



REPORT TO PROCEDURES COMMITTEE – 21 APRIL 2021

REVIEW OF PLANNING DELEGATIONS

1 Reason for Report / Summary

- 1.1 This report sets out proposals for a review of Part 2C of the Scheme of Governance – Planning Delegations – and identifies areas which will form part of that review. Comments are sought from Procedures Committee on the scope of the proposed review and the timeline within which the review should be undertaken.

2 Recommendations

The Committee is recommended to:

- 2.1 Comment on the proposals and scope of the proposed review of Part 2C of the Scheme of Governance; and**
- 2.2 Agree the timeline for Officers to undertake this review as outlined in paragraph 3.4.**

3 Purpose and Decision Making Route

- 3.1 The Council's Scheme of Governance was implemented on 27 January, 2017. The List of Planning Delegations is contained within Part 2C. Since then, minor amendments to Part 2C have been made during annual reviews of the Scheme of Governance but there has not been a full review of the operational effectiveness of the planning delegations since its implementation in 2017.
- 3.2 Since 2017, the Scottish Parliament has passed the Planning (Scotland) Act 2019. This Act seeks to modernise Scotland's planning system and secondary legislation and guidance continues to be developed and introduced to support the provisions of the Act. Work on the fourth National Planning Framework has commenced and an interim Scottish Planning Policy was published in December, 2020. More locally, the Council's Proposed Local Development Plan was submitted to Scottish Ministers for examination on 12 March, 2021.
- 3.3 With that in mind, it is considered timely to undertake a review of the planning delegations to ensure they remain aligned to legislation and planning policy, as well as the Council's own aspirations as a planning authority.
- 3.4 It is proposed that the Head of Planning & Environment will further consult with the Planning & Environment Member/Officer Working Group (P&E MOWG) on the scope of the review, having regard to the comments made by the Procedures Committee. The P&E MOWG is next scheduled to meet on 9 June, 2021. Thereafter, having consulted with the P&E MOWG, work shall commence on the review with a view to Officers reporting to the Procedures

Committee in September to make clear recommendations on any amendments which are required to be made to the list of planning delegations. Proposed amendments will be reported to Full Council, if required, in November 2021 as part of the annual review of the Scheme of Governance.

4 Discussion

4.1 The following paragraphs highlight provisions within the list of planning delegations that may benefit from a review of their operational effectiveness, taking into account changes in planning policy and legislation. It should be noted that this is not an exhaustive list and there may be other matters that arise during the course of the review that merit consideration.

4.2 Member Notification Process

The planning delegations provide for circumstances where local ward members can request that applications are referred to Area Committee for determination. In order for an application to be referred on this basis, at least two local ward members must make a request (with the request providing material planning reasons for the referral).

In the majority of cases this referral mechanism operates well. However, there are circumstances where the process could benefit from review. For example, where a declaration of interest has been made by a local ward member or where one or more local ward members has not responded to their member notification on Ward Pages, there are no alternative means for a referral to Committee. As such, consideration could be given as to whether these provisions could be refined so as to provide further clarity.

4.3 Number of Valid Objections

Section 3.1 e. and f. of the planning delegations require applications to be referred to Area Committee in respect of objections received in the following circumstances:-

- Where six or more valid objections have been received, or
- Where there are five or fewer, if two or more local ward members make a request to refer the application to the Committee.

Consideration could be given to whether that number of 'five or fewer' / 'six or more' remains the most appropriate number of objections to warrant a referral of an application to Area Committee.

4.4 Referral Procedures

The planning delegations currently require a planning application to be referred to Infrastructure Services Committee from an Area Committee in a situation where the Area Committee wishes to support the application and approval of would result in a significant departure from the Local Development Plan.

Further information is provided below in paragraph 4.5 regarding significant departures.

However there are other areas in the Delegations where the mechanism for referral exists. An example is where an application is considered to have a significant impact on more than one Area. In such cases, the Area Committee in whose area the development is located, or substantially located, will determine the application following consultation with the adjacent Area Committee(s). If however there is a difference of opinion between the Area Committees, the matter must be referred to Infrastructure Services Committee for determination.

Taking account of the experience gained since the planning delegations were implemented in 2017, it is proposed that a review of the Committee referral procedures across the Planning Delegations would be prudent to ensure that they remain fit for purpose.

4.5 Significant Departures

As referred to above, the scheme provides for planning applications to be referred to Infrastructure Services Committee for determination from an Area Committee in circumstances where the Head of Planning & Environment is of the professional opinion that the approval of the application would constitute a significant departure from the Development Local Plan and the Area Committee wish to approve the application.

In making such a judgement there requires to be consistency in approach across all six areas and surety for Elected Members, Officers and applicants regarding the route of determination for applications which could be considered a significant departure.

