

Agenda Item	9
Report No	EDI 44/19

HIGHLAND COUNCIL

Committee: Environment, Development and Infrastructure

Date: 15 August 2019

Report Title: Planning Bill – Update and Resource Implications

Report By: Director of Development and Infrastructure

1. Purpose / Executive Summary

- 1.1 This report updates Members on the finalised content of the Planning Bill.
- 1.2 The Act and its related secondary legislation will have significant resource and other implications for the Highland Council. These are outlined for Members consideration.

2. Recommendations

- 2.1 Members are asked to:
 - i. note the content of the finalised Planning Bill; and
 - ii. note and consider the future resource and other implications of the additional statutory duties that will be brought in by the Act and its related secondary legislation.

3. Implications

- 3.1 Resource: There are many additional or amended duties that the Council will have to undertake as a result of the Bill. These will have resource implications for the Council as outlined in this report.
- 3.2 Legal: The Bill has been passed but the Council should, as a consultee, seek to influence the content of the secondary legislation that will flow from it.
- 3.3 Community (Equality, Poverty and Rural): The Scottish Government has carried out its own assessments of this primary legislation and following amendments deemed it to be neutral or positive in respect of these issues.
- 3.4 Climate Change / Carbon Clever: The Scottish Government has carried out its own assessments of this primary legislation and, following amendments, deemed it to be neutral or positive in respect of these issues.
- 3.5 Risk: The Bill has been passed but the Council should, as a consultee, seek to

influence the content of the secondary legislation that will flow from it.

3.6 Gaelic: None

4. Background

4.1 The principal, primary legislation that affects planning policy and decisions has changed. The Planning (Scotland) Bill received Royal Assent on 25 July 2019. Full details are available via the [Scottish Parliament website](#). The new and amended statutory duties for the Highland Council that will result from the legislation and their resource and other implications, are explained below. The bulk of the legislation will become operative over the next 1-3 years.

4.2 Members may also wish to note that the Bill will introduce several **changes at national level** that are likely to have significant impacts on Highland, albeit in an indirect, non financial manner. These include:

- the Scottish Government's national planning policies will now have greater, statutory importance in decision making but as a balance will be subject to better public consultation, parliamentary scrutiny and be part of the National Planning Framework;
- the Scottish Government will have powers (time limited to the next 7 years) to introduce a national *Infrastructure Levy* which, if introduced, would replace the Council's current definition and collection of non site-specific developer contributions;
- Scottish Ministers will have to publish and lay before Parliament their call-in criteria for planning applications;
- any properly constituted community body will have the option to prepare a statutory land use plan for any part of their area called a *Local Place Plan* – this preparation must include consultation with local councillors for that area;
- the new National Planning Framework will have regional housing targets which local authorities will have to meet and will be renewed on a 10 year cycle the first renewal being completed no later than 2024; and,
- reversing rural depopulation will be a policy and practice aim at national and local level.

5. New and Amended Statutory Duties for Local Planning Authorities (LPAs)

5.1 **New duties** include the following list.

- **Open Space Strategy** (mandatory) – the preparation and publication of a strategy for the enhancement, maintenance and use of green space in Highland including an audit of existing provision – as a minimum this will include all green space within and adjoining Highland's settlements;
- **Regional Spatial Strategy** (not mandatory for Highland) – the preparation, consultation on, and adoption of a strategy for any *strategic developments* in Highland – these are defined as “development likely to have a significant impact on future development within the area of more than one planning authority”;
- **Additional Local Development Plan assessments and content** (mandatory) – the audit of and, where applicable policies and proposals for, areas of depopulation; public conveniences; play facilities; reuse of disused railway infrastructure; water refill locations; health needs and health facility capacities; housing needs of young adults, the elderly, gypsies / travellers, disabled people, and self builders; education

facility capacities; cultural facility provision; and, water and energy network capacities;

