

## **Masterplan Consent Areas**

**Updated 22<sup>nd</sup> May 2024**

Heads of Planning Scotland (HOPS) is the representative organisation for senior planning officers from Scotland's local authorities and national park authorities.

This consultation response summarises key points made by Scottish Planning Authorities, but we note that there will be differences of opinion between authorities and would defer to their own responses on specific local issues.

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### **Approach to Regulations**

- 1. To what extent do you agree with the principle that regulations be kept to the minimum necessary and that more advice be offered in guidance and kept updated? Please explain your view.**

Agree

Regularly updated guidance in place of further legislation is to be welcomed. The use of regularly updated guidance offers more flexibility than regulation and the clearer and more straightforward the guidance, the better. Any such guidance should be published at the time that the regulations come into force. However, if that is not the case, we would be supportive of the regulations being more comprehensive. With there being a requirement for co-operation between different stakeholders, anything that can be done to make the process more straightforward would be helpful. For example, Designing Streets policy is rarely applied as intended in respect of the co-ordination with roads authorities and construction consent. Keeping regulations succinct would allow for local variation and interpretation and the development of good practice over time to feature in updated guidance. This allows for a place-based approach, where local and site-specific requirements can be built-in.

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### **Excluding kinds of development from MCA schemes**

- 2. We are not proposing to regulate to exclude any form of development from having potential to be within an MCA. To what extent do you agree with this approach? Please explain your view.**

Agree

A case-by-case approach offers flexibility, including in respect to scale, type or nature of development. There could be various developments and schemes, large and small that could benefit from the mechanism. The decision on which forms of development would be appropriate for any given Masterplan Consent Area should be made by the planning authority and local community stakeholders. It is agreed that all these consents which the Planning and Roads Authorities would otherwise determine should be included. Given that the type of development to be included within the MCA would be at the discretion of the planning authority, subject to consultation, and because development could not take place in the designated locations set out in Schedule 5A of the 1997 Act, it is considered reasonable not to exclude any form of development from having potential to be set out within an MCA. Allowing for a wide range of different types of development would allow for the flexible approach considered in Question 1. Excluding use classes would restrict the usefulness of designating MCAs by limiting the possibilities for mixed-use schemes and enabling development. Planning authorities will have their own locational criteria in their local policies which already assess the suitability of certain development types, and which use classes

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they can be co-located alongside. Schedule 5A will allow any use classes to be excluded in future should they prove to be problematic in MCAs.

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### **Places that cannot be included in a scheme**

- 3. We are not proposing any changes to the designations listed in schedule 5A (Paragraph 3(4)). To what extent do you agree with this approach? Please explain your view.**

Agree

The range of exceptions appears appropriate. It would be possible to assess development in respect to these designations, however its perhaps important that their strength isn't diluted given the sensitive nature of sites and the reasons for designations. This approach provides a consistent framework across other legislation and allows any unanticipated future issues with specific development types or land designations to be addressed. Excluding from an MCA the locations within the list of designations of international and national importance set out in Schedule 5A of the 1997 Act (including Conservation Areas) is considered appropriate to ensure their continued protection.

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### **Duty to periodically consider making a scheme statement**

- 4. To what extent do you agree that the matters above in relation to the statement be set out in guidance rather than regulations? Please explain your view.**

Agree

Although including detail of these requirements within regulations provides more certainty for planning authorities and ensures greater consistency, clearly setting out the requirements of the statement in regularly reviewed guidance offers flexibility. This reduces pressure on Planning Authority resources and allows the statement to be tied in with the programme of other consultation work and publications. It is likely that where planning Authorities identify potential MCAs as part of their Local Development Plan there would be a significant amount of detail and engagement but there may not be during consideration of sites outwith the Plan cycle, so offering flexibility would be welcome. It is noted that part 3 (4) of the draft regulations requires planning authorities to notify community councils if they are considering making an MCA. It is suggested that requiring authorities to issue statements notifying community councils and others in cases where an MCA is not taken forward would ensure the same level of transparency. We would also suggest that the list of notifications should also include owner, lessee, or occupier for areas within and adjacent to areas considered for bringing an MCA forward. The wording of the legislation suggests that it must be justified why an MCA has or has not been considered or prepared for any part of the planning authority area. This being the case and particularly when it has been concluded that no designation of an MCA is required, it is considered proportionate to restrict any requirements for engagement or reporting to the list set out in the suggested guidance wording.

