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## NORTH AYRSHIRE COUNCIL

18 March 2020

### Emergency Governance Decisions (Covid-19 Outbreak)

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| <b>Title:</b>          | <b>Emergency Governance Arrangements</b>  |
| <b>Purpose:</b>        | To enable effective decision making during the COVID-19 outbreak  |
| <b>Recommendation:</b> | <p>That the Chief Executive, on behalf of the Council, agrees: - (1) to the changes to Governance Documents set out in Appendix 1; (2) to cancel all meetings of Council and Committees until 30 June 2020, including the Ordinary meeting of Council scheduled for 2pm on 25 March 2020; (3) to grant power to the Chief Executive, in consultation with the Leader of the Council, the Leader of the Opposition the Leader of the Conservative Group and an Independent Member nominated by the Independent Members to cancel, or rearrange the dates of other meetings, if required due to the outbreak; (4) that any meetings which proceed during the current emergency and which are webcast, do not have physical public attendance; (5) that non-attendance of Members while meetings are cancelled during the emergency is a reason approved by the authority under Section 35 of the Local Government (Scotland) Act 1973; (6) to determine any call-ins from the meeting of Cabinet on 17 March 2020; (7) to agree to suspend until 30 April 2021 the operation of those parts of the Scheme of Establishment for Community Councils which state that Community Councils and Community Councillors have a term of 4 years, to extend the term of any Community Council or Community Councillor which would otherwise come to an end in 2020, to 30 April 2021, to allow Community Councils to fill any vacancies remotely and to postpone Community Council elections due in 2020 to Spring 2021; (8) not to exercise the power of dissolution in the event that a Community Council does not meet on 6 occasions due to the emergency, and (9) to receive a report reviewing decisions taken under recommendation1 to 4 at the next Ordinary meeting of Council which is convened following the recommencement of meetings.</p> |

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## 1. Executive Summary

1.1 This report sets out changes which are required to enable effective decision making during the current COVID-19 outbreak.

In particular, it deals with the implications of suspending Council and Committee meetings during the outbreak. Government advice is that the outbreak is likely to last into the summer of 2020. While the proposals primarily address this period, they have also been designed to cope with a longer period.

## **2. Background**

1.1 2.1 UK and Scottish Government advice issued on 16 March 2020 is that: -

- To slow the spread of COVID-19 (coronavirus) public are being asked to stay at home as much as possible and avoid unnecessary social contact;
- households of those suspected of having COVID-19 should self-isolate for 14 days; and
- those who are pregnant, over 70, have a long-term condition or a weakened immune system should work from home where possible and take measures to socially isolate for up to 12 weeks.

The aim of this guidance is to delay or slow the spread of the virus to enable emergency services to cope with expected levels of demand.

### **Meetings**

2.2 In relation to Council and Committee meetings, this has a number of implications:

- It would be unwise for Members who fall into the above categories to attend meetings;
- To avoid spreading the virus it is advisable to cancel all non-essential meetings. It is important the Council shows leadership in supporting Government efforts.
- Most meetings need to be “open to the public”, further increasing the numbers who might attend and the risk of infection
- There may be difficulties in getting a Quorum

2.3 It is recommended that all meetings of Council and Committees are cancelled until 30 June in order to minimise the risk of infection. If any urgent meetings are required, the Provost or Chair can use their existing power to call Special Meetings. Currently Standing Order 2.1 states that “Unless otherwise agreed to by Council, ordinary meetings of the Council shall be held in the Council Chamber, Cunninghame House, Irvine at 2pm on the Wednesday of the sixth week of each six-weekly cycle determined by the Council.” It is recommended that Council suspend the operation of this Standing Order until 30 June 2020. Effectively this would cancel all meetings until after the recess, committees being scheduled to recommence on 17 August 2020.

2.4 The dates of Council and Committee meetings to be held in 2020 were agreed by Council on 25 September 2019. It is recommended that Council agrees to (a) cancel all meetings arranged until 30 June 2020 and (b) grants power to the Chief Executive, in consultation with the Leader of the Council, the Leader of the Opposition, the Leader of the Conservative Group and an Independent Member nominated by the Independent Members, to cancel, or rearrange the dates of other meetings, if required due to the outbreak.

