

“Conflict is natural, inevitable, necessary and normal. The problem is not it’s existence but how we handle it”

Bernard Mayer,
The Dynamics of Conflict Resolution. 2000

*“How are we going to solve this?”
(us against the problem)*

is much easier to hear than

‘What are you going to do differently?’

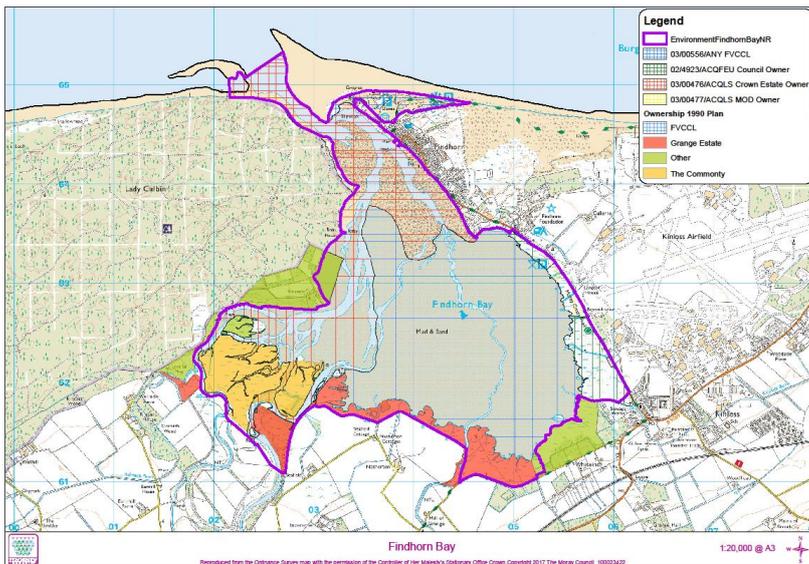
(you are the problem)

or worse

‘Surely you can see you need to change?’

(I know the solution)”

Dan Dana,
‘Conflict Resolution’ (2001)



REPORT TO MORAY COUNCIL

THE FINDHORN BAY WILDFOWLING NEGOTIATIONS

BACKGROUND & OUTCOMES

Catalyst Mediation Ltd 2019

1) BACKGROUND TO THE NEGOTIATION PROJECT

History

Some 20 years ago local wildfowling clubs expressed a desire for a byelaw and regulated permit scheme as a way of controlling numbers and visiting wildfowling whose behaviour on the Bay was considered unacceptable.

In 2016 a petition was presented representing those residents close to the bay for whom the noise of shooting, the behaviour of some wildfowling and for some the practice of wildfowling, was unacceptable.

As with any community, on almost any topic there will be a range of views, some of which might be termed “extreme” at either end of the debate. In this debate those extremes came to be represented by:

- ✦ a small number of individuals who sought to disrupt the activity of wildfowling and
- ✦ some wildfowling, mostly visitors, whose behaviour exacerbated the situation.

Accusations of bad behaviour on all sides increased, many local wildfowling ceased to visit the Bay because of the atmosphere and some residents felt unsafe in their own homes.

An attempt to arrive at a voluntary permit scheme agreed by all parties nearly succeeded in 2017, but failed on two main issues:

- 1) Voluntary schemes would not guarantee the control and eventual eradication of unacceptable behaviour from either end of the debate.
- 2) The details of the permit scheme were not acceptable to all elements of the wildfowling community.

Key Problems

In any community where new residents move in from outside the area, differences of opinion on many traditionally accepted activities will develop. Frequently this has been characterised as the difference between metropolitan values and those of the countryside.

The debate around wildfowling was a good example of this.

- ✦ A traditional sport, practiced for hundreds of years and recognised in law, was regarded by many new to the area as creating an unexpected and unacceptable level of disturbance, while some regarded it as morally unacceptable and believed strongly that it should be banned.
- ✦ Wildfowling resented what they saw as an unreasonable attempt to ban their sport, accepted that disturbance could be ameliorated through a permit scheme, but wanted reassurance that the “extreme” behaviour of the small group of protesters, would stop.

Not unexpectedly, there was neither trust nor respect between the various communities.

2) CURRENT PROJECT

In spring 2018 the Head of Direct Services won support for a different approach, of engaging an external negotiator to form a group representing those communities most affected by the debate, with the objective of reaching an outcome all the communities could support to achieve:

1. a cessation of the unacceptable behaviour from all sides
2. ameliorating the noise impact on nearby residents
3. reducing disturbance to wildlife, especially those protected species such as the curlew

Catalyst Mediation Ltd were appointed in August 2018 after a competitive tender and contacted the following representatives to form a Negotiating Group:

Binsness Estate (as a Landowners representative)	British Association for Shooting and Conservation
Findhorn and Kinloss Community Council.	Findhorn Bay Ecovillage
Findhorn Bay Local Nature Reserve Management Committee	Findhorn Wildfowling & Conservation Assoc
Forres Nairn and District Wildfowling Association	Friends of Findhorn Bay

The Findhorn Village Conservation Company asked to be informed but not involved in the discussions.

