

ITEM No ...3.....

REPORT TO: CITY DEVELOPMENT COMMITTEE – 26 OCTOBER 2020

REPORT ON: THE PLANNING (SCOTLAND) ACT 2019

REPORT BY: EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

REPORT NO: 260-2020

1 PURPOSE OF REPORT

1.1 The purpose of this report is to update members on the passing by the Scottish Parliament of the Planning (Scotland) Act 2019 and to present the key implications of the Act for Dundee City Council.

2 RECOMMENDATION

2.1 It is recommended that the Committee notes the contents of the report and changes to the planning system as outlined in section 4 of this report.

3 FINANCIAL IMPLICATIONS

3.1 The proposals set out in this report are likely to have financial implications although this cannot be fully quantified at this stage. There will be additional duties to undertake as a consequence of the Act. However, the extent of these is not fully known at present. The Council will work closely with Scottish Government, the Convention of Scottish Local Authorities (COSLA) and Heads of Planning Scotland (HOPS) to ensure that resources are in place to deliver the responsibilities of the Act.

4 BACKGROUND

4.1 In September 2015, an independent panel was appointed by Scottish Ministers to review the Scottish Planning System with the objective of bringing together ideas to achieve a quicker, more accessible and efficient planning system. The Planning (Scotland) Bill was introduced to the Scottish Parliament on 4 December 2017 and after three stages of scrutiny received Royal Assent on 25 July 2019, thereafter becoming the Planning (Scotland) Act 2019. The 2019 Act amends the primary planning legislation, The Town and Country Planning (Scotland) Act 1997.

4.2 The introduction to the Planning (Scotland) Act states that it is part of a wider programme of reforms to the planning system and that some of the key aspects of the Act are:

- a its provisions in relation to the system of development plans;
- b the opportunities for community engagement in planning;
- c the effective performance of planning authorities' functions; and
- d a new way to fund infrastructure development.

4.3 The 2019 Act sets out the changes to the Planning System. However, secondary legislation/regulations are required to implement the changes and to set out transitional arrangements. In this regard, Commencement Regulations are now being progressed to bring changes into force. Appendix 1 provides a breakdown of the significant areas commenced at the time of writing this report.

- 4.4 It should be noted that some of this work has been delayed as a consequence of responding to the Covid-19 emergency. A revised work programme is being developed and will be published by the Scottish Government when available.

KEY PROVISIONS OF THE ACT

- 4.5 The key provisions contained within the Act are summarised below. In addition to the most significant implications of the Act highlighted in this report, the Act introduces many other more detailed matters that will require to be taken on board through the work of the planning authority.

GENERAL PROVISIONS

- 4.6 The Purpose of Planning has been set out in legislation to underpin the preparation of the National Planning Framework, and also planning authorities' work on development plans. The purpose of planning is "to manage the development and use of land in the long-term public interest".
- 4.7 Member training is to become compulsory for elected Members before being able to vote on planning decisions.
- 4.8 The Act provides a focus on performance, with requirements for Councils to produce annual reports and the appointment of National Planning Improvement Co-ordinator to monitor performance.
- 4.9 Each planning authority must have a Chief Planning Officer to provide advice about the carrying out of the functions conferred by the planning Acts, and any function conferred on them by any other enactment, insofar as the function relates to development.

NATIONAL PLANNING FRAMEWORK (NPF)

- 4.10 The National Planning Framework (NPF) is a long-term strategy for Scotland. It is the spatial expression of the Government Economic Strategy, and of plans for development and investment in infrastructure. The NPF identifies national developments and other strategically important development opportunities in Scotland. At present, the NPF and the associated Scottish Planning Policy document (SPP) are material considerations in the determination of planning applications. The 2019 Act elevates the status of the NPF and integrates this alongside Scottish Planning Policy (SPP) into the Development Plan, providing a more specific requirement than the previously broad terms of reference relating to NPF. This will impact upon both development planning and development management. Local Development Plans will need to reflect the NPF and in order to avoid being repetitive, could provide an opportunity for LDPs to be condensed with a renewed focus on place rather than policy. In relation to Development Management, the incorporation of SPP into the Development Plan will change the current situation where it is a material consideration and will give it primacy in decision making. As part of this, an NPF4 position statement is to be released in November with further engagement and consultation with Local Authorities expected early 2021.

DEVELOPMENT PLANNING

- 4.11 Development planning is the most significant area of change within the Planning (Scotland) Act 2019. The legislation adjusts the form and content and processes for preparing plans, from early engagement to the examination and adoption. Those in relation to the primacy of the NPF and SPP discussed above are particularly notable. In addition, the Act changes timescale for the review of Local Development Plans from 5 – 10 years, with an increased emphasis on the delivery of the Plan rather than preparation. The 2019 Act sets out matters to be considered in the development plan and includes the health needs of population, their housing needs

(including for older/disabled people and those in education), and land for development of renewable energy. LDPs are required to set out the authority's policies and proposals on the provision of changing places toilets and water refill locations.