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### **Consultation on possible proposals for a masterplan consent area scheme**

- 5. Draft Regulation 3(4) specifies that planning authorities must consult with community councils before determining the content of any MCA proposals which may be publicised. To what extent do you agree with this? Please explain your view.**

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Agree

In line with important planning applications, it seems reasonable that Community Councils be consulted in this way. Aside from being of general interest and relevance, engagement is particularly important as there exists the potential that MCAs may encompass or overlap areas covered by Local Place Plans, many of which are likely to be prepared by or in association with community councils. It is, however, noted that should an LDP be amended to reflect an MCA the requirement appears to include all Community Councils. We support the flexibility within these MCA regulations and are concerned that having declared an MCA there appears to be wider scope for consultation for a LDP amendment. The difference could be one of several factors that discourage Local Planning Authorities from amending LDPs to include new MCAs. There is also a question about outcomes and how likely it would be that a scheme would subsequently be amended or halted because of objections. We would also suggest that as part of a wider consultation package the list of notifications should also include owner, lessee, or occupier for areas within and adjacent to areas considered for bringing an MCA forward. As with all new planning policy, community consultation should be a key part of the development of MCA proposals and planning authorities will wish to be cognisant of the contents of Local Place Plans and how the scheme fits with these. Early involvement of Community Councils would likely lead to a better outcome with regards to designing a Masterplan Consent Area proposal that fits with the needs of the community and would increase local buy in. It may, however, be challenging to manage the expectations of local communities as part of the process – for example, if the scheme is being prepared to market a site and developers have not yet been secured, this will need to be made explicit in all communications. It is also acknowledged that not all parts of Scotland benefit from an active community council, therefore regulations should not place undue weight on the role of community councils. We would also like to highlight a concern with carrying out a further process of engagement when amending a LDP to incorporate LPPs or MCAs as both will, based on current and proposed regulations and guidance, already have been subject to engagement and public consultation. The Government should consider whether it is proportionate and fair to repeat an engagement process, potentially opening further consideration of objections previously addressed and repeat hearings or examinations, particularly for MCAs, which are de facto planning permissions. This would run contrary to the intention for the new planning system to provide certainty.

- 6. Draft Regulation 3 provides how consultation for possible proposals for an MCA scheme is to be undertaken, including notification and the requirement to undertake two public events, with opportunity to make comments to the planning authority. To what extent do you agree with this approach? Please explain your view.**

Agree

The consultation requirements are in line with those required during pre-application for planning permission and give parity with what would be expected from a developer/agent taking forward a masterplan. The scope, timing and extent of engagement is considered proportionate and is broadly in alignment with the requirements for major planning applications. In particular, that the proposed required engagement is similar to the 'Inform' and 'Consult' levels as specified in the draft Effective Community Engagement in Local Development Planning Guidance. It is understood from the regulations that the requirement for two public events will only apply to schemes which are classed as 'major development' or 'national development', but that the procedures for notification, including publication online, will apply to MCA schemes of all sizes (although the nature of MCAs will probably mean that most will indeed be major development). This approach is considered appropriate and is in line with the approach planning authorities would likely take with any similarly large projects or proposals (such as regional Growth Deal or City Deal projects). Planning authorities should have

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discretion to determine the best approach organising public events based on the needs of the particular area/uses. It may be that a mixture of online and face-to-face events would get better feedback than using only face-to-face events; this should be within the scope of the regulations. However, if the only paper notice published is the final announcement, could this lead to challenges due to a perceived lack of publicity (i.e., ongoing adverts 'hidden' online)? Furthermore, given it would be the Planning Authority promoting the scheme, it does raise questions about what it does with unresolved comments or objections. It would be unusual for Authorities not to approve a scheme and unresolved objections could become a difficult area, including in having a level of participation like this. There is also concern about the scope of hearings and every respondent having the right to be called to the hearing, with no clear indication of the relevance of any objection being a factor.

