

SCOTTISH GOVERNMENT CONSULTATION: MASTERPLAN CONSENT AREA
REGULATIONS

1.0 EXECUTIVE SUMMARY

- 1.1 The aim of this report is to advise PPSL of the [Scottish Government Masterplan Consent Areas - draft regulations: consultation](#) and seek approval for the proposed response to the consultation (see **Appendix 1**). The response is due by 22nd May 2024.
- 1.2 The Planning (Scotland) Act 2019 introduced Masterplan Consent Areas (MCAs) as a new upfront consenting mechanism for development proposals. As well as planning consent an MCA can also potentially grant Roads Construction Consent, Conservation Area Consent and Listed Building Consent.
- 1.3 The proposed regulations principally add procedural detail to the existing MCA legislation introduced by the 2019 Act and it is considered that, on the whole, they do not represent undue requirements above what could be reasonably expected for a process that provides a consenting regime of this nature. It is anticipated that further guidance will be issued by the Scottish Government relating to the MCA process. Whilst some matters are raised as concerns or questions within the draft consultation response (**appendix 1**) the overall content of the proposed regulations do not raise significant concerns.
- 1.4 Whilst it is not anticipated that the proposed regulations themselves would add significantly to the resources required to create an MCA the potential overall resource and cost implications of such a process should be noted.

RECOMMENDATIONS

It is recommended that the PPSL:

- i) note this report and the implications of the proposed regulations.
- ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

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2.0 INTRODUCTION

- 2.1 The Scottish Government is consulting on [Master Plan Consent Area Regulations](#). The proposed regulations are part of the Scottish Government's implementation of the Planning (Scotland) Act 2019. The proposed response to this consultation is set out in **Appendix 1**. The response should be submitted by 22nd May 2024.
- 2.2 The Planning (Scotland) Act 2019, which made changes to the Town and Country Planning (Scotland) Act 1997, introduced Masterplan Consent Areas (MCAs) as a new upfront consenting mechanism for development proposals. The 2019 Act amends the 1997 Act to insert new sections and a new Schedule relating to MCAs. These (aside from one specific element relating to the duty on planning authorities to consider making an MCA) have not yet been commenced and therefore do not yet have legal effect. A separate report is with this PPSL that relates that duty on planning authorities to consider making an MCA and to publish a statement of their decision.
- 2.3 An MCA would grant planning consent for the development set out within the MCA Scheme documents, subject to any conditions attached. MCAs are similar to Simplified Planning Zones that are already provided for in the 1997 Act but with expanded powers. MCAs are broader in scope as they can potentially give authorisation for Planning Consent, Roads Construction Consent, Conservation Area Consent and Listed Building Consent (if the scheme so provides). Within an adopted MCA, development could be brought forward without the need for an application for the above types of consent if it is in line with the agreed scheme.
- 2.4 The 2019 Act also amends the 1997 Act to provide a bar to the creation of new Simplified Planning Zones and whilst part that has not yet commenced it is the intention to do this at the same time as the MCA regulations coming into force. This effectively means that MCAs will replace SPZs as the consenting regime for any such future projects.
- 2.5 The proposed regulations add detail to the MCA legislation introduced by the 2019 Act. The legislation requires Scottish Ministers to set out certain provisions

within regulations whilst there are some other aspects that Scottish Ministers have discretion to regulate on.

2.6 Two sets of draft regulations have been prepared.

- The Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 which provide procedural detail about preparing MCA schemes.
- The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 which provide procedural detail regarding Environmental Impact Assessments where an MCA scheme should require one.

2.7 There is no actual requirement on the Council to make an MCA although through the legislation introduced by the 2019 Act Scottish Ministers can direct a local planning authority to make one. There is also a requirement on the local planning authority to consider, once within each 5 year period, whether to would be desirable to either make a new MCA or alter an existing one and to publish a statement of their decision (this matter is addressed within a separate report which is with this PPSL).

