

THE CITY OF EDINBURGH COUNCIL
THE TRANSPORT (SCOTLAND) ACT 2001

CONGESTION CHARGING

PROPOSED SCOPE AND FORMAT OF PUBLIC INQUIRY

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1. Introduction

- 1.1 The City of Edinburgh Council ("the Council") has resolved to hold an inquiry in public to examine their proposals to make a charging scheme under section 49 of the Transport (Scotland) Act 2001. Section 52 of that Act empowers the Council to "*..cause an inquiry to be held in relation to a charging scheme proposed to be made by them.*"
- 1.2 Although the Scottish Ministers are empowered to make regulations to specify circumstances in which a charging authority must hold an inquiry, no such regulations have been made and it is understood that the Ministers do not intend to regulate this matter. Similarly, the Ministers are not expected to provide guidance on the scope or format of such inquiries beyond, perhaps, a statement that they would expect any inquiry to cover the four policy tests referred to in paragraph 3.2 below.
- 1.3 In the absence of either a statutory framework regulating the scope and/or format of the inquiry or national guidance advising on such matters, careful consideration has been given to the purpose of the proposed inquiry and the most appropriate format to ensure fair treatment of all interested parties in a way that secures best value for the Council and the public purse.
- 1.4 The purpose of this paper is to set out the chosen scope and format of the inquiry, including details of the procedure to be followed at the inquiry, all of which have been designed to allow the Council to expose their case for congestion charging to public scrutiny in a cost effective way while ensuring fairness to objectors and to supporters of the proposed scheme.

2. The Purpose of the Inquiry

- 2.1 Before reaching a final decision on whether or not to make the charging scheme, the Council is committed to the holding of an inquiry and, thereafter, a referendum within Edinburgh. The process before that final Council decision will involve the following stages:
- (i) A Council decision in January 2004 on the final form of the draft charging order taking into account feedback from the three month consultation period;
 - (ii) Public deposit of the final draft charging order for a 28 day period running from 30 January to 27 February 2004;
 - (iii) Public scrutiny of the Council's case for congestion charging at the inquiry;
 - (iv) Delivery of the Reporters' report on the public inquiry;
 - (v) The Reporters' report and recommendations submitted to the Council to allow them to decide whether or not to proceed to the next stage;
 - (vi) If the Council decide to proceed to the next stage, they will hold a referendum within Edinburgh;
 - (vii) The results of the referendum will be taken into account by the Council before they decide whether or not to proceed to the next stage;
 - (viii) If the Council decide to proceed to the next stage, they will make the charging order, which will then have to be submitted to the Scottish Ministers for confirmation. The charging order, as made by the Council, will be submitted with *inter alia*, the Reporters' report on the public inquiry, which will be taken into account by the Scottish Ministers when deciding whether or not to confirm the order. Accordingly, the final decision on whether or not to introduce the charging scheme rests with the Scottish Ministers.
- 2.2 The Reporters' report on the public inquiry will be submitted to the Council to assist with their decision making¹ and, in the event of the Council deciding to make the charging order, to the Scottish Ministers to assist with their decision making² at the confirmation stage. An important part of the purpose of the inquiry, therefore, is to assist both the Council and the Scottish Ministers in their decision-making processes.
- 2.3 Another important part of the purpose of the inquiry is to facilitate a public examination of the proposed charging scheme so that members of the public can be better informed about the detail and effects/impacts of the proposed charging scheme.
- 2.4 It should be borne in mind that no third party has a legal right under the 2001 Act either to have their objection publicly heard or to present their case at a public inquiry. In strict legal terms, an inquiry under the 2001 Act is not a forum for the hearing of objections or the reconciliation of opposing cases, as in the case is local

¹ (v) above

² (viii) above

plan or planning appeal inquiries. Nevertheless, Regulations³ provide for the submission of written objections within twenty eight days of formal public deposit of the final draft order. Those Regulations require the Council to prepare and publish a report detailing

- a) the number of objections received;
- b) a summary of the general nature of the objections received;
- c) the authority's response to objections received; and
- d) whether the authority intend to hold a public inquiry.

2.5 There is therefore a relationship between the inquiry and objections received during the twenty eight day statutory period. It would be unreasonable for an authority to hold an inquiry that did not take into account those objections.

2.6 Therefore the purpose of the inquiry will be to take into account objections received during the statutory period as well as assisting both the Council and the Scottish Ministers in their decision-making processes and informing the public of the details of the charging scheme.

