

MINUTES

A&B - PUBLIC

Shetland Islands Council
Council Chamber, Town Hall, Lerwick
Wednesday 20 February 2019 at 10.00am

Present:

M Bell	M Burgess
P Campbell	A Cooper
S Coutts	A Duncan
J Fraser	C Hughson
S Leask	E Macdonald
A Priest	D Sandison
I Scott	D Simpson
C Smith	G Smith
T Smith	R Thomson
A Westlake	B Wishart

Apologies:

A Manson	R McGregor
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In Attendance (Officers):

M Sandison, Chief Executive
N Grant, Director of Development Services
D Coupe, Executive Manager - Roads
I McDiarmid, Executive Manager – Planning
R Sinclair, Executive Manager – Capital Programme
J Manson, Executive Manager – Finance
J Riise, Executive Manager – Governance and Law
J Holden, Team Leader – Development Management
J Sutherland, Deputy Executive Manager - Children's Social Work
R MacNeill, Planning Officer
P Sutherland, Solicitor
C Anderson, Senior Communications Officer
L Adamson, Committee Officer

Also in Attendance:

A Smith, Viking Energy/SSE
J Watt, Viking Energy/SSE
P Bruce, Managing Consultant, Ramboll

Chairperson

Mr Bell, Convener of the Council, presided.

Circular:

The circular calling the meeting was held as read.

The Convener ruled that in accordance with Section 43(2) of the Local Government in Scotland Act 2003, the attendance of Councillor Mark Burgess during the proceedings would be permitted by telephone link.

Convener's Opening Remarks

Tribute to the Late Former Councillor Mr Peter N Guy.

The Council stood while the Convener paid tribute to the late former Councillor Peter Guy.

“We were deeply saddened to hear, late last year, about the passing of our former colleague Peter Guy. Peter passed away in North Yorkshire aged 79.

Peter was born in London at the outbreak of World War 2 and during the Blitz moved with his family to Yorkshire. After retiring from a career in the RAF, during which he served for a short time at RAF Saxa Vord, Peter returned to Shetland in 1979 to become the external relations officer for BP at Sullom-Voe Oil Terminal.

Peter was known for his people skills, and they were put to good use during negotiations with the Council. He also edited the award winning industry magazine ‘Sullom-Voe Scene’, wrote a regular column on local landmarks and customs and began writing the first of seven books on walks around Shetland.

Peter stood for the Council at a by-election in 1993 for the seat of Yell South. He was elected with 208 votes against his opponent’s 89. The following year at the election in May 1994, his constituents in Yell South returned Peter and he served the full term before standing down at the next election in May 1999. During this period he served with distinction on numerous committees and was Chair of the Leisure and Recreation Committee. Outside Shetland, he represented the SIC on the CoSLA Education Forum.

After leaving the Council, Peter returned to North Yorkshire but maintained his connections with Shetland and Yell in particular by maintaining a house in Burravoe.

Peter will be remembered by all who knew him as a warm, friendly man who had a particular skill with the written word. I am sure you will join with me in extending this Chamber’s sympathy to his wife Catherine and family. I move that an extract of the minute of this meeting be sent to Peter’s family.” Members concurred.

Declarations of Interest

Mr Fraser declared an interest in Item 3, “Asset Investment Plan – Business Case – Residential Childcare”, as a tenant of Hjaltland Housing Association, a representative on the Tenants Forum and on the Scrutiny Panel. Mr Fraser added that having taken advice he had concluded that his declaration should not exclude him from participating on this occasion.

Mr Cooper declared an interest in Item 4, “2018/335/ECUCON - To vary the consent by increasing the maximum tip height of the turbines from 145 metres (m) to a maximum of 155 m and increasing the maximum rotor diameter of the turbines by 10 m to a maximum of 120 m. The installed capacity of the proposed generating stated would be greater than 50 MW. (Viking Wind Farm)”, being a former Director of Viking Energy. He advised that that given that he had ceased to be a Director more than 8 years ago and, therefore, due to the passage of time, he now intended to take part in the discussion.

