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<b>Report To:</b>	<b>Safe Sustainable Communities Committee</b>	<b>Date:</b> 11 <sup>th</sup> June 2009
<b>Report By:</b>	<b>Corporate Director Environment and Community Protection</b>	<b>Report No:</b> ECP/PLANN/FW/MM/020
<b>Contact Officer:</b>	<b>Fraser Williamson</b>	<b>Contact No:</b> 01475 712401
<b>Subject:</b>	<b>Scheme of Delegation and Local Review Bodies Pre Determination Hearings</b>	

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## 1.0 PURPOSE

- 1.1 The purpose of the report is (i) to seek approval of the Scheme of Delegation for Local Developments in terms of the new Section 43A of the Town and Country Planning (Scotland) Act 1997, for submission to the Scottish Ministers; (ii) to seek approval for the procedures to be followed by the Local Review Body and (iii) to advise Members of the need for Pre Determination Hearings in prescribed cases.

## 2.0 SUMMARY

- 2.1 The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009 which came into force on 6<sup>th</sup> April 2009 introduce three categories of planning applications – national, major and local.
- 2.2 Section 43A of the Town and Country Planning (Scotland) Act 1997 requires planning authorities to prepare separate schemes of delegation for determining planning applications relating to local developments. This will give powers to “appointed officers” to determine such applications for planning permission subject to the terms of the scheme of delegation. This is set out in Appendix 1.
- 2.3 The Town and Country Planning (Scheme of Delegation and Local Review Bodies) (Scotland) Regulations 2008 set out the review procedures to be followed where the “appointed officer” refuses an application for planning permission or for consent, agreement or approval; grants it subject to condition; or has not determined it within the prescribed period. This will be by means of a Local Review Body. The proposed procedures for this are set out in Appendix 2.
- 2.4 A new Section 38A of the Town and Country Planning (Scotland) Act 1997 introduces the requirement to hold pre-determination hearings in respect of national developments and major developments which are significantly contrary to the local development plan.

## 3.0 RECOMMENDATIONS

- 3.1 That Committee:
- (a) agrees to adopt the Scheme of Delegation prepared under the terms of Section 43A of the Town and Country Planning (Scotland) Act 1997 for determining local developments as outlined in Appendix 1 and subject to approval from Scottish Ministers;
  - (b) agrees to the setting up of a Local Review Body and the procedures to be followed set out in Appendix 2;

- (c) agrees to remit (a) and (b) above to the Inverclyde Council for approval;
- (d) notes the requirement to hold pre-determined hearings in respect of national developments and major developments which are significantly contrary to the local development plan.

#### 4. BACKGROUND

- 4.1 At the March meeting of the Safe, Sustainable Communities Committee a report was submitted which outlined the proposed changes being introduced to the planning system with regard to development management and development planning. It was indicated that further reports would be brought forward as appropriate in terms of administrative arrangements required to implement the changes.
- 4.2 The Town and Country Planning (Hierarchy of Developments)(Scotland) Regulations 2009 which introduced national, major and local developments came into force on 6<sup>th</sup> April 2009. National and major developments will be processed in line with the procedures set out in Regulations and detailed in the March report.
- 4.3 Under the terms of Section 43A of the Town and Country Planning (Scotland) Act 1997 as introduced by Section 17 of the Town and Country Planning (Scotland) Act 2006 – Local Authorities are required to prepare a scheme of delegation for dealing with local developments. Under this scheme designated officers will determine applications for planning permission for a development within the category of local development or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category.
- 4.4 The proposed scheme of delegation for local developments is shown in Appendix 1. It lists the categories of local developments which fall within the scheme and also details the exceptions whereby the designated officers would not be able to determine the application. In such circumstances referral to the Planning Board would be required.
- 4.5 The proposed scheme of delegation is intended to reflect the guidance and regulations approved by the Scottish Ministers and the spirit of the modernising planning agenda. The scheme requires to be in place by 3<sup>rd</sup> August 2009 but it firstly has to be sent to the Scottish Ministers for approval. The deadline date for submission is 29<sup>th</sup> June 2009. The planning authority is not permitted to adopt the scheme until such time as it has been approved by the Scottish Ministers.
- 4.6 Once approved by the Scottish Ministers the Council must make available a copy of the scheme of delegation for inspection at an office of the planning authority – Cathcart House – and in every public library in the area of the planning authority. It is also a requirement to publish the adopted scheme of delegation on the internet. A scheme of delegation must be prepared at intervals of no greater than 5 years.
- 4.7 The Council currently operates a scheme of delegation for planning applications and planning matters under the provisions of the Local Government (Scotland) Act 1973. This provision still applies but given the requirements for a separate scheme of delegation in respect of local development it is necessary for the existing scheme to be revised. The proposed changes in relation to planning matters will be dealt with as part of a wider review of the Scheme of Delegation to officers.
- 4.8 The significant aspect of the new scheme of delegation for local developments is that decisions made under this scheme will be subject to the new review procedures and applicants will not have the right of appeal to the Directorate of Planning and Environmental Appeals (DPEA). Only planning applications determined by the Planning Board will have that right of appeal to DPEA
- 4.9 The Regulations require that such review cases shall be dealt with by a Local Review Body which will operate as a Committee of the Council and will comprise a minimum of 3 Elected Members of the Authority. The proposed Local Review Body procedures are

