

Item: 8

Policy and Resources Committee: 19 February 2019.

Orkney Transmission Connection and Infrastructure Project.

Governance Arrangements.

Joint Report by Chief Executive and Executive Director of Development and Infrastructure.

1. Purpose of Report

To consider governance arrangements in regard to Planning and other consenting aspects of the Orkney Transmission Connection and Infrastructure Project.

2. Recommendations

The Committee is invited to note:

2.1.

That the Orkney Transmission Connection and Infrastructure Project is designated as a national development in the Scottish Government's National Planning Framework 3.

2.2.

That, in terms of the Town and Country Planning etc. (Scotland) Act 2006, planning applications for national developments must be subject to a pre-determination hearing and determined by the full Council.

2.3.

That the regulatory consenting regime covering the Orkney Transmission Connection and Infrastructure Project consists of the following:

- Planning applications for the substation and switching stations.
- A marine license for the submarine cables.
- An application under Section 37 of the Electricity Act 1989 for the overhead power lines and underground cables.

It is recommended:

2.4.

That the Hearings Process for Determination of Planning Applications, attached as Appendix 1 to this report, be approved for Pre-Determination Hearings when such Hearings are required in terms of the Planning etc. (Scotland) Act 2006.

2.5.

That, as well as determining the planning applications submitted for the Orkney Transmission Connection and Infrastructure Project, the Council should also determine any responses made as a statutory consultee in regard to the marine license for the submarine cables and the application under Section 37 of the Electricity Act 1989 for the overhead power lines and underground cables.

2.6.

That, prior to the Pre-Determination Hearings, the Council should undertake unaccompanied site visits to the proposed substation at Finstown and the switching stations at Ellibister and St Margaret's Hope.

2.7.

That the Planning Committee – Site Visits procedure, attached as Appendix 2 to this report, be approved as guidance for the Council in respect of the site visits referred to at paragraph 2.6 above, together with site visits in respect of any future planning applications where pre-determination hearings are mandatory.

2.8.

That the Executive Director of Development and Infrastructure should arrange training, particularly for the benefit of Elected Members who have not previously had training/experience in planning matters, in order to allow participation in the consenting processes, detailed in paragraph 2.5 above.

3. Background

3.1.

To facilitate the connection of new renewable generation, Orkney will require the construction of new transmission infrastructure. The Orkney Transmission Connection and Infrastructure Project will consist of the following elements:

- A marine cable linking Mainland Scotland and Mainland Orkney; and also linking a number of the Orkney islands.
- A new substation at Finstown.
- An underground cable linking the Finstown substation to a cable landing site at Warebeth, west of Stromness.
- Construction and installation of 132kV trident wood pole overhead lines:
 - A north section from the Finstown substation providing a link to Westray and Costa Head.
 - A south section providing a link from the Finstown substation to Hesta Head and the south of Hoy.
- Two switching stations at Ellibister, north of Finstown and on South Ronaldsay to the south of St Margaret's Hope.

3.2.

In terms of planning, the High Voltage Electricity Transmission (various projects throughout Scotland including the Orkney project) is identified in the Scottish Government's National Planning Framework (NPF3) as a national development. The National Planning Framework is a spatial plan for the whole of Scotland and designation of a project as a "national development" effectively means that the need for the development has been established, provided the proposal complies with national and local planning policies.

3.3.

This report seeks to address governance issues associated with the proposals detailed above which, by virtue of their designation in the National Planning Framework, require a different approach in terms of their determination.

4. Consenting Regimes

4.1.

The regulatory consenting regime covering the elements of the Orkney Transmission Connection and Infrastructure project includes a marine licence application, three planning applications and a consent under Section 37 of the Electricity Act. Only the substation at Finstown, together with the switching stations at Ellibister and St Margaret's Hope, will be subject to planning applications under the Town and Country Planning Acts.

4.2.

Applications to install overhead power lines and underground cables are made to Scottish Ministers under Section 37 of the Electricity Act 1989 (processed and determined by Scottish Government Energy Consents Unit). The Council will be formally consulted as a statutory consultee when this application is submitted and, in terms of the Council's governance processes, determination of the Council's response lies with the Planning Committee.

4.3.

Elements of the Orkney Transmission Connection and Infrastructure project requiring installation of submarine cables require a Marine Licence from Scottish Ministers (processed and determined by Marine Scotland). The Council is a statutory consultee for Marine Licence applications and, in terms of existing procedure, responsibility for providing a Council response on such matters is delegated to the Executive Director of Development and Infrastructure.

