

EAST AYRSHIRE COUNCIL**MINUTES OF MEETING HELD ON THURSDAY 22 SEPTEMBER 2011 AT 1000
HRS IN THE COUNCIL CHAMBERS, COUNCIL HEADQUARTERS,
LONDON ROAD, KILMARNOCK**

PRESENT: Provost Stephanie Young and Councillors Rose-Ann Cuninghame, John MacKay, John McGhee, Helen Coffey, Willie Coffey, Maureen McKay, Tom Cook, Robert Keohone, Iain Linton, Douglas Reid, Jim Buchanan, Depute Provost John Campbell, Councillors Gordon Cree, Drew McIntyre, John Knapp, Hugh Ross, Jim Todd, Alan Brown, Stuart Finlayson, Robert McDill, Neil McGhee, Jim Roberts, David Shaw, William Crawford, Kathy Morrice, Eric Ross, Elaine Dinwoodie, Drew Filson and Moira Pirie.

ATTENDING: Fiona Lees, Chief Executive; Elizabeth Morton, Depute Chief Executive/Executive Director of Neighbourhood Services; Graham Short, Executive Director of Educational and Social Services; Alex McPhee, Executive Director of Finance and Corporate Support; Bill Walkinshaw, Head of Democratic Services; David Mitchell, Head of Legal, Procurement and Regulatory Services; Eddie Fraser, Head of Service: Social Work; Andrew Kennedy, Acting Head of Facilities Management; Gwen Barker, Community Planning and Partnership Manager; Lynne Buchannan, Communication and Customer First Manager; Craig Young, Litigation Team Leader; and Julie McGarry, Administration Manager.

APOLOGIES: Councillors Jimmy Kelly and Barney Menzies.

CHAIR: Provost Stephanie Young, Chair.

ADDITIONAL ITEMS

1. The Provost intimated that three formal questions had been received by the Chief Executive within the specified timescale as provided within the Standing Orders and that these formal questions would be dealt with as the last items of Council business.

PROVOST'S REMARKS

2. The Provost advised that she, along with fellow Elected Members, had attended the launch of the Encore project, the new office build at the Opera House, John Finnie Street, Kilmarnock, on 4 July and was pleased to see the work progressing on this fantastic new build which, once completed, would help to transform Kilmarnock Town Centre.

The Provost congratulated the Council's Food Law Enforcement Service which received a very positive report following an audit by the Food Standards Agency and commended the team for the work they had done.

The Provost then advised that due to personal circumstances she had been unable to attend the reception organised to welcome members from the World Council of Credit Unions who had been visiting the area but that the Depute Provost and Chief Executive had been there to welcome them.

The Provost expressed her delight to join fellow Councillors and community members to mark the first stage of the regeneration programme in Galston. The Provost advised that the Galston Community Education Centre would benefit from a £1m

refurbishment and was sure that once completed the local people would benefit enormously from the new Centre.

The Provost also welcomed the opportunity to attend the ceremonies to start the work for the refurbishment of Sorn Primary and the construction of New Cumnock Primary School which would be fantastic new facilities for these communities and would give the young people the best possible start to their education.

The Provost referred to Connor Graham, who was a 6th year pupil from Cumnock Academy, who had secured a place on a trip to NASA's Johnson Space Center in Houston, Texas. The Provost further advised that only 10 out of 100 pupils had been selected for the trip so congratulated Connor on being successful and wished him a wonderful trip.

The Provost then referred to the global/continental market which had returned to Kilmarnock Town Centre at the beginning of September which had attracted approximately 45,000 visitors during the 4 day event, an increase of 10% from the last event.

The Provost expressed her delight to have welcomed Councillor Simon Moritz from our twin town of Kulmbach back to Kilmarnock. The Provost advised that Simon had been accompanying a group of young musicians and that it had been a pleasure to listen to them perform at St Joseph's Academy and everyone who had attended had enjoyed the evening.

