

## **Decision of the Hearing Panel of the Standards Commission for Scotland following the Hearing held at Highland Council Headquarters, on Thursday 25 May 2023.**

**Panel Members:** Ashleigh Dunn, Chair of the Hearing Panel  
Helen Donaldson  
Anne-Marie O’Hara

The Hearing arose in respect of a Report referred by the Ethical Standards Commissioner (the ESC), further to complaint reference LA/H/3755, concerning an alleged contravention of the Councillors’ Code of Conduct (the Code) by Councillor Hugh Morrison (the Respondent).

### **Referral**

Following an investigation into a complaint received on 12 May 2022 about the conduct of the Respondent, the ESC referred a report to the Standards Commission on 28 February 2023, in accordance with the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act).

The ESC advised that he had considered whether the Respondent had failed to comply with the Code, and, in particular, whether he had contravened paragraphs 5.5, 5.6, 7.1, 7.4, and 7.5, which are as follows:

#### ***Extracts from Councillors’ Code 2021***

##### ***Declaration of Interests***

*5.5 I understand my connection is an interest that requires to be declared where the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to influence the discussion or decision-making.*

*5.6 I will declare my interest as early as possible in meetings. I will not remain in the meeting nor participate in any way in those parts of meetings where I have declared an interest.*

##### ***Taking Decisions on Quasi-Judicial or Regulatory Applications***

*7.1 I need to be especially vigilant when I am making a decision on a quasi-judicial or regulatory application. For these applications, I need to ensure there is a proper and fair hearing of the application and I must avoid any impression of bias in the whole decision-making process.*

*7.4 In dealing with these applications, I WILL:*

- a) throughout my involvement with the entire application process act fairly and be seen to act fairly;*
- b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;*
- c) deal fairly and impartially with all parties involved in the application;*
- d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;*
- e) take into account professional advice given to me by council employees; and*
- f) seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.*

*7.5 In dealing with such applications, I WILL NOT:*

- a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;*
- b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;*

- c) in advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making;*
- d) lobby other councillors who may be dealing with the application;*
- e) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;*
- f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered;*
- g) express any indicative or provisional views in the course of my involvement in any aspect of the application;*  
*or*
- h) otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly.*

Having reviewed the report, the Standards Commission directed the ESC, on 8 March 2023, to undertake further investigation in respect of whether the Respondent had ensured that he was seen to be acting fairly and that he avoided any suspicion of unfairness or bias in respect of the matter in question.

Following the conclusion of the further investigation on 31 March 2023, the ESC advised that he was of the view that the Respondent had not breached the Code. The Standards Commission nevertheless decided, on 6 April 2023, that it was both proportionate and in the public interest to hold a Hearing on the matter. This was because the Standards Commission was not satisfied, based on the contents of the ESC's initial report and his report on further investigation, that no breach of the Code had occurred. It further considered that the alleged breach was not insignificant or of a technical nature. The Standards Commission decided, therefore, that it wished to hear evidence and submissions at a Hearing in order to determine whether the Code had been contravened. The Standards Commission noted that holding a Hearing (and the associated publicity) could also promote the provisions of the Codes of Conduct and the ethical standards framework.

### **Evidence Presented at the Hearing**

#### **Submissions made by the ESC**

The ESC advised that the complaint was that the Respondent had failed to declare an interest in a planning application being considered at a meeting of Highland Council's North Planning Applications Committee on 26 April 2022 and that he proceeded to participate in its consideration, despite having previously expressed support for the application. The ESC noted that the Respondent was acting in his capacity as a councillor at the meeting and, as such, that there was no dispute that the Code applied to him at the time.

The ESC advised that the application in question was for planning permission for a wind farm at Sallachy, which is located within the Respondent's council ward. At the meeting on 26 April 2022, the Respondent advised that he was "delighted" that the application was back before the Committee, having previously been considered and approved by the Council, before consent was refused by the Scottish Ministers in 2015. The Respondent noted that the local community councils had not objected to the application and that it would benefit the local area. The application was then approved without dissent.

The ESC advised that a previous application from the same company for a wind farm at Sallachy had been submitted and approved by the Council in 2013. The applicant company had engaged with the local community both before and after the application had been submitted, by holding community meetings, one-to-one events, and through the creation of an interactive website. While the first application, which had been to construct a 22-turbine windfarm, had been approved by the Council it was later refused, in 2015, by the Scottish Ministers due to concerns about its impact on scenic and wild land areas.

