



**APPENDIX 1 TO THE STANDING ORDERS FOR MEETINGS OF
THE PLANNING & ACCESS COMMITTEE
OF THE LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY**

SCHEME OF DELEGATION RELATIVE TO PLANNING

UNDER

- (1) SECTION 43(A) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC. (SCOTLAND) ACT 2006**
- (2) THE NATIONAL PARKS (SCOTLAND) ACT 2000**
- (3) THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW
PROCEDURE) (SCOTLAND) REGULATIONS 2013**
- (4) The Loch Lomond and The Trossachs National Park Designation, Transitional and
Consequential Provisions (Scotland) Order 2002/201**

LOCH LOMOND AND THE TROSSACHS NATIONAL PARK AUTHORITY

SCHEME OF DELEGATION RELATIVE TO PLANNING

INTRODUCTION

In keeping with the aims of the Scottish Ministers that the planning system should respond in a more proportionate and efficient way to proposals that come before it and to ensure that applications for planning permission are dealt with in a way that is appropriate to their scale and complexity, Loch Lomond and The Trossachs National Park Authority (the “Park Authority”) as planning authority for the Loch Lomond & The Trossachs National Park have adopted this Scheme of Delegation. This Scheme of Delegation has been prepared in pursuance of the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) (the “1997 Act”), as introduced by Section 17 of the Planning etc. (Scotland) Act 2006 (the “2006 Act”), and in accordance with the requirements set down within The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. It also sets out other planning powers which are delegated under the National Parks (Scotland) Act 2000 (the “2000 Act”) and the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002/201 (the “Designation Order”).

The meaning of all words and phrases used within this Scheme of Delegation, where not otherwise given, will be as provided for under the various Acts and Regulations referred to. References to any Act of Parliament (or associated secondary legislation) shall include any modification, extension or re-enactment thereof for the time being in force.

For the avoidance of doubt attention is drawn to the fact that, in accordance with the 2006 Act, the Scottish Ministers will determine which applications fall into the category of “major development” or the category of “local development”. There is no scope for local interpretation either by planning authorities, applicants or by other stakeholders.

“Local development” for the purposes of this Scheme of Delegation will include all development other than national development, as designated in a National Planning Framework document prepared and published by the Scottish Ministers under Part 1A of the 1997 Act; and major development, as identified in terms of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (the “2009 Regulations”).

1. The **Appointed Officer** who shall be entitled to exercise the delegated powers set out below shall be the Head of Planning and Rural Development, and where he/she so determines, the, the Development and Implementation Manager, or such other appropriate Director, Head of Service or Manager of the Park Authority. Part 3 of the Scheme of Delegation sets those powers which may also be exercised by the Development and Implementation Manager or other appropriate officer (as determined by the Appointed Officer from time to time) on behalf of the Park Authority.
2. Any delegated decision under the terms of this Scheme of Delegation shall observe the following general requirements:
 - 2.1 all determinations shall be carried out in accordance with the provisions of the development plan, unless material considerations indicate otherwise;
 - 2.2 no determination shall be made which conflicts with a decision made by the Planning and Access Committee on a previous similar application or enforcement matter on the same site unless there has been a change in the material considerations applicable;

- 2.3 all determinations made under Part 1 of this Scheme of Delegation shall be reported, for information only, on the first available National Park Weekly Planning Schedule.
3. In a number of the categories of delegation there may be the need for a degree of judgment and interpretation on the part of Appointed Officer. As with all schemes of delegation this is unavoidable. However, rather than set artificial thresholds, it is considered more appropriate for the Appointed Officer to use their professional discretion to determine those matters which would otherwise be considered by the Planning and Access Committee.

PART 1: DELEGATED POWERS TO DETERMINE VARIOUS PLANNING APPLICATIONS UNDER SECTION 43 A (1) OF 1997 ACT AND SECTION 8 AND SCHEDULE 1 (PARAGRAPH 17) OF THE 2000 ACT

- 4.1 Part 1 of this Scheme of Delegation is prepared in accordance with the provisions of Section 43A(1) of the 1997 Act and Section 8 and Schedule 1 (Paragraph 17) of the 2000 Act.
- 4.2 For the purposes of this part of the Scheme of Delegation, the term 'applications' refers to the following:
- 4.2.1 applications for planning permission for a development within the category of local developments submitted under the provisions of Part III of the 1997 Act;
 - 4.2.2 applications for consent, agreement or approval required by a condition imposed on a grant of planning permission for a local development;
 - 4.2.3 applications for variation of planning consents under Section 64 of the 1997 Act;
 - 4.2.4 applications to modify or discharge planning obligations under Section 75A of the 1997 Act and the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
 - 4.2.5 applications for listed building consent or conservation area consent submitted under the provisions of Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the "Listed Buildings Act 1997");
 - 4.2.6 applications for advertisement consent submitted under the provisions of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (the "1984 Regulations");
 - 4.2.7 applications for hazardous substances consent submitted under the Planning (Hazardous Substances)(Scotland) Act 1997 (the "Hazardous Substances Act 1997"); and
 - 4.2.8 applications submitted by the Crown under the provisions of Circular 21/1984 'Crown Land and Crown Development'.
 - 4.2.9 directions under Section 58(2) of the 1997 Act in so far as such directions apply to applications.

