



**Item: 14**

**General Meeting of the Council: 8 October 2024.**

**Planning Committee – Governance Arrangements.**

**Report by Corporate Director for Strategy, Performance and Business Solutions.**

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## **1. Overview**

- 1.1. In terms of the Scheme of Administration, membership of the Planning Committee consists of twelve Elected Members, including at least one representative from each of the six electoral wards, with one member from each ward not being a member of the Committee.
- 1.2. The Leader and the Chair of the Development and Infrastructure Committee are not eligible for membership of the Planning Committee. The purpose of this provision is to present an element of separation between the roles of developer and decision-maker in respect of any Council-led projects which have significant planning implications.
- 1.3. In addition, it is preferable that the Depute Leader and the Vice Chair of the Development and Infrastructure Committee should not sit on the Planning Committee, for the same reasons outlined at section 1.2 above.
- 1.4. Councillor Thomson was appointed to the Planning Committee on 14 May 2024, but resigned on 28 June 2024 following her appointment as Vice Chair of the Development and Infrastructure Committee on 4 June 2024. Councillor Thomson has not been replaced on the Planning Committee.
- 1.5. As a consequence, there are now eleven Members on the Planning Committee, and no members present from the North Isles ward. This is a position that does not align with the current provisions of the Scheme of Administration as noted in section 1.1 above.
- 1.6. The options available for addressing the vacancy are set out in section 5 below.
- 1.7. Option 1 is the recommended option. This is to make no appointment, thereby retaining the current membership at eleven members for the period until the next local government election in May 2027.

- 1.8. Option 1 is the most expedient option to the extent that membership of the Planning Committee would remain unchanged, with no associated impact on the other members. For example, there would be no requirement to draw additional members from other wards which, in terms of the Councillors' Code of Conduct, would have the effect of removing their power to advocate for or against applications relating to proposed developments within their respective wards. In addition, an eleven-member committee would have the advantage of presenting a reduced risk of split decisions than a committee that consisted of an even number of members.

## **2. Recommendations**

- 2.1. It is recommended that the Council:
- i. Approve Option 1, namely to make no additional appointments to the Planning Committee following the resignation by Councillor Thomson, thereby retaining membership of the Planning Committee at eleven members for the period up to May 2027.

## **3. Membership of Planning Committee**

- 3.1. In terms of the Scheme of Administration, membership of the Planning Committee consists of twelve Elected Members, including at least one representative from each of the six electoral wards, with one member from each ward not being a member of the Committee.
- 3.2. The Planning Committee also sits as the Local Review Body and, in that capacity, exercises delegated authority, on behalf of the Council, to conduct reviews, where the appointed planning officer:
- Has refused an application for planning permission or for consent, agreement or approval, or
  - Has granted it subject to conditions, or
  - Has not determined it within the period allowed for determination of the application.
- 3.3. In terms of the Scheme of Administration, the Leader and the Chair of the Development and Infrastructure Committee are not eligible for membership of the Planning Committee. This is in order to present an element of separation between the roles of developer and decision-maker in respect of any Council-led projects which have significant planning implications and thereby minimise risk of challenge in relation to the Councillors' Code of Conduct.

- 3.4. In addition, it is preferable, so far as existing constitutional arrangements, restrictions and other appointments allow, that the Depute Leader and the Vice Chair of the Development and Infrastructure Committee should not sit on the Planning Committee, for the same reasons outlined at section 3.3 above.
- 3.5. At the Special General Meeting held on 14 May 2024, Councillor Thomson was appointed to the Planning Committee. Councillor Thomson was the sole Member for the North Isles ward appointed to the Planning Committee.
- 3.6. Subsequently, at its meeting on 4 June 2024, Councillor Thomson was appointed Vice Chair of the Development and Infrastructure Committee.
- 3.7. On 28 June 2024, in light of the position set out in section 3.4 above, Councillor Thomson, having accepted her appointment as Vice Chair of the Development and Infrastructure Committee, intimated her resignation from the Planning Committee.
- 3.8. Councillor Woodbridge, as Leader, is ineligible to sit on the Planning Committee on account of the provisions in the Scheme of Administration referred to in section 3.3 above.
- 3.9. The remaining North Isles member, Councillor Clackson, was subsequently approached by the Chief Executive about the vacancy arising from Councillor Thomson's resignation. Councillor Clackson responded that, for personal reasons, he was not in a position to add membership of the Planning Committee to his existing councillor duties.
- 3.10. As a consequence, there are now eleven Members on the Planning Committee, and no members present from the North Isles ward. This is a position that does not align with the current provisions of the Scheme of Administration as noted in section 3.1 above.

## **4. Current Membership of Planning Committee**

4.1. The current membership of the Planning Committee is as follows:

- Kirkwall East:
  - Councillor John A R Scott.
  - Councillor David Dawson.
- Kirkwall West and Orphir:
  - Councillor W Leslie Manson.
  - Councillor Ivan A Taylor.

- Stromness and South Isles:
  - Councillor P Lindsay Hall.
  - Councillor Janette A Park.
- West Mainland:
  - Councillor Jean E Stevenson.
  - Councillor Owen Tierney.
  - Councillor Duncan A Tullock.
- East Mainland, South Ronaldsay and Burray:
  - Councillor James R Moar.
  - Councillor Raymond S Peace.
- North Isles:
  - Vacant.

## 5. Options Appraisal

5.1. The options available for addressing the vacancy on the Planning Committee are set out below.

**5.1.1. Option 1: make no appointment and retain membership of the Planning Committee at eleven members for the period up to the next local government election in May 2027.**

5.1.2. This option would maintain the status quo and therefore ensure a level of stability in terms of the current membership.

