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HIERARCHY OF DEVELOPMENTS

■ circular

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Hierarchy of Developments

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Scottish Planning Policy (SPP) is the statement of Scottish Government policy on nationally important land use planning matters.

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

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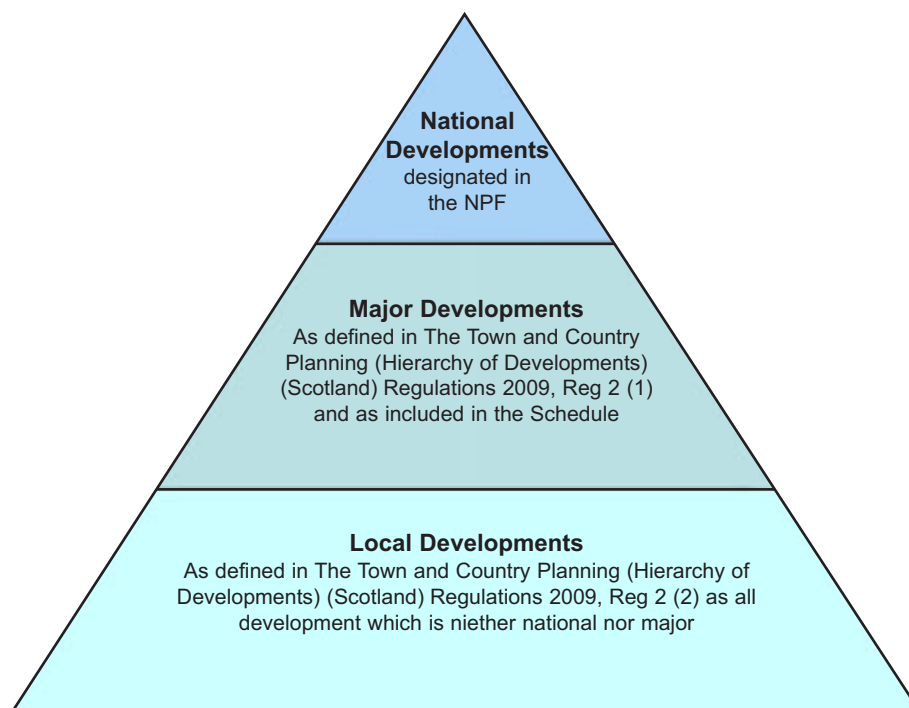
Planning Advice Notes provide advice and information on technical planning matters.

Further information in the Scottish Government's role in the planning system is available on <http://www.scotland.gov.uk/Topics/Built-Environment/planning>

INTRODUCTION

1. The hierarchy is at the heart of the modernised planning system. The [Planning etc. \(Scotland\) Act 2006](#)¹ (the 2006 Act) introduced the hierarchy for planning in primary legislation. The hierarchy will help deliver Scottish Minister's aim that the planning system should respond in a more proportionate and efficient way to proposals that come before it.
2. It will ensure that applications are dealt with in an appropriate way to their scale and complexity, allowing decisions to be taken at the most appropriate level. Part 3 Section 5 of the 2006 Act inserts a new section 26A into the Town and Country Planning (Scotland) Act 1997 which defines the three categories in the hierarchy of development to which all developments will be allocated:-
 - national development;
 - major development; and
 - local development.

The hierarchy is reflected in the diagram below.



¹ The Planning etc.(Scotland) Act 2006

http://www.opsi.gov.uk/legislation/scotland/acts2006/pdf/asp_20060017_en.pdf



3. This circular accompanies **The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009**² (the Hierarchy Regulations) which came into force on 6 April 2009. These regulations have been made by Scottish Ministers in exercise of the powers conferred by section 26A(2) of the Town and Country Planning (Scotland) Act 1997 and of all other powers enabling them to do so.

APPLICATION OF THE HIERARCHY – DEVELOPMENTS / GEOGRAPHIC / APPLICATIONS AND CONSENTS

4. The Hierarchy Regulations apply to all developments across Scotland, and to all land and waters covered by the Planning Acts. The reference to waters includes marine territorial waters (out to the 3 nautical mile limit) around Scotland, but only in so far as it relates to marine fish farming.
5. The 2006 Act requires regulations to describe “classes of development”. The hierarchy will be applied to applications for planning permission; applications for planning permission in principle and applications for approval of matters specified in conditions. It does not relate to the review of old mineral permissions, or listed building consent.
6. The hierarchy allows a proportionate approach to be used for dealing with planning applications depending on which of the three categories a development falls within. The procedures for making and handling planning applications vary between the three categories. Procedural matters including the making and handling of different categories of development are explained in Circular 4/2009 which accompanies the Development Management Procedure Regulations³.

