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ARGYLL AND BUTE COUNCIL

PLANNING, PROTECTIVE SERVICES  
AND LICENSING

DEVELOPMENT AND  
ECONOMIC GROWTH

23rd MARCH 2022

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## LOCAL DEVELOPMENT PLANNING – REGULATIONS AND GUIDANCE CONSULTATION

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### 1.0 EXECUTIVE SUMMARY

- 1.1 The aim of this report is to advise the PPSL of the Scottish [Government Local Development Planning Regulations & Guidance Consultation](#) and seek approval for the proposed response to this consultation (**See Appendix 1**). The response is due by 31<sup>st</sup> March 2022.
- 1.2 The regulations and guidance being consulted on are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019.
- 1.3 There is a statutory duty for the planning authority to prepare and update local development plan(s) for its area. The current Adopted Argyll and Bute Local Development Plan 2015 will remain in place until the adoption of Local Development Plan 2, which is currently at Examination. The preparation of Local Development Plan 3 will be governed by the new regulations and guidance.
- 1.4 The regulations and guidance raise issues regarding; the balance between flexibility provided by guidance versus robustness provided by regulation; consideration of islands and remote rural areas; and detailed issues in terms of LDP production requirements. This consultation highlights the enhanced corporate role of the LDP and the issue of additional resources required to prepare LDP3.

### 1.5 RECOMMENDATION:

It is recommended that the PPSL:

- i) note this report and the implications, including financial for the planning service and wider council.
- ii) approve the response to the Scottish Government in **Appendix 1**.

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### 2.0 INTRODUCTION

- 2.1 The Scottish Government is consulting on [Local Development Planning Regulations & Guidance](#). The proposed regulations and guidance are part of the Scottish Government's wider work on planning reform and implementing of the Planning (Scotland) Act 2019. The proposed response to this consultation is set out in **Appendix 1**. The response should be submitted by the 31<sup>st</sup> March 2022.
- 2.2 There is a statutory duty for the planning authority to prepare and update local development plan(s) (LDP) for its area. The current Adopted Argyll and Bute LDP 2015 will remain in place until the adoption of LDP2, which is currently at Examination. The preparation of LDP3 will be governed by the new regulations and guidance. A diagram of the new LDP process is shown in Section C, Annex C of the Consultation.
- 2.3 This consultation does not cover all aspects of Local Development Plan regulation and guidance. Further consultations will follow on the omitted aspects, such as amending LDPs.

### 3.0 RECOMMENDATIONS

- 3.1 It is recommended that the PPSL:
- i) note this report and the implications of the proposed regulations and guidance, including financial for the planning service and wider council.
  - ii) approve the response on this consultation to the Scottish Government in **Appendix 1**.

### 4.0 DETAIL

- 4.1 The consultation is split into 4 sections. Part A is the introduction; Part B the proposed Development Plan Regulations; Part C Draft Guidance on Local Development Planning, and Part D the Interim Impact Assessments.

- 4.2 Further consultations are to follow including on Open Space Audit and Strategy and Play Space Assessment (at this Committee), Effective Community Engagement, Gypsies and Travellers – definition, LDP Modification and Regional Spatial Strategies. Separate guidance will be published on a common approach to Housing Land Audits.
- 4.3 In general, the regulations and guidance are clear and should support the preparation of the next LDP in the context of NPF4. Given the cross references to NPF4 which is currently only a draft document, there may be changes to NPF4 which result in consequential changes to the proposed regulations and guidance. Issues are raised regarding the balance between flexibility provided by guidance versus robustness provided by regulation, consideration of islands and remote rural areas and detailed issues in terms of requirements. This consultation highlights the enhanced corporate role of the LDP and the issue of additional resources required to prepare LDP3.

