

MORAY COUNCIL

Minute of Special Meeting of the Moray Council

Wednesday, 25 October 2023

Council Chambers, Council Office, High Street, Elgin, IV30 1BX

PRESENT

Councillor James Allan, Councillor Peter Bloomfield, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor Theresa Coull, Councillor John Cowe, Councillor John Divers, Councillor Amber Dunbar, Councillor J  r  mie Fernandes, Councillor Donald Gatt, Councillor David Gordon, Councillor Juli Harris, Councillor Sandy Keith, Councillor Scott Lawrence, Councillor Graham Leadbitter, Councillor Marc Macrae, Councillor Paul McBain, Councillor Neil McLennan, Councillor Shona Morrison, Councillor Bridget Mustard, Councillor Kathleen Robertson, Councillor Derek Ross, Councillor John Stuart, Councillor Draeyk Van Der Horn, Councillor Sonya Warren, Councillor Ben Williams

IN ATTENDANCE

Chief Executive, Depute Chief Executive (Economy, Environment and Finance), Depute Chief Executive (Education, Communities and Organisational Development), Head of Governance, Strategy and Performance, Chief Financial Officer, Head of Environmental and Commercial Services, Head of HR, ICT and Organisational Development, Head of Economic Growth and Development, Consultancy Manager, Senior Engineer (Transportation), Principal Planning Officer, Democratic Services Manager and Angela Pieri, External Auditor, Grant Thornton.

1. Chair

The meeting was chaired by Councillor Kathleen Robertson.

2. Thanks

The Council joined the Chair in thanking all Council staff who were on call over the weekend of Storm Babet and passed on thoughts to colleagues in Aberdeenshire, Angus and Perth and Kinross Councils on the challenges they face following the previous weekend.

3. Declaration of Group Decisions and Members Interests *

Councillor McLennan sought clarification from the Monitoring Officer on whether Items 9 and 10 should be considered in the open session before Councillors consider the motions.

The Chair advised that the advice given was to deal with the declarations first and then consider the adoption of the resolution.

In terms of Standing Orders 21 and 23 the Council noted the following declarations:-

In respect of the Conservative Group, the Council Leader confirmed that the Conservative Members had discussed Agenda Items 6a, 9 and 10 and a group decision had been taken on how members would vote.

On behalf of the Scottish National Party, Councillor Leadbitter declared that the Group Members had discussed Agenda Item 10 and a decision had been taken on how members of the group would vote.

Councillor Fernandes declared that he was a Trustee of the Chartered Institute of Library and Information Professionals in Scotland and having sought advice from the Monitoring Officer would remain in the meeting for the discussion of Item 9 on the agenda.

Councillor McLennan declared an interest in Item 9 on the agenda, having sought advice from the Monitoring Officer, although there is a connection, he deemed the connection by virtue of considering the budget setting in totality as per 5.4 of the Code and from the advice taken, he is not required to step out of the discussions but happy to take further advice from the Monitoring Officer if required.

4. Resolution

The Chair sought agreement from the Council in terms of Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Items 9 and 10 of business on the grounds that it involves the likely disclosure of exempt information of the class.

Councillor Leadbitter sought to move Item 10 on the agenda into the open session of the agenda as he questioned the reason for the report being confidential as the report is in regards to a Council Policy and does not relate to specific individuals. He further added that he appreciated there is some reference to labour negotiations however felt that a Council policy should be debated in public.

The Chair sought advice from the Monitoring Officer on Items 9 and 10 on the agenda.

In response, the Monitoring Officer confirmed that in terms of legislation it is for members to decide on where to discuss items on the agenda based on advice from Officers. He further added that the advice on Item 9 is that, as the report refers to jobs at risk the report is in the confidential section. Following the meeting today, the Chair would hold authority to grant publicity rights on the information contained in the report but there would still be sensitivity around some of the detail which would need to be preserved during a consultation period. His advice would be to keep the report in the confidential section.

