

Shetland Islands Council
Council Chamber, Town Hall, Lerwick
Wednesday 28 October 2009 at 10 a.m.

Present:

A J Cluness	L F Baisley
J Budge	A T Doull
A G L Duncan	E L Fullerton
F B Grains	I J Hawkins
J H Henry	R S Henderson
A J Hughson	C H J Miller
G Robinson	J G Simpson
R Nickerson	F A Robertson
C Smith	J W G Wills
A Wishart	

Apologies:

L Angus A T J Cooper
W H Manson

In Attendance:

D Clark, Chief Executive
G Greenhill, Executive Director – Infrastructure Committee
H Sutherland, Executive Director – Education and Social Care
N Grant, Head of Economic Development
G Johnston, Head of Finance
J Riise, Head of Legal and Administration
J R Smith, Head of Organisational Development
K Adam, Solicitor
M Finnie, Capital Programme Service Manager
K Foster, Accountancy Officer
A Cogle, Service Manager – Administration

Chairperson

Mr A J Cluness, Convener of the Council, presided.

Circular

The circular calling the meeting was held as read.

Declarations of Interest

Dr J W Wills intimated his intention to declare an interest in agenda item 7, Monitoring Officer Report – Anderson High School, and agenda item 11, Review of Structural Requirements for the Delivery of the Capital Programme Service.

Mr A Wishart intimated his intention to declare an interest in agenda item 6, Electricity Act 1989 – The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 Section 26 Application to construct a Wind Farm at Various Locations in Shetland.

Mrs C Miller intimated her intention to declare an interest in agenda item 6, Electricity Act 1989 – The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 Section 26 Application to construct a Wind Farm at Various Locations in Shetland, as a Director of Viking Energy.

130/09 **Shetland Islands Council: 16 September 2009; and 14 October 2009**

Subject to the following, the Council confirmed the minutes of the aforementioned meetings, on the motion of Mr A J Cluness.

Min. Ref. 108/09 – Minutes

Mr A Hughson said he had requested at the meeting on 16 September that it should be minuted that the Convener had given an assurance that the instruction given to the Human Resources Manager would be dealt with. Mr Hughson said this had not been minuted, and asked again that it be minuted now. The Convener confirmed that this would be minuted.

Min. Ref. 112/09 – Infrastructure Committee – 1 September 2009

Mrs B Fullerton added, for clarification that when she had said that Mrs Fullerton said that the “majority of the community had the utmost respect for Mr Simpson as a Councillor and many had realised the difficult position Councillors had in finding the best way forward.”, this had not been only her opinion, but was the view of members of the community who had contacted her.

Min. Ref. 123/09 – Christmas Grant to Pensioners/Disabled Persons: Request by Shetland Charitable Trust to take over the Scheme

Mr R Nickerson asked when the enabling report would be presented to the Council. The Head of Finance said that his recollection was that a report would come back to the Council for anything requiring the Council’s attention, but that the decision was being administratively handled with a view to implementation in the new year.

Min. Ref. 129/09 – Report of the Investigating Committee

Dr J Wills said that the hearing was heard under procedural rules that were drawn up in 1996, before the Human Rights Act was in force, and the rules were incompatible with that Act. He said that the Council had repeatedly asked COSLA to review and clarify the rules, yet this hearing had gone ahead. Dr Wills said he had participated in the hearing under protest as it was breaching his rights.

Mr Cluness reminded Dr Wills that the process was not on the agenda today for discussion.

Dr Wills said that in view of the fact that there were several other unresolved complaints that might be requiring a disciplinary hearing, he moved that the Council apply to COSLA Joint Secretaries for clarification of these rules.

Mr Cluness agreed to accept Dr Wills’ suggestion.

Mr C Smith and Mr A Hughson both intimated that they had made comments at the meeting, but these had not been minuted.

Sederunt - 16 September 2009

Mrs L Baisley advised that she had not been in attendance at the last part of the meeting.

131/09 **Members Attendance at External Meetings – Update**

A J Cluness – Convention of Highlands and Islands, Dunoon.

F B Grains – Board of Trustees of National War Memorial, Edinburgh.

The Council agreed that a letter of thanks be sent from the Convener to the Council of Social Services for donating the Roll of Honour to the National War Memorial, and to the Shetland Library for binding the Roll to match the one from the First World War.

