
Appointment of Director as proper officer

- Purpose of Report

To ask the Board to homologate their own agreement that the Director be appointed as proper officer to the Board.

- Background

Schedule 1, paragraph 13 of the Transport (Scotland) Act 2005 states that “a transport partnership shall appoint one of its employees as its proper officer for the purposes of sections 190, 191 and 193 of the Local Government (Scotland) Act 1973.

The provisions under those sections of the 1973 Act refer to the service of legal proceedings and notices and the authentication of documents.

Now that the Strategic Transport Fund (STF) has been approved the requirement to contribute to this fund is being raised with relevant developers through the planning process. Payment of contributions into the fund will come direct to Nestrans who will manage the fund, prioritising and delivering the strategic transport interventions. The STF contributions will be set out in the wider Section 75 agreement covering all developer contributions and will be signed by the relevant council.

In order to receive the STF money directly into the fund, Nestrans will become a signatory to the Section 75 agreement. The signatory of the agreement needs to be a designated “proper officer”. Jane MacEachran, Head of Legal and Democratic Services at the City Council was appointed the Nestrans’ proper officer for legal matters at the Board meeting on February, 2006.

Legal advice has been sought from the City Council who have advised that there would be a conflict of interest for the proper officer to sign the Section 75 agreement on behalf of two different organisations. It is advised therefore that the Board appoint a proper officer who is

authorised to (1) act as a proper officer as per paragraph 13 of the Transport (Scotland) Act 2005 and (2) enter into any legal agreement or contract on behalf of Nestrans.

It was therefore proposed (to the Board Members) that the Nestrans Director be approved as a proper officer with authority to carry out the functions above. This has the added advantage that Nestrans will receive directly all communication in relation to the development of the Section 75 agreement without it being passed through other channels.

It was important to get this approval at the earliest opportunity, therefore all members of the Board were asked to approve the appointment of the Director, as proper officer via email with the Clerk to the Board. The Clerk to the Board had explained that if all members were in agreement with the appointment then an item would be placed on the agenda for the next ordinary meeting of the Board, and the Board would be asked to homologate their own agreement. The Clerk had explained that if any of the Board members were concerned or did not want to approve the appointment this way then they should contact him outlining their concerns and a special meeting of the Board could be called in terms of the Board's Standing Orders to deal with the appointment.

11 Members of the Board have agreed to the appointment of the Director as proper officer (at the date of finalising this report 1 Member is yet to respond). Although not all 12 Members have agreed to this course of action it is still recommended that the Board be asked to homologate their own agreement.

- Recommendation

That the Board homologate their own agreement to appoint the Director as proper officer and as such he is able to sign the Section 75 agreement on behalf of Nestrans as detailed in the report.

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