

THE MORAY COUNCIL
MINUTE OF MEETING OF THE MORAY COUNCIL

WEDNESDAY 12 MAY 2010

COUNCIL OFFICE, ELGIN

PRESENT

Councillors G McIntyre (Convener), A Wright (Depute Convener), L Bell, G Coull, S Cree, J Divers, J Hamilton, J Hogg, B Jarvis, G Leadbitter, J MacKay, M. McConachie, A McDonald, G McDonald, A McKay, F Murdoch, I Ogilvie, P Paul, D Ross, J Russell, M Shand, J Sharp, R Shepherd, D Stewart, and I Young

IN ATTENDANCE

The Chief Executive, the Director of Educational Services, the Director of Environmental Services, the Chief Financial Officer, the Chief Legal Officer, the Corporate Policy Unit Manager, the Educational Resources Manager (Item 6), Alexander Burrell Estates Surveyor (Item 12) and the Principal Committee Services Officer, Clerk to the Meeting.

APOLOGIES

An apology for absence was intimated on behalf of Councillor E McGillivray.

ALSO IN ATTENDANCE

Lorna Skirving, Audit Scotland

2. ORDER OF BUSINESS

In terms of Standing Order 28 the Meeting noted that Agenda Item 5 'Review of The School Estate' had been withdrawn from the agenda to allow Members an opportunity to discuss with officers more appropriate criteria for a review instead of the criteria as detailed in Appendix 3 of the report by the Chief Executive.

3. ADDITIONAL BUSINESS

In terms of Standing Order 28(d), the Meeting agreed to accept as an Additional Item 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 in order to give early consideration due to the timescales involved:-

“Elgin Flood Alleviation Scheme Travis Perkins Relocation’ -Report by Head of Estates Services [Para 9]

It was further agreed that it be taken in confidence as Item 12 on the Agenda.

4. NOTICE OF MOTION

In terms of Standing Order 32(b) there was submitted by Councillor G McDonald, seconded by Councillor A McDonald, an urgent Notice of Motion asking that this Council congratulates Buckie Thistle Football Club on becoming the Highland League Champions for 2009-10.

In moving the Motion Councillor G McDonald stated that Buckie Thistle won their first Highland League Championship in fifty two years on Saturday 1 May 2010, with a 3 – 0 away win at Wick Academy in front of a large travelling support. He further stated that congratulations must also go to Forres Mechanics who won the Foster’s Highland League Cup Final on Saturday 8 May 2010 with a 2 – 0 win against Rothes in front of a crowd over twelve hundred at Buckie’s Victoria Park. As Chairman of “Buckie Regeneration” he was of the opinion a lot of pride had been restored to the town and it gave him great pleasure in proposing that this Council congratulates Buckie Thistle Football Club becoming the Highland League Champions for 2009/10.

In seconding the Motion, Councillor A McDonald stated that it was a tremendous achievement and congratulated everyone connected with Buckie Thistle Football Club.

Various Members expressed their congratulations to both Buckie Thistle Football Club and Forres Mechanics, and thereafter the Meeting unanimously agreed to support the Notice of Motion and congratulated Buckie Thistle Football Club on becoming the Highland League Champions for 2009/10.

5. NOTICE OF MOTION

In terms of Standing Order 32(b) there was submitted by Councillor Wright moved an urgent Notice of Motion referring to the decision of the Communities Committee held on 13 April 2010 to progress plans to the planning stage to create gypsy/travellers halting sites across Moray and moved that, given the extent of public concern expressed at public meetings and in press coverage and the resultant need to clarify how the Council will consult on this decision, a report on how the Council will consult be submitted to the Meeting of the Communities Committee on Wednesday 8 June 2010 for Members’ consideration and approval.

In seconding the Motion Councillor Cree stated that he was present at the Communities Committee at the time the decision was taken and at that time had the understanding that full consultation was to take place and this Motion will simply, in his mind, clarify that.

During discussion assurance was sought that in addition to consultations, public meetings will be held to ensure openness and transparency and that in terms of the policy, should only one of the three potential sites be chosen, the policy of having more than one site will also be debated at the Communities Committee at the same time.

