

MINUTES of MEETING of the MIDLOTHIAN COUNCIL held in the Council

Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday, 4 November 2014 at 2.00pm.

Present:- Provost Wallace, Depute Provost Coventry and Councillors Baxter, Bennett, Bryant, Constable, de Vink, Imrie, Milligan, Montgomery, Pottinger, Rosie and Thompson.

Religious Representatives Present (Non Voting Observers for Education Business):- Mr V Bourne and Mrs M Harkness.

Apologies for Absence:- Councillors Beattie, Johnstone and Russell.

1 Declarations of Interest

No declarations of interest were intimated.

2 Order of Business

The Clerk advised the Council that with regard to Item No 9 on the Agenda, namely "Financial Strategy 2015/16 to 2017/18" that a letter dated 9 October 2014 from John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth, which unfortunately had been omitted as an Appendix to this report had since been distributed to Members.

3 Minutes of Council

The Minutes of Meeting of Midlothian Council of 23 September 2014 were submitted and approved as a correct record.

4 Other Meetings

The undernoted Minutes of Meetings were submitted. The Council noted the Minutes and approved the recommendations contained therein: -

Meeting	Date
Cabinet	26 August 2014
	26 August 2014
Planning Committee	27 May 2014
General Purposes Committee	17 June 2014
	19 August 2014
Local Review Body	2 September 2014

Meeting	Date
Performance, Review and Scrutiny Committee	2 September 2014
	3 September 2014
	3 September 2014
Audit Committee	28 October 2014

5 Question to Leader of the Council

There was submitted report, dated 28 October 2014, by the Director, Resources, advising that the following questions to the Leader of the Council had been received from Councillor de Vink under Standing Order 4.2(vii):-

“It was with dismay that I read in the local media that Sir Robert Clerk had commented adversely on the Midlothian Council Planning Service.

I would like to know the cost and service implications for Midlothian Council resulting from any major planning appeals in respect of wind energy developments.”

In response, Councillor Thompson advised that every year there were a number of planning appeals received for differing reasons. In 2010 there had been 9, 15 in 2011, 8 in 2012, 5 in 2013 and 7 in 2014. With regard to the detail behind and costs involved in these the appropriate Director had been requested to provide additional information in due course as this would take a bit of work to put together. He stressed that it was of course the right of applicants to do this although there was a cost to the Council when it did happen and that this financial information would be provided in due course.

(Action: Head of Planning and Development Control)

6 Notices of Motions

(a) 2014 Commonwealth Games

There was submitted a Notice of Motion by Councillor Bennett, countersigned by Councillor Russell, as follows: -

“Midlothian Council congratulates Danderhall man, David Peacock on winning a gold medal at the Glasgow 2014 Commonwealth Games, as part of the Men’s Fours Bowling Team. David not only did Team Scotland proud but also Danderhall and Midlothian.”

Having heard both Councillor Bennett and Councillor Russell in amplification of the Motion, Council agreed unanimously the terms of the Motion and noted that Provost Wallace would write to Mr Peacock on behalf of the Council.

(b) Community Charge

“There was submitted a Notice of Motion by Councillor Thompson, countersigned by Councillor de Vink as follows: -

“Midlothian Council welcomes the Scottish Government’s plans to legislate against the collection of historic Poll Tax (Community Charge) debt and agrees that it is right and proper to finally lay to rest the spectre of this immoral charge”.

As an amendment, Councillor Montgomery, Countersigned by Councillor Imrie submitted as follows

“Midlothian Council notes the Scottish Government’s plans to legislate against the collection of the historic Poll Tax (Community Charge) debt.

In the event of this legislation being approved by the Scottish Government Midlothian Council formally requests that Holyrood reimburse our authority the estimated £8 million outstanding from non-payment”.

On a vote being taken, 5 Members voted for the amendment and 8 for the Motion, which accordingly became the decision of the Council.

7 COSLA Community Justice Sub Group

There was submitted report dated 28 October 2014, by the Director, Resources inviting the Council to endorse the action of the Chief Executive, taken in consultation with the Leader of the Council, in putting forward the names of Councillor Johnstone to serve on the new Sub Group on Community Justice which COSLA’s Community Well-Being Executive Group had recently agreed to establish.

Decision

- (a) To endorse the action of the Chief Executive, taken in consultation with the Leader of the Council, in putting forward the name of Councillor Johnstone to serve on the new Sub Group on Community Justice which COSLA’s Community Well-Being Executive Group had agreed to establish; and
- (b) To consider the position regarding the appointment of a second nominee as requested by COSLA.

(Action: Director, Resources)

8 Chief Social Work Officer Report 2013/14

There was submitted report dated 15 October 2014, by the Director, Health and Social Care highlighting the work within social work and social care services for the period 2013/14, which was required to be submitted to the Scottish Government on an annual basis.

