

Report To: Safe Sustainable Communities Committee

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**Report By: Corporate Director Environment and
Community Protection**

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Subject: Modernising Planning – New Regulations

1.0 PURPOSE

- 1.1 To inform Committee of new Planning Regulations laid before Parliament as part of the Scottish Government Modernising the Planning System.

2.0 SUMMARY

- 2.1 A series of Regulations and Circulars will shortly be introduced as part of the modernising the Planning System which will have implications for the development management and development planning functions of the Council.
- 2.2 In relation to development management changes include the introduction of pre-application consultation for certain types of development; the opportunity to enter into processing agreements with applicants to define timescales for determination; the transfer of responsibility for neighbour notification to the planning authority; the requirement to prepare a Scheme of Delegation for local developments; and the setting up of a local review body to review decisions taken in respect of local developments covered by the scheme of delegation.
- 2.3 With respect to development planning new procedures are outlined for the preparation of the Development Plan with the requirement for the planning authority to prepare and publish a Development Plan Scheme and Participation Statement.

3.0 RECOMENDATION

- 3.1 That Committee notes the changes being introduced into the planning system and that further reports will be brought forward in terms of some administrative arrangements to implement these changes.

Fraser Williamson
Head of Planning and Housing

4.0 BACKGROUND

- 4.1 At the end of December 2008 a series of Regulations were laid before Parliament as part of the Scottish Government's Modernising the Planning System agenda. These will have an impact on how the planning function is delivered within Inverclyde.
- 4.2 The various relevant Regulations are;
- (a) The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009 due to come into force on 6th April 2009.
 - (b) The Town and Country Planning (Development Management Procedure)(Scotland) Regulations 2008 part of which are expected to come into force on 6th April 2009 with the remainder coming into force on or after 3rd August 2009.
 - (c) The Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 parts of which will come into force on 6th April 2009 with the remainder coming into force on or after 3rd August 2009.
 - (d) The Town and Country Planning (Development Planning)(Scotland) Regulations 2008 due to come into force on 28th February 2009.
- 4.3 The 2006 Planning Act introduced the concept of hierarchy to help deliver the Scottish Minister's aim that the planning system should respond in a more proportionate and efficient way to proposed developments. Three categories are identified – national development, major development and local development.
- 4.4 National development consists of these categories defined in the National Planning Framework. Currently there are no such categories which affect Inverclyde.

For major applications 9 classes are detailed in the regulations and thresholds and each has a description and relevant threshold which defines its "major" status (see Appendix 1).

All other developments not falling into the above definition are termed local developments.

- 4.5 The Development Management Regulations set out the process by which the three types of applications should be considered and deals with the pre-application phase, content of applications, validation and acknowledgement, processing by the authority and decision making.
- 4.6 For national and major developments the applicants will require to undertake pre-application consultation with neighbours and consultees. As part of the process the applicant will be obliged to hold a public meeting, invite public and consultee comment and submit to the planning authority with the planning application a pre-application consultation report. This process is seen as an opportunity to engage and inform the public at the early stage of project development. It is separate from and does not take away from objectors the right to make comment to the planning authority when the planning application is formally lodged. The Scottish Government also wishes to encourage the use of processing agreements for national and major developments which would provide greater clarity about the timescales and processes that would take place before a determination is made on such proposals.
- 4.7 A further change is that the responsibility for carrying out neighbour notification will be transferred from the applicant to the planning authority. The minimum timescale within which individuals can make representation is being increased from 14 to 21 days. The resource implications of this will be assessed over time but we will look at the most effective way of carrying out this function.

- 4.8 As part of the enhanced scrutiny measures pre determination hearings will be required in respect of national developments and for major applications which are significantly contrary to the development plan. The purpose is to make the planning system more inclusive allowing the views of applicants and those who have made representations to be heard before a planning decision is taken.

It should also be noted that cases which are required to have a predetermination hearing will also have to be decided by the full Council.

