

**REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 21 APRIL 2008**

**REPORT ON: MODERNISING PLANNING APPEALS**

**REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION**

**REPORT NO: 176-2008**

## **1 PURPOSE OF REPORT**

- 1.1 The report seeks to confirm the views of the Council in response to the Consultation Paper "Modernising Planning Appeals" and to authorise the Director of Planning and Transportation to issue the response to the Scottish Government by 9 May 2008.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee:
- a endorses the matters raised in the commentaries throughout this report and the answers to the questions posed by the Scottish Government; and
  - b authorises the Director of Planning and Transportation to issue this report as the Council's formal response to the Scottish Government by 9 May 2008.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 The Consultation Paper at Annex D includes a Partial Regulatory Impact Statement which seeks to evaluate the proposals contained in the set of 3 proposed Regulations (Schemes of Delegation, Local Review Procedures and Appeal Examinations) in terms of their purpose, the options available, benefits and costs and in terms of their impact on the public, private and voluntary sectors.

- 3.2 In terms of the likely financial impact of the proposals on Councils the Consultation Paper makes the following points:

- a Schemes of Delegation - no likely financial impacts are noted. The paper notes that effective revised Schemes of Delegation have the potential to achieve a more cost efficient management of Council business through the delegation of a greater number of applications to officers, thus reducing the costs of committee administration.

It is not possible at this stage to predict with any degree of certainty the net financial impact on the Council as there are too many variables involved in the modernising process which have yet to be confirmed.

- b Local Review Bodies - the Consultation Paper acknowledges that there will be cost implications for Councils as a result of the establishment of Local Review Bodies. These costs will depend on the level/composition of the body, the frequency of meetings, the level of business, and the level of preparatory work in relation to each meeting. Staff requirements are likely to vary on a case by case basis and according to the need for specialist planning advice.

It is considered that the Consultation Paper underplays the likely resource implications of the establishment and servicing of Local Review Bodies. The principal cost areas for the Council are likely to be:

- administrative costs in servicing what will in effect be an additional Council Committee. This will involve the copying and circulation of papers, attendance at meetings and issuing written decisions;
- Legal Officer time commitment in leading advice to the Body. A potentially significant time commitment will be involved in preparing for each case and attending meetings; and
- Professional Planning Officers. If the Council decides that there should be a professional planning involvement in each case it will require to decide whether this is provided from within the Planning and Transportation service or acquired from, for example, independent consultants. Each will have a distinct and different cost impact. The time commitment by the planning officer will undoubtedly deflect that officer from other casework and feed through into potential inefficiencies elsewhere in the service.

3.3 Given that every delegated decision (normally decisions to refuse planning permission) have the potential to create a review case for the Body, workloads will be potentially considerable for both Members and Officers.

3.4 The Consultation Paper does not indicate the payment of any fee by appellants in support of the Local Review Body, nor does it indicate how Councils are to be compensated for the additional annual revenue costs involved in operating what is a statutory requirement.

3.5 The Consultation Paper does not make any reference as to whether the Council's will have the powers to consider and make awards of expenses in respect of unreasonable behaviour in placing a review case before the LRB.

3.6 Once the Regulations are confirmed it is proposed to bring another report on resource issues before the Committee.

#### **4 BACKGROUND**

4.1 Copies of the Consultation Paper are available in the Members Lounges or may be viewed on the Scottish Government's website at [www.scotland.gov.uk/Topics/Planning](http://www.scotland.gov.uk/Topics/Planning).

4.2 The Consultation Paper seeks comments on proposed changes to the planning appeal system in Scotland. The Government's proposals are intended to make the process for challenging planning decisions more efficient without reducing the high quality of determination provided under present arrangements.

4.3 The Scottish Government wants the planning system to be fit for its purpose and its response to applications or appeals to be proportionate. It also wishes to ensure that the appeal process avoids unnecessary complexity or lengthy procedures that do not add value to the quality of the decision.

