

3 September 2009

Agenda Item	
Report No	

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

**Report by the Assistant Chief Executive**

**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.

**1. Main Amendments**

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

Part 1 – Powers Reserved to the Highland Council

(<http://www.highland.gov.uk/yourcouncil/committees/committeeinformation/schemeofdelegation/sd-part-1.htm> )

Part 11 – Terms of Reference of Headquarters Committees and Joint Committees

(<http://www.highland.gov.uk/yourcouncil/committees/committeeinformation/schemeofdelegation/sd-part-2.htm> ),

Part III – Functions Referred/Powers Duties Delegated

(<http://www.highland.gov.uk/yourcouncil/committees/committeeinformation/schemeofdelegation/sd-part-3.htm> ) and

Part IV – Powers Delegated to Officers

(<http://www.highland.gov.uk/yourcouncil/committees/committeeinformation/schemeofdelegation/sd-part-iv.htm> ).

**1.1 Part I – Powers Reserved to the Highland Council**

Amend wording as follows – Section 1.20 - “To act as Trustee for Common Good Funds and Associated Funds in relation to determining and delivering investment policy, including the purchase and disposal of trust assets, subject to the administration of these funds being delegated to Inverness City Committee or to Officers in terms of this Scheme.”

Include wording as follows – “To determine national and major applications (as defined in Regulation 2(1) of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 where they have been assessed to be significantly contrary to the development plan. For the avoidance of doubt, those major applications considered to be minor departures are delegated to the appointed Officer in accordance with the Scheme of Delegation.”

1.2 **Part II – Terms of Reference of Headquarters Committees and Joint Committees (and Sub Committees Acting with Full Delegated Powers)**

**Planning, Environment and Development Committee**

**(i) General**

Include wording as follows:-

“To serve notices and to acquire land by agreement or compulsory purchase with the consent of Scottish Ministers pursuant to the delivery of the Council’s duties and responsibilities under Part 1 of the Land Reform (Scotland) Act 2003.”

“To appoint persons to Local Access Fora in pursuance of its duties and responsibilities under Part 1 of the Land Reform (Scotland) Act 2003.”

“To exempt land from access rights in pursuance of its duties and responsibilities under Part 1 of the Land Reform (Scotland) Act 2003.”

“To enter into path agreements in pursuance of its duties and responsibilities under Part 1 of the Land Reform (Scotland) Act 2003.”

Amend wording as follows –

“To determine applications referred to the Committee, rather than to a *Planning Applications Committee*, where the Director, following consultation with the Planning, Environment and Development Chair and the relevant Chairs of the *Planning Applications Committees*, is of the opinion that an application raises strategic and/or cross boundary issues”.

“To determine applications referred to the Committee under the Council’s Notice of Amendment procedures in respect of applications first considered at a *Planning Applications Committee*”.

**Resources Committee**

**(i) Property (4.1)**

Delete current wording as follows – “The acquisition, management, lease and disposal of land and property of a capital value exceeding £100,000 or £15,000pa; investigating and formulating proposals for joint venture utilising Council property assets.”

Include wording as follows – “The management, lease and disposal of land and property of a capital value exceeding £200,000 or £25,000pa: investigating and formulating proposals for joint venture utilising Council property assets.

The acquisition and lease of land and property of a capital value exceeding £100,000 for acquisitions or £15,000pa for leases.”

**Audit and Scrutiny Committee**

**(i) General**

Include wording as follows – “To scrutinise actions agreed by Strategic Committees in response to the findings and recommendations arising from national reports by

scrutiny bodies.”

(ii) Specific

Amend wording as follows –

Para 2.5 – “To consider (for its interests) the implications, *outcomes and action plans*, for the Highland Council of reports produced by Audit Scotland *and other inspection and scrutiny bodies*.”

Para 2.6 – “To *consider and advise* the Council on the review of Financial Regulations and Contract Standing Orders.”

Para 2.9 – “To oversee the Council’s risk management policies and strategies and receive reports annually from the Depute Chief Executive and Director of Finance on Risk Management Plans for all Services, including an update on Corporate and Cross Cutting Risks on a *six monthly* basis.”

Para 2.10 – “To prepare and undertake a *scrutiny* workplan, for the Council’s approval, in relation to monitoring the performance of the Council and funded third party organisations against service delivery and to make recommendations to the Council on proposed action.”