I would not anticipate a significant number of such hearings being required in Inverclyde and it would probably be appropriate to hold these hearings as part of the Planning Board meetings. Further details will be brought forward in due course.

- 4.9 Under Section 43a of the 2006 Act the planning authority will be required to prepare a Scheme of Delegation to allow designated officers to determine planning applications for local developments. Under appropriate criteria this should apply to decisions to grant and refuse planning permission. In such circumstance a challenge of a decision to refuse planning permission, to grant subject to conditions or for non-determination will be to a Local Review Body. Challenges to all other applications would still be to the Scottish Ministers.
- 4.10 The Scheme of Delegation and Local Review Procedure Regulations indicate that the review should be carried out by a committee of the planning authority comprising at least 3 Elected Members.

As with hearings it is difficult to predict how many applications are likely to come before such a Review Body. This will largely depend upon the nature of the agreed Scheme of Delegation.

Again it is possible that this could be integrated into the Planning Board meetings.

A further report will be brought forward in due course in relation to a proposed Scheme of Delegation and administrative arrangements for the Local Review Bodies.

- 4.11 The Regulations also introduce a notification of initiation of development effective from 3rd August 2009 in respect of national and major applications and those classes specified in Schedule 3 of the Regulations (previously referred to as “bad neighbour” developments.

This notice will indicate when it is anticipated that the development will commence and provides the planning authority with the opportunity to ensure that any suspensive conditions attached to the planning permission have been adhered to.

There is also a new requirement for a notice of completion of the development to be given to the planning authority again to allow the opportunity to ensure that the development has been carried out in accordance with the planning permission.

These two stages are a welcome step forward.

- 4.12 The Development Planning Regulations provide a minimum set of requirements to ensure that the Scottish Ministers’ priorities for the operation of the development planning system are achieved. Development plans should be succinct and set out ambitious long term visions for their areas. They should be kept up-to-date and provide a practical framework within which the outcome of planning applications can be decided with a degree of certainty and efficiency. The key features are outlined in Appendix 2.

5.0 IMPLICATIONS

- 5.1 There are no financial, legal or personnel implications arising directly from this report.
- 5.2 Equalities – the report has no impact on the Council’s Equalities policy.

6.0 CONSULTATION

6.1 Chief Financial Officer – no requirements to comment.

6.2 Head of Legal and Administration

6.3 Head of Organisational Development and Human Resources – no requirement to comment.

7.0 BACKGROUND PAPERS

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

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

The Town and Country Planning (Grounds for Declining to Follow Recommendations)(Scotland) Regulations 2009.

The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008.

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

The Town and Country Planning (Schemes and Delegation and Local Review Procedure)(Scotland) Regulations 2008.

Draft Circular x/2009 – Development Planning.

Draft Circular – The Town and Country Planning (Hierarchy of Developments) Scotland 2008.

Draft Circular xx/2009 – Schemes of Delegation and Local Reviews.

Draft Circular – Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

Hierarchy of Developments

National Developments – Defined in the National Planning Framework

Major Developments :

1. Developments mentioned in Schedule 1 of the Environmental Impact Assessment (Scotland) Regulations 1999.
2. Housing
 - construction of buildings for use as residential accommodation comprising 50 or more dwellings or a site area exceeding 2 hectares.
3. Businesses and General Industry, Storage and Distribution
 - the gross floor space of the building exceeds 10,000 square metres or the site area exceeds 2 hectares.
4. Electricity Generation
 - the generating station has a capacity of or exceeding 20 mega watts.
5. Waste Management Facilities
 - the facility has a capacity of or exceeding 25,000 tonnes per annum.
6. Transport and infrastructure projects
 - the length of road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 Kilometres.
7. Fish Farming
 - the surface area of water covered is or exceeds 2 hectares.
8. Minerals
 - the area of the site is or exceeds 2 hectares.
9. Other Development
 - any development not wholly falling within any single class of development categories 1 to 8 where the gross floor area of any building is or exceeds 5,000 square metres or the area of the site is or exceeds 2 hectares.