132/09 **Development Committee - 1 October 2009**

Subject to the following, the Council confirmed the minute of the aforementioned meeting, on the motion of Mr J G Simpson.

Min. Ref. 102/09 - Judane Ltd – Outstanding Loans

Mrs Baisley referred to page 8 of 10, and advised that she had said there had been a suggestion about the possibility of the company being interdicted, therefore there must be some value to the site. The Council noted that this part of the minute was in private. Mrs Baisley acknowledged this, and intimated she had no further comments to make. Mr G Robinson asked that Members be provided with an update at the end of the meeting. The Convener agreed.

Declarations of Interest

Mrs C Miller advised that as the Development Committee minutes had been moved as an accurate record of what was said, she drew Members' attention to the declaration of interest by Dr Wills where he stated, "He has an unresolved commercial dispute with Frank Miller over his unauthorised use of his copyright material." Mrs Miller said the content of this declaration was clearly false and she believed the timing and presentation of this interest was not intended to produce transparency but was rendered through malice.

133/09 **Infrastructure Committee - 6 October 2009**

Except as undernoted, the Council confirmed the minute of the aforementioned meeting, on the motion of Mr A Wishart.

Sederunt

Mr A Wishart advised that he was in attendance at the meeting.

134/09 **Audit and Scrutiny Committee - 24 September 2009; and 7 October 2009**

The Council confirmed the minute of the aforementioned meeting, on the motion of Mrs F B Grains.

Mr R Nickerson asked the Council to note a letter of thanks he had received from Scalloway Junior High School. Mr Nickerson said that the Pupil Council had attended and observed the Audit and Scrutiny Committee and wanted to formally thank the Audit and Scrutiny Committee and the Council for allowing their attendance, which they found to be a fantastic opportunity.

135/09 **Services Committee - 8 October 2009**

Subject to the following, the Council confirmed the minute of the aforementioned meeting, on the motion of Mr A J Cluness.

Min. Ref. 97/09 – New Anderson High School Capital Project

Regarding membership of the AHS Member Officer Liaison Group, Mr J Budge was nominated on the motion of Mr R Nickerson, seconded by Mr A Duncan. In response to a request for clarification, the Executive Director Education and Social Care confirmed that the Liaison Committee had been appointed to in July 2007, prior to the custom and practice of each Ward being represented. She advised that Shetland South was the only Ward not currently represented, and accordingly Members had sought to rectify that. The Council concurred with the appointment made.

136/09 **Planning Board - 23 September 2009**

The Council confirmed the minute of the aforementioned meeting, on the motion of Mr F A Robertson.

137/09 **Harbour Board - 30 September 2009**

The Council confirmed the minute of the aforementioned meeting, on the motion of Mrs I J Hawkins.

138/09 **Licensing Sub-Committee - 28 September 2009**

The Council confirmed the minute of the aforementioned meeting, on the motion of Mr C Smith.

139/09 **Inter Island Ferries Board - 9 October 2009**

The Council confirmed the minute of the aforementioned meeting, on the motion of Mr R Henderson.

140/09 **Shetland Islands Council Accounts 2008/09: Qualification Regarding Grouping of Accounts with Shetland Charitable Trust**

The Council considered a report by the Head of Finance (Appendix 1).

After hearing the Head of Finance summarise the terms of the report, Mrs B Fullerton referred to paragraph 5.4, and said that her understanding was that the Council had set up the Charitable Trust with the funds from the oil industry. The Head of Finance said that his understanding was that the Council, in negotiation with the oil industry, set up the Charitable Trust but the oil industry receipts had passed straight through to the Trust as there had never been a hand over of resources from the Council. He went on to say that this was not a particularly germane point, as the independence of the Trust was the important point, and it was unjust for the Council to be punished for the actions of an autonomous entity..

Dr J Wills asked if the Trust were to have a majority of non-Councillor Trustees if that would make any difference. The Head of Finance said that the content of the Trust deed and Trustees' make-up was entirely a matter for the Trust and not a matter for the Council, and nor was it a matter for the Council's Auditors.

Mrs I J Hawkins said the issue was very plain to her, and agreed with the terms of paragraph 8.1.2.2 adding that it was certainly a reason why she had voted against it initially.

Mr R Nickerson asked if there were any sanctions that could be held against the Council if it did not comply. The Head of Finance said there had not yet been any consideration of what sanctions there could be.

