

**REPORT TO: DEVELOPMENT QUALITY COMMITTEE - 18 FEBRUARY 2008**

**REPORT ON: DRAFT REGULATIONS ON THE PLANNING HIERARCHY - CONSULTATION PAPER**

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

**REPORT NO: 59-2008**

## **1 PURPOSE OF REPORT**

1.1 The Report seeks to confirm the views of the Council in response to the Consultation paper "Draft Regulations on the Planning Hierarchy" and to authorise the Director of Planning and Transportation to issue the response to the Scottish Government by 21 March 2008.

## **2 RECOMMENDATION**

2.1 It is recommended that the Committee:

- a endorses the recommendations in Annex B to this report as may be amended by Committee as the Council's formal response to the Consultation Paper;
- b authorises the Director of Planning and Transportation to issue the formal response to the Scottish Government by 21 March 2008.

## **3 FINANCIAL IMPLICATIONS**

3.1 The implications of the proposals are that for a relatively small proportion of applications which fall within the thresholds proposed there will be additional processing work required by the Council. However, the Scottish Government intends to revise the Fee Regulations to take this into account. The thresholds have been set to avoid the prospect of planning authorities and other stakeholders from being overburdened by additional costs which could not be reasonably compensated for, in the case of planning authorities, by increased fees.

3.2 The Council will have the opportunity to comment on the revised Fee Regulations when they are published in due course.

3.3 It is therefore anticipated that subject to a suitable amendment to the Fee Regulations then the financial burden of the proposals on the Council is unlikely to be significant.

## **4 BACKGROUND**

4.1 The proposals contained in the Consultation Paper represent the Government's proposals for providing a more proportionate approach to dealing with planning applications, ensuring that the planning system is fit for purpose and efficient. The proposed hierarchy is seen as a fundamental element of the reform of the planning system and links in with other elements of the reform package viz schemes of delegation; local review bodies; and appeals.

## **5 THE IMPORTANCE AND DEFINITION OF THE HIERARCHY**

- 5.1 Part 3 Section 5 of the Planning Etc (Scotland) Act 2006 introduced the hierarchy for planning defining the three categories to which all developments will be allocated as follows:
- a national;
  - b major; and
  - c local.
- 5.2 The thrust of the Scottish Government's approach is that there should be a focus of engagement and scrutiny on the more complex development management proposals whilst at the same time streamlining and speeding up processes. In doing so, a more effective use of resources would follow. Accordingly, major proposals which are likely to raise the most significant economic, social or environmental issues should receive appropriate priority by planning authorities. This will involve the best use of delegated powers to free up the system and by exempting very minor developments from the planning application process through a review of permitted development rights.
- 5.3 The consultation paper includes at Annex A the proposed Regulations and throughout a set of six questions are posed. Also provided are regulatory and equality impact statements at Annexes B and C.
- 5.4 This report will summarise the detail of the proposals under each hierarchy category whilst Annex A outlines the consultation questions and suggested Council responses.
- 5.5 Copies of the full Consultation Paper have been deposited in the Members Lounges or may be viewed on-line at [www.scotland.gov.uk/Topics/Planning/Modernising](http://www.scotland.gov.uk/Topics/Planning/Modernising).

## **6 NATIONAL DEVELOPMENTS**

- 6.1 It should be noted that this consultation paper does not make proposals in respect of "National" developments. Comments are being invited in the separate consultation on the second National Planning Framework (NPF2) which is underway. A draft discussion document was published on 8 January 2008. A separate report on this document will be made to the Planning and Transport Committee in due course. However, as background the paper identifies "National developments" as major infrastructure projects which in the Scottish Government's view have a "critical contribution to make to our overall purpose of creating a more successful country".
- 6.2 The draft National Planning Framework contains a statement of Ministers' reasons for considering the need for the developments in question. There will be Parliamentary scrutiny of the proposals.
- 6.3 Draft NPF2 identifies nine "National" category developments, none of which are located within or adjacent to Dundee.

## **7 MAJOR DEVELOPMENTS**

- 7.1 In drawing up the detail of the hierarchy and the thresholds for major developments in particular, it is the Government's intention to:

- a set measurable thresholds;
  - b provide clarity as to procedures to be followed;
  - c reflect the scale and complexity of the development.
- 7.2 The Schedule to the Draft Regulations proposes the following thresholds for inclusion as major developments:
- 1 All developments requiring an environmental impact assessment being those listed in Schedule 1 of the Environmental Impact Assessment (Scotland) Regulations 1999 as amended;
  - 2 Housing developments of 100 units or more or where the area of the site exceeds 2 hectares;
  - 3 Business and industry, storage and distribution developments over 20,000 sq metres floorspace or exceeding 4 hectares in site area;
  - 4 Renewable energy developments generating over 2MW capacity;
  - 5 Waste Management/Disposal - capacity exceeding 25,000 tonnes per annum;
  - 6 Transport Infrastructure - Lengths of road, railway, tramway, waterway, aquaduct or pipeline exceeding 8 kilometres and all motorway service area developments;
  - 7 All other development - exceeding 10,000 sq metres floorspace or the site area exceeds 2 hectares.
- 7.3 It should be noted that the Scottish Government does not propose to introduce different hierarchy provisions for different geographical areas, eg cities as opposed to rural areas. This is to avoid complexity and the creation of regional variations. The consultation paper offers no explanation as to the criteria which governed the setting of the thresholds.
- 7.4 However, in a further consultation paper issued in January 2008 certain types of "local" development are being proposed for inclusion in the procedures for pre-application consultation with communities. A further report to the Development Quality Committee will be made in respect of this consultation paper.
- 7.5 Procedurally all developments falling into the "major" category will be subject to enhanced consultation and scrutiny. Although the details are set out in the further consultation paper referred to above, it is likely that they will be subject to all or most of the following processes:
- a an applicant may, prior to an application being made, seek a formal response from a planning authority advising if their application falls within the limits of a particular class of development in the hierarchy (Screening);
  - b formal advance notification to the planning authority of a proposal to make such an application (Proposal of Application Notice) and seeking input as to the nature of required pre-application consultations;

- c the undertaking by the applicant of owner and neighbour notification, pre-application consultations, with communities including publicity, formal service of notice on Community Councils and the convening of a public meeting and the submission of a Report (Pre-application Consultation Report) with the application to the planning authority outlining the measures taken;
  - d under revised Schemes of Delegation all such applications are likely to fall into the category of those to be determined by elected Members as opposed to an "appointed person" (officer);
  - e certain categories of "major" application will be subject to mandatory hearings by Members prior to determination as a minimum statutory requirement;
  - f a discretionary process by which agreement between an applicant and the planning authority mutually agreed setting out the terms of a "processing agreement" which would indicate timescales and other arrangements for the processing of the application;
  - g acknowledgement that such applications will generally require longer than the statutory two month period to determine and the establishment of a default four month period.
- 7.6 Scottish Ministers have the power to direct that a particular "local" development (see below) should be dealt with as if it were a "major" development.
- 7.7 Although the classes of "major" developments will apply as a national standard as outlined above, planning authorities will also be able to set more detailed arrangements in their Schemes of Delegation as to how far the arrangements for delegation to officers should extend. This will be helpful in introducing an element of flexibility. However, authorities will have no powers to "move" proposals from one class in the hierarchy to another. The potential implications for the City Council's planning applications caseload is unlikely to be significant.
- 7.8 Based on the above definitions of the hierarchy and based on recent trends, ie over the calendar years 2006 and 2007, it is unlikely that significant numbers of applications will fall into the "major" applications category are likely to emerge. Annex B outlines the distinction of applications for each category. The Council's current Scheme of Delegation means that each of these decisions was taken at the DQ Committee.

Annex C illustrates what the affect would have been if the thresholds were reduced by 50%.

## **8 LOCAL DEVELOPMENTS**

- 8.1 These are defined in the Draft Regulations as all developments that are neither identified as "national" developments nor "major" developments.
- 8.2 It is envisaged that decision-making for most "local" developments will be devolved to local authorities. This will involve the introduction of a new local review process to replace the current appeals process for "local" developments where decision-making is delegated to officers under a Scheme of Delegation. This is in line with the principle that decisions on local matters should be made locally.

- 8.3 Further details relating to the role and constitution of Local Review Bodies and guidelines on the establishment of Schemes of Delegation will be contained in a further consultation paper anticipated shortly.
- 8.4 Based on the proposed hierarchy definitions it is likely that the major part of the Council's applications workload will continue to be categorised as "local".
- 8.5 In due course further reports will be made to Committee on the linked issues of Schemes of Delegation and Local Review Policies.

## **9 EQUALITIES IMPACT ASSESSMENT AND DRAFT REGULATORY ASSESSMENT**

- 9.1 The consultation paper contains information which justifies the proposals against the Scottish Government's equal opportunities objectives and assesses its overall impact.

## **10 POLICY IMPLICATIONS**

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

## **11 CONSULTATIONS**

- 11.1 The Chief Executive, Depute Chief Executive (Support Services) and Depute Chief Executive (Finance) have been consulted and are in agreement with the contents of this report.

## **12 BACKGROUND PAPERS**

- 12.1 Draft Regulations on the Planning Hierarchy - Consultation Paper (November 2007).
- 12.2 The Planning Etc (Scotland) Act 2006.
- 12.3 The Town and Country Planning (Scotland) Act 1997.

