

## LEGALLY PRIVILEGED AND CONFIDENTIAL

### Cycling budget allocation

#### 1. ISSUE

- 1.1 At the Budget meeting on 9 February 2012, Council agreed "that the percentage of transport spend (net of specifically allocated external transport funding) allocated to cycling shall be a minimum of 5%, for both revenue and capital, in 2012/13 and that the percentage of spend on cycling will increase by 1% annually."
- 1.2 Cllr Bill Henderson has challenged the basis for the current cycling budget allocation which he does not believe is in line with the decision of Council. Cllr Henderson is of the view that roads and street lighting spend should be excluded when calculating the baseline transport budget to which the agreed percentage should be applied.

#### 2. BACKGROUND – OPERATIONAL CHANGES

- 2.1 On 22 December 2011, the Council approved the recommendations of a report by the Chief Executive in relation to changes in management reporting arrangements. The report included a recommendation that Transport, at that time within the directorate of City Development, should re-align to Services for Communities. The rationale for the change, as outlined in the report, was to allow an integration of services within SfC. Roads Services was at that time a separate service area within SfC.
- 2.2 The 22 December 2011 report did not agree a specific timescale for the changes, but the terms of reference for the organisational review of the Transport and Roads services on the Orb states that :

"On 27 February 2012, Roads and Transport Services were brought together within Services for Communities (SfC) under one Head of Service. These new reporting arrangements placed greater emphasis on cross-service working, delivery at a local community and neighbourhood level and a desire for an integrated Roads and Transport Service."

- 2.3 The organisational review was stated to include the following services:

- Roads Services
- Street Lighting
- Transport
- Neighbourhood Roads Teams
- Relationships with key partners

- 2.4 The timetable given in the terms of reference for implementation of the proposals was 1 April 2013.

#### 3. TRANSPORT, INFRASTRUCTURE AND ENVIRONMENT COMMITTEE DECISIONS

- 3.1 Following the local government elections in May 2012 and the change of administration, Cllr Jim Orr, the new Vice-Convenor of the Transport, Infrastructure and Environment (TIE) Committee, submitted a motion to the 19 June 2012 Committee meeting which called for a report on how the 5% transport budget allocation agreed by the Council on 9

February was to be spent. This motion was passed and on 13 September 2012, the Director of Services for Communities submitted his report to the TIE Committee.

3.2 In this report, the 5% cycling spending commitments in 2012/13 were calculated as a proportion of existing Roads, Transport and Neighbourhood budgets (revenue and capital).

3.3 The decision of the Committee was:

“1) To note the contents of the report.

2) To approve the proposed 2012/13 Capital and Revenue budget transfers to achieve the 5% spending commitment. ....”

#### 4. **COUNCIL DECISION – 9 FEBRUARY 2012**

4.1 On 9 February 2012, the City of Edinburgh Council considered the revenue budget for 2012-13 and the capital investment programme for 2012-2016. The then Lib Dem/SNP administration put forward a motion in relation to (inter alia) the revenue and capital budget, which was approved by Council.

4.2 The relevant provisions of the motion (now Act of Council no. 2 of 9 February 2012) are as follows:

“Council notes:

Report nos. CEC/86/11-12/PS and CEC/87/11-12/PS by the Director of Corporate Governance, setting out the overall resources available for revenue expenditure in 2011 – 2014;....

Report nos. CEC/88/11-12/PS and CEC/90/11-12/CG by the Director of Corporate Governance, setting out the overall position on capital resources for the period 2012 – 2016.

Council approves:

The revenue budget set out in the reports and the detailed departmental budget packs and resource allocations, subject to the adjustments set out in Annex 1 to this motion;

The 2012-2016 capital budget as set out in reports CEC/88/11-12/PS and CEC/90/11-12/CG by the Director of Corporate Governance.....

Council agrees that the percentage of ***transport spend (net of specifically allocated external transport funding)*** [my italics] allocated to cycling shall be a minimum of 5%, for both revenue and capital, in 2012/13 and that the percentage of spend on cycling will increase by 1% annually. Council therefore instructs the Director of Services for Communities to provide a report to a meeting of the TIE Committee in September each year detailing, the allocation of cycle funding, progress towards the Council's Charter of Brussels commitments, and progress on the cycle aspects of the ATAP.”

4.3 Unfortunately the motion is framed in terms which are somewhat vague and unclear. No further explanation is given as to the meaning of “transport spend” within the decision.

4.4 As set out above the TIE Committee subsequently decided, in September 2012, to include roads, street lighting and neighbourhood roads expenditure in calculating the “transport spend” in line with the recommendations in the report by the Director of SfC.

4.5 The annual review of the revenue budget and annual review of the capital allocation programme are matters reserved to the Council for decision. At that time this was set out in the Council's Standing Orders and is now contained in the Committee Terms of Reference and Delegated Functions (Section A 2.1).

4.6 As this is a decision which is reserved to the Council it cannot be changed or expanded upon by a subordinate committee. The determining factor is the will of the Council as expressed in the decision of 9 February 2012 and it will be necessary to consider the correct interpretation to be given to that decision

4.7 It follows that any decision of the TIE Committee which goes beyond or is not in line with the decision of Council in relation to the budget will be *ultra vires*.

## 5. INTERPRETING THE COUNCIL DECISION

5.1 The starting point is to look at the text of the decision and the reports and supporting documents submitted to and considered by the elected members of the Council at the time of the 9 February 2012 decision.

5.2 As mentioned above the wording of the motion itself is ambiguous. I have also reviewed the officer reports referred to and approved in the decision with a view to understanding what the Council could reasonably have been understood to mean by "transport spend".