In response the Chairman of the Communities Committee, Councillor McGillivray, gave an assurance that in regard to the concern raised about the number of sites, this would be debated at the Communities Committee. In regard to the holding of public meetings, Councillor Wright stated that this was exactly why this notice of motion was raised and that a decision on exactly what the format of the public consultation will be will be taken at the meeting of the Communities Committee on 8 June 2010.

Thereafter the meeting unanimously agreed to support the notice of motion and agreed that a report on how the Council will consult be submitted to the Meeting of the Communities Committee on Wednesday 8 June 2010 for Members' consideration and approval.

6. DECLARATION OF GROUP DECISIONS

In terms of Standing Order 20 and the Councillors' Code of Conduct Councillor Paul declared a personal interest in Item 12 (paragraph 17 of the Minute refers) due to a relative being an employee of the Company referred to in the report. Thereafter the meeting noted 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.

7. EXEMPT INFORMATION

<u>Para No of Minute</u>	<u>Para No of Schedule 7A</u>
17	9

8. MINUTES

The following Minutes were submitted and approved:

- (a) SPECIAL PLANNING AND REGULATORY SERVICES – MINUTE OF MEETING DATED 3 MARCH 2010**
- (b) THE MORAY COUNCIL – MINUTE OF MEETING DATED 17 MARCH 2010**
- (c) LOCAL REVIEW BODY – MINUTE OF MEETING DATED 24 MARCH 2010**

- (d) SPECIAL LICENSING COMMITTEE – MINUTE OF MEETING
DATED 25 MARCH 2010**
 - (e) POLICY AND RESOURCES COMMITTEE – MINUTE OF MEETING
DATED 30 MARCH 2010**
 - (f) HEALTH AND SOCIAL CARE SERVICES COMMITTEE – MINUTE
OF MEETING DATED 31 MARCH 2010**
 - (g) PLANNING AND REGULATORY SERVICES – MINUTE OF
MEETING DATED 6 APRIL 2010**
 - (h) COMMUNITIES COMMITTEE – MINUTE OF MEETING DATED 13
APRIL 2010**
 - (i) CHILD PROTECTION SUB COMMITTEE – MINUTE OF MEETING
DATED 16 APRIL 2010**
 - (j) SPECIAL FULL COUNCIL – MINUTE OF MEETING DATED 14
APRIL 2010**
 - (k) CHILDREN AND YOUNG PEOPLE’S SERVICES COMMITTEE –
MINUTE OF MEETING DATED 14 APRIL 2010**
 - (l) ECONOMIC DEVELOPMENT AND INFRASTRUCTURE – MINUTE
OF MEETING DATED 20 APRIL 2010**
- Approved subject to Councillor Ogilvie’s details being removed as
being present.
- (m) LICENSING COMMITTEE – MINUTE OF MEETING DATED 21
APRIL 2010**
 - (n) FLOOD ALLEVIATION SUB COMMITTEE – MINUTE OF MEETING
DATED 21 APRIL 2010**
 - (o) LOCAL REVIEW BODY – MINUTE OF MEETING DATED 22 APRIL
2010**
 - (p) POLICY AND RESOURCES COMMITTEE – MINUTE OF MEETING
DATED 27 APRIL 2010**
 - (q) AUDIT AND PERFORMANCE REVIEW COMMITTEE – MINUTE OF
MEETING DATED 28 APRIL 2010**

9. WRITTEN QUESTIONS

The Meeting noted that no written questions had been submitted.

10. SCHOOL BUILDING PROGRAMME: SELECTION OF PRIORITY PRIMARY SCHOOL

Under reference to paragraph 24 of the Minute of the meeting of the Children & Young People's Services Committee dated 14 April 2010, there was submitted a report by the Director of Educational Services inviting the Council to agree the recommendations of the Children & Young People's Services Committee to endorse Milne's Primary School as this Council's priority for funding from a national School Building Programme.

During discussion Councillor G McDonald raised a concern about the format of the referral report which he considered did not provide this meeting with sufficient information on which a decision could be taken. He also asked why the report had been referred to the Full Council

In response the Chief Legal Officer advised that it was current practice and convention for officers to submit referral items in this way. This Meeting would rely on the Minutes of the Service Committee making the recommendation in deciding whether to follow that recommendation. It was, however for Members to guide officers on how this issue be treated in future.

