

# Royal Burgh of St Andrews Community Council

## Minutes of Special Meeting – 2 August 99

*By requisition of 200+ members of the public*

(As approved and made public by meeting of 6 Sep 99)

Chair: Frank Riddell

### **Present:**

#### **Community Councillors:**

Ken Crichton, Sean Dobson, Ian Goudie, Hugh Gray, Helen Lawrie, Pete Lindsay, Dennis Macdonald, Murdo Macdonald, Donald Macgregor, Lindsay Murray, Joe Peterson, Archie Strachan, Cynthia Tero, Chris Young

#### **Student Representative:**

Steve Durrant

#### **Coopted:**

Bill Sangster

#### **Fife Councillors:**

Jane Ann Liston, Frances Melville

#### **Apologies:**

Sheila Hill, Chris Lesurf, Craig Buchanan, Ken Fraser, Craig Barrett.

#### **Invited:**

Cllr Peter Douglas, Menzies Campbell MP, Iain Smith MSP, Dorothea Morrison (Chair, Preservation Trust).

*Meeting opened at 7pm, with about 30 members of the public present.*

Chair Frank Riddell circulated a background position summary document and suggested procedures for this exceptional meeting. He drew members' attention to item 2.2 containing a suggested agenda. He proposed a 5 minute break to allow everyone to read the document.

Due apparently to some confusion that this was the actual document containing Counsel's opinion objections were made that 5 minutes was far too short a time to properly understand such an important matter.

Frank Riddell clarified: the position document was purely background. Mr Bennett, the legal representative of the people who had commissioned counsel's opinion, was unwilling for it to be made public, hence the order of business given.

After further discussion Lindsay Murray proposed (seconded Ian Goudie) that the suggested order of business be adopted. Meeting agreed.

Dennis Macdonald questioned the choice of invitees, claiming them to be known anti-Kingask. He asked why no pro's had been invited. Frank Riddell explained that several of those invited were elected representatives for the area (Cllr Douglas's ward includes the Kingask site). They had been invited as a matter of courtesy and in the hope that they could offer advice – in particular Menzies Campbell had much experience of planning cases as a QC and Peter Douglas chairs the East Area Development Committee. The Preservation Trust was represented as they had offered to fund further action should this be agreed. Dennis Macdonald suggested that other national politicians living in and around St Andrews should have been invited.

*Meeting recessed at 7:10 and resumed at 7:15*

Ian Goudie suggested that an overview be given in lay terms of the reasons Fife Council's decision on Kingask is considered unsound and the implications for St Andrews. Sean Dobson proposed, 2nd Lindsay Murray. Against Hugh Gray, 2nd Murdo Macdonald.

For summary 6, Against 8, Abstain 2

Mr Bennett was invited to speak

He then asked that the meeting be held in private, as the opinion of Counsel was the private

property of his clients who were not willing for it to be made public beyond discussions with the Community Council.

Frank Riddell proposed, 2nd Sean Dobson, that the press and public be asked to leave, excepting only those specifically invited. Hugh Gray opposed, 2nd Joe Peterson.

**For 11, Against 4, Abstain 1**

Dennis Macdonald repeated his objection to the invitees but as a vote had been taken to include them he had to be overruled.

*Public left at 7:25*

Mr Bennett again explained that his clients had chosen not to circulate the opinion beyond those that already have it – on the Community Council this was the office bearers who had all received a copy via Frank Riddell that day. In response to questions he explained that his clients were people with a long association with St Andrews (owners of the Grange), though living overseas and trading as Capta Ltd.

When an eminent Counsel was first approached it was thought that there was an open and shut case which belief triggered the calling of this meeting. The Community Council, as a statutory consultee in the planning process for Kingask was thought by Counsel to be well-placed to petition for Judicial Review.

Judicial review looks only at the process of a decision – whether it has been taken properly, not at the decision itself. It asks if all matters have been considered properly and if correct procedures have been followed. It does not concern itself with whether Kingask is a good thing.

If judicial review of Kingask were successful it would not stop the decision for all time. Fife Council could quite possibly reconsider the matter and come to exactly the same conclusions on the basis of rewritten reports, possibly after their consideration by counsel. It might result in a requirement being put upon Fife Council to inform the First Minister of the application, triggering a planning enquiry – but the First Minister, or appropriate Minister in the new Scottish Executive might decide that an enquiry was not necessary. If judicial review were successful it might also require associated political pressure to achieve a result.

