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| <b>Agenda Item</b> | <b>20</b>       |
| <b>Report No</b>   | <b>HC/47/18</b> |

## **HIGHLAND COUNCIL**

**25 October 2018**

### **SCHEME OF DELEGATION AND ADMINISTRATION TO COMMITTEES AND SUB COMMITTEES AND TO OFFICERS**

#### **Report by the Head of Corporate Governance**

##### **Summary**

This report outlines proposals for amendment to the Council's Scheme of Delegation and Administration to Committees and Sub Committees and to Officers.

Annual Review of the Scheme is a requirement of the Council's Code of Corporate Governance.

The link to the current version of the Scheme of Delegation is highlighted below –

[https://www.highland.gov.uk/downloads/file/16903/scheme\\_of\\_delegation](https://www.highland.gov.uk/downloads/file/16903/scheme_of_delegation)

##### **Recommendation**

The Council is invited to agree the proposed changes to the Scheme of Delegation as detailed in this report.

## 1. Main Amendments

The main changes to the Scheme of Delegation – which are highlighted below – are in relation to:-

Part I – Powers Reserved to The Highland Council

Part II – Terms of Reference of Headquarters Committees

Part III – Functions Referred/Powers and Duties Delegated to Planning Application Committees, Highland Licensing Committee, Planning Review Body, City of Inverness Area Committee, Local Committees and Joint Committees from the Council and Headquarters Committees.

Part IV – Powers Delegated to Officers.

### **Part I – Powers Reserved to The Highland Council**

**Amend** wording as follows:

Current Version – 1.36 To determine all applications for planning permission relating to ‘major developments’ (as designated by s26A(1)(b)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are considered to be significantly contrary to the development plan.

Proposed Version – 1.36 *To determine all applications for planning permission relating to ‘major developments’ (designated as such by regulations made under s26A(2) of the Town and Country Planning (Scotland) Act 1997 (as amended)) which are considered to be significantly contrary to the development plan.*

### **Part II – Terms of Reference of Headquarters Committees**

#### **Environment, Development and Infrastructure Committee**

**Amend** wording as follows:

Current Version – 2.1. To carry out the functions of the Council as the statutory authority in relation to the following – Access, Building Standards, Burials, Coast Protection, Development Planning, Development Management, Environmental Health, Environmental Protection, Flood Risk Management, Harbours, High Hedges, Planning Enforcement, Roads, Street Cleaning and Waste Collection and Disposal.

Proposed Version – 2.1. *To carry out the functions of the Council as the statutory authority in relation to the following – Access, Building Standards, Burials, Coast Protection, Development Planning, Development Management, Environmental Health, Environmental Protection, Flood Risk Management, Harbours, Trees & High Hedges, Planning Enforcement, Roads, Street Cleaning and Waste Collection and Disposal.*

Current Version – 2.2. To carry out the functions of the Council in delivering services relating to the following Asset Management, Community Asset Transfer, Capital Design and Delivery, Cleaning, Catering and Facilities Management, Climate Change, Communications, Countryside Facilities, Economic Development and Regeneration, Energy, Environmental Health, Animal Health and Contaminated Land, Estates and Tenancy Management, Europe, Ferries, Fleet Management, Grounds Maintenance, Industrial Investment, Land Reform and Environment, Capital Design and Delivery, Oil Pollution, Parking Enforcement and Management, Property Maintenance, Recycling, Road Safety, Roads Network Management, Public and School Transport, Purchasing and Logistics, Street Cleansing, Street Lighting, Traffic Management, Transport Infrastructure, Waste Management, Housing Development and Winter Maintenance.

*Proposed Version – 2.2. To make decisions relating to the functions of the Council in delivering services relating to the following: Asset Management, Community Asset Transfer, Capital Design and Delivery, Cleaning, Catering and Facilities Management, Climate Change, Communications, Countryside Facilities, Economic Development and Regeneration, Energy, Environmental Health, Animal Health and Contaminated Land, Estates and Tenancy Management, Europe, Ferries, Fleet Management, Grounds Maintenance, Industrial Investment, Land Reform and Environment, Capital Design and Delivery, Oil Pollution, Parking Enforcement and Management, Property Maintenance, Recycling, Road Safety, Roads Network Management, Public and School Transport, Purchasing and Logistics, Street Cleansing, Street Lighting, Town & Country Planning, Traffic Management, Transport Infrastructure, Waste Management, Housing Development and Winter Maintenance.*

Current Version – 2.3. To set service standards and approve policy and overall priorities for the delivery of Place service functions to comply with the Council's legal, regulatory and financial responsibilities, approve the distribution of operational budgets to Local Committees, scrutinise expenditure against local budgets and agree corrective action to ensure a balanced Service budget.

