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Report summarising the investigation into the Wellington Brae project, 2016-2017

Investigation Officer: [REDACTED], Corporate Investigation Team, Marischal College

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1. Introduction

- 1.1 The Wellington Brae project became the subject of public scrutiny in April and May 2017. There were allegations that the correct Council processes had not been followed; that the project lacked the necessary oversight; and that public money had in some way been misused. There were further issues when emails purporting to originate from Council officers appeared in the local press.
- 1.2 An investigation into the project was requested by the interim Director of Communities, Housing and Infrastructure (CH&I) in May 2017. The terms of the investigation were approved by the Chief Executive and Head of Finance as the Interim Director of CHI was on annual leave.
- 1.3 The purpose of the investigation was to examine the circumstances and events which led to Council officers approving more than £200,000 of remedial works at Wellington Brae in 2017 without the scrutiny and oversight expected of a public authority. Further, to identify any issues of potential misconduct by the officers involved in the above process, including unauthorised information disclosure to third parties.
- 1.4 The specific scope of the investigation was to:

- Examine the full circumstances from beginning to end;
- Investigate where and why actions by specific Officers deviated from that expected;
- Confirm that the information contained within the Sustrans funding application was correct, and that subsequent awards were within the scope of their accepted practice;
- Determine what data breaches occurred and their extent.

- 1.5 The period covered by the investigation is 3 February 2016 to 12 June 2017.
- 1.6 Whilst the potential outcomes of the investigation were always likely to be internally managed, provision was made for liaison with external partners in the event that civil or criminal proceedings were required.
- 1.7 This report presents a summary of my investigation and is intended for use by the interim Director of CHI. It is envisaged that the findings of the report are used to inform the report expected before the Audit, Risk and Scrutiny Committee of 26 September 2017.

Methodology

- 1.8 A list of potential witnesses was identified predominantly through email correspondence secured by the interim Head of Planning and Sustainable Development. A list of these witnesses appears at appendix 1.
- 1.9 Witnesses were offered either a written statement or an audio-recorded statement, the majority of whom opted for an audio-recorded statement.
- 1.10 The former Director of CHI, Mr Pete Leonard, was unavailable for comment.
- 1.11 Given the passage of time, and the nature of the administrative arrangements of the teams involved, the evidence obtained is largely derived from retrieved email correspondence and/or witness statements.

2. Timeline

03/02/2016	Wellington Brae closed to the public
03/02/2016	[REDACTED]
22/02/2016	[REDACTED]
25/02/2016	Funding of £50,000 agreed by Sustrans, to be spent by May 2016.
15/03/2016	[REDACTED]
16/03/2016	[REDACTED]
05/04/2016	[REDACTED]
18/04/2016	[REDACTED]
17/05/2016	Wellington Brae project referenced in a Bulletin to members of CHI Committee.
18/05/2016	[REDACTED]
27/05/2016	[REDACTED]
24/08/2016	[REDACTED]
22/09/2016	[REDACTED]
28/09/2016	[REDACTED]
18/10/2016	Replacement tree planting application placed on Planning list for 2 weeks.
27/10/2016	[REDACTED]
27/10/2016	[REDACTED]
28/10/2016	[REDACTED]
10/11/2016	[REDACTED]
25/11/2016	[REDACTED]
05/12/2016	Written confirmation from Planning that tree replanting authorised as no objections received.
01/03/2017	Tender advertised for Wellington Brae and retaining wall.
10/03/2017	Residents of Prospect Terrace made aware of imminent work on Wellington Brae.
11/03/2017	[REDACTED]
13/03/2017	[REDACTED]
16/03/2017	[REDACTED]
17/03/2017	Close of tender for Wellington Brae and retaining wall.
23/03/2017	Award of works contract to Drago Services
13/04/2017	[REDACTED]
19/04/2017	[REDACTED]
21/04/2017	Consent issue escalated to Bernadette Marjoram, who contacts Councillor Young to request written permission.

