

**Local Government and Communities Committee**

**Planning (Scotland) Bill**

**Submission from Suzanne McIntosh Planning Ltd**

INTRODUCTION

Suzanne McIntosh Planning Limited is a practice founded in 2009. We focus on Planning, Urban Design and Mediation. We are based in Edinburgh but work throughout the UK.

We write in response to the Planning (Scotland) Bill on behalf of a wide range of clients in Scotland from the housing, entertainment and leisure, food and drink, food production, agricultural and retail sectors.

General Summary Position

On the whole the changes in the direction of change in the planning system that are proposed in the Planning (Scotland) Bill are welcomed.

We are particularly encouraged and supportive of the stated primary policy objective of the Bill and wider review aim to change planning's operation and its reputation from that of a regulator to a positive and active enabler of good quality development; a shift from reacting to development proposals to proactively supporting investment and quality place making.

We await much of the detail at the secondary legislation stage on the implementation of the Bill and look forward in engaging on that stage also.

We have direct day to day experience in the planning system and this has informed our response to the questions set. We have over the years been involved in representing a variety of community groups as well as corporate entities.

Our general view is that the planning system should be one that is fair and just to all parties involved in the process. For this reason we implore the committee to consider bringing back a right to be heard in the appeals forum.

Our clients are of the view that a right to choose an oral process makes for a more open and transparent decision making process. The increased delegation and fast track decisions, don't necessarily make for the best decisions.

A right to be heard can also be brought into the Local Review Body process where applicants, objectors and supporters should be able to be heard by way of making oral presentations to the LRB and being questioned by the LRB. The situation we have at present is not, in our view working or indeed fair. This view is shared by clients and industry professionals alike.

We have for the past 9 years been advocating the use of mediation in the planning process and have direct experience of its use that can be drawn upon. We have also

been advocating different methods of engaging with stakeholders in the planning process in order to achieve a quality of dialogue that benefits all parties. We are happy to share the outcomes from our experience with the committee.

In respect of the questions set, please find our response below.

**1. Do you think the Bill, taken as a whole, will produce a planning system for Scotland that balances the need to secure the appropriate development with the views of communities and protection of the built and natural environment?**

There is a concern that as it stands the Bill could potentially weaken environmental and heritage protections and does not necessarily balance the relationship between development and community interest.

The Policy Memorandum suggests that the detail will be found in secondary legislation but without sight of this, confidence in this legislation increasing public trust in the planning system or delivering appropriate development is low at present.

There is a concern particularly that the Bill provides no additional mechanisms for protecting Scotland's heritage and indeed potentially weakens them i.e. Simplified Development Zones.

Existing Scottish Planning Policy states that the planning system should promote the care and protection of the designated and non-designated historic environment but legislation only provides protection for designated assets – listed buildings, scheduled monuments and conservation areas. The Bill is an opportunity to strengthen the protection for Scotland's non-designated cultural heritage and make positive statements in that regard. 2. To what extent will the proposals in the Bill result in higher levels of new house building? If not, what changes could be made to help further increase house building?

National and local development plans should be focused on delivering and shaping well planned, thriving communities in well-connected locations - not just focused on the quantity of units delivered.

In the past the local plan process has become dominated by discussions on housing numbers. The amendments presented seem to shift the focus to housing numbers not their means of delivery, commitment to quality and innovation.

The mechanisms for increasing house numbers are believed to be in the new gatecheck process in advance of the preparation of the Local Development Plan and the introduction of Simplified Development Zones.

We understand there are conflicting schools of thought as regards housing land supply and request that the government give clarity on this issue; particularly in relation to the requirement for a generous allocation of a housing land supply and what this means in reality; especially if we are starting now from a position of proving effectiveness. Clarity as to where a sequential, brownfield sites allocation process fits into this is also requested.

In addition, given the longer lifespan of the LDP we believe there is there merit in reintroducing first and second stage sites for example: year 1-5 sites as early plan sites and years 6 -10 sites as later plan sites as existed throughout the 1990s and early 2000s.

The emphasis on providing all of the 'evidence' as to a site's effectiveness being demonstrated for the gatecheck or earliest stage in our view favours the volume builder type operation who essentially has the resources to carry the cost of this. This step can be seen to be excluding the smaller builder and land owner led site promotion. We've seen cases of this in recent years.