*Proposed Version – 2.3. To set service standards and approve policy and overall priorities for the delivery of EDI service functions to comply with the Council's legal, regulatory and financial responsibilities, approve the distribution of operational budgets to Local Committees, scrutinise expenditure against local budgets and agree corrective action to ensure a balanced Service budget.*

Current Version – 3. Specific

*Proposed Version – 3. Service Responsibilities*

Current Version – 3.1. Land Reform and Environment - To deliver the Council's duties and responsibilities, where such duties and responsibilities are not delegated to Officers (or where Officers have declined to exercise their delegated powers) or to Planning Applications Committees, under the Countryside Act 1967, the Land Reform (Scotland) Act 2003 and the Nature Conservation Act 2004.

*Proposed Version – 3.1. Land Reform and Environment - To oversee the Council's duties and responsibilities under the Countryside Act 1967, the Land Reform (Scotland) Act 2003 (in terms of access) and the Nature Conservation (Scotland) Act 2004, where such duties and responsibilities are not delegated to Officers (or where Officers have declined to exercise their delegated powers) or to Planning Applications Committees.*

Current Version – 3.4.2. To prepare, monitor and review (for the Council) any Local Development Plans (and associated Action Programmes), Supplementary Guidance and other land use, policies and guidance that provide a Highland-wide policy context for place-specific plans, policies and guidance, in accordance with the terms of the Town and Country Planning (Scotland) Act 1997 (as amended).

*Proposed Version* – 3.4.2. To oversee the preparation, monitoring and review (for the Council) of any Local Development Plans (and associated Action Programmes), Supplementary Guidance and other land use, policies and guidance that provide a Highland-wide policy context for place-specific plans, policies and guidance, in accordance with the terms of the Town and Country Planning (Scotland) Act 1997 (as amended).

Current Version – 3.4.3. To determine all applications referred to the Committee (with the exception of applications relating to 'major developments' (as designated by s26A(1)(b)&2 of the Town and Country Planning (Scotland) Act 1997 (as amended) which are considered to be significantly contrary to the development plan, rather than to a Planning Applications Committee where the Director, following consultation with the Planning, Development, and Infrastructure Chair and the relevant Chairs of the Planning Applications Committees, is of the opinion that an application raises strategic and/or cross boundary issues.

*Proposed Version* – 3.4.3. To determine all applications referred to the Committee (with the exception of applications relating to 'major developments' (designated as such by Regulations made under s26A(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are considered to be significantly contrary to the development plan, [rather than to a Planning Applications Committee] where the Director, following consultation with the Environment, Development, and Infrastructure Chair and the Chairs of the relevant Planning Applications Committee(s), is of the opinion that an application raises strategic and/or cross boundary issues.

Current Version – 3.4.8. Planning etc (Scotland) Act 2006 – to determine under Part 9 (Business Improvement Districts) whether the Council should exercise its power of veto over a BID proposal and hence whether a ballot shall be held or not.

*Proposed Version* – 3.4.8. Planning etc (Scotland) Act 2006 – to determine under Part 9 (Business Improvement Districts) whether the Council should exercise its power of veto over a ballot being held into a BID proposal.

**Part III – Functions Referred/Powers and Duties Delegated to Planning Application Committees, Highland Licensing Committee, Planning Review Body, City of Inverness Area Committee, Local Committees and Joint Committees from the Council and Headquarters Committees.**

### **Planning Application Committees**

**Amend** wording as follows:

Current Version – 2. To receive reports on Proposal of Application Notices for national development (as designated by s3A(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended) and major developments (as defined by s26A(1)(b)&(2) of the Town and Country Planning (Scotland) Act 1997 to allow Members to comment on issues related to the proposed developments (but not to discuss the merits or otherwise of the proposed developments).

*Proposed Version – 2. To receive reports on Proposal of Application Notices for national development (designated as such by s3A(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended) and major developments (designated as such by s26A(2) of the Town and Country Planning (Scotland) Act 1997 to allow Members to comment on issues related to the proposed developments (but not to discuss the merits or otherwise of the proposed developments).*

Current Version – All of the powers and duties of the Planning, Development and Infrastructure Committee contained in 1 - 9 above, the powers in 7 being fully delegated.

*Proposed Version – All of the powers and duties of the Environment, Development and Infrastructure Committee contained in 1 - 9 above, the powers in 7 being fully delegated.*

## **Part IV – Powers Delegated to Officers**

### **Environment, Development & Infrastructure**

Current Version – b) Applications for “major developments” designated as such under s26A(1)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are recommended for approval; or, irrespective of the recommendation, are significantly contrary\*\* to the development plan; and

*Proposed Version – b) Applications for “major developments” designated as such by Regulations made under s26A(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are recommended for approval; or, irrespective of the recommendation, are significantly contrary\*\* to the development plan;*

Current Version – k) applications where the Appointed Officer exercises their discretion and requests that a decision is made by the relevant Planning Applications Committee. For the avoidance of doubt, this discretion may not be exercised where Members of Highland Council for the Ward(s) in which the development is proposed, having been given prior notification under sub section (k) of the recommendation of refusal, have by majority not requested in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee.