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25/04/2017	Contractors instructed to cease work on Wellington Brae.
25/04/2017	Meeting in office of Chief Executive Officer, attended by Monitoring Officer, Director CHI, Head of Planning and Sustainable Development, HoS OCE, Internal and External Communications Manager
25/04/2017	Initial media statement by ACC, highlighting a "serious failing" by Council Officers, and that efforts underway to identify the landowner.
26/04/2017	P&J identify Councillor Young as landowner. Includes response from ACC that "serious failings" by officers.
26/04/2017	Second ACC media release, advising nothing further to add to statement of previous day.
27/04/2017	P&J publish emails to Councillor Young from ACC officers.
27/04/2017	Eric Owens initiates review of emails to determine if there has been a data breach. Email accounts of some staff are locked down. ICT sifts through email archive.
27/04/2017	Third ACC media statement that Councillor Young is not the landowner.
28/04/2017	BBC news story on Wellington Brae, focussing on Councillor Young.
28/04/2017	Monitoring Officer writes to Councillor Young with an opinion that based on the facts available to him at the time, there did not appear to be a requirement to declare a conflict of interest.
29/04/2017	P&J names ██████████ land owner.
08/06/2017	Written authorisation to commence work received by ACC from solicitors acting on behalf of ██████████.

3. Background

Wellington Brae

- 3.1 Wellington Brae is a 70 metre footpath in Ferryhill to the south of the City, which connects Prospect Terrace to South College Street. As an adopted footpath it is maintained by Aberdeen City Council.
- 3.2 The path is cut to form a banking on either side, contained by retaining walls. The bankings and the retaining walls are privately owned. There is a steep gradient declining from Prospect Terrace to the path termination at a tunnel under a railway bridge, which leads onto South College Street.
- 3.3 Wellington Brae comprises an integral part of the National Cycle Network (NCN), “a series of safe, traffic-free paths and quiet on-road cycling and walking routes that connect to every major town and city,” according to Sustrans, the charity which manages the route. NCN Route 1, of which the Brae is part, is of particular significance to Sustrans as it allows cyclists and walkers to safely travel from Dover to Shetland.
- 3.4 Until 1990 the land to the south of Wellington Brae, including the retaining wall, was owned by [X], [redacted] Prospect Terrace. [X] passed away this year. Under the feu, maintenance of the walls appears to be the responsibility of the feuer.

coming: And as the feu is separated from Prospect Terrace on the west and north west, from Wellington Brae on the north east and from ground belonging to British Railways on the south east by stone and lime walls and wooden fences erected wholly within the feu, the said stone and lime walls and wooden fences are hereby declared to be the property of the feuars and shall be maintained by them, in all time coming at their own expense, which boundaries shall not be

Feu disposed to [redacted], 1960

3.5 [REDACTED]

3.6 The land incorporating the northern wall of Wellington Brae does not form part of this report.

3.7 [REDACTED]

3.8 [REDACTED]

3.9 [REDACTED]

3.10 In February 2016, the Brae was closed to the public whilst funds were sought for remedial work.

Teams and staff involved

3.11 The Transport, Strategy and Programmes (TSAP) team supports the delivery, planning and implementation of local and regional transport plans. TSAP is very experienced in sourcing funding for transport projects. It reports these at each CHI Committee in the External Funding Report. For the duration of the period under consideration these reports were written by [REDACTED] based on information advised by colleagues

3.12 [REDACTED]

3.13 [REDACTED]

3.14 [REDACTED]

September 2015-May 2016	Interim Head of Service	John Lynch
June 2016 – December 2016	Interim Head of Service	Gale Beattie
December 2016 - present	Interim Head of Service	Eric Owens

3.15 The HoS role reports to the Director CHI. Pete Leonard was operational until July 2016. Marc Cole acted as interim Director between August and November 2016. The current interim Director is Bernadette Marjoram.

3.16 [REDACTED]

3.17 [REDACTED]

3.18 [Redacted]

Public Awareness

3.19 [Redacted]

3.20 [Redacted]

3.21 [Redacted]

3.22 [Redacted]

3.23 [Redacted]

[REDACTED]

3.24 [REDACTED]
[REDACTED]

[REDACTED]

3.25 [REDACTED]

[REDACTED]

3.26 [REDACTED]
[REDACTED]

3.27 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.28 [REDACTED]
[REDACTED]

3.29 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

3.30 [Redacted text block]

3.31 [Redacted text block]

[Large redacted text block]

3.32 [Redacted text block]

3.33 [Redacted text block]

3.34 [Redacted text block]

3.35 [Redacted text block]

[REDACTED]

3.36

[REDACTED]

3.37

[REDACTED]

