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| Agenda Item | 22 |
| Report No | HC/48/20 |

HIGHLAND COUNCIL

Committee: Highland Council

Date: 17 December 2020

Report Title: Annual Review of the Scheme of Delegation

Report By: Executive Chief Officer, Performance and Governance

1. Purpose/Executive Summary

1.1 This report contains proposed amendments to the Scheme of Delegation and Administration to Committees and Sub Committees and to Officers. The Scheme reflects the following changes:

- Under Part II, inclusion of the Terms of Reference for the Tourism Committee and the Gaelic Committee;
- General updating across all area to reflect changes in the regulatory and legislative landscape.
- Changes to planning delegations and referrals to reflect the outcomes of a recent members seminar – Appendix 3

In this regard, an electronic link to the current version of the Scheme is highlighted here:

https://www.highland.gov.uk/downloads/file/16903/scheme_of_delegation

1.2 It is also noted that there are references to European Law throughout the Scheme of Delegation which will need to be amended as the new replacement legislation is confirmed. It is too early to do so at this stage, but a revised Scheme will be brought back to Council when the position has been clarified.

2. Recommendations

2.1 The Council is invited to agree:

1. The changes to the Scheme of Delegation as detailed in Appendix 1 and 2 to

this report;

2. The Gaelic Committee to report to the Council instead of the Economy and Infrastructure Committee;
3. That amendments to post titles can be made without recourse to Council as long as the level of delegation remains unchanged;
4. That a further report will come back to Council in March once there is clarity around the changes required to the Scheme of Delegation as a consequence of leaving the European Union, and any other changes required as a consequence of possible further changes in the Council's management structure.
5. Amendments to the Scheme of Delegation in relation to planning matters as set out in detail at Appendix 3 and summarised as follows:
 - i. No change to development size.
 - ii. Reduction of number for objections from 8 to 5 across Highland.
 - iii. Implement power of 2 ward Members to call-in any application validated from 1 Jan 2021 onwards and subsequently recommended for approval.
 - iv. Review impact of changes after 6 months.

3. Implications

- 3.1 Resource Implications: there are no resource implications as a consequence of this report except for the planning changes. Any increase in the number of applications being reported to Committee will add to officer (planning and committee services) and PAC member workload.
- 3.2 Legal: The revised Scheme will support the Council to meet its legal duties and enhance the Council's governance arrangements. All amendments are consistent with the Local Government Act and the legislative and regulatory framework governing the delivery of Council services.
- 3.3 Community (Equality, Poverty and Rural): The additional functions identified for area committees and the focus on developing a place-based strategy will have a positive impact on communities. Any change to the Scheme of Delegation that reduces the size of development automatically referred to Committee or reduces the number of objections received on an application would disproportionately allocate Planning Service resources to the smaller Highland communities.
- 3.4 Climate Change / Carbon Clever: Climate Change has been included as a standing item in the Part II general powers section.
- 3.5 Risk: the recommendations arising from the Review should have a positive impact on

risk because of the focus on improved scrutiny, oversight, control and assurance. Any increase in the number of applications being reported to Committee will impact adversely on the performance of the Planning Service – the performance of planning authorities is measured by Scottish Government and those authorities whose performance is poor risk their Planning Service being placed under the management of the Scottish Government.

- 3.6 Gaelic: It is proposed to give Gaelic a higher priority by moving oversight of Gaelic to the Council instead of the Economy and Infrastructure Committee. The Tourism Committee remit includes a commitment to ensure that all agreed Tourism strategies, projects and initiatives contribute to the Council's Gaelic and Cultural development priorities. Gaelic has also been included as a standing item in the Part II general powers section for all Council Committees.

4. Summary of proposed Changes

- 4.1 A number of amendments are required to the Scheme of Delegation following on from the changes introduced by the Governance Review. The most substantive changes are the changes to Planning contained in Appendix 3 and the inclusion of the remit and terms of reference for the two new committees established by the Review – the Tourism Committee and the Gaelic Committee. These have been agreed by their respective Committees and are set out in Appendix 1 of this report for formal Council approval.
- 4.2 Detailed amendments to the remaining parts of the Scheme of Delegation are contained in Appendix 2. Where there is any change or addition proposed, this is shown in bold and italics. Deletions are shown in bold, italics and struckthrough.
- 4.3 There are numerous minor adjustments required to reflect changes in post titles. For the most part these do not reflect a change in the level of delegation, simply the title of the post holder. It is proposed that in future, such changes should not require the formal approval of Council as part of the annual Review. Instead, the Scheme should be amended contemporaneously with the change in the post title to ensure the Scheme of Delegation remains up to date. Any proposal to change the *level* of Delegation would however be required to come forward for Member approval.
- 4.4 A Members' seminar was held on 27 November 2020 specifically to consider potential changes to planning delegations. A summary of the discussions and the proposals arising from them are contained in appendix 3 and recommendations have been presented for member approval.

Designation: Kate Lackie, Executive Chief Officer, Performance & Governance

Date: 3 December 2020

Tourism Committee Terms of Reference

- Develop and review a Highland Sustainable Tourism Strategy;
- Provide input to and co-ordinate the Council response to local strategies / Destination Plans prepared by other bodies;
- Oversee the delivery of Council actions from tourism strategies as they relate to the Highland area;
- Recommend the introduction of new policies or changes to existing visitor management policies to manage tourism pressures through the preparation of the Visitor Management Plan;
- Recommend investment priorities in new facilities for visitors;
- Recommend investment in maintenance of existing facilities where appropriate;
- Oversee Council and other Highland partner body applications for external funding;
- Prepare and recommend the adoption of the Council's Tourism Infrastructure Plan;
- Ensure that all agreed Tourism strategies, projects and initiatives contribute to the response to the Council's Climate and Ecological Emergency;
- Ensure that all agreed Tourism strategies, projects and initiatives contribute to the Council's Gaelic and Cultural development priorities;
- Prepare responses to national consultations and initiatives as they relate to tourism;
- Scrutinise performance relating to tourism related service delivery and implementation of strategy, policy and service plans as they relate to tourism issues;
- Consider wider socio-economic reports on the impact and value of the tourism sector to the Highland economy;
- Consider the impact of decisions on communities, specifically taking into consideration the issues of equality, poverty and rurality; and
- Ensure that all decisions take into account the Resource, Legal, Climate Change/Carbon Clever, Risk and Gaelic implications that need to be considered.