- 4.12 The requirement to prepare a Main Issues Report (MIR) is replaced by the provision to prepare an Evidence Report. This sets out the authority's view on matters including specific reference to actions taken to meet the needs of older and disabled people and support the needs of Gypsies and Travellers.
- 4.13 The significant changes affecting Development Planning are noted below:
- 4.14 National Planning Framework to become part of the Development Plan and include housing targets and outcomes related to health and wellbeing of people. To also fully incorporate provisions of SPP.
- 4.15 Strategic Development Plans Abolished – The TAYPlan Strategic Development plan will be replaced by a Regional Spatial Strategy which must identify the proposed locations for strategic development. There is a recommendation that authorities work collaboratively to prepare Regional Spatial Strategies. Whilst these would not be statutory development plans they would inform the content of the National Planning Framework and Local Development Plans.
- 4.16 Development Plan – Local Development Plans and National Planning Framework to be reviewed at least every 10 years instead of every 5 years.
- 4.17 Evidence Report - Main Issues Report to be replaced with an evidence report which will be subject to review by a Scottish Government Reporter to ensure the consideration and agreement of key matters is included at an early stage in the process.
- 4.18 Local Place Plans - planning authorities are to invite local communities to prepare local place plans and assist in the process. There is no obligation for Local Place Plans to comply with the Local Development Plan (LDP) or reverse. Although full details have not yet been released as to how this provision is envisaged to operate, this process will require a collaborative approach across various Council Service areas and community groups.
- 4.19 Supplementary Guidance – to no longer have 'development plan' status and expected that this detail would be included in the LDP or non-statutory planning guidance.
- 4.20 Masterplan Consent Areas - provision made for making and altering Masterplan Consent Area (MCA) Schemes, replaces previous provisions in respect of Simplified Planning Zones. Within a Masterplan Consent Area, any proposed development that falls within the definitions specified in the Scheme does not require an application for planning permission. Authorisation (i.e. planning permission) is granted subject to any limitations or conditions specified in the Scheme. There are currently no Simplified Planning Zones in Dundee but the MCA scheme may afford an opportunity to promote development in identified locations.

DEVELOPMENT MANAGEMENT

- 4.21 In terms of the Development Management function of the Council, the Act introduces a number of changes to the current system.
- 4.22 Pre-application consultation – Prior to submitting a major planning application, developers are required to undertake Pre-application consultation (PAC). However, there is currently no specified time limit for the submission of a planning application, meaning that applications can be submitted a considerable time period after the initial community consultations have been carried out. Provision in the 2019 Act introduces a new 18-month time limit to submit a planning application.

- 4.23 Health Effects – of national or major developments to be considered. The role of planning in tackling public health issues can encompass a variety of development management activities including making streets safe and more attractive places to walk in, locating housing where there are services, reducing car dependency and creating green spaces.
- 4.24 Duration of Planning Permission – the rules will be simplified to a three-year time limit for a detailed permission, and a five-year time limit for a planning permission in principle.
- 4.25 Changes to scheme of delegation under Section 43A - schemes of delegation to include applications for approval under development order, certificates of lawfulness, and advertisement consent. The effect of this change is that jurisdiction for a wider range of appeals of decisions made by officers using delegated powers will be to the Council's Local Review Body, rather than a Scottish Government Reporter.
- 4.26 Infrastructure Levy – The 2019 Act recognises that delivering infrastructure is an issue and proposes to supplement/amend the existing Planning Obligations developer contributions process. This is a part of the legislation where detail requires to be set out in regulations, including guidance on how Councils are to discharge this function and how the levy income is to be spent.
- 4.27 Agent of Change – proposals for noise-sensitive developments must include consideration of measures to mitigate the effect of noise from existing cultural venues or facilities. This section attempts to bring better protection to existing noise generating businesses and uses when new “noise sensitive” developments, such as houses are proposed adjacent to them. Aspirations for the city centre as an important focus for new housing is a significant area where this provision of the Act could be beneficial.
- 4.28 Short term lets – introduces short-term lets control areas where a planning authority may designate an area where the use of a dwellinghouse for the purpose of providing short term lets will require planning permission. This change reflects concerns regarding ‘Airbnb’ type uses in certain parts of Scotland.

5 POLICY IMPLICATIONS

- 5.1 This report has been subject to an assessment of any impacts on Equality and Diversity, Fairness and Poverty, Environment and Corporate Risk. There are no major issues.

6 CONSULTATIONS

- 6.1 The Council Management Team have been consulted in the preparation of this report.

