

Consultation Response

Masterplan Consent Area Regulations Consultation

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Approach to Regulations

Question 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?

Disagree

Lack of Clarity

We understand the benefits of using guidance, which can more easily be adapted over time thereby increasing flexibility as we get a better understanding of how MCAs can work (and are working) in practice.

However, we are concerned that this desire for flexibility is being placed at the expense of the clarity that is needed for MCA schemes to work in practice. Our members expressed uncertainty as to how MCAs are to be defined and when they should be taken forward. Although we heard from our members a variety of potential uses for MCA schemes, there was much uncertainty expressed about their intended purpose and likely effectiveness in bringing forward and frontloading development.

If the decision is made to rely on guidance, we strongly recommend that this be drafted and in place alongside the regulations. If the regulations come into force with a long wait for guidance, this will result in much confusion and uncertainty and may disincentivise local planning authorities from utilising this mechanism.

Effectiveness of MCA Schemes

RTPI Scotland supports the frontloading of considerations that MCA schemes would facilitate. However, our members raised the point that this frontloading exercise is currently available through other mechanisms within the planning system, including through the pre-application process.

The pre-application process has the potential to get all stakeholders around the table (including local planning authorities, developers, landowners, statutory consultees etc.) and to address the material considerations related to a development from the outset prior to lodgement of the planning application. However, our members have told us that the pre-application process is not always as effective as it could be. This is a service that local planning authorities offer on a discretionary basis. As such, the level of service varies between local planning authorities. This is largely due to issues of capacity within local planning authorities, but it is also related to the capacity of other stakeholders who are required to be part of the process to make it work effectively. For example, we heard from one member that a response to a pre-application from a statutory consultee took 12 months to receive – rendering the purpose of the pre-application process largely redundant.

Our members expressed the view that the issues faced by the pre-application process are not due to a lack of willingness by local planning authorities or statutory consultees, but due instead to the resourcing and capacity challenges both are currently facing. Our members questioned how MCA schemes will help to address this issue. They also questioned whether it would be more appropriate to focus our attention on making the processes we already have more effective rather than

introducing yet another mechanism which, without adequate resourcing, will face the same challenges.

Enforceability of MCA Schemes

Our members expressed concern that there is currently a lack of clarity around the enforceability of MCA schemes once all the work has been undertaken (utilising significant LPA resources) and the MCA scheme has been formally made.

In the above regard, we understand that MCA schemes are similar to Simplified Planning Zones (SPZs), but with expanded powers. Some of our members relayed their experiences of SPZs, with one member recounting an occasion when, at the end of the process of adopting an SPZ, the developer who then purchased the site did not use the passports created through the SPZ process and instead submitted an ordinary planning application to obtain permission for an alternative development. Our members questioned whether MCA schemes would also be vulnerable to this outcome.

It is important that greater clarity is provided around the purpose and enforceability of MCA schemes once they have been formally made. This is vital to assist local planning authorities in determining whether to pursue a MCA scheme. If this clarity is provided through guidance, we reiterate that this guidance must be finalised in time for the regulations coming into force.

Planning Permission Granted through the MCA Scheme

We also note that the consultation paper sets out the intent of the MCA process to allow for different consents to be issued through an approved MCA scheme, including planning consent, roads construction consent, and listed building consent. Many of our members expressed the view that the type of permission granted should be at the discretion of the local planning authority and that in some circumstances, it may be more appropriate for a MCA scheme to grant Planning Permission in Principle (PPiP) rather than full planning consent. This approach would, perhaps, address other concerns voiced by our members about the maximum 10-year lifespan of MCA schemes (refer to our response to Question 8 below). It could also address concerns about the potential loss of planning fees. This latter concern relates to the potential imbalance that the MCA scheme process could create for local planning authorities who would, on the one hand, be required to outlay substantial resources to gather the evidence and commission the necessary investigations for a MCA scheme, but on the other hand could then be unable to recoup these costs. We are supportive of a collaborative and frontloaded process, but this will require a detailed resourcing strategy to demonstrate how this will work in practice, particularly if MCA schemes are to grant full planning consent. If a MCA scheme is to be an effective mechanism, it needs to be clear where it adds value over and above other mechanisms. For example, how will MCA schemes address the resourcing challenges that have acted as a barrier to the effective utilisation of the pre-application process?

Excluding kinds of development from MCA Schemes

Question 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?

Agree

RTPI Scotland broadly agrees that the regulations should not be used to exclude any form of development. We appreciate that MCA schemes have the potential to be used to bring forward different development types and that this should be left to the discretion of the local planning authority to determine what is appropriate having regard to the local and regional context of the proposed MCA scheme site.



