

REPORT TO: POLICY & RESOURCES COMMITTEE – 11 NOVEMBER 2013

REPORT ON: SCHEME OF DELEGATION

REPORT BY: DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 405-2013

1 PURPOSE OF REPORT

- 1.1 To make recommendations concerning the form and content of the Council's mandatory scheme of delegation to be submitted to Scottish Ministers for approval and to make recommendations concerning the Council's discretionary scheme of delegation.

2 RECOMMENDATIONS

- 2.1 It is recommended that
- i. The Committee adopts the Mandatory Scheme of Delegation outlined in Annex A to this report in accordance with the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997 as inserted by of the Planning etc (Scotland) Act 2006 and of the Town and Country Planning (Schemes of Delegation and Local Review Procedures) (Scotland) Regulations 2013;
 - ii. The Committee adopts the discretionary Scheme of Delegation outlined in Annex B to this report;
 - iii. The Director of City Development is authorised to submit the mandatory Scheme of Delegation to the Scottish Government for the approval of Scottish Ministers;
 - iv. The Head of Democratic and Legal Services be remitted to amend the Council's Scheme of Administration - Delegation of Powers to Officers to give effect to the terms of this report;
 - v. Both the mandatory and discretionary Schemes of Delegation become operational in respect of applications submitted on or after 1 December 2013 unless approval is not received from Scottish Ministers for the mandatory scheme in which case they shall become operational once it has been approved.

3 FINANCIAL IMPLICATIONS

- 3.1 Although there are no direct financial implications arising from the approval of this report, improved resource efficiencies are likely to result leading to a more focussed and proportionate allocation of Member and officer resources.

4 BACKGROUND

- 4.1 To coincide with major changes brought about by the Planning etc. (Scotland) Act 2006, the Scottish Government introduced a new additional scheme of delegation (referred to in this Report as the Mandatory Scheme of Delegation) for planning applications for "local development". This allowed Councils to decide which local applications could be determined by delegation to an appointed officer rather than by Committee.
- 4.2 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 conferred wide powers on Councils to decide which local applications it could delegate to officers, but a single restriction

was imposed by regulation 3(4) which prevented an appointed officer from determining an application for planning permission where the application is made by the planning authority or a member of the planning authority or where the planning authority had an ownership or financial interest in the land.

- 4.3 Following a report to the Policy and Resources Committee in June 2009 the Council adopted new schemes of delegation (mandatory and discretionary) taking effect on 3 August 2009.
- 4.4 The purpose of the regulation 3(4) restriction was to ensure that Councils did not make decisions on significant matters in which they had a vested interest without going to Committee. However it soon became apparent that very minor matters such as applications for garden sheds and fences had to come before the Development Management Committee because of Council interest. This ran directly contrary to the Scottish Government objectives of speeding up the planning process and requiring Committee scrutiny for significant development proposals. Often these minor applications attracted no public interest.
- 4.5 As a result the legislation was amended with the introduction of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 which came into force on 30 June 2013. This enabled Councils to adopt a Scheme of Delegation for local applications without restriction. A number of Councils have now amended their schemes of delegation to remove the mandatory requirement that Council interest applications be determined by their Development Management Committee.
- 4.6 It is considered appropriate that Dundee City Council adopt a new scheme of delegation in line with the changes to the legislation but maintaining the following safeguards:
- All local applications made by a member of the planning authority will continue to be considered by the Development Management Committee.
 - All local applications made by the planning authority or where the planning authority has an ownership or financial interest in the land will be subject to the same restrictions as any other local application as set down in the mandatory and discretionary schemes of delegation.
- 4.7 In addition to the above matters, new legislation has been introduced entitled the High Hedges (Scotland) Bill 2013 which received Royal Assent in May 2013 and which is expected to come into force in April 2014. This legislation will allow the owner/occupier of domestic property affected by a high hedge to apply to the Council for a high hedge notice. The Councils discretionary scheme of delegation was approved without any reference to this legislation and it is therefore considered appropriate to delegate to the Director of City Development to power to determine applications and to carry out all functions under this legislation.
- 4.8 Finally there is a statutory requirement for the Council to prepare a scheme of delegation at intervals of no greater than every five years and any such scheme must undergo certain statutory requirements including approval by Scottish Ministers before it can be adopted. The Council is obliged to prepare a new scheme of delegation no later than 3 September 2014. Given the significant changes proposed

in paragraphs 4.6 and 4.7 above it is considered appropriate that the Council review its entire scheme of delegation and submit a new one for approval to Scottish Ministers now.

