

Agenda Item	22
Report No	HC/48/13

19 December 2013

**PLANNING AND LICENSING APPLICATIONS  
PROTOCOL ON THE USE OF SPEAKING RIGHTS**

**Report by the Depute Chief Executive**

**Summary**

This report outlines a Protocol for the Use of Speaking Rights in regard to Planning and Licensing Applications, as requested at the last meeting of the Council on 5 September 2013.

**1. Background**

- 1.1 Members will be aware that, at the last meeting of the Council on 5 September 2013, the decision was taken to dispense with Local Member Vote arrangements for Planning Application Committees, the Planning, Environment and Development Committee and the Licensing Committee with effect from 30 September 2013.
- 1.2 It was also agreed that arrangements should be introduced to allow 1 Member from each Ward to act as a Substitute Member for each Planning Application Committee and this has now been implemented.

**2. Protocol on the Use of Speaking Rights**

- 2.1 Arising from the above decision, it was suggested that it would be helpful for Members if a Protocol could be drawn up to provide guidance on the use of Speaking Rights in relation to the discussion of Planning and Licensing Applications at meetings and this is now attached as Appendix 1 to this report for consideration.

**3. Implications Arising from the Report**

- 3.1 There are no resource, legal, climate change/carbon clever, equalities or risk implications arising from these proposals.

**Recommendation**

The Council is asked to agree the proposed Protocol on the Use of Speaking Rights in relation to Planning and Licensing Applications as detailed and as attached as Appendix 1 to this report.

Designation: Depute Chief Executive

Date: 3 October 2013

# PROTOCOL ON THE USE OF SPEAKING RIGHTS UNDER STANDING ORDER 13.1

## PLANNING AND LICENSING APPLICATIONS

Standing Order 13.1 (SO 13.1) provides that any member of the Council who is not a member of a Committee or Sub-Committee may attend a meeting of that Committee or Sub-Committee and may be entitled to speak at the meeting (but not vote) at the discretion of the Chair on any item of business on the agenda that concerns them.

This protocol has been produced to provide guidance and clarity on the use of speaking rights under SO 13.1, particularly in relation to regulatory decisions at Planning Applications Committees (PACs), the Planning, Environment and Development Committee (PED), and the Highland Licensing Committee (HLC).

### 1. Agenda items for which speaking rights may be sought

Standing Order 13.1 allows speaking rights to be sought in relation to any item of business on an agenda, so this will include policy matters as well as regulatory decisions on planning and licensing applications.

A member may exercise speaking rights on planning and licensing applications in any ward.

Regulatory decisions on which speaking rights may be sought under SO 13.1 will include not only decisions on applications for licences or for planning permission, listed building consent, advertisement consent, etc., but also licence review hearings at HLC and decisions at the PACs on matters such as enforcement action, confirmation of tree preservation orders or consultation responses in respect of applications for approval of Scottish Ministers under the Electricity Act 1989. At PED, they will include any application brought to PED for redetermination under the Notice of Amendment (Planning) procedure.

### 2. Procedure for obtaining speaking rights

SO 13.1 does not set down any procedure for obtaining speaking rights. Members are accordingly entitled simply to turn up at a Committee and request that the Chair permit them to speak on a particular item.

However, in relation to regulatory decisions before the PACs, PED or HLC, it is strongly recommended that members wishing to use speaking rights on a particular regulatory matter notify the relevant Committee Chair and Clerk in advance of the day of the meeting. This will allow opportunity for advance discussion of any issues arising such as any potential declarable interest. This in turn may help to ensure that, in exercising speaking rights in relation to a particular regulatory decision, the member does not inadvertently expose himself

or herself to risk of complaint under the Councillors' Code of Conduct or indeed expose the decision itself to legal challenge through judicial review.

Please also note that members seeking to participate in a meeting from a remote venue by video conferencing (whether as a full voting member or with speaking rights only) are required in terms of the Council's Video Conferencing Protocol to notify the Clerk of their request at least 24 hours in advance of the meeting and must specify at which of the venues listed in the Video Conferencing Protocol the remote link is requested. The Video Conferencing Protocol can be accessed at <http://www.highland.gov.uk/NR/rdonlyres/7FB01CA0-60B2-43FE-8EDE-BA24ABC83DCA/0/VideoConferencingProtocol.pdf>

### 3. Financial and non-financial interests

The particular standards in relation to declarations of interests by members taking decisions on regulatory applications such as planning and licensing applications are set out in Section 7 of the Councillors' Code of Conduct.

Members restricted to speaking rights at PACs, PED or HLC are not themselves "taking decisions" on applications and consequently, with the exception of paragraph 7.15 of the Code (see further below), the particular standards set out in Section 7 of the Code – though undoubtedly best practice – will technically not apply to them.

However, members exercising speaking rights under SO 13.1 must still comply with the requirements in respect of declarations of interest set out in Section 5 of the Code. In particular, if a member wishing to exercise speaking rights on a planning or licensing application has a financial or non-financial interest in the outcome of the decision on that application, they must comply with paragraph 5.3 of the Code.

