritage

- 3.23 This Council's original response considered it likely that the proposed development would have an adverse impact on the setting of nearby Listed Buildings within Midlothian, suggesting that this could be contrary to ELSP Policies ENV1c and ENV8 and to MLP Policies RP18 and MIN1. The applicant notes that Historic Scotland (HS) have not objected to the application, albeit that HS acknowledge that the scope of their response on listed buildings relates only to 'A' listed buildings and their settings. Neither of the two listed buildings at Oxenfoord are in this category. While it is a matter for Midlothian Council to assess the impact of the proposed development on these listed buildings and their setting, this Council's concerns remain.

Air Quality

- 3.24 The Council did not object to the proposed development on air quality grounds but made a number of comments, particularly in relation to the practicalities of monitoring and enforcement of dust. The Environmental Protection Manager notes in the addendum the suggestion that the applicant will install real-time boundary particulate monitoring and shall suspend all adjacent operations when pre-arranged trigger levels are exceeded. This is to be conducted in accordance with a protocol approved by Midlothian Council. The EPM re-iterates his original comments that "*The various monitoring methods to be adopted by Scottish Coal should be in accordance with those described in Paragraphs 6.58-6.60 and A1.53-A1.69 (Annex 1) of Local Air Quality Management: Technical Guidance LAQM.TG(09).*" Trigger levels would also need to take account of the relevant Air Quality Objectives of 50ug/m³ (24-hour mean) and 18ug/m³ Annual Mean.
- 3.25 Para 3.71 of the Cabinet report of 13th October 2009 advised that the EIA dust assessment incorrectly specifies the PM_{2.5} target level in Scotland. The applicant's response and their statement that the objectives for PM₁₀ and PM_{2.5} have been considered within the original assessment are accepted. The original representation made by ELC

served to highlight the fact that the proposed limit values and Objectives for PM_{2.5} had not been incorporated into domestic legislation as yet, contrary to a statement made in Para 2.19 of the original Air Quality Report (Appendix 8 of the EIA).

- 3.26 Para 3.73 of that previous Cabinet report noted that there may be practical difficulties in conducting real-time monitoring around the proposed site, agreeing trigger levels and responding effectively to incident. Although continuous monitoring and reporting can be conditioned as part of any planning consent, via an Environmental Management System, concerns persist about the practicalities of enforcing such a condition if complaints are received from East Lothian residents at Tynemount Cottages, Tyneside Villa and West Byres. Any monitoring equipment to be used should be provided with a modem link on-site and be provided with necessary software to allow Local Authority Officers to inspect emissions data with as short a delay as possible, e.g. 1-hour logging as a minimum for particulates.
- 3.27 Para 3.74 of that Cabinet report advised that methods for particle monitoring should include approved methods for measuring PM₁₀ and PM_{2.5}. Any monitoring should focus on relevant locations where exposure to Particulates is likely to be highest. The suggestion to measure close to source does not provide an accurate reflection on exposure levels at residential properties where the Air Quality Objectives apply. The Environmental Protection Manager suggests that any monitoring equipment be located as close to sensitive receptors as possible, rather than close to source. As stated above, the various monitoring methods to be adopted by the applicant should be in accordance with those described in Paragraphs 6.58-6.60 and A1.53-A1.69 (Annex 1) of Local Air Quality Management: Technical Guidance LAQM.TG(09). This can be in accordance with a protocol approved and agreed by Midlothian Council in consultation with others.

Transportation

- 3.28 The Council's previous report advised that the Head of Transportation would require the localised widening of the junction of the B6371 with the coal handling area at Cockenzie Power Station, to avoid HGV overrun onto the verge. The Head of Transportation also required that the existing road drainage system in this area be cleaned annually. In addition, if there were to be a substantial increase in HGV movements to the power station, than a future maintenance scheme, partially funded by the operator, should be put in place to resolve road surface deterioration issues that are already evident on the approach to the coal handling plant.
- 3.29 The applicant takes the view in the addendum that there is no particular issue with vehicles overrunning onto the entrance verge, although notes that it would be open to the applicant to carry out some localised resurfacing within the adopted road verge should this prove to be a problem. However, the Head of Transportation advises that it is the verge

opposite the entrance rather than adjacent to it that is currently being affected by vehicles exiting the plant and turning south. The Head of Transportation also notes that there is already an existing road surface deterioration problem here since the road is programmed for resurfacing this year. Finally, he confirms that the road drainage system at this location needs regular cleaning due to the accumulation of coal dust and that any additional traffic to the plant will add to this.

- 3.30 On this basis, there is nothing in the addendum that would change the Head of Transportation's views detailed in the previous Cabinet report.

Other Matters

- 3.31 The addendum notes that any Section 75 Agreement should include for the appointment by Midlothian Council, funded by the Scottish Coal Company Ltd, of an **independent compliance assessor** to monitor site operations and compliance with planning permission and to ensure that the restoration and aftercare bonds remain sufficient.
- 3.32 If Midlothian Council is minded to grant planning permission then East Lothian Council should require that this be a joint appointment and its remit subject to joint agreement.

