

REPORT TO: POLICY & RESOURCES COMMITTEE - 27 APRIL 2009

REPORT ON: THE PLANNING HIERARCHY

REPORT BY: DIRECTOR OF PLANNING & TRANSPORTATION

REPORT NO: 52-2009

1 PURPOSE OF REPORT

- 1.1 The report seeks to inform members of the content of the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 and to outline the potential implications for the Council, communities and other stakeholders.

2 RECOMMENDATION

- 2.1 It is recommended that the Committee notes the content of this report and considers its implications in conjunction with parallel reports relating to the Scheme of Delegation and Local Review Bodies elsewhere on this agenda.

3 FINANCIAL IMPLICATIONS

- 3.1 The Hierarchy Regulations will have resource implications for the Council and for applicants in respect of "national" and "major" category applications. Examples include the conclusion of Processing Agreements, additional pre-application work, statutory pre-application scrutiny procedures, post-application scrutiny work and training.
- 3.2 At the consultation stage of the Regulations in 2008 Scottish Government indicated that a review of the planning fees regime was to be undertaken and that consultation with stakeholders would follow. This consultation is awaited. However, it cannot be assumed that any increase in planning fees is inevitable. Accordingly it has to be assumed that should there be no compensatory increase in fees, a complete reassessment of staff resources for development management may be necessary.

4 BACKGROUND

- 4.1 As outlined in Report 59-2008 considered by the Development Quality Committee on 18 February 2008, these Regulations represent a fundamental element of the planning reform package providing the foundation for other elements viz Schemes of Delegation, Local Review Bodies and in relation to the pre-application scrutiny of proposals in particular.
- 4.2 The thrust of the Scottish Government's approach is that there should be a focus of engagement and scrutiny on the more complex proposals whilst at the same time streamlining and speeding up processes in relation to the remainder. 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. This will be assisted by exempting very minor developments from the planning application process through a review of permitted development rights (see Report 40-2009 approved by the Development Quality Committee on 16 February 2009).

- 4.3 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 "NATIONAL" CATEGORY DEVELOPMENTS

- 5.1 "National" developments sit at the peak of the hierarchy triangle. Section 3A(4)(b) of the 2006 Act provides that the National Planning Framework (NPF) may describe a development and designate it as a class of development and designate each such development as a national development. Draft NPF¹ represents the Scottish Government's long term strategy for the development of Scotland over the next 25 years. This statutory document following consultation and parliamentary scrutiny has been approved by the Scottish Parliament. Only through the mechanism for review of the NPF can "national" category developments be identified. The document accordingly provides a "national" context for development plans as well as informing the programmes of the Scottish Government, public agencies and local authorities. Scottish Ministers are committed to reviewing the NPF every four years.
- 5.2 Draft NPF2 indicates that for projects designated as "national" developments, these will be determined in accordance with the particular procedures set out in the Development Management Procedure Regulations².
- 5.3 The projects identified in Draft NPF2 as "national" developments are:
- 1 Replacement Forth Crossing
 - 2 Improved Rail Connectivity in the West of Scotland
 - 3 Strategic Airport Enhancements
 - 4 Grangemouth Freight Hub
 - 5 Rosyth International Container Terminal
 - 6 New Port on Loch Ryan
 - 7 Scapa Flow Container Development Facility
 - 8 New Power Station and Transhipment Hub at Hunterston
 - 9 New Non-Nuclear Baseload Capacity at Other Existing Power Station Sites
 - 10 Electricity Grid Reinforcements
 - 11 Metropolitan Glasgow Strategic Drainage Scheme
 - 12 Commonwealth Games Facilities and Infrastructure

Therefore under the current approved framework the Council will not be involved in receiving any applications for "national" developments.

- 5.4 The procedure Regulations provide for "national" applications to be submitted to the local planning authority concerned according to the requirements of the Regulations. The applications will be subject to the same pre-application scrutiny arrangements as will apply to "major" category applications (see below). However, at the decision-

¹ The document can be accessed at www.scotland.gov.uk/Resource.Doc/254599/0075380.pdf

² The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

making stage a Pre-Determination Hearing (see below) must be undertaken with the full Council (as opposed to a Committee of the Council) taking the final decision (see section 9 below).

- 5.5 Members should note that because "national" developments are prescribed in the NPF which has lain before and debated in the Scottish Parliament the principle of a national development is not for debate. When a "national" application is determined what will be for debate will be the detail of the proposal.

