



**PLANNING AND BUILDING  
STANDARDS COMMITTEE  
MONDAY, 1ST FEBRUARY, 2016**

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**Please find attached the Additional Items in respect  
Item on the agenda for the above meeting**

7.	(a)	<b>Proposed amendments to the Public Speaking Protocol</b>	(Pages 1 - 4)	10 mins
	(b)	<b>Letter to Chair of Planning Review Panel and response from Chief Reporter</b>	(Pages 5 - 10)	10 mins

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## **Public Speaking at Meetings Protocol**

### **Planning and Building Standards Committee**

#### **Introduction**

Scottish Borders Council will permit public presentations on planning applications in the circumstances and subject to the limitations set out below.

The opportunity to make a verbal presentation applies only to applications that are determined by the Planning and Building Standards Committee. Separate arrangements apply to applications that are determined by Council and applications that are subject to review by the Local Review Body.

#### **1. Speakers**

Public speaking at the Planning and Building Standards Committee is at the discretion of the Chairman of the Committee. However, under normal circumstances the following Groups will be allowed to make verbal representations in respect of each planning application:

- Up to 3 objectors, who have already provided written representations during the course of the application process (Group 1)
- Up to 3 supporters, including the applicant or his/her agent who have already provided written representations during the course of the application process (Group 2).
- Any Member of the Council representing the Ward within which the application lies (Group 3).

Only one speaker per household will be permitted.

#### **2. Registration**

Parties will be advised of the opportunity to speak through acknowledgement of application and acknowledgement of representation letters.

Any supporter or objector who may wish to speak at Committee is required to register that interest in writing with the Planning case officer. Anyone registering such an interest will subsequently be notified when a particular application is due to be considered by Committee. Notification will normally be given one week before the date of the meeting. Parties will then be asked to re-affirm their wish to speak at the meeting to the Committee Clerk no later than 12.00 noon on the working day preceding the meeting.

Any Member, who is not a member of the Committee, wishing to speak at the Committee should register that request with the Committee Clerk no later than 12.00 noon on the working day preceding the meeting.

Where more than the permitted number of speakers have expressed an interest in speaking it is for parties to decide in advance of the Committee meeting who should speak. If agreement cannot be reached it shall be at the sole discretion of the Chairman to decide who should speak.

### **3. Time Allocation**

Each Group of speakers (Group 1, Group 2 and Group 3) will be allowed up to six minutes in which to make their representations. Groups will be encouraged to nominate one speaker. Where this is not possible it will be for each group of speakers to decide in advance how the permitted time is allocated between individual speakers.

The allocation of time should be notified to the Committee Clerk prior to the commencement of the meeting. The allocation of time will be monitored by the Committee Clerk, and will be strictly enforced.

### **4. Content of Presentations**

Presentations should focus on matters that have already been raised in writing. Presentations should not introduce new matters. Speakers should ensure that their statement relates only to relevant planning policies and material considerations directly related to the application under consideration. Speakers will give their presentations to the Committee from a lectern in the Council Chamber. **During presentations reference can be made to a maximum of 2 visual aids (photomontages, photographs, maps, plans, etc) that have been lodged properly with the Council in respect of the application being considered and a minimum of 8 days in advance of the Committee.** No audio visual material or handouts will be permitted.

Guidance on what does and does not constitute a material planning consideration is available at the undernoted link.

<http://www.scotland.gov.uk/Publications/2009/07/03153034/11>

The Chairman may intervene to curb irrelevant or inappropriate comments, repetition of points made by an earlier speaker, or deviation from the matter being discussed. Direct comments or criticisms of a personal nature against any individual involved in the planning process will not be permitted.

### **5. Questions**

There shall be no questioning or cross examination of any parties other than by the Committee Chairman who may question a speaker in order to clarify points he/she has made. At the conclusion of their presentation parties shall return to the public gallery and shall take no further part in the Committee proceedings.

### **6. Order of Speakers**

Following a brief introduction of the item by the Chairman of Committee the order of speaking shall be as follows:

- Elected Member(s) who are not members of the Committee.
- Parties objecting to the application.
- Parties supporting the application.

Officers will present the item and their recommendation at the conclusion of the oral presentations following which the Members of the Committee will debate and determine the application.

## **7. Deferred Items**

If an item has been deferred for a site visit or other reason, parties will not normally be invited to make further presentations unless the proposed development has changed significantly, and a further round of consultation has taken place.

## **8. Behaviour at Planning and Building Standards Committee Meetings**

All those in attendance at Committee meetings must be aware that the purpose of the meeting is for Members of the Committee to make decisions on planning applications. Public Speaking procedures are intended solely to assist this process within the guidance set out above.

Any unreasonable or disruptive behaviour will lead to the removal of those persons from the Chamber and/or the suspension of the meeting.