In relation to Item 10 he advised that, before taking a view on whether the report is taken out of the confidential section, Members may wish to hear from the Depute Chief Executive (Education, Communities and Organisational Development) in regards to labour relation issues around the consultation with unions.

In response, the Depute Chief Executive (Education, Communities and Organisational Development) confirmed that the reason for Item 10 being in confidence was in relation to industrial relations matters and the consultation around that. She further added that it would be normal for an employer to consider their employment position in private and then enter into negotiations with their employees

and their representatives before declaring their final position. The report contains some advice which she would have concerns around the risks that would then be presented to the Council because the report gives Council advice on employment issues that the Council would not want to share until a final position has been agreed.

The Chair sought clarification from Councillor McLennan and Councillor Leadbitter if they were prepared to accept the advice which had been given.

Councillor McLennan sought advice from the Monitoring Officer on the difference between confidentiality as stated in standing orders and exemption reasons as detailed in the legislation. He stated that in the Local Government Act 1973, Item 50, 50(a) 1 and 50(a)2 lists the reasons for reports being placed in the confidential section and sought clarification on the specific parts that applies to each report before making a decision.

The Chair sought a short adjournment to allow Officers the opportunity to provide the information sought.

On the resumption of the meeting the Monitoring Officer advised that he had looked at the 1985 Access to Information Act and stated that a Local Authority may by resolution excluded the public from a meeting during consideration of an item of business whenever it is likely in the view of the business to be transacted or the nature of the proceedings that if members of the public were present during consideration of that item of business there would be disclosure of them of the exempt information. He further added that the advice given earlier by himself and the Depute Chief Executive (Education, Communities and Organisational Development) still stands and the decision is taken on both items 9 and 10.

The Depute Chief Executive (Education, Communities and Organisational Development) requested that if Item 10 was to be heard in the open session, that she be afforded the opportunity to redact sections of the report to reduce the risk to the Council should the full report be published.

The Chief Executive further added that in this instance members are acting as employers in terms of the recommendations as set out in the report and it was emphasised on Page 93 – Consultations – Trade Unions have been made aware of this report and there will be a requirement for formal consultation on the position determined by the Council if this is to change the current arrangements. He further added that if the decision is to take the report in public it would need to be redacted before publishing publicly.

Councillor Fernandes sought clarification on when the re-dacted report would come back to Council.

The Depute Chief Executive (Education, Communities and Organisational Development) confirmed that she anticipated having the re-dacted paper available for later in the meeting as she did not feel it would take much work to redact.

The Chair advised that a vote would be taken on Item 9 and 10 separately and sought a seconder for Councillor McLennan's motion to move Item 9 into the open session of the meeting. Councillor Van Der Horn confirmed that he would second Councillor McLennan in regards to Item 9 on the agenda.

Councillor Macrae, seconded by Councillor Gatt proposed leaving Item 9 in the confidential section of the agenda.

On the division there voted:

For the Motion (5)	Councillors McLennan, Van Der Horn, Cameron, Fernandes and Warren
For the Amendment (20)	Councillors Macrae, Gatt, Bloomfield, Colyer, Coull, Cowe, Divers, Dunbar, Gordon, Harris, Keith, Lawrence, Leadbitter, McBain, Morrison, Mustard, Ross, Robertson, Stuart and Williams
Abstention (0)	

Accordingly the amendment became the finding of the meeting and the Council agreed to consider Item 9 on the agenda in the confidential section of the meeting.

In regards to Item 10, Councillor Leadbitter moved to consider Item 10 in the open section of the agenda, this was seconded by Councillor Stuart.

Councillor Robertson, seconded by Councillor Gatt proposed considering Item 10 in the confidential section of the agenda.

On the division there voted:

For the Motion (11)	Councillors Leadbitter, Stuart, Cameron, Coull, Fernandes, Harris, Lawrence, Morrison, McLennan, Van Der Horn and Warren
For the Amendment (14)	Councillors Robertson, Gatt, Bloomfield, Colyer, Cowe, Divers, Dunbar, Gordon, Keith, Macrae, McBain, Mustard, Ross and Williams
Abstentions (0)	

Accordingly the amendment became the finding of the meeting and the Council agreed to consider Item 10 in the confidential section of the agenda.

