

Subject: Board and Committee Remote Decision-Making Scheme
Date: 1 May 2020
Report to: Chair of the Corporation, and shared with the Board
Report of: Tim Somerville, Interim Head of Governance

For decision

This report will be considered under urgency and decisions reported at the Board's next meeting

1 Summary

- 1.1 This paper seeks approval for a new 'Remote Decision-Making Scheme' to be adopted by the Corporation. The Scheme will facilitate the taking of decisions – including on planning applications and other planning matters – without physical meetings, which cannot reasonably be held at this time due to the Covid-19 pandemic and emergency travel and movement restrictions. Instead it is recommended that a procedure is put in place so that matters will be considered by the Chairs of the Board and its Committees (as relevant) following consultation with corresponding 'Advisory Panels', deliberating remotely with public transparency. The Advisory Panels are constituted from the existing members of the Board and committees, which continue to exist.
- 1.2 These changes are necessary to allow the business of the Corporation to continue to function effectively without usual Board and Committee meetings, and have been devised to enable as much transparency as possible while the lockdown and social distancing measures are in place. These measures are necessary because OPDC, as a Mayoral Development Corporation, is not covered by the provisions for remote board and committee meetings that apply to local authorities in England and Wales and which were recently introduced by government through the Coronavirus Act.
- 1.3 The changes required to allow remote decision-making will be given effect through a new Scheme document (**Appendix A**) – which provides the overall framework for remote decision-making and includes more detailed

procedures that will apply (**Appendix 1** to that document). Modifications are also being made to the urgency procedure in the Corporation's General Scheme of Delegation (**Appendix B**) to bring it in to line with the remote decision-making procedure. These arrangements will be kept under review with the expectation that, depending on the rate and risk of new infections, they will become unnecessary at some point in the future.

- 1.4 Under the OPDC's Governance Direction the Mayor must be consulted on changes to the Corporation's Scheme of Delegation. The Mayor has been consulted and given his endorsement to the proposals.
- 1.5 The first instance in which the new procedures will be used is to determine planning applications that would normally be referred to Planning Committee for decision. A 'Planning Advisory Panel' will be scheduled for 19 May. In accordance with the new framework, the Chair of the Planning Committee will be asked to consider and determine the application in consultation with the members of the committee formed as an Advisory Panel.
- 1.6 Given the current stay at home advice and legal restrictions on movement and travel, it is not practical or advisable to convene a special meeting of the Board to approve the procedures and necessary changes to the Corporation's scheme of delegation. The next meeting was being scheduled for June. Therefore it is recommended that the Chair provides approval under the current Urgent Action provisions.

2 Recommendation

- 2.1 **The Chair, having consulted with available members of the Board and under the urgent action procedure set out in the Corporation's General Scheme of Delegations, is asked to approve:**
 - **the adoption by the Corporation of the Remote Decision-Making Scheme set out in Appendix A, including the procedures set out in Appendix 1 to that document; and**
 - **the changes to the Corporation's general Scheme of Delegation set out in Appendix B.**

3 Background

- 3.1 The Government's 'stay at home' instruction and the wider health concerns arising from the Covid-19 pandemic mean the Corporation cannot reasonably hold physical meetings of the Board and committees at this time. These meetings are the primary route for the Corporation to take major decisions and to decide on other matters reserved to the Board and its committees. They are subject to the requirements of Part 5A of the Local Government Act 1972 (access to information), which require

meetings to be open to the public, give the press and public a right to attend them and to have access to agendas and reports normally five clear working days in advance.

- 3.2 The Coronavirus Act 2020 recognised this was a problem for local government bodies covered by the 1972 Act and gave the Secretary of State the power to make regulations that would flex the legislative framework governing 'formal' meetings and allow, among other things, for them to be held 'remotely'. Regulations were duly made and came into force on 4 April¹.
- 3.3 Unfortunately, and despite representations from the GLA, London Legacy Development Corporation and OPDC, Mayoral Development Corporations (MDCs) were, in what appears to be an oversight, omitted from the list of bodies in the Act to which the Regulations could be applied; and as such the flexibilities do not, by force of the Regulations, apply to MDCs such as OPDC and LLDC.