Delete wording as follows – Para 2.7 – “To ensure that tendering or market testing by the Council for goods, works, services and land or property complies with Financial Regulations and Contract Standing Orders”.

1.3 **Part III – Functions Referred/Powers Duties Delegated**

Amend wording as follows – “**Functions Referred/Powers and Duties Delegated to *Planning Applications Committees, Licensing Committees, Planning Review Body* and *Inverness City Committee* from the Council and Headquarters Committees”.**

**Planning Applications Committees - Powers Delegated from the Planning, Environment and Development Committee and from Council**

Amend wording as follows –

“To exercise delivery of the development management functions under the Town & Country Planning (Scotland) Act 1997 (as amended) and the Planning etc (Scotland) Act 2006 except where *a planning application for national or major development is recommended for the grant of permission where such a decision would be a significant departure from the Development Plan*.”

Delete wording as follows –

“To determine marine fish farming applications following the coming into force of the Town & Country Planning (Marine Fish Farming) Scotland Order 2007.”

“To exercise full delegated powers on behalf of the Council in fulfilment of the provisions of the Planning etc (Scotland) Act 2006 to review at the request of the applicant delegated decisions taken by Officers.”

## **Planning Review Body – Powers Delegated from the Council**

Include wording as follows –

“To exercise full delegated powers on behalf of the Council in fulfilment of the provisions of the Planning etc (Scotland) Act 2006 to review, at the request of the applicant:

1. Any application (as defined in Regulation 2(2) of the Town & Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009) refused by the appointed Officer;
2. Any condition attached to an application (as defined above) approved by the appointed Officer; or
3. Any application (as defined above) that has not been determined by the appointed Officer within the period allowed for determination of the application.

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

#### **Housing and Property Service**

##### **(i) Housing (Scotland) Act 1987**

Delete current wording in relation to Section 47 – “to instruct Court action for recovery of possession”.

Delete current wording in relation to Sections 49 and 50 – “to act in respect of abandoned tenancies”.

Delete current wording in relation to Section 57 – “to consent, or withhold consent, to tenants’ repairs and improvements and to determine whether, and if so to what extent, the cost of which should be reimbursed”.

Include wording in relation to Sections 61-64 as follows – “to determine applications under Right to Buy” – delegated to Area Housing and Property Managers.

##### **(ii) Housing (Scotland) Act 2001**

Include wording in relation to Section 14 as follows – “to instruct court action for survey, inspection and valuation” – delegated to Area Housing and Property Managers.

Include wording in relation to Sections 17-21 as follows – “to act in respect of abandoned tenancies” – delegated to Area Housing and Property Managers.

Include wording in relation to Section 27 as follows – “to implement regulations issued under the ‘Right to Repair’ Scheme” – delegated to Area Housing and Property Managers.

Include wording in relation to Sections 28-29 as follows – “to consent or withhold consent to tenants’ repairs and improvements and to determine whether, and if so to what extent, the cost of works should be reimbursed” – delegated to Area Housing and Property Managers.

### (iii) Non-Statutory Powers – Housing

Delete wording as follows – “To determine applications under the rent to mortgage, right to buy, right to compensation for improvement and right to repair schemes”.

Include wording as follows – “To authorise payment of compensation to tenants and maintain a register of such payments” – delegated to Director of Housing and Property.

### (iv) Property Services

Amend wording as follows – “To approve, negotiate and undertake by disposal sale, lease, assignation, sub letting, lease surrender, licence or excambion of General Fund property interests up to a value not exceeding £200,000 or £25,000pa subject to demonstrating the asset is surplus to the operational requirements of the Highland Council services and further subject to the sale price/rent not being below market value and consultation with the Ward Members”.

Include wording as follows – “To acquire or lease assets up to a value of £100,000 for acquisitions or £15,000pa for leases, subject to consultation with Ward Members” – delegated to Head of Housing Development and Estates.

## **Planning and Development Service**

### (i) Town and Country Planning (Scotland) Act 1997 and Planning etc (Scotland) Act 2006

Delete current wording as follows – “To determine all applications except.....(a)... (b)... (c)...(d)...(e)...”

