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REPORT TO: East Lothian Council

BY: Depute Chief Executive – Partnership & Communities

DATE:

SUBJECT: Planning (Scotland) Bill: Call for Evidence to the Local Government and Communities Committee of the Scottish Parliament

1 PURPOSE

- 1.1 The purpose of this report is to update Members on the provisions proposed in the Planning (Scotland) Bill and to allow Members the opportunity to consider those provisions and comment on them in evidence to the Local Government and Communities Committee of the Scottish Parliament.

2 RECOMMENDATIONS

- 2.1 That Members note the provisions of the Bill as set out below and the officer comments in Annex 1 of this report as a submission of evidence to the Local Government and Communities Committee of the Scottish Parliament as evidence for that Committee's consideration, subject to any Member comments.

3 BACKGROUND

- 3.1 The Planning (Scotland) Bill was introduced into the Scottish Parliament on 4 December 2017, following an independent review of planning commissioned by the government and extensive consultation on a range of measures suggested by that review. Details of the independent review and the consultation process can be found in the Policy Memorandum referred to in the background papers.
- 3.2 The Scottish Government states that the Bill will improve the system of development planning, giving people a greater say in the future of their places and support delivery of planned development.

- 3.3 The Parliamentary Bureau has designated the Local Government and Communities Committee as the lead Committee for the Bill.
- 3.4 On Friday 15 December 2017 the Local Government and Communities Committee launched a call for written evidence as part of its Stage 1 scrutiny of the Planning (Scotland) Bill.
- 3.5 The Committee anticipates holding oral evidence sessions at Stage 1 of the Bill on the following dates:
- Wednesday 28 February 2018 (Stakeholder Panel 1)
 - Wednesday 7 March 2018 (Stakeholder Panel 2)
 - Wednesday 14 March 2018 (Stakeholder Panel 3)
 - Wednesday 21 March 2018 (Scottish Government)
- 3.6 The submission date for evidence to the Local Government and Communities Committee has been extended on request from 2 February to 9 February to allow time for the Planning Committee to consider and comment on the provisions of the Bill as set out in Annex 1.
- 3.7 The Planning (Scotland) Bill as proposed is enabling legislation and requires regulations to be made for the measures set out to come into force or for the setting out of detailed matters. Therefore, any timescale for its provisions coming into effect is variable.
- 3.8 Fuller details of all of the proposed measures of the Bill are set out in the Explanatory Notes and Policy Memorandum published by the Scottish Government as referred to in the background papers. Details of potential savings anticipated by the Scottish Government are set out in the Financial Memorandum as also referred to in the background papers.
- 3.9 **National Planning Framework:**
- The Bill gives enhanced status to the National Planning Framework (NPF) as the Scottish Ministers' policies and proposals for the development and use of land. It will have a regional planning aspect. It will be part of the development plan and include Scottish Planning Policy.
 - It extends the period in which the NPF has to be revised to 10 years, though allows that it can be amended at any time, subject to the appropriate consultation and approval processes.
 - The Bill sets out a duty for key stakeholders to cooperate on the NPF, including a provision that planning authorities can be directed to do so.

3.10 Strategic Planning:

- With reference to the changes proposed for the NPF, the Bill removes the current statutory requirement to prepare and approve strategic plans, such as SESplan.

3.11 Local Development Plans:

- The Bill proposes some significant changes to the Local Development Plan process, with preparation of LDPs required to take account of the NPF, with the local outcomes improvement plan and local place plans. The development plan will consist of the NPF and LDP.
- The first stage for an LDP would be an evidence report rather than MIR and a draft proposed plan would be introduced at an earlier stage.
- There would be an early 'gatecheck' for key aspects of plan, intended to reduce the later examination in public stages.
- The time period for review would be a maximum of 10 years rather than the current 5 years, though they could be amended at any time and there is a provision for amendment by ministerial direction.
- The LDP would require to be approved by full Council and not be delegated to a committee.
- The minimum time period for representations to a proposed plan would be increased from 6 weeks to 8 weeks.
- The existing legislative provisions for statutory Supplementary Guidance to be prepared would be removed, though non-statutory supplementary planning guidance could still be approved.
- The current requirement that LDPs be accompanied by an action programme would be replaced by a requirement for a delivery programme, required to be signed off by the Council Chief Executive and by a full council meeting.