3.0 RECOMMENDATIONS

3.1 It is recommended that the PPSL:

- i) note this report and the implications of the proposed regulations.
- ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

4.0 DETAIL

4.1 A consultation paper has been published that provides more information about the proposed regulations or, where Scottish Ministers have decided not regulate, the reasonings for not doing so. The consultation paper poses a series of questions relating to these matters for both sets of draft regulations. The draft Council response to these questions is set out at **Appendix 1**.

4.2 The consultation paper sets out that Scottish Ministers have worked to the principle that regulations are kept to the minimum necessary and that to provide for maximum flexibility and resilience much of their expectations for implementation of the new system will be set out in guidance. Consultation question 1 relates to this. It is considered that this principle is agreeable as it helps provide local flexibility and opportunity to provide up to date assistance to local authorities.

4.3 As set out in Section 2 of this report, whilst the MCA legislation introduced by the 2019 Act allows Scottish Ministers to regulate on various aspects of the MCA process there are some aspects they have elected not to (at this point). None of the aspects to which Ministers have elected not to regulate on raise significant

concerns. However, it is considered that one aspect should be raised as a question within the response and this is in relation to certain places where MCAs cannot be made. These places are already set out within the 2019 Act and include various environmental designations such as National Scenic Areas. Ministers are not proposing to regulate to amend the existing list, however this list does not include National Nature Reserves of which there are a number in Argyll and Bute. The consultation response to the related question 3 (**Appendix 1**) raises the question as to why National Nature Reserves have been excluded. It is however considered a relatively minor issue as the extent of the NNRs in Argyll and Bute are almost entirely covered by SSSI designations which are on list of areas where an MCA would not be permissible.

- 4.4 The regulations that Scottish Ministers have decided to bring forward are largely in relation to the process of creating an MCA or altering an existing one and they include aspects relating to; publicity and consultation, hearings, publication of information notices and information to be placed on the planning register.
- 4.5 There is one matter where it is considered necessary to disagree with the proposed regulations and this relates to requirements in relation to the publication of an MCA scheme once it has been made (adopted). The regulation requires that a decision notice must be published on the internet and within a local newspaper and sets out the information that this notice must contain. This information includes; statements about the scheme, the reasons for the decision, information about the public participation undertaken and the right to challenge the validity of the decision and the process for doing so.
- 4.6 This raises two matters, with regards to challenging the validity of the decision it is not clear on what basis this proposed requirement is being made. The draft consultation response questions the need for this information to be contained in the decision notice and requests that if Scottish Ministers are minded to include the requirement that further clarity is provided through the regulations or associated guidance. Secondly, the actual amount of information required to be contained in the decision notice raises concerns in relation to publishing it as newspaper advertisement. Whilst there is no significant objection to publishing this information within a decision notice to be placed on the internet the corresponding newspaper advert with the same information would likely be lengthy and potentially unduly costly. It is considered that a more proportionate approach would be to publish the decision notice with the information required on the internet and to require a newspaper advertisement to inform of the decision and to direct interested parties to where the full decision notice maybe inspected. The proposed response is contained at question 15 within **appendix 1**.
- 4.7 Consultation question 14 (**Appendix 1**) does not relate to the MCA regulations but instead to part of the 2019 Act that gives Scottish Ministers powers to direct planning authorities to notify them when an MCA is proposed or proposed to be altered. The consultation paper sets out that Scottish Ministers intend to issue a direction to accompany the regulations that they be notified of proposed MCA schemes in certain circumstances. These circumstances generally relate to

certain types of development and the consultation paper indicates that these are to ensure consistency with scrutiny on planning applications. The intended direction raises no significant concerns.

