

DECISION NOTICE

Issued under Regulation 15 of the *Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020*

Applicant: Dr John Holliday, Sliabh, Balephuill, Isle of Tiree, PA77 6UE (on behalf of Tiree Community Council and Tiree High School Parent Council)

Relevant Authority: Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT

1. The Application

- 1.1 This Decision Notice is issued under Regulation 15 of the *Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020* (hereinafter referred to as “the Regulations”). It relates to an Application for review of a decision relating to an Island Communities Impact Assessment (hereinafter referred to as an “ICIA”), submitted under Regulation 5 of the Regulations and received by the Relevant Authority on 3rd August 2022; the Relevant Authority’s Notice to the Applicant requesting further information and documentation required to complete the Application, in terms of Regulation 6(2); the Applicant’s response providing the requested information or documentation, as the case may be, received by the Relevant Authority on 23rd August 2022; the subsequent validation of the Application by the relevant Authority on 15th September 2022; and the Regulation 7 Notice published by the Relevant Authority on 23rd September 2022.
- 1.2 The Application was made on the ground that the Applicant disagrees with the published explanation of the Relevant Authority for not preparing an ICIA in connection with the Relevant Authority’s permanent appointment of the Executive Head Teacher of Tiree High School and Oban High School in June 2022.

2. The Review Process

- 2.1 The Application was originally made on 3rd August 2022, in the Form prescribed by Regulation 5, and accompanied by a supporting Document A – providing further details relevant to the Application.
- 2.2 However, following a review of the Application as submitted, the Relevant Authority considered (in terms of Regulation 6(2)) that the Application in its current form was incomplete; and documentation listed on the Application Form as having been submitted in support of the Application had not been provided in full. Accordingly, the Relevant Authority issued a Notice to the Applicant on 16th

August 2022, under Regulation 6(2) requiring the submission of a range of information and documentation, as listed within that Notice.

- 2.3 The Applicant submitted the requested information and documentation, which was received by the Relevant Authority on 23rd August 2022. The provision of this further information and documentation allowed the Application to be completed, and a Validation Notice was issued by the Relevant Authority (in accordance with Regulation 6(5)) on 15th September 2022. That Notice acknowledged receipt of the full Application; and gave Notice to the Applicant that all documents submitted in connection with the Application would be published on the Relevant Authority's website at the following link:

[Island Communities Impact Assessments \(argyll-bute.gov.uk\)](https://argyll-bute.gov.uk/Island-Communities-Impact-Assessments)

- 2.4 On 23rd September 2022, the Relevant Authority published a further Notice on its website, in accordance with Regulation 7, which set out the decision to which the Application for review related, the ground on which the Application was made (i.e. Regulation 4(a)), where the Application and associated documentation (redacted in accordance with Regulation 9(2)) could be accessed by any party (i.e. at the above link), and information in relation to how written representations could be made by any person to the Relevant Authority in connection with the Application.
- 2.5 The deadline for making written representations was no later than 23.59 on Friday 14th October 2022. Representations could be emailed or posted to the Relevant Authority. No written representations were received by the Relevant Authority.
- 2.6 Following the above exercise, and having noted that no written representations were submitted in relation to the Application, the Relevant Authority considered (in terms of Regulation 10) that the review documents provided sufficient information to enable it to determine the Application without any further procedure.

3. "Community Controlled Body"

- 3.1 The Application was submitted by Dr John Holliday, but made on behalf of Tiree Community Council, and Tiree High School Parent Council (as per Section 1.2 of the Application Form). The Relevant Authority understands that the said Dr John Holliday is the Convener of Tiree Community Council, and as such, made the Application on behalf of that body. However, no information was originally submitted as part of the Application to demonstrate that Dr John Holliday had the express authority to act on behalf of Tiree High School Parent Council. Accordingly, the Relevant Authority requested evidence from Tiree High School Parent Council (via the Regulation 6(2) Notice, issued by the Relevant Authority on 16th August 2022) that the said Dr John Holliday had the authority to make the Application on that body's behalf.

3.2 Following this request, the Relevant Authority received further documentation and information from the Applicant required to complete the Application on 23rd August 2022, which included a letter to the Relevant Authority from Will Wright, Chair of Tiree High School Parent Council. That letter advised that Dr John Holliday was co-opted onto the Tiree High School Parent Council in January 2022, and had the express authority to act on behalf of the Parent Council in respect to the Application.