Decision

- (a) To note the content of the Chief Social Work Officer report;
- (b) To note its submission to Scottish Government; and
- (c) To note the good work of the staff within social work and social care services to improve the outcomes for people within Midlothian

(Action: Director, Health and Social Care)

9 Financial Strategy 2015/16 to 2017/18

There was submitted report dated 27 October 2014, by the Head of Finance and Integrated Service Support providing Council with a further update on the delivery of the Financial Strategy approved by Council on 4 February 2014 with a focus on;

- The Scottish Government's spending plans for 2015/16 which were set out to Parliament on 9 October 2014 by the Cabinet Secretary for Finance, Employment and Sustainable Growth; and
- The implications of the spending plans on the projected Scottish Government Grant Settlements for Councils.

The Scottish Government's spending plans for 2015/16 set out spending for Local Government at a national level, with individual Council figures published in December. For 2015/16 Local Government would receive revenue funding (including Non Domestic Rates) of £9,895 million. This was close to flat in cash terms when compared on a like for like basis with the current year totals. The national figures were however approximately £200 million higher than what was proposed for this year's budget which principally reflected the extra funding for free primary school meals and early years provision.

The Scottish Budget set out the conditions attached to the Local Government settlement which were as follows "*For 2015-16 each local authority will require to agree formally to work with the Scottish Government to deliver a council tax freeze for the eighth consecutive year. Agreement has also been reached that the Scottish Government and Local Government will work in an inclusive process with others towards reaching an in-principle agreement to an educational outcomes-based approach subject to the completion of work which is satisfactory to both parties. This first phase of this work will be completed by 1 March 2015. In addition, local government will work with their NHS partners to work towards the full integration of adult Health and Social Care.*"

Further information as regards the terms of the Local Government finance settlement allocations were set out in a letter from the Cabinet Secretary to the President of COSLA and copied to the leaders of all Scottish Local Authorities.

Decision

- (a) To note the publication of the Scottish Governments draft budget for 2015/16 and the assessment set out in sections two and three of the report; and
- (b) To otherwise note the update on delivery of the Financial Strategy.

(Action: Head of Finance and Integrated Service Support)

10 Financial Monitoring 2014/15 – General Fund Revenue

There was submitted report dated 27 October 2014, by the Head of Finance and Integrated Service Support, providing Council with information on performance against revenue budget in 2014/15 and details of the material variances.

The detailed budget performance figures were shown in an appendix to the report and resulted in a projected net overspend of £0.266 million which was 0.14% of the revised budget for the year.

Detailed information on material variances was contained within a further appendix which identified each variance, explained why it happened, outlined what action was being taken to control variances and detailed the impact of that action.

Decision

- (a) To approve the Financial Discipline savings in 2014/15 of £0.571 million; and
- (b) To Otherwise endorse the contents of the report.

(Action: Head of Finance and Integrated Service Support)

11 Links in Europe - Heinsberg and Komarom-Esztergom - Festival of Friendship

There was submitted report dated 28 October 2014 by the Director, Resources updating Council on the progress made with linking activity and in particular the Festival of Friendship which was scheduled to take place in Midlothian in October 2015. Further, the report sought Council funding and if approved a commitment to proceed with the organisation of the event.

The report advised that at the Council Meeting on 24 May 2011, having noted a statement by the Leader of the Council that while the Administration appreciated the historical benefits of twinning and links in Europe, they felt that in the current financial climate, when throughout the public sector major cuts were faced, they needed to reign in expenditure in this area too, Council agreed:-

- (a) *To cancel the grant made annually to Midlothian Twinning Association; and*
- (b) *In future, all hospitality arrangements, including twinning and visits to all council premises, civic hospitality, receptions and civic gifts, be approved by the Director, Corporate Resources, in consultation with the Provost.*

The current policy of the Council was to agree:-

- (a) *to accept invitations to be represented at the Festival of Friendship, and, if appropriate, anniversary celebrations of the French Links and at any "reinvigoration" visits, such representatives to be the Provost and Chief Executive, on a "whom failing" basis and that if additional representation is envisaged, the invitation be remitted to the Chief Executive in consultation with the Chair and Convener of Cabinet;*
- (b) *to invite similar representation from the respective local authorities at any anniversary celebrations here; and*
- (c) *to provide assistance to Midlothian Twinning Association.*

Councillor Thompson, seconded by Provost Wallace moved to agree that the Council provide the funding request of a maximum of £25,000 to provide the Festival of Friendship in 2015 based on the indicative programme ie on the basis that other avenues of support will be explored by the Director, Resources.

As an amendment Councillor Milligan, seconded by Councillor Montgomery moved that this support was not provided due to the ongoing need to provide savings throughout the Council.