set out in Appendix 2 and it is suggested that for Inverclyde the Local Review Body will be members of the Planning Board with a minimum of 3 members present constituting a quorum.

- 4.10 This will ensure that the members of the Local Review Body have a sound knowledge of planning issues, are able to take a consistent approach to the review of the planning decisions and are able to make impartial decisions on the cases which come before them.
- 4.11 The procedures for carrying out the review process are detailed in Appendix 2 and it is possible in some cases that consideration of a case will be conducted over more than one meeting of the Local Review Body. In order to ensure transparency and consistency in the decision making process it will be a requirement that where such a review extends to more than one meeting that at least 3 members of the Local Review Body will have attended all the meetings pertaining to that case.
- 4.12 The exact volume of workload for the Local Review Body cannot be predicted at this stage but it is proposed that the meetings of the Local Review Body – which are required to be held in public – should be carried out as part of and following the monthly scheduled meetings of the Planning Board.
- 4.13 The purpose of the Local Review Body is to consider the matters which were before the appointed person – designated under the Section 43A Scheme of Delegation – at the time the initial determination was made. Parties to the review shall not be entitled to raise other matters unless they can demonstrate that the matter could not have been raised before that time or that exceptional circumstances prevail.
- 4.14 Where the Local Review Body consider they have sufficient information before them they may determine the review without further procedure. Where it is considered that further information is required the review may proceed thereafter by means of written submission, by holding one or more hearing sessions, by site inspection or by a combination of procedures. This will be for the Local Review Body to decide based on the merits of each review case.
- 4.15 It is proposed that the Local Review Body will be supported by the Head of Legal and Administration who will ensure that the Local Review Body is given the necessary guidance on the review process and ensure that the process respects the principles of fairness and transparency. It is for the Local Review Body to decide whether or not they wish any planning guidance when carrying out the review. If so there is a requirement that the person appointed should not have been party to the determination of the planning application.
- 4.16 Options available to fulfil this role would include:
  - (a) identification or appointment of a dedicated officer reporting to someone other than the “appointed person” determining the planning application;
  - (b) employment or retention of external consultants;
  - (c) investigation of opportunities for establishing reciprocal agreements with neighbouring or like authorities.
- 4.17 In terms of financial and staff resources and the anticipated workload of the Local Review Body I do not consider options (b) or (c) to be appropriate. It would be more realistic that where planning advice is required it should come from “in-house” staff. I would suggest that this remit be given to the Planning Policy Team Leader.
- 4.18 Prior to these procedures coming into effect on 3<sup>rd</sup> August 2009 it will be necessary to provide training for Elected Members and officers who will be involved in the process. This will be arranged in house in due course.

- 4.19 A further procedural requirement is introduced by Section 38A of the Town and Country Planning (Scotland) Act 1997. This sets out the need to hold pre-determination hearings in respect of applications relating to national developments and major developments which are significantly contrary to the local development plan.
- 4.20 These are introduced as part of the enhanced scrutiny measures aimed at making the planning system more inclusive and allowing the views of applicants and those who have made representations to be heard before a planning decision is taken. It will be for the planning authority to determine what is significantly contrary to the local development plan and how the hearings will operate.
- 4.21 I do not envisage having a significant number of such pre determination hearings and I would propose initially at least that these be heard by the Planning Board as part of the monthly cycle of meetings. The opportunity will still be available of course to arrange a separate date for holding the hearing if this was deemed appropriate.
- 4.22 A further requirement introduced by Section 14(2) of the Town and Country Planning (Scotland) Act 2006 is an amendment to the Local Government (Scotland) Act 1973 to the effect that applications which are required to have a pre-determination hearing will require to be decided by the full Council following on deliberation by the Planning Board. The implications of this can only be fully assessed in due course when these hearings arise.