3.3 The Application is made on behalf of Tiree Community Council and Tiree High School Parent Council as community controlled bodies (Section 1.1 of the Application Form). A “community controlled body” is given the following definition in the Regulations (as per Regulation 2):

“community controlled body” means a body (whether corporate or unincorporated) having a written constitution that includes the following—

(a) a definition of the island community to which the body relates,

(b) provision that the majority of the members of the body is to consist of members of that island community,

(c) provision that the members of the body who consist of members of that island community have control of the body,

(d) provision that membership of the body is open to any member of that island community,

(e) a statement of the body’s aims and purposes, including a promotion for the benefit of that island community, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of that island community,

3.4 The Relevant Authority are clear that Tiree Community Council satisfies the above definition following a review of the Scheme of Establishment of Community Councils in Argyll and Bute, and the Model Constitution, at Appendix 1 therein ([Scheme of Establishment of Community Councils in Argyll and Bute](#)).

3.5 However, the Relevant Authority are not persuaded that Tiree High School Parent Council falls under the above definition, following a review of that body’s Constitution ([Tiree High School Parent Council - Constitution](#)) for the following reasons:

(a) The Parent Council’s Constitution does not contain a definition of the island community to which the body relates. Rather, it contains a definition of the school to which the Parent Council relates.

(b) The Constitution does not contain a provision that the majority of the members of the Parent Council are to consist of members of that island community. Instead, the requirement is for the Parent Council membership to consist of (a minimum of three, and a maximum of twelve) parents and carers of the children of Tiree High School. As was mentioned by Dr John Holliday in his response to the Relevant Authority's Regulation 6(2) Notice, it is noted that the Parent Council has a power to co-opt community members or groups (outwith the Parent Forum) to assist in the discharge of its functions. However, as a minimum, the membership of the Parent Council must consist of members of the Parent Forum as a majority. Also, the Parent Council must be chaired by a parent of a child attending the School.

(c) There is no provision within the Constitution that the members of the Parent Council, who consist of members of that island community, have control of the body. As explained in the above paragraph, the prerequisite for the minimum membership and control of the Parent Council is to be members of the Parent Forum, rather than members of the island community. Although the two may be closely related in a practical sense, there is a distinction to be made.

(d) There is no provision within the Constitution that membership of the Parent Council is open to any member of that island community. As mentioned in Paragraph (b), above, it is noted that community members may be co-opted onto the Parent Council, but the Parent Council must be constituted by members of the Parent Forum in the first instance, as a minimum.

(e) The objectives, aims and purposes of the Parent Council, as set out in its Constitution, are to promote Tiree High School, the views of the Parent Forum, and the education and welfare of pupils attending the School specifically – they are not set out in furtherance of the island community in general.

(f) There is no provision within the Constitution that any surplus funds or assets of the Parent Council are to be applied for the benefit of that island community. Rather, all funds are to be applied for the benefit of Tiree High School (and in particular, in furtherance of the Parent Council's objectives). Also, in the event that the Parent Council ceases to exist, any surplus funds are to be passed to the Education Authority, to be used for the benefit of the school (or schools) where this continues.

3.6 As a result of the above, it is the Relevant Authority's position that Tiree High School Parent Council does not fall under the definition of a "*community controlled body*" under the Regulations, and as such, cannot competently make the

Application. As such, the Relevant Authority holds that the Application has been made by Tiree Community Council only, with Dr John Holliday acting as that body's representative.

4. Ground of Application

- 4.1 The Application was made under the ground that the Applicant disagrees with the published explanation of the Relevant Authority for not preparing and ICIA, in terms of Regulation 4(a).
- 4.2 The Applicant is of the position that the Relevant Authority should have carried out an ICIA in relation to the permanent appointment of the Executive Head Teacher of Tiree High School and Oban High School in June 2022.
- 4.3 The Applicant contends that an ICIA should have been carried out in relation to this appointment as it resulted in a material change in the model of service delivery at Tiree High School.
- 4.4 The Applicant further submits that several factors need to be considered when evaluating the requirement for an ICIA in this particular instance, namely:
 - 4.4.1 The isolation of the Tiree High School campus – in comparison to Oban High School.
 - 4.4.2 Differences between Tiree High School and Oban High School – in terms of size, education provision, and other relevant characteristics.
 - 4.4.3 The fragility of Tiree's community and culture – in terms of recent population decline, and a reduction in Gaelic speakers on the island.
 - 4.4.4 Tiree's unique heritage and traditions – and how a Tiree-based Head Teacher is required in order to protect these.
 - 4.4.5 The expansion of virtual classes in Tiree High School in recent years – its unpopularity with parents and pupils, and a proposition that remote learning would not have been so extensive had this been a mainland school.
 - 4.4.6 The need for and ICIA has already been accepted by the Relevant Authority – specifically in relation to the School Leadership Structures proposals which were previously being consulted on by the Relevant Authority.

