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Director of Finance and Commercial Services

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Report of: *Kate Josephs*

Report to: *Co-operative Executive*

Date of Decision: *19th January 2022*

Subject: *Appointment of the Independent Chair of the Local Inquiry into the Street Trees Dispute*

Is this a Key Decision? If Yes, reason Key Decision:-	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
- Expenditure and/or savings over £500,000	<input checked="" type="checkbox"/>	
- Affects 2 or more Wards	<input checked="" type="checkbox"/>	
Which Cabinet Member Portfolio does this relate to? <i>Deputy Leader and Executive Member for Community Engagement and Governance</i>		
Which Scrutiny and Policy Development Committee does this relate to? <i>Overview and Scrutiny Management Committee</i>		
Has an Equality Impact Assessment (EIA) been undertaken?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If YES, what EIA reference number has it been given? <i>1060</i>		
Does the report contain confidential or exempt information?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-		
<i>"The (report/appendix) is not for publication because it contains exempt information under Paragraph (insert relevant paragraph number) of Schedule 12A of the Local Government Act 1972 (as amended)."</i>		

Purpose of Report:

This report sets out:

- *the context for the commitment in the Co-operative Agreement to "appoint an independent person to conduct a local non-statutory inquiry into the management of the street trees dispute";*
- *the work undertaken during 2021 to carry out this commitment;*
- *the recommended outcome of the recruitment process to identify a suitable Independent Chair; and*
- *a financial envelope for the inquiry.*

Recommendations:

Co-operative Executive are recommended to:

1. *Note the work conducted to establish a firmly independent inquiry into the street trees dispute*
2. *Delegate authority to the Chief Executive and Director of Finance and Commercial Services to take the necessary steps to secure Sir Mark Lowcock as the Independent Chair of the Inquiry, in consultation with the Deputy Leader and Executive Member for Community Engagement and Governance*

Background Papers:

(Insert details of any background papers used in the compilation of the report.)

Appendix A – Application Pack for the role of Independent Chair

Appendix B – Co-operation Agreement

Appendix C – Record of Questions and Answers from 1st September Public Meeting

Appendix D – Record of Questions and Answers from 9th September Public Meeting

Lead Officer to complete:-		
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.	Finance: <i>Ryan Keyworth</i>
		Legal: <i>Scott Fitzjohn</i>
		Equalities: <i>Adele Robinson</i>
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>		
2	EMT member who approved submission:	<i>Kate Josephs</i>
3	Cabinet Member consulted:	<i>Cllr Julie Grocutt & Cllr Douglas Johnson</i>
4	I confirm that all necessary approval has been obtained in respect of the implications indicated on the Statutory and Council Policy Checklist and that the report has been approved for submission to the Decision Maker by the EMT member indicated at 2. In addition, any additional forms have been completed and signed off as required at 1.	
	Lead Officer Name: <i>Ryan Keyworth</i>	Job Title: <i>Director of Finance and Commercial Services</i>
Date: <i>14th January 2022</i>		

1. THE CONTEXT FOR THIS WORK

- 1.1 In July 2012 the Council entered into a 25 year city wide highways maintenance PFI “Streets Ahead” contract with Amey. As part of its obligations to maintain the highway under the Contract, Amey is also responsible for maintenance of the city street trees.
- 1.2 Local residents began to express concerns in relation to the number of street trees being felled by Amey on behalf of the Council in 2013 and established the Sheffield Tree Action Group (STAG) in 2015 as an umbrella protest group. The disputes between protesters on the one side and the Council and its contractors have been well documented, and were a challenging time for the city.
- 1.3 In 2018 representatives of Sheffield City Council, Amey and the steering group for Sheffield Tree Action Groups (STAG) came together through a series of mediated talks to understand the different positions and find a way forward. As a result of these talks, a joint position statement between the parties was agreed and published in December 2018. A new way of working was agreed in relation to highway maintenance and the replacement of street trees. A new street tree strategy was agreed. More recently the Council has committed to create a street tree dispute archive containing all relevant material held by the Council.
- 1.4 Nonetheless there has remained discontent about how the conflict was managed and the Council has continued to receive a significant number of requests for documentation regarding the period in dispute. There was also a desire expressed by a number of parties that there should be an Independent Inquiry into the delivery of the Streets Ahead program (under Contract) and the conduct of all parties during the conflict.
- 1.5 In May 2021, following local elections, a new cooperative administration was formed between the Labour party and the Green party. As part of their cooperation agreement, the two parties have set out a number of priorities for the new Co-operative Executive including the appointment of an independent person to conduct a local non-statutory inquiry into the management of the street trees dispute with to the aim of “reflecting on and understanding what unfolded, to learn any lessons, and to support Sheffield to move forward confidently.”