2.5 Meetings of the Policy Advisory Panel, Community Planning Partnership, Locality Partnerships, the Integration Joint Board and any other meetings have also been cancelled throughout this period.

- 2.6 In terms of both the Local Government (Scotland) Act 1973 and the Council's Standing Orders "Every meeting of the Council shall be open to the press and public to the extent that they are not excluded under the provisions of Sections 50A(2) and (4) of the 1973 Act." Public health risk is not a ground to exclude the public from meetings under the 1973 Act criteria. The aim of this provision is to ensure transparency of meetings. A meeting that is webcast provides such transparency and makes the meeting 'open to the public' in a virtual, if not physical sense. Neither the 1973 Act or Standing Order state that meetings must be "open to the public" through any specific means. Therefore, it is proposed that any meetings which proceed during the current emergency and which are webcast, would not have physical public attendance. Insofar as the public are not entitled to address meetings this would not disadvantage them. Restricting physical public attendance would however lower the infection risk, should any meetings go ahead.
- 2.7 Officers have been examining the practicalities of allowing Members to access meetings remotely. The webcasting system does not have this capability, either to enable or link into remote access. There are also significant difficulties in enabling such access for all Members, either through Microsoft Teams or conference call. For example, conference call systems generally allow up to 8 persons to access. Work is however continuing on this to see if a solution could be found for smaller committees which need to urgently meet. To enable this it is proposed to temporarily amend Standing Orders for 2020 to include the following provision: -
- "8.5 Where the law allows and the Chief Executive confirms that proper facilities are available, a member may be regarded as being present at a meeting if he or she is able to participate from a remote location by a communication link. A member participating in a meeting in this way will be counted for the purposes of deciding if a quorum is present. In the event that there is remote participation, votes will be by roll-call."
- 2.8 It is also recommended that Council agrees that non-attendance of Members while meetings are cancelled during the emergency is a reason approved by the authority under Section 35 of the Local Government (Scotland) Act 1973 (this states that if Member fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless the failure was due to a reason approved by the Council, cease to be a Member).
- 2.9 In the event that there any call-ins from the meeting of Cabinet on 17 March 2020, it is recommended that these are determined by Special Council at this meeting. Otherwise, in the absence of any meetings to consider this, such decisions cannot be implemented, unless the Chief Executive exercises powers detailed in the next paragraph.

### **Delegated Powers**

- 2.10 In the absence of Council and Committee meetings, provision will need to be made to enable decisions to be taken. The current Scheme of Delegation to Officers approved by Council on 25 September 2020 already grants the Chief Executive the following power: -

“To consider and deal with any urgent issues, whether arising during a recess period or otherwise, subject to reporting back to the Cabinet at the first available opportunity. This power is to be exercised in consultation with the relevant Chief Officer and the relevant portfolio holder”

This can also be delegated to other Chief Officers.

Where the Chief Executive is taking decisions, which would otherwise be taken by Cabinet, there is no call-in procedure.

It is recommended that the foregoing power is amended to provide that the reporting is back to Cabinet, Council or the relevant Committee. This reflects the fact that the Chief Executive could use delegated authority to make decisions which would normally fall to another Committee, such as Planning, or Council.

- 2.11 While this power would usually only be exercised during recess, it is likely that to keep the Council functioning, this power will have to be exercised on a regular basis during the period that meetings are suspended. As will be noted, this power is exercised in consultation with the relevant portfolio holder. In practice and for issues which would normally be determined by Council, this would be also be exercised in consultation with the Leaders of all Political Groups and a nominated Independent Member identified by Independent Members. Moreover, for more controversial matters the Chief Executive would take soundings to ascertain whether a decision would be supported by the majority of Members.
- 2.12 Notwithstanding the Chief Executive's powers detailed in 2.10, there are a number of duties which are specific to Council and its committees, and which cannot be exercised by the Chief Executive. Usually this is because primary legislation or regulations specify the manner in which the decision must be made. The following paragraphs cover the implications of these. However, it is likely that other unforeseen issues may also arise. To cover such eventualities, it is recommended that the Scheme of Delegation to Officers is amended to give the Chief Executive the following additional power: -

