

Agenda Item	6
Report No	ECI/12/2024

HIGHLAND COUNCIL

Committee: Economy and Infrastructure

Date: 2 May 2024

Report Title: Masterplan Consent Areas

Report By: Executive Chief Officer Infrastructure, Environment & Economy

1 Purpose/Executive Summary

- 1.1 This report explains the Scottish Government's proposed introduction of discretionary powers to establish Masterplan Consent Areas (MCAs) under new planning legislation. MCAs are seen as a tool to positively influence and accelerate the unlocking of key sites where there is a need to unlock and respond dynamically to strategic opportunities. The consultation document can be found [here](#). The report outlines the potential implications and potential applicability of MCAs in Highland and seeks approval for a draft response to the current Scottish Government consultation.
- 1.2 The current consultation on MCAs by Scottish Government outlines that MCAs are intended to better coordinate and expedite development, transport, design and built environment issues in defined areas. Scottish Government describes MCAs as a "new upfront consenting mechanism for development proposals" and which are similar to the previous Simplified Planning Zone mechanism. If and when adopted then an MCA would set clear parameters, conditions and principles for development that - if met - would remove the need for planning permission, roads construction consent, and potentially other consents. The detailed circumstances for such considerations would be prescribed by a council within an MCA "Scheme."

2 Recommendations

- 2.1 Members are asked to:-
- i. **Agree** the Council's response to the current Scottish Government MCAs consultation as detailed within Appendix 1;
 - ii. **Agree** that the statement in Paragraph 5.3 is published to indicate the Council's intent, as required by the legislation;
 - iii. **Note** the potential application of the MCA model within Highland; and
 - iv. **Agree** that the Council continues to investigate the role of MCAs to address emerging development requirements, and that further reports on this matter will be brought to this Committee before any commitment is made.

3 Implications

- 3.1 **Resource** – section 6 below considers the potential loss of future planning application fee income but the likely ability to recoup this from landowners and developers. This does require further clarification from Scottish Government and is likely to be considered as part of a separate consultation on Resourcing the Planning System. Otherwise, existing Service resources can be utilised to progress any MCAs within Highland.
- 3.2 **Legal** – Schedule 5A Paragraph 5 of the Planning (Scotland) Act 2019 requires planning authorities to consider periodically (which is identified as at least once in each five-year period) whether it would be desirable to make an MCA scheme. Although the provisions have not been implemented the first five-year period will end on 24 July 2024. The report recommends adoption and publication of a statement confirming the Council's intention to consider MCA schemes once the legislation is enacted and supporting regulations finalised. This will ensure the Council discharges this statutory obligation. There are no immediate legal consequences or implications arising from submission of the proposed response to the consultation which offers broad support for the introduction of MCAs. Once the legislation is enacted and the regulations are in place further consideration will require to be given to ensuring the Council has the processes in place to meet the requirements of the regulations addressing matters such as consultation and publication. Ancillary work will be required on hearing processes and the Council's Scheme of Delegation will require to be revised. Further Committee Scrutiny will be put in place prior to any significant work being undertaken on the new arrangements and future reports will identify the legal implications arising.
- 3.3 **Community (Equality, Poverty, Rural and Island)** – the implications of individual MCA proposals will be subject to a full Impact Assessment at the time of being implemented. There are no specific implications arising from the response to the Regulations themselves.
- 3.4 **Climate Change / Carbon Clever** – the related national legislation has been subject to Strategic Environmental Assessment. Parallel Environmental Impact Assessment regulations are being progressed.
- 3.5 **Risk** – there is a risk that MCAs are seen as a way of by-passing the normal Local Development Plan process. The Regulations are set out to ensure that The Council is responsible for the identification and the delivery of the MCAs – this maintains local democratic control of the process. Given the significant pressures being felt from stakeholders to ensure that appropriate housing and other infrastructure is in place to support the Green Freeport, it is considered that the MCA will provide a useful tool to ensure that demand does not outstrip supply. The very significant investment that is anticipated was not foreseen at the time the Inner Moray Firth Local Development Plan was prepared. Members should note however that the delivery of a small number of MCAs will not replace the normal preparation of the Highland Local Development Plan.

- 3.6 **Health and Safety (risks arising from changes to plant, equipment, process, or people)** – not applicable.
- 3.7 **Gaelic** – in line with the Council’s Gaelic Language Plan, all publicity and documentation associated with any future MCA will contain titles and main headings in Gaelic.