### **PART A - Introduction**

- 4.4 The Adopted Local Development Plan and Proposed Local Development Plan 2 were prepared in accordance with regulations related to the Town and Country Planning (Scotland) Act, 1997, as amended by the Planning etc. (Scotland) Act, 2006 and by Scottish Government Planning Circular 6/2013. The Scottish Government are proposing new regulations and guidance for the new Planning (Scotland) Act 2019 (The Act) to direct the preparation of the new LDP. The guidance (Part C) is proposed to not take the form of a circular but to be a “live” document capable of evolving as the new planning system is implemented. The guidance is to be applied in a proportionate and place based way by planning authorities.
- 4.5 The advantage is this allows for maximum flexibility and resilience in the guidance. The disadvantages are that i) the development plan process is often subject to challenge and, whilst flexibility has some advantages, it is important that the process is robust; ii) using changing guidance rather than regulation is liable to be more open to challenge; iii) it is unclear what consultation there would be on any review of the guidance; iv) potential for changes in the guidance during an LDP process, which may result in confusion; and a lack of clarity on the status of the guidance. There are key parts of the process where regulation is preferable to guidance in order to have as robust a process as possible to avoid legal challenge and additional expense. **See Appendix 1 Question 1.**

### **PART B - Regulations**

- 4.6 Much of the existing regulations have remained unchanged with amendments where there is a new duty or the process has changed. Changes for the LDP process and content were brought forward by the Act and include:
- taking into account and have regard to NPF4, Local Outcome Improvement Plans, Regional Spatial Strategies and Local Place Plans;
  - policies for water refill stations and public conveniences;
  - have regard to the desirability of preserving disused railways,
  - take into account people seeking self-build housing; and
  - contain targets for meeting housing needs.

Other regulations have been taken into account such as consolidation of the hazardous substances regulations. These do not raise any significant issues. **See Appendix 1 Questions 4 and 5.**

- 4.7 Emerging and enlarging issues are noted relating to climate change, community planning and health. The consultation asks if additional information is needed to address these issues. However, it is considered that the proposed process involving the Evidence Report, enhanced integration with community planning including a shared vision related to the Local Outcome Improvement Plan and other assessments that integrate with the LDP process all provide sufficient information. Additional information may be sought based on local requirements rather than regulation. **See Appendix 1 Question 6.**
- 4.8 The Evidence Report is a new stage in the LDP process requiring the gathering and analysis of a significant amount of supporting information to enable the preparation of the LDP. The Evidence Report goes through a Gatecheck with an assessment by a Scottish Government appointed Reporter. Areas of dispute are examined. The cost of this assessment is borne by the planning authority. Plan preparation can only proceed once the Gatecheck is passed. Once the Gatecheck is passed it should not be necessary for these issues to be revisited at the Examination of the LDP.
- 4.9 The consultation proposes that the Evidence Report requirements are dealt with through guidance. However, it is considered that whilst some elements may be adequately dealt with by the requirements of the Act and the Development Plan Scheme process, the minimum requirements would benefit from a level of regulation as opposed to guidance, in order to ensure the process is robust and less open to legal challenge. **See Appendix 1 Question 7.** Given the importance placed on this stage the guidance notes that the Evidence Report is required to go to full Council for approval prior to submission to Scottish Ministers and that a corporate approach is sought in its preparation. Although the guidance itself raises no significant issues, it is considered that regulation is the more appropriate place for elements of this. **See Appendix 1 Section C Question 19 and Question 20**
- 4.10 The regulations for the Evidence Report Assessment are proposed to be the same for costs, procedures and assessment currently in place for the Examination. It should be noted that the planning authority will now be responsible for the cost of the Evidence Report Assessment as well as the Examination. The publication of the Proposed Plan submitted for Examination and subsequent modification process is proposed to continue in the same manner. This raises no significant issues. **Appendix 1 Question 9.**
- 4.11 There is now a different approach to modifications prior to submission for Examination, gives scope for the planning authority to produce a Modification Report to accompany the submitted proposed plan, taking account of the representations without preparing a modified Proposed Plan. The proposed regulations and guidance deal with this welcomed part of the process. The process and regulations for amendment of local development plans during the plan period will be consulted on at a later date. **Appendix 1 Question 10 and Section C Question 21**

- 4.12 Development Plan Schemes set out the timetable for LDP preparation and participation. The Act brought in a new requirements in terms of the DPS, which are detailed in the regulations and guidance and have resource implications. The diagram in Annex C would benefit from additional detail in terms of estimated time scales (as currently shown in Circular 6/2013) to assist with programming. Appendix 1 Question 11 and Part C Question 15
- 4.13 Delivery Programmes (DP) are to replace the Action Programme to aid in the delivery of the policies and proposals in the LDP. These are now to be corporate level documents, given equal weight with the LDP, contain more information, have a specific duties for the head of the planning authority's paid service (Chief Planner), alignment with wider authority budgets and require full Council approval. The regulations are amended to take these changes into account. The regulations and guidance (Part C) raise no significant issues in terms of process, however, the resource implication and requirements of the DP should be noted. **Appendix 1 Question 12 (Part B), Question 17 (Part C)**