6 "MAJOR" CATEGORY DEVELOPMENTS

- 6.1 The criteria/thresholds for identifying "major" category developments are set out in the Schedule to Regulation 2(1) of the Hierarchy Regulations and are repeated in detail in Annex A to this report. The Circular accompanying these Regulations provides an interpretation of the Schedule.
- 6.2 It will be noted that the Scottish Government has not introduced different hierarchy provisions for different geographical areas, eg cities as opposed to rural areas. This has avoided complexity and the creation of regional variations. The criteria have been set following consultation during 2008.
- 6.3 At the consultation stage it had been proposed that certain types of "local" development should be subject to the pre-application scrutiny procedures applicable to "major" developments. These provisions have been removed in the final Regulations, although the power to do so has been retained by Scottish Ministers.
- 6.4 Procedurally all developments falling into the "national" and "major" category will be subject to enhanced consultation and scrutiny and be subject to 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 (Pre-Application Screening Notice);
 - b the applicant must give 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: This Notice must be made at least 12 weeks prior to the submission of the application. This Notice must set out not only a description of the proposal and its location but an account of what consultation the application proposes to undertake before the application is submitted. The Notice must be served on Community Councils and placed on the list of new applications;
 - c the local authority must respond to the Notice within 21 days specifying any additional consultation required beyond the minimum requirements of the Regulations;
 - d as a minimum the applicant, in addition to serving the Notice on Community Councils must hold at least one public event (meeting, exhibition or similar) and to publicise this by press advertisement;

- e the applicant must accompany the planning application with a Pre-Application Consultation Report outlining what has been done to comply with the above procedures, and the applicant's response to comments made during the consultation process and any changes to the initial proposals which have resulted. The application cannot be determined until this report has been submitted;
 - f an applicant and the planning authority may, by mutual agreement, enter into a Processing Agreement which will establish respective responsibilities, outline timescales for the analysis of information, and for decision making.
- 6.5 These processes must apply to applications submitted on or after 3 August 2009. Consequently applicants who wish to submit "national" or "major" category applications on that date must have submitted their Proposal of Application Notice by 11 May 2009. Indeed this procedure can begin any time after 6 April 2009 when the Regulations come into force. It is conceivable therefore that communities, the Council and other stakeholders will become engaged in pre-application consultation work at any time after the beginning of April 2009.
- 6.6 The Council is already taking steps to engage with local agents and Community Councils/NRS's to explain these procedures and to raise awareness. Guidance Notes and relevant forms have been placed on the Council's website.
- 6.7 These procedures will introduce a new and significant opportunity for applicants and communities to work together during the period well before the submission of final proposals in the form of a planning application. It is important to appreciate that this consultation does not replace the opportunity which will still exist for communities and individuals to object or make representations on planning applications. However, what the procedures should do is add value to the process of decision-making which will follow.
- 6.8 The statutory period for determining "major" category applications will now be four months compared to two months previously. This is the period which a local authority can take to determine an application before an appeal against a non-determination can be lodged.
- 6.9 As noted above Scottish Ministers have the power to direct that a particular "local" development should be dealt with as if it were a "major" development. However, authorities will have no powers to "move" proposals from one class in the hierarchy to another.
- 6.10 Based on the above definitions of the hierarchy, and as indicated in Report 59-2008, it is unlikely that significant numbers of applications which fall into the "major" applications category are likely to emerge particularly in the current economic climate. However, the Council must nevertheless prepare itself to comply with the legislation.

7 "LOCAL" CATEGORY DEVELOPMENTS

- 7.1 "Local" category developments are defined in the Regulations as all developments that are neither identified as "national" developments nor "major" developments. Nevertheless as Report 200-2009 (elsewhere on this agenda) indicates in more detail, the new Act makes provision for the authority to decide if it wishes a particular

application in the "local" class which falls within its Scheme of Delegation to be determined by Members in Committee.

8 DECISION-MAKING PROCEDURES

- 8.1 All "major" developments must be determined by Members of Councils (as opposed to officials) under these Schemes of Delegation. The exception to this will be where the proposal is a "national" category development or where the development is "significantly contrary to the development plan". In these cases, there must be convened a statutory Pre-Determination Hearing before the Committee who will then make recommendations to the Full Council who will take the decision.
- 8.2 For all development proposals determined under the above process, appeals will continue to be made to Scottish Ministers as occurs at present.
- 8.3 Scottish Government envisages that a broad range of "local" category development proposals will be delegated for decision by officials. Mandatory Schemes of Delegation will set out details.
- 8.4 Where a "local" category development proposal is determined by officials under the formal Scheme of Delegation, the Act has introduced provisions relating to the setting up of Local Review Bodies of Members to hear and determine locally, requests that such decisions should be reviewed.
- 8.5 Detailed reports on Schemes of Delegation and Local Review Bodies including matters relating to Pre-Determination Hearings and decisions by Full Council are contained elsewhere on this agenda.