Governance:

Committee minutes will be reported to the Economy and Infrastructure Committee.

Gaelic Committee Terms of Reference

General:

- To promote and support the indigenous Gaelic language, heritage and culture of the Highlands and to oversee the implementation of the Council's Gaelic Language Plan.

Specific:

- To monitor, scrutinise and promote the implementation of the Council's Gaelic Language Plan, including the delivery of Gaelic education;
- To liaise with Bòrd na Gàidhlig on the strategic development of Gaelic language;
- To work with Gaelic development agencies in promoting, developing and sustaining the Gaelic language, heritage and culture in the Highlands;
- To work with the Scottish Government and Parliament with regard to legislation relating to Gaelic language;
- To monitor the implications of legislation in respect of Gaelic language and advise the Council of its impact across the Highlands;
- Budget monitoring and scrutiny of Gaelic specific funding, grants and expenditure.

Governance:

Committee minutes will be reported to Full Council.

**ANNUAL REVIEW OF THE SCHEME OF DELEGATION – DETAILED
AMENDMENTS**

Part II Terms of Reference for Headquarters Committees

For all Committees, the General Powers to include Climate Change and Gaelic:

9. Ensure that all decisions take into account the resource, legal, risk, ***Climate Change and Gaelic*** implications that need to be considered.
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Corporate Resources Committee

2.6 All matters relating to the administration of local taxation, including Council tax and non-domestic rates, and council tax reduction and benefits, including benefits promotion ~~and anti-fraud activities.~~ *[moved to Audit and Scrutiny Committee]*

Under the section: Powers and Duties Delegated to the Committee, add

(e) Corporate Resources Sub Committee

Education Committee

To include Culture and Leisure under section 1.2

Communities and Place Committee

2.2 Remove 'harbours' - already included in I&E Committee remit

2.3 Remove 10) Employability and 11) Developing Scotland's Young Workforce; and include in I&E Committee remit

2.10 To set charges for relevant services, unless delegated to Local Committees ***or to Officers as set out in the Scheme of Delegation.***

Economy and Infrastructure Committee

~~4. Economy and Transformation Service~~

4.1 ~~Carry out the functions of the Council in delivering services relating to the following:~~

- ~~Economic Development and Regeneration~~
- ~~Tourism – reported to Council~~
- ~~Change programme – reported to Council~~
- ~~Redesign and Commercial programme – reported to Council~~
- ~~Europe – reported to Council~~
- ~~City Region Deal – reported to Council~~
- ~~Industrial Investment~~
- ~~Estates and Tenancy Management~~
- ~~Housing Development~~
- ~~Culture and Leisure – moved to the Education Committee~~
- ~~Safe Highlander~~

Economy

4.1 Carry out the functions of the Council in delivering services relating to the following:

- *Economic Development and Regeneration*
- Tourism – ~~reported to Council~~
- Europe – reported to Council
- City Region Deal – ~~reported to Council~~
- Industrial Investment
- Estates and Tenancy Management
- Housing Development
- Culture and Leisure
- Safe Highlander
- ***Employability***
- ***Developing Scotland's Young Workforce***

Insert the following new power:

To determine the criteria and allocation of the Council's share of the Crown Estates Revenue to local area committees.

Transformation

4.1 Carry out the functions of the Council in delivering services relating to the following:

- Change programme – reported to ~~Council~~ ***The Recovery Board***
- Redesign and Commercial programme – reported to ~~Council~~ ***The Redesign Board***

~~4.5 Gaelic Language and Culture~~

~~4.5.1 Gaelic Medium Development and approval of the Gaelic Language Plan.~~

4.5.2 Consideration of reports and recommendations from the Gaelic Language Committee

Gaelic Language and Culture is now subject to its own committee and reports to Full Council

Audit and Scrutiny Committee

Add to the remit as follows:

2.3 To consider all matters relating to anti-fraud activities including Whistleblowing.

Part III, City of Inverness Area Committee

1. General Powers

1.8 To approve delegated local functions e.g. Road Traffic Orders; Road Construction Consents; and Upholding Access Rights **such as Notices applying to various sections of Part 1 of the Land Reform (Scotland) Act 2003.**

1.10 To deal with requests for and make nomination / appointments to local outside bodies not covered by the Council or Strategic Committees e.g. Local Access Forums. **In the case of Local Access Forums, only where multiple nominations or appointments are necessary.**

2. Specific Powers

~~2.40 To review Core Path Plans and make recommendations to the Economy and Infrastructure Committee.~~ **To review the Core Path Plan and approve amended and/or modified plans for public consultation. Adopt core path changes into the plan where there are no objections, to recommend modifications or to accept Scottish Government recommendations following a PLI. To make recommendations to the Economy and Infrastructure Committee where there are outstanding objections to an amended or modified amended core path plan.**

Insert a new power at 2.42 as follows:

2.42 To approve Section 11 orders of 6 days or more for advertisement as required by Section 11(2)(b) of the Land Reform (Scotland) Act 2003 and where there are no outstanding objections to confirm such orders. Where objections

are outstanding to a proposed order the area/local committee shall make a recommendation to the Economy and Infrastructure Committee.

Insert a new power at 2.42 as follows:

2.43 To allocate Crown Estate revenue to local projects and initiatives according to the criteria determined by the Economy and Infrastructure Committee.

Part III, Local Committees

1. General Powers

1.4 To ensure implementation of the Council's **place-based** approach **to service design and delivery, involvement and participation to localism** and place planning as it relates to the locality.

