

**PERTH AND KINROSS COUNCIL****Council Meeting - 2 October 2013****LOCAL REVIEW BODY – STANDING ORDERS AND NOTE ON GUIDANCE PROCEDURES****Report by Head of Democratic Services****PURPOSE OF REPORT**

This report sets out proposals to amend the Standing Orders and Guidance Note on Procedures for the Perth and Kinross Local Review Body.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 At its meeting on 30 September 2009 (Article 503 refers), the Council approved Standing Orders for the Perth and Kinross Local Review Body, and also a Guidance Note on Procedures to be considered by the Local Review Body and revised as appropriate.
- 1.2 The approved Standing Orders and Guidance Note were developed on the basis of Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008. The documents have not been reviewed since their adoption.

**2. PROPOSALS**

- 2.1 On 30 June 2013, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 came into force, triggering a review of the legislative references in both the Standing Orders and the Guidance Note.
- 2.2 The opportunity has been taken to review both the Standing Orders and Guidance Note in their entirety. However, the documents have not required to be amended significantly.
- 2.3 The amended Standing Orders and Guidance Note on Procedures are contained at Appendix 1 and Appendix 2 to this report.

**3. CONCLUSION AND RECOMMENDATIONS**

- 3.1 The introduction of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 has triggered a review of both the Standing Orders and Guidance Note of Procedures for the Local Review Body.

- 3.2 It is recommended that the Council approve the amended Standing Orders and Guidance Note on Procedures contained at Appendix 1 and Appendix 2 to this report.

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**Approved**

<b>Name</b>	<b>Designation</b>	<b>Date</b>
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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

The undernoted table should be completed for all reports. Where the answer is 'yes', the relevant section(s) should also be completed. Where the answer is 'no', the relevant section(s) should be marked 'not applicable (n/a)'.

<b>Strategic Implications</b>	<b>Yes / None</b>
Community Plan / Single Outcome Agreement	<b>Yes</b>
Corporate Plan	<b>Yes</b>
<b>Resource Implications</b>	
Financial	<b>None</b>
Workforce	<b>None</b>
Asset Management (land, property, IST)	<b>None</b>
<b>Assessments</b>	
Equality Impact Assessment	<b>None</b>
Strategic Environmental Assessment	<b>None</b>
Sustainability (community, economic, environmental)	<b>None</b>
Legal and Governance	<b>Yes</b>
Risk	<b>None</b>
<b>Consultation</b>	
Internal	<b>Yes</b>
External	<b>None</b>
<b>Communication</b>	
Communications Plan	<b>Yes</b>

### 1. Strategic Implications

#### Community Plan / Single Outcome Agreement

- 1.1 The proposals set out in this report support the delivery of all of the priorities in the Perth and Kinross Community Plan / Single Outcome Agreement 2013/2023.

#### Corporate Plan

- 1.2 The proposals set out in this report support the achievement of all of the objectives in the Council's Corporate Plan.

### 2. Resource Implications

#### Financial

- 2.1 N/A

## Workforce

2.2 N/A

## Asset Management (land, property, IT)

2.3 N/A

## **3. Assessments**

### Equality Impact Assessment

3.1 N/A

### Strategic Environmental Assessment

3.2 N/A

### Sustainability

3.3 N/A

### Legal and Governance

3.4 The Head of Legal Services has been consulted in the preparation of this report and is in agreement with the proposals.

### Risk

3.5 N/A

## **4. Consultation**

### Internal

4.1 The Local Review Body has been consulted in the preparation of this report and is in agreement with the proposals.

### External

4.2 N/A

## **5. Communication**

5.1 If the Council approves the proposals set out in this report, the revised documents will be made available to all stakeholders in the Local Review Body process.

**2. BACKGROUND PAPERS**

None

**3. APPENDICES**

Appendix 1 – Standing Orders for Perth & Kinross Local Review Body

Appendix 2 – Guidance Note on Procedures for Perth & Kinross Local Review Body





**STANDING ORDERS FOR THE  
REGULATION OF PROCEEDINGS  
OF THE LOCAL REVIEW BODY**

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*Index in Numerical Order*

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## **PART 1 - PRELIMINARY**

### **Commencement**

- 1 These Standing Orders shall apply with effect from 2 October 2013.