The meeting resolved that in terms of Section 50A (4) and (5) of the Local Government (Scotland) Act 1973, as amended, the public and media representatives be excluded from the meeting for Items 9 and 10 of business on the grounds that it involves the likely disclosure of exempt information of the class.

Para number of the minute	Para Number of Schedule 7a
14	Para 1 Information in relation to staffing matters
15	Para 11 Information relating to any consultations or negotiations in connection with any labour relations.

5. External Audit - Annual Report to Members on 2022-23 Audit

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) providing the Council with a copy of the External Auditors Annual Audit Report to Council on the 2022/23 accounts.

The External Auditor provided a review of the findings in the report.

Following consideration the Council unanimously agreed to note the contents of the Annual Audit Report 2022/23.

6. Audited Annual Accounts 1 April 2022 to 31 March 2023

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) which submitted to the Council the Audited Annual Accounts for the Moray Council for the year ended 31 March 2023.

Following consideration, the Council unanimously agreed to:

- i) note the Audited Annual Accounts for the financial year 2022/23; and
- ii) approve the Annual Accounts being signed, have regard to the Annual Report from the external auditor considered earlier at this meeting.

7. Audited Connected Charities Audited Annual Accounts 1 April 2022 to 31 March 2023

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) submitting to the Council the audited Annual Accounts for Moray Council's Connected Charities for the year ended 31 March 2023.

Following consideration the Council unanimously agreed to approve the audited Annual Accounts for the Connected Charities for the financial year 2022/23.

8. Best Value Thematic Review 2022 - 2023

The meeting had before it a report by the Chief Executive asking the Council to consider the Best Value Thematic Review Report on Moray Council by Grant Thornton ("the auditors") and the associated Improvement Action Plan.

Councillor McLennan suggested some amendments to the wording on pages as detailed:

Page 136 - Councillor Chris Price resignation, amend to say a resignation of a member rather than from an opposition party.

Page 140 - bottom line of page "ensure committee members are clear on the remit of the Audit and Scrutiny Committee." Remove or amend sentence as without speaking to all members of Audit and Scrutiny this statement may not be accurate.

Page 145 - top line on the page. Gives impression the Council only require to work alongside communities as a result of pandemic recovery. May be better to say enhanced working alongside communities?

The External Auditor agreed to amend in the report in light of Councillor McLennan's comments prior to final sign off.

Following further consideration the Council unanimously agreed:

- i) to welcome the areas of strength recognised in the Best Value Thematic Review report on "Leadership and Development of New Strategic Priorities" in Appendix 1 including the work undertaken in relation to community engagement in forming the new Corporate Plan;
- ii) to note the findings, seeking clarification on points as required; and
- iii) the Improvement Action Plan in Appendix 1 of the report.

9. Medium to Long Term Financial Strategy

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) asking Council to consider an updated financial strategy to facilitate medium to long term financial planning.

Following consideration the Council unanimously agreed to approve the updated Medium to Long Term Financial Strategy at Appendix 1 to the report.

10. Cloddach Bridge

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) informing the Council of the findings of the Pre-feasibility Study undertaken on the potential repair of Cloddach Bridge.

Councillor Mustard informed the Committee that at a meeting of Heldon Community Council the previous evening, it had been confirmed that the Community had secured £120,000 in funding to be put towards the full business case.

Councillor Mustard therefore proposed that the Council:

- i) note the findings of the pre-feasibility study; and
- ii) progress to the Full Business Case for the repair of Cloddach Bridge to be funded with the £120,000 from the Community and the balance funded by the Council.

This was seconded by Councillor Macrae.

