

# MINUTE

# A&B - Public

**Planning Committee**  
**Council Chamber, Town Hall, Lerwick**  
**Tuesday 13 October 2015 at 2pm**

**Present:**

F Robertson	P Campbell
A Manson	D Ratter
D Sandison	

**Apologies:**

M Bell  
S Coutts  
B Fox  
G Robinson

**In Attendance (Officers):**

I McDiarmid, Executive Manager – Planning  
M Holmes, Coastal Zone Manager  
R Leask, Marine Planning Officer  
J Rosie, Marine Planning Officer  
P Sutherland, Solicitor  
L Adamson, Committee Officer

**Also in Attendance**

M Burgess

**Chair**

Mr F Robertson, Chair of the Planning Committee, presided.

**Circular**

The circular calling the meeting was held as read.

**Declarations of Interest**

None

13/15      **Minutes**

The Committee confirmed the minutes of the meeting held on 15 September 2015 on the motion of Mr Sandison, seconded by Mr Campbell.

**Local Review under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) to be considered by the Planning Committee sitting as Local Review Body:**

The Chair advised that the Planning Committee today was sitting as the Local Review Body. He explained that under the modernisation of the Planning Act 2006, the right for aggrieved appellants to put matters to Scottish Ministers was removed. Since May 2011 this was replaced by arrangements for the Council's Planning Committee to be given delegated authority by the Council, but virtue of its training, to act as the Local Review Body, to consider appeals against decisions made by the appointed person, who had delegated authority to determine a planning application.

The Chair then advised on the process for a Local Review, whereby papers have been presented, and additional presentations are made by the objector/agent, and applicant/agent, which form the basis for the Local Review Body to make their decision. He advised that the decision of the Local Review Board is full and final with the only recourse, should the applicant be aggrieved, is through the local courts in term of processes and procedures of handing and management. The Chair advised that those permitted to address the meeting will be given a maximum of 5 minutes; Members present then have the opportunity to ask any further points of clarification to those who have addressed the meeting. Cross examination is not permitted, and the process and procedures as set are abided by.

The Chair invited the Planning Officer to introduce to the Local Review Body the planning application as submitted, and considered under delegated authority.

14/15      **2015/008/MAR – LR3 – To extend an existing shellfish site by increasing four 200m twin head longlines to 220m and adding two extra 220m longlines (part retrospective), Whalsies Ayre, Stream Sound, South of Trondra, Shetland**  
The Committee considered a report by the Coastal Zone Manager [RECORD Appendix 1] for a decision following a Local Review.

The Marine Planning Officer (R Leask) introduced the planning application from East Voe Shellfish, to extend an existing mussel site, by increasing four existing longlines from 200m to 220m, which he advised was retrospective. The application also included the addition of two new extra 220m longlines to the site. In referring Members to the location plan slide, the Marine Planning Officer highlighted the location of the site as being the purple octagon at Whalsies Ayre, Stream Sound, South of Trondra.

The Marine Planning Officer explained that the initiation of the planning application was that Council monitoring had discovered that the longlines on the site were 220m and not the licensed 200m. East Voe Shellfish were made aware of this breach and that they could either apply to change their planning permission or remove the extra 20m from each line. The Company decided to apply for the extra 20m on each line and to also, at the same time, add another two lines which would also be at 220m. East Voe Shellfish were advised at pre-application, that the application would breach the Council's Policy on carrying capacity (which is the total shellfish biomass that can be sustained within a water body), for the Stream Sound area and would most likely be recommended for refusal. The Company noted this and still wished to apply.

The Marine Planning Officer reported that the application was lodged, and after consultations with consultees, the RSPB had objected on carrying capacity. The two fishing associations, the Shetland Shellfish Management Organisation (SSMO) and the Shetland Fishermen's Association (SFA), had objected on navigation issues. Also, the Community Council, although not objecting, were concerned about navigation in the area. However, after discussions between the applicant and the associations, the objections on navigation were withdrawn, so the only group still objecting were the RSPB on the carrying capacity issue.