The ESC explained that the Complainer considered that the Respondent had previously expressed support for the application at community council meetings, meetings with the applicant company, and in

correspondence he had sent to the Scottish Government in response to its 'Call for Ideas' on the National Planning Framework 4.

The ESC advised he had found, and it was not in dispute, that:

- It was recorded in the minutes of a meeting of Kinlochbervie Community Council on 29 May 2018 that the Respondent was in attendance, that he was to speak to the company which was to reapply for planning permission for the Sallachy Wind Farm and that this would "benefit the community".
- The Respondent had met with the applicant company before and after the Community Council meeting on 29 May 2018.
- The minutes of a meeting of Kinlochbervie Community Council on 20 November 2018 recorded how some of the revenue from the proposed wind farm at Sallachy would be divided amongst the local community.
- It was recorded in the minutes of a meeting of Kinlochbervie Community Council on 24 September 2019 that the Respondent was in attendance and that "the Sallachy Wind Farm discussions are ongoing, with 30% of the profits being divided between Scourie, Durness and Kinlochbervie".
- In an undated letter to the Scottish Government responding to its consultation on the National Planning Framework, the Respondent stated: "To date since 2014, only one consent has been granted for a wind development in a WLA [wild land area]. Part of the consented Creag Riabhach wind farm is within a WLA. This is located close to us in Sutherland. In contrast various schemes have been refused consent for development wholly or partly within WLAs (Allt Duine, Glenmorie, Sallachy, Glencassley, Culachy, Caplich, Carn Gorm). The Sallachy Project, based in Central Sutherland is largely supported by the local community and would bring many benefits to Central and North West Sutherland but has been delayed for several years over what we believe to be confusing Wild Land policy". The ESC advised that as the letter was undated, he could not confirm the exact date on which it had been sent, but understood this to be sometime between January and April 2020, being the time that the Government's consultation was live.

The ESC advised that he had found that the Respondent had attended the community council meetings in his capacity as a ward councillor. The ESC noted that the minutes of the community council meeting on 29 May 2018 recorded that the Respondent was to speak to the applicant company. The ESC advised, however, that the Respondent's position was that he had not offered or agreed to do so and, indeed, that he had not done so on any one-to-one basis. The ESC advised that he had found no evidence that the Respondent had spoken to the applicant company on behalf of the community council. The ESC noted that the minutes would have been drafted by a community council member and that the Respondent would not have had any control over the content or wording.

The ESC noted, in any event, that the second application had not yet been submitted at the time of the community council meeting on 29 May 2018. The ESC contended that the second application "differed substantially" from the first one, as the location of the proposed wind farm on the plot had been moved in order to reduce the impact on the scenery and wild land.

The ESC advised the minutes recorded that the Respondent had not attended the community council meeting on 20 November 2018. The ESC advised that while the Respondent had attended the community council meeting on 24 September 2019, the minutes only recorded that information about the wind farm project at Sallachy had been provided. The ESC advised that there was no evidence that the Respondent had made any comments at the meeting that would indicate either support for, or opposition to, the project.

The ESC noted that the Respondent accepted that he had attended meetings with the applicant company. The Respondent had advised, however, that these were general information-sharing meetings that had been open to other councillors, members of the local community and local development trusts, which had been

arranged as part of the applicant company's commitment to keep in regular contact with the community about the project.

The ESC advised that the Respondent denied having attended any one-to-one meetings with the applicant company and confirmed that no evidence of any such meeting had been found during the investigation. The ESC noted that councillors are entitled, under the terms of the Code, to attend meetings with parties involved in quasi-judicial or regulatory matters (including applicants and objectors), provided they do not indicate or imply support for or opposition to an application nor indicate their voting intention prior to the appropriate meeting where the application is to be considered. The ESC confirmed that he had not found any evidence that the Respondent had expressed any views on the project or proposed application at any meetings with the applicant company and noted that his position was that he had not done so.

The ESC noted that the Respondent's letter to the Scottish Government had been sent one year before the second application was submitted and two years before it was considered by the planning committee in April 2022. The ESC contended, therefore, that the contents of the letter could not be taken as being comments on the second application. Instead, it had been a general response about the National Planning Framework and, in particular, the Government's then policy on wild land. The ESC argued that the Respondent had submitted his letter, in his capacity as a stakeholder and resident of the local area, with no specific project in mind. The ESC noted that the Respondent had not been a member of the committee at the time the letter was sent, and further noted that the Respondent had mentioned various projects in the letter, not just the one at Sallachy.