4 POLICY IMPLICATIONS

- 4.1 None

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 The report is not applicable to the well-being of equalities groups and Equality Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Planning application 09/00349/FUL submitted by the Scottish Coal Company Ltd to Midlothian Council for the extraction of coal by surface mining methods on land at Airfield, near Cousland, Midlothian, together with Supporting Statement and Environmental Statement and Appendices dated July 2009

- 7.2 Report by Executive Director of Environment to 13th October 2009 Cabinet, *Consultation from Midlothian Council: extraction of coal by surface mining methods at Airfield, near Cousland, Midlothian*
- 7.3 Airfield Surface Mine: Addendum to Environmental Statement and Planning Application Statement, Scottish Resources Group/Scottish Coal, June 2010
- 7.4 Midlothian Local Plan 2008
- 7.5 Edinburgh and Lothians Structure Plan 2015
- 7.6 Scottish Planning Policy
- 7.7 Planning Advice Note 50 and Annexes, Controlling the Environmental Effects of Surface Mineral Working, Scottish Government, 1996-2000

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REPORT TO: Cabinet

MEETING DATE: 14 September 2010

BY: Executive Director of Environment

SUBJECT: North Sea Cycle Route through East Lothian:
Feasibility Study

6

1 PURPOSE

- 1.1 To inform Members about the outcome of this study into the development of the North Sea Cycle Route (NSCR) and its relationship with the Coastal Tourism Strategy and to present the recommendations for its future implementation.

2 RECOMMENDATIONS

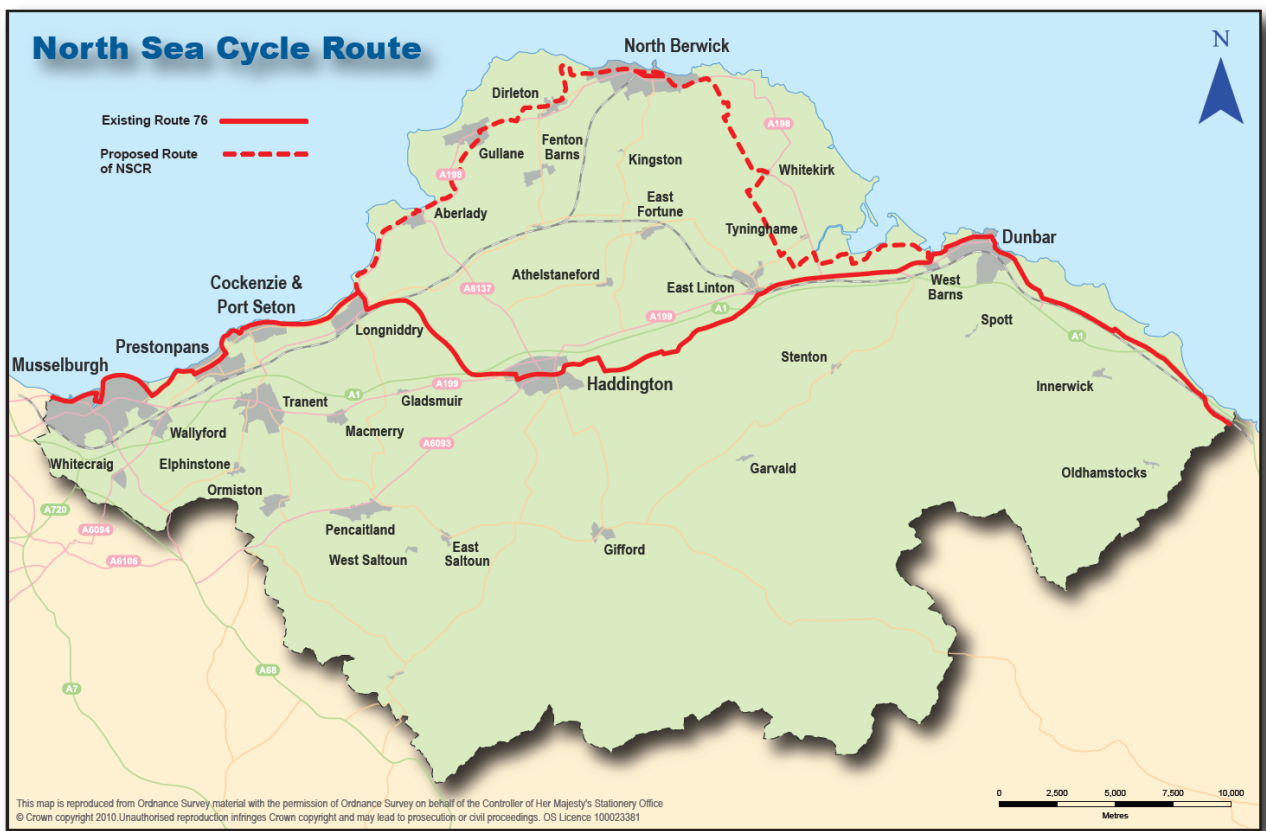
- 2.1 That Members approve the recommendations of the NSCR feasibility study for the re-routeing of the North Sea Cycle Route around the coast of East Lothian and the development of a wider network of linking routes in East Lothian;
- 2.2 That Members note the recommendation in the Council's Coastal Tourism Strategy to "Establish and promote the North Sea Cycle Route";
- 2.3 That Members approve the route signing of the Round the Forth Route 76 as the NSCR in the short term;
- 2.4 That Members approve the development of a route from Longniddry to East Linton via the coastal settlements which will be signed as the NSCR on completion; and
- 2.5 That Members note: the funding proposals for this project over the short, medium and long terms; that work will continue on the development of specific schemes which will be considered for implementation if external funding is obtained and as internal resources permit.

3 BACKGROUND

- 3.1 The NSCR was officially opened in June 2001 and comprises a 6,000km route around the coasts of the eight countries bordering the North Sea (see www.northsea-cycle.com) and the Council contributed to the cost of

developing of the route. However, as there were only sufficient funds for signing, the route follows the existing National Cycle Route 1 (NCN1) between Berwick-upon-Tweed and Edinburgh via Galashiels. There was not a suitable route around the East Lothian coast to sign as the NSCR. Between Dalkeith and Edinburgh, NCN1 enters East Lothian and runs through Whitecraig and Musselburgh, a distance of some 6km.