3.12 Local Place Plans:

- The Bill makes provision for Local Place Plans (LPP) to be prepared by a 'community body'. Such plans would require to have regard to the NPF and LDP (a community body is defined as per section 19 of the Community Empowerment Act 2015 or a community council <http://www.legislation.gov.uk/asp/2015/6/section/19/enacted>)
- LPPs are intended to enhance engagement and community involvement in the plan making process.

3.13 Simplified Development Zones:

- These are proposed to supplant the current provision for simplified planning zones and would allow for authorisation for the type of development set out in the scheme, within the geographic zone.

3.14 Development Management:

- There is a provision which would give Ministers the power to direct that pre-application consultation processes with the public do not apply to particular proposals.
- Whereas currently there is no time limit for submitting a planning application after the submission of a Proposal of Application Notice (PAN), the Bill proposes a time limit of 18 months, beyond which a further PAN process would require to be carried out.
- There is provision that allows for planning applications which are subject to a pre-determination hearings to be determined by committee rather than by full council.
- The Bill would bring applications for advertisement consent and for certificates of lawful use under the scheme of delegation so that they can be determined under delegated powers. There is a consequential amendment of the right to appeal for such applications to Scottish Ministers, changing this to the right of appeal to the Local Review Body.
- The use of time conditions for the duration of planning permission/planning permission in principle would be re-instated. As drafted this can include for different durations for different aspects of a Planning Permission in Principle if required due to the scale and/or complexity of the proposal.
- The Bill allows for a power to serve completion notices where a Planning Authority considers that a development will not be completed in a reasonable time. The power would have the effect of removing unimplemented development rights (subject to a minimum 12 month notice period) but would not allow for revocation of planning permission for development already carried out.
- There is a proposed amendment to the definition of planning obligations to include specific reference to payment of a specified amount or periodical sums, so this can now allow for financial only requirements without other restrictions on use or development of land.
- The current power to modify Planning Obligations (Section 75A modifications) and discharges would be amended to allow the Planning Authority flexibility in approving modification applications

rather than only as applied for. Currently Planning Authorities can only approve or refuse an application in the terms applied for.

- The Bill would enable the Planning Authority to vary fees in certain circumstances (to be confirmed by regulation), including provision for surcharges on retrospective planning applications

3.15 Planning Authority performance:

- The bill proposes that training requirements be specified for those making decisions (i.e. Elected Members) and that where a Planning Authority does not have sufficient trained persons, it can be taken over by another Planning Authority or by the Scottish Ministers.
- A proposed requirement for an annual report to Ministers.
- Enablement for a person to be appointed to monitor performance and advise on improvements to Planning, generally.
- Also enablement for a person to be appointed with powers to assess the performance of a Planning Authority in whole or part.

3.16 Infrastructure:

- This part of the Bill would enable an infrastructure levy (in addition to the current provisions of Section 75 rather than replacing them) and sets out what may be provided for in infrastructure levy regulations, including: allowance for who is liable and when; scope for local exemptions/discounts; collection and enforcement; financial penalties for late payment; and deferring or stopping permission due to late payment. Provision is also made for appeals, for accounting for and aggregating funds or transferring part to Scottish Ministers.

4 POLICY IMPLICATIONS

- 4.1 The provisions proposed in the Bill will have procedural implications for the Council. Any policy impact will derive from the detail of future NPFs rather than the procedural changes proposed.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The Scottish Government has carried out an Equalities Impact Assessment the conclusion of which is that no significant negative impacts would result.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – the proposals for removal of the requirement to prepare a Strategic Development Plan and the 10 year rather than 5 year requirement for review of the Local Development Plan may result in savings, though any savings may be offset by requirements to contribute to the National Planning Framework and alternative cross boundary working arrangements between local authorities.
- 6.2 Personnel - as above
- 6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Planning (Scotland) Bill [PSB](#)
- 7.2 Planning (Scotland) Bill Explanatory Notes [PSBEN](#)
- 7.3 Planning (Scotland) Bill Policy Memorandum [PSBPM](#)
- 7.4 Planning (Scotland) Bill Financial Memorandum [PSBFM](#)