### **Interpretation**

- 2 The Interpretation Act 1978 applies to the interpretation of these Standing Orders as it would to the interpretation of an Act of Parliament.

### **Definitions**

- 3 In these Standing Orders the following words and expressions shall have the meanings hereinafter respectively assigned to them, that is to say:

“Review Body” means the Perth and Kinross Local Review Body in terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure (Scotland) Regulations 2013 [\(the Regulations\)](#).

“Member” means a councillor duly elected at an election or by-election or duly elected to fill a council vacancy within Perth and Kinross Council and who has made a declaration of acceptance of office in terms of Section 33A of the Local Government (Scotland) Act 1973 and in relation to the Review Body, a person appointed as being eligible to serve on the Review Body.

### **Alteration of Standing Orders**

- 4 These Standing Orders may only be altered by reference to the Council.

### **Declarations of Interest**

- 5 Members who consider that in terms of the Councillors' Code of Conduct, they have a financial or non-financial interest in any matter are required to declare that interest. If a member of the Review Body realises that they must declare an interest in any application due to be considered, whether financial or non-financial, he/she must advise the Clerk to the Review Body in order that arrangements can be made for a substitute to attend. The substitute will be drawn from the pool of Development Management Committee members eligible to serve on the Review Body. The substitute may attend on behalf of that member for consideration of that application only, or for the entire meeting.

### **PART 2 - MEETINGS AND PROCEEDINGS OF THE LOCAL REVIEW BODY**

Where matters are not specified in these Standing Orders, procedures are governed by the Regulations.

#### **Meetings of the Review Body**

- 6 Meetings of the Review Body shall be held in accordance with a cycle of meetings to be determined from time to time by the Review Body.
- 7 All meetings of the Review Body shall be held at such place and hour as the Review Body may determine.

#### **Calling of Meetings**

- 8 Notice of the place and time of a meeting of the Review Body shall be given by

or on behalf of the Clerk to the Review Body (i) by being delivered to the usual place of residence of every member of the Review Body or at such other address advised to the Clerk, or (ii) by such other means as may be deemed appropriate by the Clerk.

### **Conduct at Meetings**

9 In terms of Section 50A of the 1973 Act unless the Review Body decide otherwise, the taking of photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings, or the making of any oral report on any proceedings as they take place, shall not be permitted.

10 In the event of any member at a meeting of the Review Body disregarding the authority of the Convener, or being guilty of obstructive or offensive conduct, the Convener will adjourn proceedings and the meeting will be reconvened at the earliest suitable opportunity.

### **Proceedings of the Local Review Body**

11 The proceedings of the Review Body shall take place in public.

### **Quorum**

12 No business shall be transacted at a meeting of the Review Body unless three members of the Review Body are present.

13 If within ten minutes of the time appointed for a meeting of the Review Body a quorum is not present, the Convener shall adjourn the meeting to a time he or

she may fix then or afterwards and in the event of the Convener being among those absent, the Clerk shall minute that owing to the lack of the necessary quorum, no business was transacted.

### **Order of Business**

14 At any meeting of the Review Body, the order of business (unless otherwise agreed by the Review Body at the meeting) shall be:-

- (a) Declarations of Interest in terms of the Councillors' Code of Conduct
- (b) The sederunt shall be taken.
- (c) The minute of the previous meeting shall be submitted for confirmation.
- (d) Pre-examination procedure.
- (e) Determination without further procedure.
- (f) Applications for which further procedure has been scheduled.

15 An item of business shall not be considered at a meeting of the Review Body unless a copy of the agenda including reports has been made publically available in terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure (Scotland) Regulations 2013) [\(the Regulations\)](#).