4 Issues for Consideration

- 4.1 OPDC officers have therefore worked closely with LLDC and our lawyers at Transport for London to draft a 'Remote Decision-Making Scheme' that facilitates decision-making without physical meetings. It is closely based on existing local government procedures and the provisions of the Regulations.
- 4.2 What the Corporation cannot do, because it is covered by Part 5A of the 1972 Act but not covered by the Regulations, is to hold decision-making meetings of the Board and committees entirely by remote means. The new Scheme and the procedures it incorporates addresses this by delegating decision-making to the relevant Chair (of the Board or Committee), with those decisions informed by 'new' corresponding Advisory Panels that will operate remotely – essentially, shadow versions of the Board and its Committees. The Advisory Panels (made up of the same members) will operate by remote means, for example video-link or teleconference and associated internet platforms, and advise the relevant Chair.
- 4.3 These Advisory Panels will as far as practicable replicate the way in which physical meetings proceed and there is deliberate similarity with the Regulations also. This is to serve two primary aims. First, to ensure all Board or Committee members continue to be sighted on the information underpinning decisions, can participate in deliberations and can influence the final decision; and second, to ensure proceedings are conducted in a fair, open and transparent manner for the press and public. This is particularly important as the Corporation is a local planning authority and

¹ Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020/ 392

there are legally enforceable expectations of fairness and natural justice as to how it conducts its business.

4.4 As such, the Scheme provides for:

- the advance publication of dates for decisions, following the normal business and meetings cycle, normally at least five clear working days in advance
- agendas and reports to be published in advance, with details of how the public can follow the proceedings of the relevant Advisory Panel by remote means
- remote participation to be, technology allowing, in the form of a video conference between the relevant Chair and Advisory Panel members
- members of the press and public to be able to follow proceedings by remote means and, in the case of the Planning Advisory Panel, will be able to make representations
- Panels to be able go into confidential session on normal grounds
- the relevant Chair to take the decision in question, informed by the proceedings of the Advisory Panel
- a record to be made and published of the discussion and decisions

4.5 The new Scheme has the effect of modifying current references in the Corporation's Standing Orders, and other policies rules and procedures, such that:

- a matter reserved or requiring the consideration or approval of the Board or a specified committee or Chair
are automatically converted into
- a reference to the relevant Chair following consultation with the corresponding Advisory Panel

4.6 Changes are also proposed to the Urgent Action provisions of the Corporation's General Scheme of Delegation to reflect the above measures so that action is taken by the relevant Chair (in consultation with available relevant Panel members) where it is not practicable or possible to use the new Panel arrangements. If the Chair is not available, then the Chief Executive can approve the urgent action required; if this isn't possible then any person acting up into that post can do so. This is to enhance resilience.

4.7 Clearly an ICT solution will be required to facilitate the above and precisely how the Scheme is applied will be influenced by that solution (the Scheme has deliberately been drafted to provide some flex in that regard). Officers are now working with colleagues at the GLA to put this in place.

4.8 The Scheme will be in force only so long as deemed necessary for reasons flowing from the Covid-19 pandemic, with that judgement to be taken by the Chair of the Corporation on the advice of officers and in light of Government guidance. Therefore the extent to which OPDC will rely on the Scheme is likely to be fairly limited. As well as a Planning Advisory Panel next month, officers will likely organise an Audit and Risk Advisory Panel to consider the draft accounts that month. The next Board meeting was being scheduled for June and the new Advisory Panel arrangements (made up of all Board members) may apply to that.

5 Risks

Description	Rating	Mitigations
Decisions taken under the procedure are challenged	Low	<ul style="list-style-type: none"> • The procedure mirrors aspects of Coronavirus Act Regulations and existing local government access to information procedures. • The new procedure for remote Advisory Panel meetings is intended to be as transparent as possible, and mimics the procedure for normal, physical meetings. • The Mayor has been consulted and has provided his written endorsement. • The Scheme will be in force only so long as is necessary and where it is clearly required and sensible for reasons associated with Covid-19. • Both MDC's are taking a largely consistent approach. • Officers are planning to draft a letter to be sent from the Mayor to the Secretary of State asking that if the opportunity arises legislation is passed to bring MDCs within the framework of the Coronavirus Act regulations.
The technological solution does not meet requirements	Low	<ul style="list-style-type: none"> • OPDC will work closely with the GLA to ensure the arrangements are secure, resilient and accessible. • The scheme provides scope for business to be conducted via email if required.