2. ESTABLISHING THE INQUIRY

- 2.1 As a first step, the Council appointed its Director of Finance and Commercial Services, Ryan Keyworth, to lead work to identify a suitable chair and establish an independent inquiry. This reflected his position as a senior officer who could provide direction and drive to the work, whilst being unconnected to the history of the matter, due to re-

joining the Council following the key period of the dispute. Ryan Keyworth was asked to report only to the Deputy Leader and Executive Member for Community Engagement and Governance, the Executive Member for Climate Change, Environment and Transport, and the Chief Executive to avoid conflicts of interest. The Liberal Democrat Group were asked to nominate a member to be involved in overseeing this work but declined to do so.

2.2 To further ensure the independence of the inquiry process, and to ensure that this is recognised by all stakeholders, the Council has appointed external legal advisers to provide advice and support during the process to identify and appoint the Chair, and subsequently to support the Chair as they conduct the inquiry. A full procurement exercise was undertaken to identify the best supplier for this service, resulting in Weightmans LLP being formally appointed on 26th August 2021.

2.3 A key first step in the work was to engage with stakeholders on all sides of the dispute to set out the Council's approach and listen to their views in response, with a view to building trust in the process.

To this end, the Council hosted two public meetings, one through a remote meeting platform and the other in person to ensure accessibility. Those attending these meetings heard from Cllr Julie Grocutt; Cllr Douglas Johnson; Kate Josephs, the Council's Chief Executive; and Ryan Keyworth. Collectively, speakers set out what the Council hoped to achieve through the Inquiry, and the developing approach to appointing a suitable independent chair, including sharing a draft person specification.

2.4 It was emphasised through these meetings that the Council is committed to the inquiry being, and being seen to be, independent. This engagement work took place at an early stage in the process of establishing the inquiry with the deliberate intention of providing an opportunity for all stakeholders to ask questions or raise concerns, and for these to shape the development of the work.

2.5 Key messages from these events included:

- A desire for the Inquiry to establish a full version of the truth of what happened, for everyone to feel they have been listened to, and for lessons to be learned
- The vital importance to the success of this work of the Inquiry being independent, and being seen to be so by all parties
- The need for the Independent Chair to be able to manage relationships across all stakeholder groups to ensure full participation, in particular in terms of who gives evidence to the Inquiry
- Concern about how the Council will approach co-operating with the Inquiry, especially with regard to access to documents

- That there remains ongoing issues around lack of trust and ill feeling about the period in question that need to be confronted and worked through
- That this process is critical to Sheffield's future reputation

2.6 Based on the discussion at these meetings Council officers, with the support of Weightmans, designed a recruitment process for the Independent Chair modelled on that which the Council uses for senior officers, with the following key features:

- Advertising in national news outlets to generate broad interest, supported by publicity through SCC news channels
- Application form designed to guide potential applicants to set out their:
 - Experience and capabilities
 - Vision for the inquiry
 - Understanding of the dispute
 - Estimated cost and support needs
- Officer, Elected Member, and stakeholder involvement in the interview process
- Independent support and input from Weightmans throughout.

