

Planning (Scotland) Bill

1.0 EXECUTIVE SUMMARY

- 1.1 This Bill stems from the review of planning which started in September 2015 with the appointment of an independent panel made up of users of the planning system. The review seeks to drive a wide range of improvements aimed at strengthening and simplifying the planning system to ensure it better serves the needs of communities and the economy. The Bills provisions seek to improve the system of development planning in Scotland, give people a greater say in the future of their places and support the delivery of planned development.
- 1.2 Some of the key aspects of the Bill are its provisions in relation to the system of development plans; the opportunities for community engagement in planning; the effective performance of planning authorities functions; and a new way to fund infrastructure development.

RECOMMENDATIONS

- 1.3 It is recommended that Members endorse the officer response which has been sent to the Scottish Parliament as set out in appendix 1 of this report

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2.0 INTRODUCTION

- 2.1 This Bill stems from the review of planning which started in September 2015 with the appointment of an independent panel made up of users of the planning system. The review seeks to drive a wide range of improvements aimed at strengthening and simplifying the planning system to ensure it better serves the needs of communities and the economy. The Bills provisions seek to improve the system of development planning in Scotland, give people a greater say in the future of their places and support the delivery of planned development.
- 2.2 Some of the key aspects of the Bill are its provisions in relation to the system of development plans; the opportunities for community engagement in planning; the effective performance of planning authorities functions; and a new way to fund infrastructure development.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that Members endorse the officer response which has been sent to the Scottish Parliament as set out in appendix 1 of this report

4.0 DETAIL

- 4.1 The Planning Bill has been developed through an extensive engagement and consultation exercise across a full range of stakeholders, including CoSLA, and individual planning authorities, representatives from industry and the general public. This culminated in the Scottish Governments consultation paper "Places, people, and planning" in January 2017. The paper set out four main areas of change, based around the themes of; Making Plans for the Future; People make the system work; Building more homes and delivering infrastructure; and Stronger leadership and smarter resourcing. The PPSL Committee considered a report on this paper and endorsed a consultation response on behalf of Argyll and Bute Council in March 2017. The responses to this consultation were analysed and a position paper published by the Scottish Government in June 2017. Following on from this further analysis, a series of technical papers and stakeholder workshops have been held, and have been used to help inform the content of the draft Bill and the wider progress of the planning review programme.

- 4.2 There are four main parts to the proposed Bill, the first is development planning. There is widespread support for maintaining a plan lead system, and for it to be strengthened to increase certainty about future development and investment. This can ensure that the plan can shape the future of places for the benefit of communities. In order to do this plans must be based on a robust and transparent evidence base informed by open and democratic debate and have a clear path to delivery. The Bill therefore seeks to provide a more streamlined and less procedure heavy system. The National Planning Framework will be extended to include Scottish Planning Policy, and its status as part of the development plan for any area clarified by amending Section 3A of the Act. The enhanced status of the combined NPF and SPP will help streamline the system by removing the need for local development plans to restate national policy. The requirement that the NPF be reviewed every 5 years will be extended to 10 years. The expanded NPF will incorporate a more focused strategic planning element at the regional scale in addition to a national focus. There will be a new duty on planning authorities to assist Scottish Ministers in preparing the NPF, provide specified information and if required by Scottish Ministers to co-operate with other planning authorities to provide this information. This approach reflects the Bills proposals to remove the requirement to prepare strategic development plans for the four city regions. Instead the Bill proposes that authorities should have the scope and flexibility to determine the best ways for them to work together in bespoke regional partnerships, covering shared interests and duties to participate in production of the NPF.
- 4.3 For LDP's the Bill envisages giving them a greater focus on place and delivery. Strengthening the national level of planning policy will reduce the need for repetition and detailed policy wording within Local Development Plans. It is envisaged that this will reduce the time taken to prepare LDP's and improve their relevance to communities by ensuring that there is a much stronger focus on spatial planning and place. The more detailed provisions for LDP include: extending the timescale from 5 to 10 years; requiring the LDP to take in to account the local outcome improvement plan (LOIP) for the plan area; and removing the requirement for the LDP to contain its own separate vision statement for its area, but instead reflect those of the LOIP. The requirement to produce a Main Issues Report will be removed. Instead a single draft Proposed Plan is proposed with a longer consultation period and more scope for the planning authority to amend to reflect views of those responding to the consultation.
- 4.4 At present LDP are subject to independent examination prior to adoption of the plan where objections are received. The new Bill proposes to improve the examination process by frontloading some of the key decisions to ensure that there is early discussion and agreement of the outcomes that the plan should seek to achieve. There will therefore be a requirement for planning authorities to produce an Evidence Report to ensure that the evidence base is clearly set out and used as the basis for an early "gatecheck" of the plan. This will be a new frontloaded step in the examination process, whereby a Reporter will have the scope to approve the report or to recommend additional preparatory work. This could include; agreement on the amount of housing land required in the plan,