AUTHOR'S NAME	Iain McFarlane
DESIGNATION	Service Manager, Planning
CONTACT INFO	imcfarlane@eastlothian.gov.uk x7292
DATE	25 January 2018

ANNEX 1

Planning Bill Call for Evidence

Planning Bill Provisions and officer comments

National Planning Framework:

- The Bill gives enhanced status to the National Planning Framework (NPF) as the Scottish Ministers' policies and proposals for the development and use of land.
- It extends the period in which the NPF has to be revised to 10 years, though allows that it can be amended at any time, subject to the appropriate consultation and approval processes.
- The Bill sets out a duty for key stakeholders to cooperate on the NPF, including a provision that planning authorities can be directed to do so.

Officer comment:

With what follows in respect of strategic and local development planning this would potentially be a simpler and clearer hierarchy with consistent timescales which may give greater certainty also. There would be a clear need for cooperation towards national/strategic issues and in particular, as there is an implication that this may include the setting of housing targets, an enhancement of local democratic consideration of growth in each Council area. It may be considered there should be a legislative safeguard that requirements not be imposed by Ministers without due process.

Strategic Planning:

- With reference to the changes proposed for the NPF, the Bill removes the current statutory requirement to prepare and approve strategic plans, such as SESplan.

Officer comment:

Subject to the considerations of the weight of local authority input to the provisions of the NPF as set out above, and to the provisions made for resolving cross boundary issues, this may assist in simplifying the development planning process and together with changes to timescales, reduce the extent of overlap and consultation fatigue in the plan making process. It is noted that the government does not wish to specify future regional working arrangements which could leave a void in terms of how this is carried out outwith the requirements of the NPF.

Local Development Plans:

- The Bill proposes some significant changes to the Local Development Plan process, with preparation of LDPs required to take account of the NPF, with the local outcomes improvement plan and local place plans.
- The first stage for an LDP would be an evidence report rather than MIR.
- There would be an early 'gatecheck' for key aspects of plan, intended to reduce the later examination in public stages.
- The time period for review would be a maximum of 10 years rather than the current 5 years, though they could be amended at any time and there is a provision for amendment by ministerial direction.
- The LDP would require to be approved by full Council and not be delegated to a committee.
- The minimum time period for representations to a proposed plan would be increased from 6 weeks to 8 weeks.
- The existing legislative provisions for statutory Supplementary Guidance to be prepared would be removed, though non-statutory supplementary planning guidance could still be approved.
- The current requirement that LDPs be accompanied by an action programme would be replaced by a requirement for a delivery programme, required to be signed off by the Council Chief Executive and by a full council meeting.

Officer comment:

There will be much to consider in the detail of regulations on this process and these should be subject to consultation. The Bill must, however, make clear that LDPs remain place-making plans with site-specific provisions and emphasise the extent to which local place plans must conform with the LDP. The provision for amendment by ministerial direction requires to be defined further and to allow for local democratic decision making to have weight and a due process to oppose such a direction. The removal of the provision for statutory Supplementary Guidance would reduce the weight afforded to guidance but would do little to reduce the resources required by Planning Authorities to produce it.

Local Place Plans:

- The Bill makes provision for Local Place Plans to be prepared by a 'community body'. Such plans would require to have regard to the NPF and LDP (a community body is defined as per section 19 of the Community Empowerment Act 2015 or a community council <http://www.legislation.gov.uk/asp/2015/6/section/19/enacted>)

Officer comment:

This is likely to raise community expectations for Councils to resource relevant community groups in making such plans. It is critical that the legislation should emphasise that any such plan be consequent on and subsidiary to an LDP and set out clear consultation measures and thresholds to ensure that community bodies fully represent the range of public opinion on a proposal and not just that community body agenda.

Simplified Development Zones:

- These are proposed to supplant the current provision for simplified planning zones and would allow for authorisation for the type of development set out in the scheme, within the geographic zone.

Officer comment:

This provision does not significantly change the powers available under existing legislation.

