
Report To:	Environment & Regeneration Committee	Date:	3 March 2022
Report By:	Interim Director, Environment & Regeneration	Report No:	ENV019/22/AH
Contact Officer:	Ash Hamilton	Contact No:	01475 712463
Subject:	Consultation on Local Development Planning – Regulations and Guidance		

1.0 PURPOSE

- 1.1 The purpose of this report is to inform the Committee of the Scottish Government consultation on Local Development Planning - Regulations and Guidance, and to seek approval of the Council's proposed response.

2.0 SUMMARY

- 2.1 Local Development Plans (LDPs) set out how our local places will change into the future, including where development should and should not happen. They form part of the statutory Development Plan and will, alongside the Draft National Planning Framework 4, be the main basis for assessing and determining planning applications.
- 2.2 Significant changes to development planning were made by the Planning (Scotland) 2019 Act in order to support a plan-led planning system. To guide the implementation of these changes, the Scottish Government has prepared Proposals for Development Planning Regulations and Draft Guidance on Local Development Planning, which are currently subject to consultation, with a submission deadline of 31 March 2022. The consultation documents are available through the weblink provided under Background Papers.
- 2.3 The proposed Regulations cover a wide range of local development planning issues, including the form, content and process for preparing Local Development Plans; Play Sufficiency Assessments, Development Planning Schemes, Delivery Programmes and Transitional provisions.
- 2.4 The Draft Guidance sets out the overall aims and expectations for the new style LDPs and the process for achieving these. It also provides detailed thematic guidance on how LDPs are expected to implement the Draft National Planning Framework 4 (NPF4) policies for the development and use of land.
- 2.5 The proposed consultation response, which is set out in Appendix 1, is generally in agreement with the proposed Regulations and supportive of the Draft Guidance, subject to points of clarification and constructive comment, particularly in relation to the Guidance.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Committee notes the Local Development Planning - Regulations and Guidance consultation and approves the proposed response set out in Appendix 1.

Stuart W. Jamieson
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4.0 BACKGROUND

- 4.1 Local Development Plans (LDPs) set out how our local places will change into the future, including where development should and should not happen. It is a legal requirement for planning authorities to prepare LDPs, which form part of the statutory Development Plan and will, alongside the Draft National Planning Framework 4, be the main basis for all decisions on planning applications.
- 4.2 While primary legislation provides the framework for LDPs and includes detail on many of the procedures to be followed in preparing plans, it also gives the Scottish Ministers powers to prepare secondary legislation (i.e. regulations) concerning a range of matters. These regulations provide additional detail on how the changes made through primary legislation are to be achieved. Current regulations relating to development planning include:
- The Town and Country Planning (Development Planning) (Scotland) Regulations 2008.
 - The Planning etc. (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008.
 - The Town and Country Planning (Grounds for declining to follow recommendations) (Scotland) Regulations 2009.
- 4.3 The proposed Regulations on Development Planning provide additional detail to support implementation of the significant changes to development planning made by the Planning (Scotland) 2019 Act, which sought to further support a plan-led planning system. They have been prepared on the basis that the regulations should be kept to the minimum necessary, with much of the detail provided in guidance. It was considered that this approach would provide for maximum flexibility and resilience, allowing experience from implementing the new system to be incorporated into updated guidance as it emerges.
- 4.4 The Draft Guidance on Local Development Planning, which has been published for consultation alongside the proposed Regulations, is intended to assist planning authorities in preparing the new style LDPs, rather than to create additional requirements. Authorities are expected to consider how the guidance can be applied in a proportionate and place-based way and to use their discretion in identifying the components of the advice which are relevant to their plan preparation.

5.0 Proposals for Development Planning Regulations

- 5.1 The proposed Regulations address a wide range of local development planning matters, including the form, content, preparation and monitoring of LDPs; Play Sufficiency Assessments, Development Plan Schemes, Delivery Programmes and Transitional Provisions. While the proposed Regulations carry forward many of the existing regulations, a number of changes, which apply to specific elements and stages of local development planning, have been made. In general, the key changes are:
- Remove references to Strategic Development Plans and add references to Spatial Strategies
 - Replace references to English planning documents
 - Remove references to the Monitoring Statement and add references to Evidence Report
 - Remove references to Action Programme and SDPA's and add references to Delivery Programme
 - Requirement for the Development Plan Scheme to specify the date (the proposed month) for the adoption / constitution of the LDP and to identify any changes to the timetable of plan preparation from that given in the previous Development Plan Scheme.
 - Amend transitional provisions to ensure provisions of the 2008 Development Planning Regulations continue to have effect for LDPs and supplementary guidance that proceed to adoption under the provisions and procedures introduced by the 2006 Act.