- 4.9 Other than the matters referred to in paragraphs 4.6 and 4.7 above it is considered that the Councils scheme of delegation has functioned effectively since August 2009. It is in keeping with the Scottish Government's aims of improving efficiency in the decision making process whilst retaining a high quality of determination and ensuring that planning authorities make the most effective use of powers to delegate decisions on straightforward planning applications to officials, allowing elected members to focus attention on more complex or controversial applications. Although the recession which occurred at the time the current scheme of delegation was adopted has meant that there has not been a large number of applications requiring determination by the Development Management Committee since then, there is no justification for requiring more minor applications to come before committee.

5 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

6 CONSULTATIONS

- 6.1 The Chief Executive, Director of Corporate Services and Head of Democratic and Legal Services have been consulted and are in agreement with the contents of this report.

7 BACKGROUND PAPERS

- 7.1 Report 293-2009 Policy and Resources Committee 8 June 2009.
- 7.2 Scottish Government Circular 7/2009 Schemes of Delegation and Local Reviews.
- 7.3 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and 2013.

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31 October 2013

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APPENDIX A

**Town and Country Planning (Scotland) Act 1997
Section 43A (1) as amended by Section 17 of the Planning Etc (Scotland) Act 2006**

**The Town and Country Planning (Schemes of Delegation and
Local Review Procedure) (Scotland) Regulations 2013**

SCHEME OF DELEGATION

OF

DUNDEE CITY COUNCIL

**As approved by Dundee City Council for
submission to Scottish Ministers:**

11 November 2013

As approved by Scottish Ministers:

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Comes into effect in respect of applications submitted on and after 1 December 2013

1 GENERAL

- 1.1 This Scheme of Delegation was prepared by Dundee City Council as required by Section 43A(1) of the Town and Country Planning (Scotland) Act 1997 as inserted by the Planning Etc (Scotland) Act 2006 and in accordance with Regulations 3 and 4 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The Scheme of Delegation was approved for submission to Scottish Ministers by the Policy & Resources Committee of Dundee City Council on 11 November 2013.
- 1.3 "Local development" for the purposes of this Scheme of Delegation will include all development other than national development, as designated in a National Planning Framework document prepared and published by the Scottish Ministers under Part 1A of the 1997 Act; and major development, as identified in terms of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

2 CLASSES OF DEVELOPMENT TO BE DETERMINED BY THE "APPOINTED OFFICER" OF THE COUNCIL AND EXEMPTIONS FROM THE MANDATORY SCHEME

- 2.1 Planning applications in the following Classes of Development as defined in Sections 3A (4)(b) and 26A of the Town and Country Planning (Scotland) Act 1997 as inserted by the Planning Etc (Scotland) Act 2006 and supported by the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 shall be determined by an officer or officers who shall be appointed by the Head of Planning for that purpose. A range of postholders may be appointed to determine cases or different classes of case under the scheme.

The applications concerned are:

- a all applications for planning permission in respect of development within the category of "local development"; and
- b all applications for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within the category of "local" development.
- 2.2 **Exemptions** - the appointed officer is prohibited, however, from determining the following types of application for planning permission within the category of "local" development:
- i any application¹ in respect of which six or more valid written objections received within the timescales specified in statutory notifications or press notices; and the application is recommended for approval;

¹ The meaning of "application" shall be taken to include applications for planning permission; planning permission in principle; applications for consent, agreement or approval required by condition imposed on a grant of consent for local developments.

- ii any application which attracts a valid timeous objection from a statutory consultee² and the application is recommended for approval;
- iii any application where the appointed officer is minded to approve in circumstances where it is significantly contrary³; to the development plan;
- iv Any application which a member, within one month of the publication of the appropriate weekly list, has requested in writing to the appointed officer that it be submitted to the Development Management Committee;
- v any application submitted by or on behalf of an Elected Member of the Council;
- vi any application requiring the submission of an Environmental Impact Statement in terms of the Environmental Impact Assessment (Scotland) Regulations 2011 as amended⁴ and
- vii any application which the Director of City Development proposes should, for valid planning reasons, be determined by the Development Management Committee rather than by the appointed person.

3 SUBSEQUENT SCHEMES OF DELEGATION

- 3.1 The Council will review or if appropriate adopt a revised Scheme of Delegation no later than a period of five calendar years following the approval of this Scheme of Delegation by Scottish Ministers.

² For the purposes of this Scheme of Delegation a statutory consultee shall be taken to be consultees referred to in Regulation 25 and Schedule 5 of the Town and County Planning (Development Management Procedure) (Scotland) Regulations and will include a Community Council or officially recognised Neighbourhood Representative Structure.