The Marine Planning Officer went on to explain that the Stream Sound area can support 25.28 tonnes of farmed mussels. The proposed expansion of the existing mussel site to six 220m lines could be capable of producing around 71.5 tonnes of mussels, which is 182.83% higher than the carrying capacity, hence the Council's Policy S7 on Biological Carrying Capacity is breached. The Marine Planning Officer said that the applicant argued that he had never had any problem growing mussels

in the area and also submitted a Hydrographic survey from when the site had been a finfish site. The survey data however is not taken into account in the model used to calculate the carrying capacity as it uses volumes of water being exchanged during a full tidal cycle and not current flow rates which do not impact on this.

The Marine Planning Officer concluded by advising that due to the breach of Council Policy S7 on the carrying capacity, the application was refused using delegated authority. The applicant then applied for a Local Review, and hence it being before Members today for a decision.

The Chair invited a representative of the objector to address the meeting. *There was no representative from the RSPB at the meeting.*

The Chair invited a representative of the applicant to address the meeting.

Mr K Pottinger, the applicant, advised that the issue is the formula used to calculate carrying capacity, as it works for a Voe but does not really reflect a Sound. The tidal range and volume of water used to calculate the carrying capacity is 1 to 2 metres, however the Hydrographic report shows clearly that the whole body of water is exchanged. The tests were done on the surface, half way down, and at the seabed, which all came out at the same speed and direction which shows that the whole body of water is moving, and not just the top layer. Mr Pottinger said that he is at the site every few days, so he is aware of the water movement and the tides in the area. Mr Pottinger said that there are only a few voes where you can see that the water is actually moving.

Mr Pottinger said that from the formula calculations, the site can produce 25 tonnes. However, he advised that he has had 120 tonnes off the 2 lines in the area, and the mussels are still bigger than what the market would want. He advised that in the year he got 120 tonne droppers, averaged 9.4 kilos per metre whilst droppers normally average 6 kilos per metre. Mr Pottinger said that he owned and operated all the sites in the area – to the north and south and some to the east, and he wouldn't be doing this if it would be affecting his other sites. Mr Pottinger stated that he knew it would work.

Mr Pottinger went on to explain the current cycle of growing mussels, where he would put 2 lines in one year and 2 the next year, then have a blank year. He advised on how you can have mussels in every year and it does not affect the overall tonnage when a new dropper goes in, as it takes a good few months until the mussels attach and start growing. He said the total biomass would only be for a few weeks during the summer.

Mr Pottinger said that when he had submitted his application, he was aware that it could be turned down, but he thought it was a chance he would take as he believed the Council's formula does not work in this instance. He added that following discussions with the SSMO and SFA they were happy with the proposals.

In response to a question from the Chair, Mr Pottinger advised that the purpose of the Hydrographic survey carried out in 2007, was in connection to a salmon site in the area. In regard to the average knots going through the Sound, Mr Pottinger advised of 0.08 metres per second, and the maximum is up to 0.3 metres per second, and therefore water at that speed will not stay in the box for long.

In making reference to the objection from the RSPB in regard to this application, Mr Ratter said that the comments made would appear to be a standard response. In regard to the carrying capacity issue, Mr Ratter questioned how the same formula could cover the different scenarios of water in a closed Voe compared to the water exchange and tidal flow in a Sound. The Marine Planning Officer advised that the Council's Carrying Capacity Model is used for all areas around Shetland. He advised that while most shellfish sites are located in voes, Stream Sound is considered a distinct area and therefore the model could be used and is not just a voe calculation. The Marine Planning Officer informed Members on the formula used to calculate the biological carrying capacity of an area of water.