Taking cognisance of the policies in the Proposed Local Development Plan, the emphasis on rural development present in forthcoming draft of NPF4 and, more immediately, the relaxation of permitted development rights for certain types of rural development from 1 April, 2021, it is timely to review the nature, scale and location of applications which are currently referred to Infrastructure Services Committee on the basis that they constitute a significant departure from the Local Development Plan.

4.6 Definition of Regional Significance

Section 2.1.a of the planning delegations makes provision for applications of regional significance to be determined by Full Council, following consultation with the Chief Executive and the Group Leaders (including representatives of the Independent and non-aligned Independent Elected Members). The definition within the glossary provides that an application will have regional significance if it has an Aberdeenshire wide impact (as opposed to a localised impact). The governance arrangements enable the relevant Area Committee to provide comments on the proposed development to Full Council.

The definition does not provide guidance or clarity on what type of applications may have regional significance. Consideration could be given to whether a narrower definition would be of benefit to the scheme.

Similarly, consideration could be given to the appropriateness of applications of regional significance being determined by Infrastructure Services Committee (as opposed to Full Council) following consultation with the relevant Area Committee.

4.7 Pre-determination Hearings

Pre-determination hearings were introduced into the planning system by the Planning (etc) Scotland Act 2006. The 2006 Act provided that, applications for which a pre-determination hearing was required, had to be determined by Full Council. This function could not be delegated to a Committee or an Officer. This provision has since been repealed by the Planning (Scotland) Act 2019. As such it is appropriate to consider and review the Council's governance arrangements and decision-making processes relative to applications for which pre-determinations hearings are required.

4.8 Modification and Discharge of Planning Obligations

The provisions within the planning delegations relating to local development have, to date, been considered applicable to applications received for the modification and discharge of planning obligations (Section 75 Agreements). On reviewing the changes to Section 75 of the Town and Country Planning (Scotland) Act 1997, as introduced by the Planning (Scotland) Act 2019, opportunities have been identified to streamline the Council's existing processes and internal procedures relating to the modification and discharge of planning obligations.

The 2019 Act provides clarity that a modification or discharge of a planning obligation can be affected by way of a simple written agreement between the Council, as planning authority, and the person(s) against whom the relevant planning obligation is enforceable. This would be an alternative to the determination of an application, which, until recently, had unresolved legal questions as to whether this was the only way in which such modifications and discharges could be considered.

The 2019 Act does not stipulate when a planning obligation should be modified or discharged by simple written agreement as opposed to through the determination of an application. Planning authorities are therefore afforded discretion to decide in what circumstances an application would be preferable to a simple written agreement.

Consideration is therefore required to be given to the governance arrangements which will support Officers in managing requests for the modification and discharge of planning obligations in an open and transparent manner; and ensuring that Elected Members are appropriately involved in the decision-making process (to the extent that they may so wish to be).

4.9 Preparation of the Local Development Plan

The preparation of the Council's Local Development Plan involves reporting to Area Committees, Infrastructure Services Committee and/or Full Council at the appropriate times in the evolution of the plan. Full Council reserves the authority to review, endorse and approve the Local Development Plan in line with statutory requirements. Infrastructure Services Committee has delegated authority to develop, monitor, review and scrutinise all policy issues and resource matters in respect of the Council's planning function. Area Committees have a general delegation to determine any matter specific to its area. Officers derive their current powers from the list of officer powers and this includes the ability to manage the administrative and operational requirements of their service.

During the preparation of the current Proposed Local Development Plan it became apparent that, whilst the plan preparation is presently covered by the aforementioned general delegations, there may be benefit in having specific delegations to Committees or Officers to increase transparency around the process of local development plan preparation. A review of the current reporting and decision making processes is therefore proposed with a view to making appropriate recommendations for inclusion in the list of planning delegations.

5 Council Priorities, Implications and Risk

5.1 The following Council priorities are relevant to this report:-

<i>Pillar</i>	<i>Priority</i>
<i>Our Economy</i>	<i>Economy & Enterprise Estate Modernisation</i>

A review of the Council's Planning Delegations will support the delivery of the above Strategic Priorities and the underlying principle of "*Right people, right place, right time*".

5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial		X	
Staffing		X	
Equalities		X	
Fairer Scotland Duty		X	
Town Centre First		X	
Sustainability		X	
Children and Young People's		X	

Rights and Wellbeing			
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5.3 An equality impact assessment is not required because this report simply sets out proposals for a review of the planning delegations and does not therefore have any impact at this time on the protected characteristics. Once recommendations in terms of changes to the delegations are identified, an equality impact assessment will be carried out at that time if required.

5.4 The following Risks have been identified as relevant to this matter on a Corporate Level:

ACORP004 - Business and organisational change (including- ensuring governance structures support change; and, managing the pace of change) [Corporate Risk Register](#).

No Risks have been identified as relevant to this matter on a Strategic Level.

6 Scheme of Governance

6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

6.2 The Committee is able to consider this item as it has the remit to consider any changes to the Scheme of Governance and make recommendations to Full Council.

Ritchie Johnson, Director of Business Services

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Date 9 April 2021