- 4.4 The proposals to modernise the planning appeals system should not be viewed in isolation. They form part of the wider agenda for modernising the planning system in Scotland. Recent consultation papers on which the Council has already offered views include:
- a Planning Enforcement Regulations 2007 (February DQ Committee)
  - b Draft Regulations on the Planning Hierarchy (February DQ Committee)
  - c Development Management - Consultation Paper (March DQ Committee)
- 4.5 The White Paper "Modernising the Planning System" (Ref Article III of the Minutes of the Planning and Transportation Committee of 12 September 2005 and Report 504-2005) signalled the intention to modernise the planning system and the Planning etc (Scotland) Act 2006 now provides the legislative framework for change. This Consultation Paper and the Draft Regulations it contains detail how these changes are to operate.
- 4.6 The White Paper underlined the following principles which the Scottish Government indicates has been followed through in the New Act and given substance in the proposed Regulations:
- a the need for planning decisions to be made so that the Scottish economy is not disadvantaged;
  - b those wishing to make planning views known should be able to do so without being intimidated by the process;
  - c there should be less cope for proposals to change during the planning and appeals processes and for the justification for them to alter without reference to the local community;
  - d the early determination of appeals in cases where the decision on the appeal could be made without more extensive consideration between the principal parties;
  - e the efficiency gains which can be delivered by delegation of decision making to officers allowing elected members to focus their attention on more complex or more controversial applications;
  - f the introduction of a Local Review Body in each Council comprised of elected members meeting together, supported by officers, for the purpose of reviewing a decision taken by officers under the Scheme of Delegation and referred to it by an applicant dissatisfied with the delegated decision; and
  - g the timescale for making an appeal to Scottish Ministers or requesting a local review is to be reduced from 6 to 3 months.
- 4.7 This report will now outline the proposals contained in the consultation paper together with a commentary and proposed answers to the questions posed in the paper, each under three headings:
- a Schemes of Delegation;

- b Local Reviews; and
- c Planning Appeals.

4.8 It cannot be overstated to strongly that the final regulations will have fundamental implications for one of the Council's most important statutory decision making functions.

## 5 SCHEMES OF DELEGATION

5.1 The proposals for Schemes of Delegation are summarised as follows:

- a under the new Act each planning authority is required to prepare a Scheme of Delegation;
- b Ministers are allowed to prescribe the form and content of Schemes;
- c Schemes of Delegation will enable certain applications within the category of "local developments" to be determined by an officer of the Council rather than by elected Members;
- d it is proposed that officials will take a full range of decisions on applications (eg approval, approval with conditions, refusal);
- e Schemes of Delegation are to be reviewed at intervals of no more than 5 years;
- f decisions taken by officers under delegated powers will be linked to a local review process rather than an appeal to Scottish Ministers as at present;
- g only delegated decisions made under the Scheme of Delegation introduced by new Section 43A of the 1997 Act will be subject to these new review procedures. This means that other types of application eg listed building consent, conservation area consent or advertisement consent which may be determined under delegated powers under the provisions of the Local Government (Scotland) Act 1973 will still be subject of the appeals process to Scottish Ministers as these types of application have not been included within the provisions of Section 43A;
- h it is intended that "local developments" which are neither complex nor controversial should be delegated for decisions to officials "to promote efficiency" (paragraph 15);
- i however, certain applications will continue to be dealt with by Members (ie no delegation):
  - applications subject to an unresolved objection from a statutory consultee;
  - applications made by the planning authority or a member of the planning authority;
  - applications relating to land in the ownership of the planning authority or to land in which the planning authority have a financial interest;

- applications requiring an Environmental Impact Assessment;
- applications relating to development that is "significantly" contrary to the terms of the Development Plan;
- applications subject to a "substantial" body of objections; and
- applications of a class mentioned in S38A of the 2006 Act (these being applications subject to enhanced scrutiny, including a pre-determination hearing by the planning authority).

The terms "significantly" and "substantial" are not defined in the Act or the proposed Regulations (see Reg 3(5)).