### **PART C - Draft Guidance on Local Development Planning**

- 4.14 The draft guidance is split into 3 sections covering the aims for the new LDP, process and thematic guidance based on the themes in NPF4. It is noted that this is a "live" document and will be subject to change. It would be useful for planning authorities to be involved in any change process. Changes may lead to significant impacts on plans part way through the preparation process, including resource and cost implications. It is therefore important to have an appropriate balance of regulation to guidance in order to maintain a robust process for plan preparation.
- 4.15 A place-based approach is expected with a clear spatial strategy. A corporate level approach is stressed throughout the guidance with the Local Outcome Improvement Plan providing the shared vision, council wide level integration in the process with approval for key stages required at full Council and a significant role for the Chief Planner. Wider engagement in the process is promoted with communities encouraged to prepare local place plans. Minor issues are noted in relation to the aims and general guidance on LDPs, including Development Plan Schemes. **See Appendix 1 Question 15**
- 4.16 Local Place Plans were brought forward through the Act. The regulations and a circular regarding LPPs are now in place. Registered LPPs require to be taken into account in the preparation of the LDP. There is also a requirement in the legislation to demonstrate in the Evidence Report what assistance has been given by the local authority to local communities in preparation of LPPs. The guidance Paragraph 91 notes "*...it is expected that this would not necessarily depend on local authority support but can extend to wider programmes*". The resource implications for remote rural and island councils and for dispersed communities is liable to be more significant than for urban areas and a note to this would be welcomed in the guidance. **See Appendix 1 Question 18**
- 4.17 The Proposed Plan is to be place based with the guidance seeking an emphasis on maps, site briefs and masterplans. In light of the corporate role of the plan the guidance proposes approval by full Council with no delegation permitted. It should be noted that currently all key stages of the LDP process go through full Council but that Council meets on average 5 times a year. In addition, the consultation process has been extended to 12 weeks minimum with no cap. Previously this

was 6 with a cap at 12 weeks. Both of these have implications for the programming of the LDP process. The role of the Chief Planning Officer in relation to the plan fulfilling its intended outcomes is noted. The guidance raises some detailed issues in relation to mapping in a remote rural and island area, LDP process programming and managing expectations. **See Appendix 1 Question 21**

- 4.18 The Examination process remains broadly the same. Matters dealt with as points of principle at the Gatecheck stage should not in general be revisited at the Examination. If the Reporter is not satisfied on the sufficiency of allocated land to meet the Housing Land Requirement a new Proposed Plan may be required. The Reporter may also require an amendment to the plan. This process will be subject to future consultation. The cost of the Examination remains the responsibility of the planning authority. The guidance raises no significant issues. **Appendix 1 Question 22**
- 4.19 In terms of the Evidence Report, the minimum evidence requirements would benefit from being in regulation rather than guidance in order to make the process more robust and avoid legal challenge. There is lack of clarity on remote rural and island issues, which may increase the scope for dispute within the process. There is a lack of clarity within the guidance over the specific requirements for supporting information. The additional supporting evidence required includes Play Space Assessments, evidence of support given to communities in respect of Local Place Plans, Town centre audits and strategies, Forestry and Woodland Strategy, Heat Mapping, 20 minute neighbourhoods, blue and green infrastructure audits, strategic flood risk assessment, nature and distribution of poor air quality, business land audit, the range of cultural venues and facilities, information on the aquaculture industry, minerals monitoring, identify gaps in digital coverage, retail study, place standard assessment, identification of types of rural area, review of Local Landscape Areas and review of Local Nature Conservation Sites. **See Appendix 1 Question 24, 25, 26 and 27**
- 4.20 In terms of the Proposed Plan there are detailed issues relating to mapping requirements. The guidance outlines new requirements of this stage such as an understanding of the emissions likely to be generated by the plan's proposals, the potential for negative emissions technologies, heat mapping (noting the new Local Heat and Energy Efficiency Strategy requirements), identification of potential charging hubs and taking into account where the local authority can make their own suitable property available to Mobile Network Operators and Wireless Infrastructure Providers. There are detailed issues relating to clarity of wording. There are also detailed issues relating to the appropriate document for setting out infrastructure requirements. See Appendix 1 Question 28, 29 and 30.

