

**REPORT TO:** East Lothian Council

**MEETING DATE:** 27 February 2024

**BY:** Executive Director for Council Resources

**SUBJECT:** Appointment of Chief Planning Officer

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## **1 PURPOSE**

- 1.1 To advise of the requirement for the Council to appoint a Chief Planning Officer, to seek formal approval of the appointment of Keith Dingwall as the Council's Chief Planning Officer (as set out in Section 3.4 of this report), and to seek approval of the consequential changes to the Scheme of Delegation (as outlined in Appendix 1 to the report).

## **2 RECOMMENDATIONS**

- 2.1 Council is asked:
- to note the requirement of the Council to appoint a Chief Planning Officer, in accordance with the Town and Country Planning (Scotland) Act 1997 (as amended);
  - to approve the appointment of Keith Dingwall to the statutory post of Chief Planning Officer; and
  - to approve the changes to the Scheme of Delegation to take account of the establishment of the role of Chief Planning Officer (as set out in Appendix 1).

## **3 BACKGROUND**

- 3.1 The Town and Country Planning (Scotland) Act 1997 (as amended) requires that each planning authority in Scotland must appoint a Chief Planning Officer.
- 3.2 The appointment and role of the Chief Planning Officer becomes a statutory requirement in April 2024, to advise authorities on planning and other functions relating to development. The post of Chief Planning Officer

is to help strengthen leadership on planning and corporate recognition of the importance and positive influence of planning within their authorities.

- 3.3 As required by the Act, guidance on the role of Chief Planning Officer was produced by the Scottish Government in March 2024. A copy of this guidance is contained as a background paper to this report. Planning authorities must have regard to the appropriate qualifications and experience outlined in this guidance when making an appointment to the role.
- 3.4 Keith Dingwall was appointed as temporary Service Manager for Planning in October 2019. In May 2022, Mr Dingwall was confirmed as the preferred candidate for the permanent post of Service Manager for Planning and was duly appointed to that role. In taking up his post, Mr Dingwall has in effect assumed the role of the Council's Chief Planning Officer. Mr Dingwall has a degree in town planning and is a chartered member of the Royal Town Planning Institute. It is considered that he has the relevant skills and experience that are necessary for the role. The Council is therefore asked to approve Mr Dingwall's appointment to the statutory position of Chief Planning Officer.
- 3.5 As a number of the specific duties and responsibilities associated with the role of Chief Planning Officer have, until now, sat with the Council's Head of Development, a number of changes to the Council's Scheme of Delegation are required. These are set out in Appendix 1 to this report.

## **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 – There are no direct financial implications associated with the recommendations in this report with all posts provided for within approved budgets.
- 6.2 Personnel – None other than those set out within this report.
- 6.3 Other - None

## **7 BACKGROUND PAPERS**

- 7.1 East Lothian Council Standing Orders

## 7.2 Scottish Government Statutory Guidance on Chief Planning Officers

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<b>DATE</b>	15 April 2024

## Appendix 1 – Proposed Amendments to the Scheme of Delegation

### New section in the Scheme of Delegation

#### **X. Specific Duties and Responsibilities Delegated to the Chief Planning Officer**

##### **A. General**

- X.1 The Chief Planning Officer is designated by the Council as the proper officer responsible for carrying out certain duties and functions in accordance with the Town and Country Planning (Scotland) Act 1997 (as amended), and other related planning legislation.

##### **B. Specific Delegated Functions**

- X.2 Taking decisions on planning applications and enforcing planning laws, subject to the protocol set out in Section 18 of this Scheme of Delegation
- X.3 Monitoring planning permission and other permissions, and taking enforcement action under Part V1 and V11 of the 1997 Act, including serving notices, taking direct action and prosecuting people for not keeping to such notices
- X.4 Determining requests to undertake work to trees that are either protected by a Tree Preservation Order or are within a Conservation Area; and determining applications for Tree Preservation Orders where there are no outstanding objections
- X.5 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)

##### **C. Proper Officer Delegation**

- 5.8 The Service Manager for Planning will act as the Chief Planning Officer. In their absence, suitably qualified and experienced officers within the Planning Service are authorised to carry out the duties of the Chief Planning Officer.