1.8 To approve delegated local functions e.g. Road Traffic Orders; Road Construction Consents; and Upholding Access Rights **such as Notices applying to various sections of Part 1 of the Land Reform (Scotland) Act 2003.**

1.10 To deal with requests for and make nominations/ appointments to local outside bodies not covered by the Council or Strategic Committees e.g. Local Access Forums. **In the case of Local Access Forums, only where multiple nominations or appointments are necessary.**

2. Specific Powers

Corporate, Cross Service and Civic Powers

2.7 To consider reports from external groups or bodies. **To** invite groups or local bodies to address the local committee on matters relevant to the local committee. **To develop productive working relations with local community bodies in public service delivery.**

Finance Services

2.9 To oversee the management of any Common Good Fund (CGF) assets for the locality ... more than 10% of the value of the CGF is reserved for Highland Council **following consideration by the Area Committee.**

2.11 ~~Remove **From the resources that are agreed to be delegated to the Local Committee, for the Local Committee to agree which resources are to be allocated through participatory budgeting and the methods to use.** and replace with:~~

For the Local Committee to consider how to adopt a participatory budgeting approach in order to support the greater involvement of communities in informing service design, delivery and, where appropriate, deploying resources.

Insert a new power as follows:

To allocate Crown Estate revenue to local projects and initiatives according to the criteria determined by the Economy and Infrastructure Committee.

Communities and Place

2.19 To approve local priorities for grounds maintenance in accordance with overall Council policy, and to increase or reduce the local service within the overall local budget ***or other local resources***, in accordance with the Council's policies on grounds maintenance, legislation and good practice guidance.

Insert a new 2.20 as follows:

2.20 To approve local priorities for play areas in accordance with overall Council policy and to increase or reduce the local service within the overall local budget or other local resources, in accordance with the Council's policies on play areas, legislation and good practice guidance (pending the decision to devolve this function at Council on 17.12.20).

2.22 To agree the naming of buildings within the Council's control. Propose moving to the section below on Property and Housing

Economy and Infrastructure

2.39 ~~***To review Core Path Plans and make recommendations to the Economy and Infrastructure Committee. To review the Core Path Plan and approve amended and/or modified plans for public consultation. Adopt core path changes into the plan where there are no objections, to recommend modifications or to accept Scottish Government recommendations following a PLI. To make recommendations to the Economy and Infrastructure Committee where there are outstanding objections to an amended or modified amended core path plan.***~~

Insert a new 2.42 as follows:

2.42 To approve Section 11 orders of 6 days or more for advertisement as required by Section 11(2)(b) of the Land Reform (Scotland) Act 2003 and where there are no outstanding objections to confirm such orders. Where objections are outstanding to a proposed order the area/local committee shall make a recommendation to the Economy and Infrastructure Committee.

Education

2.43 To monitor the local delivery and outcomes linked to the National Improvement framework in line with local school improvement plans and standards and quality annual reports. from Curriculum for Excellence,

~~2.43~~ To consider an annual report on the attainment of young people from deprived backgrounds

2.44 To scrutinise secondary school leavers data within the locality and in relation to ~~including performance of schools within the locality.~~

- Percentage of leavers attaining literacy;
- Percentage of leavers attaining numeracy;
- Attainment for All across the 3 cohorts (Highest 20%, Middle 60% and Lowest 20%);
- Leaver Initial Destinations; and
- Breadth and Depth analysis (Percentage of pupils achieving SCQF level awards)

~~2.44-2.45~~ To ~~scrutinise and~~ monitor *locality HMIE school inspection reports.*

~~2.46~~ ~~To monitor the local delivery of the Highland Play Strategy as agreed by the Education Committee.~~

2.46 To monitor and scrutinise ASG attainment over time in relation to numeracy, literacy and positive destinations.

Part IV – Powers Delegated to Officers

Chief Executive's Office

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| Regulation of Investigatory Powers (Scotland) Act 2000 | To designate and authorise officers to authorise action to undertake directed surveillance or the use of covert human intelligence sources. | Chief Executive <i>and ECOs with relevant training</i> |
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Performance and Governance

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| <i>Gaelic Language Plan</i> | <i>To report progress on the delivery of the Council GLP to the Gaelic Committee</i> | <i>Executive Chief Officer</i> |
| <i>Gaelic Committee</i> | <i>To provide reports and support to the Committee as set out in the Committee's Terms of Reference</i> | <i>Executive Chief Officer</i> |

Corporate Resources

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| <p>Subject to the requirements of the Council's Standing Orders, European Community Law and legislation, the undernoted powers to enter into commercial arrangements on behalf of the Council -</p> <ul style="list-style-type: none"> a) agreement of specifications with user Services b) construction of contract terms and conditions c) development of sourcing and contracting strategies d) agreement of procurement budget heads e) selection of tenderers f) opening and evaluation of tenders g) award of contracts and framework arrangements h) appointment of consultants | <p>Executive Chief Officer, Resources and Finance Corporate Resources Head of Procurement, Principal Contracts Officers</p> |
| <p>To sign and accept procurement contracts on the Council's behalf in the manner approved by the Council.</p> | <p>Executive Chief Officer, Resources and Finance Corporate Resources Head of Procurement, Principal</p> |

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| | Contracts Officers |
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Economy and Transformation

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| <i>To manage the Council's Recovery Programme</i> [new entry] | Executive Chief Officer |
| To manage business development – <i>move to Infrastructure and Environment</i> | Executive Chief Officer |
| Liaison with HLH – <i>move to Education</i> | Executive Chief Officer |
| Liaison with Eden Court and other 3rd sector partners – <i>move to Education</i> | Executive Chief Officer |
| To manage the Highland Council City Region Deal programme <i>move to Infrastructure and Environment</i> | Executive Chief Officer |
| <i>Economy - move to Infrastructure and Environment</i> | |
| To determine applications for loan finance up to the value of £50,000. | HoDR |
| To prepare reports and recommendations to the Board of Highland Opportunity Investments Limited for loan finance over the value of £50,000. | HoDR |
| To determine applications for grant for business development, land and building regeneration and employability support initiatives up to the value of £50,000. | HoDR |
| To prepare reports and recommendations to the Economy and Infrastructure Committee for applications for grant for business development, land and building regeneration and employability support initiatives over the value of £50,000. | HoDR |
| To enter into Service Level Agreements with external bodies to deliver business, land and building regeneration and employability activities, projects and programmes. | HoDR |
| <i>Housing Development - move to Infrastructure and Environment</i> | |
| To manage the Scottish Government's Evergreen Infrastructure Loans Fund and to oversee the operation of the loan fund. | HODR |