scoping of the strategic environmental assessment of the plan, or information on the capacity of the infrastructure of the area to accommodate additional development.

- 4.5 Other changes to the LDP system include removing the provision for statutory supplementary guidance, although there will still be scope for non- statutory guidance or advice to be a material consideration. The Bill will also allow the definition of Key agencies to be widened through Regulations, and place duties on them to participate in the development plan process, and could include for instance private sector infrastructure providers.
- 4.6 One of the key aspects of the proposed reforms is to establish the LDP's role as supporting and delivering development and promoting a collaborative approach to development planning and informing investment decisions. Greater emphasis on this is to be achieved by requiring Action Programmes which are currently prepared to accompany LDP's to be replaced by Delivery Programmes, which are to be agreed by the local authority as a whole, kept updated and reviewed regularly. The Bill proposes that there will be a requirement for the Chief Executive and the Council to sign off the delivery programme to demonstrate awareness and commitment to delivering its content, closing the gap between proposals in the plan and development on the ground.
- 4.7 The Bill will also enable local communities to produce Local Place Plans (LPP) and provide for them to be included as part of the development plan. The aim is to improve community engagement in planning and enable communities to take a proactive role in planning their future. Planning should reflect the aims of the communities it seeks to serve, and it's also important for LPP to support the LDP. It's expected that LPPs will link with wider Community Planning work including alignment with local outcome improvement plans. Where an LPP has been prepared, if it is submitted to the planning authority, then it will need to have regard to the LPP when preparing the LDP, this could either be via an amendment to an existing plan or at a future review of it. If an amendment to the LDP is proposed then it would be subject to standard LDP procedures, including independent examination where Scottish Ministers view it as a significant change.
- 4.8 The Scottish Government has carried out a review of Simplified Planning Zones, (SPZs) and Argyll and Bute Council are participating in a pilot study to see how these can be made to work better. The Bill proposes to replace SPZs with Simplified Development Zones (SDZs), and extend their remit to enable them to be designated in Conservation Areas and National Scenic Areas for example, and also to extend the grant of planning permission for the types of development specified in the scheme, to include other consents such as conservation area and listed building consents and also road construction consents in circumstances where it would be appropriate to do so. The Bill envisages significant potential for SDZs to lead and facilitate development by front loading the planning process. It therefore proposes that there should be a requirement for planning authorities to periodically report on how they have considered making schemes, and also to introduce a duty on authorities to consider making schemes on request, with requirements to report to Scottish Ministers, who

would then have scope to call in schemes or to direct that schemes be made or altered.