However, we reiterate our point above about the need for clarity on the intended purpose, scope, and enforceability of MCA schemes as an effective planning tool to deliver developments in a frontloaded and place-based manner. If the decision is made to rely on guidance to provide this clarity, we strongly recommend that this be drafted and in place alongside the regulations. If the regulations come into force with a long wait for guidance, this will result in much confusion and uncertainty and may disincentivise local planning authorities from utilising this mechanism.

Places that cannot be included in a scheme

Question 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?

Agree

No further comment

Duty to periodically consider making a scheme statement

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

Agree

We broadly agree with this approach. Given the suggested flexibility of MCA schemes in terms of types of development and locations, we can see that statements may vary considerably between local planning authorities having regard to the local context and circumstances.

However, we take this opportunity to note the following concerns:

Lack of Clarity

If MCA schemes are to add value to the system, their unique role needs to be clearly established in comparison with other existing mechanisms – for example the pre-application process. Councils will need to be clear on this point if they are to properly consider bringing a MCA scheme forward, and this will have implications on the form and content of the scheme statement.

It is vital that if the considerations in relation to the statement are to be set out in guidance, that this guidance be prepared prior to the regulations coming into force in order that they can be available to local planning authorities and other stakeholders as soon as the regulations take effect.

MCA Scheme Relationship with Local Development Plan

We also take this opportunity to question the relationship between MCA schemes (which are required to be considered every 5 years) and the local development plan (which now has a 10-year lifespan).

We recognise that there are potential interlinkages between this consultation and the Development Plan Amendment Regulations, the consultation for which is now closed. In our response to this latter consultation, we questioned how amendments to the Development Plan relate to the registration of Local Place Plans. Similarly, our members have questioned what status MCA schemes will have in local development plans and how this will relate to the Development Plan Amendment process. The

relationship between these two new mechanisms are not made clear in either consultation, and it is vital that additional clarity is provided on this point.

In our view, this relates back to current uncertainties around the purpose and enforceability of MCA schemes, having regard to the following questions:

- Can sites that aren't already allocated in the LDP be brought forward through a MCA scheme?
- Would it be a requirement that following the making of a MCA scheme that the LDP must be amended to incorporate this scheme?
- Would MCA schemes that are not in the LDP carry less weight, enabling proposals that do not accord with the MCA scheme to be granted separate planning consent through the ordinary planning application process?
- Conversely, if MCA schemes are included in the LDP through the amendment process, would they carry significantly more weight such that proposals that deviate from the scheme would be unlikely to be granted separate planning consent?

MCA Scheme Relationship with Local Place Plans

In addition to the above, our members also questioned the relationship between MCA Schemes and LPPs, particularly in situations where a conflict between the two may arise. The consultation paper does not give any indication as to how such conflicts should be addressed through the MCA scheme process, or the weight that should be given to either MCA schemes or LPPs where such conflicts arise.

Consultation on possible proposals for a masterplan consent area scheme

Question 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?

Agree

RTPI Scotland does not object to planning authorities being required to consult with community councils. However, this consultation question skips past those aspects of the consultation paper around project initiation, about which we have the following concerns:

Collaborative Working and Resourcing

The project initiation section of the consultation paper sets out in vague terms the potential for collaborative working and early engagement with key agencies and other local authority departments (including roads and transport). However, the pre-application process has taught us that this type of early engagement and collaboration is not easy to achieve in practice. This is not due to a lack of willingness by local authorities or key agencies and statutory consultees to collaborate and engage, but rather to the resourcing and capacity challenges they are currently facing.

Our members questioned how MCA schemes will help to address this issue, voicing concerns that without adequate resourcing, MCA schemes will be unable to effectively facilitate the type of collaborative working set out in the consultation paper.

Related to this issue of collaboration and resourcing, we note that the consultation paper anticipates that planning authorities will be responsible for putting together an appropriate team to initiate a MCA scheme. Masterplanning is a resource intensive exercise, including the work required to put together a team and project manage a MCA scheme. In order that planning authorities can effectively carry out these new duties, it is vital that a clear resourcing strategy is prepared to identify how this can be

done having regard to current resourcing constraints. Without an effective resourcing strategy in place, there is a risk that the MCA will become a blunt instrument in the Scottish planning system that fails to achieve its intended purpose.

Data and Digital Tools

We are also concerned that there is no mention of the importance of data and digital tools in the project initiation section of the consultation paper (or in the consultation paper as a whole). Data and digital tools (including digital spatial mapping tools) are going to be beneficial to the successful preparation and delivery of MCA schemes, including in the process of developing an understanding of the site/area, and communicating and engaging with stakeholders through the consultation stage of the process.