4 Legislative Background

- 4.1 The Planning (Scotland) Act 2019 introduced the concept of Masterplan Consent Areas (MCAs) as a new proactive consenting mechanism. However, the provisions have not, to date, been brought into effect.
- 4.2 A significant difference to planning applications - which are typically led by a developer - is that the preparation of MCA schemes will be led by the planning authority but can be taken forward through collaboration with interested parties such as landowners.
- 4.3 Once in force the new provisions will allow the Council to prepare an MCA ‘Scheme’ setting out for particular places, the detail of what they are giving consent for, through the MCA scheme. There will be specific requirements for publicity and consultation on individual schemes.
- 4.4 The purpose of MCA schemes will be to streamline consent and to allow issues to be considered as part of a joined-up approach. Whilst MCAs will be tailored to the individual circumstances there will be the option to grant:-
- planning permission,
 - roads construction consent,
 - listed building consent, and
 - conservation area consent
- 4.5 The consequence is that within adopted MCA areas, development could be brought forward without the need for a full application as long as it is in line with the agreed scheme.

5 Consideration of the Duty to periodically consider making MCA schemes

- 5.1 Part 2 of the Planning (Scotland) Act 2019 sets out the legal framework for preparing MCAs. The full provisions from the Act relating to MCAs and the associated regulations are not yet in force.
- 5.2 However, Schedule 5A Paragraph 5 is in force and requires planning authorities to consider whether it would be desirable to make a scheme for a part or parts of their district, and to publish a statement as to their consideration of that, by 25 July 2024.

- 5.3 Accordingly and in order to ensure compliance with the 2019 Act it is proposed that the planning authority agree and publish the following statement:-

“As the MCA regulations are not yet in place, the Council has not yet fully identified or assessed potential locations for which it may be desirable to bring forward an MCA scheme. The Council recognises the potential benefits preparation and implementation of MCA schemes could offer Highland, in particular in support of the development of the Inverness and Cromarty Firth Green Freeport and supporting infrastructure. The Council intend to reconsider this once the legal basis for preparing MCAs is in place. The Scottish Government has indicated that MCAs could be used to support delivery of the local development plan. The Council will consider whether it would be desirable to make any Masterplan Consent Areas as part of our work on delivery linked to the Local Development Plan’s Delivery Programme. This Statement fulfils the Council’s legal requirements under Schedule 5A Paragraph 5 of the Town and Country Planning (Scotland) Act, as amended.”

6 Masterplan Consent Areas - Draft Regulations: Consultation

- 6.1 As noted above the provisions within the 2019 Act in respect of Masterplan Consent Areas have not, to date, been enacted. However the Scottish Government has indicated that they anticipate the MCA provisions will be fully in place later in 2024. The Scottish Government is undertaking a consultation on the proposed regulations on the procedures to be followed to prepare Masterplan Consent Areas (MCA). It sets out the proposed procedures and includes two sets of regulations: covering the main process for making MCA schemes and relating to environmental impact assessment. The consultation document can be found [here](#). The suggested Council response to that legislation is set out within **Appendix 1**. The deadline for the response is 22 May 2024.

7 Masterplan Consent Area - Benefits, Process and Consultation

- 7.1 MCAs are promoted as a delivery mechanism to unlock complex or presently constrained development sites or wider areas via a coordinated, inclusive but expedited masterplanning process. Complexity and constraints to delivery arise from a number of factors such as: multiple landownerships, inadequate infrastructure capacity, viability, environmental issues, local community concern, contamination, and marketability. MCAs should save time by front loading and targeting assessment, consultation and decision making. MCAs should also reduce risk for those choosing to invest in Highland. No types of development are excluded but certain designations are. MCAs cannot be established within National Scenic Areas, and international and national nature conservation sites. MCAs can be operative for no more than 10 years.
- 7.2 An MCA Scheme is subject to community and statutory agency engagement. There are no “shortcuts” proposed relative to existing planning application and road construction consent processes. The following are still required: Environmental Impact Assessment (at least to screening stage); two public events (if endorsing at least major scale applications); landowner and neighbour notification; community council consultation; press advertisement; a 30-day period for representations; and notification of maintained statutory agency objections to Scottish Ministers.