2. THE NEGOTIATING GROUP

Group Function

The Group were invited on the basis they agreed to negotiate (not mediate) in good faith, a set of improvements to any permit scheme, to maintain confidentiality during the negotiations and to maintain a respectful attitude to one another in the meetings. The facilitator would have no decision making power, but could suggest and advise the Group on any points raised and liaise with any organisation the Group felt would be useful to contact.

Three stages were outlined:

- 1) To agree the goals common to all communities.
- 2) To agree the most effective method of achieving those goals.
- 3) To negotiate the detail of the agreed method.

Based on this, meetings were held approximately every three to four weeks, with a clear agenda, notes from any previous meetings and any additional information the facilitator felt would be useful for the discussions. This included experiences from other wildfowling areas, the views of Police Scotland and other groups not necessarily represented at the meetings.

Members of the Group were encouraged to share experiences and views on any topic. The level of mistrust and suspicion meant that from time to time members had to be reminded of the benefits of demonstrating respect and there were two breaches of the confidentiality agreement, but on the whole most members accepted the wisdom behind these rules.

There were also issues with the unrealistic negotiating position adopted by some members, but these modified and became more realistic with time and encouragement.

Progress Achieved : The Common Goal & Method

Gradually a common view evolved that for both sides of the argument, enforceable legislation would be the only platform which would control unacceptable behaviour from both extremes of viewpoint. An associated permit scheme would allow for amelioration of disturbance to residents and wildlife.

Knowing this would involve a byelaw and associated costs, the Facilitator discussed possibilities with Moray Council and a way forward was proposed: that the communities involved would be consulted on three topics

- 1) Did they wish for a byelaw with a permit scheme to control unacceptable behaviour, ameliorate noise and disturbance and aid conservation of wildlife?
- 2) Would they be prepared to fund such a scheme?
- 3) Which of three possible permit scheme rules for year 1 they would prefer.

The Communities would be consulted by the Group using Scottish Government's Community Engagement (CE) guidelines with guidance from Moray Council staff.

Assuming positive responses to all three questions, fund raising would then begin to cover the costs of preparing a byelaw and submitting it to Scottish Government. At the same time funding would be raised so that a Warden could be employed on the Bay, possibly by more than one organisation, including a new fund raising body associated with the LNR and the Findhorn Village Conservation Company.

There were several reasons for adopting the Community Engagement approach:

- 1) This is an issue between communities representing different value systems, so the democratic approach is to put decisions in their hands. The level of response will show the level of their concern.
- 2) This also removes from the decisions any emotion between the members of the Group, especially around elements of the Permit Scheme.
- 3) If all the communities involved are sufficiently concerned, as they are reported to be, then it is not unreasonable for them to fund the necessary legislation.

- 4) In the event Scottish Government was approached to confirm a Byelaw and Permit Scheme, the likelihood of a Public Inquiry would be significantly reduced.

I offered to work with the Group to implement the CE program at an agreed to be community funded.

Current Position

Our contract ended in February 2019 with the agreement to proceed with the Community Engagement (CE) process and a “hand over” to the Moray Council CE team. The Group decided to carry on working with the CE team from Moray Council.

While my understanding is that the Community Engagement plan is still the preferred option, the details were taking so long for the Group to agree, that the limited time allocation available to the Moray Council CE team was more than used up without final agreement being reached by the Group on all points.

Given the lack of progress, on June 4th, Steven Cooper, Head of Direct Services for Moray Council, called an emergency meeting of the Group and explained that the Council could no longer support the Group CE plan as no agreement had been reached on the details of the program.

I attended that meeting and afterwards encouraged the Group to find ways of progressing the CE program and offered what help I could.

As yet I have had no response.

Conclusion

Moray Council were correct in allowing a negotiation to proceed, even with a group with such diverse views.

Achievements include:

-  An improved understanding from all sides of the others positions.
-  A degree of respect and trust between some members of the Group where none existed before.
-  A common goal in conserving the Bay and regulating unacceptable behaviour from all users.
-  A method by which this goal could be underpinned through a Byelaw and underlying Permit scheme.
-  A method by which the Communities involved could be canvassed for their support in funding a Byelaw and associated permit.

Recommendation

These elements still exist and could be made to work.

Rather than lose the investment put in by the Council and the effort put in by the Group, we would recommend that other local groups are canvassed to see if they would progress the existing plan.