The ESC concluded that there was no evidence that the Respondent had indicated support for the application before the planning committee meeting on 26 April 2022. The ESC contended, in any event, that the Code provides that councillors can give a preliminary view on a planning matter; they are just not entitled to take any action that would show they had closed their mind and were not prepared to assess any application on its individual merits at the meeting at which it was due to be considered. As an analogy, the ESC noted that having a manifesto pledge to undertake any action that would progress general socio-economic development would not prevent a councillor, once elected, from taking part in any quasi-judicial or regulatory application that could progress a specific development. This was because it would be unreasonable for someone to conclude that the councillor concerned would have a closed mind on a specific application and would not be able to take into account other issues or factors relating to the merits of the application.

The ESC noted that a third party had written to the Respondent questioning whether he had demonstrated bias in favour of the Sallachy windfarm project and making express reference to his letter to the Scottish Government in response to the 'Call for Ideas'. In a response email of 23 June 2021, the Respondent had advised the third party that he could not make any comment as he could be involved in determining the application. The ESC advised that he considered that this response supported his contention that there was no evidence that the Respondent had done anything other than act fairly and without bias in respect of the second application. In addition, there was no evidence he had taken any action that would lead members of the public, with knowledge of the relevant facts, to reasonably conclude he had pre-judged or demonstrated bias in favour of the application before the meeting on 26 April 2022.

In response to questions from the Panel, the ESC accepted that it did not matter that the Respondent was not on the planning committee at the time he sent his letter to the Scottish Government, given the complaint concerned a failure to declare an interest at the meeting on 26 April 2022 (and given that he was attending the meeting in his capacity as a substitute member and, therefore, had a responsibility to declare any applicable interests on matters to be considered by the committee).

The ESC further accepted that the minutes of the community council meeting on 29 May 2018 recorded that the Respondent would speak to the applicant company. The ESC reiterated, however, that the Respondent

had not had any input into the drafting of the minutes and there was no evidence he had agreed to speak to the applicant company or indeed that he had done so on a one-to-one basis.

The ESC acknowledged that the application being considered by the planning committee at the meeting on 26 April 2022 was from the same company, and concerned a wind farm at the same site, as the one the council had approved in 2013 (that had been rejected subsequently by the Scottish Ministers). The ESC further acknowledged that the resubmission of an application by the company for a wind farm at the site was the subject of the discussions at the meetings of Kinlochbervie Community Council on 29 May 2018, 20 November 2018 and 24 September 2019 and was the reason for the ongoing engagement between the applicant company and the local community. The ESC also accepted that in his letter to the Scottish Government, the Respondent referred to the Sallachy wind farm project as being “delayed” and acknowledged that this could give the impression that the second application was perceived as a progression or continuation of the first application.

The ESC noted that if the two applications were essentially the same, then the fact that the Respondent’s actions, as outlined above, pre-dated the submission of the second application would be irrelevant, as indeed would the amount of time that had elapsed between the actions and date of receipt of the second application. The ESC contended, however, that the second application differed substantively from the first one, both in terms of the location and scope.

In response to a question about whether he had asked the Complainer about why she thought that the Respondent’s meetings with the applicant company had been held on a one-to-one basis, the ESC advised that he had found no evidence of this, and that the Complainer’s understanding had been based solely on the information outlined in the community council minutes.

When questioned about his analogy regarding a party’s political manifesto, the ESC accepted that it would be possible, when campaigning before being elected, for a councillor to say or do something that could demonstrate they would not be able to make a decision on a quasi-judicial or regulatory application with an open mind. An example could be if an individual stated, as part of their election manifesto, that they would vote against every single wind farm application.

The Panel questioned the ESC about whether it would be reasonable for members of the public, with knowledge of the relevant facts, to form the view from the:

- content of the community council meeting minutes;
- Respondent’s letter to the Scottish Government; and
- the fact that the Respondent had attended four meetings with the applicant company,

that he had pre-judged the second application. The ESC advised that he did not consider this was reasonable. The ESC advised this was because the evidence supplied by the Complainer was “entirely circumstantial” and there was no evidence to support the contention that the Respondent had done so. The ESC advised that the key relevant fact was the second application was a new project with clearly different characteristics to the first one.

### **Submissions made by the Respondent**

The Respondent advised that he had not pre-judged the application before the meeting of the planning committee on 26 April 2022 and that he was content that he had not taken any action that would give rise to a perception that he had done so. The Respondent advised that he always kept an open mind about planning applications and considered them on their individual merits. The Respondent contended that he was not always supportive of windfarm applications and, indeed, had opposed one last year.

