MINUTES AB – Public

Special Shetland Islands Council
Auditorium, Shetland Museum and Archives,
Hays Dock, Lerwick
Wednesday 15 February 2017 at 10.00am

Present:

M Bell	M Burgess
P Campbell	G Cleaver
A Cooper	S Coutts
B Fox	R Henderson
A Manson	D Ratter
F Robertson	G Robinson
D Sandison	C Smith
G Smith	T Smith
M Stout	A Westlake
J Wills	A Wishart
V Wishart	

Apologies
A Duncan

In Attendance (Officers):
M Boden, Chief Executive
H Budge, Director – Children's Services
C Ferguson, Director – Corporate Services
N Grant, Director – Development Services
M Sandison, Director – Infrastructure Services
J Belford, Executive Manager – Finance
A Jamieson, Executive Manager - Housing
J Riise, Executive Manager – Governance and Law
C Anderson, Senior Communications Officer
B Hall, Partnership Officer
C McCourt, Financial Accountant
H Tait, Team Leader - Accountancy
L Geddes, Committee Officer

Chair:
Mr Bell, Convener of the Council, presided.

Circular:
The circular calling the meeting was held as read.

Declarations of Interest

None

03/17 **Integration Joint Board (IJB) Appointment**

The Council considered a report by the Executive Manager – Governance and Law (GL-03-17-F) which sought appointment of a Member to the IJB to fill a temporary vacancy.

The Executive Manager – Governance and Law explained that the vacancy had arisen as the result of a resignation, and that there was provision within the IJB's Scheme of Administration to deal with vacancies. It was the view of the Chair of the IJB and the Chair of the IJB Audit Committee that although it was late in the term of this Council, the vacancy should be filled, and Councillor Allan Wishart had expressed his interest.

In moving that Councillor Allan Wishart be appointed, Mr C Smith advised that it was important that there was a full complement of councillors on the IJB until the end of this Council's term.

Mr Cooper seconded.

Mr Wishart advised that he was willing to accept the nomination.

Decision:
The Council appointed Councillor Allan Wishart to the IJB for the remaining term of the Council.

04/17 **Community Asset Transfer Policy**

The Council considered a report by the Partnership Officer (DV-14-17-F) which recommended adoption of the Community Asset Transfer Policy.

The Director – Corporate Services advised that she chaired the project board charged with implementing the Community Empowerment (Scotland) Act 2015 (the Act). Part 5 of the Act – Asset Transfer – was now in force, and there were a number of issues that the project board was looking at pulling together. Part 5 of the Act was powerful in terms of empowering community groups, but public resources would be safeguarded. The proposal would be supported through the Community Planning and Development team who worked closely with communities and would support groups through each stage of the process, although community groups would be responsible for taking initiatives forward. It was expected that the process would be straightforward, but any exceptional circumstances or issues would be discussed with Members.

The Partnership Officer advised that the Policy had been developed in line with secondary legislation and guidance supplied to local authorities. The Community Planning and Development Service would act as a single point of contact for communities who had identified a need, and the options for addressing this could include asset transfer. As other parts of the Act developed, they could also be included. If the asset was available, officers would facilitate communication between those involved and could feed into the development of business plans. When all parties were in agreement, a formal application for asset transfer could be submitted. When the request was confirmed as valid, this set the validation date from which the process had six months to be completed. Delegated authority was being sought for the Chief Executive, or his nominee, for the decision-making process. In the event of a request being declined, the next step of the process would involve consideration by the Policy and Resources Committee, who would act as the Council's review panel. The procedure to back up the Policy would be agreed by the project board, and training was being developed to ensure that staff were familiar with the Policy.

It was noted that the third bullet point of 18.2 of the Policy would be amended to read "...This must be *no later* than six months from the date of the decision notice".

The Director of Corporate Services, the Partnership Officer, the Executive Manager – Governance and Law, and the Chief Executive then responded to questions, and Members noted the following:

- There were a number of strands to the Act. Community participation was one of these, and there would be far-reaching consequences regarding how local authorities worked with communities. Regulations relating to the enactment of the different provisions in the Act were at different stages, and these would be presented to Members as they happened.