Include wording as follows – “To determine all applications except:-

(a) Major applications (as defined in Regulation 2(1) of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 recommended for approval in accordance with the development plan but where there have been either objections on planning grounds from members of the public residing at, or having their principal place of business at, five or more separate addresses, which objections cannot be addressed by conditions, or where there are objections from statutory consultees that cannot be addressed by conditions; where, in the opinion of the Head of Planning and Building Standards or Area Planning and Building Standards Manager (as appropriate) the development plan is not sufficiently clear or there is no relevant policy framework to determine the application; where Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, by majority request in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee; made by the Council or in which the Council has an interest; made by an Elected Member or Senior Official of the Council

(b) Local applications (as defined in Regulation 2(2) of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 recommended for approval in accordance with the development plan but where there have been either objections on planning grounds from members of the public residing at, or having their principal place of business at, five or more separate addresses, which objections cannot be addressed by conditions, or where there are objections from statutory consultees that cannot be addressed by conditions; where, in the opinion of the Head of Planning and Building Standards or Area Planning and Building Standards Manager (as appropriate)

the development plan is not sufficiently clear or there is no relevant policy framework to determine the application; where Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, by majority request in writing within 5 working days of such notification that the application be referred to the relevant Planning Applications Committee; submitted by the Council or in which the Council has an interest; submitted by an Elected Member or Senior Official of the Council

which shall be determined by the local Planning Applications Committee” –

delegated to the Head of Planning and Building Standards (HPBS)/Area Planning and Building Standards Manager (APBSM)/Development Management Team Leaders (DMTL)/Principal Planners with the approval of the APBSM (PP).

Amend wording as follows – “To determine whether the Council wishes an Appeal or application called in by *Scottish Ministers* to be dealt with by way of written submissions or by public or by Public Local Inquiry” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To issue screening and scoping opinions in respect of whether or not an Environmental Statement is needed to accompany an application and to determine the scope of such Statements” – delegated to APBSM/DMTL/PP.

Include wording as follows – “To issue screening opinions in respect of whether or not the development proposed is a ‘major development’” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To issue *Directions* requiring additional information *in respect of Regulation 24 of the Town and Country Planning (DM Procedure) (Scotland) Regulations 2008*” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To agree an extended period with the applicant for determination of a planning application *under the Town and Country Planning (Scotland) Act 1997, Section 47(2) and Regulation 26(3) Town and Country Planning (DM Procedure) (Scotland) Regulations 2008*” – delegated to APBSM/DMTL Case Officers.

Amend wording as follows – “(Application includes applications for planning permission (*detailed planning permission in principle and approval of matters*), *applications for developing land without compliance with conditions previously attached (s42 applications)*, *applications for certificates of lawfulness of existing (s150) or proposed (s151) use or development*, listed building consent, conservation area consent, hazardous substances consent, prior approvals (agriculture, forestry, demolition and minerals permitted development), advertisement consent, consents required to purify conditions of permission, Section 64 applications for non-material variations of planning permissions, notifications of electricity lines and gas transmission pipelines, details of fulfilment of permitted development conditions, notices of proposed developments and *aquaculture applications*)”.

Amend wording as follows – “To issue response notices in respect of Purchase Notices and Counter Notices in respect of Blight Notices” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To serve Planning Contravention Notices, *Breach of Condition Notices, Temporary Stop Notices, Section 33A Notices requiring the submission of an application, Section 272 Notices requiring the submission of*

*information and Notices requiring proper maintenance of land (Waste Land Notices).*

To seek interdict in the Sheriff Court and/or the Court of Session where circumstances are considered to require urgent action after consultation with the *Head of Legal and Democratic Services or Solicitors acting for her* – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To determine applications for certificates of lawful use or development” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To take enforcement action in respect of control of advertisements and to instruct the removal or obliteration of placards or posters displayed in contravention of advertisement regulations” – delegated to APBSM/DMTL/PP.

Amend wording as follows – “To exercise rights of entry and powers to require information (Sections 269, 270 and 272) and to serve Notices (Section 271)”.

Amend wording as follows – “To require the giving of information to enable service of Notices under Section 275 of the 1997 Act” – delegated to APBSM/DMTL/PP.

Include wording as follows – “To decline to determine applications under the terms of the Acts (Section 39 of the 1997 Act and Section 15 of the 2006 Act)” – delegated to APBSM/DMTL/PP.

