Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Pentland Hills Regional Park Boundary Bill Committee of the Pentland Hills Regional Park Boundary Bill, which was introduced by Christine Grahame MSP on 30 April 2015.

Background

2. There are three Regional Parks in Scotland: Pentland Hills, Clyde Muirshiel and Lomond Hills (Fife). All are managed and funded by local authorities. The Parks were created in countryside close to Scotland’s larger towns and cities to provide coordinated management for outdoor recreation alongside other land uses, such as farming and forestry. The Scottish Government is not involved in the operation of Regional Parks.

3. Regional Parks are local authority designations. The Pentland Hills Regional Park (PHRP) was designated in 1986 by Lothian Regional Council. It covers the northern 45% of the hill range. Edinburgh is the managing authority for the PHRP on behalf of all three local authority partners (City of Edinburgh, Midlothian, West Lothian).

4. In 1986 both PHRP and Lomond Hills Regional Park were designated, with Clyde Muirshiel Regional Park following 4 years later. Since then, Part 1 of the Land Reform (Scotland) Act 2003 has been introduced, giving everyone statutory access rights to most land and inland water. People only have these rights if they exercise them responsibly by respecting people’s privacy, safety and livelihoods, and Scotland’s environment. The Scottish Outdoor Access Code accompanies the Act and provides detailed guidance on the responsibilities of those exercising access rights and of those managing land and water. The Code recognises that the outdoors is a working environment and clearly envisages that responsible access and the carrying out of land management and related operations are not incompatible.

5. Ms Grahame lodged a draft proposal “for a Bill to extend the boundary of the Pentland Hills Regional Park” (February 2014). This has re-opened a debate last held over 25 years ago when the original proposal was for a Park covering the whole of the Pentland Hills range. However, lack of support from landowners in the south meant only the part within Lothian Region was designated.

The Bill

6. Ms Grahame introduced her Member’s Bill on 30 April 2015. It makes provision to amend the southern boundary of the PHRP in one of two ways:
(i) by means of regulations made by Scottish Ministers (subject to the affirmative procedure) to designate an area which has been proposed by all five relevant local authorities acting jointly;
(ii) by a default measure, which would happen automatically 2 years after the Royal Assent if the Park boundary had not been altered by regulation.

7. In the case of (i) Scottish Ministers could only designate an area which met three criteria regarding: the line of the southern boundary, the inclusion of the southern summits of the Pentland Hills and the procedure to be followed by the local authorities in preparing their joint proposal. This procedure would involve notification of relevant landowners and other bodies, publication of the proposal and joint consideration of representations on it. The Bill would allow Scottish Ministers to amend the procedure but only before a proposal was made.

8. In the case of (ii) Scottish Ministers would have no discretion to impose a boundary of their own choosing. It would have to follow an outer limit, i.e. the line demarcated by the A roads bounding the southern part of the hill range (see attached map which was prepared to accompany the Bill). There is no procedure at the time of imposition of the new boundary (2 years after Royal Assent, at which point ownership may have changed), for allowing any affected (or potentially affected) persons to make representations or objections.

9. The Bill also provides the power for the boundary to be altered by regulation after the default date (two years after Royal Assent) should local authorities come to an agreement on a boundary.

Proposal and Public Consultation by Christine Grahame MSP for a Bill (Spring 2014)

10. Ms Grahame consulted widely about a proposal to extend the boundary of the Pentland Hills Regional Park. A consultation exercise, managed by her parliamentary office, yielded 65 responses: 41 (63%) were from private individuals, 9 from public sector organisations, 9 from community organisations, 5 from charitable organisations and 1 from a private sector organisation.

11. 51% were in favour of the aim of a proposed Bill to extend the boundary of the Regional Park to include the entire range of hills. However many, whether supporting or opposing the Bill in principle, wanted more information, especially on funding and governance.

12. 17 responses from landowners, land managers and farmers who would be directly affected by the proposed extension, set out major concerns with the possible impacts of increased public access on farming operations – including bio-security. Observations were that:

- public access to the proposed extension area already exists;
- Regional Parks should be limited to areas of intense recreational pressure;
- the extension area’s character differed from the existing PHRP – the latter generally includes larger farms used for sheep grazing whilst much of the proposed extension area is made up from smaller farms used for mixed
farming; and in general the terrain is less suitable for public access due to considerable areas of bog land;

- a partnership approach at local level was essential to any future extension.

13. Of the local authority respondents, Edinburgh welcomed the proposal in principle but was concerned about budgetary pressures. West Lothian also supported the principle but went on to say it could not support the extension without having clarity on funding and local authority representation. Midlothian did not take a position but also wanted clarity on these issues. Scottish Borders Council (SBC) was strongly opposed to the proposal; it said there was no case for an extension in terms of recreational pressures. All four local authorities that responded to the consultation expressed concerns about the financial provision and long-term financial stability of the extended PHRP given the financial pressures on the existing PHRP.