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**Ron Smith**  
*Executive Member for Planning & Environment*  
*Chair of Planning Committee*  
*Councillor for Hawick & Hermitage*

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Mr Crawford Beveridge  
Chair of Planning Review Panel  
c/o Planning & Architecture Division  
Scottish Government  
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Dear Mr Beveridge

#### **SCOTTISH BORDERS LOCAL DEVELOPMENT PLAN: EXAMINATION REPORT**

Scottish Borders Council received the Examination Report into its Proposed Local Development Plan on 30 October 2015. A Briefing Session was held for Elected Members on 4<sup>th</sup> December and the full Council then considered its formal response to the Report at its meeting on 17 December 2015. The Council determined to accept the Reporter's recommendations, but in so doing also agreed that letters should be sent to the Chief Planner, the Chief Reporter and the Chairman of the Independent Panel of the Review of the Planning System to express its serious concerns on the process itself and on the outcomes from the process. This Council decision was unanimous and was therefore endorsed by all political parties.

Principal areas of concern were the time taken to undertake and complete the Examination, and the responses relating to renewables / wind energy and to housing numbers.

The Council submitted its Proposed Plan to the Scottish Government on 22 October 2014 and Examination formally started on 26 November 2014. The Council responded to a number of questions from the Reporter and took part in one 1-day hearing on the subject of housing numbers.

The initial target date set by the Lead Reporter for delivery of his report was 23 July 2015. This was later amended, first to mid-August 2015, then to September 2015, then to mid-October 2015. As noted above it was finally delivered on 30 October 2015 and published by the DPEA on 4 November 2015. The DPEA have not explained the reasons for delay.

This timeline is significantly beyond the Government expectation set out in Circular 6/2013 that such Reports should take around six months, and rarely exceed nine months. This delay is particularly unhelpful in the light of the Government requirement that Local Development Plans must be updated at least every 5 years, and the current Scottish Borders Local Plan will be 5 years old in February 2016. At this point Scottish Planning Policy makes it clear that the weight given to it will be reduced, in that material weight will be given to a presumption in favour of an application that contributes to sustainable development. The Council therefore wishes to express its serious concern that the lateness of the Examination Report could place the proper democratic planning process in jeopardy.

The Report largely rewrites the text and policy in relation to renewables / wind energy. The Council acknowledged during the Examination process that the spatial strategy had been overtaken by the publication of the 2014 Scottish Planning Policy. It offered to provide an updated version to the Reporter, but this was

not taken up. In large part these further proposed modifications are based on the Reporter's interpretation of national policy. The result is a generic style that fails to take account of the Council's substantial knowledge and experience on this matter. The modifications also remove the interpretation of the assessment criteria for planning applications which would have been helpful to all interested parties. It is of particular concern to the Council that these significant modifications have been devised without the benefit of a hearing into the matter. It is further noted that Circular 6/2013 makes it clear that it is not the role of the Reporter to make the Plan as good as it can be (in his terms), but only to modify those parts of the Plan that are clearly inappropriate or insufficient.

The Council wishes to express its serious concern on this issue because there is such limited scope to challenge the Reporter's conclusions. To do so would inevitably lead to legal challenge and a further delay to the Plan as a whole. Therefore, whilst the Council has concluded that it would not be to anyone's benefit to decline the Reporter's recommendations, it is of the opinion that local democratic principles should apply to the Local Development Plan process, and give greater scope for the Council to determine its own Local Development Plan on which it has undertaken wide consultation with the wider public and with professionals on all sides over a significant period of time. The intervention of the Reporter, so radically and so extensively, at this late stage in the process runs strongly counter to the Government's drive towards community empowerment, and undermines the democratic credibility of the 'Local' Development Plan. While we recognise the primacy of Scottish Planning Policy, we believe that it is for our team of planners to offer the solutions to allow this to be achieved locally.

Similar issues of principle apply to the treatment of housing land allocations where the Reporter has proposed that Supplementary Guidance should be prepared within one year of adoption to identify sites for a further 916 house units. This proposal is largely based on the Reporter's unilateral decision, against Council advice, to amend the baseline for the consideration of housing numbers from 2012 to 2014. This results in an artificial shortfall of housing land largely because the pace of development has not met the requirement set by the SESplan Strategic Development Plan (a requirement set by the Reporter into the SESplan SDP against advice of the member authorities). The consequence is that the LDP requirement not met rolls forward into the remaining requirement.

The Council has serious concerns therefore that the basis upon which the Proposed Plan was finalised and put forward for public representation has been significantly altered at the final stage in the process. Therefore, there has been no public scrutiny of these proposed modifications which could have a serious impact on the general public within the Scottish Borders. This Council does not consider it appropriate for the Reporter to amend key foundations of the Plan at Examination as it leads to a disenfranchisement of the public from key decisions that have a direct impact upon them. This view is supported by the Government's own desire to front load the planning process so that consultation is meaningful to the public.

Equally concerning is that the Council will go through the process of preparing Supplementary Guidance and bring forward additional land that may have to be removed at the next LDP because of the low housing requirement set by the Government-approved HNDA for the Scottish Borders. This has the potential to bring the planning process into disrepute with the public. It should also be noted that the requirement to produce the SG on housing will inevitably lead to a delay to the preparation of the next LDP in order to avoid unnecessary confusion on the part of the public, and this will put further pressure on future timescales.