Mrs F B Grains said she could remember that the funds had not originally sat in the Council, even overnight, but went straight to the Charitable Trust. Mrs Grains said that the Auditors seemed to see the Council and the Trust as one and should be grouped, although OSCR took a totally different view, and said it would be useful to have some clarity.

Mrs C Miller said that as far as she was concerned, it was quite clear that the Council was one body, and the Trust was another, and she agreed with the terms of paragraph 8.1.2.2.

Mr G Robinson moved the recommendations in the report, adding that in terms of paragraph 8.1.2.2. Mrs I J Hawkins seconded.

Mrs B Fullerton said that if the Council was approving the terms of paragraph 8.1.2.2, it may give the impression that the Council does not want to break the impasse and suggested that the Council had to be careful about what it was saying.

It was noted that the terms of paragraph 8.1.2.2 required an "either/or" decision. To clarify, Mr G Robinson said that the motion was that the Council approve the recommendations in the report, and that in terms of paragraph 8.1.2.2, the Council had asked for co-operation from the Trust in order to prove that it could not break the impasse. Mrs Hawkins, as seconder, agreed, and the Council concurred.

141/09 **Progress Report – Capital Programme**

The Council considered a report by the Capital Programme Service Manager (Appendix 2) and approved the recommendations contained therein, on the motion of Mr C Smith, seconded by Mr A J Cluness.

142/09 **Capital Programme - Approval of Projects in Year 1 and Way Forward**

The Council considered a report by the Chief Executive (Appendix 3).

Mr J G Simpson said that the terms of this report had been considered by the Finance Review Member/Officer Working Group, and at its last meeting had received a presentation from the Head of Environment and Building Services in relation to the proposed Gateway process to take the Capital Programme forward. Mr Simpson said that he was impressed with the proposal but that some tweaking would be required before it could be finalised and, in addition, he said that he suggested at the last Working Group meeting that the Council should be asked to set the Capital Programme for one year, and then try to get in place the Gateway process that suited the Council, to set the five year programme. In this regard, Mr Simpson moved that the Council approve the recommendations in the report. Mrs I J Hawkins seconded.

With regard to paragraph 1.1, Mr C Smith sought clarification that the report was seeking approval of 1 year of the capital programme, and then 5 years thereafter. The Executive Director Education and Social Care confirmed this was the case, and that this related to the fact that managers had put forward a five year plan and an inactive list of projects for the Council to determine after the Gateway process has been approved.

Mr R Henderson said that Members appreciated the hard work that had gone into this report, and thanked officials and Councillors for their contributions.

Mr R Nickerson said he fully supported the recommendation, but referred to Appendix 5, Projects for Consideration in Later Years, and asked that the replacement of the Good Shepherd be added.

Mr J G Simpson, with the consent of his seconder, Mrs I J Hawkins, agreed to accept this addition.

Mr G Robinson suggested that such a decision may be premature and should be part of the process before it was agreed. However, it was noted that these were only proposed projects at this stage for later years, and would be required to go through the agreed process before being accepted onto the Capital Programme.

Mr Robertson said that the only projects being approved for year one, were those projects that can actually start on site. He said that this criteria should continue as projects are placed in the capital programme, and that this would ensure that the Council does not see the level of slippage being continued year on year.

Mrs C Miller said that this clarified matters for her, and suggested that the Council may want to look at a 10 year capital programme, as a 5 year one may be too short, and that that may be the only way for the Council to deal with such an expensive infrastructure.

Dr Wills said that he was a little confused, as page 3 of the report stated that there was £100m total available funding over 10 years, although he understood that was £10m more than the Council actually had. Regarding the Gateway process, Dr Wills said that he thought it was a good idea, particularly once it had been explained to him in more detail by the Head of Environment and Building Services, but asked if it was a substitute for the point system, and would it help the Council to decide its priorities. Dr Wills said that he applauded the work of the Finance Review Group, but said the Council needed a proper Finance Committee and he would continue to make that suggestion at the Audit and Scrutiny Committee meeting.

The Chief Executive said that in terms of cost, £100m was a figure that he was quite comfortable in putting in the report in discussion with the Head of Finance, and it was indicative at this stage. He said that once the Council was procuring more efficiently, this would generate savings and value engineering costs would come down. In this regard, the Chief Executive said that £100m was a realistic target and compatible with project budgets. The Chief Executive went on to confirm that the Gateway process was proposed as an alternative to the points system, and would assist in forming the Council's priorities. He added that the suggestion of a Finance Committee may have some merit, and he would be interested to hear the detail behind that.