Mike Galloway  
Director of Planning & Transportation

Ian Mudie  
Head of Planning

IAR/MM

7 February 2008

Dundee City Council  
Tayside House  
Dundee

## ANNEX A: CONSULTATION QUESTIONS AND COUNCIL RESPONSES

Question	Suggested Response/Commentary
<b>Q1 Do you support the proposed number of classes in the Schedule of Major Developments?</b>	<p>The Council supports the number of classes in the schedule of "major" developments as covering the categories of significant developments likely to merit enhanced public involvement and scrutiny by Members.</p>
<b>Q2 Do you agree with the proposed major development thresholds described in the Schedule for:</b> <b>a Schedule 1 Development;</b> <b>b Housing;</b> <b>c Business and General Industry, Storage and Distribution;</b> <b>d Renewable Energy Generation;</b> <b>e Waste Management Facilities;</b> <b>f Transport Infrastructure;</b> <b>g All Other Development?</b>	<p>The thresholds proposed are considered appropriate although it is considered important that Council's apply the thresholds in a consistent manner. In this regard it is noted that the Draft Regulations are unclear in a number of respects. For example:</p> <p>a Do the Regulations cover applications in principle (outline) and applications for the approval of reserved matters?</p> <p>b Are developments in respect of, for example, the conversion or change of use of single properties on large sites covered, or are the Regulations concerned only with new build proposals?</p> <p>c The Regulations do not appear to cover tall developments with relatively small footprints on small sites and which may have a significant environmental impact on more than a localised community.</p> <p>It may be considered strange that there is no separate category for retail developments of a scale below 10,000 sq metres in these particular Regulations. However, it is noted that similar consultation and scrutiny arrangements will apply to other categories of application listed in Schedule 1 of the Draft Development Management Regulations currently the subject of separate consultation. The Council will express a view on these proposals in due course.</p>
<b>Q3 Do you agree with the proposed approach of avoiding regional variation?</b>	<p>It is considered appropriate that there should be a single national approach to this issue as Council's have the option to draw up Schemes of Delegation appropriate to local circumstances, and that existing opportunities for consultation, publicity and public participation will continue.</p>

Question	Suggested Response/Commentary
<b>Q4 Do you agree with the definition of local development?</b>	No comment. However, the Council awaits with interest the opportunity to comment on the Scottish Government's proposals for extending the range of permitted development. The capacity for Council's to redistribute resources in development management will to a large extent depend on the extent and simplicity of the revised arrangements.
<b>Q5 Are there any potential impacts on the business or voluntary sectors that we should be aware of in finalising these regulations?</b>	As with all modernising proposals their effective implementation will depend on the extent to which they are publicised and understood by stakeholders, in particular developers and their agents/consultants. The Scottish Government has yet to make explicit how this is to be achieved and the extent to which Councils will be expected to take a lead role.
<b>Q6 Are there any potential impacts on particular societal groups that we should be aware of in finalising these regulations?</b>	It is important in enforcing the pre-application publicity measures that when communities and community groups which represent them are formally consulted, they take the opportunity to participate in an informed manner. It may prove challenging for planning authorities to accurately define a "community" for the purpose of applying the Regulations. For example, very large developments may have an economic, social or environmental impact wider than the immediate community or neighbourhood where the proposals is to be located.

**ANNEX B: DECISIONS TAKEN BY DUNDEE CITY COUNCIL ON APPLICATIONS FALLING WITHIN THE PROPOSED "MAJOR" DEVELOPMENT DEFINITION (2006 AND 2007)**

Year	Total Number of Applications Received/ Decided	Category						
		Schedule 1 EIA	100+ Housing Units/ 2ha+ Housing	Industrial/Commercial 20,000m <sup>2</sup> /4ha+	Energy 20 megawatts+	Waste Management 25,000 tonnes pa	Transport Infrastructure 8km+	Other Developments 10,000m <sup>2</sup> +/2ha+
2006	1,118/944	0	6	3	0	0	0	0
2007	1,032/985	0	4	0	0	0	0	1

Source: Planning and Transportation Department Records 2006 and 2007

**ANNEX C: DECISIONS TAKEN BY DUNDEE CITY COUNCIL ON APPLICATIONS WHICH WOULD FALL WITHIN A DEFINITION OF "MAJOR DEVELOPMENTS" REDUCED BY 50% (2006 AND 2007)**

Year	Total Number of Applications Received/ Decided	Category						
		Schedule 1 EIA	50+ Housing Units/ 1ha+ Housing	Industrial/Commercial 10,000m <sup>2</sup> /2ha+	Energy 10 megawatts+	Waste Management 27,500 tonnes pa	Transport Infrastructure 4km+	Other Developments 5,000m <sup>2</sup> +/1ha+
2006	1,118/944	0	13	3	0	0	0	9
2007	1,032/985	0	13	2	0	0	0	3

Source: Planning and Transportation Department Records 2006 and 2007