The Respondent confirmed that he had not attended any one-to-one meetings with the applicant company. The Respondent advised that the only meetings he had attended, where the applicant company had been represented, were:

- meetings set up by the council's ward manager for all ward councillors and some council employees, to which the applicant company would have been given a slot to provide an update; and
- community liaison forums that he understood had been set up by local development trusts, again for the purpose of sharing information about the project.

The Respondent referred the Panel to a letter submitted to the Standards Commission by the Trust Manager of the Kyle of Sutherland Development Trust, which was a charity that focused on strengthening and empowering local communities. The Trust Manager advised, in his letter, that since its inception in 2011, the Trust had played a significant role in negotiating with developers to maximise community benefit from local wind farms. The Trust Manager advised that the Trust had become involved in discussions about the windfarm at Sallachy in early 2018 and had taken the lead role in outlining and discussing any community benefits on behalf of six local community councils.

The Trust Manager stated that a Memorandum of Understanding (MoU) between the six community councils on Community Shared Ownership was agreed in 2021, with local development trusts working alongside the applicant to create the best possible investment opportunity for the area. The Trust Manager advised that the Trust had agreed to support the project at Sallachy for investment and sustainability reasons. The Trust had, therefore, held numerous meetings with the relevant community bodies and councils to ensure that the local community was well informed about the proposed development. The Trust Manager stated that all local elected members, including the Respondent, had also been kept informed about the proposed development, but that he could not recall the Respondent having ever made any statement relating to the planning or future benefits of the development. The Trust Manager further stated that the Respondent had not been present at any of the discussions relating to the potential community benefits of the windfarm project or the agreement of the MoU, and had not had any discussions with him, as the Project Lead for the local development trusts, about the financing or planning of the Sallachy development.

The Respondent confirmed that the Trust Manager had been the individual responsible for liaising between the applicant company, the local community councils, and the local development trusts. The Respondent advised that he had not been involved in any of the discussions or liaison meetings and had not received any individual updates about these.

The Respondent also drew the Panel's attention to a letter sent to the Standards Commission by the former Chair of Kinlochbervie Community Council. The former Chair had confirmed that he had been the individual responsible for liaising with the applicant, and for seeking and providing information to the community council about the project. The former Chair had confirmed that the Respondent had played no part in any discussions with the applicant company on the matter.

The Respondent advised that his letter to the Scottish Government was not intended to provide a view on the project at Sallachy and, instead, had simply been an expression of his views about the National Planning Framework and the effect of the Government's wild land policy. The Respondent noted that he had mentioned various other windfarm projects in this letter.

The Respondent advised that he had only indicated support and voted for the second application at the planning meeting on 26 April 2022, after having considered all relevant factors carefully. This had included weighing the merits of the application and any objections received.

In response to a question from the Panel, about how his attendance at four meetings with the applicant company could be perceived, the Respondent advised that it was fairly normal to attend a few meetings on a specific application as developers were often keen to update the community and to hear the public's views on any proposals. The Respondent confirmed that he had been invited, and had attended, in his capacity as a ward councillor (as opposed to his capacity as a member of the planning committee).

The Respondent advised that the second application was different to the first in terms of both scale and topography, in that it only proposed that nine turbines be built (rather than 22) in a different location, albeit still at the Sallachy site.

## **DECISION**

The Hearing Panel considered the submissions made both in writing and orally at the Hearing. It concluded that:

1. The Councillors' Code of Conduct applied to the Respondent, Councillor Morrison.
2. The Respondent had not breached the Code.

## **Reasons for Decision**

The Panel considered both the evidence received before and the submissions made at the Hearing carefully.

The Panel noted that there was no dispute that the Respondent had participated in the meeting of the Council's North Planning Applications Committee on 26 April 2022 at which the application was considered, despite:

- having attended four meetings at which the applicant was present, three before the application was submitted and one after it had been granted;
- it being recorded in the minutes of a local community council meeting on 29 May 2018 that the Respondent was in attendance, that he was to speak to the applicant company that was to reapply for planning permission for the Sallachy Wind Farm, and that the proposed windfarm would "benefit the community"; and
- the Respondent having submitted a letter to the Scottish Government stating that the Sallachy Project was largely supported by the local community and would bring many benefits.

The Panel was satisfied that despite it being recorded in the minutes of a local community council meeting on 29 May 2018 that the Respondent was to speak to the applicant company, there was no evidence that he had held any one-to-one meetings with the company or indeed that he had planned to do so. The Panel was satisfied, from the submissions, that the Respondent had been invited to meetings with the company in his capacity as a ward councillor and that others had attended. The Panel noted that the former Chair of the Kinlochbervie Community Council had confirmed that it had been his responsibility (and not that of the Respondent) to seek and provide information about the project, and that the Respondent had played no part in discussions on the matter.

