

**REPORT TO:** East Lothian Council

**MEETING DATE:** 27 February 2024

**BY:** Executive Director for Council Resources

**SUBJECT:** Amendments to Standing Orders

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## **1 PURPOSE**

- 1.1 To seek approval for changes to Standing Orders (Scheme of Delegation) to require that proposed consultation responses in respect of applications made under Section 36 of the Electricity Act 1989 are reported on the Council's Committee Expedited List, thereby giving Members the opportunity to call proposed responses off the List, for a decision of Planning Committee; to give the Head of Development further powers in relation to the variation, modification and discharging of planning obligations; and to amend the powers relating to Section 193 (signing powers for notices and orders) of the Local Government (Scotland) Act 1973.

## **2 RECOMMENDATIONS**

- 2.1 That Council approves the proposed new processes and associated changes to the Scheme of Delegation (as set out in Sections 3.7, 3.9 and 3.19).

## **3 BACKGROUND**

- 3.1 In Scotland, any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of 50 megawatts (MW) or over requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Such applications are processed on behalf of the Scottish Ministers by the Energy Consents Unit ("ECU"). Onshore generating stations which will have a capacity of less than 50MW when constructed are not within the scope of the Electricity Act, and such proposals require an application for planning permission to be submitted to the relevant local planning authority.
- 3.2 Electricity generating stations encompass a range of technologies, including wind turbines, thermal generation and solar arrays. In addition,

the Scottish Government considers that a battery energy storage system is to be treated as a generating station. At present, there are a number of proposals for the development of electricity generating stations within East Lothian. Such proposals can sometimes generate significant public interest and/ or concerns.

- 3.3 The ECU consults East Lothian Council on all Section 36 applications within East Lothian. Additionally, the Council may be consulted on applications that are not within East Lothian but where the ECU thinks that it may impact on the authority area. Where the Council objects to the granting of consent for a generating station within its area, a public inquiry must be held.
- 3.4 Standing Orders (Scheme of Delegation, Section 12.5) currently delegates the following specific function – “Providing the Council’s view as planning authority on planning applications and other consultations from neighbouring planning authorities and the Scottish Government”.
- 3.5 The current procedure is that Section 36 consultations are allocated to a planning case officer. They will consult relevant internal services and will undertake a site visit. Scottish Ministers will consult with other relevant bodies and send their responses to the planning case officer for consideration. The case officer will take into account consultation responses, as well as any other representations received, before preparing a consultation response. The response will then be checked over by either the Service Manager for Planning or the Team Manager for Policy and Strategy before it is sent to the ECU. The response will confirm whether or not the Council objects to the proposal.
- 3.6 It is proposed that once the consultation response has been checked over it will be placed on the Committee Expedited List. The List is circulated each week to Members, who would then have seven days in which to request referral to Planning Committee. Otherwise, the consultation response is deemed to be accepted and the Service Manager for Planning shall be authorised to proceed on that basis.
- 3.7 It is proposed that the Scheme of Delegation is amended to reflect this process.

Section 12.5, which relates to one of the specific functions delegated to the Head of Development, should be amended as follows:

Providing the Council’s view as planning authority on planning applications and other consultations from neighbouring planning authorities and the Scottish Government. The only exception to this is consultation responses on applications made under Section 36 of the Electricity Act 1989 (see Section 18.5).

This proposed wording of this new section (Section 18.5) is as follows:

**Scheme of Delegation Section 18.5: Consultation requests under Section 36 of the Electricity Act 1989**

Consultation responses on applications made under Section 36 of the Electricity Act 1989 shall be circulated on the Committee Expedited List

to Members, who shall have seven days to request referral to the Planning Committee, otherwise the officer consultation response is deemed to be accepted and the Service Manager for Planning shall be authorised to proceed on that basis.

The remit and powers of the Planning Committee (listed under Section A of the Scheme of Administration for the Planning Committee) will be expanded to include:

*5. Consultation responses on applications made under Section 36 of the Electricity Act 1989*

(a) deciding on consultation responses referred to the Planning Committee under Section 18.5 of the Scheme of Delegation.