6 Equality Comments

- 6.1 The Scheme is intended to mirror as far as possible existing practice, albeit with meetings held remotely. Internet enabled meetings may, nevertheless, have a disproportionate impact on some of those groups with protected characteristics which have lower levels of access to the internet. However, physical meetings, which are not possible, but rather meetings are not possible under the current lockdown movement restrictions; and to hold such meetings would increase the risk of infection to the Corporation's members and supporting staff, which is not acceptable. The arrangements will be kept under review and steps taken where appropriate to minimise any significant adverse impact on disadvantaged groups.
- 6.2 OPDC will seek to ensure accessibility is a central consideration in its implementation of the new Scheme and will keep the Scheme under review to ensure it is not in force longer than is necessary.

6 Financial Implications

- 6.1 Any financial implications that do arise are considered likely to be incidental and will be approved by officers under delegation.

7 Legal Implications

- 7.1 Subject to the Mayor's formal powers of direction (which it is not necessary to invoke), MDCs can decide their own procedures (including as to quorum)². Under the OPDC's Governance Direction the Mayor must be consulted before significant changes are made to its schemes of delegation.
- 7.2 The proposed Scheme for Remote Decision-Making, and amendments to the OPDC's General Scheme of Delegation, providing for decision-making by the Chairs of the Boards and Committees acting under delegated authority in consultation with those bodies in the form of corresponding Advisory Panels, is designed to replicate existing local government access to meetings and information requirements as far as is practical in current circumstances. They therefore retain: the public's right to follow and as appropriate participate in proceedings, the normal five clear working days advance publication requirement for agendas and reports, as well as the ability to go into closed session for specified reasons. This is to maintain openness and transparency as far as possible in current circumstances, which is particularly important in the context of the MDCs' role as local planning authorities where there are legally enforceable expectations of

² Paragraph 8, Schedule 21 to the Localism Act 2011

fairness and natural justice about how they conduct their business while allowing for decisions to be made that need to be made. The taking of decisions by Chairs of MDC Boards and Committees pursuant to delegated authority, following appropriate consultation, is a longstanding local government mechanism and does not amount to the holding of meetings which would otherwise normally have to be held physically under local government legislation applying to openness and transparency in relation to local authority meetings.

Appendices

Appendix A – Scheme for Remote Decision-Making (including Remote Decision-Making Procedures at Appendix 1 to that document)

Appendix B – Amendments to the Corporation’s General Scheme of Delegation.

Background papers

OPDC’s Schemes of Delegation (general and for planning) and Standing Orders

Report originator: Tim Somerville, Interim Head of Governance

Telephone: 020 7983 5780

Email: tim.somerville@london.gov.uk

APPENDIX A

OLD OAK & PARK ROYAL DEVELOPMENT CORPORATION

SCHEME FOR REMOTE DECISION-MAKING

Section A: Remote decision-making by the Old Oak & Park Royal Development Corporation during the Covid-19 emergency movement restrictions

- A. The following provisions of this Scheme shall apply for so long as the Chair considers there is a threat to public health posed by the incidence and spread of the coronavirus that makes resuming meetings of the Corporation's Board, committees and subcommittees in person undesirable.
- B. These procedures shall be kept under review by the Chair of the Board and the Chief Executive Officer in light of the existence and extent of movement restrictions imposed or recommended by the Government.

Advisory Panels

1. The members of the Corporation's Board, and of its committees and subcommittees shall separately (in addition to their membership of those bodies which continue to exist) also be members of a corresponding Advisory Panel constituted under these procedures. The Chair of each relevant body shall also chair that body's corresponding Advisory Panel. Observers to the Board, committees and subcommittees shall be observers to the relevant Advisory Panel.
2. A person who is a Substitute for any member of a committee or subcommittee may on the same basis substitute for that person on its corresponding Advisory Panel.

Standing delegation to Chairs

3. The Board delegates to:
 - the Chair of the Board, following consultation with the Board Advisory Panel;
 - the Chairs of each committee or sub-committee following consultation with their corresponding Advisory Panels,the power to exercise any function of the Corporation that the Board, committee or subcommittee (as applicable) is able to exercise on the Corporation's behalf. Any decisions made in the exercise of this delegation shall be made in accordance with the Remote Decision-Making Procedures set out in **Appendix 1** and other terms and conditions of this Scheme, but subject always to paragraph 1 (Urgent Action) of the Corporation's Scheme of Delegation.
4. If on any occasion a Chair is absent or otherwise unavailable then the following persons (in the order given) may deputise and exercise the powers referred to in paragraph 3 above in the same manner as set out there:

- the Deputy Chair (if there is one) of the Board, committee or subcommittee;
- another member of the body in question as is appointed by the Chief Executive Officer to do so;
- the Chief Executive Officer;
- any member of staff acting up into such post on a temporary or permanent basis.

Application of standing orders etc

5. Every reference to the discharge of a function of the Corporation as being reserved to or otherwise requiring (however expressed) the consideration or approval of the Board, a committee or subcommittee or the Chair of such a body in the Corporation's:
- standing orders;
 - general Scheme of Delegation and the Scheme of Planning Delegations;
 - financial regulations;
 - contracts and funding code;
 - budget and business plan; and
 - other policies, procedures and rules of whatever nature;
- shall be construed in accordance with paragraph 3 above and shall have effect subject to the Remote Decision-Making Procedures set out in **Appendix 1**.¹

Decision Making Procedures

6. Chairs' consultations with their corresponding Advisory Panels, and the proceedings of those Panels, shall take place entirely by remote means so that no members are required to be physically present together.
7. The delegation conferred by paragraph 3 above shall be exercised in accordance with the Remote Decision-Making Procedures set out in **Appendix 1** which shall be published on the Corporation's website. The Chief Executive Officer may, following consultation with the Chair of the Board, revise those procedures as is considered appropriate from time to time and shall publish any revision on the Corporation's website.

¹ For example, the approval of a matter reserved to the Board or to the Planning Decisions Committee shall be given by the Chair of the Board following consultation with the Board Advisory Panel or by the Chair of the Planning Committee following consultation with the Planning Advisory Panel.

Appendix 1: Remote Decision Making Procedures

These procedures have been approved under the Corporation's Urgency Procedure – and have been consented to by the Mayor of London – and may be amended from time to time by its Chief Executive Officer.

1. The Chief Executive Officer shall, following consultation with the Chairs, as soon as possible determine and publish on the Corporation's website a calendar ("Calendar") of indicative Advisory Panel dates which shall follow as closely as is practicable the normal cycle of meetings and business that would apply during the year. The Calendar shall be kept under review and any revisions published as soon as possible in the same way.
2. If it is impracticable for any reason to hold the proceedings of an Advisory Panel on a particular date in the published Calendar its date may be altered (brought forward or put back) and notice of the new date shall be published on the Corporation's website.
3. Advisory Panel Agendas (containing the proposed agenda, all items of intended business including reports and related appendices that are to be considered at a Advisory Panel) shall be published on the Corporation's website and copies sent to Panel Members and Observers not less than five clear working days in advance of the relevant Panel date unless the Chair considers that the business to be transacted is urgent, in which case the Agenda shall be published on the website and agendas sent as soon as practicable to do alongside a statement as to the reasons for doing so.
4. Every member of the press and public shall be entitled to access and download copies of an Advisory Panel Agenda and to follow the proceedings of a Panel by remote means (in so far as the Chief Executive or Secretary considers them to be practicable in the circumstances at the time) except to the extent –
 - a. it is likely in the opinion of the Proper Officer², in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public had copies of, or remote access to, information relating to that item of business there would be disclosure to them of "Confidential Information" or "Exempt Information" (as defined in sections 100A (3) and 100I(1) of the Local Government Act 1972, as amended); or
 - b. any technical failure prevents it.
5. The Corporation's website and every Advisory Panel Agenda shall contain details (including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers) about how members of the press and public can follow the proceedings of the Panel by remote means.
6. If a member of the public would have been entitled under the Corporation's rules governing such meetings to attend and make an oral statement to a meeting of the Board, a committee or subcommittee then the Chief Executive Officer shall approve and publish arrangements by which such a person may by pre-

² References to the "Proper Officer" has the same definition as in the Corporation's Standing Orders.

arrangement make a written statement instead, unless the Chief Executive Officer or Secretary considers to be practicable in the circumstances at the time for that person to do so by means of a live or recorded audio or video link.

