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<b>Report To:</b>	<b>Environment &amp; Regeneration Committee</b>	<b>Date:</b>	<b>31 August 2023</b>
<b>Report By:</b>	<b>Head of Legal, Democratic, Digital &amp; Customer Services</b>	<b>Report No:</b>	<b>LS/071/23/IS</b>
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<b>Subject:</b>	<b>Elected Member Objections to Roads and Traffic Orders</b>		

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## **1.0 PURPOSE AND SUMMARY**

- 1.1  For Decision  For Information/Noting
- 1.2 The purpose of this report is to fulfil a decision of the Environment & Regeneration Committee on 9 March 2023, namely for officers to (i) review the custom and practice of Elected Members making objections to proposed roads and traffic orders, with a report to be brought back to a future meeting of the Committee, and (ii) refer to the Strategic Leadership Forum the matter of Elected Members formally objecting to such proposed orders.
- 1.3 This report concludes that there is nothing inherently wrong with Elected Members making objections to such orders, and even maintaining such an objection, provided that they make it clear they are an Elected Member and that at all times they ensure they comply with the Councillors' Code of Conduct. As such, Officers do not believe there needs to be any change to existing practice.

## **2.0 RECOMMENDATIONS**

- 2.1 It is recommended that the Committee notes the contents of this report; and
- 2.2 It is recommended that the Committee agrees that there are no changes required to existing practice as regards Elected Members making objections to proposed roads and traffic orders, other than it being noted that it is not always necessary for the Council to appoint a Reporter to consider maintained objections by an Elected Member, and the Council could deal with this at the Committee going forward, with the ability to still refer it to a Reporter where that was felt appropriate, subject to any overriding regulatory provisions.

**Iain Strachan**  
**Head of Legal, Democratic, Digital & Customer Services**

### 3.0 BACKGROUND AND CONTEXT

- 3.1 At its meeting on 9 March 2023, the Environment & Regeneration Committee considered a report from the Shared Head of Roads and Environmental Services, in connection with “20mph Town & Village Centres Speed Limit Orders – Maintained Objections”. A link to the papers for that Committee is included here:- <https://www.inverclyde.gov.uk/meetings/meeting/2537>.
- 3.2 The report in question considered six Speed Limit Orders (SLOs). During the period of public consultation on the SLOs, one valid objection was received to the SLO in respect of Inverkip, and one valid objection to the SLO in respect of Wemyss Bay. No objections were received to the four other SLOs, in respect of Kilmacolm, Port Glasgow, Gourock and the Cathcart Street area of Greenock. Officers entered into correspondence with the objector who objected to the Inverkip and Wemyss Bay SLOs. Despite officers’ efforts the objector did not respond therefore their objections were considered to be maintained. The objector in both instances is an Elected Member.
- 3.3 The report noted that “[t]he rules of natural justice strongly indicate that the Council should not hear objections where one of their own Elected Members is the objector. One aspect of the rules of natural justice is the right to a fair hearing. A member of the public could find it difficult to understand how Elected Members of a committee could act as an independent decision maker when one of the objectors is also an Elected Member. These are considerations which strongly point towards the hearing into the objections being dealt with by an independent Reporter.”
- 3.4 Following consideration of the report the Committee agreed to hear the objections through an independent reporter. In addition, the Committee agreed two further actions, namely for officers to (i) review the custom and practice of Elected Members making objections to proposed roads and traffic orders, with a report to be brought back to a future meeting of the Committee, and (ii) refer to the Strategic Leadership Forum the matter of Elected Members formally objecting to such proposed orders.
- 3.5 For the purposes of this report, Officers have considered Elected Member objections to the main roads and traffic orders promoted by the Council, being Traffic Regulation Orders, Redetermination Orders, Stopping Up Orders, SLOs and Traffic Calming Schemes, albeit there are others too, including Weight Restriction Orders and One-Way Orders. In this report all such orders are referred to as “Orders”.
- 3.6 Current officers within Legal Services can only recall two other instances of an Order being the subject of a formal maintained objection from an Elected Member.
- 3.7 The first relates to The Leapmoor Cottage Public Path Diversion Order (PPDO) in 2010. Being a PPDO, the objection had to be referred to the Scottish Ministers, who considered the objection at a public local inquiry and ultimately dismissed it.
- 3.8 The second is current and relates to the recent Port Glasgow and Kilmacolm Waiting and Loading TROs, where an Elected Member has objected to both TROs and each of those objections is still maintained. This was reported to the Committee on 12 January 2023. It is to be noted that there were other objectors to these TROs, there being 42 and 2 objections to each TRO respectively. <https://www.inverclyde.gov.uk/meetings/meeting/2519> .
- 3.9 In addition, current officers can also recall three other instances where there were objections/informal objections from Elected Members that were dealt with or withdrawn following engagement by officers. These related to (i) the Off Street Car Parks Variation Order Number 11, where the Lochwinnoch Road, Kilmacolm car park was subsequently removed from that Order, (ii) a traffic calming project at Sinclair Street bridge where the informal objection was negotiated

out through discussion and (iii) a Disabled Persons Parking Place (DPPP) Order although again the negative comments were dealt with and this did not turn into a formal objection.