Councillor Wright stated that following the recent move to have more concise minutes, when an item is referred from the Service Committee to Full Council for approval, it would be appropriate for an appendix, i.e. the previous report, to be attached to those referral reports.

Thereafter, Councillor Ross stated that there had been a full and frank discussion on the matter at the Children and Young People's Services Committee and that within the referral report it states that a copy of the full report is available for any Member who wishes to see it and was of the opinion that there was no need to debate the issue again and in order to move this along moved the recommendations as printed. Councillor Hogg seconded the motion.

Following further discussion the Director of Educational Services advised that in response to the second question a report on the Schools Building Programme had been submitted to a previous meeting of the Moray Council which had referred the report to the Children and Young People's Services Committee for more information about the rationale for choosing Milne's Primary School as the Council's priority school and added to that was a request to that Committee to endorse Milne's Primary School as the selected school. He further advised that it was never the intention that the Children and Young People's Services Committee take the final decision. It does not have the authority to take that decision. This was a capital plan matter reserved for the Council to determine. Whilst the convention was for referral reports to be presented with a very brief covering report, given the foregoing, he supported the assertion that a full report should have been submitted to the Council.

The Chairman stated that in future it would be helpful if referral reports stated the full reasons within the first paragraph relating to the reason for the report.

Thereafter, there being no one otherwise minded, the Council approved the recommendation from the Children & Young People's Services Committee to endorse Milne's Primary School as this authority's priority for School Building Programme Funding.

It was also agreed that the Chief Legal Officer review the current format of referral reports.

11. REVISIONS TO TREASURY MANAGEMENT STRATEGY 2010/11

There was submitted a report by the Chief Financial Officer requesting that in light of the requirements of new investment regulations the Council suspend Standing Orders and agree in accordance with the new regulations revisions to the Treasury Management Strategy previously agreed on 11 February 2010.

Suspension of Standing Orders

The meeting unanimously agreed to Suspend Standing Order 83, given that that the change in circumstances set out in Sections 3.1-3.5.2 of the report represent a relevant and material change in circumstances, in terms of Standing Order 84, and agreed:

- (a) to note the implementation of the new Investment Regulations;
- (b) to approve the revisions to the Council's Treasury Management and Annual Investment Strategy as detailed in this report and apply to these strategies to both the Council and Common Good Funds;
- (c) the Permitted Investments and limits detailed in the tables in APPENDIX 1;
- (d) the Borrowing in Advance Strategy as detailed in APPENDIX 2;
- (e) that the day to day operation of the above limits will be delegated to the Chief Financial Officer in accordance with current treasury management arrangements; and
- (f) that in future reports on Treasury Management Strategy will go to the Policy and Resources Committee for scrutiny before being considered at Full Council

12. FUTURE OF THE CCTV WORKING PARTY

There was submitted a report by the Chief Legal Officer inviting the Council to consider a recommendation of the CCTV Working Party about the future of the Group.

Following consideration the Council approved the recommendation of the CCTV Working Party that it is disbanded and any future operational issues be reported to the Community Planning Safer and Stronger Strategic Group or to whichever other Committee / body the Council consider appropriate.

13. APPOINTMENTS TO OUTSIDE BODIES: NORTHERN AREA COMMITTEE OF THE HIGHLAND RESERVE FORCES & CADETS ASSOCIATION

With reference to para 9 of Minute of Council dated 9 May 2007 there was submitted a report by the Chief Legal Officer requesting the Council note that Councillor Young has intimated his resignation as the Council's representative on the Association and appoint another representative in his stead.

The meeting noted Councillor Young's resignation and appointed Councillor G McIntyre as the Council's representative in his stead.

14. NORTHERN EAST SCOTLAND CHILD PROTECTION COMMITTEE (NESCPC): MORAY CHID PROTECTION SUB COMMITTEE

There was submitted a report by the Chief Legal Officer inviting the Council to:

- (i) note that the Council's Children & Young People's Services Child Protection Sub Committee has fulfilled its remit and disbanded;
- (ii) endorse the establishment of a Moray Child Protection Sub Committee which will operate as a sub-committee of the North East of Scotland Child Protection Committee (NESCPC)
- (iii) invite the Council to nominate 3 members to represent Moray Council on the newly established Moray Child Protection Sub Committee.

