

THE MORAY COUNCIL
MINUTE OF MEETING OF THE MORAY COUNCIL
WEDNESDAY 14 NOVEMBER 2007
COUNCIL OFFICE, ELGIN

PRESENT

Councillors L A Bell, A Bisset, G S Coull, J S Cree, J A Divers, J Hamilton, J C Hogg, B Jarvis, G Leadbitter, M J McConachie, A D McDonald, G McDonald, E M McGillivray, G McIntyre, A C McKay, F J Murdoch, I Ogilvie, P Paul, D G Ross, J G Russell, M Shand, R H Shepherd, D C Stewart and A G Wright.

IN ATTENDANCE

The Chief Executive, the Director of Community Services, the Director of Environmental Services, the Director of Educational Services, the Chief Financial Officer, the Chief Legal Officer, the Principal Solicitor (Litigation and Licensing)(Item 14), the Consultancy Manager (Items 15 and 15(a)), Peter Haslam Senior Engineer (Flooding and Coastal Protection)(Items 15 and 15(a)) and the Principal Committee Services Officer, Clerk to the Meeting.

APOLOGIES

Apologies for absence were intimated on behalf of Councillors J Mackay and I R Young

COMMONWEALTH GAMES 2014

In congratulating the City of Glasgow in its successful bid to host the 2014 Commonwealth Games the Convener stated that this was not only good news for Glasgow but also for Scotland and was a credit to all those involved for working so hard to pull this off. He further stated that one of the challenges for the Council will be to promote Moray as a place to visit and the meeting agreed that a letter be sent to the Lord Provost of Glasgow passing on this Council's congratulations and best wishes to all those involved

1. ADDITIONAL BUSINESS

In terms of the relevant Standing Order, the Meeting agreed to accept as Additional Items of Business to be transacted at the Meeting, the undernoted matter on the Convener certifying that, in his opinion, it required to be considered on the grounds of urgency having regard to the relevant timescales involved:

- 15(c) Offer of Funding for Consultancy Services – Report by Chief Executive.

2. DECLARATION OF GROUP DECISIONS:-

In terms of Standing Order 20 and the Councillors' Code of Conduct the meeting noted that there were no declarations from group leaders or spokespersons in regard to any prior decisions taken on how members will vote on any item on the Agenda nor any declarations of Members Interest in respect of any Item on the Agenda.

3. WRITTEN QUESTIONS

In response to a written question from Councillor Russell asking when Members can expect the next Retail Health Check for Elgin the Meeting noted that surveys of vacancy rates in Elgin Town Centre and the other four main towns in Moray have been undertaken in the past on a bi-annual

basis and that it is intended to undertake a further survey during early January 2008, once staff commitments in connection with the Review of the Moray Local Plan have been completed.

It was further noted that a Town Centre Health Check is the appropriate monitoring tool to measure the strengths and weaknesses of a town centre and to analyse the factors, which contribute to its vitality and viability. Together, these measures give an indication of the health of a town centre and can demonstrate changes in performance that can inform future decision-making.

Examples of vitality and viability indicators include vacancy rates, particularly street level vacancy in prime retail areas. However, Health Checks go much wider than this, to include indicators such as pedestrian flow, prime rental values, retailer representation and intentions, commercial yields, physical structure of the centre, including opportunities and constraints and its accessibility, periodic surveys of consumers, and crime. This was noted.

It is understood that the Scottish Government are due to publish advice to Local Authorities on Town Centre Health Checks, in the form of a Planning Advice Note, early in 2008. It is suggested that once this information is made available, it will inform the Council as to the most appropriate way in which to address this subject. It is envisaged that a report will be submitted to the Council on Town Centre Health Checks subsequent to the publication of the Planning Advice Note. This report will suggest a plan for the way forward and include advice on resource implications. This was noted.

4. THE MORAY COUNCIL – MINUTE OF MEETING DATED 19 SEPTEMBER 2007

The Minute of the Moray Council dated 19 September 2007, was submitted and approved.

Under reference to paragraph 7 of the Minute the Meeting agreed that Councillor A McKay be appointed as the fourth member to the Moray Housing Partnership.

Under reference to paragraph 22 of the Minute in response to a query by Councillor Paul in regard to applications to the Moray Flood Relief Fund, the Chief Legal Officer advised that the approach used in dealing with applications to the Moray Flood Relief Fund was by delegated powers in order to ensure applications were dealt with swiftly within the set criteria as set by the Committee and it was agreed that the Chief Legal Officer and the Chief Executive in consultation with Councillor Paul would deal with any outstanding applications as quickly as possible.