This paragraph requires the member to apply the objective test as to whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the member's discussion of the application in question at Committee.

Where, having applied that objective test, a member considers that his/her interest falls within the terms of the objective test, they should not seek to exercise speaking rights under SO 13.1 on the application in question as they have a declarable interest which would require them to withdraw from the meeting until both discussion of and voting on the relevant item is concluded.

While it is members' personal responsibility to make decisions about whether they have a declarable interest which precludes their exercising speaking rights under SO 13.1, they can, of course, seek advice from appropriate Council officers in advance of the meeting. Paragraph 5.2 of the Code, however, advises that in making such decisions for which members have personal responsibility, they should err on the side of caution.

#### 4. Making representations on behalf of third parties

Except in the case of applications being determined under a hearings procedure, members exercising speaking rights under SO 13.1 on a particular planning or licensing application must confine their contribution to the debate to expressing their own assessment of the planning or licensing merits of the application. They may not make representations on behalf of constituents or other third parties. If they attempt to make such representations they will be required by the Chair to cease.

Where planning or licensing applications are subject to a hearings procedure, then in terms of paragraph 7.15 of the Code, a member may make representations at the meeting on behalf of constituents or other parties provided that

- In terms of the hearings procedure, equal opportunity is then given to any other parties wishing to make representations to do so,
- The member declares his or her interest in the matter before making his or her representations, and
- After making those representations the member then retires fully from the meeting room (it is not sufficient to retire to a public gallery situated in the meeting room).

All three of these conditions must be met before representations by members on behalf of constituents or third parties will be permitted at the meeting.

It should be noted that while most applications before the HLC are subject to a hearings procedure, hearings in respect of planning applications will take place only:

- Where a pre-determination hearing before full Council is required under planning legislation (this applies only to major applications which are significantly contrary to the development plan and to national developments), or
- Where, prior to determining a planning application, the relevant PAC has resolved to hold a discretionary hearing in respect of that application prior to determination<sup>1</sup>.

Councillors who may wish to make representations on a planning application on behalf of constituents or other parties under paragraph 7.15 of the Code should not seek to lobby the responsible Committee or its individual members to agree to hold a discretionary hearing. Any such lobbying could, itself, be perceived as a breach of the Councillors' Code of Conduct.

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<sup>1</sup> While it would also be open to PED to resolve to hold a discretionary hearing prior to determination of any application brought before it under the Notice of Amendment (Planning) procedure, past practice has been for such applications to be determined under the hearings procedure at PED only where a hearing preceded the original determination at PAC. In such cases, usual practice is for the hearing at PED to be arranged for the meeting at which the Notice of Amendment is first considered rather than being delayed until a formal resolution by PED to hold a hearing has been made.

## **USING SPEAKING RIGHTS UNDER STANDING ORDER 13.1 FOR PLANNING AND LICENSING APPLICATIONS:**

### **FREQUENTLY ASKED QUESTIONS**

**Q: Do I have to apply in advance for the Chairman's permission to speak?**

A: There is no rule which requires you to apply in advance, but for practical reasons advance notice to the Chairman and the Clerk is helpful and is encouraged.

**Q: Am I restricted to speaking on applications in my own ward?**

A: No. You may speak on planning or licensing applications regardless of the ward to which they relate. You may also speak on other agenda items at a planning or licensing committee such as enforcement issues or policy matters.

**Q: Do I have speaking rights at the Highland Licensing Board as well as at the Highland Licensing Committee?**

A: No. The Licensing Board is not a committee of the Council and the Council's standing orders (including SO 13.1 conferring speaking rights) do not apply to its proceedings. Only Licensing Board members may participate in proceedings at Board meetings.

**Q: Since I won't be voting, can I speak on applications even if I have a financial or non-financial interest?**

A: The rules set out in section 5 of the Code of Conduct in respect of declarations of interest apply not only to voting but also to taking part in discussions at committees. Consequently, if, having applied the objective test set out at paragraph 5.3 of the Code, you consider you have a declarable interest in respect of a planning or licensing application, you should not seek to exercise speaking rights under SO 13.1 in respect of that application.

**Q: Since I won't be voting, can I speak on applications on which I have already publicly expressed my views for or against?**

A: Section 7 of the Code of Conduct requires members to remain impartial (and to give no grounds to doubt their impartiality) until all the facts are presented to them at the meeting. This rule applies to those "taking part in the decision making process" rather than just those taking part in making the decision. If you are using speaking rights to address the committee, this can only be construed as for the purpose of influencing the decision which the committee members will make. Your address to the committee is therefore part of the decision making process. You should not therefore seek to address the committee on applications on which you have publicly expressed a view in advance of the meeting.

**Q: Can I make representations on behalf of constituents or others?**

A: Speaking rights under SO 13.1 may not be used to make representations on behalf of third parties for or against particular applications. They may only be used to express the member's own assessment of the planning or licensing merits of the application. Members may only make representations on behalf of third parties where applications are subject to a formal hearings procedure and the terms of paragraph 7.15 of the Code of Conduct are met.