Development Management:

- There is a provision which would give Ministers the power to direct that pre-application consultation processes with the public do not apply to particular proposals.
- Whereas currently there is no time limit for submitting a planning application after the submission of a Proposal of Application Notice (PAN), the Bill proposes a time limit of 18 months, beyond which a further PAN process would require to be carried out.
- There is provision that allows for planning applications which are subject to a pre-determination hearings to be determined by committee rather than by full council.
- The Bill would bring applications for advertisement consent and for certificates of lawful use under the scheme of delegation so that they can be determined under delegated powers. There is a consequential amendment of the right to appeal for such applications to Scottish Ministers, changing this to the right of appeal to the Local Review Body.
- The use of time conditions for the duration of planning permission/planning permission in principle would be re-instated. As drafted this can include for different durations for different aspects of a Planning Permission in Principle if required due to the scale and/or complexity of the proposal.
- The Bill allows for a power to serve completion notices where a Planning Authority considers that a development will not be

completed in a reasonable time. The power would have the effect of removing unimplemented development rights (subject to a minimum 12 month notice period) but would not allow for revocation of planning permission for development already carried out.

- There is a proposed amendment to the definition of planning obligations to include specific reference to payment of a specified amount or periodical sums, so this can now allow for financial only requirements without other restrictions on use or development of land.
- The current power to modify Planning Obligations (Section 75A modifications) and discharges would be amended to allow the Planning Authority flexibility in approving modification applications rather than only as applied for. Currently Planning Authorities can only approve or refuse an application in the terms applied for.
- The Bill would enable the Planning Authority to vary fees in certain circumstances (to be confirmed by regulation), including provision for surcharges on retrospective planning applications

Officer comment:

There is no clarity as to why a power to direct that pre-application processes with the public should not apply nor any caveats as to in what circumstances this might be seen to be reasonable – national interest?

The change to add a time limit to the PAN process is welcomed as it gives greater clarity for the public and authorities. The changes to process for pre-application hearings/determination, for amending planning obligations and for setting time conditions are also welcomed. In respect of the latter, consideration should also be given to amending section 42 of the 1997 Act to further clarify its provision that that an approval of an application to amend or remove a condition is just that and does not create an entirely new planning permission for the associated development and that Circular 3/2013 (as amended 2015) should be revoked or amended on this matter as it is at odds with the primary legislation. A power to vary fees may be welcome, subject to the detail of how it applies to retrospective applications and to other cases. For retrospective applications it should not be an across the board provision but one targeted at serial offenders and parties with a clear responsibility to understand the process.

The proposed power to remove development rights for part implemented schemes needs significant consideration in terms of

intent and how it would be implemented, especially in situations where development may have paused due to cash flow or viability issues. A key consideration would be the condition and future maintenance of undeveloped parts of the site, including essential infrastructure.

Planning Authority performance:

- The bill proposes that training requirements be specified for those making decisions (i.e. Elected Members) and that where a Planning Authority does not have sufficient trained persons, it can be taken over by another Planning Authority or by the Scottish Ministers.
- A proposed requirement for an annual report to Ministers.
- Enablement for a person to be appointed to monitor performance and advise on improvements to Planning, generally.
- Also enablement for a person to be appointed with powers to assess the performance of a Planning Authority in whole or part.

Officer comment:

The proposed specification of training requirements for Members as decision makers needs careful consideration, especially if the reporting to Ministers and monitoring and assessing performance is to be applied to Member decisions. The current use of the Heads of Planning Scotland Planning Performance Framework would not serve these functions and any additional reporting requirements should avoid being overly onerous or duplicating existing reporting.

The key concern around performance is that this is in some way assessed in terms of the quality of development achieved and not just on speed of decision making, as the latter takes no account of whether good or bad decisions are being made. Also a concern is that there is no provision that any appointee should be required to have significant experience of working in a Local Government Planning Authority.

Infrastructure:

- This part of the Bill would enable an infrastructure levy (in addition to the current provisions of Section 75 rather than replacing them) and sets out what may be provided for in infrastructure levy regulations, including: allowance for who is liable and when; scope for local exemptions/discounts; collection and enforcement; financial penalties for late payment; and deferring or stopping permission due to late payment.

Provision is also made for appeals, for accounting for and aggregating funds or transferring part to Scottish Ministers.

Officer comment:

Whilst the Bill does not detail how these provisions would be arrived at the areas covered as points of principle indicate the potential of a more comprehensive approach to infrastructure funding which would help to overcome the specific and sometimes short-term nature of the Section 75 regime and the consideration of such a levy is welcomed.