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## **MCA schemes form and content**

### **7. To what extent do you agree that the regulations should require reasons for conditions to be set out in the MCA scheme? Please explain your view.**

Agree

Conditions should have reasons, in line with conditions for planning applications in order to be consistent and in the interest of transparency. Providing explanations for any conditions which are set would enable the planning authority to clarify their aspirations for a Masterplan Consent Area scheme, which would be useful when consulting on the scheme with local stakeholders and promoting the scheme to potential investors or developers. For example, it may be desirable to build in conditions that would contribute to Community Wealth Building, it would also be important in order to be clear on the parameters that development should adhere to. It is considered reasonable to set out reasons for conditions in a similar manner to a planning consent Decision Notice.

### **8. Are there any further aspects you consider should be required to be included in an MCA scheme? Please specify and explain why.**

Clarity would be welcome with regard to Elected Member involvement in the process. This could be included within guidance. There may also be occasions where an MCA scheme is at odds with a registered Local Place Plan. Unlike in the preparation of Local Development Plans, there is nothing within the draft regulations or guidance which states to what extent MCAs should have 'regard' to any LPPs within the MSC scheme area. Guidance in this regard would be welcomed. In the interest of transparency, where possible, it may be useful for the MCA scheme to detail the proposed cost offsetting or use of discretionary charging to cover the cost of front funding costs. Given the length of an MCA scheme, this would need to be caveated to reflect any changes to planning fees during the lifespan of an MCA scheme e.g., should changes come into effect that would see planning fees increase annually in line with inflation. The flexibility within the current regulations will allow planning authorities to navigate the development of initial MCA schemes to fit with the needs of their local areas and communities. The existing powers leave room for further requirements to be added in future if the practical application of MCA schemes raises the need for this. The extent of information would need to be at the level of a planning application to make a competent decision. It might be helpful to have the proposed guidance set out expectations in this regard.

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## **Consultation on proposals for a masterplan consent area scheme**

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- 9. Draft Regulation 4(3) and Schedule 1 of the draft MCA Regulations specify those who a planning authority must consult with before determining the content of any MCA proposals which may be publicised. To what extent do you agree with these groups? Please explain your view.**

Agree

These align with existing processes for planning applications and are consistent with the key agencies who would usually be consulted with regards to any major planning proposal, as appropriate to the site, albeit with a longer representation period. The neighbour notification is also as standard, and in the context of Masterplan Consent Area schemes, which may not have been initiated by the landowner, it is essential that all landowners are consulted. However, with respect to point (b), it is unclear as to what would constitute 'neighbouring land' and a more refined wording to refer to properties immediately adjacent to or within a set distance (e.g., 20m) of the MCA boundary may be appropriate.

- 10. Draft Regulation 4(2) provides how consultation in relation to an MCA scheme is to be undertaken. To what extent do you agree with this approach? Please explain your view.**

Agree

The proposals align with existing processes and are in line with typical development management expectations. However, consideration should be given to the availability of printed copies for public inspection (e.g., at local libraries or an office of the planning authority). This could be clarified within guidance. Overall, the approach appears robust, with the scheme and accompanying notice published online so that it is made publicly accessible. The required information for the notice is reasonable and will give a detailed overview of the scheme and the process for making representations. As with planning applications, consultation/notification will be more/less onerous depending on the nature of the proposal.

