

# PLANNING AND DEVELOPMENT CONTROL COMMITTEE

21<sup>ST</sup> OCTOBER 2014

## REPORT OF THE HEAD OF PLANNING – N. PEARCE

### Chairman's Urgent Item

The following is an urgent item allowed at the discretion of the Chairman pursuant to Section 100B(4)(b) of the Local Government Act 1972.

### Reason for Urgent Item

The reason for the report being tabled as an Urgent Item is due to the need for the Delegated Arrangements to be amended in order to allow the Authority to discharge its duties in responding to the Tidal Lagoon Nationally Significant Infrastructure Project (NSIP) in a timely manner in accordance with deadlines prescribed by the Planning Inspectorate

### Background

At Full Council on 15<sup>th</sup> October 2014, Members approved changes to the determination of planning applications which included minor changes to delegated powers. These included the addition of matters relating to Nationally Significant Infrastructure Projects (NSIPs), which were incorporated under the 'Delegated Panel' Procedure and allowed delegation as follows: -

*Submission of all responses in respect of Nationally Significant Infrastructure Projects (NSIPs), unless considered to be strategically important in which case it shall be reported to Committee*

Members will be aware that Officers are currently responding in detail to the Tidal Lagoon NSIP which, in addition to the Local Impact Report and Written Representations (which were reported to Committee) has involved many responses to additional information, legal documents and rounds of questions from the Examiners.

As a consequence of this detailed work, and the need to meet tight and strict deadlines imposed by the Planning Inspectorate, it has been identified that the wording of the above delegation scheme does not allow sufficient flexibility for Officers to respond to all other, largely technical, matters relating to the NSIP process.

Accordingly, it is proposed that the responses to NSIPs are amended to fall under a new 'normal delegated powers' (NSIPs) and the wording relating to NSIPs and which elements are reported to Members for authorisation is clarified as follows: -

D. 'Normal' Delegated Matters

*(i) Nationally Significant Infrastructure Projects (NSIPs)*

*Submission of all responses in respect of Nationally Significant Infrastructure Projects (NSIPs), with the exception of the Authority's Local Impact Report and initial Written Representations, which shall be reported to Committee.*

The above changes will ensure that such matters are appropriately covered by the delegated powers, and that these responses can be issued in a timely manner. In this respect it is noted that the NSIP process is different to 'normal' planning applications, insofar as there is no public consultation and no 'objections' are received from the public directly to the Authority (all external objectors are directed to the Planning Inspectorate to register as an interested party in their own right). Accordingly NSIPs are proposed to fall within a new section D which omits reference to objections in the interests of clarity.

The changes also clarify that the principal response to any NSIP, comprising the Local Impact Report (LIR) and the initial Written Representations (WR) submission, still requires Members authorisation at Committee.

The changes approved by Council on 15 October 2014, as amended by this report (such changes being identified in bold text) are identified in detail within Appendix 1.

RECOMMENDATION

That the changes to the delegated arrangements approved by Council on 15 October 2014, and as amended by this report (such changes being identified in bold within Appendix 1) are approved and incorporated into the Constitution with immediate effect.

**Proposed New Delegated Arrangements  
Delegated Matters (para 17 of Annex J to the current Constitution)**

17. Planning

(i) General Planning Delegation

A. Determination of Applications / matters by the Planning and Development Committee

The Planning & Development Committee will determine all applications / matters which fall within the following criteria: -

1. Where an application is considered to be of strategic importance, or where it is considered by Officers to be appropriate to be determined by Members, taking into account the views of Members where they have requested an application to be considered at Committee (*note: the member process agreed is set out in the Appendix*).
2. Where an application is to be recommended for approval, and where it is considered by Officers that the proposals would materially depart from Policies within the Development Plan.
3. Where an application has been submitted by a Member of the Council or close relative of a Member.
4. Where an application has been submitted by an employee of the Council who is directly involved in the Development Management process or in a post identified below: -
  - Director of Environment
  - Head of Planning
    - All posts under the direct responsibility of the Head of Planning
  - Head of Engineering and Transportation
    - Highways Development Control Officers
    - Drainage Officers
  - Head of Regeneration
  - Head of Streetcare
  - Head of Legal and Democratic Services
    - Committee Clerk (Planning)

