

**REPORT TO: THE MORAY COUNCIL ON 7 JULY 2010**

**SUBJECT: MORAY LOCAL REVIEW BODY**

**BY: CHIEF LEGAL OFFICER**

**1. REASON FOR REPORT**

1.1 To invite the Council to review the composition of the Moray Local Review Body (MLRB) in light of operational experience.

1.2 This report is submitted to Council in terms of Section (II) (10) of the Council's Administrative Scheme relating to Committee structures, distribution of functions and responsibilities.

**2. RECOMMENDATION**

**2.1 That the Council reviews the current arrangements and membership of the MLRB in light of operational experience and agrees to establish a MLRB of 5 members, from different Wards, with a standing Chair to consider and determine all new requests for review.**

**2.2 Should recommendation 2.1 above be approved to determine the membership of the Committee by appointing five members and a standing chair.**

**2.3 Should the Council agree to the status quo, Councillor Leadbitter would require to be formally appointed to the MLRB in place of Councillor Sharp. (see Section 3.3 below)**

**3. BACKGROUND**

3.1 At a special meeting of the Planning & Regulatory Services Committee dated 26 May 2009 (para 2 of the Minute refers) the Committee agreed:-

(i) to support the proposed arrangements as set out in Appendix 3 to the report whereby the MLRB would comprise 3 members selected from a pool of 8 Councillors, one from each ward, with substitutes in an agreed order and that ward members be excluded from any review in their own ward and membership shall rotate on a 3 monthly basis;

(ii) that further reports on the detailed processes and any staffing implications be presented to the appropriate service committee; and

(iii) remit the matter of Membership of the MLRB to Full Council.

3.2 At a subsequent meeting of the Council on 17 June 2009 (para 9 of the Minute refers) there was submitted a report by the Director of Environmental Services asking the Council to note the arrangements agreed by the Planning and Regulatory Services Committee and to appoint Councillors to serve on a Moray Local Review Body. The Council agreed:-

- (i) that a pool of 8 Councillors (one from each Ward) be appointed - Councillors Paul, Shepherd, J MacKay, Ross, Hogg, Jarvis, Sharp and Young;
- (ii) the Moray Local Review Body should comprise 3 members with 4 substitutes, selected in order (with exclusion of Local Member);
- (iii) membership of the Moray Local Review Body to rotate on a 3 monthly basis;
- (iv) that officers of Committee Services, Legal and Planning be instructed to develop the necessary administrative and procedural arrangements to service the new Body, and
- (v) that a subsequent report should be submitted to the Policy and Resources Committee, once staffing and financial requirements have been identified, seeking special budget approval to cover any required costs.

3.3 Following that meeting, it was informally agreed that Councillor Leadbitter would replace Councillor Sharp on the MLRB. This arrangement has not been formally approved.

#### **4. ROLE & OPERATIONAL DIFFICULTIES OF THE MLRB**

4.1 The role of the MLRB is to consider and determine requests from applicants to review refusal decisions of the Appointed Officer, a condition or conditions applied to an approval by the Appointed Officer or the failure of the Appointed Officer to determine a planning application within two months. The MLRB is a Committee of the Council and all meetings must be held in public. Whilst membership is set at a statutory minimum of three, there is no upper limit.

4.2 The first meetings of the MLRB took place on 25 February 2010 with subsequent meetings on 24 March, 22 April, 19 May & 30 June 2010. Whilst the meetings progressed in accordance with the agreed arrangements, officers have expressed some concerns regarding various administrative aspects resulting from the MLRB model adopted by the Council.

#### **(i) Members who start must finish the Review**

The three members who start a review must see it through to a conclusion as the absence of any one member would render the meeting inquorate.

In the event of a request for review being deferred for written submissions, a site inspection or a Hearing or a combination of two or more procedures then, when resubmitted, if one of the three members is unavailable on the scheduled meeting day, the review cannot proceed until all three are available. In the event of long term illness or absence from duties for any other reason by a member, the review process would require to be halted. Whilst it might be possible for a fresh MLRB to be constituted to rehear the case, this is fraught with difficulties both procedural and legal. It would also be likely to be seen as an unreasonable use of public funds given that the possibility of the MLRB becoming inquorate is foreseeable, and could be addressed by increasing the membership.

**(ii) Multi MLRBs in one sitting**

Each time a new MLRB is constituted there is a need to appoint a Chair. The current arrangements have created a situation where several MLRBs have to be constituted in the course of one sitting. On the 25 February there were three MLRBs constituted in one sitting, on 24 March three MLRBs constituted, on 22 April five MLRBs constituted, on 19 May 3 MLRBs constituted and on 30 June 2 MLRBs constituted. This creates operational difficulties for the MLRB support and is confusing for members of the public in attendance at meetings.