5.1.3. This option would preserve the right of existing non-members to represent individuals or groups seeking to make representations for or against an application for a proposed development within their ward. By contrast, an appointment to the Planning Committee, in terms of the Councillors' Code of Conduct, would remove that Member's right to advocate for or against an application if that Member intended to be involved in the determination of the planning application. There would be particular risk of prejudice if appointment of a member resulted in all members for the same ward being on the Planning Committee with the effect that no members for that ward would be available to advocate for their constituents on a planning application.

5.1.4. There is precedent for the Planning Committee operating with eleven members when former Councillor Sinclair, who represented the North Isles, resigned from the Planning Committee in 2020 and no appointment was

made to replace him until the next local government election in May 2022, albeit that at that time the Scheme of Administration provided that there should be two elected members from each ward and that after Councillor Sinclair's resignation there was still another Elected Member from the North Isles Ward on the Planning Committee. The number of members however was 11 which was still less than the number prescribed in terms of the Scheme of Administration. The quorum for the Planning Committee is three Members of the Committee, so it is suggested that a membership of eleven would present no risk to meetings of the Committee remaining quorate.

- 5.1.5. Although there would be no North Isles representation on the Planning Committee, and local knowledge is useful when considering an application, what is more important is that planning decisions are made on competent and material planning grounds. That is achieved by reference to the relevant policies, appropriate application of these to the facts being presented, and sound advice from the professional officers. In any event, Members always have the option of requesting a site visit if they consider that this would deliver benefit over and above the assessment of the information presented to the Planning Committee by the Appointed Officer. It is also important to note that increasing the membership to twelve by appointing a member from another ward would not resolve the issue in the existing case, which is that the only North Isles Member eligible to sit on the Planning Committee has advised that he is not in a position to do so.
- 5.1.6. In addition, it is suggested that an eleven-member committee would have the advantage of presenting a reduced risk of split decisions than a committee that consisted of an even number of members.
- 5.2.1. **Option 2: temporary addition of a member from another electoral ward to take the membership up to 12 until the next local government election in May 2027 or until the one of the other eligible North Isles Councillors agrees to sit on the Planning Committee.**
- 5.2.2. The only advantage identified with Option 2 is that it would ensure adherence to the section of the Scheme of Administration which provides that there shall be twelve members of the Council on the Planning Committee, although it would fail to comply with the subsequent section of the Scheme which provides that the membership shall include at least one representative from each of the six electoral wards.

- 5.2.3. There is no statutory requirement to have twelve Members on the Planning Committee. The size of membership and level of representation from each ward are matters of discretion for the Council.
- 5.2.4. Option 2 would also present potential risks. It would disenfranchise the new member from advocating for or against a planning application in their ward, and, if all the other members for that ward were already on the Planning Committee, would lead to a scenario of the residents having no local ward representative available to make representations on their behalf in a planning application. Option 2 would also exacerbate the imbalance in representation on the Planning Committee between the North Isles ward and the other wards.
- 5.3.1. **Option 3: conduct a wholesale review of the current rules on the composition of the Planning Committee.**
- 5.3.2. This is arguably disproportionate and would not address the issue that has arisen in this case which is that there is no member from the North Isles ward currently able and willing to sit on the Planning Committee. In theory, the Scheme could be revised so as to remove the requirement for there to be at least one representative for each of the six electoral wards, but it would not alter the position that there is, as a matter of fact, no member in the North Isles both eligible and willing to become a member of the Planning Committee. In any event the requirement for the Leader, Depute Leader, and Chair and Vice Chair of the Development and Infrastructure Committee not to sit on the Planning Committee is sound from a governance perspective and protects both the Council and the Members concerned. It would seem unfair to ask the Leader or Vice Chair of the Development and Infrastructure Committee to relinquish their positions because the third member for their ward was not in a position to accept an appointment to the Planning Committee.
- 5.3.3. In any event the current provisions requiring that there be at least one representative from each of the electoral wards on the Planning Committee (with the exception of the Leader, Depute Leader, and Chair and Vice Chair of the Development and Infrastructure Committee), with one member from each ward not being a member of the committee, ensure, so far as practicable, a fair representation of all the wards on the Planning Committee and that, so far as practicable, ward residents can be represented by one of their ward members in any planning application. The current Scheme of Administration at least ensures that the residents of the North Isles can be represented by their ward members in respect of any application if they so wish.

5.4. On balance, and, for the reasons stated above, Option 1 is the preferred recommendation.

## 6. Legislative position

6.1. With limited exceptions, Section 56 of the Local Government (Scotland) Act 1973 provides that a local authority may arrange for the discharge of its functions by a committee of the authority, a sub-committee, an officer of the authority or by any other local authority in Scotland.

6.2. There are no statutory rules in force in Scotland as to which councillors should be appointed to which committee. Councils have a discretion to decide the membership of their committee and sub-committees.

### For Further Information please contact:

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### Implications of Report

1. **Financial:** none.
2. **Legal:** none.
3. **Corporate Governance:** The composition of the Council's committees is regulated by the Council's Scheme of Administration.
4. **Human Resources:** none.
5. **Equalities:** none.
6. **Island Communities Impact:** not applicable.
7. **Links to Council Plan:** not applicable.
8. **Links to Local Outcomes Improvement Plan:** not applicable.
9. **Environmental and Climate Risk:** not applicable.
10. **Risk:** not applicable.
11. **Procurement:** not applicable.
12. **Health and Safety:** not applicable.
13. **Property and Assets:** not applicable.
14. **Information Technology:** not applicable.
15. **Cost of Living:** not applicable.

### List of Background Papers

Standing Orders for the Regulation of Proceedings and Business of Orkney Islands Council.

Scheme of Administration.