## **5. IMPLICATIONS**

- 5.1 There are no immediate legal implications arising from this report.
- 5.2 There are no direct financial implications arising from this report.
- 5.3 There are no personnel implications arising from this report.
- 5.4 Equalities: when delivering services to our customers full cognisance is taken of equality and diversity processes and procedures.

## **6. CONSULTATION**

- 6.1 Consultation has been carried out with the Chief Financial Officer, the Head of Legal and Administration and the Head of Organisational Development and Human Resources. No comments have been received.

## **7. LIST OF BACKGROUND PAPERS**

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

Town and Country Planning (Scheme of Delegation and Local Review Bodies) (Scotland) Regulations 2008

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

Town and Country Planning (Scotland) Act 1997

Town and Country Planning (Scotland) Act 2006

## Town and Country Planning (Scotland) Act 1997 – Section 43A Scheme of Delegation – Local Developments

This Scheme of Delegation is prepared in accordance with Section 17 of the Town and Country Planning (Scotland) Act 2006 – which introduced a new Section 43A to the Town and Country Planning (Scotland) Act 1997 – the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2008 and the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009.

It relates to any application for planning permission for a development within the category of local developments (see Appendix 1) or any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a development within that category.

The “Appointed Person” in terms of Section 43A(1) of the 1997 Act will be either the Head of Planning and Housing, the Development and Building Standards Manager or the Planning Policy and Housing Manager.

The appointed person will have the authority to determine (a) all planning applications for planning permission within the category of local development and (b) all applications for consent, agreement or approval required by a condition imposed by a grant of planning permission for a development within that category submitted to Inverclyde Council in compliance with the requirements of the Town and Country Planning (Scotland) Act 1997 – as amended by the 2006 Act – and all associated statutory provisions with the following exceptions;

- (a) The approval of an application which would be contrary to the approved Development Plan,
- (b) The approval of an application which is the subject of letters of representations from 10 or more individuals and/or 2 community groups (including Community Councils) which are formally constituted and comprise at least 10 members,
- (c) Applications made by the planning authority,
- (d) Applications made by a Member of the planning authority,
- (e) Application relating to land in the ownership of the planning authority or to land in which the planning authority has a financial interest.

### Local Developments

1. Housing – construction of buildings for use as residential accommodation comprising less than 50 dwellings or a site area not exceeding 2 hectares.
2. Businesses and General Industry, Storage and Distribution – the gross floor area of the building does not exceed 10,000 square metres or the site area does not exceed 2 hectares.
3. Electricity Generation – the generating station has a capacity not exceeding 20 megawatts.
4. Waste Management Facilities – the facility has a capacity not exceeding 25,000 tonnes per annum.

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5. Transport and infrastructure projects – the length of road, railway, tramway, waterway or aqueduct or pipeline does not exceed 8 kilometres.
  6. Fish Farming – the surface area of water covered does not exceed 2 hectares.
  7. Minerals – the area of the site does not exceed 2 hectares.
  8. Other Development – any development not wholly falling within any single class of development categories 1 to 7 where the gross floor area of any building does not exceed 5,000 square metres or the area of the site does not exceed 2 hectares.

## **Town and Country Planning (Scotland) Act 1997 Local Review Procedure**

The Local Review procedure applies to applications for planning permission or for consent, agreement or approval falls in the categories to be determined by an appointed officer under the Scheme of Delegation prepared in terms of Section 43A of the Town and Country Planning Act 1997. If such an application has been refused, granted subject to conditions or has not been determined within the prescribed period the applicant may under the terms of Section 43A of the Act require the planning authority to review the case.

The review will be carried out by a Committee of the planning authority and will be known as the "local review body" (LRB). For Inverclyde Council the LRB will be the members of the Planning Board with 3 present constituting a quorum and the reviews will be carried out as part of and following the scheduled monthly of meetings of the Planning Board. In dealing with any particular review it will be a requirement that a minimum of the same 3 members must be present at all meetings pertaining to that review. Meetings of the LRB will be held in public but they do not convey an automatic right for the applicant or others to make oral representation. The LRB will be supported by the Head of Legal and Administration who will ensure the LRB is given the necessary guidance on the review process and ensure that the process respects the principles of fairness and transparency. The focus of the review should be on the material which was before the appointed officer during the processing of the application including any handling report.