- 3.2 It has been a longstanding aspiration of the Council (and also Scottish Borders Council) to route the NSCR around its coast. This would link the various coastal settlements and provide an attractive route for cyclists and other users and generate economic activity at businesses along the route. Scottish Borders Council has recently signed a route close to its coast northwards from Berwick-upon-Tweed to Cocksburnpath as the NSCR, increasing the demand for a continuation of the route around the coast of East Lothian.
- 3.3 Sustrans is the UK's leading sustainable transport charity which promotes active travel and aims to reduce the environmental and resource impacts of transport. It is developing its Round the Forth Route (Route 76) from St Andrews to Dunbar via Stirling and this currently follows an inland route via Haddington and East Linton through East Lothian. In the short term, it is proposed to sign the NSCR along Route 76 to provide a through route in East Lothian. In the longer term, when a suitable route is developed around the coast, it will be signed as the NSCR and Route 76 as shown on the attached plan.



Coastal Tourism Strategy

- 3.4 In a parallel study, the Council appointed consultants to develop a Coastal Tourism Strategy for East Lothian setting out how tourism at the coast could be managed and promoted, while sustaining the rich diversity of the coast. Meeting the needs of the growing range of user groups was one of the items to be addressed. The consultant was given a copy of the NSCR feasibility report to consider as part of the study.
- 3.5 The Council has now approved its Coastal Tourism Strategy and cycling is included as one of the elements to be promoted by the proposed “Activities” delivery group. A number of cycling related projects are included in the Strategy’s Action Plan. These include:
- Promote path and cycle networks through the core path plan and adopt a consistent approach to signage;
 - Establish and promote the North Sea Cycle Route; and
 - Integrate with initiatives and programmes across SE Scotland, especially infrastructure eg. Edinburgh promenade, coastal walking and cycle routes.
- 3.6 The introduction of similar long distance cycle routes in other parts of the UK has increased the number of cyclist visitors and stimulated economic activity at businesses along the routes. In 2006, the NSCR in the North-East of England attracted some 60,000 trips and spending of around £2.9million. Similarly, the C2C route from Whitehaven to Sunderland attracted 241,000 trips generating £6.5million and safeguarding 105 fte jobs.
- 3.7 Within East Lothian, the John Muir Way has been established as a walking route around the coast and this also forms part of the North Sea Trail, a walking route around the coast of the North Sea similar to the NSCR (see www.northseatrail.org). Some sections of the North Sea Trail, particularly in the west of the County, are suitable for cycling and will be incorporated into the NSCR. The eastern section of the John Muir Way is not suitable for cycling, hence the need for a study to identify a suitable route for cycling.
- 3.8 A coastal route in East Lothian would link the coastal communities and provide opportunities for both recreational and commuter cycle trips. It would be marketed via the NSCR website and have the potential to attract a substantial number of visitors from the continent where there is a greater tradition of cycle touring as a leisure activity. The route passes through the many ferry ports around the North Sea linking Great Britain with the continent and providing the opportunity to cycle sections of the route between the ports.

Coastal Cycle Route Study

- 3.9 The Council submitted a bid to Sustrans in August 2007 for funds to carry out a feasibility study into the routeing of the NSCR around the East Lothian coast and subsequent implementation of recommendations.
- 3.10 The cost of the study was £15,000 and the Council agreed to pay half this amount. Sustrans subsequently approved the bid in June 2008.

- 3.11 Peter Scott Planning Services was appointed by the Council to carry out the study and this was completed in April 2009 with copies of the final report submitted to the funding partners. A copy of the final report has been placed in the Members' Library for reference.
- 3.12 The Consultants consulted a wide range of people and organisations and two workshops were held, one for Community Councils and ELC Members and the second for members of the East Lothian Cycle Forum.
- 3.13 The final report identifies a proposed route around the coast, see the attached plan, together with a number of potential links to other cycle tracks, the surrounding minor road network and visitor attractions. This will allow the route to be used for both long-distance rides and shorter circular rides within East Lothian.
- 3.14 The report also includes a number of recommendations together with a detailed costed implementation programme running to some £1.6 million spread over a 10 year period. The summary of key findings and Action Plan are attached as Appendix A.
- 3.15 The study makes the following recommendations to the Council:
- a. agree an Action Programme for the North Sea Cycle Route and Associated Initiatives;**
 - b. agree annual and rolling 3-year budgets to achieve the proposed Action Programme;**
 - c. consult and involve the East Lothian Cycle Forum in progressing the North Sea Cycle Route;**
 - d. establish a North Sea Cycle Route Development Group;**
 - e. identify a dedicated North Sea Cycle Route Development Officer; and**
 - f. develop a Monitoring and Reporting Programme which should incorporate:**
 - i. route condition recording and reporting**
 - ii. user surveys**
- 3.16 The proposed implementation programme will be examined to see which items could be included within existing budgets and work programmes.
- 3.17 There will still be a requirement for additional funding to complete the proposed route and discussions have already taken place with Sustrans who have indicated that they are keen to assist in progressing the route and would welcome bids for match funding to complete sections of the route. There is also the possibility of European funding at some point in the future and discussions have taken place with the Economic Development Unit to identify potential funding streams. It must however be recognised that the funds available to the Council to spend on transport will decline over the foreseeable future and that a decision will have to be made as to the priority that can be given to this additional, albeit worthwhile, project.