- 4.9 In relation to development management the Bill proposes a number of technical changes which aim to improve efficiency of the process, these include: Removal of recovery of advertisement cost for applications as it is to be incorporated in fees; widening the scheme of delegation to other types of applications such as advertisement consent; and allowing applications for the modification or discharge of planning obligations to be granted in part or subject to amendments.
- 4.10 The Bill also proposes to make changes to the provisions for pre application consultation (PAC) with local communities for national and major applications. The changes will require an application to be submitted within 18 months of the PAC notice, and will also allow minor changes that may require a new planning application to be made to use the original PAC rather than require the consultation exercise to be run all over again. While these changes are welcome more effective evidence of public engagement and relevance to the application would be demonstrated if the requirement to submit the application was within 12 months of the PAC rather than 18 months as proposed.
- 4.11 It is also proposed to simplify and clarify the duration of planning permission, and re-introduce the requirement to set the duration of a planning consent by condition. This is in order to increase transparency for applicants and communities. The Bill will also make provision for the default timescales for implementation of the consent to be varied by planning authorities as appropriate to the particular development proposed. Future guidance on these matters from the Scottish Government is expected to ensure that focus on delivery of development is maintained when considering the duration of planning permissions. Allied to this the Bill proposes to streamline the process for serving completion notices and will not require unopposed notices to be referred to and confirmed by Scottish Ministers.
- 4.12 The Bill seeks to vary the regulations which allow Scottish Ministers to set planning fees, this may enable more flexibility, such as enabling some discretionary charging, so that in some instances authorities will have the ability to reduce or waive fees. These changes may also extend to allowing higher fees to be set for retrospective applications, and it is also proposed to increase the effectiveness of enforcement through increase in the level of fines, and by improving the ability of planning authorities to recover expenses associated with ensuring compliance with an enforcement notice.
- 4.13 In order to justify increased planning fees and monitor the effects of additional investment in the planning service, the Bill seeks to introduce new provisions to assess the performance of planning authorities and to intervene where this is unsatisfactory. The Bill would introduce a statutory requirement for all planning authorities to submit an annual performance report in a form prescribed by Scottish Ministers, it is presumed from the detail available that this would be a document similar in nature to the existing annual Planning Performance Framework submission. The draft legislation also makes provision for Scottish

Ministers to appoint a person who will monitor the performance of planning authorities and how they carry out their functions as well as providing advice on ways in which they might improve their performance. Provision is also made for the appointment by Scottish Ministers of a person to undertake an audit of a planning authority and to prepare a performance assessment report for submission to and publication by Scottish Ministers. The appointed person would have wide ranging powers of access to the premises and information held by a planning authority and the Bill intends to support this by making it an offence where any person fails to co-operate with any request to provide information or evidence. Scottish Ministers would also gain statutory powers which would require planning authorities to implement improvement actions identified in the performance assessment report.

- 4.14 The final section of the Bill relates to the provision of an infrastructure levy to help the provision of necessary services and amenities to enable land to be developed, or provide the infrastructure necessary to serve the additional growth within an area. The levy would be designed to capture a proportion of the land value uplift associated with the development. The infrastructure levy will be established through Regulations, and these will be developed once further work on levels and viability has been done. The Bill provides that the Regulations may give local authorities the power to waive or reduce the infrastructure levy for development within their areas. The intention is that local authorities will be responsible for collecting and spending this levy at a local level.

5.0 CONCLUSION

- 5.1 The proposed Bill is based on the Review of the Planning System which has been ongoing since September 2015, and which has been subject to several rounds of consultation. The proposals contained in the Bill are largely as anticipated, having been trailed in the Scottish Governments Position Statement which was published in the summer of 2017. The Council has participated both directly and indirectly through CoSLA and HOPS, in responding to these consultations.
- 5.2 Much of the detail of the Bill and its ultimate effect on the delivery of the planning system will be contained in Regulations which will follow. In general the direction of travel is supported, however the resourcing implications set out in the associated financial memorandum are unlikely to be as quantified, particularly for smaller rural authorities with dispersed and island communities such as Argyll and Bute.