4. Circumstances of Wellington Brae project

Project Description

- 4.1 Wellington Brae was closed on the instruction of Structures in February 2016 as it was assessed that the site presented a health and safety hazard to the public.
- 4.2 Structures advised TSAP of this. TSAP staff were aware that Sustrans might have been willing to fund the necessary repairs. [REDACTED] was allocated to progress this.
- 4.3 The project was delivered in two phases. The first phase entailed emergency work, including tree felling, to make the Brae safe again. This phase also included determining land ownership and drawing up plans for phase two. The costs for phase one were to be recovered from Sustrans by May 2016, and were anticipated to be up to £50,000. Phase two was dependent on confirmation of Sustrans funding over the following financial year, and consisted on work to improve the site. The anticipated budget for this was £200,000.
- 4.4 Emergency tree work and site clearance took place shortly thereafter. Site surveys occurred before the land owner had been ascertained.
- 4.5 Funding and land ownership were handled by TSAP, specifically [REDACTED] until August 2016, and latterly [REDACTED]
- 4.6 Design of the project and construction, including tree felling and landscaping, was organised through Structures.
- 4.7 Initial work was charged to Structures, and reclaimed from TSAP.
- 4.8 There were only a few meetings between TSAP and Structures. They were un-minuted and the witnesses were unable to recall details.
- 4.9 [REDACTED]
- 4.10 [REDACTED]
- 4.11 [REDACTED]
- 4.12 Structures appear to have commenced their initial work before having a solid plan. Until the final design plan and bill of quantities produced in the Summer of 2016, the only project document produced by the team was a sheet of A4 and a map of the area.

4.13 Work on site under the second phase of the project commenced in April 2017 without the written authorisation of the landowner until it was halted in May 2017 (see following section).

Land Ownership

4.14 A land ownership search was requested from Legal on 22 February 2016. An initial search of Council records by the solicitor indicated that none of the land surrounding Wellington Brae belonged to the Council. Therefore Registers of Scotland were engaged.

4.15 [Redacted]

4.16 [Redacted]

4.17 [Redacted]

4.18 [Redacted]

4.19 [Redacted]

4.20 [Redacted]

4.21 [Redacted]

4.22 [Redacted]

4.23 [Redacted]

4.24 [Redacted]

[REDACTED]

4.25 [REDACTED]

4.26 [REDACTED]

4.27 [REDACTED]

4.28 In response to media interest concerning a potential conflict of interest, Councillor Young sought the advice of the Monitoring Officer, in terms of the Members' Code of Conduct. The Monitoring Officer provided a response that, based on the information advised to him by Councillor Young, he did not require declare a conflict of interest when asked by Council officers whether or not he would be willing to consent to the work on the wall.

4.29 When interviewed, Councillor Young intimated that he had failed to respond to the requests because he judged it to be a low priority and he was dealing with a substantial amount of Council business. He states that he finally requested that his solicitor check land ownership on 2 January 2017.

4.30 He further stated that he believed initially that the land might have been the property of Deevie Homes Ltd., of which he is a director, and which he has listed in the Register of Members' Interests. However, the land is, in his view, "almost worthless."

4.31 Councillor Young stated that at no point had he been given the opportunity to contribute towards the cost of the Wellington Brae project.

Committee Reporting

4.32 External Funding Reports submitted in May and August 2016 demonstrate that TSAP was comfortable in submitting these reports to notify the Committee of grants and seek approval to spend.

4.33 The initial tranche of Sustrans funding was secured on 25 February 2016, [REDACTED]

4.34 It has not been possible to determine why the initial request for £50,000 was not put before Committee for approval. However, passing reference was made to the funding in the Strategic and Local Transportation Updates Bulletin, which was shared with members in advance of the May CHI Committee. This does not constitute Committee approval.

4.35 [Redacted]

4.36 [Redacted]

4.37 [Redacted]

4.38 [Redacted]

4.39 [Redacted]

4.40 The Service produced regular Project Status Reports for projects which had an element of funding from Nestrans or from Bus Lane Enforcement. As Wellington Brae was entirely funded by Sustrans, it was not included.

4.41 [Redacted]

4.42 [REDACTED]

4.43 [REDACTED]

4.44 [REDACTED]

4.45 [REDACTED]

ACC Response to Public Interest

4.46 Around 19 April 2017 [REDACTED] was asked about the Wellington Brae project by officers from Communications and LDS following queries from journalists and members about Committee approval for the works.