## **PART D – Interim Impact Assessments**

- 4.21 This section contains the range of interim impact assessments on the proposed regulations and guidance. This includes a Business and Regulatory Impact Assessment (BRIA), Equalities Impact Assessment (EQIA), Fairer Scotland Duty Assessment, Island Communities Impact Assessment and a Strategic Environmental Assessment (SEA). The questions relating to Part D are contained in Part A Q2 and Q3.

- 4.22 The BRIA in terms of impact upon the Council notes that *“The new processes will have significant impacts on local authority teams involved in the LDP process and how they take this work forward. The proposals stem from recent legislative changes that were intended to strengthen LDPs, reducing the time spent on producing plans and giving them a greater focus on place and delivery”*. The timeframe for the current LDP process was estimated at 31 months. The new process timeframe is estimated at 36-48 months, given the additional requirements. However, the lifespan of a plan is increased from 5 to 10 years, reducing the frequency of review. The Plan may be subject to amendment during the 10 year period, however, this matter will be subject to a subsequent consultation.
- 4.23 The BRIA notes that *“the changes made to development planning in the Planning Bill were estimated to deliver potential saving to planning authorities collectively, of between £21.42m to £31.5m over a ten year period.”* It is noted in contrast, that the Royal Town Planning Institute estimated the changes of the Act would bring additional costs of £12,138,880 to £59,263,685 over a ten year period.
- 4.24 The BRIA also sets out impact on communities and notes that the extent of impact on communities will be *“dependent on their willingness and need to become involved in these processes”*. This omits a significant point in terms of community capacity to become engaged and raises the question of support for capacity building within communities.
- 4.25 The EQIA, Child Rights and Wellbeing Impact Assessment, Fairer Scotland Duty Assessment and Strategic Environmental Assessment raise no significant issues.
- 4.26 Island Communities Impact Assessment. The timescales for plan preparation were noted and that the logistics of site visits and the small size of island authority planning teams may have an impact.
- 4.27 It is noted that the preparation of the next Local Development Plan will need to be informed by the appropriate impact assessments, including Strategic Environmental Assessment, Habitat Regulation Appraisal, Equalities Impact Assessment, Island Communities Impact Assessment, Fairer Scotland Duty Assessment. Guidance is in place for some of these assessments e.g. SEA, HRA, Island Communities but there needs to be an informed and robust approach to all the assessments, including emerging assessments, such as Children’s Rights and Well Being Assessments.

## **5.0 CONCLUSION**

- 5.1 The consultation on regulations and guidance for Local Development Plan preparation is welcomed, giving the Council an opportunity for engagement in the move to the new planning system. It is considered that there are some issues relating to the appropriate balance between regulation and guidance, in particular relating to the Evidence Report Stage. There are also issues related to the handling of remote rural and island areas. The Act brought in a significant number of new duties, which have been detailed in the regulation and guidance. This



highlights the significant resource issue in relation to the preparation of the next Local Development Plan.

## **6.0 IMPLICATIONS**

### **6.1 Policy**

Once approved the regulations and guidance will govern the preparation and delivery of the next Local Development Plan. The corporate level role of the Local Development Plan, including approval route and how it integrates with other Council plans, strategies and programmes has been enhanced and emphasised.

### **6.2 Financial**

The new process for preparation of the Local Development Plan, which is a statutory duty, involves some savings and some additional costs. It is estimated that there will be a net additional cost to the Council from the new duties.

### **6.3 Legal**

There is a statutory duty to prepare and update a Local Development Plan. This will need to be in accordance with the regulations and guidance once approved.

### **6.4 HR**

None as a result of this consultation. However, the proposed regulations highlight the resource requirements to deliver the next local development plan.

### **6.5 Fairer Scotland Duty:**

6.5.1 Equalities - protected characteristics

6.5.2 Socio-economic Duty

6.5.3 Islands

The above issues are assessed in Part D - the Interim Assessment Report. Comments on these assessments are included in the consultation response.

### **6.6 Climate Change**

This is assessed in Part D – the interim assessment report Strategic Environmental Assessment screening.

### **6.7 Risk**

None as a result of this consultation. However, there are associated risk factors to note as follows:

If the balance between regulation and guidance does not deliver a robust process there may be an increased chance of legal challenge in the LDP process;

The guidance requires a significant amount of information at the Evidence stage and content at the proposed plan stage. Failure to resource this may result in failure to deliver an LDP timeously.