The Provost advised that East Ayrshire Council had recently celebrated winning an Association for Public Service Excellence Award in a UK-wide competition which had drawn around 300 submissions in total. The Provost further advised that the Council's Onsite Service team had won the coveted prize in the Best Healthy Living Initiative category for its Food for Life Programme in schools which fought off stiff competition from 40 other entries. The Provost congratulated the team on such an outstanding accomplishment.

The Provost referred to Kilmarnock Academy, who had recently celebrated winning a prestigious International Schools Award from the British Council, for encouraging pupils to become global citizens in the wider world. The Provost congratulated them on their achievement and was pleased to see the school being recognised for all their hard work and that hopefully this would continue to develop.

The Provost referred to Mrs Mary Sloan, who had been involved in New Cumnock Community Centre since its opening and for the past 47 years, and had held various positions in the Community Association including Chair. The Provost advised that Mary's fundraising activities over those years had helped to secure new equipment for the Centre and that she had worked tirelessly and selflessly for New Cumnock and its people and wanted Members to join her in wishing all the best for Mary's future retirement. The Provost also advised that it was her intention to meet with Mary in the very near future to thank her for all that she had achieved.

The Provost also referred to Margaret Paton, who had been Chair of the recently disbanded North West Kilmarnock Environmental Improvement Group since 1999, when it had been formed. The Provost informed that over the years the Group had been responsible for a number of environmental improvements in the area. The Provost further advised that after 12 successful years, Margaret, her husband Robert, who had been Treasurer, and the rest of the Group had called time and was sure Members would want to join her in thanking them for all their hard work and

again advised that it was her intention to invite Margaret and her husband to meet with her in the very near future.

The Provost then advised that East Ayrshire Council and Rathbone Ayrshire had recently won a coveted Scottish Training Federation Award for Successful Partnership Working, the award had been given for the services available to young people by working in partnership between the East Ayrshire Support Team and Rathbone to meet vulnerable individual young people's needs. The Provost congratulated Rathbone and Julie Muir, Principal Officer Additional Support Needs as the Lead Council Officer who had been working with Rathbone Ayrshire.

Finally, the Provost referred to the inter-authority bowling tournament where, at long last, the East Ayrshire team had brought home the trophy for the first time in the Provost's tenure. The Provost remarked that it had been a great day and was made even more special by the fact that the team had won, the score sheet which made sad reading for South Lanarkshire - more like a rugby score - 12-0. The Provost further advised that the rink which had won the Tom Hinshelwood Bowl for the winning score had been that of Bernie Gribben, Council Officer. The Provost thanked Bernie for all his hard work and scheming over the last five years, which had eventually paid off.

PREVIOUS MINUTES

3. There were submitted and approved as a correct record, the Minutes of Special Council of 16 June (pages 1694-1696) and Minutes of 23 June 2011 (pages 1711-1723).

CABINET/COMMITTEE MINUTES

4. There were submitted (circulated) and approved, as correct records with the exception of the Minutes of the Governance and Scrutiny Committee which were for noting only, the Minutes of the undernoted meetings, viz:-
 - 4.1 **CABINET OF 15 JUNE 2011 (pages 1685-1689).**
 - 4.2 **SPECIAL NORTHERN LOCAL PLANNING COMMITTEE OF 15 JUNE 2011 (pages 1690-1693).**
 - 4.3 **GOVERNANCE AND SCRUTINY COMMITTEE OF 17 JUNE 2011 (pages 1697-1701) (FOR NOTING ONLY).**
 - 4.4 **LOCAL REVIEW BODY OF 20 JUNE 2011 (pages 1702-1704).**
 - 4.5 **SPECIAL CABINET OF 22 JUNE 2011 (pages 1705-1710).**
 - 4.6 **CABINET OF 29 JUNE 2011 (pages 1724-1732).**
 - 4.7 **SOUTHERN LOCAL PLANNING COMMITTEE OF 30 JUNE 2011 (pages 1733-1735).**
 - 4.8 **SPECIAL SOUTHERN LOCAL GRANTS COMMITTEE OF 30 JUNE 2011 (pages 1736-1738).**
 - 4.9 **LOCAL REVIEW BODY OF 1 JULY 2011 (pages 1739-1740).**
 - 4.10 **SOUTHERN LOCAL PLANNING COMMITTEE OF 5 AUGUST 2011 (pages 1741-1744).**