Following consideration the Council:

- (i) noted the Moray Council Child Protection Sub Committee has fulfilled its remit and disbanded;
- (ii) endorsed the establishment of the Moray Child Protection Sub Committee of the North East Scotland Child Protection Committee (NESCPC),
- (iii) agreed that the elected member representation comprise the Convener or Depute Convener, the SNP Group spokesperson on

child protection and Councillor J Divers, given his experience in child protection issues.

Councillor Divers left the meeting at this juncture.

15. NIMROD MEMORIAL, FORRES

There was submitted a report by the Director of Environmental Services asking the Council to consider a request for permission to erect a memorial stone in Forres to commemorate the lives lost when a RAF Kinloss Nimrod crashed whilst on operational duties in Afghanistan in 2006.

The meeting approved the request from the Nimrod Memorial to be sited adjacent to the Forres War Memorial, on the basis that, due to the sensitivity of the location, the Council's Environmental Protection Manager administer the contract for and supervise the construction of the Memorial.

16. QUESTIONS ON COUNCIL MINUTES

Minute of Meeting of the Health and Social Care Services Committee dated 31 March 2010

Under reference to paragraph 3 of the Minute Councillor Ross sought clarification from the Chief Legal Officer either today or in the future that if an elected member asks a supplementary question which forms a couple of parts they will be answered and not, in this case, only the answer which the Director chose to give and other areas were ignored.

In response the Chief Legal Officer advised that as he was not present at the meeting, he would prefer the second option given by Cllr Ross to be given time to reflect on the question that was asked and also consult with his colleagues in Committee Services and respond to him. This was agreed.

Minute of Meeting of the Communities Committee dated 13 April 2010

With reference to paragraph 17 of the Minute the Convener asked for confirmation as to whether an official approach had been made to Crown Estates regarding a proposed Gypsy / Traveller Halting site at Dallachy, and in the interests of all concerned sought an assurance that a formal request will be made without further delay and that the outcome is made public.

In response the Chief Legal Officer advised that as he was not in attendance at the meeting and in the absence of the Chief Housing Officer at this meeting he would consult the Clerk to the Meeting.

Under reference to paragraph 2 of the Minute, Councillor Leadbitter in referring to the issue he raised about the possible breach of confidentiality in relation to the Gypsy Traveller Halting Site report, asked if there had been any outcome in regard to the investigation into the breach.

In response the Chief Legal Officer advised that due to the Chief Executive's commitments as Returning Officer for the recent General Election he had not had an opportunity to discuss the matter with him but that he will take this up with the Chief Executive. In apologising for the delay he hoped Members understood the circumstances.

Minute of Meeting of Children and Young People's Services Committee dated 14 April 2010-05-13

Point of Order: Deferral of Reports to Committee

Under reference to paragraph 22 of the Minute Councillor Russell asked whether the fact that a motion to defer the paper on the Forres After School Club without discussion, is in contravention of standing orders.

In response the Chief Legal Officer advised that it was his understanding that the report was withdrawn on the basis that there were material issues not reflected in the report. Reports coming before Members should be full and comprehensive. He further advised that in such circumstances he would advise that if a report is lacking to a material extent, it would be prudent to withdraw the report as the Council could be taking a decision without material information and that not constitutes sound decision making. He also advised that in terms of governance he had drafted a 'Chairman's Protocol' to cover some areas such as this. He anticipated the protocol would be submitted to the next cycle of Council meetings for consideration.

In response Councillor Russell stated he was talking about an Agenda item which was deferred on the allegation it lacked some material information and the officers present at committee were not given the opportunity to address the committee before a reasoned decision could be taken. In response the Chief Legal Officer advised that in his opinion the issue is the same but that the procedure might be somewhat different. However, if the issue is about material information in a report being lacking then that is a fundamental issue in terms of the soundness of Council decisions whether it is deferred or withdrawn the issue remains the same. But it is a point well made, the point is taken and he will take it forward on the basis suggested in terms of the protocol in a substantial draft starting to go into the committee process.