- 3.18 The Landscape and Countryside Section is generally responsible for the existing off-road path network in the County and several sections of the proposed route fall into this category. Where new sections of route are developed, appropriate maintenance arrangements will be put in place.

4 POLICY IMPLICATIONS

- 4.1 The proposal ties in with a number of Council policy initiatives including promoting physical activity, tourism and sustainable transport.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 An Equalities Impact Assessment has been carried out and no significant negative impacts have been identified.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – Members will note the funding implications of this proposal. In the short term, it is proposed that only work which can be contained within existing budgets or funded from external sources will be implemented. Work will continue on the development of specific schemes which will be considered for implementation in the longer term if Council resources become available or external funding is obtained.
- 6.2 Personnel - The development of the NSCR will be implemented by existing staff as part of their current duties.
- 6.3 Other – None.

7 BACKGROUND PAPERS

- 7.1 Report to the Environment and Technical Services Committee, 6th March 2001.

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APPENDIX A

NORTH SEA CYCLE ROUTE (NCN 76) IN EAST LoTHIAN: FEASIBILITY STUDY SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

The Feasibility Study

This study assesses the feasibility of developing the North Sea Cycle Route in the vicinity of East Lothian's coast. It has been undertaken on behalf of East Lothian Council and Sustrans, with inputs from representatives of the Council, community councils with coastal interests, cycling groups and selected land managers. The analysis, findings and recommendations are presented as a Consultative Report, to elicit feed-back from interested parties (see contact information in report).

Key Findings and Recommendations

Based on desk research, initial consultations, route surveys, other assessments, and experience of good practice in the planning, developing and marketing of strategic cycling routes, **the principal findings and recommendations of the Feasibility Study are –**

- a. **there is substantial scope for the development of the North Sea Cycle Route in the vicinity of East Lothian's coast, from Musselburgh to Dunglass**
- b. **the proposed cycle route will comprise, also, the East Lothian sections of the Round the Forth Cycle Route and the National Cycle Network (Route 76)**
- c. **development of the North Sea Cycle Route will complement, extend the range of uses and enhance the quality and sustainability of the John Muir Way, help to progress elements of East Lothian's *Core Paths Plan*, provide a 'spine' and catalyst for developing local cycling networks and enhance connections between East Lothian's coastal communities** – in particular, by up-grading or providing new sections of multi-use paths for the benefit of local and visiting walkers, cyclists and, where sustainable, horse riders and wheelchair users
- d. **development of the North Sea Cycle Route and growth in cycling activity will help to achieve a range of national, regional and local policies** – including many of the objectives and actions in East Lothian's *Single Outcome Agreement* and, in particular, policies and programmes relating to -
 - sustainable and safe travel
 - health and active lifestyles
 - tourism
 - economic development
 - countryside access and enjoyment
 - climate change
- e. **more specifically, effective development and marketing of the cycle route and associated programmes will help to -**
 - **overcome current shortfalls in cycling provision in East Lothian's coastal areas and the lack of a 'cycling culture' within its communities**
 - **encourage residents to cycle for recreation, sport and trips to school, work, etc.**
 - **promote East Lothian's coast as an attractive destination for cycling day and tourist visits, with associated economic benefits**
- f. **while the recommended route of the North Sea Cycle Route will attract and cater for a broad spectrum of cyclists, including families and less confident cyclists, it may not satisfy road cyclists, who are committed to covering longer distances at speed** – this results from agreement, at the outset, that this study should focus on cycling opportunities on off-road paths, shared-footways and quieter roads; particularly, where these enable enjoyment of the coast and coastal heritage

g. a Vision for the North Sea Cycle Route in East Lothian is recommended –

The North Sea Cycle Route in East Lothian will comprise a continuous cycle route in the vicinity of East Lothian's coast, which encourages local residents and visitors to cycle, and to appreciate and enjoy East Lothian's coastal landscapes, natural and cultural heritage, and settlements. Much of the route will be available for use by walkers, cyclists and, where practical and sustainable, by horse riders and all-abilities users, for recreation, tourism and trips to work, school, etc.. The cycle route will achieve social, economic and environmental benefits, through high quality cycling provision and effective marketing.

The cycle route will be developed, promoted and managed as an integral component of the multi-national North Sea Cycle Route and the Round the Forth Cycle Route (Route 76 of the U.K.'s National Cycle Network). Several sections of the cycle route will share the route of the John Muir Way and the North Sea Trail – enhancing opportunities for enjoyment of these routes by a range of recreational users.

h. a recommended route for the North Sea Cycle Route has been identified (Maps A.-D.; Figure 8.1). Assessments demonstrate that strategic sections of this route will -

- **satisfy the route planning criteria for the National Cycle Network** – in summary: safety, coherence, directness, attractiveness and comfort
- **achieve the suggested objectives for the North Sea Cycle Route in East Lothian** – in summary: providing a continuous route, which meets NCN criteria; connecting settlements; providing and promoting tourism, recreational and functional cycling; facilitating enjoyment of the coast and 'showcasing' its natural and cultural heritage; contributing to the visitor economy; and encouraging safe and responsible cycling

i. a 10-year action programme is recommended for developing and improving the North Sea Cycle Route. The estimated overall cost of this programme is £1.58m - including short-term costs (Years 1-3) of £0.50m, medium-term costs (Years 4-7) of £0.87m, and longer-term costs (Years 8-10) of £0.21m

j. in addition to the development of the North Sea Cycle Route, the recommended action and investment programme will achieve significant, and often essential, improvements to the John Muir Way and other core paths

k. initial development and subsequent maintenance and marketing of the North Sea Cycle Route will require substantial and sustained investment and staff resources. Potential sources of funding and other support (e.g. volunteers) have been identified

l. to progress the implementation of the North Sea Cycle Route and associated programmes, it is recommended that East Lothian Council should –

