

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 17 OCTOBER 2023

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 43A SCHEME
OF DELEGATION TO OFFICERS**

REPORT BY SERVICE LEADER PLANNING AND SUSTAINABLE GROWTH

Abstract: This report seeks approval to form a short life member officer group (MOG) to review the statutory scheme of delegation required by virtue of section 43A of the Town and Country Planning (Scotland) Act 1997 and appointment of 5 elected members to the group.

1. RECOMMENDATION(S)

It is recommended that the Committee agree to: -

- (i) establish a short life MOG to review the council's current scheme of delegation under section 43A of the Town and Country Planning (Scotland) Act 1997 and to consider whether any changes are required to improve efficiency and effectiveness in determining relevant planning applications;
- (ii) agree the appointment of 5 elected members to the MOG;
- (iii) instruct the Service Leader - Planning and Sustainable Growth to report back in the first instance to this committee on the conclusions of the MOG and onward to council for approval of the scheme of delegation.

2. ALIGNMENT TO THE COUNCIL PLAN

A proportionate scheme of delegation contributes to the provision of an effective and efficient development management service, and in turn contributes to the following outcomes in the Angus Council Plan 2023-2028:

- Caring for our economy
- Caring for our people
- Caring for our place
- Angus Council is efficient and effective

3. BACKGROUND

- 3.1 Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) requires the council to prepare a to prepare a scheme of delegation by which any application for planning permission for a development within the category of local developments or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category is to be determined by a person appointed by them. It also requires the scheme to be kept under review. The associated Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 require the planning authority to prepare a scheme of delegation at intervals of no greater than every 5-years. The scheme of delegation cannot be adopted until it

has been approved by the Scottish Ministers.

- 3.2 Where an application is determined under the section 43A scheme of delegation, the applicant may challenge the decision by application to the local review body (development management review committee). Where an application is determined by committee, or by delegation provided by the Local Government (Scotland) Act 1973, an applicant may challenge the decision by means of appeal to Scottish Ministers.

4. DISCUSSION

- 4.1 The introduction of the requirement for section 43A schemes of delegation was linked with a number of measures that sought to improve the effectiveness and efficiency of the planning process. The scheme of delegation avoids committee time being spent deciding routine or minor applications which do not give rise to controversial issues or matters of wider public interest. The ability to challenge decisions made through the section 43A scheme of delegation to the local review body (development management review committee) sought to increase the number of decisions taken at a local level and reduce the number of cases determined by Scottish Government appointed reporters.
- 4.2 The council's first scheme of delegation was approved by Ministers in June 2009 and came into effect from 3 August 2009. It was reviewed by a short life working group in 2014 (report 162/14) and again in 2019 (report [107/19](#)). The current scheme of delegation, which reflects the 2019 review, was approved by Scottish Ministers on 17 May 2019.
- 4.3 As matters stand, while figures will fluctuate slightly year-on-year, around 96% of applications are determined under delegated powers and a similar percentage are approved each year. The delegation and approval rates are broadly comparable with figures available for other planning authorities in Scotland.
- 4.4 Angus Council has generally been in the top quartile of all planning authorities in terms of timescales for dealing with most categories of planning applications. However, recent performance has been affected by difficulty recruiting to fill vacant posts, both within the planning service and in other service areas that contribute to the assessment of planning applications. Notwithstanding that, performance dealing with the applications remains reasonable strong in comparison to the Scottish average. In 2022/23, the average time for dealing with an application for local development where a processing agreement was not in place was 8.7 weeks in Angus compared with a Scottish average of 11.5 weeks. For householder development during the same period, the average time for a decision was 6.7 weeks in Angus compared with a Scottish average of 8.9 weeks. During that period, over 97% of applications were delegated and around 96% of applications were approved. The current scheme of delegation has helped maintain a reasonable level of performance in otherwise challenging circumstances.
- 4.5 The Planning (Scotland) Act 2019 includes provision to expand the range of application types that can be determined through the section 43A scheme of delegation to include certificates of lawfulness and advertisement consents. Those application types are currently typically determined under delegated powers provided by the Local Government (Scotland) Act 1973 which means associated appeals are to Scottish Ministers. However, that provision has yet to be formally implemented, but signals a desire from government to see increased use of section 43A delegation.

- 4.6 Regulations require the council to prepare a section 43A scheme of delegation before May 2024. Consistent with the approach taken previously, it is appropriate to establish a MOG to identify any changes that might be considered necessary to improve the efficiency and effectiveness of the current scheme. It is anticipated that the MOG should not need to meet more than twice at most.
- 4.7 In terms of Standing Order 32(4) in appointing members to committees the council, “shall, so far as possible” give effect to the principles of regarding “political balance”. Whilst this standing order does not apply to Member/Officer groups, the council has, by custom and practice, normally sought to comply with the same principles.
- 4.8 In that respect, it is suggested that the MOG should comprise the following membership:
- Administration group: 3
 - Opposition: 2
- 4.9 The findings of the MOG will be reported to this committee before any change is made to the scheme of delegation. The scheme of delegation will then be taken to a meeting of the full council for agreement before being submitted to Scottish Ministers for approval.

5. OTHER IMPLICATIONS

The council is required by Regulations to prepare a scheme of delegation every 5-years. The current scheme of delegation was approved by Ministers in May 2019. Consideration of the content of the scheme of delegation will need to start now, as delay could result in not being prepared and approved by Scottish Ministers before May 2024.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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