**Q1 - Do you agree with the above scope of schemes of delegation?**

**Response** - It is noted that the Regulations do not prescribe that all "national" and "major" category applications must not be included in a Scheme of Delegation. Section 38A of the Act relates to hearings only. The Council considers that the Regulations should be adjusted to specifically provide that all "national" and "major" category applications should be decided by elected members. In this way a consistent approach nationally to the method of determining significant developments can be achieved and avoid the situation where complex applications are included in Schemes of Delegation with Local Review Bodies being expected to accept applications for the review of these delegated decisions. In this way all applications subject to enhanced scrutiny arrangements will, as they ought to be, determined by elected members.

Defining what is a "significant" departure from the development plan will be contentious and it will be difficult for Councils to adopt a consistent and fair approach without further guidance from Scottish Ministers. Delays and inefficiencies will potentially occur if elected members do not chose to delegate responsibility for defining significance to officials or do not set clearly defined criteria. It is suggested that significance of a departure is judged on the extent to which the application if approved would potentially derail the strategy and/or implementation of the development plan.

This approach would appear to fall into line with the proposal that EIA developments and "significant" departure applications should be the subject of mandatory pre determination hearings and final decisions by Full Council.

Similar issues arise with regard to the definition of a "substantial" body of objections. Whilst the assistance offered in Regulation 3(5) is appreciated it is odd that it should appear in the Regulations rather than in more considered guidance. The decision on any application however simple or complex can be swayed by a single well argued objection by an individual as opposed to an organisation purporting to represent a body of objection. This is a matter to which the Council will take into consideration in drawing up its revised Scheme of Delegation.

It is noted that it would appear that all listed building and advertisement applications must be appealed to Scottish Ministers irrespective of whether they have been

determined by officers or Members. Therefore a routine planning application refused by officials under delegated powers can use the subject of review to the LRB whilst the complementary refusal of listed building consent must be appealed to Scottish Ministers. Whilst it is appreciated that the appeal and review will be judged on their individual merits under different legislation this seems to place barriers in the way of efficient decision-making. The Council encourages an early change to primary legislation to correct this anomaly.

**Q2 - Are there other categories of decision which should not be delegated to officials?**

**Response** - See response to Q1.

- 5.2 The overall intention is that arrangements for decision making should promote efficiency whilst ensuring that complex or controversial proposals continue to be dealt with by elected Members. This is intended to allow authorities to put in place administrative arrangements which should not prevent applications for local developments consistent with the development plan to be processed through the system quickly.
- 5.3 The Regulations require planning authorities to send a copy of their Schemes of Delegation to Scottish Ministers. The Scheme must not be adopted until a 28 day period has elapsed. During this period (which may be extended by Scottish Ministers), Ministers may "require" the authority to consider modifying the Scheme in accordance with their recommendations (paragraph 17).
- 5.4 In response, planning authorities are expected to provide reasons why any recommendations made for modification by Scottish Ministers have not been accepted. The Draft Regulations enable Scottish Ministers to notify a planning authority that a Scheme should not be adopted until it has been approved by Scottish Ministers.
- 5.5 There is no provision in the Regulations for consultation on draft Schemes.
- 5.6 Once a planning authority has agreed a Scheme of Delegation the Regulations provide that it should be made available in public libraries and on the authority's website.
- 5.7 Reference to where the Scheme of Delegation may be inspected will require to be advertised periodically.
- 5.8 The new Act enables an application which is within an adopted Scheme to be determined by Members rather than by an official under delegated powers (see 43A(6)). Where this is done a statement of reasons is to be provided to the applicant as soon as such a decision is taken. These provisions are intended to provide a degree of flexibility that can be used on a case by case basis.
- 5.9 Decision notices will require to state clearly which route is available to applicants dissatisfied by any decision ie either review by the Local Review Body or appeal to Scottish Ministers as applicable.

**Q3 - Should planning authorities be required to undertake local consultation on their proposed scheme of delegation?**

**Response** - The Council does not consider that mandatory or voluntary public consultation is necessary. It is considered that elected members are sufficiently experienced and attuned to the views of their constituents that a constructive debate on the adoption of Schemes of Delegation within the Council is adequate.