³;A proposed development is "significantly contrary to the development plan" if the departure concerned, in the judgement of the "appointed person" is directly related to the achievement of the core objectives of any element of the development plan and the approval of the application would seriously compromise the achievement of the development plan's objectives and compromise its other policies and proposals. For the avoidance of doubt a proposal will not necessarily be significant if, for example, it fails to meet the terms on one or more policies or one or more of the criteria in any criteria based policy.

⁴ An application which is determined by the Director of City Development to be an application requiring the submission of an Environmental Impact Statement in terms of the Environmental Impact Assessment Regulations 2011, as amended.

ANNEX B**Proposed Discretionary Scheme of Delegation in Relation to Development Management as Provided for by the Town and Country Planning (Scotland) Act 1997 as amended by the Planning Etc (Scotland) Act 2006 and the Local Government (Scotland) Act**

Issue	Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council
1 General Powers to delegate Negotiations Planning Policy Entry to Land Day to Day Procedural Matters	 Authorise the Head of Planning to appoint appropriate officers to determine cases of application or different classes of case which fall to be determined under the approved mandatory Scheme of Delegation. Authority to negotiate with the private sector and other agencies for the purposes of securing the proper development of the city in accordance with the Council's objectives". Authority to advise the Council on land use planning matters for the purposes of securing the proper development of the city in accordance with the Council's objectives. Authority to authorise a person to enter upon any land at any reasonable time for the purposes mentioned in Sections 156, 158, 160-163, 167, 172-175,177, 269 and 270 of the 1997 Act as amended and section 18-21 of the High Hedges (Scotland) Act 2013. The undertaking by the appropriate officer of the Council of all day to day procedural matters and other actions relevant to the Council's planning functions, as provided for in the planning and related legislation.
2 Hierarchy of Application Types	To determine with reference to the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 whether or not a description of a development falls into the categories of "major" and "local" respectively and to so determine where a Pre-application Screening Notice is submitted to the Council.

Issue	<p style="text-align: center;">Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council</p>
<p>3 Pre-application Consultation and Scrutiny</p>	<p>The implementation and enforcement of pre-application procedures under Section 35A of the 1997 Act as amended including:</p> <ul style="list-style-type: none"> • assessing and responding to Pre-application Screening Notices; • assessing and responding to Proposal of Application Notices; and • assessing Pre-application Consultation Reports and determining the validity of related applications.
<p>4 Determination of Planning Applications</p>	<p>the determination of all applications for planning permission and planning permission in principle; applications for the approval of matters specified in conditions attached to planning permissions and planning permissions in principle; further applications; applications seeking to amend or delete conditions; listed building consent applications; conservation area consent applications; applications for consent to display advertisements (including the unconditional approval of applications), EXCEPT:</p> <ul style="list-style-type: none"> • "national" and "major " categories of application; • "local" category applications which the Council has decided in its Scheme of Delegation, approved by Scottish Ministers, should be determined by it as opposed to the Appointed Officer, except any application where, within one month of the application appearing on the Weekly List, written notice is given to the Committee Services Officer that the Development Management Committee intends to determine the application. Such information (which shall be referred to as a s.43A(6) referral shall only be valid when signed by the Convener and Vice Convener and shall include a statement of the reasons for such a referral; • all applications for the removal or amendment of conditions which were originally imposed at the specific request of members; • all applications for Hazardous Substance Consent; • any application submitted by or on behalf of an officer of the Council involved in the statutory planning process; and

Issue	Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council
	<ul style="list-style-type: none"> • applications which had been determined subject to a planning agreement (planning obligation) and which now require to be determined as a consequence of the Council and the applicant and other parties to the agreement not being able to conclude the agreement within a reasonable period of time. This provision will apply in cases where the original decision was taken by Committee.
5 Reasons for Decisions	issuing to applicants reasons for the decisions in respect of all planning and related applications made by the Council.
6 Attachment of Conditions at the Request of Scottish Ministers	to consider whether to impose a condition directed by Scottish Ministers in respect of a planning application referred to them.
7 Processing Agreements	where necessary to negotiate and agree with applicants and other parties to the agreement, the terms of Processing Agreements.
8 Determination of the Validity of Objections and Representations	determining whether a representation or objection in respect of a planning or related application is timeous, valid or material in respect of the application under consideration.
9 Variations to Planning Permissions	determining to approve a variation , as provided for by Section 64 of the 1997 Act as amended and to issue refusals where the terms of Section 64 are not satisfied.
10 Variations to Planning Applications Not Yet Determined	<p>to determine to agree to a variation by the applicant to a submitted application, as provided for by Section 32A of the 1997 Act as amended and to issue refusals where the terms of Section 32A are not satisfied.</p> <p>to determine what notice if any to give to other parties concerning such a variation if agreed.</p>
11 Approval of Matters of Detail Covered by Conditions	approving matters of detail which have been reserved when previously granting the conditional approval of a detailed planning application.