Mr T Smith declared an interest in Item 3, Asset Investment Plan – Business Case – Residential Childcare”, as a Board Member of Hjaltland Housing Association. Mr T Smith advised that he would take no part in the discussion. Mr T Smith also declared an interest in item 4, “2018/335/ECUCON - To vary the consent by increasing the maximum tip height of the turbines from 145 metres (m) to a maximum of 155 m and increasing the maximum rotor diameter of the turbines by 10 m to a maximum of 120 m. The installed capacity of the

proposed generating stated would be greater than 50 MW. (Viking Wind Farm)", advising as follows "As Chair of the Planning Committee I feel it only right and proper that I consider applications in an impartial and objective manner. Unfortunately, in this case I feel unable to reach an unbiased view. I have been an opponent of the Viking project since I became a Councillor in 2012 and nothing said over the intervening years has changed my mind. Therefore I feel I am compromised and will take no part in the discussion or decision of this item and will leave the Chamber. Obviously, if any further applications from Viking come before the Planning Committee or Council I will be making the same declaration while I remain Chair of Planning".

Minutes

The minutes of the meeting held on 12 December 2018 were approved on the motion of Ms Wishart, seconded by Mr Thomson.

The minutes of the meeting held on 19 December 2018 were approved on the motion of Mr Leask, seconded by Mr Fraser.

The minutes of the meeting held on 16 January 2019 were approved on the motion of Ms Wishart, seconded by Mr Thomson.

5/19 Notice of Motion - Street Lighting

The Council considered a Notice of Motion, in the following terms, "That part-night lighting, i.e. switching streetlights off between midnight and 6am Sunday to Thursday, and currently applied to the following areas is rescinded, and that street lighting is left on during those hours/days: Blydoit, Scalloway; Underhoull, East Voe; and Ingaville, Scalloway".

Mr Scott introduced his motion, advising on safety concerns following a number of incidents in Scalloway when streetlighting has been switched off during the night. He said that while he was aware that a review of the streetlighting was to be undertaken, a decision of Council would be required to rescind the decision for part-time lighting as set out in his motion. Mr Scott moved that the Council adopt the motion. In seconding, Mr Sandison advised on concerns raised by a number of residents, and said that the lighting being kept on should reduce any incidents of petty crime in the areas.

During discussion, some Members spoke in support of the motion, highlighting a number of other areas of Shetland where there are safety issues and petty crime concerns with the streetlighting being switched off between midnight and 6am. It was concluded therefore the issues were wider than Scalloway, and that any review should cover the whole of Shetland. During the discussion it was also reported that light pollution can be an issue in certain areas of Shetland.

During further discussion, the Executive Manager – Roads advised that a Review of the Streetlighting Reduction Policy would be reported to Environment and Transport Committee in March 2019. The report will include proposals to replace the current streetlighting with an LED programme, where lighting can be dimmed during the night, rather than lights being switched off.

Decision:

The Council RESOLVED to adopt the following motion:

“That part-night lighting, i.e. switching streetlights off between midnight and 6am Sunday to Thursday, and currently applied to the following areas is rescinded, and that street lighting is left on during those hours/days: Blydoit, Scalloway; Underhoull, East Voe; and Ingaville, Scalloway”.

6/19

Appointment of a Member of the Employees Joint Consultative Committee to the Joint Staff Forum

The Council considered a report by the Executive Manager – Governance and Law (GL-02-19-F) that sought confirmation of the nomination made by the Employees Joint Consultative Committee (EJCC) for a Council representative on the Joint Staff Forum (JSF).

In introducing the report, the Executive Manager – Governance and Law advised that Mr R McGregor had been nominated by the EJCC to the JSF.

On the motion of Mr Coutts, seconded by Mr Duncan, the Council confirmed the appointment of Mr R McGregor to the JSF.

Decision:

The Council CONFIRMED the appointment of Councillor R McGregor to the Joint Staff Forum .

(Mr T Smith left the meeting).

7/19

Asset Investment Plan - Business Case - Residential Childcare

The Council considered a report by the Executive Manager – Capital Programme (CPS-01-19-F) presenting the Full Business Case for Residential Childcare for Looked After Children.

