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SCOTTISH BORDERS COUNCIL

MINUTES of Meeting of the SCOTTISH COUNCIL held in Council Chamber, Council Headquarters, Newtown St. Boswells and via Microsoft Teams on Thursday, 26th October, 2023 at 10.00 am

Present:- Councillors W. McAteer (Convener), J. Anderson, D. Begg, C. Cochrane, J. Cox, L. Douglas, M. Douglas, J. Greenwell, C. Hamilton, S. Hamilton, E. Jardine, J. Linehan, N. Mackinnon, S. Marshall, D. Moffat, S. Mountford, A. Orr, D. Parker, J. PatonDay, J. Pirone, C. Ramage, N. Richards, E. Robson, M. Rowley, F. Sinclair, E. Small, A. Smart, Steel, R. Tatler, V. Thomson and T. Weatherston

Apologies:- Councillors P. Brown, S. Scott and E. Thornton-Nicol

In Attendance:- Chief Executive, Director Corporate Governance, Director - Education & Lifelong Learning, Director of Finance & Procurement, Director Infrastructure & Environment, Director - Resilient Communities, Director - Strategic Commissioning & Partnerships, Chief Officer - Health & Social Care Partnership, Director - People Performance & Change and Clerk to the Council

1. CONVENER'S REMARKS.

1.1 The Convener asked those present to observe a minutes silence for those currently involved in conflicts across the world and recorded the sympathy of the Council for all innocent victims.

1.2 The Convener paid tribute to the following:-

- (a) the Domestic Abuse Advisory Service who had received accreditation from the SafeLives Charity, making them only the second group in Scotland to receive such accreditation;
- (b) Councillor Greenwell for hosting a lunch for the Coldstream Town Twinning Association and Councillor Moffat for his work with this group; and
- (c) Chief Inspector Vinnie Fisher who was moving to a new post with Police Scotland, thanked him for his work in the Borders and welcomed his replacement, Stuart Fletcher.

1.3 The Convener thanked Jenny Wilkinson and Louise McGeoch for their service to the Council over many years and presented them both with Border Reivers.

DECISION

AGREED that congratulations be passed to those listed in paragraphs 1.2 and 1.3 above.

2. MINUTE

The Minute of the Meeting held on 28 September 2023 was considered.

DECISION

AGREED that the Minute be approved and signed by the Convener.

3. **COMMITTEE MINUTES**

The Minutes of the following Committees had been circulated:-

Pension Fund	8 August 2023
Local Review Body	14 August 2023
Peebles Common Good Fund	23 August 2023
Eildon Area Partnership	7 September 2023
Peebles Common Good Fund	11 September 2023
Jedburgh Common Good Fund	11 September 2023
Executive	12 September 2023
Teviot & Liddesdale Area Partnership	12 September 2023
Galashiels Common Good Fund	21 September 2023
Civic Government Licensing	22 September 2023
Pension Fund	22 September 2023
Pension Board	22 September 2023
Executive	3 October 2023

DECISION

APPROVED the Minutes listed above.

4. **BORDERS RAILWAY - ESTABLISHMENT OF CROSS-PARTY WORKING GROUP**

There had been circulated copies of a report by the Director Resilient Communities summarising progress with the development of the business case for the reinstatement of the Borders Railway between Tweedbank and Carlisle and proposing the establishment of a Cross-party Working Group to oversee this work in line with the £10m funding commitment detailed in the Borderlands Inclusive Growth Deal. The report explained that agreement had been reached with both Governments, DfT and TS that the next step was to progress the Strategic Business Case for the project, and that the £10m Deal commitment could be used to fully fund this work. Agreement had also been reached that the £10m could be used to fund a Senior Project Manager, appointed by Scottish Borders Council on behalf of the Borderlands Partnership as Lead Partner for the project, to oversee the development of the business case and coordinate the team of internal and external professionals who would deliver this work. This would include initially preparing a full project plan for completing the Full Business Case for the project, including associated feasibility studies, drawing on the £10m Growth Deal investment. To support this work moving forward, and based on the previous governance model which oversaw the first phase of the Borders Railway feasibility work and business case development to successful completion, it was proposed to set up an internal Cross-party Working Group to oversee this work. It was suggested that the membership of this working group includes representatives of each of the political groups of the Council, to ensure there is full visibility and oversight of this complex and high-profile project. Members supported the proposal. In response to a question on the frequency of meetings, Mrs Craig advised that this would be agreed by the Group once established but would be varied depending on need at any given time. Councillor Scott Hamilton proposed that the number of members be increased to 9 to allow full cross-party involvement and this was agreed. It was further agreed that names would be submitted after the meeting.