We strongly believe that the objectives of the Scottish Government's digital planning strategy should continue to be the golden thread that runs through the Scottish Government's current workstreams in order that the bold ambitions of the strategy can still be achieved in a holistic manner, despite the recent budget cuts.

Masterplanning PAN 83

We note that the consultation paper makes one reference to PAN 83: Masterplanning as a source of further advice for considering the site context. This PAN was published in 2008, and it is unclear what weight it will have following the MCA regulations coming into force. Will there be a robust review of this document to determine its continued relevance and applicability following the MCA regulations taking effect?

Question 6 – 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?

Agree

We understand the importance of engaging with local communities from the outset in order to garner public support for a MCA scheme.

However, we use this opportunity to highlight the resource intensive nature of carrying out meaningful engagement. In our response to the recently closed Development Plan Amendment Regulations consultation, we expressed concern that undertaking the meaningful and collaborative methods of engagement will be resource intensive in terms of time, staff and finances. In addition, in order for this engagement to be delivered effectively, it is imperative that the planning authority staff undertaking these community engagement activities are appropriately trained to ensure they are equipped to:

- Employ the right engagement methods at the right time, with the right members of the community in accordance with the guidance.
- Facilitate these engagement methods in a way that ensures maximum productivity is achieved (including how to handle community backlash and/or hostile situations that may unintentionally arise).
- Appropriately collate and analyse the quantitative and qualitative data gathered through these engagement activities such that it positively influences the outcomes of the process.

RTPI Scotland have critical concerns that current constraints on resourcing and funding could continue to act as a barrier to successful early collaboration with communities.

RTPI Scotland's latest research on resourcing the planning system (<https://www.rtpi.org.uk/research-rtpi/2023/december/resourcing-the-planning-service-rtpi-scotland-research-briefing/>) reveals that:

- Planning expenditure is still falling, with a 28.6% drop since 2010-11, leaving it as the most reduced and lowest funded local authority department on a national scale.
- Workforce is at the lowest level in five years at 1205 members of staff in local authorities as of 2022/23.
- The planning workforce continues to age, and employees 50+ now represent 39.6% of the total.
- RTPI Scotland's 2022 update reported that the Planning (Scotland) Act 2019 has introduced 49 unfunded duties on local authorities. The Scottish Government's roll out of this legislation risks planners (and the planning system) being immediately placed on the back foot in terms of delivering on these duties without a robust resourcing and upskilling strategy in place.
- Based on past statistics and current trends, there appear to be too few planners entering the sector through higher education to meet replacement demands.

We are also aware that the resourcing challenges local planning authorities are facing are not equal across Scotland, which could result in the disproportionate utilisation of MCA schemes across the country, depending on the unique staffing and resourcing challenges affecting different LPAs.

MCA Schemes Form and Content

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

Agree

We would generally support this proposal and agree it is important for the purpose of creating transparency in the process.

Question 8: Are there any further aspects you consider should be required to be included in a MCA scheme?

We would like to take this opportunity to highlight the concerns raised by our members about the maximum 10-year lifespan of a MCA scheme as set out in the Act.

On the one hand, some of our members expressed concern that a delivery timeframe of 10 years would be far too long to enable the frontloading of every detail. Related to this was a concern that a lot of investigations would be required upfront, including a potential EIA, which can be expensive to commission. One member pointed out that protected species survey data is out of date quite quickly, and the 10-year lifespan could then result in this work needing to be done again within the 10-year period – putting a further strain on local planning authority resources.

On the other hand, concerns were also voiced by our members that for some MCA schemes, a maximum 10-year lifespan might be too short to effectively deliver a scheme comprising multiple sites and partners (one example given was where a MCA scheme covers a green freeport). A question was raised as to what happens once a scheme that has not been fully implemented expires. Would there be scope to extend the lifespan of the scheme or would the local planning authority be required to start the MCA scheme process from scratch to re-enliven the scheme?

We also have concerns about the inconsistencies between the maximum 10-year lifespan of a MCA scheme compared to that of a planning consent granted through the usual planning application process – which is normally only three years. This relates back to our previous point about the current lack of clarity about the purpose of MCA schemes and the value they will add to the Scottish planning system. Is it the intent that developments granted full planning consent through a MCA scheme have a maximum of 10 years to commence? Or would developments granted planning permission through a MCA scheme be required to be completed within the scheme's maximum 10-year lifespan (which, we understand from our members, may not be possible for certain schemes)? This remains unclear and requires further clarification.