On a vote being taken 6 Members voted for the amendment with 8 voting for the Motion which accordingly became the decision of the Council.

(Action: Director, Resources)

12 Severe Weather 2014/15 Pre-Winter Update

There was submitted report dated 27 October 2014, by the Head of Commercial Operations, updating Council on the plans that were in place for the forthcoming winter season and details of the financial implications of providing the current level of service.

Decision

- (a) Adopt and publish the Winter Service Policy and Operational Plan for the 2014/15 winter season; and
- (b) Request the Director, Resources to provide a detailed report in early 2015 detailing those service areas that could be considered for reduction.

(Action: Director, Resources)

13 Borders Railway

There was submitted report dated 28 October 2014 by the Director, Resources, outlining the arrangements by the Council to recognise and to capitalise on the establishment of the Borders Railway which was scheduled to open for service in September 2015.

Decision

- (a) To progress to date with arrangements for the establishment of Borders Railway and the associated opening events;
- (b) To agree the proposed working groups and governance arrangements as detailed within the report; and
- (c) To note the intention to provide regular updates on key events, including publicity.

(Action: Director, Resources)

14 Note of Seminar of Midlothian Council – Newbyres Crescent, Gorebridge

There was submitted and noted the Note of Seminar of Midlothian Council of 21 October 2014 as detailed in the Appendix hereto.

15 Newbyres Crescent, Gorebridge –Options to Review Gas Migration

There was submitted report dated 28 October 2014, by the Chief Executive, outlining options for rectification for consideration by Council to ensure the protection of the public health of the residents and the long term resolution for the site at Newbyres Crescent, Gorebridge.

Decision

- (a) Note the actions established by the Council in connection with the protection of public health and to note the IMT findings in Section 4.1;
- (b) Note the costs outlined with each option as detailed in section 7.1;
- (c) Note the full EqIA is available in the Member's library;

- (d) Authorise the Director, Resources to continue to progress actions and approve resource requirements to maintain the public safety arrangements;
- (e) Note the commencement of design for the former Greenhall High School Site;
- (f) Progress with Option B;
- (g) Progress financial Insurance settlement;
- (h) Note the commencement of surveys;
- (i) Note that the site has not been determined as meeting the statutory definition of contaminated land; and
- (j) Note the Fairhurst report, dated September 2014 was available in the Member's library.

(Action: Chief Executive)

The meeting terminated at 4.06pm.

Appendix

(relative to paragraph 14)

NOTE of **SEMINAR** of **MIDLOTHIAN COUNCIL** held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday, 21 October 2014 at 2.45 pm.

Present:- Provost Wallace and Councillors Bennett, Bryant, Constable, de Vink, Johnstone, Milligan, Montgomery, Pottinger, Rosie, Russell and Thompson.

In Attendance:- Mr Andrew Kram, Fairhursts.

Apologies for Absence:- Depute Provost Coventry and Councillors Baxter, Beattie, Imrie and Muirhead, Mr V Bourne, Mr P Hayes and Mrs M Harkness.

1 Declarations of Interest

No declarations of interest were intimated.

2 Newbyres Crescent, Gorebridge – (a) Working Draft of Report to Midlothian Council on 4 November 2014

With reference to paragraph 3 of the Minutes of the Special Council of 17 June 2014, there was submitted draft report, dated 13 October 2014, by the Chief Executive providing an update on issues in relation to the gas penetration into 64 properties at Newbyres Crescent, Gorebridge.

In addition, the draft report also explored the two options for rectification, following demolition of all 64 properties, approved by the Council, to ensure the protection of public health of the residents and long term resolution for the site, viz:-

- Option A - Market the Site for Sale (Option 5, June 2014 Council Report); and
- Option B - Build direct by Council (Option 2, June 2014 Council Report).

(b) Introduction, Purpose and Aims of Seminar

The Director, Resources, having introduced Andrew Kram from Fairhursts, the Council's independent advisers to the meeting, explained that the purpose of the seminar was to provide Members with an update and to allow the options following demolition to be considered so that a view could be reached to allow matters to be taken forward by the Council.