### **Term of Office of Convener of the Review Body**

16 The Convener, not being the Convener or Vice-Convener of the Development Management Committee, shall be appointed by the Council and shall normally hold office until the next ordinary election of the Council unless they cease to be a member of the Council before that date.

### **Duties of Convener of the Review Body**

- 17 The Convener shall preside. If he/she is absent, the Review Body shall appoint one of the members of the Review Body present to preside.
- 18 The Convener shall decide all matters of procedure, competency and relevancy. The Convener's ruling shall be final and shall not be open to discussion.
- 19 It shall be the duty of the Convener to preserve order. The Convener shall be entitled, in the event of disorder arising, to adjourn the meeting to a time fixed then or decided afterwards, and vacating the Chair shall indicate that the meeting is adjourned.

### **Motion to Challenge the Minute**

- 20 No motion to challenge the accuracy of a minute shall be competent unless intimated in writing to the Clerk at least two working days prior to the meeting at which it is intended to challenge the minute.

### **Order of Debate**

- 21 Every motion shall be relevant to the business before the meeting and shall be moved and seconded.
- 22 A motion once moved and seconded, shall not be withdrawn without the consent of the mover and seconder thereof.
- 23 When a member raises a point of order, or information, the other member speaking shall desist until the point of order or information has been decided by

the Convener.

24 **Voting**

In the event of a split decision, the minute shall record how each member voted.

**Suspension of Standing Orders**

25 So far as not inconsistent with any statutory provisions, any one or more of the Standing Orders may be suspended at any meeting, but so far only as regards the business at such a meeting, provided that two members of the Review Body present so decide.

**PART 3 - GENERAL**

**Use of Substitutes**

26 A member of the Review Body must advise the Clerk accordingly if he or she is unable to attend a meeting of the Review Body thereof to which he or she has been called. The Clerk will make arrangements with another member of the panel of members eligible to sit on the Review Body, and shall pass to that substitute the appropriate meeting papers.

**Oral Representations**

27 The applicant, agent or interested parties will not have an automatic right to present information or evidence orally at the meeting of the Review Body. Parties will be guided in this by the Review Body and its Legal Adviser. However, it is likely that such exchanges will only be permitted in the context of a hearing session being held.

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**GUIDANCE NOTE ON PROCEDURES FOR  
PERTH AND KINROSS LOCAL REVIEW BODY**

## INTRODUCTION

The Town and Country Planning (Scotland) Act 1997 (as amended) (<http://www.legislation.gov.uk/ukpga/1997/8>) (the Act) and [the Town and Country Planning \(Schemes of Delegation and Local Review Procedure \(Scotland\) Regulations 2013](#) (the Regulations) together provide for the establishment of a Committee of the Council, to be known as a “Local Review Body”, with effect from 3rd August 2009.

Where an application for planning permission for local development has been determined by an appointed officer in accordance with the Council's Planning Scheme of Delegation, the applicant will be entitled to seek a review of that decision by the Local Review Body ("Review Body"). Similarly, if an application which falls within the scope of the Scheme of Delegation for decision by an appointed officer has not been determined within the prescribed period (2 months) the applicant may seek a review by the Review Body of that "deemed refusal".

Review Body meetings are held on a four weekly cycle, ordinarily on a Tuesday. The Local Review Body is a Committee of the Council and, as such, meetings are governed by Standing Orders for the Regulation of Proceedings of the Local Review Body, dates of meetings and Standing Orders for the Local Review Body are available on the Council's website at [www.pkc.gov.uk](http://www.pkc.gov.uk).

## PART 1 – REVIEW PROCEDURES

### 1. General

- 1.1 All meetings of the Review Body will be held in public. All decisions made by the Review Body will take place in public. The minute of the meeting is not a verbatim record of proceedings, but will record all decisions reached.
- 1.2 The Review Body at any meeting shall comprise 3 elected members appointed from a rota and drawn from the Development Management Committee. Where the Local Review Body determines to convene a hearing session, the hearing session has commenced and it has been necessary to adjourn that hearing session, the Review Body will re-convene with the same membership to complete its determination at a future date. Further guidance in relation to hearing sessions is provided at paragraph 6 below and as set out in the Hearing Session Rules in Schedule 1 to the Regulations.
- 1.3 Meetings of the Review Body will deal with more than one case in most instances. Persons attending Review Body meetings are asked to respect that fact.
- 1.4 There is no automatic right for the applicant or others to make oral representations to the Review Body.