*Proposed Version – k) applications where the Appointed Officer exercises their discretion and requests that a decision which otherwise would have been made under delegated powers is instead made by the relevant Planning Applications Committee. For the avoidance of doubt, this discretion may not be exercised where Members of Highland Council for the Ward(s) in which the development is proposed, having been given prior notification under sub section (l) of the recommendation of refusal, have by majority not requested in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee.*

Current Version – (l) applications, other than those under Sections 36, 36C and 37 of the Electricity Act 1989 (as amended), recommended for refusal for reasons which do not include:

- i. the non-submission of further particulars, documents, materials or evidence requested under Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended); and/or
  - ii. the non-submission of further information or evidence requested under Regulation 23 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (as amended); and/or
  - iii. non-submission of further information requested under Regulation 3(2) of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas)(Scotland) Regulations 1987 (as amended); and/or
  - iv. the failure to conclude a Section 75 Obligation or Section 69 Agreement (but only after a period of 4 months has expired following the decision to grant planning permission subject to such an obligation or agreement); and/or
  - v. the failure to submit an Environmental Statement in support of an EIA application (which evokes deemed refusal under Regulation 9(4) and/or refusal under Regulation 9(5) of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (as amended));
- where Members of The Highland Council for the Ward(s) in which the development is proposed, having been given prior notification of the recommendation of refusal, by majority request in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee;

*Proposed Version – (l) applications, other than those under Sections 36, 36C and 37 of the Electricity Act 1989 (as amended), recommended for refusal for reasons which do not include:*

- i. the non-submission of further particulars, documents, materials or evidence requested under Regulation 24 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended); and/or*
  - ii. the non-submission of further information or evidence requested under Regulation 23 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (as amended); and/or*
  - iii. non-submission of further information requested under Regulation 3(2) of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas)(Scotland) Regulations 1987 (as amended); and/or*
  - iv. the failure to conclude a Section 75 Obligation or Section 69 Agreement (but only after a period of 4 months has expired following the decision to grant planning permission subject to such an obligation or agreement); and/or*
  - v. the failure to submit an Environmental Statement in support of an EIA application (which evokes deemed refusal under Regulation 9(4) and/or refusal under Regulation 9(5) of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (as amended));*
- where 2 Members of The Highland Council for the Ward(s) in which the development is proposed, having been given prior notification of the recommendation of refusal, request in writing, within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;*

Current Version – (m) applications under Sections 36, 36C and 37 of the Electricity Act 1989 (as amended) where objections are to be raised for reasons which do not include the non-submission of further particulars, documents, materials or evidence requested in writing, where Members of The Highland Council for the Ward(s) in which the development is proposed, having been given prior notification of the recommendation of refusal, by majority request in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee;

*Proposed Version – (m) applications under Sections 36, 36C and 37 of the Electricity Act 1989 (as amended) where objections are to be raised for reasons which do not include the non-submission of further particulars, documents, materials or evidence requested in writing, where 2 Members of The Highland Council for the Ward(s) in which the development is proposed, having been given prior notification of the recommendation of refusal, request in writing, within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;*

Current Version – \*Unless otherwise stated, the term ‘applications’ includes:

- i. all applications for planning permission; planning permission in principle; the approval of matters specified in conditions attached to a planning permission in principle; planning permission for development already carried out; permission to develop land without compliance with conditions previously attached (s42); listed building consent; conservation area consent; hazardous substances consent; advertisement consent; aquaculture development;
- ii. All consultations under the Electricity Act 1989 (as amended), including those made under s36, s36C and s37; and
- iii. any other applications made under the statutes listed opposite and not provided for elsewhere in the scheme of delegation to officers.

Proposed Version – \*Unless otherwise stated, for this Part of the Scheme of Delegation the term ‘applications’ includes:

- i. all applications for planning permission; planning permission in principle; the approval of matters specified in conditions attached to a planning permission in principle; planning permission for development already carried out; permission to develop land without compliance with conditions previously attached (s42); listed building consent; conservation area consent; hazardous substances consent; advertisement consent; aquaculture development;
- ii. any application approved subject to a planning obligation under s75 of the Town and Country Planning (Scotland) Act 1997 (as amended) and where the applicant has failed to sign the planning obligation within 4 months of receiving the Council’s terms and conditions;
- iii. any application approved subject to payment of a developer contribution under the Council’s supplementary guidance in force at the time of the determination and where the applicant has failed to pay the contribution within 28 days of being invoiced by the Council; and
- iv. any other applications made under the statutes listed opposite and not provided for elsewhere in the scheme of delegation to officers.

## **2. Implications Arising from the Report**

There are no resource, legal, climate change/carbon clever, equalities, Gaelic or rural risk implications arising from these proposals.

Designation: Stewart Fraser, Head of Corporate Governance

Date: 15 October 2018