6.0 Draft Guidance on Local Development Planning

- 6.1 Section 1 of the Draft Guidance sets out the overall aims and expectations for new style plans. The

aims are for LDPs to:

- Contribute to sustainable development and the achievement of the National Performance Framework National Outcomes.
- Plans for the future – i.e. looking 20 years ahead
- Delivery focused
- Place based
- People centred

6.2 Section 2 sets out the process for achieving the new style plans, including the legislative requirements, how these are to be met and responsibilities of stakeholders. For example, it provides guidance on the 5 key stages of plan preparation, i.e. Evidence Report, Gate Check, Proposed Plan, Examination, Adoption and Delivery. The attached background paper, 'New Local Development Plan Preparation Process', provides further detail on each of these stages. This section also addresses additional statutory duties to prepare a Development Plan Scheme and a Delivery Programme, and to invite communities to prepare Local Place Plans.

6.3 Section 3 provides detailed thematic guidance on how new style plans are expected to implement the draft National Planning Framework 4 (NPF4) policies for the development and use of land. The four themes are Sustainable Places, Liveable Places, Productive Places and Distinctive Places.

7.0 Proposed Consultation Response

7.1 The proposed consultation response is set out in Appendix 1, with a brief summary of the key points below.

Proposals for Development Planning Regulations

7.2 The proposals are generally welcomed and supported. With regard to evidence gathering at the start of the plan preparation process, it is considered that the views of the Travelling Show people community and ethnic/religious groups should be included.

Draft Guidance on Local Development Planning

7.3 The Draft Guidance is generally welcomed and supported. In relation to community engagement, improved methods of engaging more communities is required, particularly at the early stages of plan preparation where people views will have most effect.

7.4 With regard to the Proposed Plan, there are concerns that the level of detail the Guidance provides on thematic policy areas (i.e. Sustainable Places, Liveable Places, Productive Places and Distinctive Places) is less comprehensive than current Scottish Planning Policy. Policies for assessing planning applications need to be sufficiently detailed and robust.

7.5 Under the Liveable Places theme, clarification is sought on how the concept of 20 Minute Neighbourhoods is to be defined and applied in practice.

8.0 NEXT STEPS

8.1 If approved, the proposed consultation response in the Appendix will be submitted to the Scottish Government for consideration.

9.0 IMPLICATIONS

9.1 Finance

There are no direct financial implications arising from this report.

Financial Implications:

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report	Virement From	Other Comments

Annually Recurring Costs/(Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments

9.2 Legal

While the Proposals for Development Planning Regulations will have implications for the preparation of Local Development Plans in the future, Democratic and Legal Services have been consulted and have not raised any significant concerns.

9.3 Human Resources

There are no personnel implications associated with this report.

9.4 Equalities

Equalities

- (a) Has an Equality Impact Assessment been carried out?

	YES – this will be published along with the Proposed Plan and updated through the Plan process.
X	NO – This report does not introduce a new policy, function or strategy or recommend a substantive change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required

- (b) Fairer Scotland Duty

If this report affects or proposes any major strategic decision:-

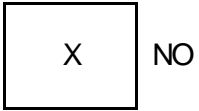
Has there been active consideration of how this report’s recommendations reduce inequalities of outcome?

	YES – A written statement showing how this report’s recommendations reduce inequalities of outcome caused by socio-economic disadvantage will be completed.
X	NO

- (c) Data Protection

Has a Data Protection Impact Assessment been carried out?

	YES – This report involves data processing which may result in a high risk to the rights and freedoms of individuals.
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9.5 Repopulation

There are no direct implications arising from this report.

10.0 CONSULTATIONS

10.1 Democratic and Legal Services were consulted.

11.0 LIST OF BACKGROUND PAPERS

11.1 New Local Development Plan Preparation Process

Scottish Government: Local Development Planning – Regulations and Guidance consultation - <https://consult.gov.scot/planning-architecture/local-development-planning/>

Appendix 1 – Proposed consultation response.

APPENDIX 1

Scottish Government: Local Development Planning – Regulations and Guidance: Consultation

Inverclyde Council – Proposed Consultation Response

Part A - Introduction

Q1. Do you agree with the principle that regulations be kept to the minimum necessary and that more detail be provided in guidance and kept updated?