## 6.8 **Customer Service**

None in relation to the consultation. The proposed regulations and guidance will result in changes to the Local Development Plan process aimed at improving engagement of the public at large and other stakeholders.

**Kirsty Flannagan** Executive Director with responsibility for Development and Economic Growth

**Councillor Kinniburgh** Policy Lead for PPSL

25<sup>th</sup> February 2022

### **For further information contact:**

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## **APPENDICES**

Appendix 1 Proposed Response

Appendix 2 Background Papers

## Appendix 1 Proposed Response

### PART A Introduction

#### Question 1

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?

Yes / No / No View

Please explain why you agree or disagree.

In principle, a minimal approach to regulation should assist with a more localised approach to delivery of the new planning act. It should enable the planning authority to deliver development plans across a range of situations from urban to remote rural to islands. A more flexible approach to guidance should enable adaptations as the new planning process is implemented.

However, some elements that are proposed to be dealt with by guidance would be more appropriately dealt with by regulation in order to ensure the system is more robust and less open to legal challenge. These elements should be contained within the regulations and be prescriptive. This applies in particular to the Evidence Report stage.

In addition, it is unclear what mechanism there would be for consultation on any review of the guidance. There is the potential for changes in the guidance during an LDP process to result in confusion and undermine the process. This may have resource implications.

#### Question 2

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

**Yes** / No

Please explain your views

Although the BRIA notes that *“The new processes will have significant impacts on local authority teams involved in the LDP process and how they take this work forward.”* It still refers to the initial assessment of costs undertaken at the Bill stage, which indicate a net saving in preparation of the LDP. Given that there have been further developments in terms of the Act, proposed NPF4 and other regulations it would be useful to update this assessment for a more accurate picture.

The BRIA in terms of impact on communities notes that the extent of impact on communities will be *“dependent on their willingness and need to become involved in these processes”*. This omits a significant point in terms of community capacity to become engaged and raises questions regarding support for capacity building within communities.

Island Communities Impact Assessment – the potential additional timescales for plan preparation and impacts of the logistics of site visits given the small size of island authority planning teams was noted. This impact will apply across the various new responsibilities and needs to be given full recognition at the Evidence Report and Gateway Check stage.

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

**Yes** / No

Please provide or direct us to the information

BRIA - It is noted that the Royal Town Planning Institute estimated the changes of the Act would bring additional costs of £12,138,880 to £59,263,685 over a ten year period.

### **Question 3**

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

Yes / **No**

Please explain your views

ii) If you consider that full assessments are required, please suggest any information sources that could help inform these assessments.

## **PART B - The proposed Development Plan Regulations**

### **Question 4**

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

**Yes** / No / No View

Please explain why you agree or disagree.

No significant issues.

### **Question 5**

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

**Yes** / No / No View

Please explain why you agree or disagree

The changes reflect necessary updates.

### **Question 6**

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

**Yes** / No / No View

Please explain your views.

The Evidence Report and associated assessments that support the plan making process are considered to be both sufficient and effective in taking account of the growing issues related to climate change, community planning and health. The shared vision with the Local Outcome Improvement Plan, corporate working, taking account of Local Place Plans and enhanced community engagement should help deliver on shared community planning objectives. Strategic Environmental Assessment is well placed to cover climate change issues. The Fairer Scotland Duty seeks to tackle socio-economic disadvantage and reduce the inequalities that are associated with being disadvantaged, including outcomes of health, housing, education or opportunities to work or train. Additional information should not be a requirement but may be tailored to local circumstances.

### **Question 7**

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

Yes / **No** / No View

Please explain why you agree or disagree

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose.

### **Question 8**

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

**Yes** / No / No View

Please explain why you agree or disagree.

Update and substance of current process retained.

### **Question 9**

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

**Yes** / No / No View

Please explain why you agree or disagree.

Update only.

### **Question 10**

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?

**Yes** / No / No View

Please explain your view.

It is seen as positive to consult on this issue at a later date when issues relating to the preparation of the LDP are more fully understood and evidenced, including resource and timescale.

### **Question 11**

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

**Yes** / No / No View

Please explain why you agree or disagree.

Appropriate level of regulation proposed.