The Council feels that it would be beneficial to discuss these issues further with the intention of feeding into the Review of the Planning system currently underway and producing a system that is properly responsive to the community agenda.

Yours etc.

CC Chief Planner, and Chief Reporter



Councillor Ron Smith  
Chair of Planning Committee  
Scottish Borders Council  
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25 January 2016

Dear Councillor Smith

## **SCOTTISH BORDERS DEVELOPMENT PLAN: EXAMINATION REPORT**

Thank you for your letter received on 8 January regarding the examination of the Scottish Borders Local Development Plan. You draw attention to Circular 6/2013 on *Development Planning* which states that examinations are expected to be concluded in 6 months and rarely to exceed 9 months and express concern that the examination in this case took almost a year.

I should make it clear at the outset that the examination in this case took longer than we would have wished and, for that, I apologise if this has led to difficulties for the council. The reason for the delay was, in part, due to pressure of work within this office: in the financial year 2014/15 DPEA concluded 13 development plan examinations (an unprecedented number in a single year), over 400 appeals, and reported to Scottish Ministers in more than 50 cases involving developments such as major housing proposals and onshore renewable energy projects. In the large majority of cases we have succeeded in meeting our targets.

Whether we are able to complete an examination in 9 months very much depends upon whether the reporters require further information, whether a hearing or hearings are necessary, the number of issues that the reporters need to consider, and whether the reporters identify any serious deficiencies in the plan. The length of the examination can also be affected by developments such as the publication of new national planning policy, as was the case with the publication of NPF3 and Scottish Planning Policy in July 2014, albeit the plan was submitted for examination after the publication of those policies.

The particular difficulties in this case were that the reporters identified two key areas in which they considered that the proposed plan did not comply with the new SPP, that is, the policy in relation to renewables/wind energy and housing land supply. As you say in your letter, the council accepted that its spatial strategy for wind farms had been overtaken by the publication of SPP and that the plan would require to be modified to bring it into line with national policy. In my view, non-compliance with SPP clearly falls into the category, referred

to in your letter and the circular, of a part of a plan which is inappropriate or insufficient. The reporter had extensive representations on this issue and considered that he had sufficient information to enable him to recommend modifications to the plan which would bring it into line with national policy and that a hearing session was not necessary.

So far as housing issues are concerned, the reporter heard evidence from both the council and those who had made representations to the plan about the adequacy of the housing land supply and had to reach a view on that conflicting evidence. The housing land requirement for the Scottish Borders is determined by the SESplan Supplementary Guidance. There is a statutory requirement that the LDP should be consistent with the relevant SDP. The fact that a new HNDA has been prepared for the Main Issues Report relative to SDP2 was not, in my view, a relevant consideration for the reporters. It is the current, adopted SDP with which the LDP must be consistent, rather than the emerging SDP2.

On the supply side the council had submitted to the examination its 2012 Housing Land Audit. At the hearing session it was noted that the council had recently published a more up to date Housing Land Audit and the reporter asked the council to update its Appendix 2 Update: Meeting the housing land requirement, to reflect the conclusions of the 2014 Housing Land Audit, leading to a further round of representations on this issue. Having considered those further representations the reporter concluded that, having regard to paragraph 3.8 of the SESplan SG, housing supply should be assessed by reference to the most recent Housing Land Audit.

That approach is entirely consistent with the conclusions reached in other examinations on similar issues.

A further factor leading to delay in completion of the report was the abnormally high number of issues (329) identified by the council. It is for the council to analyse the various representations made in relation to the plan and to group these into issues but it is not uncommon for us to discuss this process with councils prior to the submission of the plan for examination. I understand that, prior to the submission of the plan for examination, we suggested that the representations should be grouped into a smaller, more manageable, number of issues. This would have assisted greatly with the assembly and final editing of the report. We explained in our email to Mr Wanless dated 28 September 2014 that the cross-checking of issues for consistency was taking much longer than anticipated. We offered an apology for the delay and explained that the reporters were endeavouring to complete the report as quickly as possible.

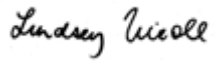
I note your concerns about the problems of bringing forward Supplementary Guidance to identify additional housing sites and the impact this may have on the timetable for preparation of the next LDP. I understand that you have discussed these issues with colleagues in Planning and Architecture Division and, as a result of those discussions, I have drawn reporters' attention to the option of recommending an early review of the plan in cases where they find a significant shortfall in the housing land allocations in a proposed plan.

I also note your concern about the binding nature of recommendations made by reporters and the fact that modifications of a substantial nature can be made at a late stage of the process for adoption of the plan. These are, of course, features inherent in the current system and I understand that colleagues in Planning and Architecture Division will be responding to you on the points you raise regarding the ongoing Review of Planning.

If there are any continuing concerns about the conduct of the examination (as opposed to the current policy or legislation governing examinations) I would be happy to meet to discuss these with you.

A copy of this letter goes to the Chief Planner.

Yours sincerely



Lindsey Nicoll  
Chief Reporter



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