

# **Change to the Delegation to the Head of Planning and Building Services**

Report of the Planning Portfolio Holder

## **Recommended:**

**That the Delegation to the Head of Planning and Building Services contained in the Council's Scheme of Delegations to Officers be amended as set out in the Annex to this report.**

### **SUMMARY:**

- In June 2019 Natural England issued advice to Local Planning Authorities that all residential development within the catchment of rivers discharging into the Solent should be nutrient neutral.
- The Council has not been determining applications falling within the scope of the Natural England Guidance which do not demonstrate nutrient neutrality.
- The Head of Planning and Building Services holds delegated power to determine applications for development (subject to exceptions).
- A change to the delegated powers of the Head of Planning and Building Services is proposed to allow Ward Members to request that applications which the Head of Planning and Building Services recommends for refusal solely on the basis of nutrient neutrality be submitted to the relevant Area Planning Committee for determination.

## **1 Introduction**

- 1.1 The Council as a Local Planning Authority finds itself in an unusual situation as a result of Natural England's advice on the impact of nutrients from development on the ecosystem of the Solent.
- 1.2 This report recommends a change to the Scheme of Officer Delegations to enable Ward Members to call applications to committee for determination within 72 hours of notification that the Head of Building and Planning Service recommends refusal of the application on the basis of nutrient neutrality alone.

## **2 Background**

- 2.1 On 2 June 2019, Natural England issued updated advice to Local Planning Authorities regarding the impact of nutrients from new development on the international conservation designations within and around the Solent.
- 2.2 On the basis of the uncertainty as to whether and to what extent new development in the catchment of rivers ultimately discharging into the Solent would cause further adverse impact to the Solent, Natural England advises:

*“one way to address this uncertainty is for new development to achieve nutrient neutrality. Nutrient neutrality is a means of ensuring that development does not add to existing nutrient burdens and this provides certainty that the whole of the scheme is deliverable in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended)”.*

- 2.3 As such, the Council has not been determining applications for development within scope of the Natural England advice unless nutrient neutrality is demonstrated.
- 2.4 Subject to specified exceptions (as set out in the Scheme of Officer Delegations contained in the Council’s Constitution) authority to make decisions on applications, notifications, consultations, negotiations, serving of notices and other activities carried out under the Town and Country Planning legislation is delegated to the Head of Planning and Building Services.
- 2.5 Providing that no other exemptions to his delegation apply, the Head of Planning and Building Services may refuse an application on the basis of its failure to achieve nutrient neutrality.
- 2.6 If an application so rejected overcame its nutrient neutrality deficiency and was resubmitted, then it would likely be deemed unreasonable to challenge the application on any other basis if the sole reason for refusal in the first instance was that of nutrient neutrality.
- 2.7 In order to provide Ward Members with further opportunity to request that an application recommended for refusal on the sole basis of nutrient neutrality is reported to Committee for decision, a change to the delegation to the Head of Planning and Building Services is proposed as set out in the Annex to this report.
- 2.8 It is proposed that this change to the powers delegated to the Head of Planning and Building Services prevails only until such time as in the opinion of the Head of Planning and Building Services in consultation with the Planning Portfolio Holder that adequate measures have been established to properly address the issue of nutrient neutrality in planning applications.

### **3 Options**

3.1 The options are:

#### 3.1.1 Option 1

That the existing Scheme of Delegations to the Head of Planning and Building Services remains unchanged.

#### 3.1.2 Option 2

That the changes set out in the Annex to this report are approved, meaning that Ward Members are able to request applications which the Head of Planning and Building Services recommends for refusal solely on the basis of nutrient neutrality are referred to Committee for decision.

## **4 Option Appraisal**

- 4.1 Option 1 would retain the status quo. Option 2 would afford Ward Members the opportunity to request an application which the Head of Planning and Building Services recommends for refusal solely on the basis of nutrient neutrality be referred to the appropriate Area Planning Committee for determination. Thus providing Ward Members with an additional opportunity to call to Committee applications recommended for refusal on the basis of nutrient neutrality alone. Option 2 is therefore the recommended option.

## **5 Risk Management**

- 5.1 A Risk Management questionnaire has been completed and indicates this report does not require a risk assessment because the changes/issues covered by the report are not significant in terms of risk or have been previously considered.

## **6 Resource Implications**

- 6.1 No resource implications are identified.

## **7 Legal Implications**

- 7.1 No legal implications are identified.

## **8 Equality Issues**

- 8.1 No potential for discrimination or adverse impact on those with protected characteristics is identified.

## **9 Other Issues**

- 9.1 None are identified

## **10 Conclusion and reasons for recommendation**

- 10.1 In order to provide Ward Members with the opportunity to call applications to Committee in circumstances where refusal is recommended on the basis of nutrient neutrality only, the amendment to the delegation to the Head of Planning and Building Service as set out in this report is recommended.

Background Papers (Local Government Act 1972 Section 100D)

The Scheme of Delegations to Officers: Delegations to the Head of Planning and Building Services.

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	1	File Ref:	N/A
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Report to:	Council	Date:	26 February 2020