- **Additional Local Development Plan consultation** (mandatory) – encouragement of local communities to produce *Local Place Plans*; specific and evidenced engagement of those under the age of 25, gypsies / travellers and disabled people; all engagement to be collated within an *Evidence Report* which will be subject to DPEA Reporter examination;
- **Masterplan Consent Areas** (not mandatory but must be considered by each LPA at least every 5 years) – an area similar to a simplified planning zone, within which the development management process is streamlined provided an application complies with the principles of the *Scheme* for that area;
- **Register of Local Place Plans** (mandatory) – preparing and updating a mapped register of *Local Place Plans* produced by prescribed community bodies;
- **Register of Self Build Housing Demand** (mandatory) – preparing, publishing and updating of such a register;
- **Short Term Let Control Areas** (optional) – an LPA defined and designated geographic area of any size within which change of use to short term let would require planning permission;
- **Public Conveniences** (mandatory) – an LPA will only be able to grant planning permission for larger public and commercial buildings if they incorporate public toilets;
- **Health Effects Assessment** – all national and major applications will require submission and consideration of a health effects assessment;
- **Compliance with Development Plan** (mandatory) – an LPA will have to be more explicit in stating whether or not each planning application it determines is in conformity with the development plan. This will provide more transparency on how often and why decisions are made contrary to the provisions of the development plan;
- **Mediation** (optional for Scottish Ministers but mandatory for LPAs if introduced) – appointment of a person considered by Scottish Ministers to be appropriate and impartial to resolve or reduce disagreement over any local, statutory planning matter;
- **Councillor training** (mandatory) – councillors will be required to fulfil planning training requirements to play a part in decision making on planning matters; and
- **Chief Planning Officer** – (mandatory) each LPA will be required to have a nominated and suitably qualified and experienced person to take on this specific and statutory role.

5.2 The new legislation also includes several **amended duties**. The following changes are of particular significance:

- The deletion of the statutory status of Supplementary Guidance. Members will recall that the Highland Council currently relies upon a wide range of adopted topic and area-specific planning policies such as Developer Contributions guidance and development briefs. This change will require the Council to transfer this policy content to other statutory planning policy documents or risk losing its statutory importance in decision making;
- Extension of the Local Development Plan mandatory review timescale from 5 to 10 years and a more frequent Plan amendment option;
- A defined time limit (18 months) within which a major application must be submitted for its initial pre-application consultation process to remain valid;
- notification to all elected politicians of all major applications lodged in their ward /

- constituency;
- a requirement for LPAs to do more to raise the general public's awareness of the existence and content of Section 75 agreements / obligations;
- reduced or waived planning fees for applications by social / not for profit enterprises that result in positive social effects;
- Scottish Government's future monitoring of LPA performance will be statutory and more robust; and
- LPAs will no longer be able to delegate the approval of significant development plan documents to strategic or local committees.

6. Resource Implications of New and Amended Statutory Duties

- 6.1 The intention of the Planning Bill was to streamline and simplify the planning system in Scotland. It is debatable whether in its final form it achieves this, however, the Council will, as a consultee and through COSLA, have the opportunity to influence the secondary legislation that will flow from it.
- 6.2 In financial terms, the Council should seek additional funding from the Scottish Government in line with the principle of full cost recovery of the additional and amended duties brought in by the legislation. The Scottish Government has produced estimates of the costs of the legislative changes, but Highland and other councils have disputed their accuracy given the many unknowns that will only be clarified when the detail of the secondary legislation is finalised. Given these differences, it will be important for the Council, working in conjunction with other LPAs, to lobby for full cost recovery as the detail of each additional duty is prescribed in Scottish Government regulations.
- 6.3 More positively, the Bill does provide opportunities that the Council should embrace. The Development and Infrastructure Service intends to pilot many of the additional assessments and better public consultation approaches outlined in the Bill through the new Inner Moray Firth Local Development Plan. Similarly, the Council has already assisted Highland local communities in producing their own land use plans and will continue to do so. The increased statutory importance of the planning function within local government is also an opportunity to better coordinate the Council's spatial planning and investment activities; for example, the local development plan's implementation vehicle, the Delivery Programme, must be subject to full Council meeting approval and should be a genuinely corporate document aligned with the Council's capital programme.

Designation: Director of Development and Infrastructure

Date: 24 July 2019

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Background Papers:

<https://www.parliament.scot/parliamentarybusiness/Bills/106768.aspx>