- **prepare and agree an Action Programme and annual and 3-year budgets** for the North Sea Cycle Route and associated initiatives
- **involve the East Lothian Cycle Forum** in progressing the North Sea Cycle Route
- **establish a North Sea Cycle Route Development Team** comprising staff with cycling, roads, countryside and marketing responsibilities and a remit to develop, implement and keep under review the Action Programme
- **identify a North Sea Cycle Route Development Officer** from existing staff, to plan and coordinate the implementation of the Cycle Route, secure funding and liaise with external parties
- **develop a route condition and user monitoring and reporting programme.**

Figure 9.1 North Sea Cycle Route: Development Priorities and Costs

Route Sections and Subsections	Priority	Cost Estimates (£'s, rounded to £'00)		
		Years 1-3	Years 4-6	Years 7-10
Section A. Musselburgh to Longniddry				
A1. East Lothian Boundary to River Esk	A	£ 1,600		
A2. River Esk to Prestonpans	B		£ 64,100	
A3. Prestonpans to Port Seton	A	£ 27,400		
A4. Port Seton to Longniddry (A198)	B/C		£ 80,500 ¹	£ 168,500
A. Total Costs		£ 29,000	£ 144,600	£ 168,500
Section B. Longniddry to North Berwick				
B1. Longniddry (A198) to Aberlady	B		£ 211,500	
B2. Aberlady to Gullane	A	£ 110,200	£ 32,000 ²	
B3. Gullane to Dirleton	A/B	£ 78,400	£ 70,200 ³	
B4. Dirleton to North Berwick	A	£ 43,200		
B. Total Costs		£ 231,800	£ 313,700	
Section C. North Berwick to Dunbar				
C1. North Berwick to Whitekirk	A/B/C	£ 71,700 ⁴	£ 14,500	£41,300 ⁵
C2. Whitekirk to A198 (Ware Road)	B		£ 97,300	
C3. A198 (Ware Road) to J. Muir C. Park (W. Barns)	B		£ 116,200	
C4. John Muir Country Park (W. Barns) to Dunbar	A/B	£ 45,100	£100,000 ⁶	
C. Total Costs		£ 116,800	£ 328,000	£41,300
Section D. Dunbar to Dunglass				
D1. Dunbar to Torness	A/B	£ 109,600	£ 76,000 ⁷	
D2. Torness to Dunglass	A	£ 600		
D. Total Capital Costs		£ 110,200	£ 76,000	
Allowance for legal fees for traffic orders		£10,000	£10,000	
Sections A. to D. Total Costs		£ 497,800	£872,300	£209,800

Priorities:
A: Early Action (Years 1 to 3)
B: Medium-Term (Years 4-6)
C: Longer-Term (Years 7+)

Notes:
¹: proposals for Port Seton to the Dean, Longniddry;
²: improvements to Luffness to Saltcoats Farm section of John Muir Way;
³: resurfacing woodland path at Archerfield;
⁴: Beach Road to Dunbar Rd./ Tantallon Rd. round-about in North Berwick;
⁵: improvements to Gleghornie to Whitekirk right of way;
⁶: new path from John Muir Country Park (West Barns) to Biel Water (capable of withstanding periodic flooding);
⁷: resurfacing of recently constructed cyclepath east of Cement Works

Figure 10.2 Initial Outline Action Programme

Key Tasks	Year 1 2009/10	Year 2 2010/11	Year 3 2011/12	Year 4 2012/13	Year 5 2013/14	Year 6 2014/15	Year 7 + 2015 -
Strategic Planning, Resource Allocations and Programming							
a. Consultations on Feasibility Study							
b. Agree in principle to develop Cycle Route							
c. Establish Steering Group & Development Team							
d. Appoint Development Officer (initial period)							
e. Prepare/agree detailed Action Programme							
f. Prepare/negotiate Funding Strategy							
g. Prepare/agree Marketing Strategy							
Phase 1: Early Action Programme (see scheduling of implementation works in Figure 9.1)							
a. Consult/negotiate with landowners, interest groups, statutory agencies, etc.							
b. Detailed surveys and designs							
c. Environmental & transportation assessments, regulatory approvals							
d. Funding bids and negotiations							
e. Tendering and contract approvals							
f. Implementation of routes, signing, etc.							
Phase 2: Medium-Term Action Programme (see Figure 9.1)							
a. Consult/negotiate with landowners, interest groups, statutory agencies, etc.							
b. Detailed surveys and designs							
c. Environmental & transportation assessments, regulatory approvals							
d. Funding bids and negotiations							
e. Tendering and contract approvals							
f. Implementation of routes, signing, etc..							
Phase 3: Longer-Term Action Programme (see Figure 9.1)							
a. Consult/negotiate with landowners, interest groups, statutory agencies, etc.							
b. Detailed surveys and designs							
c. Environmental & transportation assessments, regulatory approvals							
d. Funding bids and negotiations							
e. Tendering and contract approvals							
f. Implementation of routes, signing, etc.							
Maintenance, Monitoring and Marketing Programmes							
a. Route condition surveys and reporting							
b. Baseline/follow-up user surveys							
c. Routine user counts (automatic counters)							
d. Route maintenance and improvements							
e. Development, maintaining and up-dating Website, publications, etc							
f. Events, other marketing and publicity ¹							

Notes: ¹ Information, marketing, awareness-raising events, etc should not proceed until initial sections of the Cycle Route have been developed/brought up to desired standards.