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- 11. Draft Regulation 4(5) sets a 30-day period for representations if they are to be treated as valid representations. To what extent do you agree with this period? Please explain your view.**

Agree

The consultation timescales are appropriate given the significance, scale, and potential complexity of MCA implementation. Setting a standardised time limit on representations is a practical approach to prevent a drawn-out process and to ensure that all correspondence is received at a timely manner and at the same point in the development of the Masterplan Consent Area scheme. A minimum 30-day period for representations would be in line with the period for Environmental Impact Assessment (EIA) applications. We would be supportive of the "a date not earlier than..." wording from the Development Management Regulations being used. A set timescale is important, but clarification is required regarding representations; do they need contain valid material considerations, like representations to planning applications, or can a representation can be on any grounds, akin to the LDP? This should be clarified in the guidance. It is also considered that planning authorities should have discretion to extend the 30-day period if the nature and scale of the proposed MCA justifies such an extension. Particularly for (e.g.,) community groups getting to grips with the concept and implications of an MCA for the first time, it may be entirely reasonable to set a deadline in excess of 30 days.

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## **Hearings**

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### **12. To what extent do you agree with the required circumstances, i.e., that where the scheme would authorise a national development, that there be a requirement for a hearing, as set out within Draft Regulation 5(1)? Please explain your view.**

Agree

It seems appropriate that any proposal that would constitute a national development would give anyone who had submitted a representation the right to a hearing with the local planning committee to discuss their concerns. However, it is not clear who or what triggers a hearing, is it for local authorities to establish this threshold? It is noted that a hearing may not always be necessary, depending on the scale and nature of representations, or indeed add value to the final outcome/decision. This also raises some questions about the nature and tone of anticipated hearings. For example, would they be clearly on the basis of discussing the detail of an MCA, as the principle and scope of the National Development may already have been 'approved' via its inclusion in NPF4? It would appear very unlikely that the Planning Authority would alter its view of the principle of development by that stage. There is also concern about the scope of hearings and every respondent having the right to be called to the hearing, with no clear indication of the relevance of any objection being a factor. However, for a hearing only to be required for national developments is considered reasonable given the level of additional scrutiny required for changes of the scale and complexity encompassed by them. The level of administration associated with the hearing process in the context of potential time and staffing constraints is therefore best served for consents of a national, strategic scale.

### **13. To what extent do you agree with the proposals for those who must be given an opportunity to appear before and be heard by a committee of the planning authority at a hearing as set out within Draft Regulations 5(2) and (3)? Please explain your view.**

Agree

The proposal that any person from whom the planning authority has received a valid representation should be given the opportunity to appear before and be heard at a hearing in relation to a proposed MCA is in line with the current processes for planning applications. However, linked to our response to Q12 above, this will require careful consideration and the current scope and definition of an interested party suggests that those parties who make a representation on matters of principle and not detail are still to be heard. The guidance should clearly set out the circumstances in which representations are to be heard.

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## **Requirement to notify the Scottish Ministers of certain proposals**

### **14. To what extent do you agree that a Notification Direction be issued requiring that in the above circumstances such MCA schemes be notified to the Scottish Ministers? Please explain your view.**

Agree

Circumstances requiring a notification to Ministers should align with those which exist for planning applications, as is proposed in the draft regulations. The notification should provide a sensible check for schemes in those circumstances. This reflects the potential for Ministers to call in or require to be notified of planning applications under certain circumstances. Furthermore, the list of circumstances for which Ministers must be notified is appropriate given their economic significance and strategic importance.



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### **Publication of the MCA scheme**

**15. To what extent do you agree with the proposed requirements in relation to the publication of MCA schemes and the decision notice as set out in Draft Regulation 7? Please explain your view.**

Agree

The proposed requirements for the decision notice are reasonable and encompass aspects that would be of interest and relevance to stakeholders, including reasons for decisions made, engagement procedures and information on how to challenge the decision. Decision notices should be made available to view, and a requirement to notify interested parties of the decision and where a decision notice is available for inspection, in line with the development management regulations is appropriate. In general, the requirements are consistent with the modes of publication of any major planning policy by the Council: using local press, online publication, and physical copies available in an office of the planning authority. The information to be included in the decision notice seems logical. The requirement for a copy to be placed in a planning authority office is similar to that for the Local Development Plan itself.