The LRB will give to the applicant and any interested party who made representations ( and which have not subsequently been withdrawn) reasonable notice of the date, time and place fixed for the holding of the meetings.

### **The Review Process**

#### ***1. Notification of Review***

Where an applicant wishes a case to be reviewed the notice must be made in writing to the LRB within 3 months of the date of the decision to which the review relates. The notice of review must contain the following information;

1. name and address of applicant and also the name and address of any representative of the applicant.
2. the date and reference number of the application to which the review relates.
3. a statement setting out the applicant's reasons for requiring the review and by what procedure the applicant wishes the review to be conducted.

All matters which the applicant intends to raise in the review together with all documents, materials and evidence must be set out in or accompany the review. Apart from this information an applicant will only be able to submit further information if the LRB requests additional written evidence or where it is requested as part of a hearing session.

#### ***2. Notification to interested parties and publication***

Not later than 14 days from receipt of a notice of review the LRB must;

1. send an acknowledgement of the notice of review to the applicant and inform how the documents related to the review can be inspected.
2. give notice of the review to each interested party.

An interested party may within 14 days of the date on which the above notice is given make representation to the LRB in respect of the review. Any such representations received must then be sent to the applicant by the LRB indicating how and by what date the applicant may make comments on the representations received.

#### ***3. Publication of review documents***

At the end of this process the LRB must then make a copy of the review documents, any notice given to interested parties and any procedure notice available for inspection at an office of the planning authority until such time as the review is determined.

Until such time as the review is determined the planning authority must afford to any person who so requests the opportunity to inspect copies of the review documents.

#### **4. Procedure for Determination**

Once the process for submission of information has been completed the LRB must consider how it will determine the review. It is expected that the majority of cases coming before the LRB will be accompanied with sufficient information for the review to be determined quickly. Where the LRB consider that the review documents provide sufficient information to enable them to determine the review they may do so without further procedure at a meeting of the LRB.

Where the LRB determine that further procedure is required they will determine the manner in which the review is to be conducted. At any stage the LRB may determine that further representations should be made or further information should be provided to enable them to determine the review. In such circumstances the review or stage of a review will be conducted by one or a combination of the following procedures;

- (a) written submissions
- (b) holding one or more hearing sessions
- (c) an inspection of the land to which the review relates.

The LRB may hold a pre-examination meeting to consider the manner in which the review or any stage of a review is to be conducted and will give appropriate notice of the meeting to the relevant parties. This is only likely to be necessary where there is a range of issues to be examined or more than one method likely to be used to support the review process.

##### *(a) written submissions*

Where further information is to be submitted by written submission this shall be done by procedure notice in writing to all parties from whom additional information is being requested specifying the matters to be addressed the timescale for submission and listing all parties who have been asked to submit further information. Where such further information is provided it shall be sent by the relevant party to the LRB and all other parties listed in the procedure notice. Within 14 days of the receipt of such information the applicant or any of the other listed parties may send comment to the LRB and at the same time copy them to all the other parties listed in the procedure notice.

##### *(b) hearing sessions*

The Hearing Session rules contained within Schedule 1 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure)(Scotland) Regulations 2008 will apply. These deal with notification arrangements, entitlement to appear at the hearing, service of hearing statements and the procedure at the hearing. The hearings are intended to take the form of a discussion led by the LRB.

##### *(c) site inspections*

The LRB can decide if these will be accompanied or unaccompanied and will be required to give the appropriate notice to the relevant parties.

If after the conclusion of any such further procedure the LRB propose to take into consideration any new evidence which is material to the determination of the review the LRB must not reach a decision without first affording the applicant and any other relevant party an opportunity of making representations on such new evidence.

##### *Appointment of an assessor*

The LRB may appoint an assessor to sit with the LRB at a hearing session to advise them on such matters as they may specify and where they decide this to be necessary they will notify every party entitled to appear at the hearing of the name of the assessor and the matters on which that person will advise them. At the end



of the hearing the assessor may (or if required to do so by the LRB) make a written report to the LRB on the matters on which the assessor was appointed to advise.

### *Decision Notice*

The LRB must give notice of their decision to the applicant and notify every other person who has made representations in respect of a review that a decision has been made and where that decision can be viewed.

Where a requirement to review is made by virtue of subsection 8(c) of Section 43A of the 1997 Act – review on failure to determine the application – a decision must be made with 2 months of the date on when the review is made otherwise the authority will be deemed to have refused the application and the applicant will have a right of appeal to the Scottish Ministers.