5.3 The report CEC/88/11-12/PS setting out the draft Capital Investment Programme for the period 2012 – 2016 which is noted and approved in the Council decision, sets out "Transport and Other Infrastructure" as a separate head of expenditure, distinct from "Environment". Roads is shown as a sub-set of "Environment" expenditure and is further sub-divided into "Carriageway and Roadway works" and "Street lighting".

5.4 The draft revenue budget set out in the report CEC/86/11-12/PS does not contain a level of detail which allows a similar comparison to be made, but I have been able to obtain copies of the detailed departmental budget packs referred to in the decision (outlined at paragraph 4.2 above). The City Development pack includes a budget for 'Transport'. This does not include roads or street lighting – these areas are contained within the SfC departmental pack under the 'Environmental' division.

5.5 It will be seen from the above that the information considered by the Council at the time of the decision and approved in the body of the decision on 9 February 2012 (in relation to both capital and revenue budgets) drew a distinction between 'Transport' and 'Environmental' (the latter including roads and street lighting).

5.6 At the time of the Council decision, it had been decided in principle (on 22 December 2011) that the Transport division would realign to SfC to allow an integration of services. Shortly following the 9 February 2012 budget decision, the operational transfer took place and the review to integrate transport with roads services, street lighting and the neighbourhood roads teams commenced. This was to take place over the financial year 12/13. The decision of the TIE Committee in September 2012 takes the functional areas included in the new integrated Transport division (including roads and street lighting) as its starting point in calculating the baseline to which the percentage cycling allocation applies. The operational efficacy of this is clear, but the determining factor is the intention of the Council when the decision was taken on 9 February 2012.

5.7 It could be argued that in referring to 'transport spend' the Council was looking forward to the new integrated transport division that would include roads and street lighting. However, the continued separation of 'Transport' from 'Roads and street – lighting' in the capital and revenue budget papers considered by Council mitigates against this view. In light of this it is difficult to conclude with any certainty that the Council intended to include roads and street lighting within the definition of 'transport spend' in the absence of a clear indication to that effect in the decision.

5.8 There is a further area of uncertainty in the Council decision in that it does not state whether the percentage allocation for cycling is to be based on gross or net expenditure.

- 5.9 The Transport budget in the City Development pack shows a positive position of c £4million as a result of the parking charges income. If the percentage were based on net expenditure, this would result in an allocation of zero to the cycling budget. On the assumption that the Council did not intend to allocate zero funding from the revenue budget, this would point towards an intention to base the percentage allocation on gross expenditure.
- 5.10 The Director of SFC has provided some further background. He has advised that he had an explicit discussion at the time the proposal was raised with the then Convener and Vice Convener about whether the budget should include roads and streetlighting. It was agreed that it should do so notwithstanding the fact that at that time Transport was within City Development and Roads etc was within SFC.
- 5.11 Andy Nichol has also checked his records and has found an email from the then Convener Cllr Gordon Mackenzie dated 8 February 2012 attaching the text of a draft Evening News article. This draft article includes the text "In future at least 5% of our roads and transport budget will go on cycling....."
- 5.12 From this it appears clear that the Convener intended the wider interpretation to apply. However, this does not provide a definitive answer to what was in the mind of the other 28 administration councillors who voted for the motion. In light of the ambiguity in the wording of the decision, it seems possible that there were differing interpretations. Short of asking those councillors (which would be neither practical nor desirable) there is no way to be sure of this.
- 5.13 The Director of SFC has also advised that:
- (a) Following the elections in 2012 there was continued discussion with the new Convener and Vice Convener and it was clearly their intention that the wider definition should apply. In September 2012 he reported to the Transport Committee on how it was intended to spend the cycling budget and, in so doing, again made it clear that the base budget for the purposes of the calculation included roads etc. No one queried this at the time to the best of his knowledge.
  - (b) In the course of developing the budget for 2013/14 it became clear that the administration was likely to add to the roads capital programme. As part of that discussion it was explicitly recognised that this would result in an increased allocation for cycling and
  - (c) Until Cllr Henderson raised this with him just before Christmas he had no idea that anyone held a contrary view to that held by both current and previous conveners and vice conveners.
- 5.14 This does not change the position that the determining factor is the will of the Council at the time of the decision, but it does outline how officers, and the TIE Committee, have in good faith taken forward an interpretation which, as mentioned above, has clear operational efficacy, notwithstanding that it is not the only possible interpretation of the decision.
6. **NEXT STEPS**
- 6.1 In the event of a formal challenge to the Council decision, the above issues would require to be investigated and explored and would go into the public domain.
- 6.2 If there is no challenge to the Council decision, and the status quo is to remain, no action requires to be taken although it may make sense to include language in this year's budget motion that clarifies the position.

- 6.3 In the event of a challenge, the issue could be addressed definitively at a meeting of the Council by either ratifying the current basis of the allocation or changing the basis of the calculation in line with the narrower interpretation. This could be done either retrospectively, or for future financial years, or both, if that is the will of the Council. Again this would bring the issue into the public domain.
- 6.4 In light of this a view requires to be taken by the Capital Coalition as to the preferred means of addressing the ambiguity and the differing views among elected members as to the interpretation of the previous administration motion/Council decision.
- 6.5 Taking into account all the above points, and balancing the competing factors outlined in this note, our recommendation would be that :
- (a) The Capital Coalition should seek to resolve this matter internally, given that this remains an internal issue and there has been no formal or public challenge to the decision; and
  - (b) Clarifying language, in suitably low-key terms, should be included in this year's budget motion to address the present ambiguity.