Issue	Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council
12 Determination of Repeat Applications	the authority to decline to determine applications which fall within Section 39 of the 1997 Act as amended.
13 Consultation on Applications Submitted to Neighbouring Planning Authorities	the authority to express views on behalf of the Council when it is statutorily or informally consulted by neighbouring planning authorities on planning applications submitted to them for determination.
14 Environmental Impact Assessments	the authority to provide informal and formal Screening and Scoping Opinions and to assess submitted Environmental Statements, all in terms of the provisions of The Environmental Impact Assessment (Scotland) Regulations 2011 as amended.
15 Requests for Further Information on Applications	the authority to identify and seek further information from applicants to enable the Council to deal with applications.
16 Legal Agreements/ Planning Obligations	In consultation with the Head of Democratic & Legal Services, negotiating, concluding and enforcing planning agreements (planning obligations) under Section 75 of the 1997 Act as amended.
	In consultation with the Head of Democratic & Legal Services, to amend Agreements which do not significantly alter their general provisions already concluded under Section 75 of the 1997 Act, as amended.
17 Certificates of Lawfulness of Existing or Proposed Development	in consultation with the Head of Democratic & Legal Services to determine all applications for Certificates of Lawfulness of Existing Development and Certificates of Lawfulness of Proposed Development.

Issue	<p style="text-align: center;">Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council</p>
<p>18 Enforcement</p>	<p>In consultation with the Head of Democratic & Legal Services, initiation, progression and conclusion of enforcement action or interdict action under Parts VI, V11 and or XIV of the Town & Country Planning (Scotland) Act 1997 as amended by Part 4 of the Planning Etc (Scotland) Act 2006 or Chapter 1V of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended, or Part VII of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 and related legislation or the High Hedges (Scotland) Act 2013.</p> <p>For the avoidance of doubt this delegated authority relates to:</p> <ul style="list-style-type: none"> • Planning Contravention Notices; • Enforcement Notices; • Making reports to the Procurator Fiscal as necessary; • Breach of Condition Notices; • Amenity Notices; • Stop Notices; • Serving of Temporary Stop Notices; • Serving of Fixed Penalty Notices; • Notices to remove Placards/Posters • Hazardous Substances Contravention Notices; • Tree Replacement Notices; • High Hedges Notices • Notices of Initiation and Completion of Development and indicating development being carried out • Notices Requiring an Application for Planning Permission to be made <p>but EXCLUDES</p> <ul style="list-style-type: none"> • the taking of Direct Action in pursuit of any of the above other than notices seeking the removal of placards/posters.

Issue	Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council
19 Prior Notifications	the authority to determine prior notification applications relating to the demolition of buildings under Class 70 of the GPDO; and the erection or significant alteration or extension of agriculture or forestry building as provided for under Part 6 and 7 of Schedule 1 to the Town & Country Planning (General Permitted Development) (Scotland) Order 1992 as amended.
	to determine prior notification applications relating to the demolition of or the erection of, or the significant alteration or extension of agricultural and forestry buildings as provided for under Part 6 and Part 7 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended.
20 Building Preservation Notices	In consultation with the Head of Democratic & Legal Services the serving of a Building Preservation Notice under Sections 3 & 4 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended.
21 Tree Preservation	the authority to determine the need to make Tree Preservation Orders and to vary or revoke existing Tree Preservation Orders.
	In consultation with the Head of Democratic & Legal Services the drafting and service of Tree Preservation Orders and Emergency Tree Preservation Orders under Part VII of the 1997 Act, as amended by Part V of the Planning Etc (Scotland) Act 2006, with the proviso that the serving of any such Order recommended for confirmation shall be reported to the City Development Committee.
	In consultation with the Head of Democratic & Legal Services, determining the appropriateness of the serving of Tree Replacement Notices under Section 168 of the 1997 Act as amended and once served to monitor implementation and enforce as necessary.
	granting or refusal of statutory permission to carry out work on trees subject of a Tree Preservation Order or the granting or refusal of such permission for works in relation to trees within a Conservation Area or protected by planning condition.
	In consultation with the Head of Democratic & Legal Services, the enforcement of Tree Preservation Orders under Section 171 of the 1997 Act as amended with the proviso that the action taken shall be reported to the City Development Committee as soon as practicable thereafter.