In response the Chief Legal Officer advised that in his opinion the issue is the same but the procedure might be different. However if the issue is about material information in a report being lacking then it is a fundamental issue in terms of the soundness of Council decisions. Whether it is deferred or withdrawn the issue remains the same. It is a point well made which he thought would be addressed in terms of the protocol referred to above.

Swimming Lessons

Under reference to paragraph 2 of the Minute, in response to Councillor Paul's request for clarification regarding the report which had been issued as an information report in relation to swimming lessons and whether this referred to an issue raised at the budget meeting on 11th February 2010, the Director of Educational Services advised that this was correct and that there were two issues where reports were requested. One related to the removal of primary school swimming and Cllr Paul asked for information on how the Council promotes swimming for young people. That was the intention of the report that is mentioned within the Minute and that this is inaccurate, the request did not come up at a meeting. Councillor Paul did not make the request at the Children and Young People's Committee. That was the purpose of that report. The other report was Cllr Sharp's report on how to promote the heritage agenda and again that report has been forthcoming.

In response Councillor Paul stated that she was not disputing the accuracy of the Minute, what she was disputing was the fact that was that appropriate to the question that was asked in the first place. At a Council meeting, an agreement was made by everyone to actually look into ways of promoting and how the Council could provide swimming to all pupils by the end of Primary 5. Therefore did this information report that came to Education, look at that in any way?

The Chairman asked that as it was obvious that a number of questions required to be responded to could these be followed up outwith the Meeting. In response the Chief Legal Officer advised that he would take it through the Clerk to the Committee that Councillor Paul is not satisfied that the report addressed the issue that was raised in the February budget meeting and have a discussion with Councillor Paul to determine where this leads procedurally in terms of what is required to be done to satisfy the request which would allow the question to be answered in terms of this meeting and allow matters to proceed. This was agreed.

Forres After School Club

Under reference to paragraph 22 of the Minute Councillor Ogilvie asked whether the staff are clearly aware that no decision has been made on the Forres "After School" Club as it had been brought to her attention that the staff have actually been given notice before this report had been before the Committee?

In response the Director of Educational Services advised that he would investigate the matter and advise Councillor Ogilvie thereafter.

Minute of Flood Alleviation Sub Committee dated 21 April 2010

Under reference to paragraph 9 of the Minute Councillor Ross asked what progress had been made in regard to inclusion of Garmouth and Kingston to the local authority's list of priority areas for flood protection measures, the issue in regard to a report to Full Council on the remit of the Flood Alleviation Sub Committee and the investigation into the ownership of the land around the Queenshaugh area of Garmouth.

In response the Director of Environmental Services advised that in so far as the report was concerned he had taken advice on that and which Committee of the Council it should be submitted to and that the Chief Legal Officer would address this issue. In regard to the investigation into the ownership of the land he advised that he had instructed Legal Services to look into the matter but as yet had not received any information from Legal Services and would report their findings to all Members of the Sub Committee when known but that he was not aware that a report was necessary.

The Chief Legal Officer advised that on looking at the report and what was being requested, the fundamental issue was the availability of finance and staffing resources to take any investigation into management of flood risk at Garmouth and Kingston forward. On this basis, himself, the Chief Financial Officer and the Director of Environmental Services agreed that the proper course of action would be for a report to come to the appropriate Service Committee to explore the funding necessary to prepare a business case. That report has been commissioned and the Director of Environmental Services is working on it. The report will come before the Economic Development & Infrastructure Services Committee outlining the situation at Kingston and Garmouth and will ask Members to consider the budgetary implications of taking the business case forward before taking the various investigations forward. The indications are that currently there is potentially quite a large sum of money in terms of revenue costs of preparing a business case and carrying out investigations prior to that and potentially quite a substantial figure in terms of capital required to undertake any work. It is important the Council establishes a budget to undertake that and that is why the report will come to Members for consideration. He further advised that this has also been discussed as is appropriate with the Service Development Group given their role in managing Council business overall.

