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**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON 31  
MAY 2022**

**SUBJECT: CONSULTATION ON PROPOSED CHANGES TO FEES  
CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT  
1989**

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

## **1. REASON FOR REPORT**

- 1.1 This report asks the Committee to consider the consultation issued by the Scottish Government on the proposed changes to fees for applications submitted under the Electricity Act 1989.
- 1.2 This report is submitted to Committee in terms of Section III (E) (1) of the Council's Scheme of Administration relating to the statutory functions of the Council as a Planning Authority.

## **2. RECOMMENDATION**

- 2.1 **It is recommended that the Committee;**
- (i) note the contents of the consultation paper set out in Appendix 1; and**
  - (ii) agree the consultation response to be sent to Scottish Government set out in para 5.2 of this report.**

## **3. BACKGROUND**

- 3.1 The Scottish Ministers (SM's) are responsible for determining planning applications for consent under Sections 36, 36C and 37 of the Electricity Act 1989. These applications are for onshore generating stations with an installed capacity exceeding 50 Mega Watts and overhead power lines in Scotland. These applications are processed by the Energy Consents Unit (ECU) on behalf of SM's.
- 3.2 The SM's are also responsible for determining applications for consents for generating stations with an installed capacity exceeding 1MW in Scottish Territorial waters and over 50MW in the Scottish Renewable Energy Zone.

These applications are processed on behalf of SM's by Marine Scotland Licensing Operations Team.

- 3.3 The Local Planning Authority are a consultee on all these consents as every consent issued includes a deemed planning consent.
- 3.4 The current fee tariff and structure for these applications came into effect on 30 June 2019 through revised fee regulations – The Electricity (Applications for consent and Variation of Consent) (Fees) (Scotland) Regulations 2019.
- 3.5 The reasons for the review of application fees is due to a shortfall between the cost of running the ECU and Marine Scotland Licensing Operations Team and the income received from application fees and it is also anticipated that a significant number of new applications are to be submitted over the next one to three years. SM's wish to ensure the service is fully serviced.

#### **4. CURRENT FEE POSITION**

- 4.1 Since the revised fees were introduced in June 2019 only three S.36 applications in Moray have been received with a total fee income of £76,875. These related to a variation for a solar array, wind farm extension and a battery storage system with associated infrastructure.
- 4.2 Two previous section 36 applications for windfarms were submitted just prior to the 2019 fee structure, being amended which resulted in a con-joined Public Local Inquiry (PLI) held in late 2020. The combined fees received for these two consultations was £40,000. Raising objections to these consultations triggered a PLI and the total cost amounted to in excess of £150,000. These costs included landscape and noise consultants and legal representation (excludes any internal staff resources used). The amount of officer resources dedicated to responding to these consultations, preparing for and representing Moray Council at the con-joined PLI was significant. The combined staff resources from Planning and Legal, internal consultees and associated administration would likely have exceeded the £40,000 received in fee income. This would include time spent by Elected Members who visited the locations with Officers, considered reports and had been contacted by constituents directly.

#### **5. PROPOSED FEE STRUCTURE FOR S.36 & S.37 CONSENTS**

- 5.1 The Scottish Government is proposing to change fee tariffs as set out in Table A in Appendix 1. This includes an increase to all fee categories of approximately 20% as well as proposing new bandings for larger scale applications which include developments that exceed capacities of 500MW, 750MW and 1GW. The additional bandings are to reflect the growing scale of offshore renewable electricity generating stations.
- 5.2 The consultation asks three main questions as well as seeking additional comments as follows:

**Q1 – Do you agree or disagree with the proposed application fees as set out at Table A?**

A – Disagree. The uplift of 20% is welcomed and it is expected that the voluntary fees share of 50% to Local Planning Authority will continue. The level of fees is currently at a low level whereby any objection to a S36 by a local planning authority automatically triggers a costly Public Local Inquiry that even a 20% increase will not cover. Initial S36 consultations and PLI costs associated with landscape, noise assessment are considerable, as a result of cumulative impact of existing and consented schemes having to be taken into consideration. The costs associated with a Public Local Inquiry and staff resources are not covered by any fee that would be received from the ECU. Moray Council (like many others) are not in a position to set a specific budget for participating in PLI's on Section 36 and other energy related proposals.