DECISION

AGREED to:-

- (a) note the progress made by the Borderlands Partnership to agree the process for developing the business case for the Borders Railway extension project;**
- (b) note the agreement made with UK and Scottish Governments to draw down the £10m commitment at key stages to fund this business case development work via the Borderlands deal;**
- (c) approve the membership and remit of a Cross-party Working Group comprising 9 members to oversee this work, based on the previous**

governance model which successfully oversaw the Borders Railway Edinburgh to Tweedbank business case development, as outlined in the report; and

- (d) that the names of the Councillors to serve on the Working Group be submitted to the Director.**

5. MEMBERS TRAINING AND DEVELOPMENT POLICY

There had been circulated copies of a report by the Director of Corporate Governance seeking approval for a Training and Development Policy for Elected Members, to support them in acquiring the skills and knowledge necessary to perform their wide-ranging roles and responsibilities as Elected Members. The report explained that learning and development had a key role to play in ensuring all Elected Members had the necessary knowledge and skills to be highly effective and serve the Council and the Borders' communities to the best of their ability. Following on from the Induction Programme (May to November 2022), and in order to ensure support for all Elected Members to acquire or hone the skills and knowledge necessary to be highly effective and serve the Council and the Borders' communities to the best of their abilities, a Training and Development Policy had now been developed and this was contained in Appendix 1 to the report. The CPD Framework for Elected Members in Scottish Local Government had been developed by the Improvement Service and it was intended that this Framework, which covered 7 roles of Elected Members, would be used as the basis for developing a Personal Development Plan for each Elected Member. The key stages in developing the CPD Framework for Elected Members were:

- (a) completion of an online survey which involved self-assessment against a range of suggested skills/behaviours;
- (b) to hold an individual meeting with Officers to develop a Personal Development Plan;
- (c) access to the Improvement Service CPD Framework Development Programme containing a range of development resources and other internal and external training and development opportunities; and
- (d) an individual annual CPD Framework review meeting to discuss progress.

Members supported the proposals and agreed it was important to keep developing their skills although capacity to undertake training was often an issue. It was noted that Members had individual needs and that the plan would be tailored to fit these.

DECISION

AGREED:-

- (a) to approve the Elected Members' Training and Development Policy detailed in Appendix 1 to the report; and**
- (b) that the outcomes from the Members' skills survey be used as a starting point to inform their future Personal Development Plans and training and development needs.**

6. REVIEW OF POLLING DISTRICTS, POLLING PLACES AND POLLING STATIONS

There had been circulated copies of a report by the Director Corporate Governance seeking approval for a review of the current Polling Districts and Polling Places within the Scottish Borders Council Area to ensure that all electors in a constituency in the local authority area had such reasonable facilities for voting as practical in the circumstances and so far as was reasonable and practicable, every polling place for which the Council was responsible was accessible to electors who are disabled. The report explained that

the Electoral Registration and Administration Act 2013 set out the timing of reviews of UK Parliamentary polling districts and polling places. The next compulsory review must be completed by 31 January 2025. Although there were no scheduled elections it was important to note that the next general election must take place by January 2025. It is also important to keep polling districts and polling places up-to-date in preparation for any unexpected electoral events. The timescale was set to allow any changes to be made in advance of the next General Election and the report set out how the review will be undertaken and the timescales for achieving Council approval. In response to a question about the possibility of RAAC in some halls and the lack of expertise of those who managed them, the Director Infrastructure and Environment confirmed he could provide assistance if required. The availability of the questionnaire in paper form was also raised and it was agreed that these could be provided.