**Q4 - Do you agree with the proposed approach to preparing and adopting the Scheme of Delegation?**

**Response** - The Council considers that the proposed processes leading to the final adoption of Schemes by Councils is overly complex. Given that it will be a statutory requirement that certain categories of application should not be included in a Scheme of Delegation there should be no need for Scottish Ministers to approve them or approve them subject to modification. Adopted Schemes could be referred to Scottish Ministers for noting.

Following the coming into force of the Regulations, Councils will be anxious to prepare, adopt and operate Schemes as quickly as possible to enable the implementation of the package of complementary Regulations. The referral process, it could be argued, could introduce unnecessary delay.

Whilst it is appreciated that the powers inserted by Section 43(A)(6) will afford officers a degree of flexibility there is the danger if too frequent use of this power is made, that it may undermine the effectiveness of the approved Scheme of Delegation.

## **6 LOCAL REVIEW BODIES**

- 6.1 For all decisions taken by officials under an adopted Scheme of Delegation an applicant will be entitled to require the planning authority to review the case (ie a refusal or against the terms of an applied condition).
- 6.2 The Scottish Government stresses that this significant change must be underpinned by high quality standards of examination; appropriately trained Members; clear timescales for review procedures; fairness; clear reasoning behind decisions; and above all independence from the original decision taken (ie the official).
- 6.3 Requirements for a review of a decision must be made within three months of the decision being taken or three months of a failure to determine an application (ie both reduced from the current six months).
- 6.4 The requirement for review will be in writing and supported by "grounds" and "materials" in support of the requirement.
- 6.5 Once received, the requirement for review is for the Council to notify those who made unresolved representations to the original application or those who were consulted.

These earlier comments will be taken into account but no further comments are to be invited.

- 6.6 The requirements for review and supporting documents are to be made available for public view.

**Q5 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering a review?**

**Response** - The Council agrees. Consideration of a case by an LRB should be based solely on the information and opinions which were before the nominated officer at the time the decision was taken. The Council believes that the duties of LRB's will be substantial and complex enough without soliciting further material from third parties whose views will already have been before the Council and evaluated at the time the decision was taken. This approach also sends a message to Third Parties to engage in the planning process from the outset and to express their views in a full and clear way. It also reinforces the position of the LRB as a body with the power to reverse the decision of the officer rather than considering the application afresh as is the case for an appeal.

- 6.7 Scottish Government considers that the Local Review Body should comprise a small number of Elected Members (3-5) with a larger pool of Elected Members available to ensure that the process operates effectively should conflicts of interest arise.
- 6.8 Administrative support will be required. It is envisaged that a Council's legal officer will provide support "supported as necessary by the planning authority's professional planning expertise drawn from those not involved in the decision under review" (paragraph 24).
- 6.9 The meetings of the Local Review Body are to be in public in the interests of fairness and transparency.

**Q6 - Do you consider that the proposed size of the review body is appropriate?**

**Response** - It is considered that the proposed size of the LRB is appropriate. The suggestion that the LRB members are drawn from a pool of appropriately trained members appears sound. The Council is of the strong view that the independence of the LRB would not be compromised if the LRB constituted to consider a particular case included any of the Ward Councillors for the Ward concerned. Councillors local to the case being considered have the greatest local knowledge and can bring genuine local insight to the issues being reviewed.

In setting up the LRB clear operating rules would require to be approved by the Council and based on a model Code of Conduct likely to be published by Scottish Ministers.



