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<b>Report To:</b>	<b>Environment and Regeneration Committee</b>	<b>Date:</b>	<b>6 March 2014</b>
<b>Report By:</b>	<b>Corporate Director, Environment, Regeneration and Resources</b>	<b>Report No:</b>	<b>E+R/14/03/02/SJ/NM</b>
<b>Contact Officer:</b>	<b>S.Jamieson, Head of Regeneration and Planning</b>	<b>Contact No:</b>	<b>01475 712401</b>
<b>Subject:</b>	<b>High Hedges (Scotland) Act 2013</b>		

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## 1.0 PURPOSE

- 1.1 The High Hedges (Scotland) Act received Royal Assent on 2 May 2013 and, although the date has yet to be advised, it is anticipated being enacted in April 2014.
- 1.2 The purpose of this report is explain the implication of the Act on Inverclyde Council, seek delegated authority to the Head of Regeneration and Planning to issue guidance, consider and determine applications, made and take enforcement action under the Act, and gain approval for the setting of the fee for the submission of such applications.

## 2.0 SUMMARY

- 2.1 The Act applies to any row of 2 or more trees or shrubs which rise to a height of more than 2 metres above ground level and which form a barrier to light. In these circumstances an owner or an occupier of a domestic property adversely affected by a high hedge may apply to the Council for a High Hedge Notice.
- 2.2 Before submitting an application the affected party must first seek resolution with the hedge owner. If unsuccessful, an application may be lodged with the Council, which will consider all the relevant circumstances of the case including loss of light to neighbours, representations from the owner and the effect of the hedge on the general amenity of the area including any cultural or historic significance. All parties are to be notified of the decision, and if a High Hedge Notice is served it will state the action required to be taken within a specified timescale. The full content of a Notice is detailed in paragraph 4.6. The Notice is binding on the owner subject to appeal procedures that are open to both the applicant and the hedge owner. Appeal is to the Scottish Ministers. Finally, in the event of a High Hedge Notice not being complied with the Council will have enforcement and cost recovery powers.

## 3.0 RECOMMENDATIONS

- 3.1 It is recommended that delegated authority be given to the Head of Regeneration and Planning to carry out the Council's powers, duties and obligations in terms of the Act, to include:
  - the issuing of guidance;
  - the consideration, dismissal and determination of applications;
  - the issue, variation or withdrawal of notices; and
  - the undertaking of any enforcement action, including any appropriate recovery of costs.
- 3.2 It is recommended that the Council sets an application fee linked to that for a planning application for an enlargement, alteration or extension to a dwellinghouse, as set by the Scottish Government. This fee is currently £192.

3.3 It is recommended that following approval by the Committee, the terms of this report be remitted to the Inverclyde Council with the Committee's recommendation it be approved.