- 4.8 With regards to The Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024, these raise no significant concerns and whilst the response to consultation question 19 (**Appendix 1**) sets this out it does also pose some questions relating to the actual content of the wording.
- 4.9 The consultation is accompanied by a range of impact assessments the content of which raise no concerns.
- 4.10 The 2019 Act has already introduced the legislative framework to make a Masterplan Consent Area and to undertake such a process would involve Council resources. The proposed regulations principally add procedural detail to the existing MCA legislation and it is considered that, on the whole, they do not represent undue requirements above what could be reasonably expected for a process that provides a consenting regime of this nature. The consultation paper indicates the potential for planning authorities to work in partnership with development partners who may be able to provide some of the resources. In addition, there is the potential ability for local authorities to charge for development within an MCA. This matter is being addressed within the concurrent Scottish Government consultation on resourcing Scotland's planning system.
- 4.11 The impact assessment estimates that the potential costs of an MCA may range from £15,000 to £200,000 depending on the size and features of the scheme and whilst the potential for partnership working and the possibility that local authorities might be able to charge for development might mitigate some of these costs the overall potential resource and cost implications of the MCA process should be noted. Taking forward an MCA could potentially divert Development Policy resources away from supporting the wider delivery of LDP2 and the future development of LDP3 within the appropriate timescales. The decision as to whether to make an MCA under the legislation and proposed regulations remains principally with the planning authority (unless directed otherwise by Scottish Ministers).

5.0 CONCLUSION

- 5.1 The Planning (Scotland) Act 2019 introduced Masterplan Consent Areas (MCAs) as a new upfront consenting mechanism for development proposals. As well as planning consent an MCA can also potentially grant Roads Construction Consent, Conservation Area Consent and Listed Building Consent.
- 5.2 The proposed regulations principally add procedural detail to the existing MCA legislation and it is considered that, on the whole, they do not represent undue requirements above what could be reasonably expected for a process that

provides a consenting regime of this nature. It is anticipated that further guidance will be issued by the Scottish Government relating to the MCA process. Whilst some matters are raised as concerns or questions within the draft consultation response (**appendix 1**) the overall content of the proposed regulations do not raise significant concerns.

- 5.3 Whilst is not anticipated that the proposed regulations themselves would add significantly to the resources required to create an MCA the potential overall resource and cost implications should be noted.

6.0 IMPLICATIONS

6.1 Policy

This is a consultation. Once in place these regulations will provide detail as to how an MCA should be created or altered.

6.2 Financial

None as a result of this paper. However, there would be a resource implication in the creation of a Masterplan Consent Area.

6.3 Legal

The consultation relates to a statutory regulation. However, there is no requirement to create a Masterplan Consent Area unless directed to by Scottish Ministers.

6.4 HR

None as a result of this consultation

6.5 Fairer Scotland Duty:

6.5.1 Equalities - protected characteristics

None as a result of this consultation

6.5.2 Socio-economic Duty

None as a result of this consultation

6.5.3 Islands

None as a result of this consultation

6.6 Climate Change

None as a result of this consultation

6.7 Risk

None as a result of this consultation

6.8 Customer Service

None as a result of this consultation

6.9 The Rights of the Child (UNCRC)

None as a result of this consultation

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APPENDICES

Appendix 1 Proposed Response

Appendix 1

Question 1: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The principle is agreeable as it will help provide local flexibility and opportunity to provide up to date assistance through the use of guidance.

Question 2: A) We are not proposing to regulate to exclude any form of development from having potential to be within a MCA. To what extent do you agree with this approach?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The ultimate decision as to whether to create an MCA remains with the local authority or Scottish Ministers (if they choose to direct the local authority to do so) and as such there would be sufficient scrutiny to assess whether the MCA approach for a particular development type would be appropriate on a case by case basis. In addition, there would be sufficient assessment and control of any proposed scheme by the Council or Scottish Ministers, as the case may be, as well as relevant stakeholder involvement before any final creation of a scheme. Should it become apparent that certain types of development are not appropriate for an MCA then regulations can be brought forward by Scottish Ministers in the future.

Question 3: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Neutral – National Nature Reserves are not specified within the list. Whilst most NNRs in Argyll and Bute are mostly covered by SSSIs their boundaries are not always co-terminus meaning that some parts of NNRs are not within a SSSI. Consideration to adding NNRs to the list would potentially help provide consistency.