Mr A Wishart said that, at the moment the Council had no system in place, but said that at £30m for year 1, this was very much front loading the £100m programme, and wondered if it was physically possible to start £30m of contracts in year 1.

Mr A Duncan asked the Chief Executive where he saw savings being achieved through procurement. The Chief Executive said that there were various ways in which savings could be generated. In the longer term, with a 5 or 10 year programme, there were procurement frameworks whereby the Council could negotiate large scale savings with a successful tenderer, and partnerships and relationships would develop over the longer term. He said that in terms of the target costs, 10% was not a particularly challenging approach to take, as at the moment mainland consultants and constructors were taking advantage of the situation, but would require someone to drive through a dedicated approach to that scenario.

Mr Duncan asked if the plan was for most goods to be provided from Shetland suppliers, or from the mainland. The Chief Executive said that it would be combination of suppliers, but it would be built in, where possible, that local services are used where they can be.

Mrs L Baisley thanked the team of officers and Members that had brought this report to the Council, and said she was delighted to see that Fetlar breakwater and the Skerries South Mouth were included. She said that these projects would benefit those fragile peripheral communities.

[Dr J Wills left the meeting.]

143/09 **Appointment of Member to Shetland College/Train Shetland Board of Management**

The Council considered a report by the Head of Legal and Administration (Appendix 4) and approved the recommendations contained therein, on the motion of Mr A Hughson, seconded by Mrs L Baisley.

[Dr J Wills returned to the meeting.]

144/09 **Appointment of a Veterans' Champion**

The Council considered a report by the Head of Legal and Administration (Appendix 5).

Mrs F B Grains and Mr J Henry were nominated.

Following voting by secret ballot, the result was as follows:

F B Grains	10
J Henry	9

Accordingly, the Council appointed Mrs Grains as the Veterans' Champion. The Council further agreed that in the event that Mrs Grains was unable to attend any meetings in this capacity, Mr J Henry would be asked to substitute.

[Mr A Wishart and Mrs C Miller each declared an interest in the following item as Directors of Viking Energy, and they left the Chamber.]

145/09 **Electricity Act 1989 – The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 Section 36 Application to construct a Wind Farm at Various Locations in Shetland**

The Council considered a report by the Executive Director – Infrastructure Services (Appendix 6) and approved the recommendations contained therein, on the motion of Mr G Robinson, seconded by Mr F A Robertson.

The Executive Director Infrastructure Services asked that the Council record its thanks to the Executive Director - Education and Social Care for chairing the public consultation meetings, to the Head of Legal and Administration for his participation, and to the Service Manager – Administration and Committee Services staff for their organisation and administration of the meetings.

[Mr A Wishart and Mrs C Miller returned to the Chamber and the meeting.]

146A/09 **Monitoring Officer Report – Anderson High School**

The Council considered a report by the Head of Legal and Administration (Appendix 7).

On a point of order, Mr R Nickerson stated that the appendix was marked confidential, and in his view the report and discussion should have been in private.

The Head of Legal and Administration advised that the appendix to the report had been marked confidential as it was an internal report and contained a number of appendices which were confidential. However, it was decided that the report, without the appendices, did not contain any exempt information and could be produced with his report to the Council, as it was normal practice for Monitoring Officer reports to be received in public.

Dr J Wills agreed with Mr Nickerson, and said it would not be possible to discuss matters concerning Council officials in public.

The Head of Legal and Administration said that it had not been anticipated that any matters of a personal nature or relating to employment matters would be disclosed or discussed.

Mrs Fullerton said she also agreed with Mr Nickerson, and that matters such as this should be discussed in private in order to ensure that staff are protected.

Mr A Duncan said that in view of what might be discussed by Members in relation to this report, he agreed that the discussion should be held in private.

Mr A Wishart said that if it was to be in private then a statement should be made after the meeting.

The Head of Legal and Administration advised that reasons for exemption had not been anticipated. He said that staff mentioned in the report were mentioned in terms of work carried out in their professional capacity, and he could not anticipate any discussion regarding employee/employer relationships or terms and conditions being relevant to this report. However, he said that if Members were minded to move into private, the relevant sections of the exempt categories from the legislation would have to be referred to.

Mr A Wishart moved that the Council approve the recommendations in the report. Mrs C Miller seconded.