“In consultation with the Leader of the Council, the Leader of the Opposition, the Leader of the Conservative Group, an Independent Member nominated by the Independent Members, and the Monitoring Officer and if required to enable effective decision making or otherwise in relation to the COVID-19 outbreak, to amend the Standing Orders for Meetings, the Scheme of Administration, the Scheme of Delegation to Officers, the Standing Orders for Contracts or the Financial Regulations as is required to meet the circumstance arising”

### **Specific Issues**

- 2.13 Powers reserved to Council- The Scheme of Administration and Scheme of Delegation to Officers reserves certain decisions for Council decision. Some of these are statutory reservations where the Chief Executive cannot make a decision under delegated powers unless legislation is changed. To date it appears that providing the draft accounts can be approved before 31 August 2020, there are unlikely to be any decisions which require to be taken by Council in this period. In relation to other non-statutory matters reserved to Council in the Scheme of Administration and Scheme of Delegation, the Chief Executive can exercise his urgency powers detailed in 2.10.

- 2.14 Planning- there is legislation which states that certain major developments cannot be determined under delegated powers, even if they comply with the LDP and there are no objections. The only such application currently pending relates to the construction of 196 houses at Newmoor, Irvine, which is another item on this agenda. There are other applications currently being processed. It is hoped that either the Scottish Government will change the rules, or the timetable for processing will align with the recommencement of Planning Committee meetings, even if we rely on the remote access power recommended in 2.7. Such remote access will not be suitable for Committee meetings which require planning hearings. If meetings cannot be held, after expiry of time limits it would be open to an applicant to appeal a deemed refusal to Scottish Ministers.

It should also be noted that Members currently have powers to call-in a planning application otherwise delegated to officers. While committees are suspended, this would mean that the application could not be determined until Planning Committee meetings recommence.

- 2.15 Local Review Body- Decisions made by planning officers which are the subject of a planning appeal by way of Notice of Review cannot be determined by officers. In the absence of legislation from the Scottish Government, either appellants will have to wait until the LRB meets to determine their appeal or to appeal a deemed refusal to Scottish Ministers.
- 2.16 Licensing Committee – The Head of Democratic Services has delegated authority to grant certain applications, but not to refuse. The reason for this is that in many cases, particularly relating to suspension of licence, an applicant has a right to be heard. To date this has been a hearing with parties present at the Licensing Committee. However, to comply with the rules of natural justice, this could equally be a determination based on written submissions. In these circumstances it is recommended that Council agree to grant powers to enable the Head of Democratic Services to determine any applications, suspensions, revocations or other business which would normally require a hearing before the Licensing Committee, provided the rules of natural justice, namely a right to a fair hearing, can be satisfied. This would apply to all licensing matters within the remit of the Licensing Committee. This also avoids the risk of applications which would otherwise be refused, being deemed granted after 6 months.
- 2.17 Licensing – Many licences, including those under the Civic Government (Scotland) Act 1982 expire after either a one year or three-year period. In order to relieve pressure on both the trade and the Licensing team it is recommended that the Head of Democratic Services is given authority to exercise powers under paragraph 10(1) of Schedule I of the Civic Government (Scotland) Act 1982 to vary the terms of a licence. This is subject to a duty to consult with the Police and the Licence-holder and could, for example be used to extend the period of any licence which might otherwise expire during the emergency.