Councillor Cameron stated that he could not disagree with what Councillor Mustard and Councillor Macrae had said other than the cost and reminded Councillors that they are elected as Councillors for the whole of Moray and proposed, seconded by Councillor Lawrence that the Council:

- i) note the findings of the pre-feasibility study; and
- ii) agrees that a full business case for the repair of Cloddach Bridge should not be funded, as this work is contrary to the decision of Economic Development and Infrastructure Services Committee on 7 February 2023 (para 11 of the minute refers) and does not comply with the Council policy on Bridge Maintenance Prioritisation.

In advance of the vote, the Monitoring Officer advised that the Council in responding to any allegation of a breach of duty of Care, would need to demonstrate that it had a robust priority system to show its budget was applied to infrastructure on a planned and prioritised basis.

He further added that there would be risk to the Council in departing from an agreed priority system.

On the division there voted:

For the Motion (14)	Councillors Mustard, Macrae, Allan, Bloomfield, Colyer, Cowe, Divers, Dunbar, Gatt, Gordon, McBain, Robertson, Ross and Williams
For the Amendment (12)	Councillors Cameron, Lawrence, Coull, Fernandes, Harris, Keith, Leadbitter, McLennan, Morrison, Stuart, Van Der Horn and Warren
Abstention (0)	

Accordingly the motion became the finding of the meeting and the Council agreed:

- i) note the findings of the pre-feasibility study; and
- ii) progress to the Full Business Case for the repair of Cloddach Bridge to be funded with the £120,000 from the Community and the balance funded by the Council.

Councillor Allan joined the meeting during the consideration of this item.

11. UK Government Our Long Term Plan for Towns

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) informing the Council of the announcement on 1 October 2023 that Elgin is one of 55 towns in the UK to receive £20 million funding towards town centre regeneration projects from the UK Government and to agree that the Head of Economic Growth and Development liaises with the UK and Scottish Governments to progress governance arrangements to establish a Town Board.

Following consideration the Council agreed:

- i) to note the award of £20million funding for Elgin from the UK Government Long-Term Plan for Towns;
- ii) that the Head of Economic Growth and Development liaises with the other 6 Scottish towns and local authorities which have been awarded funding to share best practice;
- iii) that the Head of Economic Growth and Development establishes an initial informal group as per para 4.8 and suitable interim governance structures;
- iv) that the Head of Economic Growth and Development proposes to the initial group that the Elgin City Centre Masterplan and Delivery Programme are updated to inform the Long Term Plan, and if this is supported, delegated authority is granted to progress that work ahead of formal constitution of the Town Board; and
- v) a further report be prepared for Council when further details on the staffing and financial implications surrounding the funding are available.

12. Moray Council Permission for Hospitality Businesses to Place Furniture and Non Furniture on Public Footways

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) seeking approval for the application process, charges and guidance for the placement of furniture (tables and chairs) and non-furniture items on the public footway for restaurants, cafes and public houses.

In terms of Standing Order 85, the Chair sought agreement from the Council to suspend standing order 77 in order to conclude the consideration of the item. This was unanimously agreed.

Councillor Leadbitter moved to agree the recommendation and for a report to come back in 18 months time to review the process.

Following consideration the Council unanimously agreed:

- i) to approve the application process, charges and guidance for the placement of furniture and non-furniture items on the public footway to enable outside dining for restaurants, cafes and public houses; and
- ii) a report would come back to the relevant Committee review the process in 18 months time.

13. Resumption of Meeting

PRESENT

Councillor James Allan, Councillor Peter Bloomfield, Councillor Neil Cameron, Councillor Tracy Colyer, Councillor Theresa Coull, Councillor John Cowe, Councillor John Divers, Councillor Amber Dunbar, Councillor Jérémie Fernandes, Councillor Donald Gatt, Councillor David Gordon, Councillor Juli Harris, Councillor Sandy Keith, Councillor Scott Lawrence, Councillor Graham Leadbitter, Councillor Marc Macrae, Councillor Paul McBain, Councillor Neil McLennan, Councillor Shona Morrison, Councillor Bridget Mustard, Councillor Kathleen Robertson, Councillor Derek Ross, Councillor John Stuart, Councillor Draeyk Van Der Horn, Councillor Sonya Warren, Councillor Ben Williams.