6.0 IMPLICATIONS

6.1 Policy	None immediately
6.2 Financial	The Bill lacks sufficient detail to accurately determine the financial implications. There are Potential planning application fee increases, and additional costs associated with greater public consultation, preparation of SDZ's, and Evidence Report and Gate check stage

	of LDP. Analysis of the Financial Memorandum which accompanies the Bill concludes the savings identified may be too optimistic and at best likely to be cost neutral.
6.3 Legal	New Planning Act to be taken cognizance of.
6.4 HR	None
6.5 Equalities	None
6.6 Risk	Uncertainty over level of resource need to deliver
6.7 Customer Service	Increase in level of customer expectation for involvement in process e.g. Local Place Plans, longer consultation period on Proposed Plan.

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APPENDICES

Appendix 1- Argyll and Bute Council Response to Planning (Scotland) Bill

The Committee invites views on any aspect of the Bill but it would be helpful if written submissions could address the following questions:

1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?

The need to balance the views of communities, protection of the built and natural environment and to accommodate new development is one of the main principles of the planning system. Overall the proposed changes will help to simplify the system and to make it more transparent. Moving to a 10 year review cycle could result in plans becoming dated and out of touch with the communities they seek to serve. It is important that the flexibility to promote mid-term amendments as proposed in the Bill is retained. The hierarchy of plans in the Development Plan should also be clearly set out

2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

The promotion of higher levels of housebuilding is a key issue at both a national and local level. The role of the development plan in coordinating and supporting the delivery of infrastructure on a planned basis to support development may help to do this. However, the planning system is only part of a complex process of housebuilding supply and demand. Changes proposed in the Bill such as a 10 year time span for local development plans, and strengthening the role of action programmes by changing them to delivery programmes can help, by providing more certainty and confidence to housebuilders. Simplified Development Zones where they are established to support housing development may also help. However in many areas the economic viability of housebuilding requires to be taken into consideration. This can be significantly influenced by the requirement for infrastructure investment, for smaller schemes and in remoter rural and island areas the costs of these can be considerable. The proposed infrastructure levy may act as a disincentive in such areas, and there could be a real challenge in achieving enough contributions to recover the costs of administering such a system, let alone provide funding to make a meaningful contribution to infrastructure investment.

3. Do the proposals in Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?

It's not clear how the removal of SDP's and their replacement with a requirement to contribute to a new National Planning Framework will operate, nor how regional partnership approaches will operate. There may be increased resource implications for those authorities which are not currently part of SDP areas, and a risk that those outwith former SDP areas will not be able to fully participate at a National or regional level. Further detail is required on how regional partnerships should operate and consideration given as to

how those authorities who may fall between two or more regional partnerships should be best represented.

4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?

The move to a ten year cycle of plan replacement may help to refocus development planning from the process of plan preparation to delivery. The requirement for an Evidence Report and for that to be gatechecked prior to commencement of preparation of the proposed plan, and the proposals to move from an Action Programme to a Delivery Programme will help to place more emphasis on monitoring of the plan and its implementation. Greater corporate ownership of the Local Development Plan with approval required by full Council and Chief Executive, and the requirement for the LDP to reflect the local outcome improvement plans should help to ensure local authority priorities as they relate to land use are reflected in the LDP. It should be recognised however that LOIP and potentially Local Place Plans can, or could, reflect broader community planning proposals which extend beyond land use planning and these may not readily be reflected in the LDP. There is a risk that by moving to a ten year review period that LDP's will not be able to reflect current Corporate or Community Planning initiatives. There will also be potential issues with expectations as to how Local Place Plans are to be reflected in an LDP given the potential 10 year timescale for replacement LDP's. The ability to make amendments to an LDP may help to address this, however further detail in the Regulations should clearly set out how each should relate to the other. Moving to a ten year timescale, will help to provide greater certainty for both communities and developers and will allow infrastructure delivery to be better planned and coordinated. However there is a risk that without flexibility, the ability for LDP to anticipate the economic climate and development requirements over a ten or so year period, may mean that change is less easily accommodated. In this regard the ability of a planning authority to amend or if necessary prepare a new Local Development Plan within the ten year period will be crucial.

5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?

SDZs are given particular prominence within the Bill with more detail and prescription than any other topic. Presumably this signals a step change in direction by the Scottish Government to focus on growth and investment areas in order to support development.