4.11 SPECIAL LOCAL GOVERNMENT LICENSING PANEL OF 9 AUGUST 2011 (pages 1745-1748).

MATTER ARISING - DECISION BY DRIVING STANDARDS AGENCY TO CLOSE THE DRIVING TEST CENTRE IN KILMARNOCK

Following discussion on the recent announcement by the Driving Standards Agency to close the Driving Test Centre in Kilmarnock on 22 October 2011 and relocate to Irvine Riverside Business Park, Council unanimously agreed that the Chief Executive write to the Driving Standards Agency expressing the Council's concern at how the Council learnt of the proposal and of the Council's view that the proposal would have a detrimental impact on local driving instructor business and learners and to request a meeting with the Driving Standards Agency to seek a reversal of the proposal.

4.12 NORTHERN LOCAL PLANNING COMMITTEE OF 12 AUGUST 2011 (pages 1749-1751).

4.13 APPEALS PANEL OF 16 AUGUST 2011 (pages 1752-1753).

4.14 CABINET OF 17 AUGUST 2011 (pages 1754-1760).

4.15 LOCAL REVIEW BODY OF 17 AUGUST 2011 (pages 1761-1763).

4.16 LOCAL GOVERNMENT LICENSING PANEL OF 25 AUGUST 2011 (pages 1764-1766).

4.17 GOVERNANCE AND SCRUTINY COMMITTEE OF 26 AUGUST 2011 (pages 1767-1771) (FOR NOTING ONLY).

4.18 APPEALS PANEL OF 30 AUGUST 2011 (page 1772).

4.19 CABINET OF 31 AUGUST 2011 (pages 1773-1778).

4.20 SOUTHERN LOCAL PLANNING COMMITTEE OF 2 SEPTEMBER 2011 (pages 1779-1780).

4.21 CENTRAL NORTH LOCAL GRANTS COMMITTEE OF 6 SEPTEMBER 2011 (pages 1781-1782).

4.22 CENTRAL SOUTH LOCAL GRANTS COMMITTEE OF 6 SEPTEMBER 2011 (pages 1783-1784).

4.23 NORTHERN GRANTS LOCAL COMMITTEE OF 7 SEPTEMBER 2011 (pages 1785-1786).

4.24 SOUTHERN LOCAL GRANTS COMMITTEE OF 8 SEPTEMBER 2011 (pages 1787-1789).

4.25 NORTHERN LOCAL PLANNING COMMITTEE OF 9 SEPTEMBER 2011 (pages 1790-1794).

**EXCERPT FROM CABINET MEETING OF 14 SEPTEMBER 2011 -
REVIEW OF MANAGEMENT STRUCTURES -
POLICY, PLANNING AND PERFORMANCE DIVISION**

5. It was agreed to the recommendations from the Cabinet meeting of 14 September 2011 to the structural changes as detailed in the report submitted to that Cabinet meeting.

REPORT BY CHAIR OF GOVERNANCE AND SCRUTINY COMMITTEE

6. There was submitted a report dated 31 August 2011 (circulated) by Councillor Tom Cook, Chair of the Governance and Scrutiny Committee.

The Chair spoke to the report and, in anticipation of agreement to the next item on the Agenda, acknowledged the valuable contribution which both Councillors Kelly and Finlayson had made to the work of the Committee and hoped that they would still be able to participate in the conclusion of the topic reviews on Insurance Arrangements Provided by Contractors Carrying Out Work on Behalf of East Ayrshire Council and Anti-Social Behaviour Orders and Other Measures in East Ayrshire since their Introduction.

The Council noted the report.