- Principal Solicitor (Planning)

Except as listed above, the Director of Environment and the Head of Planning are granted Delegated Powers for the determination of all planning and other related matters / applications, including the preparation of screening and scoping opinions, discharge of conditions, tree preservation orders, hedgerow and high hedges applications, appeals and enforcement matters, in accordance with the following procedures: -

#### B. 'Delegated Panel' Procedure

To determine applications relating to the following matters and following agreement with local Ward Members and subject to the provisions of the Planning Code of Conduct: -

- Refusal of Applications
- Developments in excess of 5 dwellings (including approval of reserved matters and/or the discharge of conditions in respect of the same);
- Developments creating new floorspace in excess of 500 sq.m. in respect of industrial, agricultural, commercial or non-commercial buildings (including approval of reserved matters and/or the discharge of conditions in respect of the same)
- Deeds of Variation, seeking to vary the terms of an existing Section 106 legal agreement
- Planning Enforcement Procedures, including: -
  - (a) To serve a Planning Contravention Notice;
  - (b) To serve a Breach of Condition Notice;
  - (c) To serve an Enforcement Notice;
  - (d) To serve a Stop Notice
  - (e) To serve a Notice under s215 (Amenity of Land) of the 1990 Act (as amended)
  - (f) To initiate prosecution action or injunctions
  - (g) To withdraw or amend any formal Notice under points (a) – (e)
- Felling of trees covered by Tree Preservation Order

#### C. 'Normal' Delegated Matters (subject to no objections being received)

- (i) to approve (but not to refuse) with or without conditions in respect of all other planning applications or matters not covered by point (i)

above, subject to there being no objections, including (but not limited to): -

- Development of up to 5 dwellings (including approval of reserved matters and/or the discharge of conditions);
- Developments creating new floorspace up to 500 sq.m. in respect of industrial, agricultural, commercial or non-commercial buildings (including approval of reserved matters and/or the discharge of conditions)
- Applications to determine whether or not an Environmental Statement is required on any submitted or proposed planning application (“Screening Opinion”)
- Applications to determine the scope of an Environmental Statement (“Scoping Opinion”) on any submitted or proposed planning application.
- Applications for a Certificate of Lawful Use of Development (Existing and Proposed)
- Decisions on applications made under section 73 to develop land without compliance with conditions previously attached to a consent.
- Discharge of conditions imposed on a planning consent.
- the topping, lopping or carrying out of other works, excluding felling, of trees the subject of tree preservation orders or of planning conditions.
- Determination of ‘Prior Approval’ (“Prior Notification”) applications, including determination of subsequent applications for such prior approval
- Making of Tree Preservation Orders
- To approve Hedgerow Removal Notices, under the Hedgerow Regulations 1997 where a hedgerow is not "important"
- Applications under the Planning (Hazardous Substances) Act 1990 and Planning (Hazardous Substances) Regulations 1992 including:- determination of applications for hazardous substances consent (HSC) (s9); deemed HSC: established presence (s11); applications for removal of conditions attached to HSC (s13); general power by order to revoke or modify HSC (s14) and determination of applications for continuation of HSC (s18).

(ii) Section 106 Agreements: To authorise the entering into of Section 106 Agreements under the Town and Country Planning Act 1990

(iii) to determine all applications in respect of the Building Regulations.

(iv) to authorise the issue of infringement notices and any enforcement action with respect to Building Regulations.

(v) Building Act 1984

- (a) Delegated powers for the elements of the Planning Service covered by legislation under the Building Act 1984.
- (b) To authorise individual Officers to act as Inspectors/Authorised Officers/Enforcement Officers under legislation contained in the Building Act 1984.
- (c) In consultation with the Director of Finance and Corporate Services, to approve legal proceedings on behalf of the Council in respect of any offence under the above Act. (This delegation also applicable to the Principal Officer (Building Control)).