4.47 [REDACTED] was unable to locate a Committee Report which discussed the project, only the bulletin which was submitted to members as part of the papers for the May 2016 Committee. At this point she approached the interim Head of Service to advise that there was an issue regarding approval for the site work.

4.48 This represents the first point at which the Head of Service had involvement in the project.

4.49 A briefing note was prepared for Eric Owens, and escalated to Bernadette Marjoram interim Director of CHI. Enquiries were made to determine the legal position of the project and whether work could continue without having the explicit consent of the Committee. On investigation, the management team came to the conclusion that this was not possible.

4.50 Discussions were initiated with Sustrans to seek an extension to the project funding past the current financial year. Enquiries were made to ascertain the cost to the Council of halting the work on Wellington Brae.

4.51 In terms of the assessed risk to the project, Eric Owens considered the project was fairly minor in terms of the work carried out by the Directorate; that it was fully funded by a third party; and that the reputational risk to the Council was likely to be very low, particularly as the issue at that stage was one of Committee approval, rather than anything to do with land ownership.

- 4.52 Once it became known that Councillor Young had not provided written approval, Mr Owens became more concerned.
- 4.53 Around a week or so later, Eric Owens and Bernadette Marjoram were made aware that press interest was intensifying and a story was likely. This increased the risk of reputational damage considerably.
- 4.54 On 25 April 2017 contractors were instructed to cease works. Senior managers were aware that the Council would incur costs as a result of this.
- 4.55 It was during this period of intense press coverage that officers became of the view that a response on behalf of the Council was necessary, as with many other press enquiries. Officers involved in the drafting and approving of press releases were interviewed as part of the investigation and were very clear that at no time was Councillor Young asked to input or influence the press releases. Miss Marjoram noted that the Council protocol on press releases was strictly observed.
- 4.56 The press coverage, including the publication of Council emails, prompted an urgent review by Eric Owens. He was to look at the leak of emails and identify where any leak originated; to review the project to date and identify any points of failure; to quickly review other projects in case there were similar failures to gain Committee approval.
- 4.57 Eric required all emails relating to Wellington Brae be passed to him, so that he could identify who was involved with which decisions on key dates. This led to the accumulation of more than three hundred emails, many of which were duplicates, which had to be analysed and sorted.
- 4.58 In terms of the review of other ongoing projects, Eric Owens stated that two were identified as requiring further Committee reports.

Findings - Project Description

- 4.59 No consideration was given to requiring the landowner to repair the damage to the retaining walls, possibly due to the urgent nature of the work, or that funding had already been secured. It is not known whether it is normal Council practice to seek to funding from landowners. [REDACTED]
[REDACTED] Had Legal been involved at the outset, this might have been possible. The option to recoup some of the project costs from the landowner was presented at the May 2017 CHI Committee. Officers had not recommended this course of action as it could have required legal action through the court system; that the timing of such an action would be detrimental to the Council as funding had already been secured; and that the delay would add additional cost as contractors were already on site.
- 4.60 There was a lack of effective project governance. At no point was it determined which team owned the project, or which individual was ultimately responsible. This represents risks in

terms of financial and resource management, with the potential for inefficiency and duplication.

- 4.61 The lack of specific project management training means that the project was undertaken by officers whom the Council may struggle to prove were sufficiently qualified to perform their work. Any lack of training increases the chance that mistakes will be made, and thereafter that the Council is vicariously liable for these mistakes.
- 4.62 There is no record kept of what actions were taken and why. There is no record of the dates and attendance of meetings, or what was agreed. This means that the Council is unable to prove due diligence, placing it at legal and reputational risk, and leaving it defenceless against claims. It further means that when reviewing a project the Council has no means by which to identify points at which its processes failed.
- 4.63 An engineering project delivered between two teams will be faced with various challenges. One would therefore expect that regular meetings would be held, so that action points could be agreed, and the team members were aware of all relevant factors. Proper records would ensure that all team members have a point of reference. This could be facilitated by even basic minute-keeping. It is surprising that the project teams did not keep minutes; even more so when those involved work for a local authority expected to account for its decisions.
- 4.64 Based on interviews with officers and the email records available, it seems obvious that emergency work was undertaken as there was an immediate and identifiable health and safety risk. Officer testimony is reliant upon their memory of events, and email availability on their individual administration skills. Should either of those things be deficient, the Council is unable to prove that officer actions were proportionate, that other options were considered, and that relevant factors had been taken into account.
- 4.65 Not all pieces of the project were in place at the right times, for instance written authorisation from all landowners prior to the commencement of work.