5. Determination and Governance

5.1.

In terms of the determination of a planning application for a “national development” the full Council, and not a committee of the Council, must decide the application. In addition, pre-determination hearings are mandatory where a planning application is made for a national development. The same requirements also apply for a major development that is significantly contrary to the local development plan. This process is intended to increase the level of community engagement and involvement in the planning process. Since the introduction of this requirement in 2006, no such applications have been considered by the Council.

5.2.

The procedure to be followed in regard to mandatory pre-determination hearings is to be decided by the planning authority. The Council already holds pre-determination hearings for all planning applications presented to the Planning Committee. The Scheme of Administration includes a Hearings Process, attached as Appendix 1 to this report, and it is proposed that this same Hearings Process be adopted by the full Council as the basis for mandatory pre-determination hearings. Should this proposal be accepted, the Scheme of Administration will be amended to reflect this change. On a practical level this will mean that an alternative venue to the Council Chamber will have to be sought as there will not be enough capacity to accommodate a hearing process involving an as yet unknown number of participants and all elected members.

5.3.

In regard to the other elements of the development where the Council is a statutory consultee – Section 37 Electricity Act and Marine Licence applications – where responses are normally delegated to the Planning Committee or the Executive Director of Development and Infrastructure, it is considered that, in this particular case, where elements of a national development are subject to different regulatory consents, it would be appropriate to have all consultation responses determined by the full Council. This will provide an opportunity for all members to fully understand and participate in all consenting aspects of this very significant development proposal, whilst ensuring co-ordinated and cohesive consideration of all aspects of the development proposal.

5.4.

Procedures in place for the Planning Committee also allow for site visits to be undertaken as part of the formal decision-making process. These are detailed in Appendix 2 to this report. Generally, site visits are only undertaken where there are anticipated benefits over and above the assessment of the information presented to the Committee. Given the scale of the proposed substation at Finstown and the switching stations at Ellibister and St Margaret’s Hope, it is recommended that elected members undertake site visits to each of these three locations prior to the pre-determination hearing.

5.4.1.

In addition, for any future planning applications where pre-determination hearings are mandatory, it is proposed that site visits be undertaken. Again, should these proposals be accepted, the Scheme of Administration will be amended to reflect this change.

5.5.

Finally, it is generally accepted that Elected Members should not determine planning applications unless they have undertaken training on planning matters. Members who sit on the Planning Committee and the Local Review Body already have experience of dealing with planning matters and have received training on planning. Further training will be provided, particularly for the benefit of members who have not previously had training/experience in planning matters, in order to allow participation by all members in the consenting processes for the Orkney Transmission Connection and Infrastructure Project.

6. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

All resources associated with supporting the proposed governance arrangements, mainly in the form of staff time, will be contained within existing service revenue budgets.

8. Legal Aspects

The existence of sound governance arrangements reduces the risk of exposure by the Council to legal challenge in respect of the process by which a decision has been reached.

9. Contact Officers

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Karen Greaves, Head of Executive Support, extension 2202, Email karen.greaves@orkney.gov.uk

Hazel Flett, Senior Committees Officer, extension 2208, Email hazel.flett@orkney.gov.uk

Gavin Barr, Executive Director of Development and Infrastructure, extension 2301, Email gavin.barr@orkney.gov.uk.

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10. Appendices

Appendix 1 – Hearings Process for Determination of Planning Applications.

Appendix 2 – Planning Committee – Site Visits.

Hearings Process for Determination of Planning Applications

Terms of Reference

1. The following procedure shall be adopted for the conduct of all meetings of the Planning Committee involving the 'hearings process' in respect of the determination of planning applications. The 'hearings process' will operate in any circumstances where it has been deemed that an application should be determined by the Committee.

Order of Business

2. At the start of the meeting, and thereafter as necessary, the Chair will outline the 'hearings process' by explaining the procedure to be followed.

3. Officials representing the Executive Director of Development and Infrastructure will present the report by giving a description of the proposed development and site, together with a summary of the relevant statutory and Development Plan provisions, an assessment of any valid objections made, and clarification of the recommendations and conditions.

4. At the discretion of the Executive Director of Development and Infrastructure, in consultation with the Chair, officers from Council services, and/or representatives of agencies such as Scottish Natural Heritage, Historic Scotland, Scottish Environment Protection Agency and Scottish Water, may be invited to provide additional professional guidance in respect of technical matters.