**DECISION
AGREED:-**

- (a) the proposals and timescales for carrying out the review of Polling Districts and Polling Places, as detailed in the report; and**
- (b) that a report on the outcome of the review be submitted to a meeting of Council as early as possible after the conclusion of the consultation period to allow any proposed amendments to be made in advance of the next General Election.**

7. MOTION BY COUNCILLOR ROBSON

Councillor Robson, seconded by Councillor Tatler moved approval of the following Motion as detailed on the agenda:-

“That the Council commends the efforts of Rotarians world-wide to support the eradication of polio, in particular appreciates the contribution made by Rotary Borderlands (Passport Group) thereto, notes the dramatic success in cutting the numbers of those who are newly infected by 99%, but recognises the need for constant vigilance to ensure the disease does not recur and therefore welcomes the joint working locally between Rotarians and the Council’s Education Department in explaining the pain and suffering polio brings and the on-going work to end this threat to human health.”

Councillors Robson and Tatler spoke in support of the Motion which was unanimously approved.

**DECISION
AGREED to approve the Motion as detailed above.**

8. MOTION BY COUNCILLOR PIRONE

Councillor Pirone, seconded by Councillor Marshall moved approval of the following Motion as detailed on the agenda:-

“This council recognises the impact that "real term cuts" announced by Police Scotland could have on our communities across the Scottish Borders. Fifty million pounds of savings have to be found by our police force this year. We have around 147 officers across the Scottish Borders. It has become apparent that we need to accept this without additional support in the foreseeable future.

Still, we acknowledge that our hard-pressed officers do their best in challenging circumstances they are presented with now and in the future. We note, of course, that this council continues with plans to protect our communities with CCTV, which will help our officers. This council also notes that nationally, the police have had to accelerate the disposal of a further 30 police buildings, which could impact our communities.

This council directs our leader to urgently draft a letter to the Scottish Government, conveying concerns about the current police numbers and how these cuts will impact the Scottish Borders. We urge the Scottish Government to assess police resources and consider alternative community safety strategies without solely relying on the council for additional support.”

Councillors Pirone and Marshall spoke in support of the Motion which was unanimously approved.

DECISION

AGREED to approve the Motion as detailed above.

9. MOTION BY COUNCILLOR PIRONE

Councillor Pirone, seconded by Councillor C. Hamilton moved approval of the following Motion as detailed on the agenda:-

“Scottish Borders Council recognises the importance of addressing anti-social behaviour among our young people in our communities and that we value positive youth engagement. We acknowledge the need for a safe environment that promotes the growth of our young residents. We therefore ask the Chief Executive to bring a report to Council detailing what the Council is currently doing to address anti-social behaviour among our young people and if there is more we can do within the Scottish Borders in partnership with others.”

Councillors Pirone and Hamilton spoke in support of the Motion which was unanimously approved.

DECISION

AGREED to approve the Motion as detailed above.

10. OPEN QUESTIONS BY COUNCILLORS

The questions submitted by Councillors Anderson, Thomson, Sinclair and Tatler were answered.

DECISION

NOTED the replies as detailed in Appendix I to this Minute.

11. OPEN QUESTION FROM MEMBER OF THE PUBLIC

The following question was submitted by Mr Bell from the Tweeddale East Ward:-

“Notwithstanding an overwhelming workload on our planning staff:-

Whilst wind-farm applications decided under the Electricity Act S36 are administered by the Energy Consents Unit [ECU], the relevant Planning Authority is a significant consultee.

As normal practice, other Planning Authorities report on all known external consultee responses, including from members of the public; helping Councillors decide based on best evidence.

SBC don't put public representations to such applications on the SBC website — indeed officers on occasion asserted that “.. *third party representations are submitted direct to the ECU and it is for them to account for these matters. You will be aware that we have received a number of representations in relation to this application and I would remind members not to allow these representations to influence your decision making today.*”

By not taking into account important external consultee responses, our Councillors are potentially not appraised of the full picture of the representations; an approach that is certainly not “best practice” compared with other Planning Authorities.

When will Scottish Borders Council adopt best practice in respect of S36 applications?”