#### (ii) Licensing (Scotland) Act 1976

Amend wording as follows – “To issue *Section 23* certificates in relation to development management for the purposed of the Licensing (Scotland) Act 2005” – delegated to APBSM/DMTL/PP.

#### (iii) Town and Country Planning (General Permitted Development) (Scotland) Order 1992

Amend wording as follows – “To *issue, in exceptional circumstances where urgent protection requires to be given to sensitive countryside or buildings, an Article IV Direction to remove telecommunication permitted development rights*” – delegated to APBSM/DMTL/PP.

#### (iv) Land Compensation (Scotland) Acts

Amend wording as follows – “Determination of applications for certificates of appropriate alternative development” – delegated to APBSM/DMTL/PP.

#### (v) Transport Act 1968

Amend wording as follows – “To make representations and objections in respect of applications for goods vehicle operators’ licences” – delegated to APBSM/DMTL/PP

#### (vi) Land Reform (Scotland) Act 2003

Include wording as follows – “To enter into path agreements pursuant to the Council’s duties and responsibilities under the Act” – delegated to Director of Planning and Development.

(vi) Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Amend wording as follows – “To authorise execution of works urgently necessary for the preservation of an unoccupied listed building (Section 49)” – delegated to APBSM/DMTL/PP.

(vii) Building (Scotland) Act 2003

Delete current wording and Include revised wording as follows –

“To determine applications for Building Warrant, including staged applications, amendment applications and applications for limited life buildings, and impose continuing requirements.

To issue Refusal Notice where applicant/agent has failed to respond to observation letter and 9 months has elapsed.

In relation to applications for a Completion Certificate, issue the Acceptance of a Completion Certificate and discharge the Continuing Requirements.

To serve Notice and take the necessary action in respect of non-conforming buildings or unauthorised building work.

To serve Notice and take all necessary action in respect of Defective and/or Dangerous Buildings.

To serve Notice of Intention to enter premises and/or to require testing of building materials.

To issue “Letter of Comfort” for works that pre-date 1 May 2005 in respect of building operations which do not have the benefit of a Building Warrant and/or a Completion Certificate.

In respect of verification duties and responsibilities, to issue observation letters in response to Applications for Building Warrants, letters rejecting the submission of a Completion Certificate and letters highlighting non conformity with the regulations following routine site inspections.”

(viii) Civic Government (Scotland) Act 1982

Amend wording as follows – “To approve *and/or respond to consultations in relation to* raised structures (*stadia*) for seated or standing accommodation and to impose conditions (Section 89 – *Safety of Platforms*)”.

Include wording as follows – “To approve and/or respond to consultations in relation to the suitability of premises and impose conditions (Section 41 – Public Entertainment Licences)” – delegated to Building Standards Team Leaders (BSTL) and Principal Building Standards Surveyors (PBSS).

Include wording as follows – “To issue comment on consultations on licensing matters arising from the Act” – delegated to APBSM/DMTL/PP.

(ix) Electricity Act 1989

Include wording as follows – “To respond to consultations on energy developments under the Act except where the criteria outlined in the Town and Country Planning (Hierarch of Developments) (Scotland) Regulations 2009 apply in relation to Major and Local Applications” – delegated to APBSM/DMTL/PP.

(x) Additional Sections to be included

(a) Licensing (Scotland) Act 2005 – “To issue Section 50 Certificates and respond to consultations as to the suitability of premises for the purposes of Liquor Licensing” – delegated to Building Standards Team Leaders (BSTL)/Principal Building Standards Surveyors (PBSS).

(b) Licensing of Houses in Multiple Occupation Order 2000 – “To approve and/or respond to consultations in relation to the suitability of premises and impose conditions” – delegated to BSTL/PBSS.

(c) Marriage (Scotland) Act 1997 – Civil Marriage (Approval of Places) (Scotland) Regulations 2002 – “To approve and/or respond to consultations in relation to the suitability of premises for the purpose of licensing the premises” – delegated to BSTL/PBSS.

**2. Other Administrative Changes**

2.1 A number of minor administrative changes have also been made to remove duplication and to clarify existing arrangements.

**Recommendation**

The Council is asked to approve the proposed amendments to the Scheme of Delegation and Administration to Committees and Sub Committees and to Officers as detailed and to note that amended pages will be circulated to all Members following the meeting for inclusion in the Council Handbook.

Signature:

Designation: Assistant Chief Executive

Date 26 August 2009