## Amendments to existing sections in the Scheme of Delegation

### **12. Specific Duties and Responsibilities Delegated to the Head of Development**

#### **A. General**

12.1 The Head of Development is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Business Development
- Economic Development
- Growth
- Heritage and Monuments
- ~~Planning~~
- Street Naming and Numbering
- Tourism
- ~~Regeneration~~
- Note: the Head of Development shall have line management and budgetary responsibilities for the Planning Service, but operational matters will be the responsibility of the Chief Planning Officer

#### **B. Specific Delegated Functions**

~~12.2 Taking decisions on planning applications and enforcing planning laws, subject to the protocol set out in Section 18 of this Scheme of Delegation~~

~~12.3 Monitoring planning permission and other permissions, and taking enforcement action under Part V1 and V11 of the 1997 Act, including serving notices, taking direct action and prosecuting people for not keeping to such notices~~

~~12.4 Determining requests to undertake work to trees that are either protected by a Tree Preservation Order or are within a Conservation Area; and determining applications for Tree Preservation Orders where there are no outstanding objections~~

~~12.5 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)~~

- 12.6 Taking decisions in relation to grants for economic development, business development, tourism, and regeneration activities, to both the private and third sectors
- 12.7 Determining applications for grant assistance under a Conservation Area Regeneration Scheme

## 18. Scheme of Delegation for Planning Applications

### 18.1 Decisions in relation to planning applications

- a. Delegated Decisions – ‘Local Developments’ as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008 shall be determined by the ~~Service Manager—~~[Planning Chief Planning Officer](#) without reference to Members, subject to 18.1(b) below. Such determination shall include, where appropriate, authority for the Council to enter into any legal agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 or otherwise and authority for the Council to take enforcement action in instances where retrospective planning permission is refused for unauthorised development.
- b. Scheme of Delegation List – A list of reports on applications to be decided under delegated authority in terms of 18.1(a) above which raise important planning issues and/or are subject to any amount of public objection shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer decision shall be issued by the ~~Service Manager—~~[Planning Chief Planning Officer](#) in terms of 18.1(a) above. The Member who has requested referral to the Planning Committee shall prepare the Statement of Reasons for issue by the Planning Authority giving the reasons why the Planning Committee and not the ~~Service Manager—~~[Planning Chief Planning Officer](#) should determine the application.

### 18.2 Appeal to Scottish Ministers against the failure to take a decision on a planning application

In cases where an applicant has appealed to Scottish Ministers against the failure to take a decision on a planning application, the ~~Service Manager—~~[Planning Chief Planning Officer](#) shall have authority for submitting the Council’s submission on the appeal, as a Council Officer statement.

### 18.3 Decisions in relation to enforcement of planning control

- a. Authority for service of Planning Contravention Notices and Breach of Condition Notices will be delegated to the ~~Service Manager—~~[Planning Chief Planning Officer](#) and will be reported for Members’ information to the Members’ Library.
- b. Committee Expedited List – reports recommending service of Enforcement Notices, Stop Notices and Notices under Section 179 (‘Land Adversely Affecting Amenity of Neighbourhood’) of the Town and Country Planning (Scotland) Act 1997 shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer recommendation is deemed to be accepted and the ~~Service Manager—~~[Planning Chief Planning Officer](#) shall be authorised to proceed on that basis.

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

- a. The ~~Head of Development~~[Chief Planning Officer](#) 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~~[Chief Planning Officer](#) 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.
- c. The ~~Head of Development~~[Chief Planning Officer](#) 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.

**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~~[Chief Planning Officer](#) shall be authorised to proceed on that basis.



## 19. Statutory Appointment of Officers

- 19.1 Under various laws, the Council must appoint officers for a variety of purposes. Officers appointed to perform these roles are authorised to take the actions that are an essential part of their roles. The 'statutory appointments' that the Council has made are set out in this section.