5. Objectors will then be given an opportunity to present their case; thereafter members of the Committee may ask questions of objectors for clarification: where no objectors are present, this condition shall not apply.

6. The applicants will then be given an opportunity to present their case, which may include a response to any matter raised by objectors; again, members of the Committee will have the opportunity to ask questions of the applicants for clarification: where no applicants are present, this condition shall not apply.

7. Members of the Committee will then have the opportunity to ask any final questions, and may give any party present the opportunity to comment further on relevant matters raised during the hearings process.

8. If necessary, and at the discretion of the Chair, officials will be given the opportunity to address any salient points raised by any party present.

9. Thereafter the 'hearings process' will be complete. Committee members will then proceed to determine the application.

Notes for Guidance and Information

10. Certain objections are not valid in planning terms, and cannot be considered by Councillors when determining the outcome of a planning application. Examples of these are:

- Issues covered by other laws, such as Licensing or Building Standards.
- Private legal disputes over boundary or access rights, or feu superior's consent.
- The background or motives of the developer.
- Concerns that the proposal is speculative, or only to make money.
- Loss of financial value of property.
- Loss of a view.

11. Applicants and objectors will each be allotted five minutes to make their presentation, which should focus on matters that have already been raised in writing and should not introduce any new material. The five minute period is the total time available to each side and must be divided amongst those wishing to speak for that side (please refer to paragraph 18.3 below).

12. In exceptional circumstances, and at the discretion of the Chair, the time allotted to applicants and objectors for making presentations may be extended depending, for example, on whether the applications are of a particularly complex nature or where there are large numbers of objectors present. The Chair's discretion, if applicable, can only be notified at the start of each item during the meeting.

13. Applicants and objectors who wish to circulate photographs and/or drawings, or to show PowerPoint slides, as part of their presentation at the meeting, must submit the information to the Clerk to the Committee no later than 16:00 two working days prior to the meeting (e.g. 16:00 on Monday for a meeting on Wednesday). In exceptional circumstances, and at the discretion of the Executive Director of Development and Infrastructure, this deadline may be extended on request. Applicants and objectors may submit information to the Clerk by e-mail (details below), or in person at the Council's Customer Services Reception. It is the responsibility of applicants and objectors to ensure that all such information is received personally by the Clerk, who will confirm receipt.

14. In cases where key agencies, such as Scottish Natural Heritage, Historic Scotland, Scottish Environment Protection Agency and Scottish Water, have formally objected to an application and have sent representatives to the meeting, they will normally be afforded additional time to present their objections and the applicants will normally be afforded additional time to respond to any points raised.

15. Objectors who wish to be heard are encouraged to appoint one or a small number of spokespersons to present their views to concentrate on the matters of main concern to them, and to avoid repetition.

16. Applicants and objectors must address all remarks through the Chair. Cross-examination of any party present shall not be permitted.

17. Applicants and objectors may present their case personally to the Committee, or may be represented by any person of their choice, other than an elected member (i.e. a Councillor) of Orkney Islands Council. In the event that a Councillor is an applicant or objector in his own right, this condition shall not apply.

18. If applicants (and/or their agents, if applicable) or objectors are unable to attend the meeting, the following options are available to them:

18.1. Ask someone to represent them at the meeting and speak on their behalf. Anyone other than a Councillor is eligible to represent applicants or objectors in this way. For example, both applicants and objectors can ask friends, relatives, neighbours, solicitors, architects, agents, etc. to represent them, although professional representation, such as by a solicitor, may result in a financial cost.

18.2. In addition to their original objection submitted during the initial consultation period, objectors can submit a further letter, of unrestricted length, detailing their objections. Applicants may also submit a letter of representation outlining the reasons why they feel the application should be granted. All such representations should be received as early as possible.

18.3. Objectors, or applicants, can submit a further written representation, limited to 250 words, summarising their case. Such representations would be read out by the Clerk to the Committee at the meeting at the point where the applicants or objectors would, if present, be asked to make their representations. All such representations must be received by the Clerk no later than 16:00 on the day prior to the meeting. With reference to paragraph 11 above, objectors who are present at the meeting will be entitled to make full use of the time available, and any additional time taken for the Clerk to read out short statements on behalf of objectors who are not present would be added to the time made available to the applicants to make their presentation.

19. The Council reserves the right to edit all letters of objection or representation received to ensure that applicants, objectors, and indeed the Council, do not breach any legislation in respect of libel or slander. Please also note that further objections in terms of the issues detailed at paragraph 10 above will not be made available to Councillors or read out to them at the meeting.

