

<b>PLANNING AND ACCESS COMMITTEE</b>	
<b>MEETING: NPAPC/05/2014</b>	<b>DATE: 25 August 2014</b>

<b>REPORT No.</b>	<b>NPAPC/05/2014/07</b>
<b>SUBMITTED BY:</b>	<b>Director of Operations</b>
<b>SUBJECT:</b>	<b>Review of the Planning &amp; Access Committee's Schemes of Delegation relative to both Planning and Access functions</b>

<b>OFFICERS:</b>	
Name: Diana Worthy (Development Management Planner) Tel: 01389 722617 E-mail: diana.worthy@lochlomond-trossachs.org	
Name: Claire Travis (Visitor Operations Manager) Tel: 01389 722122 E-mail: claire.travis@lochlomond-trossachs.org	

**1 SUMMARY AND REASON FOR PRESENTATION**

- 1.1 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 requires local planning authorities to review their planning 'Scheme of Delegation' every five years. Our current Scheme was first prepared in 2009 and is now required to be reviewed, taking into account changes that were introduced by the 2013 Regulations.
- 1.2 The Planning Scheme of Delegation sits as an appendix to the Planning and Access Committee's 'Standing Orders for Meetings' alongside an Access Scheme of Delegation. To ensure that the Park Authority's planning and access functions operate in an up to date, efficient and transparent manner, it is timely that these two documents are both reviewed. These documents are attached as Appendix 1 and 2 to this report (showing the proposed 'tracked' changes).
- 1.3 This report seeks the Committee's agreement to modify the two Schemes of Delegation relative to planning and access, prior to presenting these to the Park Authority Board for approval, and approval by Scottish Ministers (where necessary).

<b>2 RECOMMENDATION</b>
<b>That Members:</b>
<ul style="list-style-type: none"> <li>1. Agree to the proposed modified Planning Scheme of Delegation (attached as Appendix 1) for subsequent approval by the Park Authority Board and consultation with Scottish Ministers for approval; and</li> <li>2. Agree to the proposed modified Access Scheme of Delegation (attached as</li> </ul>

Appendix 2) for subsequent approval by the Park Authority Board.

3. Agree that each Scheme of Delegation be presented as recommended to the Park Authority Board for approval prior to submission to Scottish Ministers for approval (as appropriate).

### **3 INTRODUCTION**

- 3.1 This report outlines the proposed modifications to the Planning and Access Committee's (the "Committee") Schemes of Delegation relative to planning and access. The report is separated into sections which outline each document's background, the proposed changes and justification for these recommendations. It also describes the next steps required to adopt the modified documents if Members are minded to approve.

### **4 REVIEW PROCESS**

- 4.1 The review of these documents was triggered by our requirements under the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (hereafter referred to as the '2013 Regulations') which require planning authorities to review their planning scheme of delegation every five years. The Park Authority Planning Scheme of Delegation is one of three Schemes of Delegation which sit as appendices to the Planning and Access Committee's 'Standing Orders for Meetings'. The other two Schemes of Delegation are relative to Access and Byelaws.
- 4.2 At this time, Members are requested to consider proposed modifications to both the Planning and Access Schemes only. A review of the Standing Orders for Meetings and Byelaws Scheme of Delegation will be undertaken and presented to Members for consideration at a later date. The review of all these documents will ensure that the Park Authority's planning and access functions operate in an up to date, efficient and transparent manner.
- 4.3 The review process has taken into account any relevant legislative changes, operational changes (such as staff member job titles) and consideration of emerging issues which have tested how the two Schemes of Delegation operate. In the latter case, recent planning applications which affect public rights of way or core paths have highlighted access responsibilities which actually fall under our planning function (rather than access function) and the need for better processes and transparency within the relevant Schemes of Delegations.
- 4.4 In addition to the documents being reviewed by our Planning, Access and Governance teams, our solicitors (Harper Macleod LLP) have also provided a legal review.