**Q2 – Do you agree or disagree with the new bandings for developments with a capacity greater than 500MW as set out at Table A?**

A – The new bands are welcomed with higher fees being paid on a sliding scale. On the basis that only 50% of the fee is to be given to the LPA even the highest band fee would not cover the costs of in circumstances where an objection were to be raised. This effect would be worsened where a development straddles two local authority areas and the 50% voluntary fee is further divided between them.

**Q3 – Do the proposed application fees set out in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)?**

A – The financial implications responding to S.36 and S.37 applications are considerable in terms of assessment and the need to utilise existing staff resources and to instruct consultants to inform responses. It is anticipated that if there will be an increase in number of applications the lack of resources to handle these is of serious concern and is a constant budget pressure. This is based on recent experience. The proposed revised fees will not cover the costs of the LPA involvement in these consultations, especially where a PLI is triggered.

**Q4 – Other comments**

A – One option is to raise the 50mW trigger for Section 36 applications to bring more applications within the planning regime and planning fees, which better reflect the actual costs of determining such proposals.

It is noted that the proposed National Planning Framework 4 may also bring into the realm of Development Management increased scrutiny over policy matters such as decarbonisation, zero waste, health and wellbeing etc. If such specialisms become imbedded in the Section 36 process, additional expertise will have to be paid for.

Given the current process for determination often results in PLI's, if the current fee schedule is to remain as is, a separate fund could be set up to support local authorities and indeed community groups to participate in PLI's.

At present the format and duration of PLI's favours applicants that have significant financial resources to support the PLI process but cannot be matched by the LPA's under the proposed fee structure.

A significant amount of staff resources are required at both the preliminary enquiry stage and post consent in terms of discharging planning conditions. A separate fee should be considered to cover these additional staff resources.

## **6. SUMMARY OF IMPLICATIONS**

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

The ten year plan's top priority is a growing, diverse and sustainable economy. It covers business, employment, infrastructure, public services and developing sustainable communities.

### **(b) Policy and Legal**

Responding to S.36 & S.37 consultations is a statutory requirement of a Local Planning Authority. S.36 and S.37 of the Electricity Act 1989 ("the Electricity Act") and The Electricity (Applications for Consent and Variation of Consent) (Fees (Scotland) Regulations 2019 ("Fees Regulations 2019").

### **(c) Financial implications**

There a likely to be future pressure for resources to be requested to consultant fees to cover specialist advice relating to landscape and noise as well as legal representation.

### **(d) Risk Implications**

There is a risk to the integrity of the planning system if these consultations are not adequately resourced.

### **(e) Staffing Implications**

Some of the anticipated increase in S.36 & S.37 applications across Scotland are likely to be in Moray and will have a significant impact on staff resources and performance if fees received do not cover the full costs of handling these consultations.

### **(f) Property**

None.

### **(g) Equalities/Socio Economic Impact**

None.

**(h) Climate Change and Biodiversity Impacts**

None.

**(i) Consultations**

Consultation has taken place with the Depute Chief Executive (Economy, Environment and Finance), Head of Economic Growth and Development, the Legal Services Manager, the Senior Engineer Transportation, the Principal Climate Change Officer, the Equal Opportunities Officer, the Strategic Planning & Development Management and Paul Connor (Principal Accountant) and their comments incorporated into the report.

**7. CONCLUSION**

**7.1 The response to the consultation is set out at para 5.2 and raises concerns that the proposed revised fee levels and introduction of new bands is not sufficient to cover the full costs of handling these consultations. In addition, the costs of providing pre-application advice and discharging the planning conditions imposed on deemed consents is significant and should be covered by a separate fee.**

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Background Papers:

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