- 1.5 Where required, the Review Body will be advised by a Solicitor from the Council's Legal Services Division.
- 1.6 The Review Body will also be advised by an appointed Planning Adviser. This adviser will have had no involvement in the application which is the subject of a Review.
- 1.7 All parties to a review will be notified in advance in writing of all meetings of the Review Body at which their review is to be considered.

## 2. Request for Review

- 2.1 An applicant may request a review by submitting to the Review Body a Notice of Review. A standard form Notice of Review together with Guidance Notes on completion of the Form is available for applicants from the Council's offices at 2 High Street, Perth and by accessing the Council's website at [www.pkc.gov.uk](http://www.pkc.gov.uk).
- 2.2 The Notice of Review must be served on the Review Body within:
- (i) three months of the date of the decision notice (in the case of a refusal or a grant subject to conditions); or
  - (ii) from the date of expiry of the period allowed for determining the application (currently set as two months following the validation date of the application) (in the case of non-determination); or

- (iii) in the case of an application for planning permission for Environmental Impact Assessment (EIA) development, the period of four months after the validation date.

**Notices of Review received by the Review Body outwith the 3 month statutory period will be invalid and will not be considered by the Review Body.**

2.3 The Notice of Review must include sufficient information to allow the Review Body to review the case. The information to be provided is:-

- (i) The name and address of the applicant.
- (ii) The date and reference number of the application which is the subject of the review.
- (iii) The name and address of the representative of the applicant (if any) and whether any notice or correspondence required in connection with the review should be sent to the representative rather than the applicant.
- (iv) A statement setting out the applicant's reasons for requiring the review.

2.4 The applicant shall state by what, if any procedure (or combination of procedures) mentioned in Regulation 13(4), the applicant wishes the review to be conducted. **However it should be noted that whilst due consideration requires to be given to the applicant's stated preference, the decision on the procedure or procedures to be followed in each case lies with the Review Body.**

2.5 The applicant should state in full the reasons for seeking a review and must set out in the Notice of Review all matters (including documents, material and evidence) that the applicant intends to rely on. Unless the Review Body decides otherwise, the applicant may not have a further opportunity to add to the statement of review at a later date and in many cases a decision will be taken based on the information provided in and with the Notice of Review.

2.6 In addition new material (including plans) which was not provided to the planning officer at the time of the determination will **not** be permitted unless the applicant can demonstrate that it could not have been introduced earlier in the process, or that it arises due to exceptional circumstances.

### 3. Initial Procedure

3.1 On receipt of a valid Notice of Review, this will be acknowledged within 14 days of receipt. Also within that period, the Review Body will write

to interested parties to make them aware of the Notice of Review. Interested parties include any statutory consultees or other parties who have made, and not withdrawn, representations (eg objections) in connection with the application. Interested parties are entitled to make further representation in writing to the Review Body within 14 days of notification, and any such further representation will then be copied by the Review Body to the applicant who will have a further 14 days to make comments to the Review Body.

3.2 In terms of the Regulations, all papers lodged in relation to a review require to be made publically available and applicants and persons making representations should be aware of this.

3.3 In cases where the review follows a failure by the appointed officer to determine the application, the Review Body shall obtain a review report from the appointed officer as part of the initial procedure and shall copy this to the applicant and any interested parties, who shall then have a period of 14 days to comment in writing. The review report and any comments from the applicant or interested parties shall form part of the review documents.

3.4 After this process is completed, the relevant papers will be issued for the next available meeting of the Review Body.