5. AUDIT & PERFORMANCE REVIEW COMMITTEE – MINUTE OF MEETING DATED 26 SEPTEMBER 2007

The Minute of the Audit & Performance Committee dated 26 September 2007 was submitted and approved.

6. ENVIRONMENTAL SERVICES (SPECIAL) COMMITTEE – MINUTE OF MEETING DATED 27 SEPTEMBER 2007

The Minute of the Environmental Services (Special) Committee dated 27 September 2007, was submitted and approved.

7. EDUCATION & SOCIAL SERVICES COMMITTEE – MINUTE OF MEETING DATED 3 OCTOBER 2007

The Minute of the Education & Social Services Committee dated 3 October 2007, was submitted and approved.

8. ENVIRONMENTAL SERVICES COMMITTEE – MINUTE OF MEETING DATED 10 OCTOBER 2007

The Minute of the Environmental Services Committee dated 10 October 2007, was submitted and approved subject to the wording at line 8 of paragraph 6 of Item 7(b) being amended to read ...'usually gather outside the harbour to check the times of tides etc...'

9. LICENSING COMMITTEE – MINUTE OF MEETING DATED 17 OCTOBER 2007

The Minute of the Licensing Committee dated 17 October 2007, was submitted and approved.

10. FLOOD ALLEVIATION SUB-COMMITTEE – MINUTE OF MEETING DATED 17 OCTOBER 2007

The Minute of the Flood Alleviation Committee dated 17 October 2007, was submitted and approved subject to the wording of the first line of the second paragraph of item 12 being amended to read ' Following consideration the Sub-Committee agreed to recommend to etc.....'

11. POLICY COMMITTEE – MINUTE OF MEETING DATED 24 OCTOBER 2007

The Minute of the Policy Committee dated 24 October 2007, was submitted and approved subject to the dissent of all members of the SNP Group present being recorded following the vote at Item 32 and to the additional wording 'and Group Leaders' being included at the last line of paragraph 3 of Item 33.

12. BRITISH LEGION (SCOTLAND) : NOTICE OF MOTION BY COUNCILLOR J DIVERS SECONDED BY COUNCILLOR B JARVIS

There was submitted a Notice of Motion by Councillor J Divers, seconded by Councillor B Stewart in the following terms:-

"This Council notes the valuable role that the British Legion (Scotland) branches play in Moray by supporting ex-service personnel and their families.

The Moray Council also notes the financial position that the social clubs are in. The refusal of Moray Council in not awarding discretionary rates relief to the social clubs in March 2007 has not helped the situation and Moray Council hereby agrees to award the maximum rates relief."

Prior to discussion of the Motion the Chief Legal Officer advised that in terms of procedure, nothing has changed in law since the decision not to afford rates relief to branches of the Royal British Legion in Moray was taken by the Policy and Resources Committee of the last council.

Then as now the main use of Royal British Legion Clubs was social, in that its members met and consumed alcohol on the premises. This in law is not construed as a charitable function or purpose, even if the funds raised were used as such. This matter has been tested in the courts and several legal precedents exist to confirm the council's existing position.

He further advised that, whilst he appreciated that Members sympathised with the plight of the area's Royal British Legion Clubs, for this Council to grant rate relief to these establishments would be contrary to judgements of the courts. What however, has changed since the decision is Government Policy on rates relief for rural filling stations and hotels and he suggested that Members may wish to look to the Scottish Parliament to address this issue.

The Chief Financial Officer advised that the Council does not have complete discretion in awarding rate relief and that the decision was taken as the main function of the clubs was not charitable and reiterated the suggestion made by the Chief Legal Officer that the matter be referred to the Parliament for clarification.

The Chief Executive advised that from correspondence he had received he was aware of the wide degree of sympathy by MSPs regarding this issue and advised that it would seem entirely appropriate to ask them to support this issue.

Following further discussion, during which Members support for the motion was noted, it was agreed to defer consideration of this matter to the next meeting of the Council in order that more detailed information can be provided on the four British Legion Clubs in Moray and that the Chief Executive write and ask MSPs to address this issue.

13. FOOT & MOUTH COMPENSATION : NOTICE OF MOTION BY COUNCILLOR G COULL SECONDED BY COUNCILLOR I OGILVIE

There was submitted a Notice of Motion by Councillor G Coull, seconded by Councillor I Ogilvie in the following terms:-

“That The Moray Council welcomes the £25 million compensation package from the Scottish Government for Scotland’s farmers who have suffered as a result of the foot and mouth outbreak. Furthermore Moray Council recognises that the Westminster Government is the body with the moral responsibility for such compensation, as in 2001, and instructs the Convener to write to the Secretary of State for DEFRA demanding they recompense the Scottish Government accordingly.

