



**REPORT TO: PLANNING AND REGULATORY SERVICES COMMITTEE ON
15 AUGUST 2023**

**SUBJECT: PLANNING ETC. (SCOTLAND) ACT 2006: SCHEME OF
DELEGATION**

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

1. REASON FOR REPORT

- 1.1 The report is to review the existing adopted Scheme of Delegation approved on 29 January 2019 (para 11 of the minute refers). It is a requirement of The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 to prepare such a scheme of delegation at intervals of no greater than every five years.
- 1.2 This report is submitted to Committee in terms of Section III (F) (1) of the Council's Administrative Scheme relating to exercising the statutory functions of the Council as a Planning Authority.

2. RECOMMENDATION

2.1 It is recommended that the Committee:

- i) agrees the revised Scheme of Delegation, as set out in Appendix 1 and submit to Scottish Government for adoption; and**
- ii) agrees to update the Scheme of Delegation in relation to S.37 consent consultations from the Energy Consent Unit, as set out in paragraph 5.2 below.**

3. BACKGROUND

- 3.1 The committee may be aware that the provisions of the Planning etc. (Scotland) Act 2006 introduced significant changes in the way in which the Council carries out its planning function which included the operation of Local Review Bodies.
- 3.2 Circular 5/2013 was issued in 2013 titled Schemes of Delegation and Local Reviews which provides the following advice in the introduction:

“The planning system should operate in support of the Government’s central purpose of creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. For decision-making this means providing greater certainty of process, including being timely and transparent, a means to achieve better places for Scotland. Planning authorities use powers of delegation so that certain decisions can be taken by officials instead of being considered by elected members of the authority at committee. Delegation to officers is an important means of adding efficiency to administrative processes and the Scottish Government wants to encourage an appropriate level of delegation to officials to support the role of the planning system in achieving their central purpose”.

- 3.3 It is also important to remember that the 2006 Act introduced a ‘Hierarchy of Developments’ and under this Hierarchy, developments are split into three categories:
- **National** – developments of a national significance, which feature in the National Planning Framework (a spatial development plan that provides the national context for key infrastructure and development for Scotland).
 - **Major** – for which there is a prescribed schedule of what classes of development are regarded as major:
 - Developments requiring a Schedule 1 – Environmental Impact Assessment
 - Residential Development of more than 50 dwellings or 2 hectares
 - Business, general industry storage and distribution of over 10,000 Esq. or 2 hectares
 - Other development in excess of 5,000 sqm or 2 hectares
 - Electricity generating stations exceeding 20 megawatts
 - Transportation or infrastructure projects in excess of 8km.
 - **Local** – the third category, comprising all development other than national or major.
- 3.4 The current delegation scheme, which has been operating since being adopted on 19 January 2019 (**Appendix 2**) has resulted in 107 planning applications and 3 High hedge applications being determined by this committee. Only 35 of these planning applications were determined by committee for the reason that they were either a national or major planning application and 3 for reasons of wider community interest/planning significance. 4 AMC applications on the North Whins Findhorn site (previously agreed by this committee on 24 August 2019, Para 8 refers) were also determined by this committee. The remaining 61 were presented under other criteria contained within the delegation scheme.
- 3.5 There have been 9 special meetings held to deal with planning applications either by the way of a Pre-determination hearing or to deal with committee items outside of the scheduled committee calendar.
- 3.6 The approved Scheme of Delegation was submitted to Scottish Ministers before being adopted. Once adopted, a copy was made available for

inspection at council offices, and at every public library. A copy is also available on the Council's website. The rationale behind the Scheme of Delegation is that the Scottish Government's intention is that planning authorities should make the most effective use of their powers to delegate decisions on straightforward applications to officials, allowing elected members to focus on more complex and strategic applications.