Findings - Land Ownership

4.66 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] With hindsight it would have been beneficial if the officers had sought advice from LDS as soon as they believed Councillor Young to be the landowner, so that a legal opinion could be obtained.

4.67 It was appropriate for Councillor Young to seek advice from the Monitoring Officer in order to address any perception that he was conflicted in his interests.

4.68 The Monitoring Officer has stated that based on the information available to him at the time, Councillor Young did not require to declare a conflict of interest because he had not been asked to make a decision as a Councillor on the works or the grant, but rather to provide his consent as a landowner.

4.69 The initial misidentification of the landowner was by Registers of Scotland which led Legal Services to state that [X] owned the land. This misidentification did not come to light until a further land registry search was undertaken in 2017. ACC could not have done anything to avert this.

4.70 Ascertaining the correct landowner in this case was dependent on the information contained in the Register of Sasines, which requires a process of deduction, and frequently cross-checking of titles. It should be noted that the Press & Journal also initially misidentified Councillor Young as the landowner.

4.71 When TSAP became aware that the landowner was not [X], as had been advised, the search should have been re-referred to Legal. As it happens, the second search request was not made until 16 March 2017, the requesting officer describing this as “urgent-ish.”

4.72 [REDACTED]

4.73 [REDACTED]

4.74 [REDACTED] This risked the Council performing work for which it could not demonstrate it had permission (as there was no supporting documentation). More significantly, the Council did not actually have permission as the land owner had not been correctly identified. In such a situation the Council could find itself defending legal claims for interfering with property without the landowner’s permission. This would also be in contravention of the MOU with Sustrans, thereby jeopardising funding. Should the work on site lead to accident or injury, the lack of appropriate permission could potentially invalidate any supposed insurance cover. Finally there is the reputational damage involved, [REDACTED]

Findings – Committee Reporting

- 4.75 [REDACTED] identified potential issues regarding planning permission and management of work around the Tree Preservation Order. They sought advice from suitably qualified officers and obtained this in writing. It was determined that no planning permission was required as the estimated cost of works amounted to £250,000 or less, and there was no suggested change of use, as per schedule 1, part 12, Town and Country Planning (General Permitted Development)(Scotland) Order 1992.
- 4.76 Subsequently, the proposed work on the Brae was correctly opened to public consultation for the statutory period on the planning register. [REDACTED]
[REDACTED]
- 4.77 [REDACTED]
[REDACTED]
- 4.78 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] However, the sheet piling work was later found to be unnecessary.
- 4.79 The tender was managed by [REDACTED] and [REDACTED] in accordance with advice from Central Purchasing Unit. The amounts involved in the tender and the procedures followed comply with the Council's Procurement Regulations 2016, and hence the procurement legislation. The phase 1 work was completed internally for just over £20,000. The phase 2 work was open to tender as a works contract, considerably under the EU threshold.
- 4.80 Committee approval should have been timeously sought for both Sustrans funding applications. The bulletin notification was inappropriate and did not allow scrutiny by members.
- 4.81 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 4.82 [REDACTED]
[REDACTED]
- 4.83 There were a number of points where the funding could have been reported to Committee. Each of these opportunities was missed.
- 4.84 The initial £50,000 funding application would have required Committee approval in May 2016, which would have conflicted with the expectation of Sustrans that the initial work be completed by the end of May 2016. Funds should either not have been accepted or, as the

Monitoring Officer has advised the investigation, an Urgent Business Committee could have been called..

- 4.85 Despite notification to [REDACTED] it is unclear why the initial funding was not reported. None of the witnesses could recall a decision to remove it from the Committee report, and there is no email detailing such a decision.
- 4.86 There was an opportunity to report the second tranche of funding when [REDACTED] [REDACTED] but this was missed.
- 4.87 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 4.88 There was a lack of clarity over reporting expectations and potential changes to protocols. The evidence from the TSAP witnesses is not corroborated by either the CHI administration officer or the Committee clerk, which indicates that confusion about the correct use of committee reports is not widespread.
- 4.89 Whilst the failure to report to Committee is undoubtedly a serious matter, it has not been possible to obtain sufficient evidence which would allow specific officer(s) to be held accountable for any inaction or negligence. The evidence from [REDACTED], [REDACTED] and [REDACTED] reflects that TSAP was heavily involved in major projects, and was not fully staffed.