- The work to date had been carried out in communication with the Shetland Partnership. As community empowerment applied to public bodies, it would be important to work in partnership through community planning. Each agency/body was responsible for dealing with the particular asset it owned and if it was the case that the asset was jointly used; the legal aspects would have to be dealt with by each body involved. It had been agreed that Community Planning and Development service would lead the project and implement the Act, given its responsibilities for leading on the community plan and the resources available to it. However there was nothing to prevent the Council's Policy from being adopted by other agencies, and it would be made available to them so that each could develop their own policy. It was hoped that because the agencies and bodies involved were already working in partnership through the Shetland Partnership, the approach would not be fragmented and the arrangements would end up reflecting the overall outcomes of the Shetland Partnership. With regard to the Integration Joint Board, legal teams would deal with what was appropriate for the Council, but responsibility would be taken by the appropriate body in line with the assets they owned.

- The Council's current policy relating to the disposal of assets stated that the decision could be made by a nominee rather than the Council. The new policy was consistent with this in that it was being suggested that delegated authority was granted to officers to manage the estate. The Act did not specify particular stages that each body must adhere to, but more work would be required if Members were looking to have a role in more than one stage. The guidance developed mirrored the process that was already in place regarding the consideration of planning applications, whereby those involved in the first decision-making process were quite separate from those responsible for reviewing that decision. This meant that the first decision-making stage would be delegated to a small body of Members, with any review being carried out by a different body of Members – maintaining a clear divide between the body making the decision and the body reviewing it. Training for Members was being considered as part of the induction training that would be carried out for the new Council.

- Legislation required that there were at least 20 members on the community group that the asset would be transferred to. However a case could be made for exceptions if this was not feasible, as it was recognised that some community groups would be small, particularly in rural/island areas. If a community group expressed an interest but did not meet the criteria, this could be explored further at the pre-application stage, and the Scottish Government could be asked to make an Order to accommodate this under the Act. The Scottish Government had clearly expressed its intention that the Act should work for communities.

- It was expected that most requests for asset transfers would proceed without any problem and, where that did not happen, the role of Members would be to review this. An early review would be carried out in terms of how it was working in Shetland.

- The Policy covered circumstances whereby buildings on local authority land were leased, and it would depend on the leasing arrangements and scope for changes in occupancy. This was something that would be dealt with on a case-by-case basis. However if the title was limited, that would be the extent of the transfer to someone else. There was potential to go beyond the scope of the Act if it was the will of the Council, for example, to acquire a better title.

- There were additional provisions in the Act regarding community right-to-buy for private properties which were abandoned and neglected, and secondary legislation in this respect was expected later in the year. Under the terms of the current guidance, community councils would not be eligible to exercise this right. However they could technically create a body in the form of a company which would meet the criteria and allow them to qualify. Existing bodies could modify their constitutions to enable them to qualify.

- Only applications which were turned down and appealed would come in front of Members.

- If Members were involved in putting together a request, it would be for them to manage their own conflicts of interest and not become involved in a way that they could become compromised when it came to the final review process. This was the case with Members' involvement in the planning process, and it was something that would be dealt with when training was carried out.

- The Planning Committee had representation from each ward area, but this was not the case with the Policy and Resources Committee, who would be responsible for carrying out reviews. However the Policy and Resources Committee had responsibility for looking at issues in a corporate fashion, rather than representing ward interests. Members would have some rights with regard to advocating for their area on behalf of applicants or objectors, and the Code of Conduct covered this advocacy role. It was the advocacy role that covered the ward representative aspect, rather representation at a decision-making level.

- Should a community group cease to function following an asset transfer taking place, there were statutory limitations in terms of bodies that could be successors to that community group. The Council had a right to impose conditions on the title on transfer, and this was something that people may seek to review, so would come before Members. There was a mechanism allowing for the property to revert back to the Council, or to place the burden of transfer to another like body.

- It was important to note that although the legislation specified community bodies, they were in effect private bodies. So public assets would be transferred to private bodies, and the Council would lose control of them. There were provisions to limit the risks and this was one of the reasons that the numbers for the community body had been set at 20 as this added some legitimacy to the definition of it being a community body.

- During the evaluation process, which would take place in the first six-month period, community groups would work with Community Development on their application and this would include work on areas such as the planning consent that may be required. The lawyers acting for the community group would have to make their offer in line with the conditions that would be imposed, and it would be for the transferee to get the valid permissions during that process.

- It was difficult to ascertain how many potential asset transfers were in the pipeline, but there had been discussions with some community groups around asset transfer and other elements of the Act.

- All assets should be serving the public and the community, and it was important to safeguard that interest and preserve the value to the public purse and public good.

- One of the stipulations set out in the guidance was that community transfer bodies had to take account of community support, and this specifically related to the relationship between a community of interest and the geographic community in which the asset was situated. The community body would require to demonstrate that it had community support, as this was one of the things that could hamper a successful transfer. It would be important to be rigorous in applying assessment of the criteria against the policies and procedures that were in place, and other legislation and conditions which would apply and must be observed. It was recognised that the community did not always speak with one voice, but assurance was given that officers would take cognisance of all aspects when applying the criteria.