14. South Lanarkshire Council did not respond to the consultation.

15. Scottish Water operate assets and manage water supply catchment within the PHRP. The proposed extension includes Drinking Water Protected Areas and reservoirs. Scottish Water indicated that they have no substantive reasons that should prevent expansion of the Park, although they have not allowed for any additional funding which may be required.

Financial Implications

16. Regional Parks are not funded by the Scottish Government.

17. In 2014-15 the PHRP had a total budget of as follows:

<table>
<thead>
<tr>
<th>Authority</th>
<th>Budget (£)</th>
<th>Percentage</th>
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</thead>
<tbody>
<tr>
<td>City of Edinburgh Council</td>
<td>251,000</td>
<td>74%</td>
</tr>
<tr>
<td>Midlothian Council</td>
<td>60,000</td>
<td>18%</td>
</tr>
<tr>
<td>West Lothian Council</td>
<td>16,000</td>
<td>5%</td>
</tr>
<tr>
<td>Scottish Water</td>
<td>10,000</td>
<td>3%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>337,000</td>
<td></td>
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</tbody>
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18. The Financial Memorandum accompanying to Bill estimates additional overall running costs would be:

<table>
<thead>
<tr>
<th>Cost</th>
<th>Amount (£)</th>
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</thead>
<tbody>
<tr>
<td>Additional staff resource</td>
<td>46,000</td>
</tr>
<tr>
<td>Path maintenance: SBC</td>
<td>5,000</td>
</tr>
<tr>
<td>Path maintenance: SLC</td>
<td>1,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>52,000</td>
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</tbody>
</table>

19. One-off, set-up costs are also estimated:

<table>
<thead>
<tr>
<th>Cost</th>
<th>Amount (£)</th>
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</thead>
<tbody>
<tr>
<td>Boundary proposal, notification</td>
<td>20,000</td>
</tr>
<tr>
<td>Information and promotion</td>
<td>7,000</td>
</tr>
<tr>
<td>Extra parking provision</td>
<td>20,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>47,000</td>
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20. Other suggested costs in the Financial Memorandum include:
   - a study into alternative funding mechanism and joint management issues;
   - possible implications for Scottish Water control measures for protecting drinking water quality and security of supply;
   - additional cost to local landowners, farmers and other businesses (e.g. for paths, gates, damage, litter, stock disturbance). These negative impacts may be offset by better access management and improved visitor behaviour.

Discussion

21. The Scottish Government considers the Bill undesirable, for several reasons:

   - First, using primary legislation to extend the PHRP cuts across powers already available to local authorities under the Countryside (Scotland) Act 1967. It sits uneasily with the existing situation whereby local authorities are the principal drivers behind the designation and operation of regional parks through the 1967 Act. Local authorities could designate a further area (such as outlined in the Bill) as being within a regional park if they so wished.

   An extension of the PHRP boundary would have significant implications for all the local authorities involved – the three current local authority partners, City of Edinburgh, Midlothian, West Lothian and the two into which the Park would be extended - Scottish Borders and South Lanarkshire Councils. Any change to the PHRP could have repercussions for the other two Regional Parks in Scotland and four other local authorities involved in their management;

   - Second, the Bill represents a shift away from the existing process as set out in the 1967 Act and The Regional Parks (Scotland) Regulations 1981:
     (a) as regards consultation: In the event of the automatic extension of the Park boundary (the default position as set out in paragraph 14) the Bill makes no provision for any consultation with those affected; it therefore runs counter to the consultation procedures as set out in the 1981 Regulations;
     (b) as regards the handling of representations and objections following consultation: Section 2 (3) of the Bill requires the five local authorities to jointly consider such representations and there is no provision for review by a third party. However, the 1981 Regulations require representations and objections to be referred to Scottish Ministers for their consideration and hearing at a local inquiry, or by someone appointed by Scottish Ministers, and affords a means of reviewing objections by a third party;

   - Third, Section 1 of the Bill would require the 5 local authorities to work together to produce a joint proposal for a new southern boundary.

   From the evidence provided by Ms Grahame’s consultation, this would seem to be unworkable. One of the local authorities (SBC) to be brought into an extended Regional Park, has publically stated that it is strongly opposed to the idea and the other has not commented. SBC say that up to one-fifth of an enlarged Park could fall within its area, but that there are not intense
recreational pressures here (the original reason for setting up the Park); there is greater need for recreational access and management near to the major Border communities and an extended Park might divert resources from elsewhere.

The costs of an extended Regional Park would fall on all 5 local authorities. All 4 local authorities that responded to Ms Grahame’s consultation have expressed concerns about the financial stability of an extended Park. It is therefore difficult to envisage that all 5 local authorities could work together to produce a joint proposal.

Scottish Government’s Position

22. Scottish Government opposes the Pentland Hills Regional Park Boundary Bill as introduced by Christine Grahame MSP.

Conclusion

23. Scottish Government notes that the Bill is undesirable as local authorities already have powers to designate Regional Parks, and their boundaries. As one of the two local authorities into which the extended PHRP will fall, does not support extending the park, Scottish Government does not support the Bill and proposes to maintain the status quo, whereby local authorities take the lead on the designation, planning and management of Regional Parks.