

Scheme of Delegation for the Determination of Planning Applications and Other Planning Decisions: Prepared in Accordance with the Provisions of the Planning Etc. (Scotland) Act 2006 and The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

Schedule 1

The Planning Committee delegate the determination of: planning applications; other applications assessed under planning and associated legislation; and other planning decisions to the relevant appointed officers (within the Council's Planning, Sustainable Growth and Investment Service) subject to the exceptions set out in Schedule 2 which are determined by the Planning Committee. For information a sample of those decisions delegated to officers is set out in Schedule 4.

Schedule 2

The following planning applications and other planning decisions shall be determined by the Planning Committee of the Council:

- i. any application for planning permission in principle (PPP), for detailed planning permission (DPP) and a Section 42 application (S42) which comprises a 'National Development' or a 'Major Development' as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (or any subsequent or replacement regulations);

A copy of the schedule in those Regulations which lists those developments which are classed as major comprises Appendix 1 to this scheme of delegation.

- ii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which is the subject of an extant objection from a statutory consultee that would result in referral of the application to Scottish Ministers under the provisions of Circular 3/2009, Notification of Planning Applications (or any subsequent or replacement guidance with regard the notification of planning applications);
- iii. any application that the appointed officer is minded to approve under the terms of this scheme of delegation but which would constitute a significant departure from the provision of the Council's Development Plan;
- iv. any application which would normally be determined by the appointed officer under the terms of this scheme of delegation but which has been the subject of notification ('Call in') that it is to be determined by the Planning Committee of the Council. Such notification shall be made in writing; 1) within 21 days of the date of validation of the application or 2) under the provisions of Schedule 3 (see below) and to be known as 'Notification of Member Referral': such notification shall only be valid if submitted by a Member in whose Ward the application site lies in whole or

in part, and includes a statement of the reasons in planning terms for the notification; and

- v. any application or other planning decision that the Chair of the Planning Committee considers to be of significance that it merits determination by the Committee rather than officers;
- vi. The adoption of Planning Policy either through the stages of the development plan process (the formal adoption of a local development plan will be a decision for 'Council' rather than its Planning Committee) or supplementary planning policy documents or guidance;
- vii. The confirmation of a Tree Preservation Order (TPO);
- viii. Under its Enforcement powers the authorising of 'Direct Action' or the referral of a case to the Procurator Fiscal for prosecution; and
- ix. Responses to Scottish Government consultations on Strategic Planning Policy matters.

Schedule 3: Information to Elected Members

Applications which fall to be determined under Schedule 1 of the Scheme of Delegation (i.e. are delegated for determination by officers), and to which any of the following criteria are relevant will be drawn to the attention of Elected Members:-

- i) the application has attracted representations, contrary to the officers recommendation, from 10 or more individual households or other premises (petitions are considered to be one representation from the coordinating premises); or
- ii) the application is the subject of a formal written representation, contrary to the officers recommendation, from a community council within whose area the application site lies either in whole or in part; or
- iii) the application materially seeks to vary the form of an application originally granted by the Planning Committee; or
- iv) where the appointed officer recommends that a planning application be approved, the application can only be approved subject to the requirement for a planning obligation*;
- v) a planning application for 20 or more residential units; or
- vi) an application submitted by an elected member or a member of staff (in the Planning, Sustainable Growth and Investment team or replacement thereof) and/or their spouse/partner (as confirmed on the application form).

Information will be provided to all elected members no later than five working days prior to the date of formal determination, thereby providing the opportunity for a local ward elected member to consider submission of a formal 'Notification of Member Referral' in accordance with Schedule 2 iv) of the Scheme of Delegation. For the avoidance of doubt the time limit period for notification specified in Schedule 2 iv) will not apply in cases notified under the provisions of Schedule 3.

Local ward elected members will be informed of any formal planning enforcement proceedings which have been undertaken within their respective Wards: such proceedings being the issuing of an Enforcement Notice, a Stop Notice, a Temporary Stop Notice, a Breach of Condition Notice, a Fixed Penalty Notice or a Section 179 (amenity) Notice.

Unless otherwise specified all communications to elected members shall be by email.

*a Planning Obligation includes a section 75 agreement, a section 69 agreement or any other financial transfer.

Note – definitions

For the purposes of this Scheme of Delegation the following definitions apply to Schedules 1 - 3:

1. Planning applications relate to planning permission in principle (PPP) applications, detailed planning permission (DPP) applications and section 42 (S42) applications;
2. Applications relate to those types stated above (PPP, DPP and S42), matters specified in conditions (MSC) applications, advertisement consent (ADV) applications, listed building consent (LBC) applications and conservation area consent (CAC) applications.
3. Other planning decisions relate to all other planning matters, requests and determinations not covered by definitions 1 and 2 above, the majority of which are identified in Schedule 4.