APPOINTMENTS

7.1 GOVERNANCE AND SCRUTINY COMMITTEE

It was agreed to the request received from the Labour Group that Councillors John Knapp and Gordon Cree replaced Councillor Stuart Finlayson and Jimmy Kelly on the Governance and Scrutiny Committee.

7.2 MEMBERSHIP OF EAST AYRSHIRE LOCAL LICENSING FORUM

There was submitted a report dated 14 July 2011 (circulated) by the Executive Director of Finance and Corporate Support which appraised Members of proposed appointments to East Ayrshire Local Licensing Forum and which recommended appointment of the applicants.

It was agreed:

- (i) to appoint Kevin Wells, Team Leader, with substitute representative Margaret Gardiner, Senior Practitioner, as representative for the Young People's category; and
- (ii) to appoint Niela Sarwar, holder of a premise or personal licence; and
- (iii) otherwise, to note the contents of the report.

7.3 COUNCIL NOMINATION TO THE BOARD OF EAST AYRSHIRE WOMEN'S AID

There was submitted a report dated 23 August 2011 (circulated) by the Executive Director of Finance and Corporate Support which invited Council to consider the appointment of an Elected Member to the Board of Directors of East Ayrshire Women's Aid.

Councillor McDill, seconded by Councillor Reid, nominated Councillor Morrice to sit on the Board of East Ayrshire Women's Aid.

Councillor Maureen McKay seconded by Councillor Dinwoodie, moved as an amendment an additional proposal, that the Council agree to establish a formal mechanism by which the nominated Member would be able to feedback to Council on issues from the Board and also feed into the Board the views and opinions of Council.

On a division by a show of hands, the motion was carried by 17 votes to 13.

**COMMUNITY PLANNING ACTION PLAN AND SINGLE OUTCOME AGREEMENT
ANNUAL PERFORMANCE REPORT 2010/11**

8. There was submitted a report dated 13 September 2011 (circulated) by the Chief Executive which presented for consideration and endorsement in respect of Council's interest, a summary of the consolidated Annual Performance Report 2010/11 in respect of the Community Plan Thematic Action Plans and East Ayrshire Community Planning Partnership Single Outcome Agreement (SOA).

It was agreed:

- (i) to note that the SOA Annual Performance Report on progress made in 2010/11 required to be submitted to the Scottish Government by 30 September 2011;
- (ii) from a Council perspective, to endorse the consolidated Community Planning/ SOA Annual Performance Report for 2010/11 in relation to which a summary of performance indicators was attached at the appendix to the report subject to minor textual amendments;
- (iii) to note that data was currently unavailable for three indicators but that updates were anticipated in this regard prior to the end of September 2011 and would be incorporated then;
- (iv) agree that the 2010/11 Annual Performance Report which included agreed improvement actions would be submitted for consideration by the Governance and Scrutiny Committee at its meeting on 28 October 2011;
- (v) to note and endorse the proposals to review existing Community Planning/ SOA Performance Management and Reporting Arrangements to further ensure a more effective approach to demonstrating delivery of local outcomes; and
- (vi) otherwise, to note the contents of the report.

Councillor Willie Coffey left the meeting at this point.

**LICENSING OF STREET TRADERS IN THE VICINITY OF
EAST AYRSHIRE SCHOOLS (Item 4, Page 1641, 07/12)**

9. There was submitted a joint report dated 12 September 2011 (circulated) by the Executive Director of Finance and Corporate Support and Executive Director of Educational and Social Services which (i) updated Council in respect of the percentage of pupils (a) who took school meals; (b) who took packed lunches; (c) who had lunch at home, within East Ayrshire schools and the type of food sold in the retail establishments within the proposed 250m exclusion zone; and (ii) presented for further consideration and approval, the terms of a proposed Resolution for public consultation which would take effect on a date 9 months after its formal adoption, and which would seek to create an exclusion zone preventing street traders operating within a set distance of the centre of all East Ayrshire schools.

Councillor McIntyre left the meeting during discussion on this item.