In introducing the report, the Executive Manager – Capital Programme provided background to the project. He advised that the Full Business Case had included further detail on the financial, management and commercial cases. Comparisons had also been made between the Council procuring the facility at a site in Lerwick, and the Council procuring the facility with the HHA at the Tingwall site. He advised that the latter continued to be the preferred option (Option 3) and was the recommendation as presented in the report, which he confirmed had been fully supported at recent meetings of the Education and Families Committee and Policy and Resources Committee.

In responding to a question, the Deputy Executive Manager - Children's Social Work advised from the proposed staffing model for the new build at Tingwall, that additional staff will be utilised during the evenings, weekends and at the busier times of the year, to support service users attend out of school activities, which will predominately be in Lerwick.

During the discussion, assurance was sought that the annual savings to be achieved following completion of the project will be directed to the long term strategic goal for there would be no children or young people in Shetland in needs of care, support or protection from the Council. The Chief Executive referred to the genuine savings in terms of revenue costs. She advised that the focus that

will be on early intervention and prevention to meet the long-term strategic goal, through the Emotional Well-Being and Resilience project, that forms part of the Service Redesign Programme.

During the discussion, comment was made that the project was to be commended. Reference was however made to the funding constraints which has impacted on the number of youth workers employed, and on the need for numbers to be increased for the benefit of young people in Shetland.

In response to a question, the Deputy Executive Manager - Children's Social Work advised on the intention that the residential care facilities at Grodians and Windybrae would continue to operate following completion of the new build at Tingwall.

During debate, Mr G Smith advised on the huge amount of work undertaken by officers and partners to develop the proposals. He said that the project will consolidate support to young people less fortunate to some others, and to provide opportunities that all young people should have. He advised on the ambition to support young people on-island, and to reduce off-island placements, however in that regard he acknowledge that the requirement to go off-island would never be eliminated. In commenting that he would look forward to the day that the residential care facility opened at Tingwall, Mr G Smith moved that the Council approve recommendation 1.3 in the report. Mr Leask seconded.

Decision:

The Council RESOLVED to ADOPT the recommendations from the Policy and Resources Committee, namely to:

- (a) instruct the Director of Children's Services to implement the preferred Option 3 for Residential Childcare for Looked After Children as described in Appendix A to this report;
- (b) to procure the facility in partnership with HHA; and
- (c) approve an associated budget in the Council's 5-year Asset Investment Plan

8/19

2018/335/ECUCON - To vary the consent by increasing the maximum tip height of the turbines from 145 metres (m) to a maximum of 155 m and increasing the maximum rotor diameter of the turbines by 10 m to a maximum of 120 m. The installed capacity of the proposed generating stated would be greater than 50 MW. (Viking Wind Farm).

The Council considered a report by the Planning Officer – Development Management (PL-01-19-F) for a decision.

The Convener confirmed that it had been appropriate and correct for this report to be submitted initially to the Planning Committee, which he said follows the Council's Constitution, approved by Members and Scottish Ministers. Therefore any suggestion that the matter should have been taken straight to the Council is inappropriate. He said that the Council is now sitting as the Planning Authority, and Members of the Planning Committee understand the importance for decisions of the Authority to follow a quasi-judicial process, and to reach a decision in that manner. The Convener advised Members that their personal views on renewable

energy should be set aside, and consideration should only be given to the facts in the report and during the presentation. Members must also disregard any representations they may have received for or against this application for variation. He advised also that Members are not to revisit the principle of the development nor is this an opportunity to strike a blow for or against the development. The Council is to make a recommendation to the Scottish Ministers, who will ultimately make the final decision.

In referring to advice provided to all Members from the Executive Manager – Governance and Law, Mr Scott said that while he was not a member of any group opposing the Windfarm, he has for some years been a staunch critic of the Viking Energy project. In that regard, Mr Scott said that as he could not be objective in taking a decision, he would leave the meeting.

(Mr Scott left the meeting).

In response to question from the Convener, Members present indicated that they were clear on the process to be followed.

The Convener invited the Executive Manager – Planning to introduce the application.