² The Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2009
Scottish Statutory Instrument 2009 No 51
http://www.oqps.gov.uk/legislation/ssi/ssi2009/ssi_20090051_en_1

³ The Town and Country Planning (Development Management Procedure) (Scotland)
Regulations 2008 Scottish Statutory Instrument 2008 No 432
http://www.oqps.gov.uk/legislation/ssi/ssi2008/ssi_20080432_en_1

NATIONAL DEVELOPMENTS

7. Section 3A(4)(b) of the Act provides that the National Planning Framework (NPF) may describe a development and designate it, or a class of development and designate each development within that class as a “national development”.
8. Scottish Ministers are responsible for the NPF which is the long term strategy for the development of Scotland over the next 25 years. The [2006 Act](#) put the NPF on a statutory footing. This means that it now provides a national context for development plans as well as informing the ongoing programmes of the Scottish Government, public agencies and local authorities. Scottish Ministers are committed to reviewing the NPF every four years.

MAJOR DEVELOPMENTS

9. Section 26A(2) of the Act gives Scottish Ministers powers to make regulations to describe classes of development other than national developments and assign each class to either “major developments” or “local developments”.
10. The Act prescribes that it is Scottish Ministers who are to describe classes of major and local development. There is no scope for local interpretation of what constitutes a major development or local development either by planning authorities, by applicants or by other stakeholders in the planning system.
11. Regulation 2(1) of the Hierarchy Regulations states that classes of development belong to the “major development” category where any applicable threshold or criterion in Schedule 1 of the regulations is met or exceeded in relation to that class of development. The Schedule of Major Developments in the Hierarchy Regulations sets out nine ‘classes’ of major developments, each with a description and relevant threshold or criteria. References to ‘classes’ in the Hierarchy Regulations refer to classes in the Schedule to those regulations.



Extensions

12. Regulation 2(1)(b) has the effect that an extension whether to an existing major or local development is only to be treated as major where the extension alone would meet or exceed the relevant appropriate threshold or criteria. The EIA Regulations at paragraph 21 of Schedule 1 already contains an equivalent provision for those types of developments. Some examples are provided below:-

Examples		Extension	Major Y/N	Comment
Existing wind farm with generating capacity of : [Class 4 threshold 20MW]	20MW existing "major"	20 MW	Y	Extension in itself meets the threshold in Class 4.
	a 20MW existing "major"	10 MW	N	Although this is an existing major development, the extension itself is not a major development.
	- 15 MW existing "local"	20 MW	Y	Extension in itself meets the threshold in Class 4.
	15 MW existing "local"	5 MW	N	Although the combined windfarm would now meet the threshold. The extension itself is not a major development.
Existing shop [Class 9 threshold 5,000sqm]	5,000 sqm existing "major"	5,000 sqm	Y	Extension in itself meets the threshold in Class 9.
	- 5,000 sqm existing "major"	2,000 sqm	N	Although this is an existing major development, the extension itself is not a major development.
	2,000 sqm existing "local"	5,000 sqm	Y	Extension in itself meets the threshold in Class 4.
	2,000 sqm existing "local"	3,000 sqm	N	Although the combined floorspace would now exceed the threshold in Class 9, the extension in itself is not a major development.

Site

13. In the Schedule of Major Developments the term 'area of the site' is used for measuring some of the thresholds or criteria against. Regulation 1(2) defines site as "the land to which development relates". Development is defined in section 26 of the 2006 Act as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, or the operation of a marine fish farm", subject to a set of seven exceptions of operations or uses of land which do not constitute development such as local authority or statutory undertakers works.
14. Accordingly references to 'site' in the Hierarchy Regulations are to solely the area to which development relates. A larger area of land may be in the ownership of the applicant, but if this is not the subject of development in the particular application it should not be taken into account in measuring whether a development is "major".

15. Developments which are for change of use and do not involve construction will typically not be “major developments” since Classes 2-6 and 9 in the Schedule of Major Developments specifically refer in the description of development section to “construction”.