**Stuart W. Jamieson**  
**Head of Service – Regeneration and Planning**

## 4.0 BACKGROUND

- 4.1 The Bill for the High Hedges (Scotland) Act was passed by the Scottish Parliament on 28 March 2013 and received Royal Assent on 2 May 2013. Although no date has yet been advised, it is anticipated that the Act will come into force in April 2014.
- 4.2 The Act when introduced will provide a limited solution to the problems of “high hedges which interfere with the reasonable enjoyment of domestic property”. This is defined as a row of 2 or more trees or shrubs which rise to a height of more than 2 metres above ground level and which form a barrier to light. Where the definition applies, an owner or an occupier of a domestic property may apply to the Council for a High Hedge Notice.
- 4.3 Before submitting an application, the applicant must firstly take, in accordance with guidance to be issued by the Council, “all reasonable steps” to resolve matters. Applications must be accompanied by a fee covering what the Council considers “represents the reasonable cost ...in deciding an application”. On receipt, the Council may dismiss an application if the applicant has not taken reasonable steps to resolve matters or if the application is considered frivolous or vexatious.
- 4.4 If an application is not dismissed, the Council will progress to fully assess the proposal. As a first step, the Council will notify the owner and occupier of the site of the hedge, allow 28 days for representation, and copy any such representations to the applicant. The representations must be taken into account in deciding the application. The application is to be determined on the basis of whether the hedge affects the enjoyment of a domestic property which an occupant could reasonably expect to have and, if so, whether any action should be taken by the owner to remedy the adverse effect or to prevent the reoccurrence of that adverse effect.
- 4.5 In reaching a decision the Council must take into account all the relevant circumstances of the case including loss of light to neighbours, representations from the owner and the effect of the hedge on the general amenity of the area including any cultural or historic significance. It should be noted that if there is no loss of light, then the hedge is not covered by the Act regardless of what other amenity issues that the applicant may have. The Act provides that the Scottish Ministers may produce guidance although as yet this has not happened. The Council must have regard to any such guidance both in assessing applications and when producing its own guidance. If a hedge is covered by a Tree Preservation Order, any decision to serve a Notice takes precedent.
- 4.6 All parties are to be notified of the decision and, if a High Hedge Notice is served, it must be copied to all parties. A High Hedge Notice will:
  - identify the high hedge which is the subject of the notice and the land on which it is situated;
  - identify the domestic property that the Council has decided is adversely affected;
  - state the date on which the notice is to take effect (which is to be not earlier than 28 days after service of the notice);
  - state the initial action that is to be taken by the owner of the land on which the hedge is situated and period for compliance;
  - state any preventative action that is to be taken by the owner of the neighbouring land;
  - inform the recipient that there is a right to appeal to the Scottish Ministers;
  - inform the recipient that the Council is entitled to authorise a person to take action where there is a failure to comply with the notice and that the Council may recover the expenses of that action; and
  - inform the recipient that it is an offence to intentionally prevent or obstruct a person authorised to take action from acting in accordance with this Act.

It is binding on the owner although the Act gives the Council the scope to withdraw or vary it. If varied, the Council must issue a revised Notice. It should be further noted that the withdrawal of a Notice does not prevent the issuing of a further Notice at a later date in respect of the same hedge.

- 4.7 The applicant may appeal to the Scottish Ministers if the Council decides to issue a Notice, the terms of which are unacceptable to the applicant, or the Council considers that there is no adverse effect, determines there should be no action taken, or decides to vary or withdraw a Notice. The owner of the hedge may appeal to the Scottish Ministers if the Council decides to issue a Notice or vary or withdraw a Notice.
- 4.8 Finally, in the event of a High Hedge Notice not being complied with, the Council will have enforcement and cost recovery powers.

## 5.0 PROPOSALS

- 5.1 To assist both owners and potential applicants in avoiding a formal application, it is recommended that delegated powers be granted to the Head of Regeneration and Planning to issue guidance on the application process, including pre application resolution requirements, factors that are taken into account in the assessment of an application, and acceptable impact on light.
- 5.2 It is recommended that the Council sets an application fee linked to that for a planning application for an enlargement, alteration or extension to a dwellinghouse, as set by the Scottish Government. This fee is currently £192.
- 5.3 It is recommended that delegated powers be granted to the Head of Regeneration and Planning to determine all applications submitted under the High Hedges Act (Scotland) 2013.
- 5.4 It is recommended that delegated powers be granted to the Head of Regeneration and Planning to undertake enforcement action and seek cost recovery as appropriate.

## 6.0 IMPLICATIONS

### Finance

- 6.1 The introduction of the Act should be cost neutral. The application fee proposed is intended to cover costs and application numbers are anticipated as being low.

#### Financial Implications:

##### One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

##### Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (if Applicable)	Other Comments
N/A					

### Legal

- 6.2 Following the coming into force of the Act, and subject to approval of the delegations recommended in this report, the Head of Regeneration and Planning will formally issue, vary and withdraw high hedge notices in accordance with the Act. Officers must have regard to such guidance as may in due course be produced by the Scottish Ministers, in carrying out the Council's functions under the Act.

## **Human Resources**

6.3 No implications.

## **Equalities**

6.4 No implications.

## **Repopulation**

6.5 No implications.

## **7.0 CONSULTATIONS**

7.1 None.

## **8.0 LIST OF BACKGROUND PAPERS**

8.1 High Hedges (Scotland) Act 2013.