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| <b>Report To:</b>      | <b>Safe, Sustainable Communities Committee</b>        | <b>Date:</b>       | <b>6 March 2012</b> |
| <b>Report By:</b>      | <b>Head of Legal &amp; Democratic Services</b>        | <b>Report No:</b>  | <b>LA/823/12</b>    |
| <b>Contact Officer</b> | <b>Neil Duffy</b>                                     | <b>Contact No:</b> | <b>01475 712147</b> |
| <b>Subject:</b>        | <b>Use of Powers Delegated to the Chief Executive</b> |                    |                     |

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### 1.0 PURPOSE OF THE REPORT

1.1 The purpose of this report is to notify the Committee of all decisions taken under the powers delegated to the Chief Executive since the last ordinary meeting of the Committee.

### 2.0 LIST OF DECISIONS TAKEN

2.1 The individual reports setting out details of each use of the Chief Executive's delegated powers form the Appendices to this report and are summarised as follows:- **APPX**

#### 2.2 Originator

#### Subject

Corporate Director Regeneration & Appointment of Planning Consultants  
Environment

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### 3.0 RECOMMENDATION

3.1 That the Committee note the use of the powers delegated to the Chief Executive as summarised in this report.

**Neil Duffy**  
**Legal & Democratic Services**

**Report To:** Head of Legal & Democratic Services      **Date:**  
**Report By:** Corporate Director Regeneration & Environment      **Report No:**  
**Contact Officer:** Aubrey Fawcett      **Contact No:** 01475 714827  
**Subject:** Use of Emergency Powers – Appointment of planning consultants

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## **1.0 PURPOSE**

- 1.1 The purpose of this report is to request the use of delegated powers to appoint planning consultant(s) to represent the Council when an appeal is submitted against the refusal of planning permission to the Scottish Ministers, when the said refusal is contrary to officer recommendation.

## **2.0 SUMMARY**

- 2.1 The majority of planning applications are determined by the Head of Regeneration and Planning under the scheme of delegation. All other planning applications are considered by the Planning Board and, in exceptional cases, as dictated by legislation, may require referral to and determination by the Full Council.
- 2.2 The Planning Board and Council may, in considering planning applications, determine not to accept the recommendation of the Head of Regeneration and Planning. The Town and Country Planning (Scotland) Act facilitates an appeal process where applications are refused; appeals may be submitted to the Scottish Ministers.
- 2.3 Planning officers are Members of the Royal Town Planning Institute. The RTPI Professional Code of Conduct prevents them from "subscribing to any statements or reports which are contrary to their own bona fide professional opinions". Consequently, appeals to the Scottish Ministers against Planning Board decisions taken contrary to officer advice are currently defended by the Council without appropriate professional planning advice.
- 2.4 Until recently there have been few cases which have been referred to the Scottish Ministers which have been contrary to Officers advice, and the Council's case in such circumstances has been presented by the Head of Legal and Democratic Services. Planning officers recommendations are based on their interpretation of Council policy, so a clear conflict of interest would occur if in the event of Members not accepting their recommendation, for said officers, then to be asked to defend a position to which they do not subscribe to. In order to limit the financial risk to the Council, but the appointment of an appropriately qualified planning consultant(s) and other such professional experts as guided by the appointed consultant would ensure that the democratic decision of members is defended with a greater level of specialist professional expertise.

## **3.0 RECOMMENDATION**

- 3.1 That where considered appropriate by the Council's Head of Legal and Democratic Services, a Planning consultant and other professional expert(s) be appointed to represent the Council when an appeal is submitted against the refusal of planning permission to the Scottish Ministers when the refusal is contrary to officer recommendation.

**4.0 BACKGROUND**

- 4.1 The majority of planning applications are determined by the Head of Regeneration and Planning under the scheme of delegation. All other planning applications are considered by the Planning Board and, in exceptional cases as dictated by legislation, may require referral to and determination by the Full Council.
- 4.2 The Planning Board and Council may, in considering planning applications, determine not to accept the recommendation of the Head of Regeneration and Planning. The Town and Country Planning (Scotland) Act facilitates an appeal process where applications are refused; appeals may be submitted to the Scottish Ministers.
- 4.3 Reports to the Planning Board are prepared on behalf of the Head of Regeneration and Planning by Planning Officers, all of whom are Members of the Royal Town Planning Institute. The RTPI Professional Code of Conduct prevents them from "subscribing to any statements or reports which are contrary to their own bona fide professional opinions". Consequently, where an appeal to the Scottish Ministers is against a decision taken contrary to officer advice they are unable to prepare or assist in the preparation of the Council's case. Accordingly, submissions presented on behalf of the Council are done so without specialist professional expertise.
- 4.4 Planning appeals can take three forms; written submissions, a hearing or a public inquiry. The large majority of appeals are considered by written submissions, while hearings can be called as an alternative to public inquiries, which are now fewer in number and are both expensive and time consuming. To date the Council's case in such circumstances has been presented by a representative of the Council's Legal and Democratic Service, but the appointment of an appropriately qualified planning consultant(s) and other such professional experts as guided by the appointed consultant would ensure that the democratic decision of members is defended with a greater level of specialist professional expertise.
- 4.5 While it would be preferable to make a term appointment, the RTPI code of conduct deems it inappropriate for a Professional Planner to commit to defending all decisions of the Council; appointment on a case for case basis is appropriate. This approach is also beneficial due to the wide range of expertise and specialism within the planning profession. It will ensure that the Council will be able to appoint the appropriate consultant on a case for case basis. It should also be noted that the costs per appeal will vary dependent upon the complexity of the case and nature of the appeal. Defending a decision at public inquiry will be significantly greater than written submissions.

**5.0 PROPOSAL**

- 5.1 That where considered appropriate by the Council's Head of Legal and Democratic Services, a Planning consultant and other professional expert(s) be appointed to represent the Council when an appeal is submitted against the refusal of planning permission to the Scottish Ministers when the said refusal is contrary to officer recommendation.

**6.0 FINANCIAL IMPLICATIONS**

Annually Recurring Costs

| Cost Centre | Budget Heading | Proposed spend this report | Virement from | Other comments               |
|-------------|----------------|----------------------------|---------------|------------------------------|
| n/a         |                | Up to £10,000              |               | The costs will require to be |

|  |  |  |  |   |
|--|--|--|--|---|
|  |  |  |  | contained within the directorate budget |
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**7.0 CONSULTATIONS**

7.1 The Head of Legal and Democratic Services and the Chief Financial Officer have both been consulted in the preparation of this report.

**8.0 BACKGROUND PAPERS**

Royal Town Planning Institute code of professional conduct  
Scheme of delegation