- 2.18 Licensing Board- The Quorum for the Board is one half. Unfortunately, Schedule 1 of the Licensing (Scotland) Act 2005 prescribes a number of functions which cannot be determined under delegated powers, only by the Board. It, and regulations made under the Act, also provide for hearings which require personal attendance of applicants or licensees. This makes it very difficult for the officers to make decisions which would otherwise fall to the Board. Arguably there would be less risk of challenge if applications not subject to any objections were granted by officers. However, refusals and suspensions which did not follow proper process would undoubtedly be challenged in court. The Scottish Government have been advised as to the issues and that regulations are required. Any changes to Licensing Board Governance arrangements would have to be made by the Board itself. If steps are identified that would assist in the administration of these licences, consideration will be given to convening a special meeting of the Licensing Board to seek relevant authority.
- 2.19 Appeals Committee – Appeals short of dismissal are currently handled by Officers. It is recommended that the Head of People & Transformation or other Chief Officer is given delegated authority during the emergency to deal with all appeals which would otherwise be heard by the Appeals Committee. This would be subject to such appeals being determined by a senior officer who had no prior involvement in the case. To minimise the risk of infection of parties it is also recommended that power is given to determine such appeals by written submissions, providing all the rules of natural justice relating to fair hearings are complied with.
- 2.20 Community Councils- Community Council elections are due every 4 years and a Community Councillor's term of office is 4 years. Many elections are due to take place in Autumn 2020. It is recommended that Council agree to suspend the operation of the relevant parts of the Scheme of Establishment for Community Councils to extend the term of any Community Council which would otherwise come to an end in 2020, to 30 April 2021, to similarly extend the term of office of any Community Councillor and postpone elections to Spring 2021. We would also permit Community Councils to fill any vacancies remotely, without the need for a meeting to ratify this. The Scheme of Establishment also provides that if a Community Council fails to meet on 6 occasions during the year this needs to be notified to North Ayrshire Council, who can dissolve the Community Council. It is recommended that Council agree not to exercise the power of dissolution in the event that a Community Council does not meet on 6 occasions due to the emergency.
- 2.21 North Ayrshire Integration Joint Board (IJB)– Both the IJB's Chief Officer and other Chief Officers within the IJB have similar powers to the Chief Executive to act in cases of urgency. To date, nothing has been identified which could not be handled under the Chief Officer's delegated powers. The IJB on 19 March also agreed to give its Chief Officer a similar power to that recommended for the Chief Executive in paragraph 2.12. That power to alter governance documents would be with the agreement of the IJB Chair and Vice-Chair and the Chief Executives of the Council and NHS Ayrshire and Arran.

### **3. Proposals**

3.1 It is recommended that the Chief Executive, on behalf of the Council, agrees:

- (1) to the changes to Governance Documents set out in Appendix 1;
- (2) to cancel all meetings of Council and Committees until 30 June 2020, including the Ordinary meeting of Council scheduled for 2pm on 25 March 2020;
- (3) to grant power to the Chief Executive, in consultation with the Leader of the Council, the Leader of the Opposition, the Leader of the Conservative Group and an Independent Member nominated by the Independent Members, to cancel, or rearrange the dates of other meetings, if required due to the outbreak;
- (4) that any meetings which proceed during the current emergency and which are webcast, do not have physical public attendance;
- (5) that non-attendance of Members while meetings are cancelled during the emergency is a reason approved by the authority under Section 35 of the Local Government (Scotland) Act 1973;
- (6) to determine any call-ins from the meeting of Cabinet on 17 March 2020;
- (7) to agree to suspend until 30 April 2021 the operation of those parts of the Scheme of Establishment for Community Councils which state that Community Councils and Community Councillors have a term of 4 years; to extend the term of any Community Council or Community Councillor which would otherwise come to an end in 2020, to 30 April 2021; to allow Community Councils to fill any vacancies remotely; and to postpone Community Council elections due in 2020 to Spring 2021;
- (8) not to exercise the power of dissolution in the event that a Community Council does not meet on 6 occasions due to the emergency, and
- (9) to receive a report reviewing decisions taken under recommendation 1 to 4 at the next Ordinary meeting of Council which is convened following the recommencement of meetings.

### **4. Implications/Socio-economic Duty**

#### **Financial**

4.1 The proposals set out in this report are aimed at ensuring effective decision making during the emergency. There are no financial implications of this report as the recommendations aim to address any potential governance issues which might have financial implications.

#### **Human Resources**

4.2 Paragraph 2.19 provides a process by which employee appeals which would otherwise go to the Appeals Committee can be handled during the outbreak. Cancellation of meetings also protects Councillors, officers and public who might attend by minimising the risk of infection.

## **Legal**

- 4.3 This report deals with the legal and governance changes required to continue effective decision making during the emergency. Scrutiny of decisions taken by the Chief Executive is through the existing provision in the Scheme of Delegation to Officers which requires decisions taken using the urgency power to be the subject of consultation with the relevant Chief Officer and Portfolio Holder and thereafter to be reported to the relevant Committee.