In regard to the remit of the Flood Alleviation Sub Committee he advised that the Sub Committee is essentially a project management board to oversee the implementation of agreed flood alleviation schemes. The Council has made no decision on a flood alleviation scheme for, or flood alleviation measures in, Garmouth and Kingston so to that extent it would be procedurally improper for the Sub Committee to make that decision. It would be in this case a decision for the appropriate committee of the Council, the ED&I committee to make that decision as to whether or not there would be a flood alleviation scheme or whatever measures were appropriate for Garmouth and then if that were to happen for the Sub Committee to oversee it.

In response Councillor Ross stated that he was disappointed that he had not been consulted on what in his view, had been a change to what he had proposed and what the Sub Committee had agreed upon. He further stated that he had been advised that what he had to do was to get Garmouth and Kingston on to the local authority list of priority areas in order to get the works done but was now finding that this is not the case, that what is being done is looking at business cases whereas he wanted to put it forward in order to show the communities in Garmouth and Kingston they had the support of the Council. He also stated that in regard to the remit of the Flood Alleviation Sub Committee for a Flood Alleviation Sub Committee of Moray Council not to be allowed to discuss debate or make decisions on flooding in communities such as Garmouth or Kingston is to him a bit surreal. Whilst he understands what was being said in regard to the remit of the Sub Committee which is to look at schemes in place and to be a body to oversee those schemes, he was of the opinion that in areas where they have major flooding problems these issues should be able to be addressed at the Flood Alleviation Sub Committee hence his reason for putting forward the request to look at the remit of the Sub Committee.

In response the Chief Legal Officer advised that in terms of consultation he anticipated the Director of Environmental Services would consult relevant local members and others on the terms of his report. As he understand the report will outline the situation in Garmouth, broadly what needs to be done but, more importantly, will outline what the financial commitment will be for members to make a decision on that financial commitment which is comparitably substantial both in revenue terms and capital terms. And members needs to make that decision. That is a political decision for members to make and it's also not just in terms of the flooding priorities but all the other Council's priorities in terms of revenue and capital spending.

Councillor Ross responded by asking that in terms of what is written at paragraph 9 branch 1, have the officers done as instructed by the Flood Alleviation Sub Committee or have they looked at an alternative to what elected members agreed.

In response the Chief Legal Officer advised that there is no alternative procedure. The proper procedure is for the Council to determine through its service committee what flood alleviation schemes it would wish and then for the Sub Committee, if it remains in its current remit, to oversee the implementation. The history of the Flood Alleviation Sub Committee is that members were unhappy at the time of the progress of the flood alleviation schemes and the committee was created so that members could oversee progress but the important thing was it was progress of already made decisions, already agreed flood alleviation schemes. There is no Council decision to have a flood alleviation scheme or to have flood alleviation measures in Garmouth and until such times as that decision is made then and only then will the remit of the Sub Committee come into play and the point is that until the proper investigations have been done in terms of Kingston and Garmouth and members have made that decision then and only then can the Council consider the remit of the Sub Committee.

Councillor Paul left the meeting at this juncture.

17. ELGIN FLOOD ALLEVIATION SCHEME TRAVIS PERKINS RELOCATION [PARA 9]

There was submitted a report by the Head of Estates Services asking that the Council agree to suspend Standing Orders to authorise the Head of Estates Services to pay a Contractor to provide fill material for a Council site at 7 Chanonry Road South, Elgin. This was to supersede the decision to use upfill material from the Council's own resources, material which is now required elsewhere (paragraph 17(b) of the Policy & Resources Committee minute of 27 April 2010 refers).

SUSPENSION OF STANDING ORDERS

Following consideration, the Council unanimously agreed to suspend Standing Order 83, given that the change in circumstances as detailed in Sections 6.1 and 6.3 of the report represented a relevant and material change in circumstances in terms of Section 84 of the Council's Standing Orders and agreed:-

- (i) to authorise the Head of Estates Services to make payment to the private Contractor named in the report as a contribution towards the cost of upfilling the Council's site at 7 Chanonry Road South, Elgin, and
- (ii) that this authority supersedes the decision in paragraph 17(b) of the Policy & Resources Committee minute of 27 April 2010.