It was agreed:

- (i) to the terms of the proposed Resolution as amended as follows: “The Council proposes to resolve that on a date 9 months after the formal adoption of the Resolution it will create an exclusion zone preventing street traders operating within a distance of 250m from the defined perimeter, as constituted by the physical boundaries in place, of all East Ayrshire Council schools during term time between 8am and 5pm on any school day”;
- (ii) to authorise the Executive Director of Finance and Corporate Support to engage in a public consultation on the terms of the proposed Resolution;
- (iii) to remit to the Executive Director of Finance and Corporate Support to undertake the necessary statutory public notification and consultation in terms of Section 9(6) of the Civic Government (Scotland) Act 1082; and
- (iv) otherwise, to note the contents of the report.

Provost Stephanie Young and Councillor John MacKay left the meeting at this point.

Depute Provost John Campbell took the Chair.

PROPOSED CLOSURE OF CLYDE COASTGUARD CENTRE

- 10.** There was submitted a report dated 20 September 2011 (circulated) by the Chief Executive which advised Council of a request from Inverclyde Council to support the campaign to opposed the proposed closure of the Clyde Coastguard Centre at Greenock.

It was agreed to accede to the request from Inverclyde Council to support the campaign to save the Clyde Coastguard Centre and to authorise the Chief Executive to sign the concordat agreement on behalf of the Council.

Councillor McIntyre rejoined the meeting and Councillor Shaw left the meeting at this point.

FORMAL QUESTIONS

11.1 QUESTION BY COUNCILLOR MAUREEN McKAY TO LEADER OF COUNCIL

Councillor Maureen McKay put the following question to Councillor Reid:-

“Can the Leader give Council the following information:-

- (1) Number of employment tribunal proceedings raised against East Ayrshire Council by employees or former employees since 2007;
- (2) Provide details of those proceedings found against the Council;
- (3) Indicate the total financial costs as a result of those proceedings;
- (4) Indicate the total financial costs as a result of out of tribunal settlements.”

Councillor Reid then advised:

- (1) The total number of employment tribunal proceedings raised against East Ayrshire Council by employees or former employees since 2007 was 1495. This figure was made up of 1462 equal pay applications; 24 unfair dismissal applications; 3 discrimination applications; 4 contractual applications; 1 flexible working application and 1 accrued leave relating to maternity pay application.

- (2) No employment tribunal proceedings had successfully been upheld against the Council during that period.
- (3) Since 2007 the Council had paid the sum of £103,883.13 to an external firm of solicitors to assist the Council's in-house legal section in the preparation, presentation and negotiation of the above equal pay claims.

In addition, the 33 non equal pay proceedings had been exclusively dealt with by the Council's in-house legal section. He stated that it was difficult to quantify the exact cost to the Council for the provision of this in-house service given that it did not operate a time recording system.

- (4) Since 2007, the Council has settled 63 equal pay cases to date at a total cost of £325,031.73.

In addition, it had:

- (a) settled 7 unfair dismissal cases to date in the total sum of £13,250.00 (with 11 cases being withdrawn; 2 cases being unsuccessful after an evidential hearing; 1 case being struck out by the employment tribunal; 3 cases ongoing);
- (b) settled 1 accrued leave relating to maternity pay application in the sum of £684.73;
- (c) settled 1 contractual case in the sum of £1,800.00;
- (d) settled 1 flexible working case in the sum of £500.00; and
- (e) settled 1 discrimination case which had been the subject of a report to Cabinet in the sum of £60,000.00.

Following a supplementary question asked by Councillor Maureen McKay on whether the Council had applied mechanisms to recover the costs outlined, this, as subsequently explained by the Head of Legal, Procurement and Regulatory Services, being a matter of a technical, legal and operational nature, confirmed that officers, where appropriate to do so, would seek recovery of the costs but further explained that in relation to the operation of employment tribunals the scope to recover the costs was limited.