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| To manage the Council's land bank fund in accordance with the priorities set out by the Economy and Infrastructure Committee. | HoDR |
| To agree terms of all land bank fund loans and grants and granting loans for feasibility studies and planning applications. | HoDR |
| To grant leases of HRA land and non-residential property or approve the assignation (after consultation with Ward Members and area housing Manager). | HoDR |
| To approve variation in terms of leases including rent reviews and lease renewals in respect of HRA land and non-residential property (after consultation with Area housing Manager). | HoDR |
| To acquire property or land up to a value of £200k using HRA funding for the delivery of new Council housing, subject to consultation with Ward Members and Area Housing Manager. | HoDR |
| Estates and Investment – move to Infrastructure and Environment | |
| To determine applications for purchases of houses (other than those held on the Housing Account under the Tenants' Right to Buy legislation). | HoDR |
| To investigate and formulate proposals for disposal of General Fund property interests. | HoDR |
| To approve, negotiate and undertaken by disposal, sale, lease, assignation, sub-letting, lease surrender, licence or excambion of property interests up to a value not exceeding £250,000 or £50,000 pa, subject to the sale price/rent not being below market value and consultation with Ward Members. | HoDR |
| To acquire or lease assets up to a value of £200,000 for acquisitions or £20,000 pa for leases after consultation with Local Members. | HoDR |
| To approve the disposal of land and property at below market value where either the best consideration that can reasonably be obtained is less than £10,000 (i.e. the threshold amount) or the difference between the proposed price and the best consideration price (i.e. the marginal amount) is 25% or less, subject to a maximum marginal difference of £10,000 after consultation with Ward Members (for General Fund Property). | HoDR |
| To agree a lease extension at less than market value, on the same terms and conditions to a community group where a | HoDR |

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| rent reduction has previously been granted, subject to consultation with Ward Members. | |
| To grant wayleaves, servitudes and rights over Council owned land or property and to vary lease terms. | HoDR |
| Where concessionary leases are proposed for properties with a capital market value of £10,000 or less or where the marginal difference between the proposed price and the best consideration is 25% or less, subject to a maximum marginal capital difference of £10,000, approve the let, subject to consultation with the appropriate Executive Chief Officer and Ward Members. | HoDR |
| To undertake valuations of land and buildings for all purposes. | HoDR |
| To act on the Council's behalf in relation to rating revaluations and appeals. | HoDR |
| To grant leases of the Council's Investment portfolio sites and premises or to approve assignment of such leases (after consultation with the Ward Members). | HoDR |
| To approve rent reviews; lease renewals (to sitting tenants); and any other valuation issues relative to Commercial leases. | HoDR |
| To identify, recommend and report on industrial and commercial development opportunities. | HoDR |
| To manage the General Fund (other property) budget to maximise income and minimise expenditure to ensure best value for Highland Council industrial and investment property assets. | HoDR |

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| <i>Move to Education</i> | |
| To submit an annual report to the Education Committee on the following companies – Blas Board , Caledonia Community Leisure Ltd, Highland Football Academy Trust and Strathpeffer Pavilion Ltd | ECO |
| <i>Move to Performance and Governance</i> | |
| To submit an annual report to the Education Gaelic Committee on the following companies – Blas Board , | ECO |

Health and Social Care

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| Social Work (Scotland) Act 1968 | Sections 12 and 13 - to promote social welfare by giving help in kind or in cash. | Children's Service Managers/ District Managers/Practice Leads/Social Workers |
| " | Section 12A - to assess the ability of carers to provide care. | Children's Service Managers District Managers/Practice Leads/Social Workers |
| " | Section 12A - to assess the ability of carers to provide care. | Area Care and Learning Managers/Children's Service Managers |
| " | Section 12B – to determine the amount of and to make direct payments. | Area Care and Learning Managers/Children's Service Managers |
| " | Section 14 - to provide home help and laundry facilities. | Area Care and Learning Managers and Delegated as part of Partnership Agreement with NHS Highland |
| " | Section 28 - to arrange burial or cremation of any person who was in the care of, or receiving help from, the Council immediately before their death, or who was a child being looked after by the Council, and to recover expenses. | Area Care and Learning Managers and Children's Services Managers in relation to children and otherwise delegated as part of Partnership Agreement with NHS Highland |
| " | Section 29 - to defray expenses of parents, relatives or other connected persons in respect of visits to a person, other than a child, in the care of the Council, or receiving assistance from the Council, or a child who is being looked after by the | Area Care and Learning Managers and Children's Services Managers in relation to children and otherwise delegated |

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| | Council, or attending the funeral of such a person. | as part of Partnership Agreement with NHS Highland |
| " | Section 86 - to recover expenditure from other Local Authorities. | Area Care and Learning Managers Children's Services Managers |
| " | Section 87 - to recover charges for services provided under this Act, under the Mental Health (Scotland) Act 1984 or under the Children (Scotland) Act 1995 and to exercise discretion in respect of ability to pay. | Area Care and Learning Managers Children's Services Managers for children and otherwise delegated as part of Partnership Agreement with NHS Highland |
| Chronically Sick and Disabled Persons Act 1970 | Section 1 – to provide information on Council Services and any relevant services of other Authorities or organisations. | Heads of Service/Area care and Learning Managers/Children's Services Managers/District managers/Unit Managers/Headteachers/Children's Services Managers for children and otherwise delegated as part of Partnership Agreement with NHS Highland |
| Disabled Persons (Services, Consultation and Representation) Act 1986 | Section 4 - to assess needs, when requested to do so, by a disabled person or their carer, and to decide whether needs of the disabled person call for the provision of services. | Children's Services Managers /District Managers/Practice Leads/Social Workers for children and otherwise delegated as part of Partnership Agreement with NHS Highland |