Schedule 4

The following applications and other planning decisions shall be delegated for determination by the appointed officer of the Council. The appointed officer of the Council is the officer appointed in terms of Part 3 Section 17 of the Planning etc (Scotland) Act 2006 (Section 43A (1) of the Town and Country Planning (Scotland) Act 1997).

The following planning applications and other planning decisions shall be determined by the Appointed Officer/s:

- i) any application which does not fall within any of the categories comprising Schedule 2 of this scheme of delegation;
- ii) any application for development not defined as a 'Major Development' in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (or any subsequent or replacement regulations);
- iii) any application to vary or amend a condition on an extant planning permission;
- iv) any application to vary an extant planning permission;
- v) the serving of a Provisional Tree Preservation Order;
- vi) the investigation of formal planning enforcement proceedings through the issuing of enforcement notices, stop notices, temporary stop notices, fixed penalty notices, planning contravention notices and Section 179 (amenity) notices;
- vii) determination of any application for a certificate of lawful development;
- viii) determination of any application for listed building consent;

- ix) determination of any application for conservation area consent;
- x) determination of any application for express advertisement consent;
- xi) determination of any application to carry out works to trees;
- xii) discharge and modifications to Planning Obligations;
- xiii) applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended;
- xiv) Environmental Impact Assessment (EIA) Screening and Scoping requests;
- xv) applications/consents made under Section 36 and 37 of the Electricity Act 1989;
- xvi) Matters Specified in Conditions applications;
- xvii) Planning Certificate applications made under Section 50 of the Licensing (Scotland) Act 2005;
- xviii) determination of prior notification applications;
- xix) determination of non-material variation requests to applications; and
- xx) the discharge of planning conditions.

Please note that the above list is set out to highlight the range of determinations made by the appointed officer/s – although it's a comprehensive list it is not designed to be a complete list and supplements Schedule 1 only.

SCHEDULE OF MAJOR DEVELOPMENTS

<i>Description of Development</i>	<i>Threshold or criterion</i>
<u>1. Schedule 1 development</u>	
Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999 (3) (other than exempt development within the meaning of those Regulations).	All Development.
<u>2. Housing</u>	
Construction of buildings, structures or erections for use as residential accommodation.	(a) The development comprises 50 or more dwellings; or (b) The area of the site is or exceeds 2 hectares.
<u>3. Business & General Industry, Storage and Distribution</u>	
Construction of a building, structure or other erection for use for any of the following purposes- <ul style="list-style-type: none"> (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. 	(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.
<u>4. Electricity Generation</u>	
Construction of an electricity generating station.	The capacity of the generating station is or exceeds 20 megawatts.
<u>5. Waste Management Facilities</u>	
Construction of facilities for use for the purpose of waste management or disposal.	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.
<u>6. Transport and Infrastructure Projects</u>	
Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.	The length of the road, railway, tramway waterway, aqueduct or pipeline exceeds 8 kilometres.
<u>7. 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.	The surface of water covered is or exceeds 2 hectares.
<u>8. Minerals</u>	
Extraction of minerals	The area of the site is or exceeds 2 hectares
<u>9. Other Developments</u>	
Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above	(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 hectare

A representation on an application shall only be competent if it comprises a written submission in the form of either a letter, e-mail or online submission. In the case of a letter the correspondent will require to include their name, full address and signature.

Planning applications are determined in accordance with the Town and Country Planning (Scotland) Act 1997 as amended (*hereafter referred to as the Act*) and associated regulations and Scottish Government advice in particular the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (*hereafter referred to as the Regulations*).

The Act requires the planning authority to “take into account any representations relating to that application which are received by them before the expiry of any period prescribed” by the Act and Regulations (21 days for notifications and 14 days for consultations). Furthermore, the Act states “no such application shall be determined until after the expiry of any period which may be so prescribed”. (*The notification and consultation requirements vary for listed building consent applications, advertisement consent applications and applications to modify or discharge a planning obligation*).

It is Midlothian’s practice to consider any representations received prior to the final drafting of an applications ‘report of handling’ which is either the Committee report or the delegated officer’s report which sets out the planning assessment of the application. This in effect means that representations received after the prescribed period are considered if the officer’s assessment of the application has not been concluded. Representations received after the publication of the Committee agenda, but before the meeting of the Committee, are assessed and if appropriate the Committee are verbally updated at the meeting.

The Committee (the decision maker) has the discretion to decide if they wish to consider ‘late’ representations received after the prescribed period. It is expected that it will wish to do so where the representation is material and could affect the planning assessment of the application. This would be consistent with the planning authority’s statutory duty to take into account all considerations which are both material and relevant to the application known at the time. In exceptional circumstances, this may mean that officers recommend that an application be deferred to a future meeting pending further detailed assessment. If deadlines for the submission of late representations are strictly adhered to there is a risk that the planning authority would be failing in its duty to consider all relevant material considerations.