The idea of SDZs to replace SPZs is supported, but the rate of take up is uncertain, given the relatively few SPZs designated under the current system. In principle the designation of new development zones could help to support the delivery LDP strategies and particular local priorities by highlighting those areas which are "development ready". However it is considered that such a designation would also need to be supported by a commitment from key agencies via the LDP to support the delivery and co-ordination of the provision of infrastructure and services within the SDZ area.

Widening the scope of SDZ's to include conservation areas, green belts and national scenic areas is supported, provided that recognition of appropriate standards and types of schemes which would be eligible for SDZ status within such areas made clear. Including the potential for other consents such as road construction consents, listed building consent, conservation area consent, and advertisement consent to be covered by such a scheme is also supported, however it should be recognized that not every scheme will be suitable for such a blanket approach to consents.

6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area? Will the proposed Local Place Plans enable communities to influence local development plans and does the Bill ensure adequate financial and technical support for community bodies wishing to develop local place plans? If not, what more needs to be done?

Removing the Main Issues Report stage will potentially reduce the opportunities for early engagement in the plan process. However having undertaken two cycles of plan preparation, experience has shown that public involvement at the MIR stage can be varied. In general communities become more involved when there are specific proposals affecting their communities and where more details of proposed developments are available. MIR has not therefore been as effective as it might have been in generating public interest the local development plan system.

Going to a proposed plan stage, providing for a longer statutory consultation period, and enabling planning authorities to make minor modifications to the proposed plan, in response to the consultation exercise, before proceeding to an examination, should help to secure more effective and meaningful community involvement in the process. Enabling the planning authority to make modifications to the proposed plan in response to representations will allow authorities to demonstrate their public accountability and transparency.

Making provision for Local Place Plans prepared by communities themselves to be recognised as part of the development plan, and for these to be reflected in the Local Development Plan could enable greater community involvement in the plan process. However, this is not without its challenges. There will be significant resource implications both for communities preparing Local Place Plans, and for planning authorities in supporting and responding to them. This will be particularly so where there are numerous communities within the planning authority's area, and where smaller communities may require more professional support to prepare Place Plans. The Bill provides no detail on the financial and technical support that will be required in order to enable local place plans to be prepared, and further detail in regulations and other guidance will be required in order to explain how it is envisaged they will be carried out. The availability of skills within communities themselves and/or professionals to support them in the preparation of Local Place Plans could result in a broad range of approaches to them, and regulations will be required in order to establish a minimum requirements in order to for the planning authority to give due consideration with regard to the Local Development Plan.

7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?

The increase in the fine level is welcomed; however planning enforcement should be about resolution rather than punishment. Clarity and consistency in the application of the enforcement service and compliance monitoring will have a far greater impact on public confidence in the planning system than increasing the level of fines.

The changes proposed in the Bill to strengthen enforcement powers will help but further changes in the following areas, as part of a wider review of enforcement processes could help further:

Environmental Courts

Consideration should be given to establishing a separate specialist environmental court which has the expertise to deal with the offences (This could also include other environmental matters from SEPA/SNH). Although the issue of environmental courts was looked at some time ago and rejected it has been successful in other countries and the case for them should be re-examined.

Fixed penalty fines

The use of fines is not considered to be a sustainable, long term solution as a workable enforcement tool. Even at the increased rates fines are still relatively low and an offender may choose to pay it to be immune from further enforcement action. A solution may be to allow the planning authority to impose repeat/increasing fines until the breach has been remedied. At the same time planning authorities may need additional powers to make it easier to recoup any unpaid fines.

Planning Contravention Notices- PCN/S.272 notices

Under existing legislation the failure to comply with PCN/s.272 notices should be referred to Procurator Fiscal, but in practice this is not a realistic option as it is not seen as a serious offence. Without proper sanctions, PCN's/S.272 are ignored which slows up the investigation process and can cost taxpayer money as the planning authority has to gather the necessary information itself. A possible solution would be to introduce a fine that can be served quickly and easily in the same way as a parking ticket.