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| Mental Health (Care & Treatment)(Scotland) Act 2003 | Section 32 – to appoint Mental Health Officers | Executive Chief Officer Health and Social Care/ Chief Social Work Officer |
| Social Care (Self Directed Support)(Scotland) Act 2013 | To make provision for and enable access to self directed support where appropriate | Head of Service/Chief Social Work Officer for children/ Area Care and Learning Managers/ and delegated as part of Partnership Agreement with NHS Highland |
| Children (Scotland) Act 1995 | Section 17 - to safeguard and promote the welfare of looked after children and to provide advice and assistance to prepare children for when they are no longer looked after by the Council. | Head of Service/ Area Care and Learning Managers/Children's Service managers/District Managers/Unit Managers/Head Teachers |
| " | Section 21 - to seek help from specified persons in the exercise of functions under Part II of the Act. | Children's Service Managers/ District Managers |
| " | Section 22 - to provide services for children in need and to promote the upbringing of such children by their families, including giving assistance in kind or, in exceptional circumstances, in cash. | Children's Service Managers/ District Managers |
| " | Section 27 – to provide day care for children in need who are aged 5 or under and who have not yet started school, and to provide care for school children in need outside school hours or during school holidays. | Area Care and Learning Managers/ Children's Services Managers |
| " | Section 29 as amended by the Children and Young People (Scotland) Act 2014 – to provide advice and assistance for young | Principal Officer (LAG & CP) Head of Children's Services |

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| | persons under 26 but over school age, and formerly looked after by the Council. | |
| “ | Section 30 – to provide financial assistance towards expenses of education or training of a young person under 21, formerly looked after by the Council, including contributions to accommodation and maintenance. | <i>Principal Officer (LAG & GP) Head of Children’s Services</i> |
| ” | Section 76 – to apply to a Sheriff for an Exclusion Order | Children’s Service Managers <i>/District Managers</i> |
| <i>Children’s Act 1989</i> | <i>Section 19 – to review child minding, day care and education services for children under 8</i> | <i>Area Care and Learning Managers</i> |
| <i>Children’s Hearing (Scotland) Act 2011</i> | <i>Section 35 – to apply to a sheriff for a Child Assessment Order</i> | <i>Children’s Service Managers</i> |
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| Children’s Hearing (Scotland) Act 2011 | Section 35 – to apply to a sheriff for a Child Assessment Order | Children’s Service Managers <i>/District Managers</i> |
| | Section 37 – 38 – to apply to a sheriff for a Child Protection Order | Children’s Service Managers <i>/District Managers</i> |
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| “ | Section 55 – to apply to a Justice of the Peace for emergency child protection measures | Children’s Service Managers <i>/District Managers</i> |
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| “ | Section 60 & 66 to cause enquiries to be made and to provide information to the Principal Reporter where compulsory measures of supervision may be necessary in respect of a child | Children’s Service Managers <i>/District Managers/Practice Leads/Social Workers</i> |
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| “ | Section 131 – to recommend reviews of Supervision Orders made by Children’s Hearings by referral of the case to the Principal Reporter | Children’s Service Managers <i>/District Managers/Practice Leads/Social Workers</i> |
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| “ | Section 144-145 - to give effect to Supervision Orders made by Children’s Hearings | <i>Area Care and Learning Managers/Children’s Services Managers</i> |
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| “ | Sections 17 &19 – to investigate the circumstances and thereafter submit a report to court in respect of a child for whom an Adoption Order is being sought | Children’s Service Managers |
| “Adoption and Children (Scotland) Act 2007 | Sections 17 &19 – to investigate the circumstances and thereafter submit a report to court in respect of a child for whom an Adoption Order is being sought | Children’s Service Managers / <i>District Managers/</i> |
| | Sections 80 &83 – to apply for a Permanence Order or a Permanence Order with authority to adopt | Children’s Service Managers/ <i>District Managers/</i> |
| “ | Sections 81 -82 – to exercise rights and fulfil responsibilities in respect of a child for whom a Permanence Order has been granted | Children’s Service Managers/ <i>District Managers/</i> |
| Children and Young People (Scotland) Act 2014 | Section 33 – To prepare a Child’s Plan where appropriate | Health Visitors/Social Workers/ <i>Head Teachers</i> |
| Looked after Children (Scotland) Regulations 2009 | To place a child in a foster placement | Children’s Service Manager / <i>District Manager/Resource Manager (Fostering)</i> |
| Matrimonial Proceedings (Children) Act 1958 | Section 11 – To provide reports to the Court, on request, where the court is considering any question relating to the care and upbringing of a child | Children’s Service Manager / <i>District Manager/Practice leads/Social Workers</i> |
| Carers (Scotland) Act 2016 | Section 12 – To prepare a young carer’s statement | Children’s Service Managers / <i>District Manager/Practice leads/Social Workers</i> |
| <i>The Health and Care (Staffing) (Scotland) Act 2019</i> | <i>To ensure the provision of the appropriate staffing levels across health care services</i> | <i>Executive Chief Officer/Head of Service pursuant to delegation by the partnership agreement</i> |
| <i>The National Health Service (Scotland) Act 1978</i> | <i>Sections 2a, 36, 37, 98 To ensure the provision of speech and language therapy, physiotherapy, occupational therapy, dietetics, primary mental health workers and</i> | <i>Executive Chief Officer/Head of Service pursuant to delegation by</i> |

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| | <i>learning disability nurses in relation to the provision of services for children</i> | <i>the partnership agreement</i> |
| “ | <i>Sections 40, 41, 42 and 98 To ensure the provision of a public health nursing health visiting service and a school nursing service</i> | <i>Executive Chief Officer/Head of Service pursuant to delegation by the partnership agreement</i> |
| <i>The National Health Service (Scotland) Act 1978 Part2 and The childhood immunisation scheme (Directed enhanced Services)(Scotland) Direction 2019</i> | <i>To ensure the delivery of the Childhood immunisation programme</i> | <i>Executive Chief Officer/Head of Service pursuant to delegation by the partnership agreement</i> |
| <i>NHS Reform (Scotland) Act 2004</i> | <i>To ensure public participation in planning and development of health care services</i> | <i>Executive Chief Officer/Head of Service pursuant to delegation by the partnership agreement</i> |