**MINUTES OF THE MEETING OF THE
LICENSING SUB COMMITTEE OF THE CABINET**

**THURSDAY 13 MAY 2010
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

7

Committee Members Present:

Councillor D Berry (Chair)
Councillor L Broun-Lindsay
Councillor J Williamson

Council Officials Present

Mr I Forrest, Senior Solicitor
Ms K MacNeill, Corporate Legal Adviser
Mr I Dalgleish, Transportation Services Manager

Visitors Present:

PC H Bowsher, Lothian & Borders Police

Clerk:

Mrs F Stewart

Apologies:

Provost S Richardson
Councillor S Currie
Councillor T Trotter
Councillor J Caldwell
Councillor J McNeil
Councillor B Turner

PUBLIC

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Licensing Sub-Committee unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

SUMMARY OF PROCEEDINGS

1. Applications for Grant of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered four applications for grant of a licence and three were granted and one was refused.

2. Applications for Renewal of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered two applications for renewal of a licence and both were granted.

3. Scottish Government (Scotland) Act 1982 – Notification of Offences

The Sub-Committee was informed of three notifications of offence and agreed to take no further action.

4. REPORT ON RESPONSES TO LETTER FROM EAST LoTHIAN TAXI AND PRIVATE HIRE ASSOCIATION

Mr Forrest, Senior Solicitor, advised that a letter dated 1 February 2010 had been received from the East Lothian Taxi and Private Hire Association (ELTPHA). The letter had been placed on the agenda for the April meeting but no representative from ELTPHA had been available to attend the meeting. Colin Paxton, Co President of ELTPHA, was present today.

Mr Forrest advised that the letter had been circulated to the relevant Council departments for their comments. The report responded to each of the points made in the letter and a representative from the Police and the Council's Transportation Department were in attendance to offer further advice, if required.

The Chair suggested that the Sub Committee consider each point, one by one, from Paragraph 3.3 of the report.

Point 1 ELTPHA believed that Class 2 medicals were too severe for taxi drivers and suggested that it would benefit the Council and ELTPHA members if there was a pro forma letter which drivers could take to their own doctors.

Mr Forrest advised that, subject to satisfaction regarding their content and cost, there was no particular reason why a pro forma, as was being proposed, could, not be introduced. It was therefore proposed that this issue be continued with a view to a further report being received by the Sub Committee.

Point 2 ELTPHA raised the issue of taxi drivers, who might fail their medical, not being entitled to a refund of the £50 fee.

*ELTPHA accepted that the fee was an **application fee** designed to cover the cost of processing the application.*

Point 3 ELTPHA requested an extension to the opening hours of the Licensing office.

It was the view of the Law and Licensing Division that, in the present financial climate, there were not sufficient resources to guarantee the ability to extend office opening hours beyond what was presently provided. However, the Chair of the Sub Committee agreed that consideration should be given to extending the opening hours on 1 or 2 days during the week. He suggested that a degree of flexibility on the current hours would also be appreciated, for example, moving one of the 10.00 – 12.00 opening periods to another time more convenient for the taxi drivers.

Point 4 ELTPHA members believed that when a car had been tested, licence holders should not have to Travel to Haddington to collect Plates.

The report advised that a new system was being brought in which was expected to speed up the supply and delivery of plates. Mr Paxton was satisfied with the progress made so far and was currently in negotiations with the licensing department on this matter.

Point 5 ELTPHA raised the issue of licence holders being charged to have a car tested and also having to bear the cost of an MOT test at approximately £50, whereas tests in other Councils included a certificate of fitness. Mr Paxton also requested clarification on when a retest fee of £40 was payable.

The report stated that the Transport Division were not at present, in a position to issue Certificates of Fitness and it was not something which was likely to be brought in in the near future. Ian Dalgleish, Transportation Services Manager, explained that anything that was allowed to be returned for MOT was free, otherwise it was chargeable.

Point 6 ELTPHA raised concerns about the cardboard laminate licences issued to drivers and suggested that an electronic licence could be issued.

Kirstie MacNeill responded that progress had been made on updating the licences. She showed examples of designs currently being developed and advised that the new licences should be available in approximately 3 months. The Licensing Division would also review where the licences could be issued from.

Point 7 ELTPHA requested that the Sub Committee consider permitting the transfer of plates and licences when a business was sold.

Ian Forrest advised that, in section 10 of the Civic Government (Scotland) Act 1982, a local authority had the power to grant a licence or renew it. There was no specific power to transfer an existing licence to another holder.

He acknowledged that some neighbouring Councils appeared to allow some form of sale/transfer of plates. However, Mr Forrest advised that the Transportation Division still had to form a final view on this issue and it was proposed that this matter be investigated further with a view to seeking clarification on the practice adopted by neighbouring councils.

In response to a question by Mr Paxton, the Chair responded that this investigation could be expected to be completed within 12 months.

Point 8 ELTPHA proposed that licences could be issued for a 3-year period, cutting down on administration and costs for both the Council and the Association.

The Police indicated that they would be reluctant to endorse this suggestion, due in part to the number of applications received where prior offences had not been disclosed. After some discussion, the Sub Committee agreed to review the situation in 12 months.

Decision

The Sub Committee agreed to:

- i) consider the terms of the letter referred to above and the terms of the initial comments; and
- ii) approve the position outlined in the report and where proposed therein, in paragraphs 3.3 and 3.9, agree to further research and consultation and to receive a further report or reports in due course.