The Panel further noted that the Trust Manager, who had taken the lead on behalf of six local community councils and development trusts to work alongside the applicant to create the best possible investment opportunity for the area, had confirmed that the Respondent had not been involved in any discussions with him about the development, or in any wider discussions about its potential benefits, financing or planning.

The Panel noted that the Respondent had advised a member of the public, by email, that he could not comment on the application in case he was involved in the planning process. The Panel considered, however, that this evidence was circumstantial in nature, and did not mean that the Respondent had not made comments already or that he would not make them in another forum.

Notwithstanding this, the Panel was unable to conclude, on balance, that the Respondent had failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias, or a lack of fairness in relation to the application being considered at the planning committee meeting in April 2022. This was because:

- While the Respondent had met with the applicant company, the Panel was satisfied that any meetings had been for the purpose of sharing information only, had been held before the committee meeting and lodging of the specific application in question, and had been open to other interested parties. The Panel noted that councillors are entitled to attend such meetings, provided they do not express support for or against any application that is due to be considered in advance of any planning committee meeting at which they are due to participate. In this case, there was no evidence or suggestion that the Respondent had expressed support for or against the application at the meetings he attended with the company.
- the minutes of the local community council meeting on 29 May 2018 recorded that the Respondent was in attendance, that he was to speak to the applicant company which was to reapply for planning permission for the windfarm, and that the proposed windfarm at the site would benefit the community. The Panel noted, however, that there was no evidence that the Respondent had made any remark to that effect (albeit it could understand from the minutes why the Complainer may have thought that was the case, given that the Respondent could have objected at the next meeting and asked for the minutes to be changed, had they not reflected accurately what had been agreed). The Panel was satisfied that the Respondent had not been at the meeting of the community council on 20 November 2018 and, therefore, could not have voiced support for the project. The Panel noted that the minutes of the community council meeting on 24 September 2019 had recorded that there had been a discussion or sharing of information about how any anticipated revenue from the proposed Sallachy windfarm was to be dispersed but was satisfied that this, in itself, was not evidence that the Respondent had voiced support for the project at the meeting.

The Panel noted the ESC's contention that as the Respondent's letter to the Scottish Government had been sent some two years before the second application was considered by the planning committee, it could not be perceived as containing comments on the second application. The Panel considered, however, that it was possible for a councillor to pre-judge or demonstrate bias in respect of a quasi-judicial or regulatory matter, even if the actions or comments in question did not concern a specific application.

Having reviewed a webcast of the meeting on 26 April 2022, the Panel was satisfied that the application for a windfarm at Sallachy submitted in 2021, being considered at the meeting on 26 April 2022, was somewhat different to the application considered and rejected by the Scottish Ministers in 2015. This was because, although it was made by the same applicant company for a windfarm at the same site, and although it was evident from the ongoing community discussions that it was anticipated a further application would be made, the later project (that was the subject of the second application) was reduced in scope, in that it consisted of fewer turbines and covered a smaller, different area.

The Panel considered, nonetheless, that the Respondent's letter to the Scottish Government could be said to demonstrate that he was broadly supportive of the project to develop a windfarm at the site in question and, therefore, of any forthcoming application. The Panel concluded, however, that the Respondent's indication, in the letter, of his general support for the project was simply an expression of a preliminary view. The Panel did not consider that the letter alone demonstrated that the Respondent had completely closed his mind and would not be able to consider the individual merits of any specific, future application that came before the planning committee.

The Panel concluded, therefore, that as it had not found that the Respondent had failed to ensure he was acting fairly, or that he had failed to avoid any suspicion of pre-judging, bias, or a lack of fairness in relation to the application, there would have been no requirement for him to have declared an interest and withdrawn from the meeting. As such, the Panel concluded that it had not been established that the Respondent had breached the Code.



The Panel noted that the ESC had advised that he had also considered the Respondent's alleged conduct against Section 6 of the Code, which concerns how councillors should respond if approached directly by an individual or organisation who is seeking to do business with the council, or who is involved in a quasi-judicial or regulatory matter (for example, as an applicant or objector). The Panel noted that the Complainer had not raised any concerns about this and that the ESC had concluded there was no evidence of a contravention of Section 6. As such, the Panel saw no reason to depart from the ESC's findings in this regard.

**Date:** 30 May 2023



**Ashleigh Dunn  
Chair of the Hearing Panel**