(c)/

(c) Presentation

Thereafter, the Seminar received a presentation from the Head of Property and Facilities Management in which he highlighted the following, viz:-

- Discussions were ongoing with external legal advisors, Shepherd and Wedderburn and independent advisors Fairhursts with a view to considering the legal liability for the cause of ground gases leaking into the houses and the possible remedies available to the Council. Given the recommendation from Fairhursts and the Incident Management Team's (IMT) subsequent recognition of the Council's decision to demolish the affected properties, Shepherd and Wedderburn's view was that there were good prospects of persuading a court that the Council would be acting reasonably in demolishing the properties built at Gore Avenue and Newbyres Crescent, Gorebridge in order to remedy the absence of a gas membrane and that therefore the costs incurred in following either option 2 or 5 in the report to Council dated 17 June 2014 should be recoverable from those parties who were found to be at fault;
- The Council's independent advisers, Fairhursts, had produced their final report on the planned monitoring cycles, a copy of which had been placed in the Member's Library. Following the last Core Group Incident Management Team meeting, it had been recommended to continue monitoring CO₂ in the houses until all the residents had been re-housed. A further monitoring cycle of 20 weeks had subsequently commenced on 15 September 2014;
- The geotechnical report by Fairhursts had concluded that *"It is our considered opinion, however, that the site could be safely and successfully re-developed in the future"* and had help to provide a clearer understand of what would be required in order that the site could be redeveloped;
- The Incident Management Team had *"welcomed the Council's decision to demolish the affected properties as it will eradicate exposure of current residents to the risk of CO₂"*. However, the IMT remained concerned regarding the long term future of the site and had asked that *"consideration be made to designating it a 'contaminated site'"*;
- Any declaration of statutory contaminated land, under Part IIA of the Environmental Protection Act 1990 (as amended), for a site of this nature, was a matter for consideration by the Local Authority. In relation to this location, the Council had determined that the land did not meet the statutory definition of Contaminated Land;
- All 64 households (including the 2 originally vacated households from September 2013) required to be moved into alternative accommodation. A range of appropriate housing options had been made available to the affected tenants. To date 29 families had been successfully decanted;

- A summary sheet, as contained in the **Appendix** hereto, detailing the positives and negatives of the two options – Option A (Sale) and Option B (Rebuild), had been tabled. It also highlighted the costs and risks associated with both options;
- The possibility of utilising the former Greenhall High School site for the Newbyres Crescent/Gore Avenue tenants to remain in the Gorebridge area had been explored as requested by Council and designs for the site had been drawn up. However, as a number of the tenants who had already made a permanent move to their preferred choice of alternative housing either within Gorebridge or elsewhere in Midlothian, it did not appear that a new build development at Greenhall would be required to accommodate them.

Provost Wallace thanked Mr Sheret for his presentation and invited questions and comments from Members.

(d) Question and Answer Session

Arising from Members questions and comments, the following issues were discussed by the Seminar:-

- The support being given to tenants to assist them in relocating from the affected properties;
- The “stress” caused by the incident and the effects that it had had on all concerned;
- The potential timeline for the development of the former Greenhall site;
- The impending legal action;
- The options for the redevelopment of the Newbyres site following demolition;
- The measures likely to be necessary to allow redevelopment of the site to take place and the implications in terms of the IMT’s request to consider designating it a ‘contaminated site’;
- Role of the Public Inquiry;

(e) Decision

After further discussion, the Seminar agreed:-

- (a) To note the update on the gas penetration into 64 properties at Newbyres Crescent, Gorebridge;
- (b) To note the intention to provide an update report to the Council meeting on 4 November 2014; and
- (c) To recommend to Council that in taking matters forward Option B (Rebuild) should be pursued.

(Action; Chief Executive).

The meeting terminated at 3.51 pm.

NEWBYRES CRESCENT – OPTIONS TO RESOLVE GAS MIGRATION

OPTIONS	PROPOSAL	POSITIVES	NEGATIVES	COSTS	RISKS
OPTION A (sale)	Market the Site for Sale/ Design, build, finance, maintain and leaseback.	Market tested Land value. Removes stigma. Protects Public Health. Capital receipt to offset some of the Council's loss Gorebridge centre amenity retained. Specific Council specification in Sales Particulars. Minimal Capital outlay.	Potential to lose out on Council stock. Loss of rental income. Reduces Council's landbank. Potential long leaseback period. Revenue impact. Cost of lease outweighs cost of debt. Residual debt charges.	Capital - £5.65M Revenue - £1.373M	1. Dependent upon the current Market situation. 2. Potential higher rent than other Council tenants. 3. Leaseback targeted mainly at first time buyers. 4. Right to buy may incur penalties. 5. Legislation change during the leaseback may require the Council costs for any modifications. 6. Procurement risk on cost/benefit/equality issues. 7. Affordability issues (higher rental cost).

OPTION B (Rebuild)	Build direct by Council	Incorporated in Phase 2 Social Housing Programme. Consistent specification. Protects Public Health. Reputational stability. Retention of Council's landbank. Maintains rental income. Meets social housing need in area. Management costs maintained. Quicker solution.	Government or Council-supported intermediate rent schemes may be withdrawn. Cash Flow – unplanned Capital outlay. Stigma remains. Less overall units from Phase 2 budget. Residual debt charges.	Capital - £10.155M Revenue - £1.376M	1. Council having to cover this cost alone. 2. Associated impact on future spending.
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