Councillor Mountford, Executive Member for Estate Management and Planning gave the following reply:-

“This is an issue that is raised from time to time as there is considerable misunderstanding of the Council’s roles in the determination of major wind farm proposals.

The first thing to emphasise is the Council is not the decision maker in these cases, nor are these proposals planning decisions in the sense that they are planning applications determined through the statutory process.

Applications are made under Section 36 of the Electricity Act which covers any proposal with an electricity generating capacity of 15 megawatts or more are made to the Scottish Government’s Energy Consents Unit for determination. As a result and as part of the application process Scottish Borders Council is only a consultee. The ECU consults the Council in its capacity as planning authority. Our remit is to assess the proposal against development plan policies and make any technical assessments that it has responsibility for, such as landscape and visual impact, access, noise and the affect of these on residential amenity. Our officers are well placed to advise on these matters and the Planning and Building Standards Committee has the final say. Along with Community Councils and other interested third parties we then submit our view to the ECU, we are not, I emphasise, making a decision on the proposal. The view being sought is that of the Council, not of anyone communicating with the Council, as these people and organisations have their own direct line of communication with the ECU. It is not for the Council to duplicate that effort or responsibility. Precisely because the ECU will address any representations directly in its capacity as decision maker. We do, however, report where Community Councils have made comments and if Councillors wish to view these or any other comments they are able to do so by checking the ECU website.

The law does not require us to seek the views of third parties because if we did what Mr Bell is requesting there is a risk that we would find ourselves reflecting the views of only a proportion of those with an interest because they happen to have copied us in. To avoid any confusion, its important that people making comments do so to the decision making body, not to another consultee.

I accept the determination of the proposals under the terms of the Electricity Act is not perfect and the respective roles of the Council and ECU can seem confusing as a result.

But we simply cannot extend the role of the Council within this legislative framework, however desirable that might be.

Mr Bell refers to other local authorities that reports all known external consultee responses, but I don’t know which local authorities he is referring too. Earlier this week I attended a meeting of Scottish Planning Convenors in Edinburgh and none of those that I spoke to was giving as Mr Bell suggests. Mr Bell also requests that SBC adopts what he describes as best practice and again I spoke with the new independent Scottish Planning Champion, it’s a new role and he confirmed that there is no universal standard of best practice because he described that as being a purely subjective notion. Having said that I am confident that SBC’s procedures are good practice. Thank you.”

DECISION
NOTED the reply.

12. **URGENT BUSINESS**

Under Section 50B(4)(b) of the Local Government (Scotland) Act 1973, the Chair was of the opinion that the item dealt with in the following paragraph should be considered at the meeting as a matter of urgency, in view of the need to make an early decision or to keep Members informed.

13. **COUNCIL TAX FREEZE 2023/2024**

The Director Finance and Procurement advised that on 17th October 2023 the Council was notified that a freeze on Council Tax levels for 2024/25 was announced at the SNP conference. Following the First Minister's announcement the Council were now awaiting further information from the Scottish Government regarding the Council Tax freeze and implications for the financial settlement for 2024/25. While she had been told it would be fully funded, she did not have any detail on what that would mean. As Councillors were aware the Council was facing significant challenges for their budget process not least because UK inflation was today running at 6.7% per annum. Council tax was of course previously frozen between 2007/08 and 2016/17 and then again in 2021/22. It was now commonly understood that these freezes had had an ongoing impact on the Council Tax base across Scotland. It was understood that this base was significantly smaller (around £600m across Scotland) than it could have been, had the freeze not been put in place.

The gearing effect of the smaller tax base meant that each subsequent increase in Council Tax raised less income than would have been the case without the freeze – a revenue substitute into Revenue Grant at year one of a freeze still resulted in a long-term reduction. Scottish Borders Council approved an indicative 5-year revenue financial plan each year. The 2023/24 approved plan reflected an assumed increase in Council Tax of 4% for 2024/25, this equated to assumed additional income of £2.7m for the Council to support the delivery of Council services. It was helpful to understand that each 1% increase in the Council Tax provided just under £700,000 per year to fund local services and of course the final decision regarding Council Tax levels might not have rested at that 4% figure. Members thanked Mrs Douglas for the update and noted that meetings of the Budget Working Group would be starting soon and that it was likely to be their most challenging budget to date.