The Council agreed to proceed to discuss the report further in private, on the basis that discussion could lead to the disclosure of information relating to particular employees of the Council.

Accordingly, and in order to prevent the disclosure of exempt information, Mr A J Cluness moved, Mr J G Simpson seconded, in terms of the relevant legislation, to exclude the public during consideration of the following items of business.

146B/09 **Monitoring Officer Report – Anderson High School**

After some discussion, Dr Wills moved as an amendment that, in addition to the recommendations, to add a new recommendation 8.1.4, and because the Chief Executive was specifically charged with supervising Mr Laider's work, that the Council censures the Chief Executive for failing to ensure the confidentiality of teachers' letters to Mr Angus. Mr G Robinson seconded.

After further discussion and summing up, some discussion took place as to the procedure for voting, and the Council noted the procedure in terms of paragraph 7.3 of the Administrative Regulations, that voting on procedure should be determined by a show of hands, and based on a majority of the Members present.

Accordingly, Mr A J Cluness, seconded by Mrs C Miller, moved that voting take place a show of hands.

Dr J Wills, seconded by Mr G Robinson, moved as an amendment that voting take place by secret ballot.

Voting on this took place by a show of hands, and the result was as follows:

Amendment (J Wills) 6
Motion (A J Cluness) 13

Dr J Wills moved that voting be by roll call. Mr G Robinson seconded. However, this motion was unsuccessful by 7 votes to 11.

Accordingly, voting took place by a show of hands, and the result was as follows:

Amendment (J Wills) 5
Motion (A Wishart) 13

147/09 **For information – Minute of Employees Joint Consultative Committee – 13 October 2009.**

The Committee noted the minute of the aforementioned meeting.

148/09 **Sella Ness Review – Union Participation, Nautilus International**

The Council considered a report by the Executive Director – Infrastructure Services.

Mr J G Simpson said that this had been discussed at the Employees Joint Consultative Committee and had been accepted. Accordingly, Mr J G Simpson moved that the Council approve the recommendation in the report. Mrs B Fullerton seconded, and the Council concurred.

149/09 **Shetland Fishermen's Widows' Relief Fund**

The Council considered a report by the Head of Legal and Administration and approved the recommendation contained therein, on the motion of Mr J G Simpson, seconded by Mrs B Fullerton.

150/09 **Review of Structural Requirements for the Delivery of Capital Programme Services**

The Council considered a report by the Chief Executive.

After considerable debate, Mr C Smith moved that paragraph 8.1.1 be accepted, paragraph 8.1.2 be replaced with the agreed outcome (minute of meeting 9 October 2009 appendix 1 to this report page 9 of 4), paragraphs 8.1.3 and 8.1.4 be accepted, and a new paragraph 8.1.5. Mr A Hughson seconded.

Mrs C Miller moved as an amendment that the Council approve the recommendations as they stand. Mr Wishart said he would second Mrs Miller's amendment, on the basis that the agreed outcomes on page 9 of 4 are incorporated. Mrs Miller agreed to accept that as an addition to her amendment.

Dr J W Wills gave notice of a further amendment.

After summing up, voting took place by a show of hands, and the result was as follows:

Amendment (C Miller) 12
Motion (C Smith) 6

Dr J Wills moved as a further amendment that the Council call for a public apology to be made to the Assistant Chief Executive and his family for the distress caused to them, and that this be agreed in addition to the recommendations in the report. Mr A Hughson seconded.

Voting again took place by a show of hands, and the result was as follows:

Further Amendment (J Wills) 6
Motion (C Miller) 13

Accordingly, the Council adopted the motion by Mrs Miller.

The Convener thanked Members for their contributions to the debate, acknowledging that it had not been easy.

[Mrs C Miller declared an interest in the following item as a consultant for Judane Ltd, and she left the Chamber.]

[The Chief Executive declared an interest in the following item, as he had a personal relationship with a Director of Judane Ltd, and he left the Chamber.]

[Mr A Duncan left the meeting.]

151/09 **Development Committee – 1 October 2009: Min. Ref. 102/09 - Judane Ltd – Outstanding Loans**

[Dr J Wills declared an interest in this item, as he had dealings with Mr Miller.]

[Dr Wills and Mrs Baisley left the meeting during discussion.]

The Head of Legal and Administration answered questions from Members, and the Council noted the current position.

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A J Cluness
Convener