5. LETTER FROM APEX SCOTLAND NATIONAL TRAINING CENTRE

A letter from APEX Scotland Training Centre dated 29 March 2010 was presented to the Sub Committee for noting. In March 2010, a client had been advised that he did not need to declare certain convictions on his application form and the Sub Committee requested that APEX be notified of this. The letter from APEX advised that the service provider for the East Lothian region had been made aware of the correspondence from the Council.



**MINUTES OF THE MEETING OF THE
LICENSING SUB COMMITTEE OF THE CABINET**

**THURSDAY 27 MAY 2010
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor D Berry (Chair)
Provost S Richardson
Councillor L Broun-Lindsay
Councillor J Caldwell
Councillor S Currie
Councillor J McNeil
Councillor B Turner
Councillor J Williamson

Council Officials Present:

Mrs M Ferguson, Corporate Legal Adviser
Mr I Forrest, Senior Solicitor
Ms D Richardson, Licensing Administration Officer

Clerk:

Mrs F Stewart

Visitors Present:

PC H Bowsher, Lothian & Borders Police

Apologies:

Councillor T Trotter

**1. CIVIC GOVERNMENT (SCOTLAND) ACT 1982, SECTION 27A
CUSTODIAL SENTENCES & WEAPONS (SCOTLAND) ACT 2007
KNIFE DEALERS LICENCE**

The Executive Director of Corporate Resources submitted a report, the purpose of which was to:

- 1) propose administrative arrangements for the processing of applications for licences under the above legislation to which there are no objections;
- 2) propose, for adoption into Council policy, a form of words giving a working definition of “domestic use” for the purposes of the above legislation; and to
- 3) bring to the attention of the Sub-Committee the attached correspondence from potential applicants for the above licence contending that the applicants in question do not require such a licence as a consequence of the “domestic use” exemption.

1) Proposed Administrative Arrangements

Ian Forrest, Senior Solicitor, explained that the Knife Dealers Licence was a new licence which came into force as of 1 September 2009 by virtue of the Knife Dealers (Licence Conditions) Order 2009. This legislation required any person carrying on business as a knife dealer to have a licence by 1 June 2010, failing which they would be guilty of an offence.

Mr Forrest advised that approval had been given to the conditions of licence and licensing fee structure proposed at the meeting of the Licensing Sub Committee on 12 November 2009. However, the processing of applications for such a licence was not specifically delegated to the Head of Law and Licensing, meaning that all applications for this licence effectively required the approval of the Sub Committee. It was therefore suggested that, to ease the administration of the licences in future, applications to which there were no objections be granted by officers. Mr Forrest advised that there would be 4 applications for a licence to be considered by the Sub Committee today as delegated powers had not yet been approved.

2) Definition of ‘Domestic Use’ for the Purposes of the Above Legislation

Mr Forrest advised that the legislation was unhelpful in one regard as the legislation did not make provision for a definition of ‘domestic use’ with regard to the statutory exception to the requirement to hold a knife dealers licence. There still was not a definition for this purpose. He advised that Paragraphs 3.6 to 3.9 detailed definitions adopted by other local authorities and recommended the wording used by West Dunbartonshire Council at Paragraph 3.7. The Council’s Trading Standards team had indicated that this definition would be acceptable to them.

In response to a question by Councillor McNeil, Debbie Richardson, Licensing Administration Officer, advised that the cost of the licence would be £150 plus a share of advertising costs. She also confirmed that the licence would also be valid for 3 years.

Councillor Broun-Lindsay stated that this licence was an example of bad legislation and requested that this point be made to the Scottish Executive. In his view, it created work and solved nothing. Councillor Berry agreed and suggested that Mr Forrest could draft a letter expressing the Sub Committee's dissatisfaction with this legislation.

Councillor Broun Lindsay referred to Paragraph 3.7 which included garden knives in a list of knives likely to be used for domestic use. He recommended that this could be amended to read curtilage rather than garden knives to provide for instruments which would cut down shrubbery and undergrowth. The Sub Committee agreed to amend the definition of knives for domestic use to include garden or curtilage knives.

3) Correspondence from Potential Applicants Requesting Exemption on the Grounds of Domestic Use

Mr Forrest advised that decisions had to be made on the following exemption requests, as those considered to require a licence must be in possession of a licence by 1 June 2010.

1 Aldi Stores Limited (Bathgate), Pottishaw Road, Junction 4/M8, Bathgate

The Sub Committee agreed that Aldi Stores would be exempt from holding a Knife Dealers Licence.

2 Horse and Outdoor, Expo House, Unit 21a Macmerry Industrial Estate.

The Sub Committee agreed that Horse and Outdoor would be exempt from holding a Knife Dealers Licence.

3 Strawberry Corner Garden Centre, 1 Wallford Toll, Wallford

The Sub Committee agreed that Strawberry Corner Garden Centre would be exempt from holding a Knife Dealers Licence.

4 Lidl UK GmbH, 19 Worple Road, Wimbledon

The Sub Committee agreed that Lidl UK would be exempt from holding a Knife Dealers Licence.

The Police had no objection to these exemptions.