Agree

Part B – Proposals for Development Planning Regulations

Q4. Do you agree with the proposals for regulations relating to the form and content of LDPs?

Agree no further additions required relating to the LDP content.

Agree the schedule of land ownership remains unchanged.

Agree the specification of the Proposals Map and the planning authority having authority to specify further mapped content, as appropriate

Q5. Do you agree with the proposals for regulations relating to the preparation and monitoring of LDPs?

Agree with the amendments to consolidate the requirements in the replacement regulations.

Q6. Do you have views on additional information and considerations to have regard to when preparing and monitoring LDPs?

Information and consideration should be extended to include reference to the mitigation of adverse effects arising from climate change.

Q7. Do you agree with the proposals for regulations relating to the Evidence Report?

The views of the Travelling Showpeople community should be included as they are in the Guidance document and the views of ethnic/religious groups could also be sought.

No other groups to be added to the list.

Prescription of the minimum data required in the Evidence Report could lead to the minimum content being produced in a document which is to be the basis for the production of the LDP. It would be better to let planning authorities produce i.e. and if there are any issues, these can be picked up at the Gate-checking stage.

Agree that guidance would be best means of outlining the content for an Evidence Report Consultation with the Gypsy and Traveller community would benefit the information base for the preparation of the LDP.

Q8. Do you agree with the proposals for regulations relating to the preparation and publication of the LDP?

Agree to the means of publishing the LDP. The public notice in the local newspaper is probably still effective for some groups and it can also be seen on the newspapers website for digital users.

Accept the 2019 Act strengthening the requirement obtaining the views of the public on the content of the Participation Statement but it is unclear how this will be carried out. Proposed guidance would be welcomed.

Accept unchanged arrangements for the notification of the Proposed Plan.

Q9. Do you agree with the proposals for regulations relating to the examination of the LDP?

Agree with the necessary amendments to update document names.

Agree with continuing to publish the plan submitted for examination in the same manner as for previous plans.

Agree the means by which the recommended modifications statement should be published.

Q10. Are there matters you wish to highlight relating to amendment of the LDP which may have bearing on the proposals for regulations being consulted on in this document?

Await the Regulations and Guidance on provisions for the amendment of LDPs once the new development planning system is in place.

Q11. Do you agree with the proposals for regulations relating to Development Plan Schemes?

Agree with the inclusion of an expected time for the adoption of the LDP changes to the origin timetable for the plan preparation and explanations for any timetable changes. This will add to the timetable for the preparation of the plan already in the DPS.

Q12. Do you agree with the proposals for regulations relating to Delivery Programmes?

Accept the name change from Action Programmes to Delivery Programmes.

Q13. Do you agree with the proposals for regulations relating to the meaning of 'key agency'?

Accept the changes to update the names of organisations.

Q14. Do you agree with the proposals for regulations relating to transitional provisions?

Noted that a planning authority must have published its Proposed LDP before June 2022 to be allowed to proceed to adoption under the existing provisions and procedures in the 1997 Act (introduced by the 2006 Act)

Part C – Draft Guidance on Local Development Planning

(Numbers refer to the paragraphs in the Guidance document)

Section 1 – Aims

Q15. Do you agree with the general guidance on Local Development Plans?

8 The Local Development Plan will be informed by Local Place Plans

This is positive as it encourages greater collaboration with the community and provides a means of getting knowledge only available to people who live and work in the community which can inform the LDP. However, if a Local Place Plan is in preparation, but hasn't been submitted to the planning authority, would the Evidence Report have to wait until the LPP was completed, given the emphasis on a place-based, people focused LDP, or could the planning authority set a cut off time after which the Evidence Report would be submitted without the LPP content?

20. Identifying and understanding the differing needs and aspirations of all people in society will be key to the delivery of an effective LDP as part of a place based approach that also supports health and well-being.

24. Innovative approaches to engagement, for example community-led design or the Place Standard Tool should be used to stimulate early engagement and inform the Evidence Report. Further detail on effective community engagement will be included in separate guidance.

Whilst some communities are keen to get involved in the planning process, others are far more difficult to engage. The introduction of Local Place Plans may assist in this but improved methods of getting more of the communities engaged is required, particularly at the early stage where contributions will inform Evidence Report upon which the Local Development Plan will be based. The forthcoming Scottish Government guidance on Community Engagement will be welcomed to assist in this.