Relevant Law	Role	Proper Officer
<b>Civic Government (Scotland) Act 1982</b>		
Section 113	Proper officer for keeping evidence of management rules	Head of Corporate Support
<b>Community Empowerment (Scotland) Act 2015</b>		
Section 22	Proper officer for receiving participation requests	Head of Communities
Section 79	Proper officer for receiving asset transfer requests	Head of Communities
<b>Data Protection Act 2018</b>		
Chapter 4, Sections 69-71	Proper officer for monitoring compliance; for informing and advising the data controller of their obligations; for co-operating with the supervisory authority in respect of (1) East Lothian Council, and (2) East Lothian Licensing Board	Team Manager – Information Governance
<b>Environmental Protection Act 1990</b>		
Section 149(1)	Proper officer for dealing with stray dogs in the area	Head of Communities
<b>Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests Regulations) 2003</b>		
Section 7(1)	Proper officer for setting up and keeping the register of councillors' business, personal and financial interests, and making these available to the public	Monitoring Officer / Service Manager – Governance / Team Manager – Democratic and Licensing
<b>Licensing (Scotland) Act 2005</b>		
Schedule 1, para. 8(1)(a)	Proper officer to act as the Clerk to the Licensing Board	Service Manager – Governance
Section 13	Proper officer for supervising compliance by licence-holders, mediating, issuing notices and applying for premises licence reviews	Licensing Standards Officer
<b>Local Authorities (Contracts) (Scotland) Regulations 1997</b>		
Regulation 4	Proper officer for certification purposes (powers to enter into a contract of other matters)	Head of Finance
<b>Local Government (Scotland) Act 1973</b>		
Section 33a	Proper officer for receiving councillors' declarations that they accept their role (declaration of acceptance of office)	Chief Executive
Section 33a(3)	Proper officer that the declaration of acceptance of officer can be made to	Chief Executive / Monitoring Officer /

		Service Manager – Governance / Team Manager – Democratic and Licensing
Section 34	Proper officer for receiving councillors' resignations	Chief Executive
Section 40	Proper officer for receiving general notices from councillors about any financial interest in a matter, and for recording the councillors' interests	Monitoring Officer / Service Manager – Governance / Team Manager – Democratic and Licensing
Section 43 and para. 1(4) of Schedule 7	Proper officer for receiving requests for special Council meetings	Chief Executive
Section 43 and para. 2(1) of Schedule 7	Proper officer for signing summonses to special Council meetings	Chief Executive
Section 43 and para. 2(2) of Schedule 7	Proper officer for receiving a councillor's notice of an alternative address	Head of Corporate Support
Section 50b	Proper officer for preventing reports containing sensitive information from being available to the public, and for providing documents to the press	Chief Executive / Executive Director for Council Resources / Head of Corporate Support
Section 50c	Proper officer for providing a written summary when the minutes of a meeting cannot be made available to the public	Head of Corporate Support
Section 50f	Proper officer for deciding which documents are not open to inspection	Chief Executive / Executive Director for Council Resources / Head of Corporate Support
Section 92	Proper officer for transferring securities	Executive Director for Corporate Resources / Head of Finance
Section 95	Proper officer for managing the Council's financial affairs	Executive Director for Council Resources
Section 145	Proper officer for asking Ordnance Survey for information	Executive Director for Place
Section 190	Proper officer for serving notices on behalf of the Council and starting legal proceedings	Chief Executive / Executive Directors / Head of Corporate Support / Service Manager – Governance
Section 191	Proper officer for signing any claim on behalf of the Council in any sequestration, liquidation, and similar proceedings where the Council is entitled to make a claim	Chief Executive / Executive Director for Council Resources / Head of Corporate Support /