Petition for judicial review would be taken in the name of the Community Council and its office bearers, the latter being liable for expenses if the petition were lost. Both Fife Council and the developers would be likely to defend and look to recover their expenses. The Fife Council would have a duty to do so to recover public funds.

Having been advised by counsel that a two day initial hearing would be likely, the costs would be about £10,000 for each party, so if the case were lost the office bearers of the community council would possibly face expenses of £30,000.

Hugh Gray asked if there might be further costs from the developers due to delays while they awaited the outcome?

Mr Bennett thought not as they would have chosen to delay. An interdict served on them forcing a delay would run that risk though.

However, to summarise Counsel's opinion: they are not optimistic of success. Unfortunately Mr Bennett was instructed by his clients not to go into further detail.

Some discussion and clarification followed.

Murdo Macdonald's opinion was that on the basis of Counsel's opinion (as Vice Chair he had a full copy) the community council should drop consideration of the matter now.

Joe Peterson asked who else was involved beside Capta and was told that there was a second anonymous contribution of £400 to the cost of seeking the opinion. He also asked who had organised the petition requisitioning the meeting and who had signed. Frank Riddell responded that it was individuals known to be opposed to Kingask. Further questioned he said that as far as he knew only one Community Councillor had collected some signatures, himself. Mr Peterson finished by asking what advice was expected from the invitees. Frank Riddell explained that they had been invited on the advice of the Secretary, Pete Lindsay, in the hope of legal, political and financial advice. He then invited Menzies Campbell to speak.

Menzies Campbell congratulated Mr Bennett on a very clear exposition of the situation. He wanted to emphasise three points however:

- The effect of judicial review is not to reverse a decision, but to put the clock back to 'a minute before' the decision was made. To be successful it must show that an unreasonable exercise of discretion has been made, there was a very high standard of

proof to be attained – it is not at all the same as saying that a different decision should have been made.

- Interdict is at the risk of the person seeking it – anyone losing by it has a right to redress.
- The suggested figures for expenses were probably correct, but it is clear that the developers are not without resources. An appeal against a successful judicial review would be likely, so £30,000 is just the start of possible costs should the case eventually fail.

Litigation, he said, is very hazardous and should only be proceeded with on strong legal advice.

(Other invitees had nothing to add at this point.)

Joe Peterson asked why, given the advice of counsel in effect not to proceed, this meeting had been called.

Mr Bennett gave the sequence of events as he knew them: that the initial positive thoughts came from one QC. That QC then withdrew due to other time pressures. A second then wrote the opinion after further research and was not as optimistic.

As Secretary, Pete Lindsay added that under Fife Council's scheme for community councils we had no choice but to meet once a public requisition had been received.

Archie Strachan proposed no further action be taken, 2nd Murdo Macdonald.

Ian Goudie spoke against this proposal commenting on the seriousness of the planning situation and the threat to St Andrews. He believed that it might be possible to find the necessary funds to cover potential liability.

Chris Young asked that a decision on whether or not to take action should be delayed for some days to see if funding could be found, which Ian Goudie supported. Hugh Gray questioned, given the possibility of appeals, whether any certain safe figure for liability cover could be determined.

Pete Lindsay (Secretary) felt the matter of costs was irrelevant in the light of a line in the conclusions of the opinion he had in front of him, which gave the prospects of success as 'poor'.

**Vote: No action on the basis of the opinion of Counsel 13, for delay 2, abstentions 0.**

*Meeting re-opened to the public at 8:10*

Frank Riddell gave the decision for the benefit of the two or three patient members of the public who returned, that the community council had decided not to proceed with judicial review on the advice of Counsel.

Discussion then passed to 'What to Do Now'

Murdo Macdonald suggested that we should wait upon the outcome of the External Enquiry at Fife Council before taking any further steps. He would like to see the results of Fife Council's Golf Overview to get some idea of how the council is thinking, and what the future might hold.

Cllr Frances Melville suggested that we should write formally to our MP and MSP and Sarah Boyack (Minister for Transport & Environment at Edinburgh) about our experiences in the Kingask Affair. Something has got to change in the planning system, she said, to allow objectors the same right of appeal as developers, especially where there is strong local feeling in a community about a large development, as in this case.

Menzies Campbell looked over some of the possibilities for objectors to obtain redress. He pointed out that developers have rights too, but that they also have deep pockets. A possible balance would be to extend legal aid to planning matters, but the legal aid budget is limited and there is a question of whether planning is an appropriate use.

Objectors can make use of the Planning Aid voluntary organisation to help best present their case, but Planning Aid provides advice only, not funds.