### **Question 12**

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

**Yes** / No / No View

Please explain why you agree or disagree.

Appropriate level of necessary regulation.

### **Question 13**

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

**Yes** / No / No View

Please explain why you agree or disagree.

This is a factual update. It should however be noted that the Crofters Commission was renamed the Crofting Commission and that this should also be updated throughout the regulations and guidance.

### **Question 14**

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

**Yes** / No / No View

Please explain why you agree or disagree.

Brings current guidance into regulation, which is welcomed.

## **PART C - Draft Guidance on Local Development Planning**

### **Question 15**

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

Yes / No / No View

Please explain why you agree or disagree.

Minor issues:

Paragraph 11 it would be useful to note diagrams as well maps, site briefs and masterplans. This ties in with the regulations and shows the importance of indicative and non-map based information.

Paragraph 22 states "*Where they have been prepared, the community's proposals are able to be incorporated into the LDP.*" This should read "*be taken into account in the preparation of*" to align with the Act and circular. The use of "incorporated" is misleading as other material considerations may dictate otherwise at the time of LDP preparation or Examination.

Paragraph 27 bullet one put the word "*sustainable*" before "*development*" to clearly indicate that development should consider climate change and support the circular economy.

Paragraph 27 bullet two only refers to site briefs and masterplans which does not take into account the differing situation in the remote rural and on islands. Remote rural areas and islands tend to have a higher reliance on windfall and fewer allocated sites than urban areas. The approach to sparsely populated areas with small settlements may be best depicted through spatial strategies on maps or diagrams. This may help promote a more inclusive approach for these communities.

Paragraph 43 This does not state who can prepare "*local guidance*" but it should be the role of the planning authority to determine what is a material consideration.

Paragraph 53/Annex C Given the significant number of new and enhanced requirements in the LDP preparation process it would be informative if the Scottish Government could indicate a timeframe next to the relevant sections of plan preparation shown in Annex C, as currently indicated in Circular 6/2013. This would be a valuable aid to programme management and assist in the preparation of the Development Plan Scheme.

Paragraph 47 Reference to Crofters Commission should be amended to Crofting Commission.

### **Question 16**

Do you agree with the guidance on Development Plan Schemes?

**Yes** / No / No View

Please explain why you agree or disagree.

However, it is noted that the preparation of the DPS will be guided by Annex C, which would benefit from additional information. Given the significant number of new and enhanced requirements in the LDP preparation process it would be informative if the Scottish Government could indicate a timeframe next to the relevant sections of plan preparation shown in Annex C, as currently indicated in Circular 6/2013. This would be a valuable aid to programme management and assist in the preparation of the Development Plan Scheme.

### **Question 17**

Do you agree with the guidance on the Delivery Programme?

**Yes** / No / No View

Please explain why you agree or disagree.

Whilst the guidance supports the process it raises issues in terms of the programme management of the LDP process. There is a significant resource requirement associated with the Delivery Programme that will require a corporate approach and buy in from external partners and stakeholders in order to deliver the LDP.

Preparation of the DP will need to be integrated with the preparation of the LDP and will need to be taken into account in the timetabling of LDP preparation. Should Annex C be amended to contain a timetable the time requirements related to integrating the preparation of the DP need to be considered.

### **Question 18**

Do you agree with the guidance on Local Place Plans?

**Yes** / No / No View

Please explain why you agree or disagree.

The guidance reflects the legislation, however, there are resource implications and practicalities for remote rural and island communities and local authorities given the scale and nature of the area that are liable to be very different to urban areas.

Emphasis of this in the guidance would be welcomed.

### **Question 19**

Do you agree with the guidance on the Evidence Report?

Yes / **No** / No View

Please explain why you agree or disagree.

Whilst the guidance itself does not raise any significant issues it is considered that elements of this should be contained within regulation. The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust

as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose.

### **Question 20**

Do you agree with the guidance on the Gate Check?

Yes / **No** / No View

Please explain why you agree or disagree.

Whilst the guidance itself does not raise any significant issues given the importance of this stage an element of regulation is considered necessary to provide a robust process which minimises the potential for legal challenge.

### **Question 21**

Do you agree with the guidance on the Proposed Plan?

Yes / No / No View

Please explain why you agree or disagree.