Decision

The Licensing Sub Committee agreed:

- i. to delegate authority to the Head of Law & Licensing to process applications for licences under the above legislation to which there are no objections, without the requirement for such applications to be considered by the Licensing Sub-Committee;

- ii. to adopt as Council policy the definition of “domestic use” as laid out in paragraph 3.7 hereof with one amendment to include curtilage knives;

“A domestic knife is any knife intended by the producer for use by private individuals in the home or adjoining private garden (irrespective of whether the knife is also intended to have other uses). Although each example will be dealt with on its merits, in principle cutlery, DIY and gardening/curtilage knives are likely to be domestic knives. In contrast, outdoor leisure knives intended for use away from the home or garden, knives with a purpose which is ceremonial or for display, knives that are designed to inflict injury, and knives designed only for use by traders and professionals, are likely to be non-domestic knives.”

- iii. to consider the attached correspondence and determine, with reference to the definition referred to in paragraph 2.2 above, whether the applicants in question should be required to obtain a licence under the above legislation.



**MINUTES OF THE MEETING OF THE
LICENSING SUB COMMITTEE OF THE CABINET**

**THURSDAY 10 JUNE 2010
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor D Berry (Chair)
Councillor J Caldwell
Councillor S Currie
Councillor B Turner
Councillor J Williamson

Council Officials Present:

Mr I Forrest, Senior Solicitor
Ms D Richardson, Licensing Administration Officer
Mr D Anderson, Trainee Solicitor
Ms C Molloy, Senior Solicitor

Clerk:

Mrs F Stewart

Visitors Present:

PC H Bowsher, Lothian & Borders Police

Apologies:

Provost S Richardson
Councillor L Broun-Lindsay
Councillor T Trotter
Councillor J McNeil

PUBLIC

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Licensing Sub-Committee unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

SUMMARY OF PROCEEDINGS

1. Application for Renewal of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered one application for renewal of a licence and this was agreed.

2. POSSIBLE SUSPENSION OF TAXI/PRIVATE HIRE CAR DRIVER'S LICENCE AND TAXI PRIVATE HIRE OPERATOR'S LICENCE

The Sub Committee considered suspending one licence and this was continued to a future date.

3. EXECUTOR OF THE LATE JOHN D M SMITH – REVIEW OF EXTENSION

The Sub Committee received an update on the progress towards completion of the winding up of Mr Smith's estate.

4 EAST Lothian Taxi & Private Hire Association – Proposed Increase to Fares

Colin Paxton and George Brooks, Co Chairs of the East Lothian Taxi Private Hire Association (ELTPHA), submitted a proposal to increase taxi fares by 15%. The last increase to fares had come into effect in January 2010.

Mr Paxton explained that the Association had missed an opportunity to increase fares in 2008/9 and their members now found it increasingly difficult to meet present running costs.

The Chair of the Sub Committee pointed out that inflation was considered to be approximately 5% and asked the Chairs of ELTPHA why the increase they proposed was 15%. Both Mr Paxton and Mr Brooks outlined the additional costs faced by their members and added that VAT was also expected to rise to 20%. It was therefore their view that an increase of 15% was justified. Mr Brooks was also concerned that a number of the larger taxi operations could be at risk. He pointed out that the smaller operations did not provide a 24 hour service and if larger operations failed, the public would lose this service.

Councillor Currie accepted that taxi drivers and operators had experienced substantial increases in running costs but added that the Sub Committee also had a responsibility to members of the public. He pointed out that, as fares had risen by 8% in January 2010, a further increase of 15% would mean a total increase in fares in 2010 of nearly a quarter.

The Sub Committee consulted Mr Paxton and Mr Brooks on a number of matters and discussed the ELTPHA proposal further.

There was a general consensus that an increase of 15% was too high and that 10% was considered more acceptable. Councillor Caldwell sympathised with the increased financial strain on taxi drivers and acknowledged that certain increases in costs were outwith their control.

The Sub Committee expected that operating costs could increase further over the next 12 months and suggested that, if ELTPHA accepted an increase in fares of 10% now, a proposal to increase fares could be submitted in June 2011. This position was accepted by Mr Paxton and Mr Brooks.

Decision

The Sub Committee unanimously agreed to approve an increase of 10% to the East Lothian Taxi & Private Hire Association tariffs. The Chair also suggested that it would be helpful if future proposals included more detailed information on increased costs to taxi operators.

5 DETERMINATION OF FEE FOR TEMPORARY PUBLIC ENTERTAINMENT LICENCE FOR UPRISING EAST LoTHIAN

The Sub Committee considered an application for the grant of a temporary Public Entertainment Licence in favour of Adrian Girling, 1 Mill Lane, Ruchlaw Mains, Dunbar and Uprising East Lothian for Uprising East Lothian.

A report was submitted by the Head of Law and Licensing which stated that a new range of fees for licences issued in terms of the Civic Government (Scotland) Act 1982 came in to effect as from 17 November 2009. The report stated that the fee for a commercial venture was £1,175 but it had been agreed that for non-commercial or voluntary organisations, application fees would be on a sliding scale of £25-£200 based on the estimated number of hours required by the various Council departments to process the application.

In this case, the applicant was a locally based, non-profit making group, who were intending to hold an indoor Skate/BMX Summer Activity Centre for young people at Phantassie Farm, Dunbar, for a period of 6 weeks from 6 July 2010. The applicant was also a Scottish Registered Charity.

Mr Girling advised that a barn on the farm would provide young people with a secure place to meet friends. They would also be encouraged, under supervision, to assist with practical tasks involved in creating the Activity Centre, which would include pool and table tennis facilities.

The Head of Law and Licensing recommended the Sub Committee set the fee for this application at £100.

The Sub Committee welcomed this initiative and thanked Mr Girling for the excellent work he was doing in the community.

Decision

The Sub Committee agreed to set the fee for this application at £100.