During the discussion that followed, it was commented that when the Policy had been considered at the Policy Forum, Members had been of the view that they would like more involvement. It could therefore be considered somewhat ironic that elected members appeared to be those who were being excluded from this element of community empowerment. Members had expressed willingness to become more involved in the initial stages, but would only be involved when an application was refused, so this was an area of concern. It was suggested that there was a need for a quarterly report to be presented to the Policy and Resources Committee which detailed all applications that had been determined – either positively or negatively.

However it was pointed out that the comparison with the planning process was a good one as the Council was in fact leading the process in its role in setting the Local Development Plan, the planning process framework, and the Local Outcomes Improvement Plan. Therefore it was not as if the process would be happening in isolation. It was also appropriate that members of the Policy and Resources Committee should not be involved in the process as they would be involved in any review, and would not be acting as ward representatives.

Concern was expressed that Members would not be notified when applications were submitted, but it was pointed out that this was encompassed within Section 13 of the Policy.

Members commented that they welcomed the Policy and that it was recognised that the Council should be making the best use of its assets. However some reservations were expressed about the practical implementation of the Policy and potential issues that may arise, particularly in respect of the criteria relating to community bodies. It was suggested that the next Council could explore whether Community Councils could be empowered to lead for the community.

Mr Robinson advised that having seen the recommendation from the Policy and Resources Committee and the correction that would be made to paragraph 18.2 of the Policy, he would be moving that the recommendation in the report be approved, with the addition that Members are notified of any applications at the earliest opportunity, and that a detailed breakdown of all applications which have been determined by officers is to be presented to the Policy and Resources Committee on a quarterly basis.

Dr Wills seconded.

Decision:
The Council adopted the Community Asset Transfer Policy, with the addition that Members are notified of any applications at the earliest opportunity, and that a detailed breakdown of all applications which have been determined by officers is to be presented to the Policy and Resources Committee on a quarterly basis.

05/17 **Housing Revenue Account (HRA) Business Plan 2017-22**

The Council considered a report by the Executive Manager - Housing (DV-16-17-F) which recommended approval of the HRA Business Plan 2017-22.

The Executive Manager – Housing summarised the main terms of the report, advising that a structured and comprehensive review of the components of the service had been carried out following resolution of the housing debt, which would no longer act as the main driver.

Responding to questions, she advised that the financial modelling for exceptional works used a mid-point costing, but the worst-case scenario could cost up to £41.4million. Experience to date suggested that the mid-point costing would be realistic, but it would depend on a number of factors that it would not be possible to forecast accurately until all properties had been inspected. To date, there had been no indications that the Scottish Government would provide financial support to rectify issues relating to the failure of blocks manufactured between 1975 and 1981, but an application for support could be considered given the significance of the problem.

She also advised that there were a number of factors relating to why the Council took significantly longer than Hjaltland Housing Association (HHA) to relet its properties. It was important to note that the Council had three-times more stock than HHA, and that the Council had older properties in areas that were sometimes hard to let. The figures could be skewed by a few properties which were vacant as a result for a long period of time. HHA also used a choice-based letting process that contributed to their quicker turnaround time.

Members acknowledged the work that had gone into the development of the business plan, and thanked staff for this work.

Mr Cooper moved that the recommendation in the report be approved, and Mr Robinson seconded.

Decision:
The Council approved the Housing Revenue Account (HRA) Business Plan 2017-22 as part of the Council's Policy Framework to be managed by the Development Committee.

06/17 **Five Year Asset Investment Plan 2017-22**

The Council considered a report by the Executive Manager - Finance (F-014-F) which set out the proposed sustainable capital budget for the Council over a five-year period from 2017-22, in line with the Capital Investment Planning policy set out in the 2015-20 Medium Term Financial Plan.

The Executive Manager – Finance summarised the main terms of the report, advising that the Plan was reviewed on an annual basis and that the Scottish Government grant incorporated the additional capital grant of £267,000 that had been announced on 2 February 2017. The Plan identified a small sum available for protection against construction price inflation on projects, but it was worth noting that the project costs were estimated and may change. The funding for the projects referred to in paragraph 4.4 would only be allocated following approval through the Council's gateway process. The Plan incorporated the ferry and terminal replacement programme, in light of the knowledge that action would be required to address an ageing fleet of vessels but paying for all these works was not affordable for the Council.

