



REPORT TO: MORAY COUNCIL EMERGENCY CABINET – 21 MAY 2020

SUBJECT: MORAY LOCAL REVIEW BODY – TEMPORARY ARRANGEMENTS DUE TO COVID-19

BY: DEPUTE CHIEF EXECUTIVE (EDUCATION, COMMUNITIES AND ORGANISATIONAL DEVELOPMENT)

1. REASON FOR REPORT

- 1.1 To ask the Emergency Cabinet to consider and agree temporary arrangements to determine appeals submitted to the Moray Local Review Body (MLRB) during the Covid-19 pandemic.
- 1.2 This report is submitted to the Emergency Cabinet following a decision of Moray Council on 25 March 2020 to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic (para 2 of the minute refers).

2. RECOMMENDATION

- 2.1 It is recommended that the Emergency Cabinet consider and agree:
- i) to reinstate the Moray Local Review Body and note that meetings will be held virtually where possible; and
 - ii) that the requirement to carry out a site inspection for every Notice of Review be temporarily suspended.

3. BACKGROUND

- 3.1 On 25 March 2020, the Moray Council agreed to temporarily suspend all delegations to committees as a result of the Covid-19 pandemic. At this meeting it was agreed that further consideration would have to be given to quasi-judicial decisions and regulated processes such as the MLRB (para 2 (viii) of the minute refers).

4. CURRENT SITUATION

- 4.1 Currently, there are 4 appeals awaiting determination, one of which has been referred for a Hearing following an earlier decision of the MLRB. Each Applicant was contacted advising that the MLRB process was temporarily suspended until agreement had been reached as to how to determine appeals whilst taking into consideration the suspension of all committees and

restrictions due to Covid-19.

- 4.2 Options are being considered to improve on the current video conferencing facilities available within the council. It is proposed that meetings will take place either with a small number of members in the chamber following social distancing rules or virtually where possible.
- 4.3 The Chief Planner issued a letter to all planning authorities on 3 April 2020 and confirmed that, throughout the current Covid-19 crisis and beyond, maintaining a functioning planning system is a top priority for the Scottish Government to support economic development and to ensure planning authorities are in a position to make decisions vital to the recovery of communities and businesses. Ensuring review decisions can be made fairly and efficiently is an important element within that.
- 4.4 The MLRB procedure is governed by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. Due to Covid-19, regulations were made on 24 April 2020 which have temporarily amended the 2013 regs so that there is no need to hold the meeting in public. To aid transparency however, it is hoped that the meeting can either be webcast or a recording of the meeting uploaded to the webcast following the meeting.
- 4.5 At the meeting of the MLRB held on 23 August 2012 (paragraph 3 of the Minute refers), the MLRB agreed that all Notice of Reviews (NORs) would be subject to a site inspection prior to determination. It was also agreed that these inspections would be attended by Members and Officers of the MLRB only. Given the current restrictions on making essential travel journeys only and the need to maintain social distancing it is proposed that the requirement for site inspections for every NOR be temporarily suspended. Where they have not already done so, applicants can be asked to submit detailed photos of the site. There are also easily accessible online resources such as Google Earth. Where it is not possible to meaningfully view a site by any means then the MLRB will have to go on to determine whether it is preferable to defer consideration or determine the review anyway.
- 4.6 As outlined above these meetings will not be open to the public. This will not prejudice applicants as almost all MLRB cases are determined using a written submission procedure.
- 4.7 With regard to the outstanding Hearing, it is proposed to conduct this by way of a virtual video conference meeting as described above. The only difference is that the Applicant and relevant planning officer have the opportunity to address the MLRB at a hearing, therefore they would be provided with the information so that they can join the meeting remotely.

5. SUMMARY OF IMPLICATIONS

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

It is important that the Council continue to carry out its obligation to review planning decisions where the Applicant disagrees with the decision of the Appointed Officer.

(b) Policy and Legal

As stated above, the Regulations governing the business of the MLRB have been temporarily amended by The Town and Country Planning (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 but only to remove the requirement for meetings to be held in public. Therefore further internal arrangements are required to move more towards business as usual.

(c) Financial Implications

None

(d) Risk Implications

Streamlining the Council's decision making process, for example temporarily dispensing with site visits, could compromise transparency in the decision making process. However, the proposals are considered to be a reasonable way of holding a committee and enabling appeals to be heard in light of the current exceptional circumstances.

(e) Staffing Implications

None

(f) Property

None

(g) Equalities/Socio Economic Impact

No direct implications have been identified.

The proposals are aimed at ensuring compliance with Art 6 of the Human Rights Act 1998 (Right to a fair trial) under the current circumstances.

Any quasi judicial process naturally has implications for the human rights and this is true for planning applicants.

In particular any compromise in the independence and transparency of the decision making process has the potential to adversely affect those human rights. However this has to be balanced with the potential adverse affects of delay. That is delay in determining applications and delay in economic recovery. The proposals are therefore considered proportionate and necessary.

(h) Consultations

Head of Governance, Strategy and Performance, Legal Services Manager, Democratic Services Manager, Mr Hoath, Senior Solicitor, the Principal Planning Officer (Strategic Planning and Development) and the Equalities Officer have all been consulted and any comments incorporated into the report.

6. CONCLUSION

- 6.1 All committees have been temporarily suspended due to the Covid-19 pandemic and an Emergency Cabinet has been formed. It is recognised that quasi-judicial decisions and regulated processes such as the MLRB have to continue in a safe environment therefore agreement is being sought to hold meetings of the MLRB in the most effective manner to**

enable decisions on review requests to be made whilst respecting the current restrictions in place.

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Background Papers:
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