Of greater concern to the Council are the following points on which no questions have been asked:-

- a the potential workload of LRB's could be significant where the lion's share of applications will inevitably fall to be determined by officers under delegated powers;
- b the servicing of the LRB will require a considerable dedicated time commitment from legal, administrative and planning officials in addition to their present duties;
- c no mention is made in the Consultation Paper as to how this additional statutory burden is to be financed. The DPEA will be relieved of the burden which will now fall on Councils. It is suggested that a compensatory shift of financial resources from DPEA to Councils is recognised in future financial settlements with Councils;
- d It is reasonable to assume that the LRB would wish to be adequately advised by planning and related professionals. Planning decisions are not taken by a single planning officer in a vacuum. Several professional officers from a variety of disciplines from within the Council potentially will have had an input to the decision-making process. It is suggested that it would be extremely difficult, if not impossible, to identify a planning officer or technical expert from other Council Departments who could be said to be totally unconnected from a particular decision in order that independence can be assured. If such an officer did exist and in order that they provided a competent view to the LRB they would require to brief themselves fully but independently of the original case officer and other colleagues. There is always the chance that that officer would have come to a different decision or arrived at the same decision for different reasons under such arrangements. The RTPI Code of Professional Conduct requires Members of the Institute to always offer an honest professional opinion. This scenario has the great potential for conflict between officers working side by side. In addition, members of the LRB as employers to the officers concerned may draw into question, in the minds of some, whether there can ever be true and meaningful independence between the LRB and any salaried officer.

The alternative options are:

- i the LRB is advised solely by a Council's legal officer as at present for appeal cases where the members have made a decision contrary to officer recommendation. This has significant resourcing issues and does not overcome the issue of the provision of independent professional advice being available;
- ii the appointment of consultants to advise the LRB on a contractual basis. The difficulty with this is the identification and appointment regime for suitably qualified and experienced consultants where their availability can be required. Members of the LRB would also have to remain impartial when planning applications involving the appointed consultant come before them in Committee. The costs associated with this option may be substantial;

- iii the drawing of independent planning advice from officers of an adjacent authority. Again commitment and availability would have to be guaranteed and resource implications may again be involved. This option would depend on mutual co-operation between officers of the Council involved and the willingness to accept reciprocal arrangements;
- iv a dedicated and independent Local Review Body Advisory Officer from within the Council's planning service.

Therefore all options would have financial or practical implications for different reasons. However on balance option iv), it is suggested offers the best prospects for a practicable solution.

- 6.10 The review process will focus on the material which was before the planning authority and consider whether the decision taken under delegated powers "was appropriate" (paragraph 25).
- 6.11 In cases of non-determination the Review Body will be required to be professionally advised. It is suggested that this should be given by the Head of the Planning Service in the authority concerned.
- 6.12 It will be a matter for the Local Review Body to decide how the case should be processed eg on the basis of the information already available; by requesting further information or clarification from "key parties; by exchange of written representations or by hearing or a combination of both.
- 6.13 For a hearing case it is open to the LRB to organise either an accompanied or an unaccompanied site inspection. The Draft Regulations are quite specific as to the content of LRB written decisions. They are likely to be lengthier and more specific than those currently prepared by Reporters for mainstream householder appeals for example.

Whether or not Councils are able to meet the two month deadline for LRB decisions will depend on

- how often they choose to meet;
- the number and complexity of review requests;
- the extent and complexity of "materials" submitted with the grounds of review;
- the extent and nature of requesting further information and/or the taking of evidence.

With the introduction of the new system and the reduction in the time period for appealing and seeking a review, it is anticipated that the numbers of appeals/review requests may rise. However, as there are a number of factors potentially influencing these figures it is difficult to predict likely workloads.

- 6.14 The Consultation Paper makes no reference to powers being made available through the new Planning Act to allow Councils to make awards of expenses in the event that a motion for a claim is made by parties to the Review on the basis of unreasonable behaviour by the other party provided the tests set out in Circular advice are met. Reporters on appeal would still have such a power.
- 6.15 The Regulations do not provide for a public inquiry type method of examination.
- 6.16 It is envisaged that the review will be determined on the basis of the issues contained in the decision notice. Any new information which is "exceptionally" introduced must be subject to comment by parties within a 14 day period before the case is considered.
- 6.17 Local Review Bodies are expected to reach decisions promptly (ie in not more than two months from the notice to review being received. The decision will be expected to be issued promptly and entered in the public register. Reasons for the decision are to be set out in full and signed by the Chair of the Review Body. The content of decision notices are specified in detail in the Draft Regulations.

