

## REPORT TO KINCARDINE & MEARN'S AREA COMMITTEE – 4<sup>th</sup> SEPTEMBER 2018

### **USE OF DELEGATED POWERS BY AREA MANAGER UNDER PARAGRAPHS B1 and B2 OF THE SPECIFIC POWERS TO OFFICERS SET OUT IN PART 2B OF THE SCHEME OF GOVERNANCE TO CONSIDER THE REQUEST FOR ADDITIONAL OPERATING HOURS FOR A FUNFAIR AT STONEHAVEN HARBOUR BY REASON OF SPECIAL URGENCY**

#### **1 Recommendations**

The Committee is recommended to note the use by the Area Manager of delegated powers (as provided in the List of Powers Delegated to Officers, paragraph A18), by reason of special urgency, as summarised in paragraph 2.1 below and as fully provided for in Appendix 1 of this report in order to grant additional operating hours for a funfair at Stonehaven Harbour.

#### **2 Background / Discussion**

- 2.1 Jeffrey Lovet of 35 Rigby Street, Glasgow, G32 6DS submitted an application for the grant of a temporary public entertainment licence in terms of Section 41 of and Schedule 1 to the Civic Government (Scotland) Act 1982. The licence was to permit the operation of a funfair at Stonehaven Harbour on Sunday 26<sup>th</sup> August 2018 between the hours of 10.00a.m. and 4.00p.m.
- 2.2 Following consultation with the Chair and the Vice Chair of the Area Committee, the Area Manager granted the request for extended opening hours on 27<sup>th</sup> July 2018.
- 2.3 Paragraph A.18 of the List of Powers Delegated to Officers allows a decision to be made by officers on any matter which ordinarily requires to be determined by the Council or Committee but, by reason of special urgency, it is impractical to convene a meeting of the Full Council or the relevant Committee to make the decision.
- 2.4 In terms of the Scheme of Delegation, the decision to determine falls within the remit of this Committee. After due consideration, the Area Manager (being the Delegated Proper Officer in terms of A.18 of the List of Powers Delegated to Officers) determined, after consultation with the Chair and Vice-Chair that, by reason of special urgency, it was impractical to convene a meeting of the Committee before a decision was necessary and that consequently the decision on this matter would be taken by officers in terms of A.18 of the List of Powers Delegated to Officers. The consequences of not treating this matter as of one of special urgency would mean that the funfair would only be able to operate restricted hours during the event he was attending at Stonehaven Harbour.

A copy of the report is attached as Appendix 1 to this Report and referred to for its terms.

- 2.5 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report. Their comments are incorporated

within the report and they are satisfied that the report complies with the Scheme of Governance and relevant legislation.

### **3 Governance**

- 3.1 The Area Committee is entitled to consider this matter in terms of paragraph B1.1 of the list of Committee Powers in the Scheme of Governance.

### **Equalities, Staffing and Financial Implications**

- 4.1 An equalities impact assessment is not required because this report is principally to note the use by officers of emergency powers and there will be no differential impact, as a result of the report's recommendations, on people with protected characteristics. The equality implications of the actions taken by officers are detailed in Paper Apart of Appendix 1 to this report.
- 4.2 There are no staffing and financial implications.
- 4.3 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers.
- 4.4 The Town Centre Principle does not apply because this report is principally to note the use of officers of emergency powers.

**Ritchie Johnson**  
**Director Business Services**

Report prepared by Fiona M. Stewart, Senior Solicitor (Democratic Services), Legal and Governance  
Date 22<sup>nd</sup> August 2018

## APPENDIX 1



### REPORT TO THE KINCARDINE & MEARN'S AREA MANAGER - 26<sup>TH</sup> JULY 2018

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982  
SECTION 41 AND SCHEDULE 1  
APPLICATION FOR TEMPORARY PUBLIC ENTERTAINMENT LICENCE  
REQUEST FOR EXTENSION OF OPERATING HOURS FOR FUNFAIR  
STONEHAVEN HARBOUR**

#### **1 Recommendations**

**1.1 It is recommended that the Area Manager, by reason of special urgency, following consultation with the Chair and Vice-Chair of the Area Committee, use the delegated powers provided in the List of Powers Delegated to Officers, paragraphs B1 and B2 of the Specific Delegations to Officers set out in Part 2B of the Scheme of Governance, in order to consider the request for additional operating hours for a funfair at Stonehaven Harbour and:**

**1.1.1 Note that should the extended hours be granted in principle, the Head of Legal and Governance will incorporate the additional hours into any licence issued under delegated powers.**

#### **2 Background/Discussion**

##### **Council's Operation Policy for Fairgrounds and Circuses**

**2.1 Aberdeenshire Council's agreed policy in respect of Circuses and Fairgrounds, sets out standard operating hours of –**

1400 hrs – 2100hrs (Monday – Thursday);  
1400 hrs – 2200hrs (Friday-Saturday); and  
1400 hrs – 1700 hrs (Sunday).