Findings – ACC Response to Public Interest

- 4.90 As the interim Head of Service and Director were relatively new to the organisation, they had no prior knowledge of Wellington Brae, and an incomplete knowledge of custom and practice within the Directorate. As such the initial decisions taken to review, not only Wellington Brae, but other projects, was wholly correct.
- 4.91 Options to allow the work to proceed were investigated; for instance, whether the work could be authorised through delegated powers.
- 4.92 The decision to halt the work on Wellington Brae was not taken lightly, and it was made with due regard to the various risks, pressures and cost implications.
- 4.93 The halting of the work was the only realistic option available as it was unsanctioned by Committee. It also allowed some time for internal reviews to take place.
- 4.94 At the time the media statement was issued, there had been no full investigation, so the statement that there had been a serious failing by Council officers relied on the information available at the time, i.e. the absence of a Committee report, and it had not yet been ascertained who held title to the land. As some of the officers had been named in the leaked emails, and as the press had been briefed that the project had been “instigated” by TSAP,

there is a risk that those members of staff suffered reputational damage and upset. However, [REDACTED] states that this reference was to demonstrate that the project had not been requested by a third party.

- 4.95 Councillor Young was involved in the Wellington Brae project so far as he was believed to be the landowner, not in his capacity as an elected member. Bernadette Marjoram has said that her interactions with Councillor Young were entirely on the basis of him being an elected member, as opposed to a private landowner. The officer witnesses have been clear that Councillor Young was informed of the media enquiries and content of the media statements in line with the provision on enquiries relating to individual elected members contained within the Council's Communications Policy. Councillor Young had no role in contributing to or authorising media statements made by the Council on the issue. The Monitoring Officer has stated that he did not consider it inappropriate for Councillor Young to be made aware of the Council's response.

5. Officer Actions

5.1 It has not been possible to determine a single point of failure in relation to how officers managed the Wellington Brae Project. This chapter is intended to list the points at which alternative actions might have positively impacted the project.

5.2 There was a failure to report external funding to Committee, and thereby obtain the appropriate authorisation from members. [REDACTED]

[REDACTED]

5.3 [REDACTED]

5.4 Further, the information on project funding was held over separate documents, depending on the nature of the funding, which increased the chances of omission.

5.5 [REDACTED]

5.6 [REDACTED]

5.7 [REDACTED]

5.8 The lack of a coherent project management plan detailing specific responsibilities means that it has not been possible to identify individual members of staff accountable for specific actions. [REDACTED]

[REDACTED]

5.9 [REDACTED]

5.10 [REDACTED]

5.11 [REDACTED]

5.12

[REDACTED]

5.13

[REDACTED]

5.14

[REDACTED]

6. Funding

- 6.1 Funding was provided by, Sustrans, a national charity registered in Scotland and England. Its purpose is to promote walking and cycling. Most of the money used by Sustrans to fund capital projects in Scotland comes from the Scottish Government via Transport Scotland.
- 6.2 Sustrans usually funds projects from its 'Community Links' programme, which requires written application and the match funding. The funding to which this report relates was not match funded, accounting for the full cost of the project.
- 6.3 A memorandum of understanding between Sustrans and grantees is signed annually. This MOU contains the terms under which grants for the forthcoming year are made, and what is expected by Sustrans, e.g. that necessary permissions are obtained from landowners.
- 6.4 This MOU covers all funds disbursed, and therefore there is no requirement for individual agreements for each award.
- 6.5 Towards the end of 2015, Sustrans was awarded funds from the Scottish Government, intended to deal with the effects of recent storms. This was communicated to partners, including Aberdeen City Council. Until the events of March/April 2017, discussions with Sustrans on Wellington Brae were dealt with exclusively by TSAP.
- 6.6 In February 2016, ██████████ of the TSAP team contacted Sustrans about the Wellington Brae closure. The Brae was an integral part of the National Cycle Network, managed by Sustrans.
- 6.7 Based on advice and estimates from Structures, ██████████ advised Sustrans of the nature of the damage, and that remedial work to modern standards was estimated to cost £250,000.
- 6.8 ██████████ requested that full amount to cover construction, tree felling, replanting and landscaping, but it would not be possible to complete the work before the end of the Sustrans financial year (May 2016). Therefore, ██████████, and was approved for, £50,000 to cover preliminary work, specifically including survey, design and land ownership checks.
- 6.9 The preliminary work cost less than anticipated, largely because the design work was carried out internally, and following receipt of supporting evidence of the cost of work undertaken, Sustrans made an award of £21,316.21.
- 6.10 In August 2016 Sustrans received from the Council the completed designs, bill of quantities and cost estimates for Wellington Brae project. By this time ██████████ involvement had largely ceased, having handed over to ██████████
- 6.11 £200,000 funding for the second phase of work was notified to the Council in November 2016, with the expectation that the work was complete by the end of May 2017, which would avoid the need for a further application from their 2017/2018 budget.