		Service Manager – Governance (in consultation with Head of Finance)
Section 193	Proper officer for signing notices and orders	Relevant Executive Director or Head of Service responsible for the service relating to the notice/order or the Service Manager – Governance / designated Principal or Senior Solicitor
Section 194	Proper officer for signing deeds and using the Council's seal	Chief Executive / Head of Corporate Support / Service Manager – Governance / designated Principal or Senior Solicitor
Section 197	Proper officer for arranging for documents to be inspected and filed	Head of Corporate Support
Section 202	Proper officer for confirming that byelaws are valid and for sending copies to other relevant authorities	Service Manager – Governance
Section 202B	Proper officer for putting valid byelaws in the register of byelaws	Service Manager – Governance
Section 204	Proper officer for providing certificates as evidence of byelaws	Service Manager – Governance
Section 206	Proper officer for keeping a register of people who are made 'freemen' of the area	Head of Corporate Support
Section 231	Proper officer for asking the Sheriff about matters arising from the Local Government (Scotland) Act 1973	Chief Executive / Executive Directors / Head of Corporate Support (in consultation with the Service Manager – Governance)
<b>Local Government and Housing Act 1989</b>		
Section 2	Proper officer for keeping lists of posts that are politically restricted	Head of Corporate Support
Section 4	Proper officer to act as the Head of Paid Service	Chief Executive
Section 5	Proper officer to act as the Monitoring Officer	Head of Corporate Support
<b>Public Records (Scotland) Act 2011</b>		
Section 1(2)(a)(i)	Proper officer for the management of the Council's public records	Head of Corporate Support / Service Manager – Governance
Section 1(2)(a)(ii)	Proper officer for ensuring compliance with the Records Management Plan	Team Manager – Information Governance

<b>Regulation of Investigatory Powers (Scotland) Act 2002</b>		
Section 6	Proper officer for authorising directed surveillance	Executive Director for Place / Head of Communities / Service Manager – Protective Services
Section 7	Proper officer for authorising covert human intelligence sources	Executive Director for Place / Head of Communities / Service Manager – Protective Services
<b>Representation of the People Act 1983</b>		
Section 41	Proper officer to act as the Returning Officer	Chief Executive
<b>Scottish Local Government Elections Order 2007</b>		
Rule 57	Proper officer for receiving all election-related documents following an election	Chief Executive
<b>Social Work (Scotland) Act 1968</b>		
Section 3	Proper officer to act as the Chief Social Work Officer	Head of Children's Services
<b>Weights and Measures Act 1985</b>		
Section 72(1)(a)	Chief inspector of weights and measures	Executive Director for Place

19.2 The proper officers appointed for the roles set out in Section 19.1 cannot delegate their duties to other officers. However, if they cannot carry out their delegated duties because they are not available, the following officers will carry out their duties:

<b>Proper officer appointed for the roles set out in Section 19.1</b>	<b>Officer(s) who will carry out duties if the proper officer is not available</b>
If the Chief Executive is not available to act as Head of Paid Service	Executive Directors, as agreed
If the Returning Officer is not available for election purposes	Depute Returning Officer
If the Executive Director for Council Resources is not available to act as Section 95 Officer	A suitably qualified and experienced person from within the Finance Service
If the Head of Children's Services is not available to act as Chief Social Work Officer	A suitably qualified and experienced person from within the following services: Children's Services Adult Statutory Services Adult Community Services
If the Head of Corporate Support is not available to act as Monitoring Officer	Service Manager – Governance Team Manager(s) – Democratic and Licensing (in relation to matters concerning the Councillors' Code of Conduct)
<a href="#">If the Service Manager – Planning is not available to act as Chief Planning Officer</a>	<a href="#">A suitably qualified and experienced person from within the Planning Service</a>

If an Executive Director is not available	Relevant Head of Service
If the Service Manager – Governance is not available to act as Clerk to the Licensing Board	A suitably qualified and experienced person from within the Legal Service
If the Executive Director for Council Resources is not available to act as the Senior Information Risk Officer	Head of Corporate Support
If the Team Manager – Information Governance is not available to act as Data Protection Officer	Head of Corporate Support / Service Manager – Governance / Team Leader – Information Governance