- 4.2.10 directions under Section 59(5) of the 1997 Act in so far as such directions apply to such applications
- 4.3 Applications not falling into the definitions set out in Paragraph 5 will be determined by the Appointed Officer set out in Paragraph 1.
5. The determination of applications falling into one or more of the following categories will **not be delegated to the Appointed Officer** and will be the subject of a report for consideration by the Planning and Access Committee:
- 5.1 development that would fall within the category of 'major' as defined under the 2009 Regulations (with the exception of categories defined in Paragraph 8 which must be considered by the Park Authority Board).
- 5.2 development that would, by determining that approval is appropriate, be considered to be a material departure from an approved Structure Plan or finalised/adopted Local Plan or Local Development Plan and where the officer recommendation is to approve;
- 5.3 development that raises a significant new planning issue on which adopted development plan policy or supplementary planning guidance gives very limited or no guidance;
- 5.4 development that has been the subject of formal objection from a neighbouring planning authority and where the officer recommendation is to approve;
- 5.5 development which, for whatever reason, requires to be notified to the Scottish Ministers;
- 5.6 development where a statutory consultee, including SEPA, SNH, the Community Council, or local authority departments (e.g. roads, flooding, environmental health, housing), has formally objected on valid planning grounds and where the officer recommendation is to approve;
- 5.7 development which, in the opinion of the Appointed Officer, has been the subject of a significant level of valid objection,
- 5.8 development requiring applications to be handled jointly with a neighbouring planning authority;
- 5.9 development that would adversely affect a statutory heritage designation or otherwise raise significant conflicts between the first aim and the other three aims of the National Park as set out in Section 9(6) of the 2000 Act and where the officer recommendation is to approve;
- 5.10 development where the application is made by or on behalf of:
- i. a Member of the Planning Authority;
 - ii. the Chief Executive of the Park Authority;
 - iii. a Director, Head of Service or Manager of the Park Authority;
 - iv. a member of staff of the Park Authority directly involved in providing professional planning advice to the Park Authority; or

- 5.11 applications relating to modification or discharge of planning obligations where the modification or discharge applied for would be inconsistent with the adopted development plan or supplementary planning guidance.
6. The powers delegated to the Appointed Officer under Paragraphs 1 and 4 hereof are further qualified to the extent outlined in the provisions of Section 43 A (6) of the 1997 Act, in which case the Park Authority may decide, for any reason, that the particular circumstances of an application which would in the normal course of events be dealt with under this Scheme of Delegation, are such that the application should be determined by the Planning and Access Committee.
7. All other categories of applications will be determined (either approved or refused), subject to the general requirements of the operation of this Scheme of Delegation as outlined in Paragraph 2 above, under delegated powers.
8. Notwithstanding this Scheme of Delegation the following categories of application as defined under the 2009 Regulations **shall not be delegated to either the Appointed Officer or the Planning and Access Committee** and shall be determined by the Park Authority Board;
- a. 'National' applications (including Pre-Determination Hearings)
 - b. 'Major' applications (including Pre-Determination Hearings) where there would be a significant departure from the Development Plan if the application were to be approved.

PART 2: POWERS DELEGATED UNDER SECTION 8 AND SCHEDULE 1 (PARAGRAPH 17) OF THE 2000 ACT.

Part 2 of this Scheme of Delegation is prepared in accordance with the provisions of Section 8 and Schedule 1(17) of the 2000 Act.

9. The following matters are delegated to the Appointed Officer:-

9.1 Prior Approvals, Notifications and Determinations

All matters relating to submissions for prior approval in accordance with the procedures required by the Town and Country Planning (General Permitted Development)(Scotland) Order 1992.

9.2 Responses to Scottish Ministers

Responses to the Scottish Ministers upon the receipt of notices of applications made, under the provisions of Section 37 of the Electricity Act 1989, in respect of the installation or replacement of overhead electric lines.

9.3 Environmental Statements

Determination ('Screening Opinions') of whether or not an application for planning permission should be accompanied by an Environmental Statement pursuant to Regulations 5 and 7 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

9.4 **Pre-Application Consultation Screening (National and Major Applications)**

On receipt of a 'pre-application screening notice', provision of a Screening Opinion on potential planning applications for national or major developments to determine whether an application requires to be the subject of a statutory Pre-Application Consultation under Section 35A(5) of the 1997 Act.

9.5 **Proposal of Application Notice (National and Major Applications)**

On receipt of a 'Proposal of Application Notice', provision of formal comment within 21 days on the consultations the applicant proposes to undertake under Section 35B(7) of the 1997 Act, notifying persons (other than those who are to be consulted as respects a proposed application) who should receive the Proposal of Application Notice and of any other consultation activity that must be undertaken as regards the proposed development.

9.6 **Certificates of Lawful Use**

The issue of certificates of lawful use under the provisions of Section 150 and 151 of the 1997 Act.