Following discussion Councillor Ross, in supporting Councillor Coull’s motion suggested amending the terms of the motion to instruct the Convener to write to the Secretary of State for DEFRA calling on them to recompense the Scottish Government accordingly. He further suggested that the letter should also highlight the pressures placed on many other businesses which rely on the agriculture industry, such as hauliers, who were also badly treated by the inexcusable delays by the Westminster Government who took several weeks to respond to the reasonable requests of many organisations to relax the restrictions on road hauliers’ driving hours.

Councillor Coull was in agreement with the suggested amendments to the motion.

Thereafter Councillor Divers, seconded by Councillor Jarvis, moved as an amendment that the Council do not instruct the Convener to write to the Secretary of State for DEFRA.

On a division there voted:

For the Motion (22)	Councillors Coull, Ogilvie, Bell, Bisset, Cree, Hamilton, Hogg, Leadbitter, McConachie, A McDonald, G McDonald, McGillivray, McIntyre, A McKay, Murdoch, Paul, Ross, Russell, Shand, Shepherd, Stewart and Wright.
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For the Amendment (2)	Councillors Divers and Jarvis.
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Abstentions (0)

Accordingly the Motion became the finding of the Meeting and it was agreed to support Councillor Coull’s motion, as amended by Councillor Ross, that the Moray Council welcomes the £25 million compensation package from the Scottish Government for Scotland’s farmers who have suffered as a result of the foot and mouth outbreak.

Furthermore the Moray Council recognises that the Westminster Government is the body with the moral responsibility for such compensation, as in 2001, and instructs the Convener to write to the Secretary of State for DEFRA calling on them to recompense the Scottish Government accordingly. The letter should also highlight the pressures placed on many other businesses which rely on the agriculture industry, such as hauliers, who were also badly treated by the inexcusable delays by the Westminster Government who took several weeks to

respond to the reasonable requests of many organisations to relax the restrictions on road hauliers' driving hours.

14. PROPOSED BYELAW ON DRINKING IN PUBLIC PLACES IN LOSSIEMOUTH

There was submitted a report by the Chief Legal Officer inviting the Council to consider the desirability of implementing a byelaw to prevent drinking in the public places of Lossiemouth and if so minded to instruct the Chief Legal Officer to progress the implementation process.

Following consideration the Council agreed :-

- (i) Scottish Executive Model 3 as the most appropriate way to take the matter forward in terms of a byelaw for Lossiemouth having regard to the four potential models proposed by the Executive;
- (ii) that the Chief Legal Officer be instructed to draft the byelaw and undertake consultation appropriate to the model chosen including any necessary consultation to amend the existing byelaws if required in order to achieve a consistent approach across Moray; and
- (iii) that a report on the outcome of the consultation be brought forward to a future meeting.

15. FLOOD PREVENTION AND MITIGATION IN MORAY BIENNIEL REPORT – NOVEMBER 2007

There was submitted a report by the Director of Environmental Services to approve the Biennial Report on Flood Prevention and Mitigation in Moray, to be published by 26 November 2007 in accordance with the requirement set out in the Flood Prevention and Land Drainage (Scotland) Act 1997.

During discussion Councillor Ross raised his concern regarding the recommendation from the Flood Alleviation Sub-Committee to the Environmental Services Committee not to take forward the proposals for a Kingston Coast Protection Scheme and asked for an assurance that the three local Members receive copies of the three monthly monitoring reports in order that they may be kept informed of the situation.

Councillor A McDonald stated that in her opinion the Council could not give a categorical assurance that a significant storm would not breach the shingle bank defences at Kingston and if breached this would be disastrous for over seventy homes and families in Kingston which could also affect parts of Garmouth and requested a detailed report be put before the next Environmental Services Committee on coastal flooding issues at Kingston and the potential impact on Kingston and Garmouth if the decision to take no remedial action other than monitoring is taken.

The Director of Environmental Services advised that the three monthly monitoring reports would be placed on the Members Information Site. In regard to the issues raised by Councillor A McDonald, he advised that the report from the Flood Alleviation Sub-Committee regarding Kingston and Garmouth would be going to the next meeting of the Environmental Services Committee at which time Members will have the opportunity to discuss the issues more fully. The terms of the rules set by the Scottish Government regarding the submission of a flood prevention scheme state that the benefits of the scheme must exceed the costs and that officers doubt that protection could be provided where the benefits would exceed the costs in this case but that this issue would be considered further at the Environmental Services Committee meeting.

In response to a question from Councillor Divers about flash-flooding and drainage surcharging in New Elgin involving Scottish Water's drainage systems it was agreed the

Director of Environmental Services would provide to Councillor Divers a response outwith the meeting.