2.7 It has been agreed that following appointment of the Chair, they alone will have authority to set the Terms of Reference, with the Council a stakeholder in consultations with the same status as any other.

3. RECRUITING THE INDEPENDENT CHAIR

3.1 Recruitment of the Independent Chair is a critical factor in the success of the Inquiry, both in terms of it being conducted successfully and in terms of the city having trust in its findings. With this in mind, the recruitment process was designed to ensure a high calibre of applicant, and that the successful candidate would be independent of the history of the matter, and seen to be so.

3.2 To ensure the broadest possible field of applicants, the advert was placed nationally as well as through the Council's local routes. The Council also issued a press release highlighting advertising for an independent chair as a major step in this work, which was picked up by local and regional press, providing further publicity for the opportunity.

3.3 The full application pack is at Appendix A of this paper; rather than a standard job application, this reflected the nature of the opportunity and what is required of the independent chair by asking interested parties to set out:

- Relevant capabilities and experience
- Their vision for the inquiry and intended approach to the work, including their approach to engaging stakeholders

- Their understanding of the dispute and initial view on where investigations should focus
- Cost
- Support needs

3.4 The deadline for applications was set for 4pm on 10th December. There was strong interest in the role from people in a range of occupations. Submitted applications were narrowed down by a shortlisting panel consisting of the Chief Executive, the Director of Finance and Commercial Services, and advisers from Weightmans LLP, using the scoring system set out in the pack. Based on this two candidates were invited for interview.

3.5 Interviews took place on 11th January, with candidates assessed by a panel of senior officers supported by Weightmans LLP, and a panel of Executive Members. They also had the opportunity to present their vision for the inquiry to an audience of stakeholders, and take questions and comments in response. This session was observed by the member and officer panel members to factor into decision making.

3.6 Following this day, the panel members met to score the candidates. Based on the assessment process, their clear recommendation was to offer the role of Independent Chair to Sir Mark Lowcock.

4. HOW DOES THIS DECISION CONTRIBUTE?

4.1 This decision enacts a commitment made in the Co-operative Agreement.

5. HAS THERE BEEN ANY CONSULTATION?

5.1 Following the commitment made in the Co-operative Agreement to appoint an independent person to chair an inquiry, officers have engaged with stakeholders in this work to determine the right way forward. This has included the two public meetings described above, but also ongoing communication around intentions and progress.

6. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

6.1 Equality of Opportunity Implications

6.1.1 No significant equality of opportunity implications of this decision have been identified. The contract with the Chair will require that the Council's key policies, including those cover equality and diversity, are followed throughout the Inquiry.

6.2 Financial and Commercial Implications

- 6.2.1 Ultimately, the terms of reference for the Inquiry will drive the costs of conducting the Inquiry. The final terms of reference will be a matter for the Chair to determine following consultation with the inquiry's stakeholders.
- 6.2.2 A lengthy inquiry with a broad terms of reference would clearly cost more than a more focussed and targeted inquiry.
- 6.2.3 At this early stage in the process, based on the proposal submitted by Sir Mark Lowcock, it would be reasonable to expect total Inquiry costs to be in the order of £500k. However, this may change as the process for developing and signing off the terms of reference proceeds.
- 6.2.4 The bulk of the costs will relate to a small team to support the Independent Chair in addition to legal and other advisory costs. The Chair will be paid a fee based on a discount of his final salary when he resigned from the civil service in 2017.
- 6.2.5 A budget for the Inquiry of £500k will be built into the 2022/23 Revenue Budget that will be presented to Council for approval in March 2022. This will be updated, if required, through the normal budget monitoring process.
- 6.2.6 The size of the savings across the organisation and the use of reserves that may be required to set a balanced budget for 2022/23 means that the costs for this Inquiry are being funded from Reserves. Any over-run will also need to come from Reserves.
- 6.2.7 The expenditure incurred by the Inquiry will be published openly and transparently on the Inquiry's website, including fees paid to the Chair and Legal costs.