We have concerns that a MCA scheme could be brought forward by a planning authority that lacks broader market support due to viability considerations not having been addressed through the MCA scheme process. Viability considerations are not currently addressed in the consultation paper. We understand that there are currently no viability tests applicable to the Scottish planning system, but this could be part of the frontloading exercise of making a MCA scheme.

[Consultation on proposals for a masterplan consent area scheme](#)

Question 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?

Agree

No further comments

Question 10 – 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?

Disagree

We have concerns that Draft Regulation 4(2) only sets out the minimum consultation requirements. These minimum standards may be adequate for MCA schemes in locations with market and community support but would be inadequate for MCA schemes in areas that have experienced past market failures (for varying reasons).

For these latter sites, many of our members felt that a more proactive approach will be required. This is not addressed in the consultation paper, and whilst we appreciate the importance of allowing local planning authorities the flexibility to determine for themselves whether a more proactive consultation process would be appropriate, we reiterate our concerns about the resource intensive nature of such proactive consultation processes, which may not be possible for every local planning authority to achieve. Again, we stress that this is not due to a lack of willingness to carry out proactive and meaningful engagement. Rather, it is primarily due to the limited resources available to undertake engagement. We reiterate that without an effective resourcing strategy in place, there is a risk that MCA schemes will become a blunt instrument in the Scottish planning system that fails to achieve its intended purpose.



Publicity for masterplan consent area scheme proposals

Question 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?

Neutral

No further comments

Hearings

Question 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)?

Agree

We broadly agree with this proposal. However, our members expressed the view that the consultation is unclear as to whether this would be the only trigger for a hearing to be held. For example, would a hearing be required where there are unresolved representations (as per the Development Plan Amendment regulations)?

Our members also voiced uncertainties around what MCA scheme hearings would look like. For example, where do they sit on the scale between the LDP hearing approach and the development management procedure for hearings? In the discussions we had at our member and stakeholder workshop, some attendees expressed the view that the intent is for this to be at the discretion of each local planning authority and that the hearing could, as an example, be heard by the Council committee rather than by the DPEA. Other members were more uncertain on this point.

Given these discussions, we believe there is a need for additional clarity on the circumstances that could trigger a hearing and the form, content, and considerations required to be determined through the hearing. For example, one of our members expressed the view that the consultation paper gave no indication as to whether material planning reasons would be required to be given at MCA scheme hearings.

Question 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)?

Agree

No further comments

Requirement to notify Scottish Ministers of certain proposals

Question 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?

Neutral

No further comments



Publication of the MCA Scheme

Question 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?

Agree

We broadly agree with the proposed requirements in relation to the publication of MCA schemes. However, we take this opportunity to comment on the section of the consultation paper that relates to the ‘making’ of a MCA scheme.

During the workshops we held with members and stakeholders on the consultation, questions were raised about who will make decisions on MCA schemes and what implications this would have on internal governance arrangements within local authorities. Some workshop attendees based in local authorities advised that their councillors have voiced concerns that if planning permission is granted through a MCA scheme, that this would take the decision making for these sites away from the planning committee. It is important that further clarity is provided around who within a local authority would be responsible for ‘making’ a MCA scheme, or if the intent here is for this decision to be at the discretion of each local planning authority.

Planning Register

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

Agree

No further comment

Alteration of a MCA Scheme

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

Agree

We broadly agree. However, we believe that amended MCA schemes should signpost where amendments have occurred and the date the amendment was adopted. This would enhance transparency in the amendment process.

Prescribed Forms

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

Neutral

Our members did not express views on this aspect of the consultation. However, it is our opinion that an important balance needs to be struck between flexibility and clarity. Any guidance on this (or any other aspect of MCA schemes) must add value to the MCA process and provide sufficient clarity to assist local planning authorities without



binding them to procedures that might be inappropriate having regard to the particular nature of the MCA scheme they wish to make through this process.

Environmental Impact Assessment

Question 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?

Disagree

The consultation paper sets out the expectation that the preparation of an EIA would rest with the planning authority where these are applicable to MCA schemes. We have concerns around the work required to prepare EIAs (which, we understand, has only become increasingly complex and onerous over time) as well as the additional resources that would be required for planning authorities to commission EIAs.

The consultation paper includes a desire to “promote a collaborative approach to the production of MCA schemes including EIA work, with planning authorities working in partnership with those who will benefit from the certainty of the MCA scheme (including developers and investors)”. However, the consultation paper is unclear how this would work in practice, particularly with respect to the costs and other resources required to prepare an EIA. This lack of clarity could render some planning authorities unable to pursue MCA schemes in locations requiring an EIA, regardless of the other merits.

Impact Assessments

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

Neutral

No further comments