IN ATTENDANCE

Chief Executive, Depute Chief Executive (Economy, Environment and Finance), Depute Chief Executive (Education, Communities and Organisational Development), Head of Governance, Strategy and Performance, Chief Financial Officer, Head of HR, ICT and Organisational Development, and the Democratic Services Manager.

14. Short to Medium Term Financial Plan [Para 1]

The meeting had before it a report by the Depute Chief Executive (Economy, Environment and Finance) seeking to approve proposed savings, subject to consultation where appropriate, for implementation in 2023/24, 2024/25 and 2025/26, in accordance with the Council's Short to Medium Term Financial Strategy.

Following advice from the Monitoring Officer, Councillor McLennan sought a short adjournment to allow himself and the Monitoring Officer to seek clarity from the Standards Commission on a potential declarable interest.

Adjournment of the Meeting

The Chair, in wishing to be able to consider the item, agreed to the short adjournment.

Resumption of the Meeting

On the resumption of the meeting the Chair advised the Council that Appendix 1 would be split into 2 sections for consideration. Appendix 1 would seek approval for the whole document with the exception of Line A 20-5 which would be considered separately as Appendix 1a.

Councillor McLennan confirmed that, following his earlier declaration and additional advice from the Monitoring Officer and Standards Commission, he had a close connection with someone who would be impacted by the particular proposal in Appendix 1a.

As the Chair had allowed this item to be considered separately from the wider Appendix 1 proposals this enabled Councillor McLennan to formally declare his interest in relation to Appendix 1a. He advised the Chair that he would step out of the meeting for consideration of that particular item.

The Chief Executive provided some guidance for Members in relation to proposals which may emerge as part of the consideration of the meeting.

He stated that Officer reports aim to provide members with sufficient financial and risk information for a fully informed decision to be taken with published agendas ensuring that fair notice is given of any decision which needs to be taken.

Motions from the floor are an important part of the democratic process but could lead to unplanned/unintended financial risk and consequences. He advised that to address this questions in 3 areas should be asked:

1.	Council Wide Financial Priorities - how would the proposal affect the Council's revenue budget/capital plan - is it affordable?
2.	Service Priorities with a fixed budget - could the proposal be inconsistent with agreed priorities? Could the proposal impact on deliverability from agreed priorities which have already been established?
3.	Officer Time - by promoting one project or priority this could reduce the time officers have to spend on other projects and priorities. Have the relative merits been evaluated? Put another way, what else may need to be stopped and for how long?

He added that if the answer to any of those questions was not clear to members then advice would be that it is unwise to proceed to a decision without further information.

He advised that the Chair has the power to declare a motion incompetent for the reasons stated, however a further report could be requested to provide more detail, but the time this would take in terms of the issue about officer time previously mentioned should be considered.

He continued to add that in terms of the Council's Standing Order 49 - members need to have sufficient information before them to come to a reasoned and balanced

decision and the Scottish Government Guidance - Right First Time asks if Members have taken necessary considerations into account and will the decision be reasonable.

The Monitoring Officer also reminded Members that in terms of Standing Order 73a, the papers in front of them are confidential as they relate to staffing matters and asked Members to respect the Confidentiality. He further added that the Chair will authorise a press release following the meeting.

Councillor Robertson, in thanking Members and Officers for the collaborative working in getting to this point, moved the recommendations as printed in the report with regards to Appendix 1. This was seconded by Councillor Gatt.

Councillor Leadbitter echoed the comments made by Councillor Robertson around the collaborative working and stated that he had no issues with recommendations (i) to (vi) in relation to Appendix 1a however, expressed concern about recommendation (vii) and stated he would not be comfortable supporting it as it currently stands. Councillor Leadbitter, seconded by Councillor Fernandes proposed agreeing recommendations (i) to (vi) only.

The Chief Executive confirmed that there is a significant risk to the Council if the proposals were not agreed today. The Scottish Government will not be publishing their budget until 19 December 2023 and the Council need to make decisions in advance of that announcement.