The Executive Manager – Finance and Director – Infrastructure Services then responded to questions, and the Members noted the following:

- Construction inflation could be extreme and it was not known if the sum of money set aside would be enough. However it did allow for the opportunity to revise and respond to things that were required.

- Business transformation was a wide-ranging phrase which would allow for a framework that captured benefits from things like digital technology and the procurement strategy, and it would allow for service redesign to take place on frontline services. There were potentially huge changes in terms of the way forward, and this would include gathering information and an understanding of where the Council wanted to be in five and ten years' time. It was recognised that business transformation was vital to the way in which the Council would operate in future, and it was a piece of work which would require to be taken forward urgently.

- A bare-boat charter process was currently taking place in respect of tug replacement, and a tug would be chartered before any decision was made to move ahead to buy. A preferred tug had been identified and should be here in June, and staff would be trained by the charterer.

- The £22.9 provision for ferry and terminal replacements over the next five years was specific to the Ferry Vessel and Terminal Replacement programme. Costs for other projects and jobs required would be spread across the ferry infrastructure. The vessel replacement programme had scheduled replacement dates for vessels, but vessels had to be maintained and those that were being replaced later would require more maintenance. The two vessels which were considered highest priority for replacement due to their condition and pressure on the service were the "Good Shepherd" and the "Hendra".

It was commented that in the absence of a long-term investment plan, which would be something for the new Council to consider, the projects outlined in the report represented a good start at maintaining the assets the Council held and looked to the future needs of the Council. It had been highlighted before that the money required to maintain assets outstripped what the Council held, so it was important to move forward in an informed way, consider how much it would cost to look after the assets held, and not contribute further to financial difficulties. It was cautioned that the new Council would have to be careful about spending money on maintaining assets that it may end up disposing of.

Some discussion took place in relation to the Ferry Vessel and Terminal Replacement programme which would be difficult to fund unless the Scottish Government came forward with funding. It was questioned if inclusion in the Plan would give the Scottish Government a reason not to fund it, and suggested that it would be better just to say that the Council could not afford it. However it was pointed out that the Scottish Government was fully aware that the Council could not afford to fund the programme, and the money that would require to be spent was less than the Scottish Government spent on the Western Isles service. The Government had agreed in principle that it was unfair to expect the local authority to bear the burden of revenue and capital costs.

It was pointed out that the Policy and Resources Committee had acknowledged that the long-term asset plan may not be complete, and that there was a need for the current Council to have a further opportunity to debate it, given that it had kept tight control of the Capital Programme during its term.

It was noted that the a progress report would be presented to the next Policy and Resources Committee meeting, so there would be an opportunity for the Council, prior to the elections, to discuss challenges relating to assets in the longer-term.

Concern was expressed that the sum of money set aside to cover construction price inflation would not be enough, given that the price of materials and timber had gone up in the region of 20% since June. It was also noted that there would be substantial costs arising in future in relation to road replacement, all of which were likely to arise around the same time, so the new Council would have to come up with a solution for this issue.

Mr Robinson moved that the recommendations in the report be approved. Mr Stout seconded.

Decision:
The Council approved the capital budget proposals for 2017/18 included in the report and as set out in detail in Appendix 1 of the report, and adopted Appendix 1 as the Council's Five Year Asset Investment Plan 2017-22, subject to any requirements of the Council's Gateway Process for the Management of Capital Projects.

07/17 **Shetland Islands Council Budget Book 2017/18**

The Council considered a report by the Executive Manager - Finance (F-013-F) which set out a summary of the spending plans for Shetland Islands Council in the next financial year.

The Executive Manager – Finance gave a PowerPoint presentation to Members regarding the 2017/18 budget which outlined the context for budget setting, the response by the Council to the decrease in Scottish Government funding, the importance of Council resources, and the changes affecting Council Tax.

He advised that since 2007/8, there had been a 20% reduction in funding from the Scottish Government, and this highlighted the need for service redesign and transformation. The Council had responded remarkably well to this reduction, moving from a position where it had been living significantly beyond its means to a position where net expenditure had been brought down to £110million and there had been less draw on reserves. Resources had been shifted in line with priorities, and a zero-based budgeting approach had been introduced. An increase to the local government settlement had been announced on 2 February and, as a result, £1.039million had been added to revenue budgets and £267,000 to capital budgets. The Council continued to generate resources from investment returns and the Harbour Account, so Shetland was well positioned compared to other Councils in this respect. There were a number of proposals aimed at closing the budget gap for 2017/18, but the use of reserves would still be required, and the budget gap had the potential to double by 2020-21 if action was not taken. The General Fund Revenue Budget was 0.1% less than the current financial year, and this was despite the cost pressures that had been described. It had been possible to maintain the budget at a level similar to 2016-17.

