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## **COUNCIL EXECUTIVE**

### **CHIEF PLANNING OFFICER AND PLANNING DELEGATIONS**

#### **REPORT BY GOVERNANCE MANAGER**

##### **A. PURPOSE OF REPORT**

To seek approval of changes to the Scheme of Delegations in relation to the appointment of a Chief Planning Officer and some other updates to current planning delegations

##### **B. RECOMMENDATIONS**

1. To establish the newly required post of Chief Planning Officer with the statutory role description set out in Appendix 1
2. To amend the Scheme of Delegations to add the Chief Planning Officer post to the list of "Proper Officers" in Appendix 2 to the Scheme and to the list of statutory officers in Appendix 3
3. To designate the holder of the post of Head of Planning, Economic Development & Regeneration Services to be the Chief Planning Officer and to authorise the Chief Executive to appoint a deputy if required
4. To update the Scheme of Delegations in relation to Tree Preservation Orders and other planning enforcement action as shown in Appendix 2
5. To amend the Scheme of Delegations to make the Head of Planning, Economic Development & Regeneration Services responsible for the council's consideration and review of Masterplan Consent Areas, subject to decisions about making of Masterplan Consent Area Schemes being carried out by full council or Council Executive

##### **C. SUMMARY OF IMPLICATIONS**

<b>I</b>	<b>Council Values</b>	Open, honest and accountable. Collaborative, inclusive, adaptive
<b>II</b>	<b>Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	Town & Country Planning (Scotland) Act 1973. Planning (Scotland) Act 2019. Local Government (Scotland) Act 1973.
<b>III</b>	<b>Implications for Scheme of Delegations to Officers</b>	The Scheme will be updated to reflect the decisions taken today

<b>IV</b>	<b>Impact on performance and performance Indicators</b>	Good governance contributes to good performance and good decisions
<b>V</b>	<b>Relevance to Single Outcome Agreement</b>	N/a
<b>VI</b>	<b>Resources - (Financial, Staffing and Property)</b>	Within existing resources
<b>VII</b>	<b>Consideration at PDSP</b>	No PDSP consideration required
<b>VIII</b>	<b>Other consultations</b>	Planning Services. Legal Services

## **D. TERMS OF REPORT**

### **1 Chief Planning Officer**

1.1 Legislation requires that planning authorities appoint a “Chief Planning Officer”. The legal duty was enacted in 2019. It was brought into force in March 2024 and applies from 1 April 2024. Planning authorities require to have regard to [statutory guidance](#) in making the appointment and in the way the post operates. The key points covered by law and guidance are:-

- Qualifications and desirable characteristics of the post-holder
- Advice and leadership in planning and other development-related functions
- Delivery of national planning priorities and aligning local priorities with the national
- Acting as placemaking champion and as ambassador for the planning function
- Contribution to the council’s leadership, vision and strategic direction

1.2 There are other existing statutory officer appointments which are already covered in the Scheme of Delegations to Officers. Those are “Proper Officer” positions (Appendix 2 to the Scheme) with related statutory role descriptions (Appendix 3). Holders of these positions will have separate employment duties and roles which arise as a matter of contract rather than statute. The Chief Planning Officer will be added to the Scheme in those same ways. The proposed statutory role description is in Appendix 1 to this report.

1.3 The post sits naturally and comfortably with the Head of Planning, Economic Development & Regeneration Services. Committee is asked to attach the statutory role to the Head of Service role. As is the case with the other statutory officer positions (other than for Monitoring Officer), it is proposed that the Chief Executive be given delegated authority to formally appoint a depute if judged to be necessary.

### **2 Planning enforcement powers**

2.1 The current entries in the Scheme of Delegations in relation to planning enforcement actions are slightly dated and incomplete. In particular, they do not reflect the current legal procedures around Tree Preservation Orders (TPOs). For example, they still refer to “Emergency Tree Preservation Orders” which no longer exist, and they do not make it clear where the power to confirm a TPO as a permanent order sits.