Retrospective applications

Circular 10/2009 suggests that we should be seeking retrospective applications for breaches that require permission but are otherwise generally acceptable. Where a planning authority has already spent resources investigating alleged breaches then it should be allowed to charge a higher fee for such applications in order to cover its costs. The fact that the offender has to regularise the unauthorised development (at a higher than normal fee) may also help to improve public confidence in the system.

Powers to decline to determine a retrospective application

Some offenders submit retrospective applications when enforcement action is being taken. In some circumstances, the offender can be playing the system to prolong the unauthorised use/development. To prevent this, the planning authority should have the discretionary power to refuse to accept applications where enforcement action has been taken.

8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development? Are there any other ways (to the proposed Levy) that could raise funds for infrastructure provision in order to provide services and amenities to support land development? Are there lessons that can be learned from the Infrastructure Levy as it operates in England?

The principle of an infrastructure levy is supported, however there are concerns that economically fragile and rural areas may not be able to support a levy at rates which would be sufficient to deliver the infrastructure required by new developments. This is particularly the case in sparsely populated rural areas and on islands where the costs of infrastructure provision are considerably higher on a pro rata basis and where the scale of development and rates of completion are low. Consideration would need to be given to the potential to vary the rate of contribution to the infrastructure levy, and it would also need to be applied to both large scale and small scale developments.

9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?

Yes all councillors who sit on Planning Committees or Local Review Bodies should receive mandatory training. In particular, the introduction of a national training agenda and examination/course completion for councillors is supported. It will ensure national consistency, and will provide a comprehensive training manual which will be kept up to date. This national standard of training should also be supplemented by local training, illustrated by local examples and case studies to provide practical and be more meaningful examples to councillors.

For those councillors involved in Local Review Bodies additional and more detailed training should be provided. There are specific and unique differences between a member being part of a planning committee and a member being on the LRB.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

Local Authorities are currently preparing Planning Performance Frameworks and submitting them on an annual basis to Scottish Ministers. These provide annual monitoring of performance against key indicators, and have helped to deliver performance improvements. The role of the proposed independent co-ordinator and independent assessors will be crucial to the success of promoting performance improvements, and should be seen as part of an ongoing and two way process. It will be important that the new procedures identify

improvements and enhancements against a jointly agreed set of indicators. Measures such as quality of design and places, community engagement, and quality of outcome should be taken into account as well as more traditional measures such as speed of planning decisions.

It will also be important to recognise that other factors can influence the performance of planning authorities, and it may be appropriate to extend the assessment by the independent assessors to include other stakeholders in the system such as the key agencies, the business and development industry, housebuilders and Homes for Scotland, and also the DPEA and Scottish Ministers where they are also involved in the process.

11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high –performing planning system the Scottish Government wants? If not, what needs to change?

Planning fees should seek to move the operation of the planning system towards full cost recovery, in order to ensure that sufficient resources are available to deliver an effective high quality planning service. There should be scope for authorities to adopt a more flexible fee structure that could involve charging for some discretionary services, and waiving the fee, or providing for reduced rates in some circumstances. Consideration should be given to ring fencing planning fees to fund planning services. Both Heads of Planning Scotland (HOPS) and the Royal Town Planning Institute in Scotland (RTPI) have recently published background papers and survey data in 2013, 2014 and 2015. Figures provided by HOPS indicated that, in 2015, planning fees covered only 63% of the cost of handling applications.

12. Are there any other comments you would like to make about the Bill?

The proposed changes to pre –application consultation (PAC) detailed in section 12 of the Bill are welcomed. These could help to streamline the current process by removing the need for further PAC, should a new application be needed to address, relatively small but material changes to a scheme. However, come more effective evidence of public engagement and relevance to the application would be demonstrated to the application if the requirement to submit this was within 12 months of the PAC rather than 18 months as proposed.