### **5. APPENDIX 1: SCHEME OF DELEGATION RELATIVE TO PLANNING**

#### **Background**

- 5.1 All planning authorities operate a 'scheme of delegation' which enables a wide range of decisions to be taken by officers in relation to applications for planning permission within the category of 'local developments'. This allows local developments to be determined by an 'Appointed Officer' instead of being

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considered by elected Members of the Park Authority at the Planning and Access Committee. This process is essential to the efficient running of the planning system. The Park Authority adopted its current Scheme of Delegation in August 2009, with subsequent modifications approved February 2012 (regarding planning obligations) and October 2013 (regarding EIA developments).

### **Proposed Modifications**

- 5.2 The Planning Scheme of Delegation is attached as Appendix 1 of this report. This review is timely given that the 2013 Regulations introduced changes which need to be incorporated into the current Scheme. Section 5 of the Scheme details a number of ‘triggers’<sup>1</sup> which require local development applications to be determined by the Committee rather than being delegated to the Appointed Officer. The 2013 Regulations now allow for the delegation of determining applications for local developments where the application:
- is made by the planning authority or one of its Members; or
  - relates to land in the ownership of the planning authority or in which the planning authority has a financial interest.
- 5.3 Under the current Scheme of Delegation, Section 5 includes the above as triggers which require the relevant applications to be presented to the Committee for determination. Recent examples have included the Park Authority’s threshold signage (as the applicant) and the Argyll Mausoleum refurbishment (financial interest). Section 5 of the Scheme is proposed to be revised to reflect the regulatory changes, with the exception of applications made by, or on behalf of, a Member of the Park Authority. In the interest of transparency, it is recommended that these types of applications continue to be determined by the Committee.
- 5.4 Members may recall that over the last year the Park Authority has considered two planning applications<sup>2</sup> which have highlighted particular areas of our access responsibilities that fall under our planning function (rather than our access function) in respect of public rights of ways and core paths. In reviewing the Scheme, consideration was given to whether local development applications which impact on such paths should be determined by the Committee (under Section 5 of the Scheme). It was concluded that this reason was not so significant in itself to justify an application being presented to the Committee, rather applications which fall into this area could competently be determined by the Appointed Officer. However, it is noted that if there were other significant issues associated with such an application, then likely it would trigger one or more of the categories under Section 5 and would be required to be determined by Members (see examples in footnote 1). The Park Authority’s responsibilities and powers regarding public rights of ways and core paths are otherwise covered under the Access Scheme of Delegation (see Section 6 and Appendix 2).
- 5.5 It is noted that the Planning etc (Scotland) Act 2006 sets out the default statutory time periods for planning permission (3 years), unless the development to which the permission relates is begun before that expiration. This came into effect on

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<sup>1</sup> These ‘triggers’ include development which has received significant objections, subject of a formal objection from a statutory consultee, is a departure from the development plan and is recommended for approval, would adversely affect a statutory heritage designation, etc.

<sup>2</sup> Kuruba Kennels and Cattery regarding a public right of way (2013/0003/DET) and a pending application at land east of Ardvreck, Arrochar, which includes the proposed diversion of a core path (2014/0059/DET).

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decisions from 2009. Consequently, the time period is now detailed as an 'informative' on the decision notice, rather than the previous practice of specifying it as a condition on the permission. In instances where a planning authority deems it appropriate to either shorten or lengthen the statutory time period of a permission, they are required to make a 'direction' to alter this time period. This legislative change has been reflected in the Scheme and it is proposed that the Appointed Officer has the delegated authority to approve directions of this type in relation to local developments.

5.6 Overall, very little changes are proposed to be made to the Planning Scheme of Delegation and these are summarised as:

- referencing of the appropriate legislation;
- revisions to officer job titles;
- removing the requirement for applications which are made by or on behalf of the Park Authority or where the Park Authority has an interest (landowner or financial) to be determined by the Committee (proposed to be delegated to the Appointed Officer); and
- the duration of planning permission time limits ('directions') proposed to be delegated to the Appointed Officer.

Planning officers are confident that the current Scheme strikes the right balance between what types of applications should be determined by the Committee or delegated to the Appointed Officer. This ensures that the Committee operates efficiently and considers only more sensitive and complex applications. With the inclusion of the proposed modifications, Members can remain confident that any proposals which have significant planning issues or considerations will continue to be presented to the Committee for determination.