He concluded by thanking staff who had been working on the Budget Book exercise, which had taken an extraordinary amount of effort and resources.

The Executive Manager – Finance then responded to questions, and Members noted the following:

- The contribution from the Council in relation to the Integration Joint Board (IJB) was subject to due diligence, and the IJB's Chief Financial Officer would shortly be presenting a report to the IJB that would consider this in detail.

- The information presented was based on the information available at this particular time in relation to 'Brexit'. The impact of Brexit was unknown, although the value of investments recently had risen and had a positive impact. However the full impact in respect of the rise in inflation had not yet been seen, and this was something that would be monitored in the Medium Term Financial Plan. There was an expectation that inflation rates would grow to 2.5% and this had been taken account of, but there were many other factors which could not be taken into account yet.

- Contingent liabilities had been taken account of during preparation of the accounts, and various liabilities were identified. The general fund balance had an uncommitted figure of £10million. This offered the opportunity to manage risks and costs that arose. Things like fuel price increases were recognised as a potential cost pressure, but costs related to emergency or unexpected situations would not be allocated within contingencies and would be covered elsewhere.

- People were entitled to apply for exemptions and reductions to Council Tax following the changes that will be introduced from 1 April 2017. This had been factored in to the forecast income with an 18-20% reduction on the basis that people would apply for these exemptions and reductions.

- No specific contingency had been included for repairs to North Ness but certain factors had been flagged up as potential costs. If a cost arose, there was money set aside to deal with such matters – the uncommitted general fund balance - but this was not included in the budget.

- Assumptions had been made regarding what the Council could expect to achieve from its own investments by way of the return on these investments, and assumptions had been made about them being sustainable over a long period. Getting to a point of equilibrium on sustainability would be very difficult, as there would always have to be an element of the costs borne by the Council having to decrease as income from the Scottish Government decreased.

During the discussion that followed, Members added their thanks to staff that had been involved in preparation of the Budget Book. It was commented that the current Council had worked hard to balance its books whilst protecting the delivery of vital services, against a background of having to deal with the consequences of overspending councils in the past. The Council was now in a position of managing to deliver largely the same services at a reduced cost of 30% in real terms. The Housing Revenue Account was now also in a healthy position, as a result of the efforts of the current Council's negotiations in respect of the housing debt. It was essential for the public to acknowledge that having the best services meant that they had to be paid for. The increase in the Council tax for most people would equate to only 9p per day, and this would help enable vital local services to be protected. Disappointment was expressed that the Scottish Government had not stuck to its promise to review local taxation. Whilst the challenges for the new Council should not be under-estimated, the Council was now in much better shape than it had been when the current Council had been elected in 2012.

Concern was expressed that the implications of the budget on the services delivered had not been explored. This was very important as the Council was currently delivering services beyond what it was being funded to deliver and it would be useful to quantify the added value of the services delivered. The ongoing situation could not be sustained, and there was a need to make continued representations regarding the cost of delivering services in Shetland. The budget-setting exercise had been conducted via a finance-led approach rather than focusing on delivering service priorities, and it would have been useful to have set out what each of the directors had gone through in an attempt to meet savings targets. It was important that the community were aware of what the Council was going to be unable to deliver because of the resources available to it, and to continue making representations about the inadequacy of funding to deliver the services required.

Mr Robinson moved that the recommendations in the report be approved, acknowledging the information had been circulated following the Policy and Resources Committee relating to the amendment made in respect of the two new charges relating to Landings of Fresh Shellfish.

Mr Stout seconded.

Decision:
The Council considered the information provided by the Chair of the Policy and Resources Committee in relation to the 2017/18 Budget recommendations made by the Committee and contained in the Budget Book and approved the 2017/18 Budget by:

- Approving the Council Budget Book 2017/18 (Appendix 1) (to include the decision made by the Policy and Resources Committee in respect of the Harbour Board budget proposals – namely that the two new charges listed in Appendix 2 of that report relating to Fresh Shellfish will not be implemented until this is considered in a further report to the Harbour Board on 6 March 2017).

- Adopting the Formal Resolutions (Appendix 2)

- Agreeing to increase the Council Tax by 3%

- Accepting the package of funding and conditions that was contained in the Scottish Government funding settlement for 2017/18

The meeting concluded at 12.35pm.