**Q7 - Are the timescales proposed for carrying out a review reasonable?**

**Response:**

The Council considers that the timescale of two months for the issue of an LRB decision may be too restrictive given the amount of work involved;

Regulation 3 of the draft Appeals Regulations tends to indicate that there would be no right of appeal to Scottish Ministers in a case where an LRB failed to reach a decision within the statutory period. However, the Local Review Body Regulations indicate that in such a case there will be a right of appeal to Scottish Ministers.

Regulation 9 (and Schedule 1) provides for a period within which further information is to be requested and exchanged among the applicant/LRB/and any other body. This has the potential to considerably eat into the two month determination period;

Similarly, Regulation 9 and Schedule 1 set out timescales should the LRB decide to convene a hearing. This will involve the gathering and exchange of evidence and perhaps the appointment of an assessor to advise the LRB. It is doubtful given the procedures involved whether, in such cases, a decision will be reached in two months;

Regulation 10 prescribes the form of the Decision Notice to be prepared by or on behalf of the LRB Chair and signed by him/her. This Notice will be detailed in its content and appears to go beyond the scope of letters of decision issued by Reporters for routine appeals. It is considered that given that the matter is a "review" rather than an appeal and that the relevant provisions of the development plan and material considerations will have been comprehensively set out in the officer's Handling Report and available to all parties, it is considered that a shorter and less detailed Decision Notice would be appropriate.

In summary, Scottish Ministers should give consideration to either simplifying the

operations of the LRB or, alternatively, extending the time period leading to the decision.

**Q8 - Are there additional provisions to those proposed which would improve the processing of reviewing the decision?**

**Response** - See response to Q7.

## **7 PLANNING APPEALS (TO SCOTTISH MINISTERS)**

- 7.1 Appeals to Scottish Ministers will in future apply to decisions taken by Elected Members only.
- 7.2 The timescale for such appeals will be reduced from 6 to 3 months.
- 7.3 The appeals system will be made more efficient by:
- a restricting the ability of parties to introduce matters that were not before the Council when the proposal was considered by them;
  - b where an appellant wishes to alter their proposals a revised planning application to the authority will be necessary;
  - c the route to be followed in the appeal (written representations, or hearing or public inquiry) will in future be decided by Scottish Ministers ending the right to be heard at public inquiry;
  - d it is envisaged that the written representations method will continue to be the most appropriate for the majority of straightforward appeals with public inquiries being reserved for the more complex or complicated cases;
  - e depending on the circumstances of each case a combination of methods of examination may be appropriate;
  - f comprehensive grounds of appeal and appeal documentation will be required to be provided at the outset;
  - g when they receive a Notice of Appeal the Council will provide a response within 14 days and within the same period notify interested parties of the appeal. No further gathering or exchanges of evidence is envisaged (the Regulations provide details on more detailed procedures which will apply to hearings and public inquiries); and
  - h simplified arrangements for public inquiries are proposed, eg shorter and more focussed statements of evidence.

**Q9 - Do you agree that it is reasonable not to invite additional comments from third parties to those made during the course of considering the planning application when considering an appeal?**

**Response** - The Council agrees with the proposals in the Consultation Paper.

**Q10 - Do you agree that Ministers should seek to use the method of examination that best fits the circumstances of the case, taking account of the views of the parties?**

**Response** - The Council strongly agrees with this proposal, as at present, public inquiries are often unnecessarily called for by appellants where a written representation or hearing approach would suffice.

**Q11 - Do you consider that the framework set out in the accompanying regulations reflects the more proportionate appeals regime envisaged in the White Paper?**

**Response** - The Council agrees with the content of the proposed Regulations.

- 7.4 The consultation Paper refers to the particular arrangements which primary and secondary legislation makes for planning applications where crown land is involved and for inquiry procedures dealing with urgent applications where development is of national importance and is required urgently. Special arrangements are in place in respect of cases where the disclosure of information at inquiry may not be in the public interest.