9.7 **Tree Preservation Orders**

Tree Preservation Orders where trees of particular merit and amenity value are considered to be under threat, and where safeguarding action is required, in accordance with the following procedures:

- 9.7.1 the preparation of, and reasons for serving, the Provisional Tree Preservation Order may be approved by the Appointed Officer;
- 9.7.2 the approval for serving the Provisional Order must be authorised by the Chair of the Planning and Access Committee, or in his/her absence the Depute Chair, by exchange of correspondence with the Appointed Officer;
- 9.7.3 in an emergency where trees of value are deemed to be under imminent threat approval for the serving of an emergency Provisional Order may be authorised by the Appointed Officer; and
- 9.7.4 within the maximum 6 month period required by statute to confirm the Order a report will be submitted to the Planning and Access Committee seeking the approval, or otherwise, of the confirmation of the Order, with or without modifications.

9.8 **Determination of minor or uncontroversial applications for the lopping, topping or felling of trees protected by a Tree Preservation Order, and to respond to notifications relating to works to trees in Conservation Areas.**

9.9 **Land Entry**

Authorisation of appropriate officers to enter land pursuant to:

- 9.9.1 Sections 156, 176, and 269 of the 1997 Act;
- 9.9.2 Section 76 of the Listed Buildings Act 1997;
- 9.9.3 Section 33 of the Hazardous Substances Act 1997;
- 9.9.4 Section 24 and 26 of the Land Reform (Scotland) Act 2003; and
- 9.9.5 Sections 33A and 88 of the Environmental Protection Act 1990

and authorisation of applications for warrants to be made in connection with the exercise of these powers.

9.10 Notice Requiring Application for Planning Permission for Development Already Carried Out

Where there is a breach of planning control to issue a Notice under Section 33A of the 1997 Act requiring the owner of the land in, on, over or under which the development has been carried out to make a retrospective planning application for the unauthorised development that has taken place.

9.11 Enforcement Notices*

In cases of emergency, or where development or works take place contrary to the terms of a previous decision of the Park Authority, or in respect of the installation of unauthorised telecommunications equipment, the service of an Enforcement Notice under the provisions of Sections 127 of the 1997 Act or Section 34 of the Listed Buildings Act 1997.

9.12 Stop Notices*

In cases of emergency, or where development takes place contrary to the terms of a previous decision of the Park Authority, the service a Stop Notice under the provisions of Section 140 of the 1997 Act.

9.13 Temporary Stop Notices*

Where it is considered that:

- 9.13.1 there has been a breach of planning control in relation to any land;
- 9.13.2 the breach consists of engagement in an activity; and
- 9.13.3 it is expedient that the activity (or any part of the activity) is stopped immediately,

the service of a Temporary Stop Notice under the provisions of Section 144A of the 1997 Act.

9.14 Interdicts*

In cases of emergency, or where any breach of control takes place contrary to the terms of a decision of the Park Authority, the making of an application for an Interdict to an appropriate court under the provisions of Section 146 of the 1997 Act.

9.15 In respect of any advertisement displayed in contravention of the provisions of the 1984 Regulations, the making of an application for an Interdict to an appropriate court under the provisions of Section 146 of the 1997 Act.

* The serving of an enforcement notice, stop notice, or temporary stop notice or an application for an interdict are delegated to the Appointed Officer on approval from both the Chief Executive and the Chair (or in their absence the Depute Chair) of the Planning and Access Committee.

9.16 Notices Requiring Proper Maintenance of Land (Amenity Notices)

Service of an 'Amenity Notice' under the provisions of Section 179 of the 1997 Act.

9.17 Minor or Technical Breaches of Control

In respect of any minor or technical breach of planning control, where no significant harm is caused to public amenity, to determine that it would not be expedient for the Park Authority to take enforcement action in order to remedy the situation.

PART 3: DELEGATION OF POWERS RELATING TO PLANNING ENFORCEMENT

10. The following powers will be delegated to the Development and Implementation Manager or other appropriate officer (as determined by the Appointed Officer from time to time) appointed by the Park Authority from time to time:-

10.1 Requisitions for Information

To require the submission of information as to interests in land under the provisions of Section 272 of the 1997 Act.

10.2 Planning Contravention Notices

To serve a Planning Contravention Notice under the provisions of Section 125 of the 1997 Act, together with the power to receive any representations at a meeting held pursuant to the Notice.

10.3 Breach of Condition Notices

To serve a Breach of Condition Notice under the provisions of Section 145 of the 1997 Act, or an Enforcement Notice relating to a breach of a condition under the provisions of Section 127 of the 1997 Act.

10.4 Tree Replacement Notices

To serve a Tree Replacement Notice under the provisions of Section 168 of the 1997 Act .

10.5 Advertisement Enforcement Notices

10.5.1 To serve an Enforcement Notice under the provisions of Regulation 24 of the 1984 Regulations.

10.5.2 To exercise powers conferred by Section 187 of the 1997 Act, in relation to the removal or obliteration of placards and posters.

10.5.3 To serve a notice requiring the discontinuance of the display of an advertisement under the provisions of Regulation 14 of the 1984 Regulations.