The smaller builder or different arrangement of housing provider e.g. a cooperative will in our experience be more likely to engage Architects and in turn will also be more likely to build a bespoke product rather than a standard product. With the place making, design quality criteria emphasis the smaller company should not be prohibited from participating in the allocation of land for housing as it will be with the process as suggested. We requires that this point is given due consideration in a Bill which seeks to standardise elements of the process. We feel this could have negative impacts on the place making agenda.

### **3. Do the proposals in the Bill create a sufficiently robust structure to maintain planning at a regional level following the ending of Strategic Development Plans and, if not, what needs to be done to improve regional planning?**

The National Planning Framework has in our view been a valuable innovation, setting out a long-term vision and identifying developments of national importance.

However, we believe it is a mistake to believe that it can be enhanced and made more effective by loading more onto it. There is a danger that charging it with responsibility for setting not just national but also regional priorities could have rather the opposite effect, making the NPF unwieldy, top-heavy, and at risk of collapsing under its own weight. The danger is compounded by the intention to merge Scottish Planning Policy into the NPF. The NPF was originally conceived as a light-touch national spatial strategy. It begs the question that there is still a need for a strategic plan particularly dealing with the issues of housing and infrastructure and importantly for the city regions.

The removal of the statutory requirement for strategic regional plans will have funding and resource implications. A local authority may use it as a cost saving exercise, reducing the funding available to a planning department.

The 2014 Scottish Government commissioned Review of Strategic Development Plans made a series of recommendations that require revisiting. Rather than abandoning the SDP the review recommended the need:

- to reinforce its role, significance & validity at different levels;
- to promote a positive community building approach that uses integrative place making to address the main geographic areas of change over the next generation;
- to advocate and deliver update awareness training & Continuing Professional Development; and

- to facilitate more effective outreach and engagement with the communities that may be affected.

The Scottish Government's response in 2014 gave a commitment to strengthen strategic planning and set out a series of actions for Strategic Development Planning Areas, Scottish Government's Planning and Architecture Division and the Minister for Local Government and Planning to follow. We await to hear whether these actions were implemented and was their outcome independently evaluated?

**4. Will the changes in the Bill to the content and process for producing Local Development Plans achieve the aims of creating plans that are focussed on delivery, complement other local authority priorities and meet the needs of developers and communities? If not, what other changes would you like to see introduced?**

The Position Statement published last summer acknowledged the need for two-way dialogue between land use planning and community planning and committed to a statutory link between development planning and community planning in the Planning Bill. In order to be more effective in this regard, the Bill should set out what these links are and how committed the Scottish Government are to this.

Stakeholder engagement will be critical to the gatecheck process and as such should be stated as a requirement. Early engagement with communities is essential.

Planning should not be something that is 'done to' people but that it is something that all age groups participate in and become active citizens producing plans relating to their place.

Much progress needs to be made with respect to technology and its use in the planning system. Engaging the young, particularly through the smart use of apps, websites, Instagram, Twitter and Facebook needs to be a high priority for all parts of the system and sides of the debate.

**5. Would Simplified Development Zones balance the need to enable development with enough safeguards for community and environmental interests?**

It is not understood how or why an old idea from the 1980's that clearly had limitations at the time should form part of the Bill especially at a time when place making and design are high on the agenda. The SDZs are not supported, there is grave concern over their use.

**6. Does the Bill provide more effective avenues for community involvement in the development of plans and decisions that affect their area?**

If Local Place Plans (LPP) were adequately resourced and communities were skilled appropriately or funded to engage the professional expertise they require to produce them then they could be a positive step. However, they need to be able to be adopted into the LDP to have any weight.

At present the provisions for Local Place Plans appear to be a clumsy discretionary bolt-on to the Local Development Plan preparation process and the proposed procedure for their integration into development plans is flawed.

We are also concerned that adequate scrutiny has not yet been given to the impact of the Planning Bill on women; in particular how we use our built environment and engage in the planning process. The Equalities Impact of the Bill does not appear to address this. We specifically request that the committee look to addressing this point.

Women are routinely excluded directly or indirectly from participating in the planning process and in utilising the end product of the process – the built environment. There are perceptions of place that impact upon how we use and move around our cities, towns and countryside that root deep into our psyche. The planning process is where the start of the story begins and engaging, particularly women in the creation of place, and understanding how we use places will go some way to understanding this issue and creating a more balanced, equal society.

