



REPORT TO: MORAY COUNCIL EMERGENCY CABINET ON 23 APRIL 2020

SUBJECT: SCHEME OF DELEGATION – DEVELOPMENT MANAGEMENT

BY: DEPUTE CHIEF EXECUTIVE (ECONOMY, ENVIRONMENT AND FINANCE)

1. REASON FOR REPORT

- 1.1 To review the procedures for determining planning applications currently carried out in accordance with the Council's approved scheme of delegation to ensure that the Council's statutory function as a Planning Authority can continue to operate during the Coronavirus (COVID-19) outbreak, whilst the Planning & Regulatory Services Committee has been temporarily suspended.

2. RECOMMENDATION

2.1 It is recommended that the Emergency Cabinet:

- i) agree a temporary change to the Council's Scheme of Delegation for Development Management Section 43 Town & County Planning (Scotland) Act 1997 (as approved by the Planning and Regulatory Services Committee on 29 January 2019 and by Scottish Ministers on 12 February 2019 – Appendix 1), set out in Appendix 2 to delegate determination of local applications to the Appointed Officer; and seek the approval of the Scottish Ministers for the amended scheme;
- ii) agree under Section 56 of the Local Government Act 1973 the Council's Scheme of Delegation be amended for the Appointed Officer to determine major planning applications as defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009;
- iii) agree that a minimum of 5 Cabinet members must be in attendance to determine a planning application;
- iv) agree that prior to determination a copy of the report and recommendation on all major planning applications and those that would have previously been determined by the Planning & Regulatory Services Committee (Appendix 1) be circulated to the Emergency Cabinet members who would have the right to call them in for determination;

- v) note that all Proposal of Application Notices (PoANs) received will be circulated to all Members of the Council for comment through email, and any comments received will be fed back to the applicant and consultees; and
- vi) agree to review the position once a decision has been made on or before 17 June 2020 in terms of the re-establishment of all committees.

3. BACKGROUND

- 3.1 Some aspects of the planning system, including a number of processes and requirements, are being affected by the impacts of the Coronavirus (COVID-19) outbreak and the resultant need for social distancing. The restrictions that have been introduced are having a significant impact on the planning workforce and its ability to deliver the Council's statutory function. At a meeting of Moray Council on 25 March 2020 the Council agreed to temporarily suspend all delegations to committees, including the Planning & Regulatory Services (P&RS) Committee (para 2 of the draft minute refers), therefore planning applications that fall outwith the approved Scheme of Delegation cannot be determined within agreed timescales.
- 3.2 One of the consequences of this is the risk of applications of importance to the local economy stalling in the system, for example major applications and large local applications which generate local jobs through investment in projects. Some of these will relate to affordable housing. A further consequence is that applicants have the right to appeal against non-determination of planning applications unless covered by a processing agreement which may result in applications being determined by the Directorate for Planning and Environmental Appeals (DPEA). This would remove local decision making and the planning application would in effect be dealt with in the same way as if the application had been refused by the P&RS Committee.
- 3.3 The current Scheme of Delegation scheme (**Appendix 1**) for Development Management purposes was approved by the P&RS Committee on 29 January 2019 (para 11 of the minute refers), and subsequently approved by the Scottish Ministers on 12 February 2019. This scheme has been working well and allows for a number of local applications to be determined by the Appointed Officer allowing the P&RS Committee to focus on larger local and major applications in accordance with Scottish Government advice contained in Circular 5/2013.

4. Proposed Temporary Arrangements

- 4.1 It is considered that in the current circumstances there are a range of options to consider. The first is to make no planning decisions on planning applications that would have normally been determined by the P&RS Committee. The risks associated with this option are outlined above at para 3.2 and until the position of all committees is reviewed on or before 17 June 2020, there is a chance that the impacts highlighted could occur. Since it is unclear whether the P&RS Committee will sit before September 2020, the

next scheduled meeting after the one which was due to take place on 16 June 2020, other options have been explored and are set out below.

- 4.2 Other Councils including Aberdeenshire are operating virtual committees using Skype and through emergency legislation recently laid that has removed the requirement for meetings to be held in public. This is not considered viable in Moray however, as debate and decision-making is likely to be difficult and unworkable due to the varying quality of connection. This also applies to circulating committee papers electronically for determination by email, as the process of seeking comments/recommendations from each member for every application under consideration by the Emergency Cabinet would be difficult to manage due to the applications being of a more significant and technically complex nature.
- 4.3 A further option available to the Council is to amend the current Scheme of Delegation for a temporary period to allow all planning applications that are local as defined in the hierarchy to be determined by the Appointed Officer. This amended Scheme of Delegation would then allow the Planning Authority to continue to process and make decisions on planning applications which are currently delegated to the P&RS Committee. This would ensure that when the current restrictions on movement are lifted the development industry in Moray is in the best position it can be in terms of progressing with approved developments. The amended Scheme of Delegation (**Appendix 2**), if agreed by Members, would need to be approved by Scottish Ministers and assurances have been given at government level that this would be turned around timeously.
- 4.4 It is on this basis that the current Scheme of Delegation (**Appendix 1**) for Development Management purposes be amended for a temporary period to allow the Appointed Officer to determine all local applications until a decision has been taken regarding the re-establishment of the P&RS Committee. At this point the previously approved Scheme of Delegation would be re-established. If this has not occurred by 17 June 2020 a review of the process will be carried out.
- 4.5 In addition to the above proposed procedure, it is recommended that under Section 56 of the Local Government Act 1973 the Council's Scheme of Delegation in terms of its emergency powers be amended to allow the Appointed Officer to determine major planning applications. This is a power that is being requested separately under exceptional circumstances and again is considered to be the only option to continue decision-making in Moray in order to maintain a functioning planning system.
- 4.6 In light of the potential controversial nature of these applications it is recommended that, prior to determination, a copy of the report and recommendation on all major planning applications and those that would have previously been determined by the P&RS Committee (**Appendix 1**) be circulated to the members of the Emergency Cabinet who would have the right to call them in for determination. A request from any individual member of the Emergency Cabinet for an application to be determined by the Cabinet would be sufficient to have the application called in.