Communities and Place

Key: Environmental Health
Waste Management

| Delegation Banding Codes | Service Section | Description and indicative posts |
|--------------------------|-----------------|--|
| 1 | | |
| 2 | | Waste Management Officer (Operations), Community Warden (assign to housing) , Pest Control Officer / Dog Warden, Waste Management Assistant, Foreperson, Environmental Health Technical officer, Anti-Social Behaviour Investigator (assign to housing and Property) |
| 3 | | Waste Management Officer (Strategy), Environmental Health Officer. Amenities Manager |

| | | |
|----------|--|--|
| 4 | | Principal Waste Management Officer, Senior Environmental Health Officer, Environmental Health Manager, Head of Environmental and Amenity Services Service lead officer for waste, Service lead officer for amenities |
|----------|--|--|

| Statute | Description of power or duty | Title of officer/Level of Post to which delegated (see Key) |
|--|---|--|
| Environmental Protection | | |
| Anti-Social Behaviour etc. (Scotland) Act 2004 assign to housing | s.58 – power to issue and enforce the provisions of graffiti removal notice. | 2 |
| Environmental Protection Act 1990 | s.87 – power to enforce provisions concerning the offence of leaving litter- to also include under powers delegated to Housing | 2 |
| Environmental Health | | |
| The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation | | |
| Statute | Description of power or duty | Title of officer/level of post to which delegated |
| Housing Scotland Act 1987, Housing Scotland Act 2006 and Housing (Scotland) Act 2014 | Part IV-VIII - sub-standard houses - to appoint, authorised officers for the purposes of duties and functions in relation to housing grants, houses not meeting the tolerable standard, houses in disrepair, closing, demolition, Works Notices and Maintenance Orders, overcrowding, and houses in multiple-occupation. Including powers of entry. | Environmental Health Manager Executive Chief Officer – Communities and People |

Ward Management

| | |
|---|---|
| To approve expenditure up to £9999 in relation to the discretionary budget allocated to Wards within the Operational Management Area following consultation with relevant Ward Members. | Senior Ward manager/City Manager |
|---|---|

| | |
|--|--|
| | Ward Management Team |
| To administer twinning arrangements, ceremonial matters and hospitality specific to the area or Ward following consultation with relevant Ward Members where not otherwise dealt with by City/Area Committees | Senior Ward manager/City Manager Ward Management Team |
| To administer local authority trusts and common good funds specific to the operational management area up to a maximum of £9999 £10,000 per application following consultation with relevant Ward Members and where not otherwise dealt with by City/Area Committees. Applications in excess of £9999 £10,000 to be considered by the relevant Area Committee. Corporate Resources Committee. | Senior Ward Manager/City Manager Ward Management Team |
| To agree and arrange, in consultation with relevant Ward Members, representation on outside bodies in the area, where not otherwise dealt with by City/Area Committees. | Senior Ward Manager/City Manager Ward Management Team |
| To agree the naming of buildings within the Council's control in conjunction with Local Members where time does not permit submission to an Area Committee meeting. | This is not delegated to officers – it is in the SoD for Area Committees |

Education: Statutory Powers and Duties of the Council which are Exercisable by Officers of the Authority

| Statute | Description of Power or Duty | Title of Officer to whom/level of post to which delegated |
|---|---|---|
| Education | | |
| Standards in Scotland's Schools, etc Act 2000 | | |
| " | Section 6 - Report on implementation of school development plans. | Area Education Managers/ EQIM/ Quality Improvement Officer Manager/ Headteachers |
| Education (Scotland) Act 1980 | Section 14 - to provide education elsewhere than at an educational establishment. | Heads of Service/ Area Education Managers |

| | | |
|--|--|--|
| " | Section 18 - to do work to improve pupils' safety. | Heads of Service; Area Education Culture and Sport Managers; Headteachers |
| " | Section 23 - to provide education for pupils belonging to area of another Education Authority. | ECO-or Head of Service; Area Education Manager |
| " | Section 28A - determination of placing requests. | Area Education Manager; Heads of Service |
| " | Section 50 - powers in respect of education of pupils in exceptional circumstances. | Head of Service; Area Education Manager |
| " | Section 51 - arrangements for provision of transport and other facilities. | Head of Service; Area Education Manager |
| " | Section 53 - duty to provide free school meals in certain circumstances | Area Education Manager |
| " | Sections 60, 61, 62, 65A, 65B, 65C and Schedule A2 - functions in respect of special educational needs. | Executive Chief Officer Education; Area Education Manager |
| " | Section 87 - suspension of teaching and non-teaching staff from exercise of their duties. | Area Education Managers; Headteachers |
| " | Sections 87, 89 - appointment of teachers to non-promoted posts and to certain promoted posts. | Headteachers; Education Officer; EQIM |
| Scottish Schools (Parental Involvement) Act 2006 | Section 11(2) – advice to Parent Council | Headteacher |
| Children and Young Persons (Scotland) Act 1937 | Section 34 - grant, revocation and variation of licences in respect of children under 12 undergoing training to take part in dangerous performances. | Head of Service-or Area Education Manager |

| | | |
|--|--|--|
| Children's and Young Persons Act 1963 | Sections 37-39 - determination of applications for licences to perform in public. | Head of Service or Area Education Manager |
| Education (Scotland) Act 2016 | Sections 7 -15 – duty to promote and support Gaelic medium education and learning and to carry out assessments where required. | Head of Service |
| “ | Section 25 – duty to appoint a Chief Education Officer | Executive Chief Officer Education or CEO |
| | | |
| Culture and Sport | | |
| | | |
| Local Government and Planning (Scotland) Act 1982 | Sections 14-19 – to award grants in accordance with Council policies, not exceeding £1,500 per application. | Executive Chief Officer Education Community Learning and Leisure Officers Head of Service |
| | | |
| Council Byelaws and Management Rules in respect of Care and Learning Facilities <i>This will be moved to Housing and Property Services under the Corporate Landlord model.</i> | To enforce such byelaws and management rules. | Executive Chief Officer Education Community Learning and Leisure Officers |
| | | |
| Children Act 1989 | Section 27 – to provide day care for children in need who are aged 5 or under and who have not yet started school, and to provide care for school children in need outside school hours or during school holidays. | |
| | Section 19 – to review child minding, day care and education services for children under 8. | Head Teachers |
| Children and Young People (Scotland) Act 2014 | Section 33 – To prepare a Child's Plan where appropriate | Head Teachers |
| | | |
| Non-Statutory Powers | | |
| Education | | |
| | | |
| To promote the welfare of children residing in school residences. | | Area Education Manager |

| | |
|---|---|
| | <p>Senior Education Officer EQIM Education Officer Residences Manager</p> |
| <p>To submit an annual report to the Education Committee on the following companies – Caledonia Community Leisure Ltd, Highland Football Academy Trust and Strathpeffer Pavilion Ltd</p> | <p>ECO</p> |