## **Equality/Socio-economic**

- 4.4 There are no significant equalities, socio-economic or island-proofing impacts. Any such impacts would continue to be assessed as part of specific decisions taken during the emergency.

## **Environmental and Sustainability**

- 4.5 No implications

## **Key Priorities**

- 4.6 Without effective governance and decision making there is a risk to all of the Council priorities. Therefore, this report supports all priorities.

## **Community Wealth Building**

- 4.7 No implications

## **5. Consultation**

- 5.1 There has been consultation with the Executive Leadership Team.

Andrew Fraser  
Head of Democratic Services

For further information please contact Andrew Fraser, **Head of Democratic Services**, on **01294 324125**.

## **Background Papers**

- 1 -Standing Orders for Meetings
- 2- Scheme of Administration
- 3- Scheme of Delegation to Officers
- 4- Standing Orders for Contracts
- 5- Financial Regulations
- 6- North Ayrshire Integration Joint Board Scheme of Delegation to Officers
- 7- North Ayrshire Scheme of Establishment for Community Councils

## Appendix 1

### Changes to Governance Documents

#### 1 -Standing Orders for Meetings

Suspend the operation of Standing Order 2.1 until 30 June 2020. This states that “Unless otherwise agreed to by Council, ordinary meetings of the Council shall be held in the Council Chamber, Cunninghame House, Irvine at 2pm on the Wednesday of the sixth week of each six-weekly cycle determined by the Council.”

Add the following provision: -

“8.5 Until 30 November 2020, where the law allows and the Chief Executive confirms that proper facilities are available, a member may be regarded as being present at a meeting if he or she is able to participate from a remote location by a communication link. A member participating in a meeting in this way will be counted for the purposes of deciding if a quorum is present. In the event that there is remote participation, votes will be by roll-call.”

Add the following: -

“22.3 In consultation with the Leader of the Council, the Leader of the Opposition, the Leader of the Conservative Group, an Independent Member nominated by the Independent Members, and the Monitoring Officer, and if required to enable effective decision making or otherwise in relation to the COVID-19 outbreak, to amend the Standing Orders for Meetings, the Scheme of Administration, the Scheme of Delegation to Officers, the Standing Orders for Contracts or the Financial Regulations as is required to meet the circumstance arising”

#### 2- Scheme of Administration- no changes

#### 3- Scheme of Delegation to Officers

Amend paragraph 15 of Section 4 -Chief Executive's Delegations: -

“To consider and deal with any urgent issues, whether arising during a recess period or otherwise, subject to reporting back to the Council, Cabinet or the appropriate committee at the first available opportunity. This power is to be exercised in consultation with the relevant Chief Officer and the relevant portfolio holder”

Add the following to Section 4 -Chief Executive's delegation: -

““In consultation with the Leader of the Council, the Leader of the Opposition, the Leader of the Conservative Group, an Independent Member nominated by the Independent Members, and the Monitoring Officer and if required to enable effective decision making or otherwise in relation to the COVID-19 outbreak, to amend the Standing Orders for Meetings, the Scheme of Administration, the Scheme of Delegation to Officers, the Standing Orders for Contracts or the Financial Regulations as is required to meet the circumstance arising.”

To add to the Section 5 delegations granted to the Head of Democratic Services: -

Authority to determine any applications, suspensions, revocations or other business which would normally require a determination by, or a hearing before the Licensing Committee, provided the rules of natural justice, namely a right to a fair hearing, can be satisfied.

To add to the Section 5 delegations granted to the Head of Democratic Services: -

Authority to exercise powers under paragraph 10(1) of Schedule I of the Civic Government (Scotland) Act 1982 to vary the terms of a licence.

To add to the Section 3 General Delegation to Officers authority: -

During the 2020 COVID-19 emergency the Head of People & Transformation and any Chief Officer may deal with all appeals which would otherwise be heard by the Appeals Committee. This is subject to such appeals being determined by a senior officer who had no prior involvement in the case. Power is given to determine such appeals by written submissions, providing all the rules of natural justice relating to fair hearings are complied with.

4- Standing Orders for Contracts- no changes-

5- Financial Regulations- no changes