The Executive Manager – Planning confirmed that the role of the Council was as a statutory consultee to the application for variation. The Executive Manager – Planning then advised the Council on the following “ Scottish Planning Policy (SPP) (2014) supports sustainable economic growth and has a presumption in favour of development that contributes to sustainable development aiming to achieve the right development in the right place supporting the transformational change to a low carbon economy. The main issue therefore to be considered in the determination of the response to make to the consultation to the Energy Consents Unit (ECU) on this application for a proposed variation of the Section 36 Consent is whether the principle of the proposed varied development on this site is acceptable, and if so can the area be developed without any unacceptable adverse impact on the environment and the amenity of the surrounding area. Also whether there is merit in making a balanced judgement between the potential for environmental impact against the economic benefits and providing support for climate change mitigation.

The previous decision of the Scottish Ministers was that the economic benefits provided by the wind farm outweighed the impact on the environment. The Ministers caveat this by adding that the benefits of the proposed Habitat Management Plan would help mitigate the impacts. The Environmental Impact Assessment (EIA) Report has concluded that the revision will not result in any further harm over and above that previously assessed with the 2009 EIA and subsequent 2010 Addendum.

A number of consultation responses and representations have raised concerns and objections to the proposed variation. Conditions which are capable of resolving or mitigating these concerns have been recommended to be applied that would allow the Planning Service to recommend that there are no conflicts with the Shetland Local Development Plan (SLDP) 2014.

The Planning Service has not reconsidered the principle of the development, and recognises that this development proposal, like its predecessor will result in an impact on Shetland in terms of landscape and habitat interests.

There is also an economic benefit that will accrue together with a major advance in terms of contributing to a reduction in CO2. On balance it is considered that the economic benefits and the environmental benefits of carbon reduction outweigh the impact on the landscape and habitat interests tempered with the knowledge that well designed mitigation measures will go some way to reduce any negative impacts.

What is considered to be important to the delivery of a development which will contribute to the provision of a sustainable energy source and contribute to the aim to reduce carbon impact is a well-managed project. This leads to the conclusion that a thorough and well considered revised Habitat Management Plan (HMP) linked to the other mitigation measures such as a Peat Management Plan, Bird Protection Plan, Otter Survey etc. required by conditions which are appropriate and enforceable to be approved by the Planning Authority should be applied. The revised HMP should take into account all the potential beneficial effects and measures that were proposed for all of the land areas in the original decision and which was instrumental in influencing the Scottish Ministers decision, to at the very least provide for the equivalent of the counterbalancing of positive effects in the revised smaller “red line” area for the proposed variation.

On balance it is considered that the economic and environmental benefits of carbon reduction outweigh the impact on the landscape and habitat interests tempered with the knowledge that well designed mitigation measures will go some way reduce any negative impacts.

Therefore it is recommended:

1. that the Shetland Islands Council as Planning Authority ‘Offer no objections’ to the application, subject to modifications and/or the imposition of appropriate conditions or legal obligations as are considered necessary to make the development acceptable, in compliance with Shetland Local Development Plan (2014) policy; and that
2. delegated authority is given to the Executive Manager – Planning and his nominated officer(s) to take part in and act on behalf of the Council in any discussions and negotiations involving the ECU and the applicant that take place with regards to planning conditions as might be presented to the Scottish Ministers for consideration.

The Executive Manager – Planning advised that the planning conditions had been the subject to a significant level of debate at Planning Committee, and Members had raised concern that the proposed conditions were ‘sprinkled’ through the report. The Planning Committee decided to defer to Council to make the decision and that the conditions be attached to the report, for clarification purposes, being the draft conditions in the original report as being the most important areas. He said that the ECU do not have to accept the Council’s proposed conditions. However, if approved, the Council needs to ensure that the conditions are complied with and any change to the conditions will come back to the Council. He added that the minutes and papers will form part of the submission to the ECU for their consideration.”

The Convener advised that representatives of the developer were in attendance, should there be any technical questions on the application.