LOCAL DEVELOPMENTS

16. Local developments are the third of the three categories in the hierarchy. Regulation 2(2) defines them as all development other than national developments and major developments. This category may encompass a sub-set of minor developments which have permitted development rights and do not require a formal planning application.

MINISTERS POWER TO DIRECT THAT A PARTICULAR LOCAL DEVELOPMENT SHOULD BE DEALT WITH AS IF IT WERE A MAJOR DEVELOPMENT

17. Scottish Ministers have a general power under section 26A(3) of the Act to direct that a particular local development should be dealt with as if it were a major development. In the particular cases where this power is used Scottish Ministers would issue in writing a direction to the relevant planning authority. It would identify the development, stating that it should be dealt with as if it were a major development and citing the power which Ministers are using to make the direction. It is not intended that this power would be used to require pre-application consultation of a proposal which was already before the planning authority.

PERMITTED DEVELOPMENTS

18. For certain developments there is no need to submit a planning application because permission has been granted in advance on a general basis to promote efficiency and remove administrative procedures. This permission is usually referred to as ‘permitted development rights’. Typically powers giving permitted development rights are used for minor non-contentious developments for example certain householder changes and other minor operations which would fall within the ‘local development’ category. There may however be some developments with permitted development rights, that reach a threshold for major development, such as operations carried out by statutory undertakers. It is important to note where a proposal sits within the hierarchy does not affect any permitted development rights which may apply.



SCHEDULE OF MAJOR DEVELOPMENTS

19. Schedule 1 of the regulations contains the classes of major development. Further information on each class is provided below.

<i>Description of development</i>	<i>Threshold or criteria</i>
1. Schedule 1 development Development of a description mentioned in Schedule 1 to the Environmental Impact Assessment (Scotland) Regulations 1999 (other than exempt development within the meaning of those Regulations).	All development.

20. All EIA Schedule 1 developments are categorised as “major” developments. The Environmental Impact Assessment (Scotland) Regulations⁴ lists the Schedule 1 developments which are subject to EIA procedures.
21. As with regulation 2(1)(b) of the Hierarchy Regulations on extensions, the EIA Regulations contain a provision which has the effect that any change to, or extension of, development listed in Schedule 1 of the EIA Regulations which in itself meets the thresholds, or description of a Schedule 1 development, would be classed as a major development.

<i>Description of development</i>	<i>Threshold or criteria</i>
2. Housing Construction of buildings, structures or erections for use as residential accommodation.	(a) the development comprises 50 or more dwellings; or (b) the area of the site is or exceeds 2 hectares.

22. The first part of the thresholds relates to where the development has 50 of more dwellings, this includes flats as well as houses. The second part of the threshold is for cases where there may be fewer than 50 dwellings but the area of the site is or exceeds 2 hectares. When considering whether a housing proposal is a major development under the terms of the second threshold only the area subject to the construction of buildings, structures or erections should be taken into account.

⁴ The Environmental Impact Assessment (Scotland) Regulations 1999
<http://www.hmso.gov.uk/legislation/scotland/ssi1999/19990001.htm>

<i>Description of development</i>	<i>Threshold or criteria</i>
<p>3. Business & General Industry, Storage and Distribution</p> <p>Construction of a building, structure or other erection for use for any of the following purposes–</p> <p>(a) as an office;</p> <p>(b) for research and development of products or processes;</p> <p>(c) for any industrial process; or</p> <p>(d) for use for storage or as a distribution centre.</p>	<p>(a) the gross floor space of the building, structure or other erection constructed as a result of the development exceeds 10,000 square metres; or</p> <p>(b) The area of the site is or exceeds 2 hectares.</p>

23. This class relates only to the construction of business developments such as offices, factories and distribution centres. It also covers the construction of premises for any "industrial process", which is defined in regulation 1(2).
24. This class primarily covers new construction rather than changes of use, unless they involve construction of structures or other erections. It relates to where the gross floor space constructed as a result of the development exceeds 10,000 square meters. Equally, the threshold relates to where the area of the site is or exceeds 2 hectares, as described in paragraphs 13 to 15.