The time saving should be via early and collaborative consensus building through the masterplanning phase and dealing with statutory objections once for each MCA not for each individual planning application or other consent application.

8 MCA Decision Making and Resourcing

- 8.1 The MCA is seen as a tool to positively influence and accelerate the unlocking of key sites where there is a need to respond dynamically to strategic opportunities. They are considered to hold considerable potential in setting the broad criteria, principles and parameters for development whilst still allowing the Council to lead and steer the scope and detailed methodology for the preparation and approval of the MCA. Whilst they can therefore reduce the scale and resource burden of planning applications, it is likely that planning applications for detailed matters may still be required.
- 8.2 The draft Regulations provide that in drafting an MCA the planning authority must consider validly submitted representations but there is no appeal process. There is still notification of maintained statutory agency objections and council property interest MCAs to Scottish Ministers and a Ministerial “veto” stage, but the Regulations do not provide for an independent hearing or examination of objections by a Reporter. The consultation proposes that Ministers may require an authority to grant objectors a hearing before a committee of the authority, but this is intended to be limited to MCAs that authorise national category developments. The authority will be obliged to establish its own rules for such a hearing.
- 8.3 There are a number of resource implications that will require to be assessed and balanced. Whilst an authority would forgo future planning application fees within an MCA officers believe there should be an appropriate mechanism for full cost recovery to resource the time and commitment incurred in the preparation and implementation. This would need to cover the cost of all Council input to the MCA process, including:-
- setting the methodology and providing ongoing input to their preparation including project meetings;
 - reviewing and finalising drafts, with appropriate Committee approval;
 - assessing the suitability of development against the finalised MCA; and
 - the planning application fees for any detailed application required.
- 8.4 Scottish Government has recognised this potential shortfall and is considering allowing authorities to recover the costs of setting up an MCA from landowners and developers likely to benefit from its establishment. Resource is a key consideration, and the Council would welcome greater certainty of the proposed means of recovery.

9 Potential Application of MCAs within Highland

- 9.1 The predecessor Simplified Planning Zone mechanism had limited applicability and success in Highland. However, Scottish Government has explicitly highlighted that MCAs could play a wider role and have greater potential impact in Highland. Specifically, its current consultation, at paragraph 26, states “MCAs have significant potential to enable large scale infrastructure projects, including green freeports and development required to support ScotWind.”

- 9.2 Whilst at a very preliminary stage officers' initial assessment is that one area where MCAs have the potential to be used as a delivery mechanism to seek to unlock presently constrained development sites could be in support of strategic employment growth associated with the Inverness and Cromarty Firth Green Freeport (ICFGF) project and specifically the Green Freeport Tax Sites. These sites are located at:
- Ardersier
 - Cromarty Firth (Deephaven)
 - Cromarty Firth (Invergordon)
 - Cromarty Firth (Nigg)
 - Inverness (Harbour, Longman and Campus)
- 9.3 Given the possibility that early successes in generating net additional employment from the ICFGF project may test the current availability and viability of development plan allocated housing land then a number of additional locations may be suggested once the Regulations are in place and initial scoping has been carried out. These could, subject to a thorough and inclusive masterplanning process under the MCA, help deliver additional housing to accommodate new workers and their families. Examples of sites that may be brought forward to a future Committee include locations relatively close to the expected new employment at Tain, Alness, Invergordon and east of Nairn. These sites have been subject to previous landowner, agency and community consultation and received in-principle support from Council Committee(s) at the time of the time the Local Development Plan was finalised for Examination.
- 9.4 They include some sites that the Reporter for the Examination opted to remove from the Intention to Adopt IMFLDP2. The inclusive masterplanning process associated with an MCA would provide an opportunity to directly address the barriers, conditions and requirements for delivery to unlock any concerns and constraints that prevented their identification and/or implementation. Specific sites that could be considered in this context include:-
1. Land at Nairn East (previously identified within the Inner Moray Firth Proposed Local Development Plan (IMFpLDP2) as allocation NA05).
 2. Land at Croft Arthur and Viewfield, Tain (previously identified within the IMFpLDP2 as allocation TN04 and part of TN06).
 3. Land at Culcairn, Evanton (previously identified within the aIMFLDP as allocation EV3).
 4. Land at Alness East (previously identified within the aIMFLDP as allocation AL3, AL6 (part) and AL4).
- 9.5 Any decision to bring these sites forward will be subject to further scrutiny and assessment of the housing demands arising from the Green Freeport development.