³ The Road User Charging (Consultation and Publication) (Scotland) Regulations 2003

3. The Scope of the Inquiry

- 3.1 A legal pre-requisite of making a charging scheme⁴ is that the authority must be satisfied that the scheme appears to them to be desirable for the purpose of directly or indirectly facilitating the achievement of policies within their Local Transport Strategy (LTS). The inquiry should therefore consider the scheme in the context of the relevant policies within the Council's LTS. The Reporters' conclusions in this regard will assist the Council in their decision making process.
- 3.2 Scottish Executive guidance⁵ sets down four policy criteria that any charging scheme will have to meet.⁶ Those criteria are congestion/noise/emissions reduction; additionality; fair treatment and pre-charging investment in public transport. The inquiry should therefore consider the proposed charging scheme in the context of those criteria. The Reporters' conclusions in this regard will assist both the Council in deciding whether or not to make and the Scottish Ministers in deciding whether or not to confirm the charging order.
- 3.3 In granting approval in principle for the Council's congestion charging proposals and associated integrated transport initiative⁷, the Scottish Executive confirmed that the Ministers would take into account the aforementioned policy criteria at the final approval stage. In addition, it was stated that the Council should also be able to demonstrate clear public support for the scheme at the final approval stage. This additional criterion of clear public support will be taken into account by the Scottish Ministers in deciding whether or not to confirm the charging order. However, a public inquiry is not considered to be the most effective forum to record the level of public support. In this case, the Council intends to hold a public referendum before taking its final decision on whether or not to make the charging order. A referendum is a more effective measure of public support and the results of the referendum will be before the Scottish Ministers at the confirmation stage. In addition, the report on objections referred to in paragraph 2.4 above will be before both the Council and the Scottish Ministers at their decision making stages. The scope of that report will provide a reasonable indicator of the level of public opposition to the proposed charging scheme.
- 3.4 If the inquiry is to achieve all of the foregoing, it should involve a full presentation of the proposed charging scheme to allow interested parties to hear the case for congestion charging, or at least to read the precognitions and hear the Council's witnesses responses to points raised by objectors to the scheme, with the evidence of the Council's expert witnesses being tested in an efficient and effective way in public in the context of objections and representations received during the statutory period, all with a view to testing that evidence against relevant national and local policy criteria and objectives.
- 3.5 In resolving to hold a public inquiry, the Council is committed to adopting an approach that is open, consistent and fair. That does not mean that there should be a laissez-faire approach to the scope of the inquiry, which could result in inefficient use of public resources without necessarily achieving the purposes of the inquiry in an effective manner. The Council will appoint independent reporters to manage the

⁴ Section 49(3) of the 2001 Act

⁵ Delivering Integrated Transport Initiatives Through Road User Charging – Consultation and Approval Process – Guidance for Local Authorities – August 2001

⁶ Paragraph 4 of the guidance.

⁷ SEDD letter dated 18 December 2002

scope of the inquiry to ensure that it can properly serve its purpose⁸ in a way that is open, fair and consistent without unnecessary public expense.. An inquisitorial inquiry will permit objectors' arguments and points of view to be put to Council witnesses by the Reporters so that no objector is prejudiced by lack of time or financial resources.

⁸ See section 2 above

4. The Format of the Inquiry

- 4.1 The Council will appoint the undernoted independent reporters to hold an inquiry in public in relation to the proposed charging scheme:
- Mr William Patterson;
 - Mr Hugh Begg; and
 - Mr John MacBryde
- 4.2 These Reporters will be charged with considering the Council's case for the proposed charging scheme in the context of objections and other representations submitted during the statutory period with a view to testing the evidence against relevant national and local policy criteria and objectives.
- 4.3 The Council proposes a format similar to that used for an examination in public of a draft structure plan to ensure public scrutiny of the scheme. This will involve an inquisitorial inquiry. The Reporters will ask questions of the expert and other witnesses in the context of the relevant policy framework. In framing their questions, the Reporters will take into account matters/issues raised by objectors and supporters during the statutory period. This approach will allow the independent reporters to collate and manage the information to ensure that all relevant matters are raised without unnecessary duplication.
- 4.4 This approach should also allow the Reporters to manage the inquiry procedure more effectively. Details of the procedure to be adopted at the inquiry are set out in section 5.
- 4.5 It will also allow the Reporters to produce a report summarising the Council's case and their experts' responses to questions put by them and other parties, as appropriate. The Reporters will be invited to record the scheme's compliance with the relevant policy criteria and to recommend whether or not the scheme, as drafted, should be made with or without modifications. In recommending any modification, the Reporters should say how that modification would allow the scheme to better achieve policy objectives or compliance.
- 4.6 This format should result in a more equitable testing of the Council's case. Not all objectors can afford professional representation and they may feel disadvantaged in relation to other stakeholders able to afford to be represented at the inquiry. Similarly the objection of an objector who is either unable to attend the inquiry at all or on the appointed day may nonetheless be put to the Council's witnesses in the same way as an objection by a fully represented objector.

5. The Procedure to be followed at the Inquiry

The Council's Statement of Case

- 5.1 The Council's case at the inquiry will be based on their Statement of Case. A Preliminary Statement of Case was published on 21 November 2003. The purpose of the Preliminary Statement of Case was to provide interested parties with advance notice of the Council's case at November 2003. This preliminary statement will be superseded by the Council's Statement of Case, which will be published on or before 16 March 2004⁹ after the statutory period for objections. The Statement of Case will therefore take into account the final draft order, as approved by the Council in January 2004, and matters and issues raised by third parties during the statutory objection period¹⁰. The Council reserves the right to publish a supplementary Statement of Case to address any new matter raised by the Reporters or third parties and not already covered in the Council's Statement of Case. **There is no requirement for third parties to produce Statements of Case.**

Documents

- 5.2 The Council published their background documents on 3 October 2003. Any additional documents to be relied upon by the Council during the inquiry will be published on or before 16 March 2004¹¹. **Any other party who wishes to present evidence at the inquiry must lodge their supporting documents with the Programme Officer¹² on or before 23 March 2004.**¹³ Those parties may rely on the Council documents as well as their own documents, if any.