DECISION

NOTED the update.

14. **PRIVATE BUSINESS**

DECISION

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in Appendix II to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraphs 1, 6, 8 and 9 of Part I of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

15. **COMMITTEE MINUTES**

The private sections of the Committee Minutes as detailed in paragraph 3 of this Minute were approved.

16. **TOILET PROVISION IN WEST LINTON**

Member agreed to continue the report by the Director Infrastructure and Environment to the next meeting in November to allow further information to be provided.

The meeting concluded at 12.20 pm

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**SCOTTISH BORDERS COUNCIL
26 OCTOBER 2023
APPENDIX I**

OPEN QUESTIONS

Question from Councillor Anderson

To the Executive Member for Estate Management and Planning

Cockburnspath Community council have been trying for many years to get an agreement in place to allow them to repair the Merket Cross. After extensive attempts by Elected members to bring this issue to a satisfactory conclusion we are still no further forward. The Merket Cross stands on SBC ground but has no owner which has made the issue difficult. Can SBC give written assurance to Cockburnspath CC that, repairs paid for by Cockburnspath CC will not result in them being liable for the Merket Cross in the future?

Reply from Councillor Mountford

The Merket Cross is a grade A listed historic monument, the ownership of the Cross is not yet established. It is not recorded on the Council's asset register and legal services are trying to establish the ownership of the land on which the cross sits because under Scots Law, if the Council own the land then the ownership of the Cross on which it sits also rests with SBC.

The Community Council has also been in extensive correspondence with the Heritage Planning Team at SBC and once ownership of the cross is established the easiest way to ensure repairs to the Cross are conducted to an appropriate standard would be for the Community Council to pass funding to SBC under a legal agreement and for the Council to undertake the necessary works. Once ownership is established there will be no risk of any future liability for the works resting with the Community Council.

Supplementary

Councillor Anderson asked if there was a timescale. Councillor Mountford advised that while he could not provide a timescale, legal services would proceed as quickly as possible to resolve ownership.

Question from Councillor Thomson

To the Executive Member for Communities and Equalities

Following the approval of the motion put forward by Cllr Tatler at the previous full council meeting, does the Administration support the promotion of the joint Trussell Trust and Joseph Rowntree Foundation Campaign calling on the UK Government for an 'essentials guarantee' to make sure the basic rate of Universal Credit is sufficient to afford the basics each of us needs to live?

Reply from Councillor Tatler

Council agreed at it's last meeting to call on all UK political party leaders to support the introduction of an Essential Guarantee within Universal Credit to ensure that the basic rate at least covers life's essentials, such as food and bills, and can never be pulled below that level. I put forward the motion in support of the joint Trussell Trust and Joseph Rowntree Campaign and I will speak to officers about how the Council can best promote it.

Supplementary

Councillor Thomson advised that the Joseph Rowntree Foundation was calling for a £22m investment by the UK Government and can we ask for a commitment for this. Councillor Tatler advised that the Council had done as asked by their Campaign.

Question from Councillor Sinclair

To the Convener

How and why was the decision taken to light up Council Headquarters blue and white on October 10th?

Reply from Councillor McAteer

First of all Councillor Sinclair can I thank you for the question that is entirely relevant and appropriate.

On the 7th October 2023 many were shocked at the despicable terrorist attack on the state of Israel, by Hamas, a 'proscribed' terrorist organisation in the UK and elsewhere across the world. In its entirety, following Parliament's approval of an Order which was laid in Parliament on Friday.

That 2012 decision of the UK government makes it unlawful to support Hamas.

On the evening of Sunday 8th October as Convener of Scottish Borders Council I was contacted by elected members of this council who advised me that the UK Government were asking for public buildings to 'fly an Israeli flag' as a 'mark of respect' in condoning the terrorist action that had resulted in the loss of more than 1000 innocent men, women and children.

This was not an 'instruction' and devolved authorities, including Scotland, were able to offer their own advice or recommendations.