In general the guidance on the Proposed Plan is welcomed, however there are a number of detailed issues as follows:

Paragraph 140 *"..being able to find what is relevant to a particular place in one area of the plan."* Whilst thematic policies are dealt with in the NPF this guidance indicates a number of thematic issues that should be indicated in the LDP. In remote rural and island areas with sparse and dispersed populations in many small settlements and with a significant range of environmental designations in these circumstances including all thematic mapping on a single place based map for each settlement may be cartographically challenging. This paragraph should acknowledge it may not be possible to map everything for dispersed rural settlements in one place, in particular thematic information and that indicative diagrams may be appropriate.

Paragraph 144 The requirement to gain approval at full Council matches the current procedures of this authority. However, it should noted that making this a requirement may have implications for LDP programming.

Paragraph 145 The extension to 12 weeks is welcomed. However, there is no cap as in the previous guidance. It may be useful to introduce a reasonable maximum in order to manage expectations at this stage and promote efficient programming and delivery of the process.

Paragraph 147 Guidance on the Modification Report is welcomed.

### **Question 22**

Do you agree with the guidance on Local Development Plan Examinations?

**Yes** / No / No View

Please explain why you agree or disagree.

This raises no significant issues.

Paragraph 180 Spelling *"issued"* to *"issues"*

### **Question 23**

Do you agree with the guidance on Adoption and Delivery?

**Yes** / No / No View



Please explain why you agree or disagree.  
This guidance raises no significant issues.

#### **Question 24**

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

Yes / **No** / No View

Please explain why you agree or disagree.

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose. Figure 6 is noted as an indicative list and yet all the following paragraphs state that the Evidence Report “should” deal with these matters, implying a requirement. The guidance lacks clarity.

#### **Question 25**

Do you agree with the proposed guidance on the Evidence Report in relation to the section on Liveable Places (paragraphs 248 – 283)?

Yes / **No** / No View

Please explain why you agree or disagree.

The Evidence Report is a new stage, which will be subject to scrutiny. It is considered that the Act and Development Plan Scheme provide an effective approach to who should be involved and additional guidance is sufficient. However, the approach of using guidance rather than providing a level of regulation for what the minimum evidence requirement is, is not considered to provide a sufficiently robust system. This is a process that requires a consistency of approach to ensure that LDPs are as robust as possible against legal challenge. Guidance, especially one that varies, is more likely to lead to interpretive issues. This is a key stage in the process, resource intensive and accompanied by a financial cost to the planning authority. It requires to be supported by the more certain approach that regulation could afford. Setting a basic standard does not mean best practice cannot exceed this. A minimum standard would also give support to the Reporters decision that the Evidence Report is fit for purpose. Figure 6 is noted as an indicative list and yet all the following paragraphs state that the Evidence Report “*should*” deal with these matters, implying a requirement. The guidance lacks clarity, in particular in relation to remote rural and island issues.

Paragraph 250 “...*where there are gaps in provision to help identify areas not currently well-served as 20 minute neighbourhoods.*” Does “*areas*” mean settlements. In the remote rural context there will be significant areas that do not have facilities. Although the guidance acknowledges a different approach may be needed in remote rural and island areas it is unclear how the guidance applies and

significant variation in interpretation is possible over what is required. This may lead to more areas of dispute due to the lack of clarity. It is considered there is a lack of rural consideration within this element of guidance.

Paragraph 255 – In terms of private supplied networks it should be noted that there may be limited data, it may be commercially sensitive and there may be no obligation to provide this data.

The range of data that “*should*” be collated and analysed is significant. This needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

### **Question 26**

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

Yes / No / No View

Please explain why you agree or disagree.

The range of data that “*should*” be collated and analysed is significant. Clarity is needed on whether this is a requirement or subject to local consideration. Regulation is required for minimum evidence requirements rather than leaving this to guidance as this would be more robust and less open to legal challenge. Some of the data may be commercially sensitive e.g. aquaculture or not readily available. This needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

### **Question 27**

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

Yes / No / No View

Please explain why you agree or disagree.

The range of data that “*should*” be collated and analysed is significant. Clarity is needed on whether this is a requirement or subject to local consideration. Regulation is required for minimum evidence requirements rather than leaving this to guidance as this would be more robust and less open to legal challenge. The level of data required needs to be factored in to the programming of LDP preparation. It is requested that Annex C shows the anticipated timeframes taking into consideration the level of information gathering and analysis required at the Evidence Report stage.