It was noted, in response to a question about the timing of a review of a business case for Buckie the review would take place next financial year. It was also agreed a reserve list for Buckie would, as requested, be provided to Councillor J MacDonald by the Director of Environmental Services.

It was further noted in response to questions about Regent Court and Newmill, Keith respectively work for both would be done in the next financial year.

Following further discussion the Council agreed to approve the Biennial Report

16. FORRES (BURN OF MOSSET) FLOOD PREVENTION SCHEME 2005: CONSTRUCTION WORKS PACKAGE AWARD, PROGRAMME AND PROJECT BUDGET

There was submitted a report by the Director of Environmental Services asking the Council to authorise the acceptance of the Target Cost for the Forres (Burn of Mosset) Works Package, and associated programme as submitted on 14 September 2007 to the Council in accordance with the Contract for Moray Flood Alleviation Schemes.

The report also sought approval for the project budget and proposals for monitoring the costs against it and for an extension of the contract with cost and project management consultants, EC Harris, in accordance with the Procurement Regulations.

Following consideration the Council agreed:-

- (i) to authorise the award of the Works Order for Construction of the Forres (Burn of Mosset) Flood Prevention Scheme as submitted by Morrison Construction in accordance with the contract for Moray Flood Alleviation Schemes, with attendant programme, as audited and certified as providing value for money by cost and project management consultants EC Harris. The Target Cost is £9,508,000.
- (ii) that the foregoing authorisation be subject to grant offer from the Scottish Government and issue of the four CAR licences from SEPA;
- (iii) to approve the project budget of £20,856,000 as set out in the report; and
- (iv) to approve an extension of the contract with cost and project management consultants, EC Harris, in accordance with the Procurement Regulations. This extension of contract to be as per the terms of their existing contract, won in competition, but extended to monitor works cost through the contract and report to the Council.

17. POLLING DISTRICT AND POLLING PLACE STATUTORY REVIEW 2007

There was submitted a report by the Chief Executive advising the Moray Council of the requirement to conduct a general four-yearly review of Polling Districts and Polling Places within their Parliamentary constituency, with particular regard to electorate accessibility, and report to the Council on any amendments and inviting the Council to approve the current Polling Scheme which was used for the 3rd May 2007 election.

Following consideration the Council agreed the current Polling Scheme, which was used for 3rd May 2007 election as shown in Appendix 1 of the report.

The Meeting also noted Councillor Ross' comments in urging the Returning Officer to continue the use of the Royal Oak, Urquhart, which in his opinion was an excellent facility.

18. OFFER OF FUNDING

There was submitted a report by the Chief Executive inviting the Council to consider an offer from the Scottish Government of consultancy expertise to undertake a review of all Council

Services. The Review is intended to assess current services and identify areas where efficiency can be improved using a model which has recently been developed in Glasgow and Edinburgh.

Following consideration the Meeting agreed to apply for funding to the Scottish Government to carry out a review of services and that the Council keeps its options open in respect of collaborating with other authorities.

19. THE MORAY COUNCIL'S AUDITED ACCOUNTS FOR THE PERIOD 1 APRIL 2006 TO 31 MARCH 2007

There was submitted and noted a report by the Chief Financial Office advising the Council of the Audited Accounts of the Moray Council for the year ended 31 March 2007.

20. ANNUAL REPORT BY THE COUNCIL'S EXTERNAL AUDITORS

There was submitted and noted a report by the Chief Financial Officer advising the Council of the External Auditor's Report for the year ended 31 March 2007.

21. CONSTITUTION OF APPOINTMENTS COMMITTEE

There was submitted a report by the Chief Legal Officer to inviting the Council to homologate the action taken by the Chief Legal Officer, in consultation with the Convener, Vice Convener and Group leaders to appoint 7 Members to the Appointments Committee.

Following consideration the Council agreed to homologate the action taken by the Chief Legal Officer, in consultation with the Convener, Vice-Convener and Group Leaders to appoint 7 Members to the Appointments Committee consisting of the joint chairs of the Employing Committee, two members from within the Administration, two members from within the SNP Group and one from within the Labour Group. (4+2+1)

22. QUESTION TIME

In response to Councillor Diver's query regarding the position relating to the Schools PPP Project in light of the Scottish Government's proposals to freeze council tax, Councillor Bisset as Chairman of the PPP Project Board stated that until such time as the Scottish Government make known their proposals in regard to council tax and alternative funding, the project will not be able to move forward as quickly as it should have been. He further advised that a report would be coming forward from the PPP Project Board to the Service Development Group and thereafter will come either to Educational and Social Services Committee or Full Council as soon as possible.

The Chief Executive stated that whilst he was aware that this was seen as a priority, it must be set in the context of the financial budget and it will be brought forward as quickly as possible.