- 4.7 All of the applications that would have been determined by the P&RS Committee will continue to be drafted in the same committee report format rather than an officer handling report and circulated to members of the Emergency Cabinet. There may be occasions where the Appointed Officer would request that an individual application would be determined by the Emergency Cabinet without the need for a Member to request a call-in and this would depend on the overall scale and complexity of the planning application.
- 4.8 The Moray Council meeting on 25 March 2020 considered the report on emergency decision making and the establishment of the Emergency Cabinet. This report allowed for a Cabinet of 7 members to reflect the political balance of the Council and allowed for the use of substitute members. If a planning report is presented to or called in for determination, any member of the Emergency Cabinet may consider requesting a substitute Cabinet member with experience of considering planning matters as a member of the P&RS to attend in their stead. Although the report on the 25 March was silent on the matter, Council standing order 19 states that $\frac{1}{4}$ of members or at least 3 need to be in attendance, whichever is greater, however for the purposes of Planning Applications it is suggested that a minimum of 5 members should be present for the meeting to be quorate to allow a greater representation of views.
- 4.9 Emergency Cabinet meetings with 7 members allow for safe social distancing within the Council Chambers which would allow public webcasting to take place however the public would not be allowed in the chamber itself. It would not be appropriate to hold a Planning Hearing during the current social distancing measures and this would not be an option for any application although none are currently anticipated. Members of the Cabinet can utilise audio remote connections to attend Emergency Cabinet meetings and in such cases voting will be done by verbal confirmation of each vote. Where audio connections using vscene are made, webcasting live will not be possible and the webcast will be uploaded after the meeting has concluded. Emergency Cabinet meetings will normally require at least 3 clear working days to consider the agenda before the meeting.
- 4.10 Members of the Cabinet or their substitutes must comply with Scottish Government guidance on social distancing and self isolation and should not put themselves or others at risk by unnecessarily attending meetings in person. However as a minimum, it is anticipated that the Chair of the Cabinet, Committee Officer and a Planning Officer would be present in the Council Chamber to facilitate the meeting when planning applications are being considered. Guidance will be issued on the running of the Emergency Cabinet and how it will operate remotely.
- 4.11 In terms of appeal arrangements all major applications under the hierarchy that are determined and refused would still have the right of appeal to the DPEA. Any applications refused under the amended scheme of delegation for local applications would be determined by the Local Review Body (LRB) except for any major application. Guidance is awaited from the Scottish Government in relation to conducting LRBs during the current COVID emergency and a report will come before the Cabinet at a future date on the proposed procedures for the LRB.

5. **SUMMARY OF IMPLICATIONS**

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

It is important for the Council to maintain an effective decision making process to continue to support the local economy and deliver a statutory planning service.

(b) Policy and Legal

These proposals will temporarily amend the Councils approved Scheme of Delegation approved by the P&RS Committee on 29 January 2019 (as approved by Scottish Ministers on 12 February 2019). The amended Scheme set out in **Appendix 2** will require to go the Scottish Ministers for approval and in the circumstances it is anticipated this will be given as a matter of urgency.

(c) Financial implications

None.

(d) Risk Implications

Streamlining the Council's decision making could compromise transparency and the involvement of Councillors in the decision making process. The proposals are considered to be a reasonable and proportionate response in light of the current exceptional circumstances.

(e) Staffing Implications

None.

(f) Property

None.

(g) Equalities/Socio Economic Impact

No direct implications.

(h) Consultations

The Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, the Strategic Planning & Development Manager, the Equalities Officer and Lissa Rowan (Committee Services Officer) have been consulted and comments incorporated into this report.

6. **CONCLUSION**

- 6.1 **As a result of the Coronavirus (COVID 19) outbreak temporary changes to the Council's current Scheme of Delegation for Development Management (as approved by the P&RS Committee on 29 January 2019 and by Scottish Ministers on 12 February 2019) (set out in Appendix 2) including determination of major applications by the Appointed Officer are proposed. This would be subject to the Emergency Cabinet having the right to call in for determination any major planning application and any planning application normally determined by the P&RS Committee (Appendix 1).**

6.2 This temporary position will be reviewed once a decision has been made on or before 17 June 2020 in terms of the re-establishment of all committees.

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Background Papers: Appendix 1 – Approved Scheme of Delegation for Development Management – 29 January 2019

Appendix 2 - Proposed temporary Scheme of Delegation for Development Management – April 2020

Ref: