

# THE HIGHLAND COUNCIL

25 JUNE 2009

Agenda Item	
Report No	

## MODERNISING THE PLANNING SYSTEM: SCHEME OF DELEGATION AND THE REVIEW BODY

Report by Assistant Chief Executive and Director of Planning and Development

### SUMMARY

This paper advises the Council of the requirement to review the Scheme of Delegation for determining planning applications and to establish a Review Body to which an applicant can request a review of refusal of permission or of a condition of permission where the application has been determined by an officer through the Scheme of Delegation.

Regulations require the Council to submit its Scheme of Delegation for the approval of Scottish Ministers by the end of June 2009. Once approved the Scheme of Delegation and the Review Body will come into operation on 3 August 2009.

These procedures are part of a series of planning reforms by which the Scottish Government wish to speed up the decision making process on planning applications to encourage inward investment and ensure the sustainable growth of our communities. The intention is that the great majority of planning decisions are made at local Council level.

It is recommended that the Council adopt the revised Scheme of Delegation, establish the Highland Council Review Body and make arrangements for all Members to be trained as described in this report.

The report links to the Programme of the Highland Council 2009-2011 to create sustainable communities with more balanced population growth and economic development across the Highlands.

### 1. INTRODUCTION

- 1.1 The Scottish Government has introduced a suite of planning reforms in order to simplify and speed up the planning process and, as a consequence, improve investment and employment opportunities. The Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2008 (the 2008 Regulations) set out what the Government expects as regards the revision of schemes of delegation and introduction of Review Bodies. The substantive parts of these regulations come into force on 3<sup>rd</sup> August 2009.
- 1.2 Planning Authorities are required to amend their schemes of delegation to reflect a new hierarchy of developments as described below. The revised scheme requires to be approved by the Scottish Government prior to adoption by the Planning Authority.

1.3 Under the new hierarchy of development, development is now:

- National; those developments designated as such in the National Planning Framework (NPF). NPF2 is under preparation and the list of national developments includes, for the Highlands, electricity grid reinforcements. National developments shall be determined by Scottish Ministers,
- Major; major developments are defined in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and include:
  - Development under Schedule 1 of the Environmental Impact Assessment(s) Regulations 1999;
  - 50 or more houses/housing sites exceeding 2 hectares;
  - construction of an office, industrial building or distribution centre which exceeds 10,000 sq m or the site exceeds 2 hectares;
  - large scale electricity generation, waste management facilities, fish farming development and extraction of minerals.

Subject to the following qualification, major developments are to be determined by planning authorities through their schemes of delegation. The qualification to this general rule is that major applications that are recommended for approval despite being significantly contrary to the development plan are required to have a pre-determination hearing and be determined by full Council. The regulations do not permit delegation of such applications to planning committees. It is not anticipated that there will be a large number of applications per annum that fall within this category but these may raise practical challenges particularly if a site visit is requested by members before determination.

- Local; local developments are those developments other than national or major developments and the regulations intend these to be determined by planning officers under revised schemes of delegation.

1.4 Existing schemes of delegation require to be revised to allow planning officers to decide applications for developments in the first instance (delegated decisions). Applicants can then seek a review of a delegated decision if it has (a) been refused, (b) not been determined within 2 months or (3) conditions attached that the applicant wishes reviewed. The Review Body will then determine the review and issue a decision. Taking local developments out of the current appeals system (to Scottish Ministers) will increase the efficiency of the appeals system which will continue to hear appeals against refusals of applications determined by the Planning Applications Committees (PACs).

1.5 Central to the success of the new review/appeal system is the introduction of a revised Scheme of Delegation. This is aimed at improving the efficiency of the planning system by speeding up decision making by increasing the current delegation to officers. The revised scheme of delegation requires to be submitted to and approved by Scottish Ministers. If the revised scheme of delegation does not meet the aims of Government it is safe to assume that it will not be approved putting on hold the introduction of a Review Body in Highland.

1.6 From 1 May 2007 to 24 April 2009 Highland Council has determined 8490 applications. Of these 404 have been refused under the Council's current scheme of delegation (committee & officer) (4.8% of total applications). Of the total number of applications:

- 7911 Applications have been determined by officers (93.2% of total applications)
- 298 Applications have been refused by officers (3.5% of total applications)
- 3.7% of those applications determined by officers are refused by officers
- 579 Applications have been determined by Committee (6.8% of total applications)
- 106 Applications have been refused by Committee (1.2% of total applications)
- 18.3% of those applications determined by committee are refused by committee
- 142 Applications have been appealed to the DPEA (1.7% of total applications)

1.7 The level of work generated that the Review Body will need to address will relate to the revised scheme of delegation. If every application refused by officers under the current scheme of delegation was reviewed by the unsuccessful applicant, this would have led to a workload per Review Body meeting of approximately 18 reviews (if the Review Body sat 8 times a year). With an increased officer delegation, the number of reviews potentially being heard by the Review Body is likely to be higher still at least at the outset. It is anticipated that, once the Review Body is introduced, applicants whose applications have been refused will seek a review at a rate proportionately greater than the number of appeals currently lodged with the Scottish Ministers. Whether this remains the case will be monitored.

## **2.0 REVISED SCHEME OF DELEGATION**

2.1 The current Scheme of Delegation for determining planning applications was introduced by Highland Council on 1 January 2008.

2.2 The scheme authorises officers to determine all planning applications except:-

- a) applications recommended for approval despite having been advertised as contrary to the development plan;
- b) applications recommended for approval in accordance with the development plan but where there have been objections on planning grounds from members of the public residing at, or having their principal place of business at, five or more separate addresses or where there were unresolved objections from a community council or a statutory technical consultee;
- c) applications recommended for refusal on technical or design grounds despite being consistent with the development plan;

- d) significant scale applications where, in the opinion of the officer, the Development Plan is not sufficiently clear, or where a particular element of an application could not be accommodated within the relevant policy framework;
- e) applications in cases where Ward Members in the Ward in which the development is proposed, having been given prior notification of an application being recommended for refusal by the Planning Officer, unanimously request in writing within 5 working days, that the application be referred to the relevant Planning Applications and Review Committee.

The Planning Officer may choose to exercise discretion and not implement his/her delegated powers and refer the application to the Planning Applications and Review Committee.

- 2.3 To comply with Scottish Government's strategy it is recommended that the Scheme of Delegation be extended to allow officers to refuse applications on design grounds and to grant permission where there is a Minor deviation from the Development Plan to improve the development eg. extending a settlement boundary to improve a layout or secure better quality landscaping or an improved access. It should also allow officers to grant permission where technical objections can be resolved by conditions
- 2.4 It should be noted that where an officer recommends the grant of permission for major applications that is a significant departure from the Development Plan this will require to be referred to the full Highland Council who may wish a site visit and/or a hearing on the case.
- 2.5 All other major and local applications which fall within the criteria should be referred to the local Planning Applications Committee (PAC). Applications which do not fall within the criteria shall be determined by the appropriate or appointed officer. It is recommended that the system, by which Ward Members wish to refer an officer refusal of permission, shall continue and the mechanism by which an appointed officer may choose not to exercise the delegated powers and refer an application to the PAC shall continue.
- 2.6 The Proposed Scheme of Delegation in respect of Highland Council, Planning Applications Committees, the Review Body and Officer Delegation forms Appendix 1 to this report.

### **3.0 REVIEW BODY**

- 3.1 The Review Body will have a single function namely to review delegated decisions on applications. Reviews can apply to applications that have been refused, applications that have not been determined within the statutory timescale or conditions attached to granted applications. The Review Body has a quasi judicial function. There is a considerable administrative challenge presented by the establishment of a Review Body for such a large, disparate geographical area as the Highlands.

3.2 At first, it should be anticipated that the number of reviews applied for is likely to be high (in relation to the number of delegated decisions refused). The Review Body must therefore be an independent, functional and pragmatic body. In this regard there are a number of key considerations:

### 3.3 Composition

When the Planning, Environment and Development (PED) Committee considered the Scottish Government's draft advice note on 28 May 2008 (report ref PED-36-08), membership of the Review Body was agreed by PED Committee to be between 5-7 members. The 2008 Regulations indicate that at least 3 members of the authority should sit on the Review Body. In order to ensure that there is a geographic spread of membership, it is recommended that membership of the single Review Body for Highland be increased to 9 (3 each from the operational areas, quorum = 3).

3.4 As the Review Body will only be reviewing delegated decisions there is no possibility of members having been part of the determination of the application at first instance and therefore having a conflict of interest. This means that an elected member could be a member of both PAC and Review Body. However, given the likely time commitment to sit on both (see proposed frequency of Review Body below) and to reinforce the independence of the Review Body, it is recommended that members of the PAC do not also sit on the Review Body (NB it is accepted that members of the Review Body could still apply for a local member vote at the PAC under the current standing orders). It must be stressed that the Review Body must act as an independent decision making body. To ensure the transparency and integrity of the decision making process it is recommended that no Member for the ward in which the review case lies sits on the Review Body for that case. It is further recommended that the Chair and Vice Chair of the Planning, Environment and Development Committee are appointed as Chair(s) of the Review Body.

### 3.5 Frequency of meetings

It is recommended that the Review Body should sit every 6 weeks with intermediary 6 weekly meetings scheduled for site visits/hearings as may be necessary. These dates should be set within the Council Diary for 2009/10 which will be reported to Council in September 2009.

### 3.6 Location

It is recommended that the Review Body should, in the main, sit in the Council Buildings, Glenurquhart Road, Inverness. The reasons for this recommendation are two fold: (1) to take account of Highland wide membership, this will limit travelling time for Members of the Review Body and (2) to take advantage of the existing equipment for a "virtual site visit", see below. Where a site visit or hearing has been requested by the Review Body, it is recommended that the meeting should be held local to the application site where possible.

### 3.7 Structure of Review Body Meetings

It is recommended that Review Body meetings are split into 2 parts. Part 1 would be a “call-over” of the reviews on the agenda to establish which reviews require further procedure (additional written submissions, a site visit or a hearing). These reviews will be continued until the next meeting of the Review Body and arrangements will be made by the Review Body’s administrative support to instruct the parties that a site visit/hearing is to be held prior to determination of the review. Part 2 is the determination of those reviews that do not require further procedure. There will not be presentations by a planning officer at this part of the Review Body. Attendance by the planning officer responsible for the delegated decision is not considered appropriate unless a site visit or hearing is to be held. The reason for this is three-fold namely:

1. If the planning officer has the opportunity to address the Review Body, it would be inequitable not to hear the applicant for the review or any third party making representations on the application.
2. The planning officer would not be able to give independent advice to the Review Body as it is to be expected that the planning officer would wish to defend his/her delegated decision.
3. The time considerations of requiring planning officers to travel to Inverness from their operational areas to attend the Review Body.

Part 2 will also consist of reviews where additional information/hearing/site visit was been requested by Part 1 of a previous Review Body Meeting.

3.8 It is recommended that deliberations are held in public. In this sense the Review Body will be no different from PAC. Consideration could be given, in the future, to web casting the Review Body to improve public access to the meetings.

3.9 The detail of Review Body procedures is covered in Appendix 2.

### 3.10 Advice/Review Body Support

The Review Body will require to be advised by a Clerk and a planning adviser. It is considered essential that the adviser(s) have a full and detailed knowledge of the planning and legal systems. It is not considered appropriate that the planning officer whose decision is the subject of the review should provide advice to the Review Body as this would not be seen as independent. It is recommended that the planning advisor should be the Head of Planning and Building Standards who would not have been party to the original delegated decision. The Review Body has the power to appoint an Assessor if a hearing is to be held. The Assessor may, as part of his/her duties, be required to prepare a written report on the matters he/she is asked to assess. Dedicated clerical/admin support will be necessary to ensure all appeal statements are compiled and issued timeously, parties are invited to meetings/site meetings/hearings, site visits are arranged and meeting accommodation booked, meetings are minuted and its decisions issued.

## **4.0 TRAINING**

- 4.1 As the Review Body is a new decision making forum, with statutory procedures to follow, it is essential that training be provided to all members of the Review Body. This training should be compulsory as the importance of the Review Body as the final decision maker on applications should not be underestimated – there is no further appeal to a higher authority except on points of law.
- 4.2 It is proposed that all Members of the Council should be required to attend training to ensure that they are fully aware of the changes to the planning arrangements and the revised national code of conduct. This is required as all Members will be involved in decisions on applications for Major development, dealt with at Full Council and many Members will also be on the Planning Applications Committee.
- 4.3 Training for the Review Body should be programmed to take place in August 2009 with the first meeting of the Review Body expected to take place in September 2009. Training for all other Members should be scheduled to take place no later than November 2009.

## **5.0 CONCLUSIONS**

- 5.1 It is imperative that the Council reviews its procedures and processes to speed up decision making on planning applications in accordance with Scottish Government's requirements and its own customer care policies.
- 5.2 The current Scheme of Delegation needs to be extended to meet the requirements of Scottish Government to achieve this aim.
- 5.3 The quasi-judicial role of the Review Body is to be emphasised and it needs to be established in a manner in which Reviews are undertaken in an open and accountable manner.

## **6.0 RECOMMENDATION**

It is recommended that the Council:-

- adopts the revised Scheme of Delegation in Appendix 1 for submission to Scottish Ministers;
- adopts the arrangements for the formation and operation of the Review Body as detailed in Section 3;
- invites nominations for 3 Members from each Operational Management Area to sit on the Review Body;
- appoints the Chair and Vice Chair of the Planning, Environment and Development Committee as Chairs of the Review Body;
- requires that all Members undertake appropriate training in line with their future roles on Highland Council, the Review Body and Planning Applications Committee;
- delegate the administrative support arrangements for the Review Body to the Assistant Chief Executive and Director of Planning and Development.

Signature:

Designation: Assistant Chief Executive and Director of Planning & Development

Date: 11 June 2009

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Background Papers: The Planning etc. (Scotland) Act 2006 and its secondary legislation and Circulars

## APPENDIX 1

### Proposed Scheme of Delegation - s43A of Town and Country Planning (Scotland) Act 1997

#### 1. Highland Council

Major applications (as defined in Regulation 2(1) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009):

- recommended for approval despite having been advertised as significantly contrary to the development plan. For the avoidance of doubt those major applications considered to be minor departures are delegated to the officers identified below;

#### 2. Planning Applications Committees

Major applications (as defined in Regulation 2(1) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009):

- mainstream development contrary to Development Plan;
- recommended for approval in accordance with the development plan but where there have been either objections on planning grounds from members of the public residing at, or having their principal place of business at, five or more separate addresses, which objections cannot be addressed by conditions, or where there are objections from statutory consultees that cannot be addressed by conditions;
- where, in the opinion of the Head of Planning and Building Standards or Area Planning and Building Standards Manager (as appropriate), the development plan is not sufficiently clear, or there is no relevant policy framework to determine the application;
- where all Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, unanimously request in writing within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;
- made by the Council or in which the Council has an interest;
- made by an elected member or senior official of the Council.

#### 3. Local applications (as defined in Regulation 2(2) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009):

- where all Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, unanimously request in writing within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;
- submitted by the Council or in which the Council has an interest;
- submitted by an elected member or senior official of the Council.

#### 4. Review Body

To exercise full delegated powers on behalf of the Council in fulfilment of the provisions of the Planning etc (Scotland) Act 2006 to review, at the request of the applicant:

1. Any application (as defined in Regulation 2(2) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009) refused by the appointed officer;
2. Any condition attached to an application (as defined above) approved by the appointed officer or
3. Any application (as defined above) that has not been determined by the appointed officer within the period allowed for determination of the application.

#### 5. Officer Delegation

The following applications are delegated to Head of Planning and Building Standards (HPBS)/Area Planning and Building Standards Managers (APBSM), HQ and Area Team Leaders (TL) and Principal Planners (PP) who have received the written approval of the APBSM. All of whom are “appointed officers” for the purposes of the Planning etc (Scotland) Act 2006 and all regulations made thereunder:

1. All local applications (as defined in Regulation 2(2) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009) with the exception of those local applications:
  - where all Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, unanimously request in writing within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;
  - which have attracted technical objections which cannot be resolved by condition and are recommended for approval;
  - submitted by the Council or in which the Council has an interest;
  - submitted by an elected member or senior official of the Council.
2. All major applications (as defined in Regulation 2(1) of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009) with the exception of those major applications:
  - recommended for approval despite having been advertised as contrary to the development plan. For the avoidance of doubt those major applications considered to be minor departures are delegated to the officers identified above;

- recommended for approval in accordance with the development plan but where there have been either objections on planning grounds from members of the public residing at, or having their principal place of business at, five or more separate addresses, which objections cannot be addressed by conditions, or where there are objections from statutory consultees that cannot be addressed by conditions;
- where, in the opinion of the Head of Planning and Building Standards or Area Planning and Building Standards Manager (as appropriate), the development plan is not sufficiently clear, or there is no relevant policy framework to determine the application;
- where all Ward Members for the Ward in which the development is proposed, having been given prior notification of applications being recommended for refusal, unanimously request in writing within 5 working days of such notification, that the application be referred to the relevant Planning Applications Committee;
- made by the Council or in which the Council has an interest;
- made by an elected member or senior official of the Council.

("Application" includes applications for planning permission (detailed, outline, approval of reserved matters), applications for developing land without compliance with conditions previously attached (s42 applications), applications for certificates of lawfulness of existing (s150) or proposed (s151) use or development, listed building consent, certificates of lawfulness of existing (s150) or proposed (s151) use or development, listed building consent conservation area consent, hazardous substances consent, prior approvals (agriculture, forestry, demolition and minerals permitted development), advertisement consent, consents required to purify conditions of permission, section 64 applications for non-material variations of planning permissions, notifications of electricity lines and gas transmission pipelines, details of fulfilment of permitted development conditions, notices of proposed developments and aquaculture applications.)

## APPENDIX 2

### Review Body Procedures:

1. These are set down in Part 4 of the 2008 Regulations with the Hearing Sessions Rules included at Schedule 1. A flow chart has been prepared that identifies the various stages in a review, see below.
2. Decisions of the Review Body must be based solely on the submission of information as related to that appeal. The applicant has 3 months to apply for a review of a delegated decision or the non determination of the application and in doing so must lodge all material that he wishes the Review Body to consider. The planning officer (and any third party) has 14 days to make representations on the request for a review. In the case of the planning officer, the most important document is likely to be the delegated report refusing the application.
3. All appeal submissions will require to be circulated to Review Board members with the agenda in advance of the Review Body meeting. It is recommended that the meeting of the Review Body be spilt into 2 parts. The first part will be to “call over” the reviews appearing on the agenda and have the Review Body decide whether they have sufficient information to determine the review or, if not, to establish what further procedure is required. Those that are ready to be determined shall be carried over to the second part of the same meeting, those that require further procedure will be deferred to the next available site visit/hearing date.
4. Where the Review Body considers that it has sufficient information to determine the review, there will be no presentation of the application from a planning officer or ability to speak in support of the application by the applicant. Rather, there will be a “virtual site visit” i.e. photographs will be shown on the screen identifying the site and other relevant particulars. This, together with the appeal statements that have been circulated in advance, will be discussed by the Review Body and will be what the Review Body bases its decision on. In this regard the Review Body will operate in a very different way from PARC where the application is introduced and a recommendation put forward by the planning officer. NB If the Review Body has questions for the planning officer on a review, it is considered that the review would require further procedure (i.e. a hearing) and the planning officer will attend to present the reasons for his decision. Review Body members will be expected to be rather more self-sufficient than is currently the case at PARC/PAC – their role is to consider the material put forward by all parties to the review and come to a decision based on the statutory test contained in the 1997 Act:

“Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

5. Determination of a review without further procedure being necessary is most likely to suit local developments that have not generated much in the way of local opposition and it is recommended that the Review Body is encouraged to use this procedure rather than calling for site visits/hearings which will, inevitably, delay a decision on the review.

6. On those occasions that the Review Body considers further procedure is necessary, all interested parties will be advised what that procedure is to be (site visit and/or hearing) and invited to attend. Site visits are expected to operate in a similar way to PARC site visits in that the applicant and interested parties can point out things to the Review Body members (whether it is a particular view, distances between an existing house and the proposed development etc) but not to address the Review Body members or make submissions in support of their position. Hearings will operate according to the Hearing Session Rules in the 2008 Regulations and the procedure to be determined by the Review Body (NB first item at the 1<sup>st</sup> Review Body will be to adopt a hearings procedure). The Review Body may appoint an assessor to sit with the Review Body at a hearing to advise the Review Body on matters arising (this will have a financial implication for the authority). In giving notice to parties that a hearing session is to be held, the Review Body is required to indicate what matters are to be considered at the hearing session and only these matters will be considered at the hearing session (NB in this respect, a Review Body hearing session will differ from a PARC hearing).
7. A person entitled to appear at a hearing session is required to send to the Review Body and all other persons invited to attend, a hearing statement (a written statement (1) outlining the case relating to the matters specified by the Review Body, (2) containing a list of documents to be relied upon and (3) listing those persons speaking in support of the case, what they are to address and their qualifications) and a list of those documents that he/she intends to refer to (together with copies of documents that are not already available).
8. Members of the Review Body will receive all the paperwork lodged by the parties in advance of the meeting and will be expected to be familiar with it. At the hearing session the Review Body will indicate the procedure to be adopted, the order in which the specified matters will be considered and the order in which the persons entitled to appear are to be heard in respect of a specified matter. Any person entitled to appear may do so him/herself or may be represented.
9. The hearing will take the form of a discussion led by the Review Body (cross examination between parties is not encouraged). In practice, it is likely to be the role of the Chair to lead the discussion. Alternatively, depending on the amount of business on the agenda, individual members could be tasked with being the "lead member" for a particular application and lead the discussion for that item. Parties to the hearing session can call evidence but the Review Body may refuse to permit evidence that is irrelevant or repetitious. Hearing sessions may be adjourned to a later time/date by the Review Body.

10. Upon hearing all parties on the specified matters, a decision needs to be made on the review. Decisions must be transparent and undertaken in an objective manner in accordance with the statutory test referred to above. Reasons will have to be given if a delegated decision is overturned and, where appropriate, conditions will need to be attached to grants of planning permission. It is recommended that as part of the planning officer's submission the scope of planning conditions be included for the Review Body to agree should they decide to uphold the review and grant planning permission. There is no guidance as to who should sign off the decision notice. Options include: the Chairman of the Review Body, The Director of Planning and Development or the Head of Planning and Building Standards.