Precognitions

- 5.3 Precognitions are statements of evidence by a witness at the inquiry. Whether or not all or part of a precognition may be read out by the witness is a matter for the Reporters. Any precognition which is longer than 2,000 words should be accompanied by a summary precognition of no more than 2,000 words or 10% of the original, whichever is greater.
- 5.4 The Council's precognitions shall be published on or before 30 March 2004¹⁴ **Any other party who wishes to present evidence at the inquiry must lodge their precognitions with the Programme Officer on or before 13 April 2004**¹⁵

Presentation of Evidence at the Inquiry

- 5.5 The Council will lead by presenting their detailed evidence on the proposed charging scheme and the reasons for it. Each of the Council's expert witnesses will present his evidence and then be questioned by the Reporters. Any third party in attendance may seek the Reporters' permission to ask additional questions on matters raised in their objection/representation but not covered by the Reporters in their questions. Whether or not additional questions are allowed will be solely within the discretion of the

⁹ 6 weeks before inquiry opens

¹⁰ 30 January to 27 February 2004

¹¹ 6 weeks before inquiry opens

¹² See section 7

¹³ 5 weeks before inquiry opens

¹⁴ 4 weeks before the inquiry opens

¹⁵ 2 weeks before the inquiry opens

Reporters. They would only be expected to refuse to allow additional questions if they were to be satisfied that the subject matter had either been covered earlier or was irrelevant. The Council's legal representatives would be entitled to suggest to the Reporters supplementary questions to clarify matters raised either by the Reporters' questions or in any questions that objectors may have been permitted to ask .

- 5.6 Interested parties could attend the inquiry to hear the Council's case being scrutinised by the Reporters without having to participate in the proceedings.
- 5.7 Any party who had submitted objections or representations during the statutory period would be permitted to lead evidence based on their precognitions to challenge the Council's factual findings and conclusions based thereon. The Reporters will have the power not to hear such evidence (whether for or against the scheme) if they were to be satisfied that the evidence was irrelevant or repetitive. The Reporters would take the lead in asking questions of these witnesses. The Council's legal representatives may be allowed to ask additional questions on relevant matters not covered by the Reporters, but only with the Reporters' permission. Any such party would then be entitled to suggest to the Reporters supplementary questions to clarify matters raised either by the Reporters' questions or in any question that the Council may have been permitted to ask.
- 5.8 Evidence, whether in the form of documents or precognitions, will only be considered by the Reporters if, in the case of objectors, in support of a timeously made objection and, in the case of the Council, in support of their Statement of Case, unless on special cause shown to and approved by the Reporters.
- 5.9 A daily transcript of the evidence will be prepared and posted on the Council's website to allow greater access to the inquiry and to assist parties who may not be able to attend the inquiry.
- 5.10 Parties will be able to monitor progress at the inquiry through the Programme Officer, who will be responsible for managing slots in the programme on behalf of the Reporters.

Closing Submissions

- 5.11 There will be no requirement to make closing submissions to the Reporters unless at the discretion and the invitation of the Reporters on any particular topic or topics.

6 Programme

The Reporters will be expected to adhere to the following pre-inquiry and inquiry programmes unless any modification thereto is agreed in writing with the Council.

A. Pre-Inquiry Programme

DATE 2004	EVENT
4 January	Expiry of three month consultation period
22 January	Council meeting to decide on content of final draft order taking into account responses from the three month consultation period.
30 January	Public deposit of final draft order and publication of Report on Consultation.
27 February	End of 28 day period for lodging objections/representations
16 March	Publication of the Council's Statement of Case with any additional documents.
23 March	Deadline for third parties to lodge their documents with the Programme Officer
30 March	Publication of the Council's precognitions
13 April	Deadline for third parties to lodge their precognitions with the Programme Officer
27 April	Inquiry opens

B. Inquiry Programme

SESSION	WEEK	DATES	TOPICS
1	1	27- 30 April	Detailed description of proposed scheme and the reasons for the scheme; Facilitation of policies within Local and Regional Transport Strategies; Third party evidence on these topics.
	2	4 – 7 May	
	3	11- 14 May	
2	4	18-21 May	The investment packages and fair treatment; Additionality, the business case and economic impact; Third party evidence on these topics
	5	25-28 May	
	6	1 – 4 June	
3	7	8 -11 June	Modelling; Impact on congestion/noise/emissions: Third party evidence on these topics.
	8	15 – 18 June	
	9	22 – 25 June	
4	10	29 June- 2 July	Related processes – traffic management, controlled parking zones

7. Contact Details

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