Development Planning

1. Two development planning regulations and one order are expected to come into force on 28th February 2009, the date of commencement of the new development planning system. They are:
 - (1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008
 - (2) The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009
 - (3) The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008
2. The most extensive and directly relevant regulation to the commencement of the new development planning system in Inverclyde is the Development Planning Regulations 2008. These regulations have been well trailed in its draft form, including in circulars and draft PANs over the past year (Min Ref 06/03/08 para 175 and 28/10/08 para 748).
3. The 2008 Development Planning Regulations introduce the two new statutory plans that will comprise the new Development Plan for Inverclyde: the Glasgow and the Clyde Valley Strategic Development Plan and the Inverclyde Local Development Plan. These replace the Glasgow and the Clyde Valley Joint Structure Plan and the Inverclyde Local Plan, respectively. The preparation and production of the new LDP is prescribed in the 2006 Act and the 2008 Regulations. The key stages and components in the plan-making process are:
 - (a) the introduction of a Development Plan Scheme and Participation Statement (the subject of a separate report to today's Committee);
 - (b) 'front-end' engagement and consultation on the early stage of Plan preparation, including preparation of a Monitoring Report;
 - (c) publication of a Main Issues Report (MIR) to replace the former Consultative Draft stage of plan-making: this Report is quite different, with a focus on the Authority's general proposals for development in its area and in particular, proposals as to where development should and should not occur. The MIR must also contain one or more reasonable alternative sets of proposals and, draw attention to the ways in which the favoured and alternative proposals differ from the spatial strategy of the existing (adopted) Plan. Each alternative should be covered in the Strategic Environmental Assessment (SEA), which is a mandatory requirement of the 2006 Act;
 - (d) publication of a Proposed Plan (PP), replacing but essentially similar to the former Finalised Draft version of the Local Plan, but expected to be more 'strategic' with a clearly defined spatial strategy, a more map-based approach and a schedule of local authority land ownership. The PP should represent the Authority's final considered view as to the future development plan for its area, having taken account of the representations received on the MIR, and having assessed the environmental implications of the alternative options in terms of environmental impact and therefore, sustainable development.

- (e) an Examination in Public (EiP) will replace the Public Local Inquiry (PLI), if required; this is intended to be less adversarial, with more opportunity for focussed debate on the most significant unresolved objections in the form of 'hearings': the Reporter will also require the planning authority to demonstrate compliance with the Participation Statement and fulfilled its public consultation and engagement strategy set out at the beginning of the process;
 - (f) the introduction of an Action Programme to implement the LDP, to be published at least three months after the LDP is adopted;
 - (g) scope for streamlining the LDP, with much of the detail that was in local plans published separately as Supplementary Planning Guidance, also to be the subject of public consultation; and
 - (h) throughout, the LDP requires to be aligned, 'twin-tracked' with the strategic level of planning, the Glasgow and the Clyde Valley SDP: this provides some explanation for the lengthy process involved with the first Inverclyde LDP not expected to be adopted until 2014.
4. One other Regulation, The Town and Country Planning (Grounds for Declining to Follow Recommendations) (Scotland) Regulations 2009 and an Order, The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008, are of lesser importance. The Regulation prescribes the grounds on which a Planning Authority may decline to modify a proposed local development plan as recommended in a report by the Reporter appointed to examine a local development plan. These grounds are few in number, so unlike the 1997 Act (and 1983 Regulations), a council will only in exceptional circumstances be able to reject a Reporter's recommendations.
 5. The Order does not relate to the development plan position in Inverclyde, since this is concerned with those planning authorities currently in the process of bringing forward local plans, or alterations to plans, under the 1997 Act.
 6. The introduction of the three sets of secondary legislation to fully enact the 2006 Act will lead to the revocation of the 1983 Regulations, and the 1997 Act.
 7. A draft Circular x 2009 'Development Planning', once finalised, will replace the current Scottish Government publications, PAN 37 'Structure Planning' and PAN 49 'Local Planning', published in 1996.