The former view of the planning system was in favour of development, objectors having to show good reason to the contrary to stop it. More recently this has changed to favour only development in line with the local plan, where developers have to show material considerations favouring their development if it is contrary to planning policies. However, the system is still something of a lottery – neither developer nor objector enjoy any reasonable confidence over what will or won't succeed. The system needs reform to bring a greater consistency in the process.

Dennis Macdonald suggested that St Andrews could be defended more generally without the

many hours spent pouring over plans by a ring of publicly owned golf courses – without hotels etc, he emphasised – under the control of the Links Trust. We should look at owning the land to control development.

Lindsay Murray wanted to discuss with Fife Council why the Strategic Plan had not held up to the pressure on it, with the possibility of a review with independent or legal advice to strengthen it. She also called for Community Councils to have access to the necessary funds to defend their community against the current purse string holders.

Hugh Gray expressed his very grave concerns over the allegations of bullying in Fife Council and suggested that we write to Fife Council on the subject. Cllr Peter Douglas who originally made these allegations public asked that we do not, while the external enquiry is underway, as the situation is difficult enough as it is.

Peter Douglas went on to comment on the ramifications of the Kingask decision from his position as Chair of the East Area Development Committee. A major problem he sees is the overruling of existing policies, which he fears will be interpreted as a green light to other developments. It is ironic that the East Area committee is told to stick to policy at all turns, but then is overridden in a way that breaks those very policies. As chair he anticipates a rough time from his fellow committee members if they follow the example set by the Strategic Committee. As regards the Golf Overview that Murdo Macdonald had asked about, he described as very shallow and summarised as: there are lots of golf courses in St Andrews so it is a good place to put more.

From the public seats Penny Uprichard expressed her concerns about the traffic levels to be expected if Kingask and other developments go ahead, fearing the environmental costs will outweigh the economic benefits to St Andrews. Dr Marianne Gilchrist pointed out that if there were suitable transport infrastructure, such as the old coastal rail link reinstated, the viability of the scheme would be quite different. However her main remarks were on the subject of jobs. She noted accusations levelled by those in favour of Kingask against objectors that they didn't care about the plight of the jobless in the area who would benefit from the 300 jobs it was claimed Kingask could bring. She pointed out that what jobless people, like her, needed were real fulltime jobs that bring in enough money to support a family, not temporary casual work as waitresses or chambermaids. The sort of development that is needed in St Andrews is low impact light industry or computing. The solution to the often complained about closing of shops providing services to local people being replaced by gift shops serving tourists was not going to be solved by bringing in more tourists she pointed out.

Joe Peterson suggested that we rethink the tactics of our objections to developments and emphasise more the aspects of pollution, pedestrianisation of the town to remove the cars from the centre, restricting the size of lorries as they are causing structural damage to historic buildings and to work in line with the current direction of government thinking on these issues.

Cllr Jane Ann Liston suggested an approach to the Ombudsman over the way Fife Council had organised the whole affair and pointed out a Scottish Office code of conduct document on planning that made interesting reading in the light of Kingask.

From the Chair Dr Riddell suggested commissioning a report in collaboration with Preservation Trust on the future of golf and golf related developments in and around St Andrews. Does St Andrews need and can it support more golf-related developments?

Ian Smith MSP suggested that an approach to the Ombudsman should be held off until other enquiries were complete. He also suggested that problems with the general planning issues and the system itself, be raised through the Scottish Parliament's Transport & Environment (T&E) Committee in Edinburgh. Having served on Fife Council himself until the May elections he was very aware and concerned about the problems and the methods of the council in this case.

Hugh Gray proposed (second Cynthia Tero) that a report be submitted to the T&E committee and the Ombudsman be approached. After discussion the latter point was agreed, but was deferred until other enquiries are completed at Fife Council. The matter should be put on the September agenda.

Meeting then agreed a press statement to be made by Dr Riddell, and set a date (Monday 9th, Local Office) for the General Purposes committee meeting that this meeting had displaced.

### **Press statement:**

Counsel's opinion was that although there were stateable grounds for raising proceedings against the Fife Council for its handling of the Kingask decision the Community Council would be best advised not to launch action for judicial review. In view of this opinion and the financial implications it contained, the

Community Council has decided not to proceed further with the matter.

The Community Council regrets that it had to conduct part of the business of the meeting in private, but this was rendered necessary because of the content of Counsel's opinion.

We wish to thank those who have fought this long and hard battle with us. We regret having to abandon the struggle at this point but it would have been imprudent to have continued.

*Closed at 9:10*