6.3 Legal Implications

- 6.3.1 The creation of an independent inquiry and appointment of an independent chair has a number of legal implications, and further potential legal implications depending on the terms of reference to be approved at a later date. These are set out below:
1. Procurement – The appointment of external solicitors (Weightmans LLP) and the independent chair has been and will be undertaken within procurement rules.
 2. Contractual – The Independent Chair will be an agent of the Council, not an employee. This means the Council will have a contractual relationship with the Chair but the Chair will be independent and the Council will not be able to control the Chair's actions except within the contract for services the Council has with the Chair. The Council itself will become a

stakeholder/contributor to the process once the Inquiry has been established.

3. Non-statutory Inquiry format – This inquiry will be non-statutory. The chair will not have any formal legal powers to call witnesses or evidence. Engagement of the witnesses and stakeholders will be entirely voluntary; as will disclosure of documents to the Chair and Inquiry by each of them. If third party organisations or ex-employees do not wish to participate, or only offer limited participation then there are no legal powers to compel them to engage. If participation is limited or not forthcoming then this may impact on the Chair's ability to conduct a thorough Inquiry which could consequently diminish the effectiveness and desired outcome of the Inquiry itself. It likely that the success of the Inquiry will depend upon the Chair's ability to engage with the stakeholders.
4. Information Sharing – there will be a great deal of information and documents related to the street trees dispute from all the stakeholders e.g. Council, Amey, STAG, SYP. It is likely that some of the information will contain either personal or sensitive data. The Council will be processing the data collected. Therefore, the Council will need to ensure that sure processing is undertaken lawfully. Systems will be put in place to allow the Chair secure and confidential access to the relevant documents and information. DPA and confidentiality risks will be mitigated by use of external legal advisors.
5. Employee relations – In engaging with the Inquiry, the Council may need some of its employees to engage with the Inquiry through provision of documents and/or attending. The Council owes duties of mutual trust and confidence to its employees which needs to be borne in mind when engaging in this process.
6. Monitoring Officer – Gill Duckworth, Director of Legal & Governance, is the Council's monitoring officer. Due to the potential for scrutiny of the Legal & Governance department's role in the street trees dispute this means that the Director is unable to directly undertake her duties specifically in relation to the inquiry.

6.3.2 These legal implications and subsequent risks have been addressed and will be managed in 2 ways. Firstly, Weightmans LLP solicitors have been appointed as an independent and external set of solicitors to advise the Council on setting up and conducting an independent inquiry. Weightmans LLP are a leading multi-disciplinary firm who have specialist lawyers working in in all the legal fields likely to arise during this process e.g. Local Government, Highways, Environmental, Inquiries and Investigations. They are acting independently of the Council's Legal Services department.

6.3.3 Secondly, Ryan Keyworth is being supported by Scott Fitzjohn, Senior Lawyer, from the Council's Legal & Governance. He has not had any prior involvement in the street trees dispute and is working independently within a 'firewall' to assist Ryan Keyworth and Weightmans LLP to implement the independent Inquiry. Scott Fitzjohn was previously involved in representing the Council at the Hillsborough Inquests.

6.3.4 Additionally, the Trees Archive project is currently compiling documents/data relating to the street trees dispute. This process is being led by the Sheffield Archives team who are using trained archivists who are used to dealing with and processing sensitive information.

6.4 Other Implications

6.4.1 No other implications have been identified.

7. **ALTERNATIVE OPTIONS CONSIDERED**

7.1 The need for an independent Inquiry was included in the May 2021 Labour and Green Co-operation Agreement. No alternative to meeting that requirement was considered.

8. **REASONS FOR RECOMMENDATIONS**

8.1 There are two key reasons for the recommendations in this report:

1. The appointment of an independent person to conduct a local inquiry into the street trees dispute fulfils a commitment in the Labour and Green Co-operation Agreement;
2. A rigorous assessment process has identified Sir Mark Lowcock as the recommended candidate for this role.

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