2.2 The current entries in the Scheme in relation to planning enforcement are shown in the first part of Appendix 2 to this report. The second part shows the revised entries proposed. They aim to tidy up the current entries and to address the specific issues

around TPOs. References to Emergency Tree Preservation Orders are removed. It states that TPOs must be confirmed at Development Management Committee if there are unresolved competent objections or representations after the TPO is first made by officers. If there are none then the Head of Planning, Economic Development & Regeneration Services will be able to confirm the TPO.

### **3 Masterplan Consent Area Schemes**

- 3.1 Regulations have recently brought into effect powers for planning authorities in relation to “Masterplan Consent Areas” (MCA) and “Masterplan Consent Area Schemes” (MCA Scheme). The powers take effect from 1 April 2024.
- 3.2 MCAs build on a previous initiative called “Simplified Planning Zones”. MCAs are expected to be areas of land identified by planning authorities for particular types of development or uses and will have a life span of 10 years. They will allow planning authorities to proactively consent the type and quality of development they wish to encourage and enable in specified places. Planning authorities give effect to MCAs through an MCA Scheme. MCA schemes will effectively grant permission (including roads construction, listed building and conservation area consent) for the types of development set out in the scheme, within the designated geographical area to which the scheme relates, without the need to apply for planning permission. The intention is for the planning authority to take a lead role in ‘place’ based planning in so far as it proactively consents the type and quality of the development it wishes to see in its area.
- 3.3 MCAs are being promoted to support placemaking, to ‘frontload’ scrutiny and to offer a greater degree of certainty to developers by reducing their risk and by streamlining the consenting process, all of which it is hoped will encourage and possibly facilitate investment in places. There may at the very least be the potential to perhaps trial MCAs in the emerging LDP for urban expansion or regeneration. It will be important that the costs incurred in establishing a MCA can be recovered from developers. Officers will report further as and after regulations and guidance have been issued and considered.
- 3.4 Planning authorities do not require to have MCAs or to make MCA Schemes. However, they must at least formally consider making an MCA Scheme, or reviewing any MCA Scheme already in place, once in every five-year period (as defined). Having done so, they must publish a statement setting out what they decided, and why.
- 3.5 The Scheme of Delegations requires to be amended to add in the MCA duty to the responsibilities of the Head of Planning, Economic Development & Regulatory Services. That delegation will state that the actual decision about making or altering an MCA Scheme must be made by full council or Council Executive.
- 3.6 Due to the date the governing legislation was enacted, its wording, and the date of activation of the duty, the council requires to have considered making an MCA Scheme before 24 July 2024. The enabling regulations and guidance are not and will not be available to guide and inform that process and decision. The Scottish Government accepts that actually making an MCA Scheme will not therefore be possible. It has though indicated that planning authorities must at least consider doing so, perhaps considering how they might wish to use the new provisions once regulations and guidance have caught up with political desire. The Scottish Government’s Chief Planner has referred to planning authorities making a “first statement”. A separate report will be brought to Council Executive to ensure whatever duty exists is met as far as it can be.

**E. CONCLUSION**

Approval of this report will ensure that newly-activated legal duties are properly reflected in the Scheme of Delegations to Officers and will ensure that Scheme entries in relation to planning enforcement actions are up to date.

**F. BACKGROUND REFERENCES**

- 1 Town & Country Planning (Scotland) Act 1973, Planning (Scotland) Act 2019 and relevant subordinate legislation (Chief Planning Officer, Tree Preservation Orders, Masterplan Consent Areas)
- 2 [Chief Planning Officers: Statutory Guidance \(March 2024\)](#)
- 3 Local Government (Scotland) Act 1973 (Scheme of Delegations)

Appendices: 1. Statutory role description  
2. Planning enforcement delegations

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## APPENDIX 1

### CHIEF PLANNING OFFICER

#### 1 Legislation and guidance

- 1.1 The Chief Planning Officer is a statutory appointment by virtue of section 1A of the Town & Country Planning (Scotland) Act 1997 (the 1997 Act). The requirement to make the appointment took effect on 1 April 2024.
- 1.2 Legislation requires the Scottish Ministers to issue guidance to planning authorities concerning the Chief Planning Officer role. That guidance is to cover both the qualifications expected of the post-holder and the manner in which the role is to be carried out. Planning authorities are required to have regard to that guidance. [Guidance was published on 2 April 2024.](#)
- 1.3 The post is not automatically a politically restricted post. The council has designated it as such under section 2(1)(g) and (2) of the Local Government & Housing Act 1989.