Housing and Property Service

| | | |
|--|---|-------------------------------|
| <p>Council Byelaws and Management Rules in respect of Care and Learning Facilities Moved from the Education Service.</p> | <p>To enforce such byelaws and management rules.</p> | <p>Head of Service</p> |
|--|---|-------------------------------|

THE HIGHLAND COUNCIL

1. Purpose/Executive Summary

- 1.1 To agree revisions to Part IV of the Council's Scheme of Delegation – Powers Delegated to Officers, insofar as it relates to the Infrastructure and Environment Service, to take account of the undernoted motion which was agreed at the Council meeting held on 10 September 2020 and the subsequent Members' workshop held on 27 November 2020.

(v)In order to reflect the geographical, demographic and logistical challenges in our diverse range of communities in Highland it is clear that the one size does not fit all in a planning context. The current guidance states that one of the definitions of a major planning application is when it meets the threshold of 90 houses, (recently changed from 50 houses). Clearly, the impact of any developments is extremely variable across the region, city, towns, villages and settlements.

In addition, another criterion that has been recently changed is that for the number of objections that triggers an application being referred to the relevant Planning Applications Committee has risen from 5 to 8. Again, this does not take into account the variances in population density across the region.

Regardless of how many Ward Councillors request referral of a planning application, under the current scheme of delegated powers the decision remains at the discretion of the Area Planning Officer.

This motion calls for these inconsistencies be resolved in the following ways:

- 1. Initially, the planning threshold for major development to be reduced to 50 houses with immediate effect for all new applications;*
- 2. Proposals will be brought to the relevant Committee to agree the introduction of a graduated or graded criterion to determine what constitutes a major development, relative to the area or environment. (For example; 5 houses for settlement areas, 10 houses for villages, 20 houses for towns, 50 houses for city locations)*
- 3. Proposals will be brought to the relevant Committee to agree the number of objections required to refer an application to the relevant Planning Applications Committee be set at 5 for city and towns and 3 for villages and settlements or thereby.*
- 4. In instances where two or more local Ward Councillor advise the Area Planning Officer that they wish any planning application to be referred to the relevant Planning Application Committee for determination, it will be mandatory to do so.*

These are measured and proportionate adjustments that will enable all Elected Members to better represent the integrity of their communities.

- 1.2 In response to the motion it was agreed that a Seminar should be arranged (within a short timescale) to allow detailed discussion of the proposals within the Notice of Motion – with the proviso that a report would be submitted to the Full Council before the end of the year reflecting the views put forward by Members at the Seminar.

4. Introduction

4.1 The current Scheme of Delegation includes the following triggers that, if applicable, mean that an application will be referred to Planning Application Committee (PAC) for determination.

- Applications for **Major**¹ developments recommended for **approval**
- **Local** developments recommended for **approval** which have resulted in:
 - 8 (or more) objections
 - unresolved objection from a statutory consultee
- Delegated **refusals** referred to PAC by 2 ward members
- Manager's discretion to refer to PAC (rather than determine under delegated powers)
- Applications lodged by members/senior officers

4.2 At the Members' workshop the proposed changes to the current Scheme of Delegation referred to in points 2, 3 and 4 from the motion referred to at 1.2 above were discussed. The options suggested by Members in the discussion are included below.

5. Point 2 – Sliding Scale of Development Size based on Location

5.1 This point seeks to introduce a tiered approach to the size of housing developments automatically referred to PAC for determination. If adopted, a sliding scale of development size would apply based on where the proposed development is to be located. The current Scheme of Delegation requires that major scale developments² anywhere in Highland must automatically be referred to PAC for determination if the application is recommended for approval. For housing, a major scale development is defined as being 50 or more dwellings or the area of the site is, or exceeds, 2 hectares.

5.2 Members put forward the following options:

- No change to current Scheme of Delegation required;
- Amend to 50 houses in city/large towns and 10 in smaller towns/villages;

Reasons given in support of change included:

- The size of development automatically referred to PAC should reflect the size of the community within which it was located given the characteristics of many Highland communities;
- The impact of development on infrastructure and services should mean that there is greater PAC scrutiny of large developments – below the Scottish Government's definition of "major" – recommended for approval.

Reasons given in support of no change included:

- Proposed change would be overly complicated to administer;
- Proposed change would be confusing for community councils and ward members in whose areas there would be a variety of settlement sizes;
- Proposed change would mean more applications being referred to PAC and would slow down decision making;

¹ As defined in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (see background papers for link)

- Change not needed if 2 ward Members are permitted to refer planning applications recommended for approval to PAC³.

Planning Service response:

- Proposed change would mean differing standards within wards and community council areas leading to confusion for the public, community councils and applicants;
- Data obtained from those applications referred to committee in 2019 supports the view that, particularly in the NPAC area, rural areas/small settlements were active as a disproportionate number of the total applications referred to PAC were in rural areas/small settlements⁴;
- Increase in number of housing applications being referred to PAC will have an adverse impact on the performance of the Planning Service which is monitored by Scottish Government.

6. Point 3 – Sliding Scale of Objections based on Location

6.1 This point seeks to introduce a tiered approach to the number of objections that trigger an application recommended for approval being referred to PAC for determination. If adopted, a sliding scale of objections would apply depending on where the proposed development is to be located. The current Scheme of Delegation requires, across Highland, that 8 objections must be received to a proposed development for that application to be referred to PAC for determination. Since the Council meeting held on 10 September 2020, the threshold has been reduced to 5 objections.