7. All decisions proposed to be taken under the delegation conferred by paragraph 3 of the Corporation's Remote Decision-Making Scheme shall be presented in the form of a report in accordance with the Corporation's normal standards and requirements for the preparation of reports that applied prior to the coming into force of these arrangements.
8. Copies of the Advisory Panel Agenda shall be sent by email in electronic form or posted for downloading on the Corporation's website as the Chief Executive Officer or Secretary considers appropriate. Unless the contrary is indicated to them all such copies will be deemed to have been received or capable of being downloaded and opened.
9. Subject to paragraphs 10 and 11 below, the Chief Executive Officer shall put in place arrangements so that the Chair and other members of an Advisory Panel are able to participate in its proceedings by remote means such that a Panel member is able at that time:
 - a. to hear, and where practicable see, be heard by, and where practicable, be seen by, the other Panel members, relevant staff of the Corporation and Observers participating in its proceedings by remote means;
 - b. to hear, and where practicable see, be heard by and, where practicable, be seen by, any members of the public participating by remote means, including in order to participate by exercising a right to speak on any item of business (where permitted); and
 - c. to be heard by and, where practicable, be seen by any other members of the public following the Panel's proceedings by remote means.
10. The press and public shall be excluded from any part of the proceedings of an Advisory Panel where there would be disclosure to them of "Confidential Information" or "Exempt Information" (as defined in sections 100A (3) and 100I(1) of the Local Government Act 1972, as amended) unless the Chair directs otherwise.
11. In the event that it is not possible for technical reasons to comply with any one or more of the requirements set out in paragraph 9 (a) to (c) above on any occasion the Chair may conduct the proceedings of the Advisory Panel by email and the procedure in paragraph 12 below shall be adapted accordingly.
12. At the time and date indicated on the Advisory Panel Agenda for the start of its proceedings (or as soon as possible thereafter) the Chair shall consult those members of the Panel who indicate to the Chair or Secretary (before or at the time and date indicated) that they are available and wish to participate in its proceedings by remote means.
 - a. Panel members may indicate their views to the Chair before the start of the Panel's proceedings by means of a telephone call or email provided the Chair accurately summarises those views to those members participating in the Panel's proceedings.

- b. The Chair or relevant staff of the Corporation may introduce each item of business and read the recommendation set out in the report.
 - c. Members of the Panel and Observers may discuss the item.
 - d. The Chair may summarise the different views expressed at the end of the discussion.
 - e. The Chair may amend a report's recommendation.
 - f. The Chair shall indicate to Panel members the Chair's decision as to whether the recommendation in the report (including as amended) is approved or not approved or is to be deferred.
 - g. Subject to the above the Chair may conduct the proceedings of the Panel as they see fit and may defer the Chair's decision on any item of business and adjourn the proceedings of the Panel (in whole or in part) to another time, provided notice of the fact is published in accordance with paragraphs 2 and 5 above.
13. The Secretary shall prepare a note of the proceedings of the Panel as soon as practicable which shall be published on the Corporation's website and which shall contain a statement as to the Chair's decisions (as above) on each of the items of business on the Panel Agenda.

APPENDIX B

Urgent action under the Corporation's Scheme of Delegation

The "Urgent action" provisions in the Corporation's Scheme of Delegation (Version 3.0, last amended 3 July 2018) are amended as follows, deleting those words crossed-out and inserting those underlined.

Type of decision	Delegation
1. Urgent action	<p>Other than those functions that are delegated to the Planning Committee, the <u>The Board</u> delegates to the each of the Chairs <u>man of the Board and</u> Committees, the exercise of any function of the Board or <u>a</u> Committee of the OPDC between scheduled meetings of the relevant body where <u>in the Chief Executive Officer's opinion</u> the matter to be decided is urgent and it is not possible and / or practicable to convene an extraordinary meeting of the relevant body <u>comply with the Remote Decision Making Procedures</u>, provided that, prior to taking action, the <u>relevant Chair</u> man consults all <u>available</u> <u>Members of the Advisory Panel corresponding to</u> relevant body (and the GLA Observer <u>as relevant</u>) notifying them in advance of the intended action and seeking their views.</p> <p>In such circumstances and where the relevant Chair man is unavailable for any reason, the Board delegates to the Chief Executive Officer the exercise of any functions of the OPDC in relation to the urgent matter provided that, prior to taking action, the Chief Executive Officer shall email all <u>available</u> members of the <u>corresponding Advisory Panel</u> Board Members (and the GLA Observer <u>where relevant</u>) notifying them of the intended action and seeking their views within a reasonable time frame.</p> <p>Any Chairs' man's or Chief Executive</p>

Officer's action using this provision must be recorded in writing along with the Chairs and Advisory Panel Members consulted and their views (if any) and reported to the proceedings of the next corresponding Advisory Panel ~~ordinary meeting of the Board.~~

All staff are delegated the authority to take emergency action in case of imminent danger to life or limb, in consultation with the most senior member of staff present or available by remote means.

Reference to the Chief Executive Officer above includes any member of staff acting-up into that position on a temporary or permanent basis.

The "Remote Decision-Making Procedures" means such procedures as are approved by the Corporation from time for the taking of decisions by remote means during the Covid-19 pandemic in accordance with the Scheme for Remote Decision-Making.