- 6.12 The timetable of works slipped, and adjustments were permitted by Sustrans, permitting an extension until mid-June 2017.
- 6.13 In March 2017 Sustrans was contacted by an external witness, [REDACTED] who had concerns that land ownership had not been properly established, and that the necessary permissions for work had not been obtained.
- 6.14 Sustrans in turn contacted [REDACTED] of TSAP, who advised by email [REDACTED] and that the matter had been notified to Committee via a bulletin in May 2016, with an update due in May 2017.
- 6.15 As the Wellington Brae story received press coverage, a teleconference involving Eric Owens, [REDACTED] and [REDACTED] was held with Sustrans. It was negotiated that some of the work could be invoiced in the current financial year (2016/17), with the final amount paid from the 2017/18 budget and work anticipated to be complete by August 2017.
- 6.16 By the end of June 2017 the Council had submitted a claim for £90,000.
- 6.17 [REDACTED]
[REDACTED]
[REDACTED] As an integral part of the National Cycle Network, the overriding priority was to ensure that Wellington Brae was reopened to the public. Its closure meant that cyclists and pedestrians had to use a route which was less safe.

Findings:

- 6.18 Sustrans funding would have been made available irrespective of who owned the affected land. There was no requirement to seek costs from the landowner first. As the funding was not part of an ongoing programme, and that the funds were provided by the Scottish Government for a specific purpose, there were few requirements specified by Sustrans, outside the general framework of the MOU.
- 6.19 Funding was arranged solely through email. This was in largely due to the urgency of the situation. However, not having financial records securely stored and available as official documents for later retrieval by line managers presents a number of potential ramifications for the Council. These include non-compliance to FOI/EIR requests as the information is not stored in an obvious location; the lack of central recording of such income presents an inherent risk of fraud, theft and embezzlement; and there is the reputational damage caused by the Council handling applications and funds outside of a recognisable corporate structure.

- 6.20 Funding was implicitly conditional on meeting the terms of the MOU, including securing necessary permissions. In the absence of documentary evidence, the council is unable to demonstrate that it had these permissions in place during the first phase of work. This has potential implications in terms of claims against the Council, and reputational damage to the Council and, by extension, Sustrans. It is therefore plausible that other MOU expectations were not met.

7. Data Breach

7.1 On 27 April 2017 the Press & Journal published a photograph which purported to show three emails from Council officers to Councillor Young. Those emails were from [redacted], requesting that Councillor Young provide written authorisation for work to commence.

7.2 In conjunction with ICT, the interim Head of Service suspended the emails accounts of the TSAP witnesses. Email trawls were conducted, firstly searching for emails discussing Wellington Brae, and secondly mapping email correspondence which originated from, or was sent to, Aberdeen Journals or the BBC. The mapping included onward transmission through CC'd emails, as well as looking at proxy access to specific accounts. Email metadata obtained went back to 21 June 2016.

7.3 Email accounts were released almost a week after. No evidence was uncovered which allowed the Service to identify an individual source of the leaks.

7.4

[REDACTED]

7.5 At interview, Councillor Young also denied having released the emails to the press.

7.6 The investigation confirmed that Councillor Young had forwarded the particular emails in question to a local resident who had a number of concerns regarding the works. [REDACTED]

[REDACTED]

Findings:

7.7 Due to the intense public interest and ongoing risk of reputational damage, it was proportionate to lock down the email accounts of the relevant staff and investigate further. Had the emails been released by a member of staff it could have constituted a deliberate data breach, possibly resulting in a financial penalty from the Information Commissioner.