6.2 Members put forward the following options:

- Introduce a sliding scale of objections to reflect community size;
- Retain the reduced threshold of 5 objections across Highland.

Reasons given in support of a sliding scale (5 in towns/3 in scattered communities/hinterland) included:

- It is easier in more populated areas to reach the threshold number of objections; less populated areas shouldn't be penalised;
- In scattered communities/hinterland, 3 objections more appropriate to reflect the size of the community.

Reasons given in support of reduction to 5 objections across Highland included:

- Introducing a sliding scale would increase the number of applications being determined by PAC creating additional workload for officers and PAC members;
- The threshold of 8 objections is too high for rural areas, 5 objections is a more appropriate number;
- 5 objections across Highland avoids confusion.
- Proposed change would mean differing standards within wards and community council areas leading to confusion for the public, community councils and applicants ;

Planning Service response:

³ Applications recommended for refusal are currently notified to ward members. If 2 ward Members request that an application be referred to PAC, it will not be determined under delegated powers.

⁴ NPAC: 30 out of 43 applications determined by NPAC were in rural areas/small settlements; SPAC: 28 out of 58 applications determined by SPAC were in rural areas/small settlements. NB this relates to total applications, not just housing applications.

- As above, data obtained from those applications referred to committee in 2019 supports the view that, particularly in the NPAC area, rural areas/small settlements were active as a disproportionate number of the total applications referred to PAC were in rural areas/small settlements;
- The increase to 8 objections in 2019 was to try and reduce the number of applications being reported to PAC but the Service has listened to Member feedback and is happy to revert to 5 objections across Highland;
- Introduction of a lower threshold in certain parts of Highland would further increase the number of applications being referred to PAC which would have consequences for officer workload, PAC agenda size and the performance of the Planning Service which is monitored by Scottish Government.

Point 4 – Ward Member Referral of Applications Recommended for Approval

7. This point seeks to introduce an additional trigger to allow applications to be referred to Committee. If adopted, 2 Members for the ward within which a development is proposed could refer to Committee an application recommended for approval, 2 ward Members can already call in applications recommended for refusal.

Members put forward the following options:

- 7.2
- No change;
 - Ward Members to have 7 days (5 working days) from inclusion of application on weekly list to call application in their ward to PAC. Minimum of 2 ward Member requests required;
 - As above but substituting 14 days (10 working days) for abovementioned 7 days. There were differing opinions on whether planning reasons should require to be given when calling applications to committee.

Reasons given in support of ward member referral to PAC included:

- This would change the emphasis from officers deciding which applications are reported to PAC, instead, the emphasis would be on Members deciding which applications would be reported to PAC;
- Flexibility would be introduced into the system, Members predicted that the power would be used sparingly;
- Short response time (from the date of issue of the weekly list) would avoid slowing down the application process (but would probably exclude the ability to provide a planning reason for the call in);
- Applications to be referred to PAC on the grounds of public interest (as opposed to giving a planning reason as who would decide if a reason is a planning reason and stating a reason could amount to pre-determining the application) and being seen to determine applications in public;
- If implemented, this should be subject to the expectation that the Members concerned will attend PAC (whether or not they are PAC members);
- Introducing member call in of approvals would address concerns raised under Point 3 above;
- The timescale for calling in should reflect the statutory timescale of 14 days to ensure that Members have time to inform themselves about the application and the community response to it;
- To measure the impact of the change it could be reviewed after 12 months.

Some concerns about the proposed change were raised by Members:

- Concern that non-PAC members of the ward could use this power to put the ward PAC members “on the spot” at meetings, therefore introduction of member referral should require Members relying on the power to attend the meeting at which the called-in application is to be determined and to speak on the item (whether they are PAC or non-PAC members);
- Discussion on applications prior to determination – taking on board the terms of the Code of Conduct – between ward members should be encouraged not discouraged to ensure that members are best informed;
- There was a need to weigh up the costs v benefits of the proposed change;
- Any call-in process should adopt a similar process to that used by Scottish Ministers where, in order to call-in an application, they have criteria that need to be met and reasons are given to justify call-in/no call-in. This protects Scottish Ministers against vexatious objectors and would similarly protect Councillors;
- Alternatively, instead of ward members making the decision, the PAC could call in the application.

Reasons given in support of no change included:

- Members would become the gatekeepers for applications being reported to PAC – meaning the possibility of applicants/objectors putting pressure on members to use their call-in powers;
- Objectivity can be influenced by local campaigns for/against applications;
- More training for community councils would help them exercise their role in the planning system therefore negating the requirement for change.

Planning Service response:

- Obliging members to give a planning reason doesn’t pre-determine the application but ensures that there is a legitimate reason to involve PAC in the determination of the application;
- Code of Conduct for PAC members:
“7.3 In such cases (matters on which councillors have to make individual decisions), it is your duty to ensure that decisions are properly taken and that parties involved in the process are dealt with fairly. Where you have a responsibility for making a formal decision, you must not only act fairly but also be seen as acting fairly. Furthermore, you must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any such decision before the appropriate Council meeting. In making any decision, you should only take into account relevant and material considerations and you should discount any irrelevant or immaterial considerations.”
- Code of Conduct for non-PAC members:
“7.5 You must never seek to pressure officers to provide a particular recommendation on any quasi-judicial or regulatory application; and you should not seek privately to lobby other councillors who have a responsibility for dealing with such an application.”
- Change will mean more applications referred to Committee, increased workload pressure for planning committee members, planning staff and committee services staff.

Recommendations

Members are asked to agree:

- i. No change to development size.
- ii. Reduction of number for objections from 8 to 5 across Highland.

- iii. Implement power of 2 ward Members to call-in any application validated from 1 Jan 2021 onwards and subsequently recommended for approval.
- iv. Review impact of changes after 6 months.

Designation: Executive Chief Officer – Infrastructure & Environment and Executive Chief Officer – Performance & Governance

Author: Dafydd Jones and Karen Lyons

Background Papers:

- Agenda item 13, Highland Council meeting 10 September 2020
- The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 <https://www.legislation.gov.uk/ssi/2009/51/schedule/made>