Mr G Smith thanked the Planning Officers for compiling the proposed conditions at Appendix 4, which he said makes the conditions much more easier to understand. He said that as far as he was concerned, the matter being referred to the full Council to make a decision, and the collation of the draft conditions were two separate matters. Mr G Smith then referred to the proposed condition relating to Aviation Lighting, and enquired whether the proposal to provide for the use of radar activated lighting (RAL) was the only system being proposed, or could another system achieve the same results. The Executive Manager – Planning explained that the proposal was part of the application for variation and will be suggested to the ECU to recommend to the Scottish Ministers to be applied. He said that any other different proposal for aviation lighting will need to come back to the Council, as Planning Authority. Mr A Smith, a representative of Viking Energy/SSE, reported that RAL was not the only option, and that other options will be considered to reduce the intensity of the lighting. He said that discussion will take place with Scatsta Airport and the Civil Aviation Authority (CAA) for a cardinal lighting system, where proposals are for lighting at the extremities, and the highest part of the site. He added that, if acceptable, there could only be a requirement for lighting on 8-10 turbines, rather than on all the turbines. In response to a further question as to whether RAL would be on all the turbines or only a small number of turbines, Mr A Smith, reported that the circumstances around RAL is not known at this time, with the scheme still to be approved by the CAA and therefore he could not quantify numbers at this time.

Mr Fraser referred to the comments in the report, that SEPA do not agree with the conclusion of the Environmental Impact Assessment (EIA) report, and have asked that the developer follow up-to-date best practice, otherwise SEPA will object to the application for variation. Mr Fraser asked whether should the Council approve the application for variation, whether SEPA's request will be articulated in the Council's proposed modifications. The Executive Manager – Planning advised that this is what we have tried to convey in the draft conditions, however he said that any areas where legislation or technology has moved on will be incorporated in the next suite of planning conditions and the area will be covered.

Mr Fraser commented that it would appear that any perceived negative effect on tourism from the variation is subjective, and in that regard he questioned whether the recommended independent tourism assessment would form part of the Council's draft conditions of approval. The Executive Manager – Planning said that it was for the Council to put in any recommended conditions, however he added that the variation to increase the height of the turbines by 10m, and the maximum diameter of the turbines by 10m, should not make any significant change to the already recognized impact on tourism.

In referring to the proposed increase in size of the turbines, Mr Duncan sought reassurance on any impact in terms of safety to flights approaching or departing from Scatsta airport. Mr A Smith advised that the potential for impact on flights at Scatsta airport was being explored in an aviation mitigation scheme. In responding to a further question as to whether there would be any additional excavation works to take place or additional hardcore/concrete required to be used to build the turbines, Mr J Watt advised that the turbine foundation requirements as set out in the EIA would still apply to the revised application.

In responding to a comment, the Chief Executive advised that the statement in Section 2.3 of the report applied to the earlier decision by Scottish Ministers and was not in relation to this variation.

In responding to a question, the Executive Manager – Planning advised from the Planning Service's assessment of the EIA, that there will be no further impacts from the proposal to increase the size of the turbines.

Mr Cooper commented that he welcomed the reassurance in the report, that bird mortality would be reduced by new technology, which he presumed would be covered in the Bird Protection Plan. The Executive Manager – Planning advised that the Bird Protection Plan and Habitat Management Plan are in place to mitigate impacts, and he confirmed that the relevant conditions being proposed take cognisance of the latest knowledge.

In responding to a question regarding the visual impact of the turbines and in terms of any change to rotation frequency with the proposed increase in rotor diameter, Mr P Woods advised that any change in the speed of the turbines would not be noticeable, however he added that there was currently nothing to compare rotation speeds against.

Mr Burgess noted that during the consultation, a number of the statutory consultees had reconsidered the development as a whole, rather than purely the variation. In that regard, Mr Burgess questioned whether the Council as a statutory consultee in this instance, rather than the decision maker, whether it was a call or a deeper quasi-judicial principle that has excluded the Council from considering the development as a whole, as other statutory consultees have duly done. The Convener responded advising that the Council, under Planning procedures, are obliged to make a recommendation in a quasi-judicial manner, and if found to have not followed that process any recommendation made by the Council could be legally challenged.