7 BACKGROUND PAPERS

- 7.1 The Planning (Scotland) Act 2019

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APPENDIX 1**Planning Act - regs and guidance timetable***

* Please note that the information compiled below represents a summary of the position in relation to key areas of the Act and is not exhaustive.

KEY ACTIVITY	PROGRESS INFORMATION
Purpose of planning	The Planning (Scotland) Act 2019 (Commencement No.1 Regulations) bring into force the Purpose of Planning in section 1 of the Act. This will underpin the preparation of the National Planning Framework, and also applies to planning authorities' work on local development plans (and strategic development plans, where relevant) – effective November 2019.
National Planning Framework (NPF) 4	Commencement No. 1 Regulations brought into force the changes in section 2 of the act on how the NPF is to be prepared and work is now underway to achieve this. NPF4 position statement from Scottish Government expected in November – effective November 2019
Regional Spatial Strategy (RSS)	Draft indicative Regional Spatial Strategy covering the Dundee City, Angus and Perth and Kinross authority areas has been submitted to Scottish Government to feed into preparation work for NPF4. Final RSS will be consulted upon and reported to the City Development Committee for approval in 2021.
DEVELOPMENT PLANNING	
Local Development Plan <ul style="list-style-type: none"> • LDP guidance • Play sufficiency assessment • Open space strategy • Self-build register • Community Engagement including Evidence Reports 	A Local Development Plan working group has been convened by Scottish Government to progress matters.
Masterplan Consent Areas	A number of pilots are underway, using the existing Simplified Planning Zone mechanism, to explore how this approach can be used in a variety of contexts ranging from town centre living to supporting rural communities. Scottish Government will await on these pilots being completed and draw on their experience to design the regulations setting out detailed procedures for Masterplan Consent Areas. This is expected to be in place by Q4 2021. Advertisement consent regulations will be updated to make provision for Masterplan Consent Areas at the same time.
Short term lets	Ongoing Scottish Government consultation on the detailed proposals for the regulation of short-term lets in Scotland closes 16 October 2020.
Forestry and Woodland Strategy	Commencement No 3 - Section 53: Brings into force the requirement for all planning authorities to prepare a forestry and woodland strategy. The wording in the Act closely

KEY ACTIVITY	PROGRESS INFORMATION
	reflects the existing guidance in Scottish Planning Policy (2014, paragraph 201) (SPP), and therefore it is not considered that any change in approach to such strategies is required. Planning authorities may wish to set out their plans for revising existing forestry and woodland strategies (or preparing one, for those few authorities that do not already have a strategy) – effective Dec 2019.
Local Place Plans	Commencement No 1 - Section 14: Further detailed requirements will be set out in regulations as part of secondary legislation.
DEVELOPMENT MANAGEMENT	
Environmental assessments	Commencement No 3 – Section 24: Assessment of environmental effects – effective December 2019.
Minister statement re application call ins	Commencement No 3 - Section 29: Activates the requirement for Scottish Ministers to lay a statement before the Scottish Parliament setting out the circumstances in which they consider it appropriate to call-in an application for their own decision – effective December 2019.
Major application notification - Councillors/MSPs/MPs	Commencement No 2 – effective March 2020.
Removal of Full Council requirement where pre-determination hearing has taken place	Commencement No 3 - Section 27: Removes the requirement that any application which has been subject to a pre-determination hearing must be determined by full council - effective March 2020.
Agent of Change principle	Commencement No 2 – effective December 2019
Changing Places toilets	Commencement No 3 – Section 26 - Brings into force the power to make regulations to amend the requirements for certain large developments to include Changing Places Toilets. Regulations to be brought forward to align these requirements with those set out in the Building Standards Technical Guidance.
New fees	Commencement No 3 - Section 41: Changes the powers to make regulations about planning fees, including the ability to introduce more discretionary charging, discounts, and a surcharge for retrospective applications.
Notice by planning authority of applications for listed building consent	Commencement No 3 - Section 5: Regulations to be brought forward to allow implementation of these requirements.
PERFORMANCE	
Appoint National Planning Improvement Co-ordinator	Commencement No 3 - Section 47: Brings into force the power to appoint a National Planning Improvement Co-ordinator. Not yet progressed by Scottish Government.
Elected members training	Expected to be in place before 2022 Local Authority elections.
Increased fees for failing to comply	Commencement No 2 –Section 42 of the Act increases the maximum level of fines that can be imposed for failing to comply with the requirements of various types of notices issued to enforce planning controls, and provides that the

KEY ACTIVITY	PROGRESS INFORMATION
	courts should consider any financial benefit gained from the offence - effective December 2019.
Chief Planning Officer	The Scottish Ministers to issue guidance to planning authorities concerning the role of an authority's chief planning officer. This is expected by the end of 2020/early 2021.