4. PROPOSED SCHEME OF DELEGATION

- 4.1 The principal matters to be addressed as part of this review is whether the committee wishes to make any further amendments to the current scheme that has been in operation for the last five years.
- 4.2 Following a review of the numbers and types of applications presented to this committee it is recommended that changes are made to the current approved Scheme of Delegation to enable the committee to determine only planning applications that either are national, major or have wider community interest and/or planning significance. This would require four criteria to be deleted in the current approved scheme.
- 4.3 The first and second criteria relate to applications on housing sites designated for 50 or more dwellings and applications between 5-49 which have resulted in a number of single house developments and various minor revised layouts being determined by this committee. These are local applications and in terms of resources would be more appropriately determined by the appointed officer under delegated powers. Recent examples relate to a single house plot at Ordiequish Fields, Fochabers and five layout/re-mix applications at R2, Ferrylea in Forres. None of the applications referred to committee under this criteria have been refused by committee.
- 4.4 The third criteria relates to applications for commercial floorspace over 2,000sqm. This has resulted in 7 planning applications being referred to committee and does add delay to determining applications for small businesses. One recent example related to a recycling building at Grays Recycling Ltd at Nether Dallachy and had a floorspace of just over 2,000 sqm. None of the applications referred to committee under this criteria have been refused by committee.
- 4.5 The final criteria proposed to be deleted states "*The proposal (as a whole or in part) has previously been reported to Committee or to a Departure Hearing (Special Committee) and that the appointed officer considers that significant amendments have been made to any previous application for Committee to consider the development*". This criteria has been found to be ambiguous resulting in local applications being referred to committee when they would be more appropriately determined by the appointed officer.
- 4.6 The criteria relating to wider community interest and or planning significance would be retained and has been an effective use of resources. Only 3 cases have been being referred to committee for determination for this reason.

- 4.7 The proposed changes would ensure the committee was acting in a way more closely aligned to the Scottish Government's aspirations in allowing elected members to focus on more complex and strategic applications. There would also be substantial savings made in terms of member and officer resources as there would be a reduction in site visits, preparation of committee papers and time spent at committee. The appointed officer would prepare a handling report the same as a committee recommendation.
- 4.8 Any applications that were refused under delegated powers could be the subject of a local review, if the applicant sought to challenge the decision, rather than an independent reporter's decision resulting in an increase in local decision making. Since the delegation scheme was adopted in 2019, 71 delegated decisions have been the subject of a review by the Moray Local Review Body (a panel of nine councillors). Of the 71 that were determined, 21 were upheld and 50 dismissed.

5. OTHER COMMITTEE ITEMS

- 5.1 The High Hedges (Scotland) Act came into force in April 2014 and so far only four applications have been received and it is considered that due to the nature of these proposals that the arrangements for these to be determined by this committee would also continue. Where committee agree to serve a high hedge notice this can be the subject of an appeal by any interested party and may require direct action to be taken.
- 5.2 Electricity Act 1989 Section 37 Consent for overhead lines – Currently applications for Section 37 development, for which Moray Council is a consultee, are the subject of committee reports. It is proposed that for Section 37 consultations from the Energy Consents Unit, these will continue to be reported to committee in all circumstances unless they relate to:
- a. Wooden poles lines less than 10km in length.
 - b. Reconfiguration/repositioning of larger lattice steel pylon lines, where there will be no net increase in the number of pylons proposed.

6. SUMMARY OF IMPLICATIONS

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

This report enables the Council's priorities and objectives to be delivered.

(b) Policy and Legal

The requirements for preparing Schemes of Delegation are contained in the Schemes of Delegation and Local Review Procedures (Scotland) Regulations 2013 and the Town and Country Planning (Scotland) Act 1997.

- (c) **Financial implications**
There would be a small saving in fuel costs, as the number of committee site visits needed to be undertaken would be reduced.
- (d) **Risk Implications**
There is a risk that performance could be impacted upon if the Scheme of Delegation increases the number of applications being referred to the Planning and Regulatory Services Committee. This may then require a review of the committee cycle to be undertaken, which would need approval of Moray Council, to ensure current performance levels are maintained.
- (e) **Staffing Implications**
This would reduce the number of papers presented to committee and would reduce the amount of officer time spent preparing committee papers and attending committee site visits although officers would still continue to write up delegated reports on applications they were determining.
- (f) **Property**
None.
- (g) **Equalities/Socio Economic Impact**
None.
- (h) **Climate Change and Biodiversity Impacts**
None.
- (g) **Consultations**
Depute Chief Executive (Economy, Environment and Finance), the Head of Economic Growth and Development, the Legal Services Manager, Principal Planning Officers, the Equalities Officer, the Chief Finance Officer and the Democratic Services Manager have all been consulted on this report and any comments received incorporated.

7. **CONCLUSION**

- 7.1 **That the Committee agrees the revised delegation scheme as set out in Appendix 1 and the approved scheme shall then be submitted to Scottish Government prior to adoption. The Scheme of Delegation is also to be updated in relation to S.37 consent consultations from the Energy Consent Unit.**

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Ref:

Background Papers: Appendix 1 – Proposed Delegation Scheme
Appendix 2 – Approved (2019) Delegation Scheme