- 3.10 The Head of Legal, Democratic, Digital & Customer Services has consulted with other Scottish local authorities, and there have been no authorities who have advised of having local rules that seek to restrict the ability of Elected Members to object to or make representations in respect of such Orders. It is, however, noted that only three authorities responded. In addition, it is understood that none of those three have had Elected Member objections, but they all indicated they would deal with it at committee and not appoint a reporter.
- 3.11 In addition, Elected Members are themselves citizens of Inverclyde, and as a matter of principle there is no reason why they should not have the right to object or make representation on such regulatory matters, even though it might be rare that they do so. It could also be argued that, with their knowledge of the area and how local government works, they are better placed to object or make representation and thus represent local interests more effectively than other citizens. The Council could not lawfully deny an Elected Member the right to object or make representation on such matters, and any such proposed approach would need to be a voluntary arrangement that Elected Members individually chose to accept.
- 3.12 Formal consideration of an Order by a Committee is a *quasi-judicial* matter. The Councillors' Code of Conduct (the Code) is clear on that, with the guidance specifically noting that decisions made in respect of traffic regulation orders are *quasi-judicial* or regulatory, in terms of the Code. As ever, it is for Elected Members to ensure they comply with the Code, and it is not for officers to remind them. However, it is to be noted that such decisions often carry additional sensitivity, and increased risk. This is both for the Elected Member in question, and the guidance on the Code highlights the "need to be especially vigilant", but also the Council, should there later be a question over the lawfulness of the decision. The guidance notes that even the perception that the Code has not been followed could result in a challenge to the decision. Clearly, an Elected Member who had objected to an Order, or made certain public comments about it, could not take part in the decision-making in respect of it, but they would need to be mindful of the duties borne by the Elected Members who will be considering it. They would also need to consider their wider duties under the Code, including the additional resources (both time and financial cost) that may be incurred by the Council in dealing with their objection, especially if the only objection is theirs, and how that might be perceived by the public.
- 3.13 This report is not the place for a detailed review of the Code, however, and a link to the Standard Commission's website is included here:-  
<https://www.standardscommissionscotland.org.uk/guidance/guidance-notes>
- 3.14 If any Elected Member is ever unsure on their duties under the Code they should seek advice from the Council's Monitoring Officer.
- 3.15 As required in terms of the Committee's decision on 9 March 2023, the Strategic Leadership Forum have been consulted on this report.

## **4.0 PROPOSALS**

- 4.1 Given the above, including (i) the fact it is understood to have been relatively rare for Elected Members to maintain objections in respect of such Orders, (ii) the terms of the Councillors' Code of Conduct, (iii) the fact Elected Members are also citizens of Inverclyde and (iv) known practice in other local authorities, Officers consider there is no need for the Council to review its current arrangements and no need for any form of restriction on the ability of Elected Members to object to or make representations in respect of such Orders. In addition, as noted above, the Council could not lawfully deny an Elected Member the right to object or make representation on such

matters, and any such proposed approach would need to be a voluntary arrangement that Elected Members individually chose to accept.

- 4.2 It is, however, not necessary for the Council to appoint a Reporter to consider maintained objections by an Elected Member, and the Council could deal with this at the Environment & Regeneration Committee going forward, with the ability to still refer it to a Reporter where that was felt appropriate. This would represent a change in practice, that Elected Members would need to be comfortable with. In addition, this would also only assist in the question of costs, and would not deal with the substantive issue here, which is the ability of Elected Members to make and maintain objections against Orders. It is, however, to be noted that for certain Orders, where there is a maintained objection, the relevant regulations require the matter to be considered by a Reporter/determined by the Scottish Ministers.

## 5.0 IMPLICATIONS

- 5.1 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed:

<b>SUBJECT</b>	<b>YES</b>	<b>NO</b>
Financial		x
Legal/Risk	x	
Human Resources		x
Strategic (LOIP/Corporate Plan)		x
Equalities, Fairer Scotland Duty- & Children/Young People's Rights & Wellbeing		x
Environmental & Sustainability		x
Data Protection		x

### 5.2 Finance

There are no financial implications arising directly from this report. However, as noted above, where there is a maintained objection to an order from an Elected Member, then the Council will incur additional costs should the current practice be continued and an independent reporter appointed to hear the inquiry. The costs of such an inquiry will vary from order to order, depending upon the facts in question, including whether or not there are other maintained objections, however recent experience suggests that even a fairly straightforward inquiry could cost in the region of £5-10,000, exclusive of VAT and outlays, depending upon the individual nature of the matter in question.

### 5.3 Legal/Risk

The legal and risk implications are included earlier in this report.

### 5.4 Human Resources

There are no human resources implications arising directly from this report.

### 5.5 Strategic

There are no strategic implications arising directly from this report.

## **6.0 CONSULTATION**

6.1 The Corporate Management Team and Strategic Leadership Forum have been consulted on this report.

## **7.0 BACKGROUND PAPERS**

7.1 N/A.