After being requested to consider flying the Israeli flag I referred to the council's 2015 'The Flying of Flags from Council Buildings' protocol. The current protocol only refers to flags and makes no provision for the recent trend of 'lighting' council or public building with coloured lighting generally aligned to the event being respected. In the absence of any clarity I considered the lighting of a public building could reasonably follow the flag flying policy to ensure consistency in the council's approach.

The protocol is predicated on Scottish Government procedures and while the content is heavily focussed on scheduled annual events e.g. birthday of the monarch, international day against homophobia, armistice day and Remembrance Sunday it also makes reference to actions resulting from acts of terrorism, natural disaster and 'any other appropriate action'.

The protocol is explicit in stating that the decision (to fly a flag) will be made by the Convener in consultation with the Chief Executive.

In following the protocol I discussed the request to fly the Israeli flag with the acting Chief Executive. We were very aware of the sensitivities and concerns that any action we undertook may have in our communities.

We jointly agreed that the specific targeted and heinous criminal attack on so many defenceless people, including young children, the deliberate taking of hostages and the direct impact on UK and other nationals justified our support to 'all' who unfortunately were victims of the Hamas terrorists.

This approach was I believe consistent with previous such decisions made by this council.

It was also established that Scottish Borders Council were not in possession with an Israeli flag and the alternative of lighting the Headquarters Tower in Blue and White was proposed.

This decision was communicated to the political groups of the council with a proposal to light the Headquarters Tower over three nights (until the weekend) with supporting media that explained why the council had taken this decision.

Subsequently I received confirmation that the Conservative group (while still preferring an Israeli flag) were totally supportive. I also received representation from the SNP and Green group who expressed their concern regarding the action. They were supportive of showing solidarity with those impacted by war and violence while making the point that hundreds of Israeli and Palestinian civilian lives had been lost'

I personally did not receive representations or expressed concerns from the Independent or Liberal Democrats groups.

In view of the divergent views of the two groups the acting Chief Executive and I discussed what a considered and proportionate response might be. Doing nothing given the horrendous circumstances and the public outrage was not considered a realistic option and failed the 'consistency' test. Ignoring one or other of the groups that had expressed support or concern was undemocratic and inappropriate. Moderating the proposal to limit the time the Tower would be lighted to one night and ensuring the accompanying public commentary made it clear that this council was recognising 'all' victims without prejudging one state or the other was preferred.

The acting Chief Executive and I agreed the latter approach.

In making this decision I was acutely aware of perfectly legitimate sensitivities and historical context between Israel and Palestine and the Middle East in general.

I was at pains to emphasise that I had no wish to become involved in the politics of this difficult and challenging relationship.

Condoning the illegal, heinous, and utterly deprived actions of a proscribed terrorist organisation in line with the UK and Scottish Governments and internationally was a reason why our Headquarters Tower was lighted for one night in blue and white. Recognising and supporting 'all' victims of such violence more than complimented that decision.

I'm sure you all join me in hoping that lasting peace returns to Israel, Palestine and the Middle East very soon.

Supplementary

Councillor Sinclair agreed that the actions of Hamas could not be condoned but that the situation had escalated since then resulting in a humanitarian crisis with the UN calling for a ceasefire. On that basis she asked if the Convener would agree to light the tower in white to recognise all casualties. Councillor McAteer advised that there were learning in all that we did and advised that having reviewed the Council's Policy there was a need to involve others in the decision making. He confirmed that it was likely that white would be the colour used in future for any similar such events.

Question from Councillor Tatler

To the Executive Member for Service Delivery and Transformation

At the Council's Executive on 18th April it was agreed that a Lessons Learned Report in relation to the Peebles Swimming Pool debacle would be brought back to Executive for their consideration. It is now 6 months since that meeting, when will the Report come to Executive?

Reply from Councillor Rowley

An initial lessons learned discussion has taken place and a formal workshop is currently being arranged with the Council's insurers Zurich. This is expected to take place once the final insurance settlement has been agreed, this Autumn. A report will be prepared for consideration by Executive Committee following the formal lessons learned workshop. At present, the expected timescale for a report is December 2023.

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