9 MANDATORY PRE-DETERMINATION HEARINGS AND DECISIONS BY FULL COUNCIL

- 9.1 Unlike Dundee, many Councils do not afford applicants and third parties an opportunity to be heard as deputations during Committee meetings or at a specially convened hearing sessions. This practice is supported by Scottish Government as best practice with the aim of making the planning system more inclusive. If and how such a practice is undertaken is a matter for Councils to determine.
- 9.2 However, in respect of "national" and "major" category proposals which are "significantly contrary to the development plan", special decision-making arrangements, involving mandatory Pre determination Hearings apply.
- 9.3 The precise procedures for these mandatory Pre determination Hearings is a matter for Councils to determine including who should be invited to participate. The Circular accompanying the Regulations provides guidance and a separate report in due course to Committee will seek to establish procedures for hearings and deputations, mandatory and discretionary. Members are advised that the no/limited new evidence rules being introduced for "reviews" and appeals may significantly affect in future the form and content of discretionary Committee deputations.
- 9.4 The Act provides that where a Pre determination Hearing is necessary it must be heard by a Committee of the Council with the related application being decided by the Full Council with a recommendation from the Committee concerned.

9.5 Each Council has a decision-making system to suit its own requirements and Dundee is unusual in that all Members comprise the principal decision-making Committees. Circular advice recognises that authorities' administrative arrangements will need to adapt to these statutory requirements, eg the synchronising of Committee meetings with Full Council meetings and ensuring that all Members are adequately trained to decide complex applications which may require a Full Council decision.

9.6 It has already been remitted to the Director of Planning and Transportation to make recommendations on the Council's Committee composition and structure in terms of the requirements of the new Act and as indicated above a separate report linking this to a policy for mandatory hearings and discretionary hearings will be referred to Committee in due course.

10 EQUALITIES IMPACT ASSESSMENT AND DRAFT REGULATORY ASSESSMENT

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

11 POLICY IMPLICATIONS

11.1 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.

12 CONSULTATIONS

12.1 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.

13 BACKGROUND PAPERS

13.1 The Planning Etc (Scotland) Act 2006.

13.2 The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

13.3 Draft Circular XXXX/2009.

Mike Galloway
Director of Planning & Transportation

Ian Mudie
Head of Planning

IGSM/IAR/MM

3 April 2009

Dundee City Council
Tayside House
Dundee

Annex A: Schedule to Regulation 2(1)**Definition of Major Developments**

Description of Development	Threshold or Criterion
<p>1 <u>Schedule 1 Development</u> Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999(a) (other than exempt development within the meaning of those Regulations).</p>	All development.
<p>2 <u>Housing</u> Construction of buildings, structures or erections for use as residential accommodation.</p>	<p>a The development comprises 50 or more dwellings; or b The area of the site is or exceeds 2 hectares.</p>
<p>3 <u>Business and General Industry, Storage and Distribution</u> Construction of a building, structure or other erection for use for any of the following purposes:- a As an office; b For research and development of products or processes; c For any industrial process; or d For use for storage or as a distribution centre.</p>	<p>a The gross floor space of the building, structure or other erection is or exceeds 10,000 square metres; or b The area of the site is or exceeds 2 hectares.</p>
<p>4 <u>Electricity Generation</u> Construction of an electricity generating station.</p>	The capacity of the generating station is or exceeds 20 megawatts.
<p>5 <u>Waste Management Facilities</u> Construction of facilities for use for the purpose of waste management or disposal.</p>	<p>The capacity of the facility is or exceeds 25,000 tonnes per annum. In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge.</p>
<p>6 <u>Transport and Infrastructure Projects</u> Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.</p>	The length of the road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 kilometres.
<p>7 <u>Fish Farming</u> The placing or assembly of equipment for the purpose of fish farming within the meaning of Section 26(6) of the Act.</p>	The surface area of water covered is or exceeds 2 hectares.
<p>8 <u>Minerals</u> Extraction of minerals.</p>	The area of the site is or exceeds 2 hectares.
<p>9 <u>Other Development</u> Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above.</p>	<p>a The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or b The area of the site is or exceeds 2 hectares.</p>