20. For the avoidance of doubt, information supplied to the Clerk, in terms of paragraphs 13 and 18.2 above, will be circulated to Councillors, applicants, agents and objectors in advance of the meeting.

Should applicants or objectors have any queries in respect of the hearings process, advice is available from the Clerk to the Committee:

Planning Committee – Site Visits

Site visits form part of the formal decision making process and the Council's Standing Orders and Members' interests provisions will apply.

1. Purpose of Site Visit

- To view the site of the planning application under consideration together with all surrounding land.
- To assist the appraisal of the constraints and opportunities afforded by the proposed development, and its potential impact on surrounding land.
- To allow the officers to point out material considerations and answer questions from members of the Committee.

2. Sites to be visited, when and by whom

2.1. Generally, site visits will only be undertaken where there are anticipated benefits over and above the assessment of the information presented to Committee, and where the majority of the Committee support the need for a site visit. In addition, in instances where the application is of a particularly complex or contentious nature, at the discretion of the Executive Director of Development and Infrastructure, in consultation with the Chair and Vice Chair of the Planning Committee, a site visit may be arranged prior to the first meeting of the Committee to determine the application. The site visit will be undertaken as close as possible to the date on which the Committee will meet to determine the application.

2.2. The site visit will be attended by the following:

- All members of the Planning Committee present at the Committee which determined the need for a site visit.
- The Clerk to the Planning Committee.
- The Head of Planning and Regulatory Services.
- The Planning Manager (Development Management).
- The Planning Case Officer.
- The Solicitor.
- Any other relevant officer of Orkney Islands Council, where necessary.

2.3. In a very limited number of cases, it may be necessary for the applicant (or agent) to be present on site, eg for safety or access reasons, but at no time will they be allowed to discuss the merits of the planning application with members of the Planning Committee or seek advice or comment from Council Officers other than matters of fact.

3. Site Visit Arrangements

3.1. Committee Services will give notice to members of the Planning Committee and relevant officers advising that an unaccompanied site visit will take place. The notice will identify an unambiguous meeting point and indicate the time when parties are to meet. The date, time and place of the meeting at which the Committee will determine the planning application will also be included in this notice. Interested parties (applicant, consultees and those parties lodging representations) will also be informed of the site visit but will not be invited to attend.

3.2. Where arrangements require to be made for a site visit to take place on land which does not form part of the application site, Committee Services will make sure that the occupier of the land is made aware in advance of the proposed site visit.

3.3. If any detailed travel arrangements are necessary, for example visits to the Isles, these will be intimated by Committee Services to Members and Officers in advance of the site visit.

4. Site Visit Procedure

4.1. Members of the Committee shall arrive at the meeting point at or just before the appointed time. If one or more of the expected participants is not present on time, any delay to the start of the site visit will be at the Chair's discretion.

4.2. The Clerk to the Committee will note the names of those members of the Committee present at the site visit as only those members will be able to take part in the determination of the planning application.

4.3. The Chair will call Members of the Planning Committee present to order. The Chair will explain the purpose of the site visit and remind all parties present that it is not possible to discuss the merits of the proposed development during the visit.

4.4. The Chair will then ask the Planning Case Officer to describe the proposal to Members, identifying relevant features of the site, including site boundaries, access arrangements, location of neighbouring properties etc. Through the Chair, Members may seek clarification from the Planning Case Officer on relevant site features.

4.5. Members may want to view the application site from neighbouring land or buildings but throughout the formal business of the site visit the visiting party will stay together as a group. When pointing out the location of the proposed development/ physical features on site, participants must address the Committee as a group (not as individual Members) through the Chair.

4.6. On conclusion of the site visit, the Chair will thank everyone for their attendance and remind participants of the place and time of the meeting when the Committee will determine the review. The Chair will then indicate that the site visit has concluded.

5. Planning Committee

5.1. On occasions when the site of the planning application under consideration is remote from the Council Offices, School Place, Kirkwall, the meeting of the Planning Committee to determine the application may take place in an alternative location from the Council Chamber immediately following the site visit.

5.2. In accordance with Standing Order 31 – “Meetings conducted by Hearings”, a member of the Committee may only participate and/or vote on the determination of an application if s/he has been present throughout consideration of the whole item of business, which includes the site visit.

5.3. If Members identify issues during the site visit that may be decisive but have not been addressed in the report to Committee, in the interests of natural justice the applicant and other interested parties will require to be invited to comment on these matters before a final decision is reached.