7.8 There is no evidence to suggest that Council officers were responsible for unauthorised disclosure of the emails to Councillor Young.

7.9

[REDACTED]

[REDACTED] Councillor Young's actions did not contravene the ICT Acceptable Use Policy as the emails did not concern any confidential information, were not protectively marked, and had been addressed to Councillor Young.

7.10 The logs from ICT were passed to the investigation. It is noted that some staff forwarded emails (not those of interest as part of this investigation) concerning Wellington Brae from their work email address to their private Gmail and Hotmail addresses, which is contrary to Council policy, creating risks around information management and security.

8. Recommendations

Finance/Funding

The investigation highlighted issues with the way in which funding was recorded and tracked. Therefore work should continue in ensuring uniform standards and practices are in place across services, particularly with regard to financial matters. It is specifically recommended that financial and funding documents are easily retrievable, and are clearly attributable to a particular project or purpose. This would be facilitated by the introduction of forms to record the officers involved in requesting and approving funding; the conditions attached to the funding; the purpose of the funding; officers authorised to disburse those funds, and what authority they are empowered by.

Funding agreements should follow a standard process across the Council for approval and governance. This includes gateway stages and sign-off of the relevant funding agreement requirements as specified by either the Council or the finding body.

Project Management

The investigation highlighted that project delivery across the TSAP and Structures teams was amorphous. The Council has an opportunity to implement a standard operating procedure which can be tailored to the various types of projects which it undertakes. A common operating model should ensure a uniformly acceptable methodology for project delivery. A common model also means that a large number of staff can be trained in project delivery, with less reliance on specialist training which would likely cost more per head.

This methodology should ensure that Project Managers are identified at the inception of a project, as well as a clear understanding of who is the project owner. Paperwork (or electronic versions thereof) should be an integral part of the project. Decisions need to be made by the most appropriate person and reviewed by a suitably senior and qualified manager. Officers joining an existing project need to be able to see that the actions taken thus far are complete and the authorisations for further work are in place.

It is recommended that the Council obtains a project management software solution which allows the scanning and retention of all documents connected to a project (plans, emails, minutes, letters, applications, etc.). These records can allow us to demonstrate that the various aspects of external funding agreements, e.g. land ownership checks, have been complied with. This mechanism should also allow an authorised person to easily retrieve details of all funding, without the need to check trackers held by different teams.

Project risk assessments should include consideration of political or public interest factors.

Guidance and refresher material should be readily available to all project staff. It is suggested that this should be via the Council intranet pages.

Governance

The investigation has shown there to be failures in governance, including insufficient supervision and record keeping. It is recommended that the Director of CHI should review processes and procedures, culture and practice within the Directorate and determine if any management action is required regarding the failure to report to Committee, instructing work without sufficient authorisation or the absence of documents or minutes connected to projects. It is further recommended that she ascertains whether any work is required to improve communication through the service hierarchy; whether there is a current satisfactory arrangement for staff to escalate concerns and ensure they are addressed; whether the Service is adequately staffed for the functions it delivers; whether the Service processes could benefit from greater involvement with staff of LDS, for instance with advice on when Committee reports are required, when a legal opinion should be sought, etc..

The issue of data breaches raises wider questions on how the Council uses email, including whether staff/members should be prohibited from sending emails relating to official business to their private email addresses; and also whether it is necessary or desirable to have a framework or approval process which covers the disclosure of internal emails to a third party.

Elected Members

The Member-Officer Relations Protocol is due for revision before Full Council in March 2018. It is recommended that the Monitoring Officer provides guidance in the protocol on a number of issues raised in this report, such as escalation procedures when a response is needed from a member; and principles and procedures on how officers conduct business with a private citizen who happens to be a Councillor, particularly with regards to how the public and private roles are delineated.

APPENDIX 1

List of Witnesses

Internal witnesses	
Bernadette Marjoram	Interim Director of CHI
Eric Owens	Interim Head of Planning and Sustainable Development; CHI
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
Fraser Bell	Head of Legal and Democratic Services
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

External Witnesses	
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
Willie Young	Former ACC Councillor
John Lynch	Former Interim Head of Planning and Sustainable Development

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