3.5 At the first meeting to consider a review case the Review Body may determine that the review documents provide sufficient information to enable it to determine the review. It is anticipated that, in the majority of cases, the Review Body will be able to determine an application without further procedure.

3.6 In the event that the Review Body decides at the first meeting that it requires further procedure before it can determine the Review, then it will consider what further procedure is required.

#### 4. Subsequent Procedure

4.1 Where the Review Body decides that further procedure is required, the Review Body may decide to hold a pre-examination meeting to consider what further procedures to follow in the review or may decide to obtain further information by means of the procedures set out in the Regulations. As previously stated, whilst due consideration requires to be given to the applicant's stated preference for further procedure, if any, the final decision will lie with the Review Body.

4.2 Accordingly the Review Body may decide to seek further information by one or more of the following methods:

\* By means of written submissions;



- \* By the holding of one or more hearing session(s); and/or
- \* By an inspection (accompanied or unaccompanied) of the land to which the review relates.

4.3 Further procedures will be carried out in terms of the Regulations and as set out in the following procedure notes.

## 5. Written Submissions

5.1 Where the Review Body decides that the review should proceed by means of written submissions, a written notice (a "procedure notice") will be sent to the relevant parties requesting the relevant information. To comply with deadlines for issuing papers, parties will normally be given 14 days to respond with written submissions.

5.2 In the event that the written submissions are not received, or are received outwith the relevant time limit, the Review Body may decide to determine the review without the information or otherwise as it deems fit. Persons who have good reason for not complying with the time limit are asked to communicate with the Clerk to the Review Body in advance.

5.3 Persons submitting written submissions will be required in terms of the procedure notice to serve copies on the other parties (and at the

addresses) specified in that notice. Proof of posting or electronic transmission will be required in advance of the next meeting of the Review Body.

5.4 Other parties will be deemed to have received the written submission(s) within two working days (if by post) or within 12 hours (if by electronic transmission). They will then require to submit any further comments within a further period of 14 days to the Review Body, with a copy of such comments being sent to the applicant and to the other parties (and at the addresses) specified in the procedure notice.

5.5 The Review Body shall consider the written submission(s) received at its next available meeting and shall either determine the review or decide that further procedure is needed.

## 6. Hearing Session

6.1 Where a Review Body decides it wishes to hold a hearing, this will be fixed for as early a date as is practicable, normally to coincide with the Review Body's four weekly cycle, and notified to the applicant, any interested party who made representations in relation to specified matters to be considered at the hearing session, and any other body or person from whom the Review Body wish to receive further representation or to provide further information on specified matters.

- 6.2 The procedure for a hearing session shall be as set out in the Hearing Session Rules forming Part 2 of this Guidance Note and as set out in the Hearing Session Rules in Schedule 1 to the Regulations.
- 6.3 Only the applicant and those persons or bodies notified in accordance with paragraph 6.1 and who have, within 14 days of such notification, informed the Review Body in writing of their intention to appear at the hearing session, are entitled to appear. The Review Body may appoint an assessor to advise it on specified matters, generally of a specialist or technical nature. An assessor may be an external consultant or an expert from within the Council who has not had a previous involvement in the application. Where an assessor is appointed those entitled to appear at the hearing will be advised of the name of the assessor and the matters which they are appointed to advise on.
- 6.4 All parties entitled to appear at the hearing session shall be given reasonable notice (usually at least 7 days) of the date, time and place fixed for the hearing session.
- 6.5 The Review Body shall set out in writing to the parties the matters that are intended to be considered at the hearing session and only those matters will then be considered at the hearing session.

6.6 A person entitled to appear at a hearing session must, by such date as the Local Review Body may by notice specify, fully set out the case to be put forward at the hearing session, by providing to the Local Review Body, the applicant and to such other persons entitled to appear at the hearing session as the Local Review Body may specify in such notice:

- (a) a hearing statement; and
- (b) where that person intends to refer to or rely on any documents when presenting their case –
  - (i) a list of all such documents; and
  - (ii) a copy of every document (or the relevant part of a document) on that list which is not already available for inspection under Regulation 11 or 19(2) or Paragraph (2) of this Rule.