However, it is considered that the cost associated with a newspaper notice including all of the required information would not be proportionate to the likely readership. A notice including less information, excluding points b and c of the Draft Regulation 7 may be more appropriate for publication in a local newspaper, with the full information available online and/or as a physical copy. A template for such a notice in regulations or guidance would be welcomed. There is also a concern that, other than direct notification as laid out in Regulations 3 and 4, publicity about the scheme being solely online could lead to concerns that there could be challenges to a scheme at a very late stage following 'wider' publicity through the placing of an advert in a local newspaper. The medium of publishing should be the same for each stage of the development, promotion, and confirmation of a scheme.

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### **Planning Register**

**16. To what extent do you agree with the proposed requirements in relation to the planning register as set out in Draft Regulation 9? Please explain your view.**

Agree

This seems to be a proportionate and sensible approach to maintaining records of MCA schemes alongside other planning documents and ensures that the DMR is consistent with MCA legislation.

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### **Alteration of a MCA scheme**

**17. To what extent do you agree with the proposals for the procedures for altering an MCA scheme, as set out in Draft Regulation 8? Please explain your view.**

Agree

The process for altering an MCA scheme should apply many of the same requirements as that of making an MCA scheme. It is considered however that the process for alteration of a scheme should be proportionate to the extent that the scheme is to be altered. The omission of consultation events might not be suitable if there was to be a significant departure from the original overall aims of the scheme that could justify more extensive engagement. It is suggested that more extensive PAC-style

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events may still be appropriate if significant changes are proposed. The processes should be similar to those for authorising an MCA. As set out above, consultation and public event requirements for local scale development should be at the discretion of the planning authority. It should also be clarified what processes would be required to withdraw an MCA scheme early. It may also be useful to have an intermediate procedure in the event that only minor changes are proposed. There are parallels to planning applications where assessing an alteration is more straightforward without certain requirements.

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## **Prescribed Forms**

### **18. To what extent do you agree with the approach not to prescribe forms of notices within the Draft Regulations? Please explain your view.**

Neutral

It is considered that including templates for prescribed forms within regulations would be beneficial for ensuring consistency. Including such notices in guidance would be supported, if not in regulations. Standardised forms are used elsewhere in the planning process and would appear sensible for new process and may help with avoiding potential omissions and errors of process. Formalising aspects, such as forms could also help give more confidence in the process.

However, the decision not to prescribe forms of notices will allow planning authorities and local publications the flexibility to adopt a style that is consistent with the way in which they usually share information of this nature and is therefore familiar to local audiences.

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## **Environmental Impact Assessment**

### **19. To what extent do you agree with the proposed process set out in the Draft Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 contained within Annex B? Please explain your view.**

Agree

It is agreed that the procedure for an MCA which relates to Environmental Impact Assessment development should resemble the procedure in the 2017 Environmental Impact Assessment regulations. Given that other statutory planning documents such as Local Development Plan policies must undergo EIA screening, it is logical that any Masterplan Consent Area scheme would be subject to the same process. The process proposed appears to be a good balance to screening/scoping and carrying out of an EIA. This would be something new for Planning Authorities. The questionnaire hasn't asked questions of resources which could be a significant difference in understanding the capabilities of Planning Authorities taking forward larger schemes.

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## **Impact Assessments**

### **20. To what extent do you agree with our approach to the impact assessments? Please explain your view.**

Neutral



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It is agreed that the regulations relate to procedures for policy which has already been made and assessed through the 2019 Planning Act, therefore screening out the impact assessments is appropriate. If impact assessments have been screened out, then the MCA process should be more streamlined. However, BRIA recognises that significant costs could be incurred by planning authorities in establishing an MCA scheme and that costs will vary depending on the size and nature of the scheme. Without the ability to recoup these costs it may be difficult for planning authorities to financially justify establishing an MCA within their area.

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## **About you**

### **Are you responding as an individual or an organisation?**

Organisation

### **What is your organisation?**

Heads of Planning Scotland (HOPS)

### **Further information about your organisation's response**

This consultation response summarises key points made by Scottish Planning Authorities, but we note that there will be differences of opinion between authorities and would defer to their own responses on specific local issues.

### **The Scottish Government would like your permission to publish your consultation response.**

Publish response only (without name)

### **Do you consent to Scottish Government contacting you again in relation to this consultation exercise?**

Yes