The Marine Planning Officer explained that shellfish farmers are told at the outset whether their proposals would result in the overall biological carrying capacity being exceeded, and should that be the case, that the application would be recommended for refusal. The Marine Planning Officer advised that this is the first time that the Council's Policy on Biological Carrying Capacity has been challenged. In response to a question, the Marine Planning Officer advised that the calculations for the Council's Policy S7 assumes 50% of the exchanged water is available to natural mussels and 50% to farmed mussels.

The Marine Planning Officer reported that when officers had reviewed the data from the Hydrographic survey, there was not as much water flow as had been expected, with 55% moderately flushed but with very little water movement. He said that this would suggest there is not a constant water flush through the Sound.

In response to a question, the Marine Planning Officer explained that the Council's Policy S7 "Biological Carrying Capacity" is based on the Scottish Government model, which is used for all bodies of water. He added that the Council's Coastal Zone Manager established the calculations for carrying capacity in all the areas around Shetland. The calculation takes into account the number of sites in an area, and the tonnage of each site, and therefore an applicant can be advised in early course whether their proposals would be over the carrying capacity level.

In response to questions from Members in regard to the consultation response from Marine Scotland, being that they had no adverse comments to make on the proposals, the Marine Planning Officer confirmed that Marine Scotland are aware of the model used by the Council to determine the biological carrying capacity. He added that Marine Scotland would also undertake their own calculations to determine the carrying capacity, however he was unsure whether Marine Scotland would be aware of the exact details of the application site.

A Member enquired on the implications for the applicant, should the Local Review Body decide to uphold the decision to refuse the application. The Marine Planning Officer explained that the applicant currently has planning permission for four x 200m longlines, and therefore should the decision be made to refuse the application the site would need to revert back to the equipment as consented. Alternatively, the applicant could submit a further application for the additional 20 metres on each line.

In response to questions from a Member, Mr Pottinger advised on his proposal to operate a 3 year cycle to have continuous production of mussels, where he confirmed that the tonnage would not be increased and therefore the carrying capacity would not change.

Mr Sandison said that although the Hydrographic survey had been carried out for salmon, and would therefore be different in regard to carrying capacity, elements of the survey would have been for regulatory purposes to calculate biomass and to support the Environment Assessment. Mr Pottinger commented that tides do not change, and can be predicted into the future. He said that the formula used calculates water exchange, where he added that the Marine Planning Officer had concluded that there was a good flow of water for most of the time in the Sound, but not a constant flow.

In response to a request for clarity from the Chair, the Marine Planning Officer explained that the Hydrographic survey submitted by the applicant did not confirm as much tidal flow in the area as the applicant had alluded. He said that the Sound is moderately flushed for half the time, and there is not a constant flushing of water.

During debate, Mr Ratter commented that he would not expect a constant flushing of water even in any Sound. He then made reference to the consistent and excellent growth rates at the site, where he said that the rapid growth rates would presume that the food supply at the site is quite good.

Mr Sandison said he was not arguing against the Council's Carrying Capacity model, but it was only that, a model, and in this instance the findings do not support the actual output and size of mussels from the site. Mr Sandison questioned who would be most disadvantaged should the site continue to produce the same tonnage of mussels as its current production, as the applicant operates all the other sites in the area, and therefore it would be the applicant himself who would suffer should there be any detriment in regard to output at the site.

Mr Campbell stated that two of the very significant players, SNH and Marine Scotland, who would be likely to oppose any proposal that would be detrimental to the environment, have chosen not to raise an objection, and the one objection in regard to this application made by an outside body, would appear to be a standard response. In speaking in support of the application, Mr Campbell said that as the tonnage on site is not going to be any greater than is at present, and the annual output of the site will not increase, he concluded that it is quite appropriate to have the additional two longlines. Mr Campbell moved that the Committee approve the application. Mr Sandison seconded.

**Decision:**

There being no one otherwise minded, the Chair confirmed the decision of the Local Review Body to uphold the appeal and **APPROVE** the planning permission for the development.

The meeting concluded at 2.35pm.

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Chair