#### 2 Appointment

- 2.1 Permanent appointments must be made by full council or by a committee with appropriate powers. Temporary, interim and depute appointments may be made by the Chief Executive. The council must have regard to the statutory guidance when making the appointment.
- 2.2 The appointment is identified in the council's [Scheme of Delegations](#) to Officers in the entries relating to the substantive post held. It is also included in the list of Proper Officer appointments in Appendix 2 to the Scheme. The officer appointed will have corporate and management responsibilities and employment duties, not included here, arising from their substantive post.
- 2.3 The statutory guidance indicates that the Chief Planning officer will be the council's head of its planning profession, and will be the senior officer responsible for the planning service. This will normally carry responsibility for effective management and development of staff and embedding continuous improvement in the service.
- 2.4 The statutory guidance lists desirable skills and experience to be held and demonstrated by the Chief Planning Officer. As well as those expected of senior council officers, they include collaborative and partnership working; ensuring effective relationships between elected members and officers; leadership, motivation and development of staff; effective communication; and supporting democratic planning processes.

#### 3 Qualifications

- 3.1 The legislation does not prescribe qualifications. The statutory guidance states that the Chief Planning Officer should possess a degree in town planning or an associated discipline, such as surveying or civil engineering. As an alternative to a degree, a candidate may be able to prove a record of alternative education, vocational experience and delivery.
- 3.2 The guidance also indicates that chartered membership of the Royal Town Planning Institute (RTPI) is highly desirable.

#### 4 Duties and powers

- 4.1 The statutory duty of the Chief Planning Officer extends beyond the narrow “planning” duties and powers of the council. The Chief Planning Officer is to advise the council about the carrying out of:-
- functions conferred by virtue of the planning Acts, and
  - functions conferred by any other enactment, insofar as the function relates to development
- 4.2 The guidance describes duties and responsibilities which rest on the Chief Planning Officer, covering:-
- Professional adviser, playing a key role in the council’s leadership, vision and strategic direction and being an ambassador for the planning profession and function
  - Delivery of national planning priorities, contributing to plans and strategies which are aligned with and support them
  - Champion of place, as the council’s placemaking champion
- 4.3 The Chief Planning officer should also be responsible for preparation and submission of the council’s annual report on the performance of its planning functions under section 251A of the 1997 Act.
- 4.4 The council’s [Scheme of Delegations](#) describes decisions and actions that may be taken without reference to elected members and so those where committee or council decisions are required. It may be necessary or advisable to seek approval from members in certain circumstances. The Scheme also permits sub-delegation of authority to other council officers to act in their name and on their behalf.

## APPENDIX 2

### Planning enforcement delegations

#### Current Scheme entries

Delivering and reviewing the Enforcement Charter

Deciding whether the lopping, felling etc. of trees subject to Tree Preservation Orders is necessary and the authorisation of such lopping, felling etc.

Authorising the making of Emergency Tree Preservation Orders, Building Preservation Notices, Stop Notices and Interim Interdicts

Issuing breach of condition notices and planning contravention notices

Authorising action to remedy an injury to amenity caused by the condition of land or a building

Deciding whether to pursue enforcement action except in cases which have been instigated by the local member and that member expressly wishes, after discussion with the Head of Planning and Economic Development, that action should be taken

#### Proposed Scheme entries

Tree Preservation Orders:-

- Making Tree Preservation Orders
- Determining the competency of and resolving objections and representations in response to the making of a Tree Preservation Order
- Confirming Tree Preservation Orders, subject to there being no unresolved competent objections or representations in which case the decision on confirmation will be by Development Management Committee
- Authorising or refusing consent to any uprooting, felling or lopping of trees covered by a Tree Preservation Order on statutory grounds

Enforcement action:-

- Delivering and reviewing the Enforcement Charter
- Authorising the making of Building Preservation Notices, Stop Notices, breach of condition notices, planning contraventions notices, action to remedy an injury to amenity caused by the condition of land or a building, and, in consultation with the Chief Solicitor, instructing proceedings for interdict and interim interdict