The Chief Financial Officer also added that the Council is running on a structural deficit, namely living in an overdraft.

The Depute Chief Executive (Education, Communities and Organisational Development) stated that it was important to have an open discussion with the public on the future of Libraries and Sport and Culture Services and asked whether, if reference to Appendix 2 was removed, would that be acceptable to Councillors Leadbitter and Fernandes to agree all the recommendations.

Adjournment of the Meeting

In response to the comments from the Depute Chief Executive (Education, Communities and Organisational Development) Councillor Leadbitter sought a short adjournment to discuss the proposal.

Resumption of the Meeting

On the resumption of the meeting, Councillor Leadbitter confirmed that himself and Councillor Fernandes would be happy to accept the recommendations, subject to the removal of reference to Appendix 2 in recommendation (vii). and withdrew his amendment.

With there being no one otherwise minded the Council unanimously agreed to:

- i) note the financial update;
- ii) note the savings options set out in Appendices 1 and 2, having due regard to the Integrated Equalities Assessments summarised in Appendix 4;
- iii) note the results of the stage 1 Public Engagement on the budget as set out in section 5 of the report and Appendix 5;

- iv) the greatest level of savings possible, subject to State 2 public communications as indicated in Appendix 1 and/or workforce consultation as required;
- v) the investment of £105,000 revenue to be funded from Council reserves earmarked for Transformation and £60,000 additional capital required to secure savings from the closure of 2 corporate offices as set out in Appendix 1;
- vi) note the position as set out in the Budget on a Page at Appendix 3, instructs that work continues to reduce the remaining budget gap, with savings options being brought forward at the earliest opportunity; and
- vii) as part of the overall savings, in order to advance the above, agreed to commence public and workforce engagement on the possible future re-modelling of Libraries and Sport and Culture Services (Pools and dry facilities) and report back to the Council on lower cost services options for future consideration, including income generation.

Councillor McLennan left the meeting at this juncture.

The Council considered Appendix 1a - A20-5 in the savings proposals. As there was no-one otherwise minded the Council unanimously agreed to accept the savings proposal at A20-5 with those already agreed Appendix 1.

Councillor McLennan rejoined the meeting following the conclusion of this item.

15. No Compulsory Redundancy Principle [Para 11]

The meeting had before it a report by the Depute Chief Executive (Education, Communities and Organisational Development) inviting the Council to consider a principle of no compulsory redundancies (NCR) and whether to establish that as a policy position reflected in an amended redundancy policy if agreed.

Councillor Gatt moved to agree recommendation 3.1 (i) and (ii) and reject recommendation 3.2. He stated that the current policy is exceedingly good and compulsory redundancy is always the last resort. This was seconded by Councillor Mustard.

Councillor Fernandes stated that No Compulsory Redundancies is the policy of the SNP, Labour and Green Parties and he felt it was important for electors who have voted on party policy to see this being agreed and proposed, seconded by Councillor Leadbitter, to agree to adopt a policy of no compulsory redundancies as per Appendix B and paragraph 5.26 of the report.

On the division there voted:

For the Motion (12)	Councillors Gatt, Mustard, Allan, Bloomfield, Cowe, Colyer, Dunbar, Gordon, Macrae, McBain, Robertson and Ross,
For the Amendment (13)	Councillors Fernandes, Leadbitter, Cameron, Coull, Divers, Keith, Lawrence, Harris, McLennan, Morrison, Stuart, Warren and Williams

Accordingly the Amendment became the finding of the meeting and Council agreed to:

- i) Approve the amended redundancy policy statement at Appendix B for incorporation into change management procedures, subject to consultation with recognised trade unions;
- ii) Approve a budget of up to £40,000 per year to be allocated from reserves for a post within the HR service to operate the supernumerary and redeployment process; and
- iii) Note that a further report on the use and terms of voluntary exit measures may be required in the context of the new NCR policy position and if so will be brought to the council for consideration