Section 2 - Process

Evidence Report

Q19. Do you agree with the guidance on the Evidence Report?

100. The Evidence Report must set out the following:

- A summary of the action taken by the planning authority to meet the accommodation needs of Gypsy/Travellers in the authority's area, and an analysis of the extent to which that action has helped to meet those needs (section 16B(3)(c)),

This will require investigation as the current Local Development Plan does not include any details. Base data on the number of Gypsies /Travellers visiting the authority would also be of use to determine demand.

The Evidence Report must include a statement on how the planning authority has sought particular stakeholders' views, and how these views are taken into account in the report. These groups are:

- the public at large;
- disabled people;
- Gypsies and Travellers;
- children and young people; and
- Community Councils

While these groups may have been consulted previously as part of the general consultation, people with disabilities, Gypsies and Travellers and children and young people have not been singled out. Greater efforts to obtain the views of these groups will benefit the information base on which the LDP will be prepared and provide better people-focused outcomes.

120. The preparation and content of the Evidence Report should be proportionate.

123. The Evidence Report should include proportionate information about the lived experience of those who live and work in a place, to be considered together with technical data.

Proportionate needs to be clarified. Is this proportionate to the population of the LDP area, the geographical area, and the number of issues within the area or proportionate to the other categories of information in the report?

Proposed Plan

Q21. Do you agree with the guidance on the Proposed Plan?

140. New style plans are expected to be place-based: there should be greater emphasis on maps, site briefs and masterplans, with minimal policy wording. The reader should be able to find what is relevant to a particular place in one area of the plan. It is envisaged that the policies and proposals within the LDP are to be focused on places and locations. Thematic policies are contained in National Planning Framework, which has the status of the Development Plan in decision making.

The guidance states that the policies and proposals within the LDP are to be focused on places and locations. How are these two defined and differentiated?

It will have to be made obvious in both the LDP and the NPF4 that the two documents have to be used together to access all of the policies. While this may be apparent to planners, it is unlikely to be clear to others not familiar with using such documents.

As indicated in the consultation on the draft NPF4, there are some concerns about the detail provided in the thematic policies compared to those currently available in the Scottish Planning

Policy which it is proposed to absorb into the draft NPF4. Policies need to be detailed and robust for use when determining applications.

145. The Proposed Plan, the Evidence Report that supports it, and the draft Delivery Programme must be published by the planning authority at the same time.

The publication of the Evidence Report and Delivery Programme along with the Proposed Plan for consultation will provide the public with more background information to understand how the planning authority has come to the decision on the Proposed Plan content. And how it will be taken forward to implementation. It isn't clear, however, that representations and subsequent modifications can only be made on the Proposed Plan document. In particular, representations on the Evidence Report which has already been approved by the appointed person for the Scottish Ministers, could result in a reset back to the Evidence Report preparation.

Section 3 - Thematic Guidance

Evidence Report

Q25. Do you agree with the proposed guidance on the Evidence Report in relation to the section on Sustainable Places (paragraphs 240 – 247)?

Figure 6

Gathering the information will be important for the baseline of the LDP and it will be an advantage for planning authorities to shape the information to their own area. However, this will be a large amount of information to be collected even if not all the items in the table have to be included. Throughout the guidance there are references to the need for audits and assessments to be undertaken to accumulate the base data. Some of the information will already be held but it will have to be rechecked and updated. The LDP progress table in Annex C doesn't give timescales for each stage as it does in Circular 6/2013 which gave 8 months for evidence gathering and MIR. What timescale is envisaged for the Evidence Report preparation?

Sustainable Places

246. The plan should be informed by up-to-date audits, strategies and action plans, including the Local Biodiversity Action Plan where applicable, and take into account statutory Open Space Strategies and Forestry & Woodland Strategies

If vital information such as from a Biodiversity Action Plan cannot be provided if, for example it is very out of date, how is it envisaged the planning authority will deal with the gap in the Evidence Report information base? Will it be required to produce any such documents before the Evidence Report information gathering can continue? What will happen if this is not possible due to lack of finance or staff, for example?

Liveable Places

250. 20 minute neighbourhoods. The Evidence Report should be informed as far as possible and proportionately by baseline information on local liveability about how well neighbourhoods function.

How will the neighbourhoods be defined? Will it be by known areas within settlements or taken with a 20 minute circumference from a community location like a school or community centre or will it be based on how the people living there view their neighbourhood. It will be necessary to know this before it will be possible to assess how it functions.