Mr Burgess referred to a further element that sits within Scottish Planning Policy, in terms of the potential effects on hard standing water and cumulative effects. In that regard he questioned whether there are any measures of this application for variation that invokes the recommendation for cumulative effects as part of the decision. The Executive Manager – Planning advised that cumulative impacts was a planning consideration and has been covered in the context of the report and will be considered by the ECU when making a recommendation to Scottish Ministers. Mr P Bruce advised that cumulative effects are a key consideration and are reinforced under the EIA regulations. He added that the EIA report presented covers all cumulative effects, and there are no additional impacts with this application for variation.

During debate, Mr Cooper confirmed that he had studied the report, and he welcomed the addition of the detailed conditions at Appendix 4. He commented that the proposed conditions are what the Planning Service believe can protect the Shetland environment and deal with the issues raised by the strongly held beliefs and objections made. Mr Cooper referred to the already consented wind farm in Shetland, and advised on the need to deal with the matter in a realistic context. In that regard, Mr Cooper moved that the Council approve the recommendation at Section 1.4 of the report.

In seconding the motion, Ms Hawick questioned any need for the decision to be referred from the Planning Committee to the Council, other than for Appendix 4 to be made available to Members.

Mr Fraser moved as an amendment, that the Council approve the recommendation at Section 1.4 of the report, with the addition that an independent tourism assessment is included as a recommended condition from the Council to the ECU.

In responding to a question from the Convener, as to whether Mr Cooper would be willing to add that additional condition into his motion, Mr Cooper said that he would first require clarity on how the condition could be achieved.

The Convener asked for a seconder to Mr Fraser's amendment. There was however no seconder.

During the discussion that followed, Mr Sandison advised that, as a Member of the Planning Committee, he considered that the decision taken last week to refer the matter to the Council was correct. He said that Members are now able to identify the specific conditions in full, and have been supplied with all the information required. Mr Sandison confirmed that he supported the motion. Mr Leask also advised that he supported the motion.

In referring to the comment made by Ms Hawick on the matter being referred from the Planning Committee to the Council, Mr G Smith explained that at the Planning Committee he had asked for the proposed conditions to be pulled together to ease understanding, which he advised now forms Appendix 4 to the report. He said that the Planning Committee would have been capable of making a decision on this matter, had the information now presented at Appendix 4 been available to Committee.

Mrs Hughson reiterated the concerns she raised at Planning Committee, relating to visual impact and on the proposed increase in size of the turbines, which she said due to their size will now require lighting. She stated that nothing has allayed her fears in those areas. The Convener asked Mrs Hughson if she wished to make an amendment to the motion. She replied that she did not.

Mr Cooper clarified his position, advising that in the absence of the Chair and Vice-Chair of Planning Committee, it had fallen to him as Chair of Development Committee, and in complying with the Local Development Plan, to support the application for variation, with the proposed conditions. He also referred to the importance of the Shetland Windfarm Environmental Advisory Group to deal with the challenges of the project going forward.

Mr C Smith spoke in support of the decision to refer to the matter from the Planning Committee to the full Council. He said that there were only 6 Members at Planning Committee and he noted that 7 Members who were not on Planning Committee had asked questions at today's meeting. The Convener confirmed that the correct route for reporting was to Planning Committee, as it follows the Council's Constitution, as it was for the Planning Committee to revert the matter to Council. Any implied criticism towards officers for taking the matter initially to the Planning Committee, was, therefore, unfair and unjustified.

Mr Cooper confirmed that his motion included the adoption of the proposed conditions as set out in Appendix 4.

Decision:

The Council RESOLVED to:

- ‘Offer no objections’, subject to modifications and/or the imposition of appropriate conditions (as set out in Appendix 4) or legal obligations as are considered necessary to make the development acceptable, in compliance with Shetland Local Development Plan (2014) policy; and
- delegate authority to the Executive Manager – Planning and his nominated officer(s) to take part in and act on behalf of the Council in any discussions and negotiations involving the Energy Consents Unit and the applicant that take place with regards to planning conditions as might be presented to the Scottish Ministers for consideration.

The meeting concluded at 11.15am.

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Convener