10 Response to Consultation

- 10.1 **Appendix 1** sets out the Council's proposed response to Scottish Government consultation. Members are asked to agree the response, noting that the Council welcomes the additional discretionary power, will consider its application, supports the streamlined process set out in draft regulations but also welcomes the prudent checks and balances retained within the proposed legislation.

11 Next Steps

- 11.1 Subject to approval by Committee **Appendix 1**, along with the content of this report, will be sent to Scottish Government by the 22 May deadline.
- 11.2 If agreed by Committee, officers will continue to investigate the potential benefits of MCAs and carry out further work in refining or adding to the potential locations for such MCAs. This will ensure that the Council is in position to bring forward proposals for future committee approval to take any specific MCA through its statutory process once Regulations are in place.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

Date: 5 April 2024

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Background Papers: Masterplan Consent Areas: Consultation [Paper](#) and Draft Regulations: Scottish Government: February 2024

Appendices: Appendix 1 – Draft Response to Scottish Government’s Masterplan Consent Areas Draft Regulations

DRAFT RESPONSE TO SCOTTISH GOVERNMENT'S MASTERPLAN CONSENT AREAS DRAFT REGULATIONS

Question 1:

A) To what extent do you agree with the principle that regulations be kept to the minimum necessary and that more advice be offered in guidance and kept updated?

- a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Definition of requirements within regulations offer certainty and defensibility against legal challenge. Guidance offers the advantages of a quicker update and more flexibility to local circumstances. Any aspect of the Scottish Government's approach that is likely to be challengeable should be within the regulations.

Question 2:

A) 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?

- a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

All land uses and types of development could benefit from a streamlined, inclusive masterplanning process in particular circumstances.

Question 3:

A) We are not proposing any changes to the designations listed in schedule 5A (paragraph 3(4)). To what extent do you agree with this approach?

- a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

The list of designations should be limited to important national and international features.

Question 4:

A) To what extent do you agree that the content and consultation matters in relation to the Statement be set out in guidance rather than regulations?

- a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

The consultation on and contents of a Statement are unlikely to be subject to legal challenge and therefore it is sensible to deal with these matters in guidance.

Question 5:

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

- a) Strongly Agree b) Agree c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Any specific MCA proposal should involve stakeholder consultation including community councils but only once the draft boundary and broad intentions of the MCA have been formulated.

Question 6:

A) Draft Regulation 3 provides how consultation for possible proposals for a MCA scheme is to be undertaken, including notification and the requirement to undertake two public events, with opportunity to make comments to the planning authority. To what extent do you agree with this approach?

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

B) Please explain your view.

Similar to existing arrangements for major scale applications.

Question 7:

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

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

B) Please explain your view.

Similar to existing arrangements for planning applications.

Question 8:

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

No.

Question 9:

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

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

B) Please explain your view.

Similar to existing arrangements for planning applications.

Question 10:

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

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

B) Please explain your view.

Similar to existing arrangements for planning applications and development plan allocations.

Question 11:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Similar to existing arrangements for planning applications.

Question 12:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

National significance justifies a higher level of local scrutiny.

Question 13:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view

The defined parties are reasonable although in practice a Council's Hearing Rules would need to require a single spokesperson to be appointed if many persons have lodged similar opinions.

Question 14:

A) To what extent do you agree that a Notification Direction be issued requiring that in the above circumstances such MCA schemes be notified to the Scottish Ministers?

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

National significance justifies national notification.

Question 15:

A) To what extent do you agree with the proposed requirements in relation to the publication of MCA schemes and the decision notice as set out in Draft Regulation 7?

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

The proposed provisions mirror arrangements for similar processes.

Question 16:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Proposed and made MCAs should be on a public register.

Question 17:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Altering an MCA could have similar impacts to making one so the process should be similar.

Question 18:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

The proposed approach mirrors the Scottish Government's approach on other planning issues. However, it would be useful to be specify advertisement content in guidance.

Question 19:

A) To what extent do you agree with the proposed process set out in the Draft Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 contained within Annex B?

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view.

Mirrors the principles of existing arrangements.

Question 20:

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

- a) Strongly Agree **b) Agree** c) Neutral d) Disagree e) Strongly Disagree
B) Please explain your view

Mirrors the principles of existing arrangements.