## 6 APPENDIX 2: SCHEME OF DELEGATION RELATIVE TO ACCESS

### Background

- 6.1 The Park Authority has duties and powers under Part 1 of the Land Reform (Scotland) Act 2003 (the 2003 Act) and in order to undertake these it is required to operate a 'scheme of delegation' that enables Park Authority officers to;
- determine applications exempting land from access rights for 5 days or less under Section 11 of the 2003 Act; and
  - uphold access rights under Sections 13, 14, 15, 19, 21, 23, 25, and 26 of the 2003 Act.

The Park Authority adopted its current Scheme in 2005.

### Proposed Modifications

- 6.2 The Access Scheme of Delegation is attached as Appendix 2 of this report. A significant addition is a section relating to powers to assert, protect, keep open, repair and maintain public rights of way under Sections 45 and 46 of The Countryside (Scotland) Act 1967. The requirement for the Scheme to include these powers was highlighted during the work undertaken in considering one of the planning applications referred to in Section 5.4 of this report.
- 6.3 A right of way is a route along which the public have a right of passage. To be a right of way, a route must meet certain conditions. The main ones are that the route must have been used by the public for at least twenty years, it must connect two public places, and it must follow a more or less defined route. A right of way is established through the collection of sufficient evidence to show that the route meets

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the accepted conditions for such status, and this evidence can be used to assert that the route is a right of way, either to secure acceptance of the way by all the interests, or through court action if required.

- 6.4 Rights of way are classified into three status categories:
- claimed – other routes which appear to meet the common law conditions necessary to be regarded as rights of way, but which have not been formally vindicated or asserted;
  - asserted – routes which have been accepted as rights of way by the landowner or where local authorities have indicated that they would take legal action to protect them if necessary; and
  - vindicated – routes declared to be rights of way by the courts or through another legal process.
- 6.5 In terms of paths, the focus of access work for the Park Authority to date has been on Core Paths and duties relating to them under the Land Reform (Scotland) Act 2003. In relation to the rights of way in the Park, gathering of evidence to demonstrate that a 'claimed' right of way is or should be 'asserted' is undertaken when deemed necessary. In such instances, the Committee would be asked to consider the evidence presented by Officers and make a determination. To date, the Committee has not been requested to consider the assertion of a public right of way within the Park.
- 6.6 It is noted that Part 5 regarding the 'Section 11 Scoring Scheme' is proposed to be deleted from the Scheme. The scoring criteria were originally included for Members' information given that it was a new concept when the Scheme was first prepared. The criteria have remained unchanged and are inherent in the process used by Officers when determining Section 11 applications. Given that reference would be made to this in any presentation to Members, it is considered that it is not necessary for the scoring scheme to be included in the Scheme of Delegation.
- 6.7 Aside from the two modifications proposed above, no other changes have been made to the Access Scheme of Delegation as Officers are confident that it strikes the appropriate balance between delegated and Committee determinations. Members can remain confident that any proposals which have significant access issues or considerations will continue to be presented to the Committee.

## **7 NEXT STEPS – APPROVING THE MODIFIED DOCUMENTS**

- 7.1 It is proposed that, subject to the Committee agreeing to these changes, the modified Planning and Access Schemes of Delegation will be presented to the Park Authority Board for consideration and approval.
- 7.2 In relation to the Planning Scheme of Delegation, if the Board are minded to approve the modifications, the Park Authority is required under the 2013 Regulations to send the revised Scheme to Scottish Ministers for approval prior to adoption. To address this requirement, the supporting Park Authority Board report will recommend that Members:
- a) approve the modified Access Scheme of Delegation; and
  - b) approve the Planning Scheme of Delegation for subsequent consultation and approval by Scottish Ministers and thereafter, the Director of Operations is given delegated authority to adopt the Planning Scheme of Delegation following approval by Scottish Ministers.

**8 CONCLUSION**

8.1 This report proposes modifications to the Schemes of Delegation relative to planning and access which will ensure the Park Authority's planning and access governance arrangements remain up to date, efficient and transparent.

***List of Appendices:***

- 1. Proposed Modified Planning Scheme of Delegation (Appendix 1 to the Standing Orders)***
- 2. Proposed Modified Access Scheme of Delegation (Appendix 2 to the Standing Orders)***