**Q12 - Are there any particular issues in relation to proposals for Crown development which would require special handling in relation to schemes of delegation, local review and appeals procedures?**

**Response** - The Council has no comment to make.

**Q13 - Are there any potential impacts on the business or voluntary sector that we should be aware of in finalising these regulations?**

**Response** - As indicated above the greatest impact from the three proposed Regulations taken together would by far be felt by officers and members of planning authorities. The impact would be in terms of both workload and cost.

**Q14 - Are there any impacts on particular societal groups that we should be aware of in finalising these regulations?**

**Response** - See response to Q13.

**Q15 - Do you have any other comments to make on the draft regulations covering schemes of delegation, local review bodies or appeals examinations?**

**Response** - The Council takes issue with the assumptions contained in Paragraph 5.11 of Annex D in relation to the contended "benefits" of the LRB proposals. The average time saving of one hour per week of one FTE Manager (£134,000) resulting from the increased level of potential referrals to the LRB is not understood. Although the volume of Committee referrals would potentially decrease, Committees would still have to be prepared for, convened and managed with enhanced Reports of Handling prepared in draft and final formats.

There will undoubtedly be a significant increase in administrative and professional costs resulting from the operation of LRB's. The paragraph over-emphasises the cost saving "felt through increased productivity and turnaround of applications". Application turnaround will be interrupted by the demand placed on the LRB and in turn the demands placed on officers. This will probably feed through into delays in routine application work.

An assessment has been made of the potential impact of a Revised Scheme of Delegation had it been applied to decisions made in the calendar year 2007. The results are outlined in the tables below.

**Table 1 Total Distribution of applications determined in 2007 and resulting in appeals(existing Scheme of Delegation)**

	Committee		Delegated		Total
	Approval	Refusal	Approval	Refusal	
Distribution of all decisions (11 committee meetings)	148	65	722	49	984
	213	(21.6%)	771	(79.4%)	
Appeals lodged in respect of decisions taken in 2007	32	Dismissed 9 Upheld 8 Pending 15	15	Dismissed 4 Upheld 3 Pending 8	Dismissed 13 Upheld 11 Pending 23 Total <u>47</u>

**Table 2 Revised 2007 Distribution of applications/appeals under an assumed Revised Scheme of Selegation**

	Committee	Delegated	Total
Distribution of all decisions	66 (7.2%)	918 (92.8%)	984
Potential distribution of actual Appeals in accordance with the assumed Revised Scheme of Delegation	<u>Scottish Ministers</u> 8	<u>Local Review Body</u> 39	47

**Notes:**

The assumed Revised Scheme of Delegation would entail full delegation to officers except the following categories of application:-

- All applications which must be referred to elected members under the Draft Schemes of Delegation Regulations 2008 and based on the proposed classifications outlined in the Draft Development Management Regulations 2008 and the Draft Hierarchy of Developments Regulations 2008;
- All "national" and "major" category applications not covered in a) above;
- All applications subject to enhanced pre application scrutiny arrangements not covered by a) or b) above.

"Significant" departure from development plan is taken to be a very major departure or potential departure which goes to the heart of the strategies of either the structure or local plan.

"Substantial" body of objection taken to be 11 or over valid, individual objection letters, and petitions properly submitted.

These figures indicate the potential shift in decision-making responsibilities following the application of that assumed Scheme of Delegation which seeks to strike an appropriate balance between member involvement in significant planning issues and officer determinations in a wider range of cases than at present.

The striking differences are in the potential reduction in the size of Committee agendas and the significant increase in the involvement of Elected Members at the Local Review Body stage.

This exercise does no more than illustrate the likely impact of a relatively modest amendment to the current Scheme of Delegation.

## **8 POLICY IMPLICATIONS**

8.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management.

8.2 There are no major issues.

## **9 CONSULTATIONS**

9.1 The Chief Executive, Depute Chief Executive (Support Services), Depute Chief Executive (Finance), Head of Finance and Assistant Chief Executive (Community Planning) have been consulted and are in agreement with the contents of this report.

## **10 BACKGROUND PAPERS**

10.1 "Modernising Planning Appeals" Consultation Paper February 2008.

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2 April 2008

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