**7. Will the proposed changes to enforcement (such as increased level of fines and recovery of expenses) promote better compliance with planning control and, if not, how these could provisions be improved?**

No comment

**8. Is the proposed Infrastructure Levy the best way to secure investment in new infrastructure from developers, how might it impact on levels of development?**

We are interested to see how this develops, particularly with regard to the idea of land value capture in relation to the impact of planning permission on land value being used to support public services and communities.

**9. Do you support the requirement for local government councillors to be trained in planning matters prior to becoming involved in planning decision making? If not, why not?**

There is Universal agreement that training would be beneficial, not just for those in a planning decision capacity – but for the wider authority, especially given the provision that the LDP needs approval from the full Council not a delegated committee. There is also a suggestion from the membership that councillors taking decisions on a planning committee or local review body should be required to take a test/exam as they are for licensing.

The Scottish Government needs to clearly articulate what training is already available for those taking place in the planning process, and whether it is both adequate and well accessed. Standardisation of this training across authorities would be tentatively welcomed.

It was noted that a planning committee does not need to be entirely elected officials, more Chartered Planners and an Architect and Urban Designer on a planning committee could be extremely beneficial. This happens for example in the national parks.

It was suggested also that the training should be available to community councillors, as well as mandatory for all elected officials playing a determining role in the planning system.

10. Will the proposals in the Bill aimed at monitoring and improving the performance of planning authorities help drive performance improvements?

The quality of places for all our citizens; with appropriate infrastructure, sustainable economic growth, high environmental standards and suitable, affordable homes would be a more fitting archetype as opposed to the speed of decision.

Without increased resources, and with multiple changes to the Planning system within the Bill, it is unclear how planning authorities are being enabled to improve on their performance as it is currently understood (speed, percentages etc).

What is needed are quality standards, embedded across all planning authorities and a ring fencing of planning fees for re-investment in planning authorities.

**11. Will the changes in the Bill to enable flexibility in the fees charged by councils and the Scottish Government (such as charging for or waiving fees for some services) provide enough funding for local authority planning departments to deliver the high-performing planning system the Scottish Government wants? If not, what needs to change?**

Clients raise the concern that there have been large increases in planning fees yet we have not seen an improvement in the planning service across Scotland as a result. The difficulty lies in the lack of ring fencing of planning fees in order to support a planning service.

**12. Are there any other comments you would like to make about the Bill?**

- Use of Mediation in the Planning System

We would like to see more tangible support and commitment, as mentioned in the Review outcomes, to the use of mediation in the planning, enforcement and appeals processes. The Bill does not emphasise this. Our colleagues in the Association of Mediators, of which we are active members will be making comment on this issue.

- Local Review Bodies

We have had for many years fundamental issues with the principle of LRBs in respect of the council considering an appeal on its own decision. However, if they are here to stay then they must be drastically improved upon. Giving parties a right to speak and a time limit at the LRB would be a start; having a chair person who is not elected but an expert in Planning, Surveying, Architecture or the Law would be another; sharing LRBs across Local Authority boundaries so that it becomes a fairer process rather than a political one would also be another idea. Bringing the chances of success at a LRB (1 in 3 appeals allowed at present) more in line with those at the DPEA (1 in 2 appeals allowed at present) would be a start. The default position of the LRB is always – ‘what did the planner say’...and just going with that lets the process down, it is not a rigorous, de novo appeals process at present. The industry has no

confidence in the LRB process and this has been widely written about and must be taken into account.

The failure of the process not to be sufficiently challenged is not defence of its shortcomings. The nature of cases considered by a LRB do not necessarily have the means accessible to them to take a challenge to the court of session.

We are of the view that the planning process should have another mechanism for challenging decisions if a party is left feeling that the process has been flawed. A planning challenge route similar to the small claims court should be considered and explored.

- Duration of Planning Permission

We are strongly in favour of going back to the use of conditions to express the duration of planning permission, as set out in Section 17 of the Bill and for the greater time period for Planning in Principle. We would request that, by means of transitional provisions, this new requirement of additional time is able to be applied to current PPP's granted within the last few years.

- Resources in Local Authority Planning Departments

Having previously worked in local government for 17 years prior to going into private practice we have every sympathy for the stresses under which Planning Authority staff area placed. We note that in recent years the degree to which the planning service is stretched has become more and more grave. Without the dedication of the highly skilled Planners working within the public sector the system would have collapsed. At times the degree of stress they are under comes through in their attitude and approach. Many will confide just how grim it actually is to endure such a stretched service day in day out; particularly in our city Authorities. We are very concerned that the changes proposed will not be adequately resourced and it will be another stress upon a service in crisis at present.

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