**5. OTHER LOCAL AUTHORITY ARRANGEMENTS**

- 5.1 A brief survey of other local authority LRB administrative arrangements was carried out. Membership of LRBs vary from 3 (minimum) to 28 being the full Planning Committee or Full Council. The most common membership of a LRB is 5 from a pool of 13, mostly drawn from the relative committee dealing with planning applications. Of the 32 councils, 10, including Moray, operate with a LRB membership of three, with only two of those operating the same arrangements as Moray ie 3 members drawn from a pool with no standing Chair or Vice-Chair. However they have either yet to have a meeting or are in the process of having their first meeting. Accordingly with such limited operational experience they will probably not have had the administrative and other difficulties experienced by MLRB.

**6. OPTIONS FOR CONSIDERATION**

- 6.1 Three options for membership of MLRB are set out in **Appendix 1** to this report for consideration by members. In considering these options, it should be noted that whilst membership of the MLRB is open to all 26 members of the Council it was accepted by the Council, when establishing the MLRB in 2009, that, in terms of openness and transparency, it would not be appropriate for a member of the Planning & Regulatory Services Committee to be a member of the MLRB.

It is the current policy of Moray Council that Members of the MLRB are not permitted to participate in a review within their own Ward. If such a situation arose under options 2 & 3 set out in **Appendix 1** to this report, the local Ward member would simply declare an interest as they would any other interest and leave the meeting, taking no part in the consideration or determination of the request. In the event of a tie in votes, the Chair would have the casting vote. After the review decision was taken, the local Ward member would then rejoin the meeting for other cases not in their Ward.

- 6.2 A number of options for MLRB membership, including those operated by other local authorities, were considered by officers and those considered the most viable for MLRB are set out in **Appendix 1** to this report.
- 6.3 It is the recommendation of officers that option 2, with a standing chair, is the best option for the MLRB.

## 7. **SUMMARY OF IMPLICATIONS**

### (a) **Corporate Development Plan/Community Plan/Service Improvement Plan**

None

### (b) **Policy and Legal**

LRBs are a statutory requirement in terms of Section 43A(8) of Part 3 of the Planning etc (Scotland) Act 2006 and the operational procedures are set out in the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008.

### (c) **Resources (Financial, Risks, Staffing and Property)**

The MLRB requires dedicated planning, legal and committee staffing resources for which there is no budget provision. The current arrangement is for existing staff to provide legal & planning advice and a committee service which has a knock on effect to the provision of existing services.

In regard to support from Legal Services, although a very significant amount of time has been dedicated by both Litigation and Licensing and Commercial Conveyancing Sections into putting in place procedures which are compliant with the statutory regime and natural justice, and that much of this work will not require to be repeated, the officer time required to support the MLRB as it further develops cannot continue to be absorbed within existing resources.

The Planning Adviser must have had no prior involvement in the application subject of Review. This role is currently being fulfilled by a Principal Officer from the Planning and Development Section, and is at

present taking up approx one day per week. Given the workload in familiarisation with caseloads; site inspections; attendance at meetings; drafting of conditions; this time involvement is unlikely to recede. This represents a 20% impact on workload, and could affect the production of the new Local Development Plan.

In regard to committee support it has been agreed, in consultation with the Chief Legal Officer, that the Senior Committee Services Officer s step down from his current duties to concentrate on setting up and running of the MLRB with the other Committee staff picking up the servicing of those Committees, Sub-Committees, Strategic Groups etc normally undertaken by the Snr Committee Services Officer. This position is not sustainable and is subject to review in August.

There is also the administrative cost to the Council in carrying out the various steps set out in the Regulations in processing and considering requests for review.

It will also be noted that there is an outstanding remit for a report to be submitted to the Policy and Resources Committee, once staffing and financial requirements have been identified, seeking budget approval to cover any required costs.

**(d) Consultations**

The Director of Environmental Services, the Head of Development Services, the Legal & Planning Advisers to the MLRB, A Scott, Principal Solicitor (Commercial & Conveyancing) and the Principal Committee Services Officer have been consulted and their comments included in the preparation of this report.

Members of the MLRB have been made aware of the terms of this report and will make their views known at the meeting.

**8. CONCLUSION**

- 8.1 This report recommends that the Council considers adopting an alternative composition for the MLRB. It is the view of those Officers involved with the MLRB that it would be more practical and efficient to move to a Committee of five with a standing Chair. This composition would allow for more consistency in the consideration of requests for review and more fluency in the production of agendas and minutes. It would also avoid the difficulties outlined at Section 4 above.**

Author of Report: Ron Ritchie, Senior Committee Services Officer, in consultation with Rhona Gunn, Acting Principal Solicitor (Litigation & Licensing), M Cross, Principal Planning Officer (Development Plans) and V Valiente, Solicitor (Commercial & Conveyancing).

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Background Papers: None

Ref: [h/mcouncil/reports/2010/MLRB](http://h/mcouncil/reports/2010/MLRB)