Paragraph 303 – This does not provide sufficient guidance on the aims or methodology related to identification of rural areas. The wording does not align with that proposed in NPF4 (see separate response on this issue).

### **Question 28**

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

Yes / No / No View

Please explain why you agree or disagree.

Paragraph 313 Whilst thematic policies are dealt with in the NPF this guidance indicates a number of thematic issues that should be indicated in the LDP. In remote

rural and island areas with sparse and dispersed populations in many small settlements and with a significant range of environmental designations in these circumstances including all thematic mapping on a single place based map for each settlement may be cartographically challenging. This paragraph should acknowledge it may not be possible to map everything for dispersed rural settlements in one place, in particular thematic information and that indicative diagrams may be appropriate.

Paragraph 325 – It is unclear if the reference to “*buffer zones*” excludes consideration of the impact of development on an adjacent environmental resource such as an NSA.

### **Question 29**

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Liveable Places (paragraphs 329 – 400)?

Yes / No / No View

Please explain why you agree or disagree.

Figure 12 Identify section bullet point 2 and Paragraph 332 This needs clarifying for remote rural and island areas. The word “areas” could refer to large tracts of sparsely inhabited countryside where it would generally be inappropriate to identify such facilities.

Paragraph 339 The plan is for a 10 year period. Even with site investigation the full infrastructure requirements may not be known and may emerge during the lifetime of the plan. Given that the Delivery Programme is proposed to be of similar weight to the LDP, with corporate level approval, this may be the more appropriate vehicle for local site infrastructure requirements where a more frequent update and simpler process applies. Strategic level infrastructure requirements, including with multi agency/partnership delivery requirements may be more appropriately identified within the Local Development Plan, keeping the document focussed on the key issues with detail passed to the Delivery Programme. This division could be made clear in the guidance. Paragraph 340 – Some detail may be more appropriately dealt with in the Delivery Programme, enabling the Local Development Plan to be more concise. This should be made clear.

Paragraph 342 The role of windfall is particularly important in remote rural and island areas. This could be noted in this paragraph.

Paragraph 344 This should make clear if this is from the date of adoption.

Paragraph 348 Site Briefs and Masterplans should be shown in the Delivery Programme, where they can be more readily updated, rather than in the Proposed Plan, which is for a 10 year period.

Paragraph 376 This does not fully consider the remote rural and island situation. The current Argyll and Bute LDP allows for low/no car parking in its Main Town centres not all of which are classed as urban.

### **Question 30**

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Productive Places (paragraphs 401 – 424)?

**Yes** / No / No View

Please explain why you agree or disagree.

In general yes but Figure 13 8<sup>th</sup> bullet “...and takes into account...” should include “*environmental constraints*” to cover these issues. It is noted that Regional Marine Plans are not yet in place for all areas.

### **Question 31**

Do you agree with the proposed guidance on the Proposed Plan in relation to the section on Distinctive Places (paragraphs 425 – 466)?

Yes / No / No View

Please explain why you agree or disagree.

Paragraph 439 Some of this resource falls within the remit of HES who would update as and when required. The LDP will be in place for 10 years. It is not considered necessarily to map all listed buildings and Scheduled Monuments in the Development Plan when these are readily available in an up to date format at source. Moving forward in the digital age this information can be made available in an up to date format in an integrated manner, potentially through use of storymap etc.. Displaying out of date information that is potentially cartographically challenging for areas such as Argyll and Bute (significant land area and historic environment resource) is not considered to be useful to users of the plan.

Paragraph 464 It is requested that *The Right Tree in the Right Place* be updated to reflect the latest planning guidance and Scottish Forestry Strategy.

### **Question 32**

Do you agree with the proposed thematic guidance on the Delivery Programme (paragraphs 467 – 482)?

Yes / No / No View

Please explain why you agree or disagree.

Some guidance that relates to the Proposed Plan may be better dealt with in this section. See comments above.

## **Appendix 2 Background papers**

- 1 [Local Development Planning Regulations & Guidance Consultation: Part A Introduction](#)
- 2 [Local Development Planning Regulations & Guidance Consultation: Part B Proposals for Development Planning Regulations](#)
- 3 [Local Development Planning Regulations & Guidance Consultation: Part C Draft Guidance on Local Development Planning](#)
- 4 [Local Development Planning Regulations & Guidance Consultation: Part D Interim Impact Assessments](#)