(vi) Safety at Sports Ground Act 1975: To issue and sign the relevant Safety Certificates under the Safety at Sports Ground Act 1975 (as amended) and to take any enforcement action (the latter to be reported to the Planning Committee for information)

(vii) Forestry Authority - Consultations on Felling Proposals

- (a) where there are no objections, the response to the Forestry Authority is delegated to the Director;
- (b) where objections are raised by local Members, relevant Community Councils, or by Officers, that the Director be delegated the power to request that this Authority be granted an extension of time, or to submit an objection to the Forestry Authority. The matter would then be reported to the next available Planning Committee for consideration and that Committee be given plenary powers to resolve the Authority's formal decision. Relevant local Members would be invited to attend the Committee and any site visits, but would not be entitled to vote, in the same manner as in the determination of planning applications;

(viii) Neath and Port Talbot Local Access Forum

To determine future changes to the membership of the forum in consultation with either the Leader or Deputy Leader.

(ix) Rights of Entry

To authorise rights of entry to relevant Officers in respect of the following legislation:-

- (a) Town and Country Planning Act 1990 (as amended) – Section 324;
- (b) Wildlife and Countryside Act 1981 (as amended) – Section 51;
- (c) Planning (Listed Building and Conservation Areas) Act 1990 (as amended) – Sections 88 – 88B;
- (d) Planning (Hazardous Substances) Act 1990 (as amended) – Sections 36-36B;
- (e) Highways Act 1980 – Section 293;
- (f) Road Traffic Regulation Act 1984 – Section 71.
- (g) Anti Social Behaviour Act 2003 (High Hedges) – Section 74

(ix) Developer Contributions (Supplementary Planning Guidance)

To determine issues of arbitration between different needs prior to any form of decision by the Planning and Development Control Committee (this in consultation with the relevant Cabinet Member).

(x) Affordable Housing Contribution

The Head of Planning is granted delegated authority to review and make any necessary amendments to the charge levied for the negotiation of the Affordable Housing Contribution

(xi) Safety of Stands for Spectators – Section 42 West Glamorgan Act 1987

The powers to the Authority under Section 42 are delegated to the Director of Environment and the Head of Planning.

(xii) Retaining Walls – Section 26 West Glamorgan Act 1987

The powers of the Authority under Section 26 are delegated to the Director of Environment and the Head of Planning

**D. ‘Normal’ Delegated Matters**

(i) **Nationally Significant Infrastructure Projects (NSIPs)**

**Submission of all responses in respect of Nationally Significant Infrastructure Projects (NSIPs), with the exception of the Authority’s Local Impact Report and initial Written Representations, which shall be reported to Committee.**

## APPENDIX A

### Delegation Process (Development Management Matters / Applications)

1. To maintain accountability and transparency, detailed reports will be prepared for all delegated matters / applications outlining the material issues for consideration together with a recommendation.
2. In the case of 'Normal' Delegated Matters (para 17 (i) C of Annex J), each report is to be signed by the Case Officer and Development Control Manager / Team Leader or in their absence the Head of Planning, prior to issuing the decision notice
3. Where applications are being dealt with under the 'Delegated Panel' procedure (para. 17 (i) B. of Annex J), a panel of Officers (a minimum of three, including the Head of Planning and/or the Development Control Manager) will consider and sign off the report and its recommendation, in addition to which the following additional process will apply:-
  - (a) Where following consultation with officers the relevant Ward Member(s) have agreed that the application can be determined the delegated decision can be made.
  - (b) if any Ward Member considers that it would be more appropriate to report the application to Committee for decision, Officers will put the matter before Committee provided a valid planning reason has been given by the Ward Member (such reason to be clearly indicated within the subsequent report to Committee);
  - (c) In the absence of any agreement under (a) or representation under (b) that the relevant Ward Member(s) be advised of the proposed decision via e-mail, giving 7 days to respond to a named officer(s) within the Department. Responses will be dealt with in accordance with (a) or (b), but if no response is received, it will be assumed that the relevant Members are satisfied that the application can be continued to be dealt with under delegated powers and the decision notice will be issued.