6.7 The Review Body may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

6.8 On conclusion of a hearing session, the Review Body shall either determine the review or decide that further procedure is needed.

## 7. Site Inspections – Regulation 16

7.1 The Review Body may at any time determine that a site inspection is necessary.

- 7.2 A site inspection may be unaccompanied or accompanied by the applicant and any other interested party. The applicant and any interested party will be notified of any proposed accompanied site inspection. However, the Review Body is not required to defer an inspection if any persons to whom notice was given is not present at the appointed time.
- 7.3 The intention to make an unaccompanied site inspection will be intimated to the applicant.
- 7.4 If there is to be an accompanied site visit, those notified are invited to attend and, solely by invitation of the Chair, respond to questions relating to features of the site which may be raised by Review Body members.
- 7.5 The purpose of the site inspection will be to inspect the site and its surroundings and the planning adviser may attend to assist in pointing out relevant features of the site. No discussion on the merits, or otherwise, of the review will take place.
- 7.6 The review shall not be determined at a site visit but shall be continued to a future meeting of the Review Body for determination.

## 8. New Evidence

8.1 If, having carried out any further procedures as set out above, the Review Body proposes to take into account any new evidence which is material to the review, it will first allow the applicant and any other relevant party an opportunity to make representations on that evidence.

## 9. Post Determination Procedures

9.1 Following determination of the review, the Review Body shall issue a decision notice, which will include a statement of the reasons on which the Review Body based that decision.

9.2 The decision notice will be issued as soon as is practicable following the determination of the review **and normally within 21 days**. In complex cases or those which involve the parties entering into a legal agreement, the Review may be continued to a subsequent meeting before issue of the final decision notice.

9.3 All decisions of the Review Body will be made available on the Council's website as soon as is practicable at [www.pkc.gov.uk](http://www.pkc.gov.uk)

**PART 2 – HEARING SESSION RULES**

1. Except as otherwise provided in these Hearing Session Rules, the Review Body shall determine the procedure at a hearing session.
  
2. The Review Body, having considered any submission by the persons entitled to appear at the hearing session, are to state at or before the commencement of the hearing the procedure which the Review Body propose to adopt and in particular are to state:
  - (a) the order in which the specified matters are to be considered at the hearing session; and
  - (b) the order in which the persons entitled to appear at the hearing session are to be heard in relation to a specified matter (a different order may be chosen for different specified matters).

The normal order will be as follows:

- (i) applicant
  
- (ii) appointed officer
  
- (iii) interested parties.

3. Any person entitled to appear may do so on that person's own behalf or be represented by another person.
4. Unless the Review Body determines otherwise, each person appearing at the hearing session shall be afforded five minutes to present their case. Thereafter members of the Review Body shall, through the Chair, ask such questions of any parties as they deem appropriate in relation to the review.
5. Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the Review Body may allow, or request that, one or more persons to appear on behalf of some or all of any persons so interested.
6. A hearing session shall take the form of a discussion led by the Review Body and cross-examination shall not be permitted unless the Review Body consider that cross-examination is required to ensure a thorough examination of the issues. Cross-examination or further statements or contributions by parties will not normally be permitted, except (a) where new evidence has been introduced in terms of Regulation 17 or (b) in exceptional circumstances as deemed appropriate by the Review Body.
7. Subject to paragraph (8) a person entitled to appear at a hearing session shall be entitled to call evidence.
8. The Review Body may refuse to permit:



- (a) the giving or production of evidence;
- (b) the cross-examination of persons giving evidence; or
- (c) the presentation of any other matter

which the Review Body consider to be irrelevant or repetitious.

9. The Review Body may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.
10. The Review Body may from time to time adjourn the hearing session. Notice of the date, time and place of the adjourned hearing session will be given to the persons entitled to appear at the hearing session. If the date, time and place are announced before the adjournment, then no further notice will be given.

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