253. The Evidence Report provides an opportunity to front load infrastructure considerations in the preparation of LDPs

254. The Evidence Report should be informed by an audit of baseline infrastructure information and data including:

- National, regional and local infrastructure investment plans and strategies relating to an area for both the public and private sectors

336. There are clear benefits to achieving a consistent and robust approach to infrastructure planning and to providing clarity on infrastructure requirements and deliverability within LDPs. In particular, it can help avoid situations where a lack of infrastructure capacity or issues with infrastructure delivery result in planned development being undeliverable. In addition, it can help avoid disproportionate infrastructure costs falling to a single party

Whilst taking an infrastructure first approach can help avoid situations where a lack of infrastructure capacity or issues with its delivery result in planned delivery being undeliverable, there is also a danger of resting too much importance on the infrastructure through front loading and that if it falls through it will then blight the development associated with it.

Figure 10:

Would there be an opportunity to include a ferry within the diagram to represent that transport sector?

264. The Evidence Report should be informed by the views of the Gypsy / Traveller and Travelling Showpeople community and other information on their housing needs identified in the HNSA and the Local Housing Strategy. Their views should be actively sought, and it may also be helpful to engage with neighbouring authorities.

It is stated here that the views of the Travelling Showpeople should be actively sought. While this group is mentioned in this guidance, it is not included in the groups targeted for consultation in the Regulations for Development Planning.

Productive Places

Q26. Do you agree with the proposed guidance on the Evidence Report in relation to the section on Productive Places (paragraphs 284 – 296?)

The Evidence Report should include analysis of employment need, local poverty, disadvantage and inequality, to highlight where future business and industry development would provide most benefit.

This is a welcome change of focus to the people and communities' needs which could lead to a prioritisation of areas.

295. Planning authorities should also ensure they engage with other relevant departments, such as economic development and where appropriate Mobile Network Operator (MNO)s and Wireless Infrastructure Providers (WIPs) to provide details of programmed investment in digital within the area.

How would it be intended to present this information? Might there be an issue about commercial confidentiality and companies being concerned about competitors obtaining information on future strategies?

Distinctive Places

Q27. Do you agree with the proposed guidance on the Evidence Report in relation to the section on Distinctive Places (paragraphs 297 – 310?)

305. A review of any local designations including consideration of their function and continuing relevance, should be carried out as part of the Evidence Report, to inform plan-preparation.

What if there is no means of carrying out such a review because of a lack of suitable qualified staff and no funding available to buy it in? Will this, or similar problems with other required data, affect the assessment of the Evidence Report by the appointed person? Could this result in it being returned due to insufficient information?

Proposed Planning

Q28. Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Sustainable Places (paragraphs 317 – 328)?

313. Draft regulation 6(1) requires an LDP to contain a map or maps, (“the Proposals Map”), describing the policies and proposals set out in the LDP, so far as practicable, to illustrate such policies or proposals spatially. The emphasis of the presentation of the Proposed Plan should be on maps, allocations, masterplans and site briefs. It should contain such other diagrams, illustrations and descriptive matter as the planning authority thinks appropriate for the purpose of explaining or illustrating the proposals in the plan. The reader should be able to find what is relevant to a particular place in one area of the plan.

There is a danger that this could become a very complicated and crowded Proposals Map if it is to get so much information in on a plan and make it understandable, even with the exception for minimal thematic policy wording. Has a current LDP been used to see how its contents and associated documents such as Supplementary Guidance would fit into this format of Proposals Map? There is no indication where all the information currently held in Supplementary Guidance will be made available.

319. The plan’s Spatial Strategy should respond to strategic land use tensions, recognising the need for significant difficult decisions being made. The response to these tensions should take account of Scotland’s commitment to tackling the twin climate and nature crises and the fundamental role of Scotland’s natural and historic environment in supporting our economy, health, wellbeing and resilience to climate change.

The reference to natural and historic environment supporting economy, health and wellbeing gives the impression that they are in a subordinate position. If it came to making some of these difficult decisions would this mean that they would be regarded as dispensable, to a greater or lesser extent, for the greater good?

Part D - Interim Impact Assessments

Q2(i). Do you have any views on the content of the interim assessments?

We agree with the content of the assessments.

Q2(ii). Do you have or can you direct us to any information that would assist in finalising these assessments?

No

Q3. Do you have any views on the Fairer Scotland Duty and Strategic Environmental Assessment screening documents?

We are agree with the content of the screening documents.