5. Determination and Reasons

- 5.1 As mentioned at Paragraphs 1.2 and 4.2, above, the Application for review relates to a decision of the Relevant Authority not to prepare an ICIA in connection with the Relevant Authority's permanent appointment of the Executive Head Teacher of Tiree High School and Oban High School in June 2022.
- 5.2 The *Islands (Scotland) Act 2018* (hereinafter referred to as "the 2018 Act") places a requirement on the Relevant Authority to prepare an ICIA in relation to any "*policy, strategy or service*", which, in the Relevant Authority's opinion, is likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities) in the Relevant Authority's area.
- 5.3 However, the decision to which this Application relates is in relation to the recruitment of staff, which is an operational matter for the Relevant Authority (as Education Authority) and not a matter of strategy, policy or service redesign. The Executive Head Teacher's post was made permanent in June 2022, after the post-holder fulfilling that position on an acting basis for a number of years (i.e. since 10th December 2018). Therefore, contrary to the Applicant's position as set out at Paragraph 4.3, a material change in the model of service delivery has not occurred at Tiree High School, as the existing arrangements have been in place for a number of years now, and no changes were made to this as a result of the permanent appointment in June 2022.
- 5.4 The Relevant Authority has also carefully considered the additional factors as set out by the Applicant, as rehearsed at Paragraph 4.4, above. In relation to Paragraphs 4.4.1 – 4.4.3, it is appreciated by the Relevant Authority that these may be overarching priorities and/or concerns for the local community. However, those factors are brought about by the unique geographical nature and circumstances of Tiree as an island community, rather than by the decision to which this particular Application relates.
- 5.5 In relation to Paragraph 4.4.4, it is appreciated that such protections are important to the Community, but the Applicant has offered no evidence within the Application and supporting papers to suggest that a Tiree-based head teacher will, in itself, afford those protections. All Argyll and Bute Head Teachers are officers of the Relevant Authority, and their role is to implement both the national and local visions for Education.
- 5.6 In relation to Paragraph 4.4.5, that is a purely operational matter for the Education Authority in terms of how Education is delivered. Expanding the curriculum offered remotely to senior phase pupils is in fact an Authority-wide improvement priority and has allowed a greater number of pupils (both on islands and the mainland) to benefit from studying courses for qualifications which would otherwise have been unavailable.

5.7 As such, the Relevant Authority maintains its view that an ICIA is not required in this particular case on the basis that the recruitment of staff by the Education Authority is a matter which is purely operational in nature and not a matter of policy or strategy. For this reason, the Relevant Authority is of the view that the relevant provisions of the 2018 Act do not apply in this particular instance.

5.8 Furthermore, with reference to Paragraph 4.4.6, the Relevant Authority denies that the need for an ICIA has already been accepted, as submitted by the Applicant. The Applicant has conflated the particular decision to which this Application relates, with the wider School Leadership Structures proposals and consultation exercise, undertaken by the Relevant Authority and considered by the Council's Community Services Committee at their meeting on 25th August 2022:

[Community Services Committee, 25th August 2022 - Argyll and Bute Council](#) (See Agenda Item 5)

5.9 As will be noted from the Committee reports and accompanying papers, that matter related to a consultation exercise on proposals to potentially transform the management structures of schools throughout Argyll and Bute. At that point, the proposals being considered were in relation to a model in principle (to be developed further if the proposals progressed) but given the widespread nature and potential implications of the proposals, coupled with the fact that this was clearly a matter of strategy for the Relevant Authority, a change in policy for the Education Authority, and a proposed change to management structure within the Council's schools – an ICIA was produced to assess the likely impacts of such a structural change on the Relevant Authority's island communities (see Appendix 2 of the Committee Report).

5.10 In contrast, and as mentioned in Paragraphs 5.1 – 5.7, above, the decision to which this Application specifically relates is to the recruitment of staff by the Relevant Authority – which is strictly an operational matter for the Relevant Authority. Furthermore, no strategic, policy or service changes (including to the management structure of the affected schools) were implemented as a result of that recruitment exercise, as the current arrangements have been in place for a number of years.

5.11 Furthermore, the decision to which the Application relates does not constitute a "relevant proposal" in terms of Schedule 1 to the *Schools (Consultation) (Scotland) Act 2010* – so a statutory consultation under that legislation was not necessary in advance of implementing the decision.

5.12 In summary, the Relevant Authority is satisfied that it had due regard to all of its legislative duties in carrying out the aforementioned recruitment exercise, and discharging its duties as an Education Authority – and determines that the 2018

Act does not apply in respect of the decision to which the Application relates for the reasons as set out above.

6. Further Action

- 6.1 Further to the above determination, the Relevant Authority will not carry out an ICIA in connection to the decision to which the Application for review relates; nor will it take any further action in terms of Regulation 16.

DOUGLAS HENDRY
Executive Director
Argyll and Bute Council

Date: 02/02/2023