Issue	Proposed Scheme The Director of City Development shall undertake the following under powers delegated to him/her by the Council
22 Appeals and Inquiries	<p>to prepare and deliver written and oral evidence in respect of all appeals and public inquiries relating to the determination of planning and related applications; the enforcement of planning control; tree preservation and high hedges all with the proviso that the outcome of each appeal/inquiry shall be reported to the Development Management Committee as soon as practicable.</p> <p>in consultation with the Head of Democratic & Legal Services to determine the appropriateness of claiming, on behalf of the Council, expenses from appellants in accordance with the terms of Circular 6/1990.</p>
23 Road Construction Consents	<p>the issuing of Road Construction Consents under Section 21 of the Roads (Scotland) Act 1984 as amended, the calculation of annual revenue implications for the Council of each consent, and the negotiation and the imposition of road bonds under Section 17 of the Roads (Scotland) Act 1984 with the proviso that the actions taken shall be reported to the Planning and Transport Committee as soon as practicable thereafter. However, where a valid objection is received by the Council then the application will be referred to the City Development Committee for determination.</p> <p>to serve Failure to Comply with Roads Construction Consent Notices under Section 21(5) of the Roads (Scotland) Act 1984 and to report breaches of Roads Construction Consent Notices under Section 22 of the Roads (Scotland) Act 1984 with the proviso that the actions taken shall be reported to the City Development Committee as soon as practicable thereafter.</p> <p>on satisfactory completion of roads to which the provisions of Section 21 of the Roads (Scotland) Act 1984 apply, and if so requested by the applicants to enter these roads on the List of Public Roads for the purposes of management and maintenance in consultation with the Head of Finance and Conveners of the Policy and Resources and City Development Committees.</p>
24 Authority to Enter Upon Land	to authorise a person to enter upon any land at any reasonable time for the purposes mentioned in the Town and Country Planning (Scotland) Act 1997 Act as amended by the Planning Etc (Scotland) Act 2006 and similar provisions in the legislation relating to listed buildings, conservation areas, high hedges and hazardous substances.
25 High Hedges	The determination of all applications for a High Hedge Notice and carry out all functions under the High Hedges (Scotland) Act 2013

Note 1

For the purposes of the Council's Scheme of Delegation as approved by Scottish Ministers and this operational scheme of delegation a valid representation (letter or statement) shall require to meet the following criteria:

- a be in the form of a signed and dated letter or statement or an e-mail indicating the name and postal address of the sender specifically indicating an objection to the application concerned. The letter/statement shall bear a legible name of the signatory and the signatory's address;
- b be received by the Council no later than 21 calendar days from the date on which the application was declared as valid by the Council or no later than 21 calendar days of any subsequent Neighbour Notification, or in the case of applications which have the subject of statutory advertisement, no later than the timescale specified in that advertisement;
- c where more than one letter/statement of representation per household is received this shall be defined as the Council having received one letter/statement;
- d where a letter or petition is received which is signed by more than one person, each signatory must provide a valid postal address, otherwise they will not be considered as a valid representation;
- e for the avoidance of doubt pre printed letters or cards which are not individually addressed and signed will not be entertained as valid and acknowledged as such. Photocopied standard template letters will be valid as long as they are signed and dated and bear the postal address of the sender;
- f to be valid a representation must contain matters which relate to the application involved and raise matters material in planning terms to the application concerned;
- g the content of invalid letters/statements will not be referred to in Director's reports and similarly non-material matters referred to in valid letters of representation will not be referred to or taken into account in the determination of the application;
- h the Director of City Development shall, in cases of doubt, determine whether an objection or other representation is valid or timeous; and
- i in respect of petitions, notification of decisions will be sent only to the co-ordinator of the petition (if known) or to the first named signatory.

Note 2

For the purposes of the Council's Mandatory Scheme of Delegation and this Discretionary Scheme of Delegation a statutory consultee shall be taken to be consultees referred to in Regulation 25 and Schedule 5 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 and will include a Community Council or officially recognised Neighbourhood Representative Structure.

Note 3

For the purposes of the Council's Mandatory Scheme of Delegation and this Discretionary Scheme of Delegation a proposed development is "significantly contrary to the development plan" if the departure concerned, in the judgement of the Director of City Development, is directly related to the achievement of the core objectives of any element of the development plan and the approval of the application would seriously compromise the achievement of the development plan's objectives and compromise its other policies and proposals. For the avoidance of doubt a proposal will not necessarily be significant if, for example, it fails to meet the terms on one or more policies or one or more of the criteria in any criteria based policy.