11.2 QUESTION BY COUNCILLOR MAUREEN MCKAY TO LEADER OF THE COUNCIL

Councillor Maureen McKay put the following question to Councillor Reid:-

“Can the Council Leader explain why the Scottish Government can support the introduction of a living wage for all government staff but his administration has, on 2 occasions when requested, refused to the introduction of a living wage for East Ayrshire Council employees.”

On behalf of Councillor Reid, Depute Leader Councillor Linton responded:

All Council employees were paid above the National Minimum Wage currently set at a rate of £5.93 per hour. The number of employees whose basic pay was less than £7.20 per hour was 802 which included casual workers.

The indicative additional cost per annum on basic salary costs of an increase in the hourly rate of the employees concerned was around £340,000 including employers costs.

It was considered that at a time of constraints the additional expenditure of around £340,000 per annum was not justifiable and equated, at £7.20 per hour, to the cost of around 20 full time permanent posts.

This Administration's objective was to retain as many in employment as possible within the finite resources available and this it intends to do within the pay arrangements which have been in place within the Council since April 2006.

A supplementary question asked by Councillor Maureen McKay was ruled not competent as it was not considered to meet the terms of Standing Order 6.3 which provided for one supplementary question for clarification of the answer given.

11.3 QUESTION BY COUNCILLOR ERIC ROSS TO LEADER OF THE COUNCIL

Councillor Eric Ross put the following question to Councillor Reid:-

"I would ask the Council Leader for clarification on the following statements made by Officers of East Ayrshire Council at the presentation of the Seminar on Community Engagement held at the Burns Monument Centre at 15 September 2011.

The statements were:-

'the reason behind this Seminar is to be found in the following slide clearly showing that the financial position of the Council will not improve in the next 15 years'.

'one recent piece of work estimated that it may be some 60 years'.

I am sure you will agree that this "financial position" vision is worrying and deserves full explanation at Council."

On behalf of Councillor Reid, Depute Leader Councillor Linton then advised:

The first statement referred to the content of a report by Dr Andrew Goudie, the Scottish Government's Chief Economic Adviser first published in July 2010 and included in the most recent Scottish Government Economic Strategy report.

The second statement referred to an article in the Financial Times in August 2011.

The point of both statements made at the seminar was to emphasise the fact that the cuts in public spending are not temporary and we need to accept that the amount of funding we have available will not improve in the medium term so we need to act now to reduce our costs on a permanent basis.

I believe that the approach to community engagement approved by the Cabinet is something we would want to do whatever the financial position but perhaps made more urgent by reduced levels of funding.

It was helpful for Councillor Ross to have raised the fact that the financial vision was worrying and deserved full explanation at Council but it is the case that this has already been taking place over the last two years. It had been widely discussed not just at Council during that time but right across the community as we had consulted with a whole range of stakeholders to let them know the position we find ourselves in and to get their views on the options we had to deal with it.

Clearly we are in a new era where, for the foreseeable future our financial position is more likely to get worse rather than better and that presented a challenge for us to use our resources wisely and effectively.

The seminar referred to presented a vision of doing more with our communities to use their talents and resourcefulness. Yesterday's Scottish budget included encouragement to do more with the NHS to tackle issues early and reduce spend and improve lives later.

Opportunities are being presented to us to change how we do things and to change them for the better. We need to be innovative, positive and outward looking and to adapt to the world we find ourselves in.

While Councillor Ross's question was welcome, equally welcome would be the engagement of all councillors in acting constructively to meet the challenges the financial position presents to us and to our communities.

Councillor McDill left the meeting at this point.

Councillor Ross asked a supplementary question that it was not clear within the answer given that everyone in East Ayrshire was aware of the financial position within the next 15-60 years and, that the financial position was so dire that the Council would have to ask groups and individuals to take on the burden and role of the current services the Council delivered.

Councillor Reid confirmed that the whole issue was raised at the budget consultation last year in terms of the financial position and the resultant dire consequences which the Council faced. He further confirmed that next financial year's budget consultation would provide further opportunity for this to be discussed and looked forward to the consultation.

The meeting terminated at 1258 hrs.