3.8 This process will be reviewed in 2025. Any subsequent amendments would need to be the subject of a further report to Council.

3.9 The Council is also being asked to approve an addition to Section 18.4 of the Scheme of Delegation, which, if approved, will come into effect on 1 April 2024. This section currently states:

**18.4 Decisions in relation to the variation, modification or discharging of planning obligations**

a. The Head of Development shall have authority to determine applications to vary, modify or discharge planning obligations, in terms of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010

b. The Head of Development shall have authority to determine applications to vary, modify or discharge Good Neighbour Agreements, in terms of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010

The proposed addition is as follows:

c. The Head of Development shall have authority to modify or discharge planning obligations through written agreement with all parties providing that there is no reduction in the scale or level of obligation or financial contribution to the Council or any non-applicant.

3.10 A S75 application will be required for any proposed modifications that seek to reduce the scale or level of obligation or financial contribution to the Council or causes additional burden to any non-applicant which they have not been informed of and agreed to in writing.

3.11 This proposed change to Scheme of Delegation is requested as the Planning (Scotland) Act 2019, Section 37 brought amendments to the Town and Country (Scotland) Planning Act 1997 which govern the creation, modification and discharge of planning obligations. These amendments came into force 18 November 2020. Section 37 amends S75A and S75B of the Town and Country Planning (Scotland) Act 1997,

which address the modification and discharge of planning obligations and the appeal regime.

- 3.12 The new legislation provides two ways to modify and discharge S75 planning obligations.
  - 1) An agreement in writing among the Planning Authority and all the parties against who the planning obligation is enforceable
  - 2) An application under S75A or following an appeal to Scottish Ministers
- 3.13 The new legislation allows all the parties (against whom the obligation is enforceable) to revisit the terms of a planning obligation. The Council, as the Planning Authority wants to safeguard the S75 as these planning obligations are the principal mechanism that controls the delivery of developer contribution towards necessary infrastructure and affordable housing.
- 3.14 Previously to this new legislation coming into effect the Council could only determine that a planning obligation was to continue without modification, was to be discharged or was to have effect subject to modifications specified in the S75A Application. S75B provided for the right to appeal against a decision to the Scottish Ministers. However, the modification by agreement provides that all the parties (including the Planning Authority) whom the planning obligation is enforceable agree and the Planning Authority can propose an alternative modification which can be accepted providing agreement by all the interested parties. This would allow parties to agree the modifications to changes in dates of contributions being received, affordable housing sites transferred, or payment schedules modified without impact on the actual amount or scale of the contribution.
- 3.15 There is a further safeguard to the process that if a modification or discharge would increase the burden on a non-applicant and the applicants have not sought the non-applicant's agreement, then a formal S75 application would be required.
- 3.16 This subtle change in this legislation provides flexibility and efficiency as formal S75A applications require a selective consultation period and can take weeks or months for the modification or discharge to be determined.
- 3.17 The written agreement option will assist in reducing time and workloads especially where planning obligations are obsolete.
- 3.18 It is critical for the Planning Authority that the wording is correct for the S75 modification(s), and this new written agreement option allows for the Council to propose alternative wording for modification, providing all parties agree.
- 3.19 Section 19 of the Scheme of Delegation, concerning the Local Government (Scotland) Act 1973, Section 193, states that the proper officer for signing notices and orders is 'the relevant Executive Director/Head of Service responsible for the service relating to the notice/order (in consultation with the Service Manager – Governance/designated Principal or Senior Solicitor)'. It is proposed that

this wording is amended to read: ‘the relevant Executive Director/Head of Service responsible for the service relating to the notice/order or the Service Manager – Governance/designated Principal or Senior Solicitor’. This amendment will allow for additional appropriately qualified officers to sign notices and orders.

#### **4 POLICY IMPLICATIONS**

4.1 None

#### **5 INTEGRATED IMPACT ASSESSMENT**

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

#### **6 RESOURCE IMPLICATIONS**

6.1 Financial – None

6.2 Personnel – None

6.3 Other - None

#### **7 BACKGROUND PAPERS**

7.1 East Lothian Council’s Standing Orders

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