<i>Description of development</i>	<i>Threshold or criteria</i>
<p>4. Electricity Generation</p> <p>Construction of an electricity generating station.</p>	<p>The capacity of the generating station is or exceeds 20 megawatts.</p>

25. This includes all types of electricity generating stations including fossil fuel power plants and all types of renewables generating stations, a definition of generating station is provided in the Electricity Supply Regulations 1988⁵.
26. The following developments are part of a different consent regime under the 1989 Electricity Act⁶ and are governed by those procedures:

offshore wind farms and generating stations wholly or mainly driven by water (such as hydroelectric, wave or tidal generating stations);	in excess of 1 megawatt MW
onshore wind farms and power stations that are not wholly or mainly driven by water (such as coal/gas fired or nuclear plant);	in excess of 50 megawatts (MW)

⁵ Electricity Supply Regulations 1988
http://www.opsi.gov.uk/si/si1988/Uksi_19881057_en_2.htm

⁶ Electricity Act 1989 http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890029_en_1.htm



<i>Description of development</i>	<i>Threshold or criteria</i>
5. Waste Management Facilities Construction of facilities for use for the purpose of waste management or disposal.	The capacity of facility is or exceeds 25,000 tonnes per annum. In relation to facilities for use for the purpose of sludge treatment, a capacity to treat more than 50 tonnes (wet weight) per day of residual sludge.

27. This applies to all types of waste management facilities whether for recycling, processing or other form of waste management or disposal. In cases of facilities for recycling solid waste, the threshold is where the facility has a capacity of 25,000 tonnes or more per annum. In cases of waste water management facilities for the purpose of sludge treatment, the threshold is 50 tonnes (wet weight) per day of residual sludge.

<i>Description of development</i>	<i>Threshold or criteria</i>
6. Transport and infrastructure projects Construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines.	The length of the road, railway, tramway, waterway, aqueduct or pipeline exceeds 8 kilometres.

28. This class covers the construction of new or replacement roads, railways, tramways, waterways, aqueducts or pipelines. In some instances such proposals may be progressed through the Transport & Works (Scotland) Act 2007⁷ system.
29. In relation to cycleways or walkways which are legally constructed as roads so fall within the description of development in this class, which exceed the 8 kilometre threshold these would also be classified as a "major development".

<i>Description of development</i>	<i>Threshold or criteria</i>
7. Fish Farming The placing or assembly of equipment for the purpose of fish farming within the meaning of section 26(6) of the Act.	The surface area of water covered is or exceeds 2 hectares.

30. This class is for fish farming including for finfish and shellfish. The definition of **equipment** is provided at section 26(6) of the 1997 Act. This includes tanks, cages, long-lines and other types of equipment such as feed barges for use in fish farming.

⁷ Transport and Works (Scotland) Act 2007

http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070008_en_1

31. The threshold relates to where any of these types of equipment cover a **surface area** of water of 2 hectares or more. It specifically relates to the surface area of water and not to any sub-surface lines or moorings, or other equipment, which could cover a larger area.
32. This class applies to all **waters** covered by the Planning Acts, both freshwater and those within Scotland's marine territorial waters (out to the three nautical mile limit).

<i>Description of development</i>	<i>Threshold or criteria</i>
8. Minerals Extraction of minerals	The area of the site is or exceeds 2 hectares.

33. This class for Minerals relates specifically to the **extraction of minerals** (including underground workings). It does not include the storage of minerals or other types of mining operations which may fall within Class 9 of the hierarchy. In the case of an application for a new site, the area against which the threshold is measured, should only be the area where extraction is proposed.
34. In the case of an existing major minerals site which has consent, where the operator wishes to put in an application for an extension, only the proposed new area of extraction should be taken into account in determining whether the extension application is for a "major" or "local" development.

<i>Description of development</i>	<i>Threshold or criteria</i>
9. Other Development Any development not falling wholly within any single class of development described in paragraphs 1 to 8 above.	(a) The gross floor space of any building, structure or erection constructed as a result of such development is or exceeds 5,000 square metres; or (b) The area of the site is or exceeds 2 hectares.

35. This class covers any development not falling wholly within any of the other classes of major development. This would include, but is not limited to, retail, leisure and entertainment, education, healthcare, community facilities, transport interchanges, water and drainage developments and projects.
36. This class also covers mixed use projects, whether the project involves a combination of developments described in the other paragraphs, eg a mixed housing (Class 2) and business (Class 3) scheme, or a mixed use project which includes different uses which have not been listed in classes 1 to 8.

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