Question 4: A) To what extent do you agree that the matters above in relation to the statement be set out in guidance rather than regulations?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – This would be a proportionate approach and allow for some local tailored approaches.

Question 5: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – This is a reasonable and proportionate approach and leaves discretionary options to the planning authority to carry out wider consultation.

Question 6: A) Draft Regulation 3 provides how consultation for possible proposals for a 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – This is a reasonable and proportionate approach and leaves discretionary options to the planning authority to carry out wider consultation.

Question 7: A) To what extent do you agree that the regulations should require reasons for conditions to be set out in the MCA scheme?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – It would help provide transparency and better align with requirements on planning consents.

Question 8: Are there any further aspects you consider should be required to be included in a MCA scheme? Please specify and explain why.

No.

Question 9: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – These appear to be aligned with the requirements for planning applications and therefore are a reasonable requirement. It is questioned however with regards to paragraphs 3 (1) d and 3 (2)

d whether the line after the comma that starts "or which is otherwise" should be on a separate line as that appears to be the case in the associated Development Management regulations.

Question 10: A) Draft Regulation 4(2) provides how consultation in relation to a MCA scheme is to be undertaken. To what extent do you agree with this approach?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The requirements are proportionate and reasonable.

Question 11: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The 30 day period is reasonable and does allow for potential alignment with the EIA report (if required).

Question 12: A) 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)?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The requirement is considered to be proportionate.

Question 13: A) 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)?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view

Agree – The requirements are appropriate in that they focus the right to appear at the hearing on those that have actually formally responded to the consultation on the proposed scheme itself.

Question 14: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The requirements are a reasonable approach and appear to align suitably with planning application procedures.

Question 15: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Disagree – With regards to the requirement to provide information relating to the right to challenge the validity of the decision and the procedures for doing so, it is not clear on what basis this proposed requirement is being made. The need for this information to be contained in the decision notice is questioned. If Scottish Ministers are minded to include this requirement then further clarity is sought either through the regulations or associated guidance.

The notice to be published in a local newspaper through the requirements (particularly in parts b and c) could result in a lengthy formal public notice which might be unreasonable in terms of the amount of information for the public to navigate and also in terms of the cost of publication given the amount of words it might contain. It would be preferable that the regulations require the publication of the notice on the internet and for a newspaper advertisement to inform of the decision and direct interested parties to where the full decision notice can be inspected.

Question 16: A) To what extent do you agree with the proposed requirements in relation to the planning register as set out in Draft Regulation 9?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The inclusion of MCAs on the planning register is considered appropriate as they would grant planning consent for development and as such this would help align with planning application processes.

Question 17: A) To what extent do you agree with the proposals for the procedures for altering a MCA scheme, as set out in Draft Regulation 8?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The regulations appear to be appropriate for the purpose.

Question 18: A) To what extent do you agree with the approach not to prescribe forms of notices within the Draft Regulations?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – Prescribed forms are not necessary within the regulations as Local Planning Authorities are well placed to write required notices in respect of any regulations. Examples of recommended forms within guidance would though be helpful if provided.

Question 19: A) 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?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The proposed regulations raise no significant concerns. It is questioned however why at various points the regulations specify the “planning authority” (e.g. paragraph 11) whereas other aspects specify “a planning authority or the Scottish Ministers, as the case may be”. On the basis that the 2019 Act allows for Scottish Ministers to make an MCA scheme themselves it is questioned whether all of the associated EIA process should actually relate to “a planning authority or the Scottish Ministers, as the case may be” as it will potentially be Scottish Ministers carrying out the EIA and all associated processes in those cases where Scottish Ministers make a scheme. It is also questioned at paragraph 22 (5) whether the wording should refer to Masterplan Consent Areas rather than planning permission.

Question 20: A) To what extent do you agree with our approach to the impact assessments?

a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree

B) Please explain your view.

Agree – The impact assessments raise no significant concerns.