**2.2 Any requests for operating hours outwith the policy must be agreed in advance by the relevant Area Committee.**

##### **Request for Additional Operating Hours**

**2.3 Jeffrey Harvey Lovet of 35 Rigby Street, Glasgow, G32 6DS, submitted an application for the grant of a temporary public entertainment licence relating to the operation of a funfair at Stonehaven Harbour. The applicant wishes to operate as follows:**

Sunday 26<sup>th</sup> August 2018: 10.00a.m. – 4.00p.m.

**2.4 Any extension to operating hours granted does not absolve the operator from operating within the terms of their licence, including meeting any noise limits or other conditions which might be imposed.**

## Consultations

- 2.5 At the time of writing this Report, the application has been to consultation with Police Scotland, Scottish Fire & Rescue Service, Building Standards and Outdoor Services. No responses have yet been received. It is anticipated that there will be no adverse comments or objections lodged in respect of the application.
- 2.6 Given that the Council is now in the vacation period;
- (i) it is impractical to convene a vacation Committee Meeting for one item of business; and
  - (ii) and in order to try to assist the applicant, the wider event and the community,

Officers are now seeking to utilise emergency powers to grant the request for additional operating hours. Similar requests have been granted by the Kincardine & Mearns Area Committee in previous years.

- 2.7 The Head of Legal and Governance has delegated powers in terms of the Scheme of Governance to grant any licence where there has been no objection or representation. Once processed, the licence will be granted. This report seeks authorisation only to include the additional hours sought which are outwith the Landscape Services policy within any licence that may be granted to the applicant on the basis of this application.

## Procedure

- 2.8 **You are NOT being asked to determine whether the application for the Public Entertainment Licence should be granted.** This will be determined by officers, in the absence of any objections or adverse representations using officer powers as outlined at Section 8.8 of the list of officer powers set out at Part 2B of the Scheme of Governance. **You are only being asked to determine whether extended hours of operation should be granted in respect of this application.**
- 2.9 Your decision in relation to the request for extended operating hours will be final. **The legal test that applies to granting the application also applies to the granting of the extended hours.** You are asked to apply the test only in respect of the granting of the extended hours. The test is as follows:

## Grounds for Refusal

### **LEGAL TEST**

- 2.10 A Licensing Authority SHALL refuse an application to grant or renew a licence if, in their opinion:
- a. The applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management, is either –

- i. For the time being disqualified from holding a licence under Section 7(6) of the Act; or
  - ii. Not a fit and proper person to be the holder of the licence
- b. The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if they made the application themselves;
- c. Where the licence applied for relates to an activity consisting of or including the use of premises or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to-
  - i. The location, character or condition of the premises or the character or condition of the vehicle or vessel
  - ii. The nature and extent of the proposed activity
  - iii. The kind of persons likely to be in the premises, vehicle or vessel
  - iv. The possibility of undue public nuisance; or
  - v. Public order or public safety; or
- d. There is other good reason for refusing the application;

And otherwise SHALL grant the application.

### **Options for Disposal**

2.11 Your options in disposing of the request sought are:-

- (a) To grant the hours of operation as sought.
- (b) To grant restricted hours of operation; or
- (c) Refuse to grant the extended operating hours in which case the funfair will operate the hours outlined in Aberdeenshire Council's policy for fairgrounds and circuses.

2.11 When coming to a decision the Committee must consider the evidence heard and the legal tests outlined at paragraph 2.10 of this Report. Supplementary advice and information can be requested, if required.

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

## **3. Scheme of Governance**

3.1 Section B1 and B2 of the Specific Delegations to Officers, as set out in Part 2B of the Scheme of Governance are applicable to this report.

3.2 Section B1 authorises the Delegated Officer to take a decision on any matter which, in their opinion requires to be determined by Full Council, Committee or Sub-Committee, but by reason of special urgency it is impractical to convene a meeting of the Full Council, Committee or Sub-Committee. The Area Committee

has power to exercise the functions of the Council relating to public entertainment licences in terms of section 8.2h of Part 2A of the List of Committee Powers.

- 3.3 Section B2 provides that any decision taken by the Delegated Officer shall be taken following consultation with the Chief Executive (unless the Chief Executive is the Delegated Officer) and the Chair and Vice-Chair of the relevant Area Committee.
- 3.4 Any decisions taken by Delegated Officers using this delegation will be reported to the next meeting of the Kincardine & Mearns Area Committee.
- 3.5 The Delegated Officers for Full Council, as set out on page 95 of the Scheme of Governance, are the Area Manager (Formartine), Chief Executive (or their substitute), the Section 95 Proper Officer and the Monitoring Officer.

#### **4 Implications and Risk**

- 4.1 An Equality Impact Assessment is not needed in this case because the granting or refusing of the application will not have a differential impact on the protected characteristics of the applicant or any third parties.
- 4.2 There are no staffing and financial implications.
- 4.3 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation.
- 4.4 The Town Centre Principle does not apply in respect of this matter as the Committee is considering the complaint as Licensing Authority in a quasi-judicial role and must determine the application on its own merits in accordance with the legal tests set out in the relevant legislation

**Ritchie Johnson**  
**Director of Business Services**

Report prepared by Fiona M. Stewart, Senior Solicitor (Democratic Services)  
Date: 26<sup>th</sup> July 2018