FINANCE COMMITTEE CALL FOR EVIDENCE

DEFECTIVE AND DANGEROUS BUILDINGS (RECOVERY OF EXPENSES)
SCOTLAND BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM HIGHLAND COUNCIL

Consultation
1. The Highland Council (Building Standards) did participate in the earlier consultation carried out by the Non-Government Bills Unit (NGBU) on behalf of David Stewart MSP. The consultations and meetings mainly concentrated on:

   • Establishing the facts and reasoning of why Charging Orders had not been carried over to the new Building (Scotland) Act 2003
   • The Highland Council provided the NGBU with information on the number of Defective and Dangerous Building incidents and Notices served in pursuance of the legislation; to ensure the health, safety, welfare and convenience of the public in and around buildings.
   • The Highland Council also provided the NGBU with information on the costs that the Highland Council had incurred in dealing with Defective and Dangerous building incidents where the owner of a building could not be found or where the owner refused or could not pay the costs

2. The Highland Council did not comment on the financial assumptions made

3. Highland Council, other than providing annual costs that the Council incurred when dealing with defective and/or dangerous buildings incidents, didn’t contribute to the financial assumptions made in the Financial Memorandum. Possibly this formed part of the secondary consultation by the NGBU, which this Council didn’t participate. The Council has however, no reason to dispute the sums stated.

4. The Highland Council was afforded sufficient time to prepare for the consultation meetings.

Costs
5. The Defective and Dangerous Building (Recovery of Expenses) (Scotland) Bill will simply allow local authorities the opportunity to make Charging Orders for the benefit of recovering expenses incurred where the local authority has had to carry out the work on behalf of the owner of a building and that owner cannot or will not recompense the local authority for the work.

6. The additional costs to local authorities if the proposed Bill is accepted will be:

   • Registering a charging order against a property in the Registers of Scotland (estimated at £50)
   • Discharging a charging order (estimated at £50)
• The cost in administration to the local authority of raising a Charging Order (estimated at £60)

7. The additional costs listed above amount to a very small percentage of the total costs lost to local authorities annually under the present legislative arrangement, when compared with the ability to place a Charging Order on a building. By allowing the local authority the opportunity to place a Charging Order permits greater flexibility to the local authority on how to recover their costs. Placing a burden (Charging Order) on a building or site will ensure the local authority is recompensed for the sometimes significant expenditure the Council incurs when carrying out work that is, the responsibility of the building owner to ensure.

8. The Highland Council has no reason to believe the figures stated in the Bill are anything other than best estimates, given there is no factual costs available at this time.

9. The estimated costs and savings set out in the Financial Memorandum appear to rely on data that exists for other legislative repayment procedures. Given there is no information available at this time for recovery of costs related to the Building (Scotland) Act 2003 for defective and dangerous building incidents the Highland Council is satisfied with the estimates and information stated as being best estimates.

10. It’s not a question about whether the Highland Council can meet the financial costs associated with what the Bill proposes. The Building (Scotland) Act 2003 already requires the local authority under Sections 29 and 30 to take the appropriate action to ensure the H & S of the public. If an owner cannot pay the costs associated with making a building safe the legislation places that responsibility and costs related to making the building safe on the local authority. The proposed Bill is simply attempting to safeguard the local authority in being recompensed for the costs expended in making buildings safe when the owner cannot be found or will not accept their liability.

11. In relation to the costs; on average, The Highland Council responds to 10 to 15 Defective Building complaints and 20 to 30 Dangerous Building incidents per year. Of this, on average more than 10 to 15 dangerous building incidents result in the Council financing the work to be done under Sections 29 or 30 of the Building (Scotland) Act 2003, because the owner cannot be found or refuses to accept liability.

12. The £110 registration and administrative fee multiplied by the incidents this Council has had to fund this financial year where the owners cannot be found amounts to less than 10% of the value of money the Highland Council has paid out to professionals and contractors in undertaking a statutory duty under Sections 29 and 30 of the Building (Scotland) Act 2003. These costs are the minimum necessary to return the buildings to a safe condition following fire, wind or water damage.

13. It should not be the public purse paying for negligent or absent building owner’s refusal or inability to manage their own properties. The Highland Council is
of the view the entire costs associated with defective and/or dangerous building incidents, including costs related to Charging Orders, should be borne by the owner of a building or land.

14. The Bill refers to 700 Charging Orders being issued per annum throughout Scotland. This figure appears ambitious. In Highland Council there is on average no more than 10 incidents per annum where the Council has been unable to recover expenses. However, if Charging Orders was available to local authorities under the Building (Scotland) Act 2003 then a more proactive approach to the building heritage would also be available by initiating action under Section 28 Defective Buildings in the Act. Permitting the local authority an earlier opportunity to instigate repairs to buildings before the building becomes dangerous, similar to the principles that Edinburgh City adopted.

15. With reference to timescales, the only concern Highland Council has is proposed the 30 year repayment period. Highland Council is of the view this is too long.

16. The Highland Council is of the view that the Financial Memorandum captures costs as accurately as the information that was available, at the time, permitted. Local authorities have been consulted during the exercise conducted by the NGBU on behalf of David Stewart MSP, and provided data that was available through the Building Standards Registers.

17. Also, NGBU has consulted with Pye Tait, a private sector organisation commissioned by Scottish Government’s Building Standards Division to undertake a study aimed at identifying ways to improve recovery of costs associated with defective and dangerous building incidents.

18. The Highland Council is of the opinion the introduction of Charging Orders into the Building (Scotland) Act 2003 should have little or no impact on local authority structures or finances provided, there is not the expectation by Scottish Parliament that by re-instating Charging Orders will result in local authorities deliberately inspecting their built heritage. Local authority staff resources simply are not equipped to take on this additional role.

19. Local authorities are already obligated to deal with defective and dangerous buildings under the Building (Scotland) Act 2003 and in the case of dangerous buildings under Section 29 of the Building (Scotland) Act 2003, to undertake the work necessary to remove the danger, immediately, if the risk is serious or if the owner cannot or refuses to carry out the work, then try and recover the expenses incurred at a later date. Charging Orders provides the local authorities with a greater opportunity of recovering the expenses expended.