

Heads of Planning Scotland (HOPS) response to the Mediation in Planning Consultation
12th March 2021

HOPS is the representative organisation for senior planning officers from Scotland's local authorities, national park authorities and strategic development planning authorities. HOPS have encouraged individual planning authorities to submit comments which highlight local experience and considerations.

1. Have we got the range of areas to which the mediation guidance should cover right?

Yes.

We agree guidance should cover Development Planning Schemes, the Gate check and Development Plan Examinations. However, mediation could also be best used in the period between consulting on the Draft Plan and before publishing the Proposed Plan. This would allow any unresolved matters to be discussed, and hopefully resolved, before publishing the proposed plan. It is after this stage that the benefit of mediation would be greatest as less unresolved matters would be outstanding at the Development Plan Examination stage making the examination process more timely, efficient and less resource intensive. This would also allow an opportunity for open discussion on outstanding matters whilst allowing changes to be made to the draft plan before the settled view of the Local Authority is reached when publishing the Proposed Plan. We also agree that the guidance should outline that mediation is a tool available within the Development Plan Scheme.

In relation to Development Management we agree that mediation guidance should include use at pre-application stages of a proposed development which would include the Proposal of Application Notice period and during Pre-Application Consultation.

It would be beneficial for Planning Authorities, developers and communities if the guidance outlines when during the Development Plan Process mediation should be used and in what circumstances. For example, mediation may not be appropriate after the Proposed Plan is published as the settled view of Planning Authority has been reached after extension consultation and perhaps mediation.

In the circumstances that a Planning Authority receive a request for mediation in the latter stages of the planning process the guidance should include that it is at the direction of the Planning Authority as to whether it is appropriate or beneficial to hold further discussions. After this stage the independent review of either a Plan through the Examination process, or a development through the planning application process, should be allowed to take place without delay. By setting out parameters of when mediation is appropriate and the timeframes around arranging and participating in mediation, including outlining the responsibilities of all parties involved, would ensure there are no unnecessary delays to the LDP process/ planning application process.

In relation to enforcement, it is the role of the planning authority to determine if a planning breach has taken place and if it is in the public interest to take enforcement action on the development. In these circumstances there would be no scope for formal mediation. Informal mediation is used currently between the developer and the Planning Authority to resolve issues before proceeding to

any formal enforcement action. Mediation would still be open to parties to resolve an issue where the Planning Authority determines not pursue action.

2. Do you agree with the suggestion to maintain policy support for the use of mediation in National Planning Framework 4?

Yes

We agree the existing reference to mediation should be carried through from Scottish Planning Policy to NPF4.

3. Please tell us about your experience of using mediation including any financial / non-financial costs incurred. Please set out also how any costs were shared between the parties.
HOPS defer to the responses of individual planning authorities for further detail.

We note that the cost of mediation needs further evidence. At a time when resources are tight and the increase in national fees has not progressed, the ability of planning authorities to fund mediation will be difficult.

4. Do you agree with the proposal that the Scottish Government's guidance on Development Plan Schemes should reference the use of mediation as one of a range of innovative techniques and activities for engaging stakeholders to be considered in the planning authority's participation statement?

Yes

Development Plan Schemes should reference that mediation is one of the tools available that can be used if required to engage stakeholders. However, there is a need to address transparency, to ensure that such discussions are as open as possible to wider engagement and to reflect again that the "purpose of planning is to manage the development and use of land in the long term public interest"

5. Do you agree with the proposal that planning authorities should consider the use of mediation when preparing the participation statement element of their Development Plan Schemes?

Yes

Planning Authorities should consider the use of mediation as one of a range of innovative techniques and activities for consulting stakeholders when preparing the Participation Statement element of their Development Plan Scheme. However, if it transpires during the consultation of the draft plan that mediation is not required, and that any issues can be resolved using the normal engagement tools, then the use of mediation should be optional, as opposed to being a requirement that has to be fulfilled in order to comply with the Statement of Conformity.

6. Do you agree that the Scottish Government should further investigate the potential role of mediation at the gatecheck stage?

Yes

Scottish Government should investigate how mediation could be used at the gate check stage once further clarity on gate checks has been finalised.

7. Do you agree with the proposal that the Scottish Government guidance should encourage the use of mediation between parties in advance of the development plan examination stage?

Yes

The use of mediation, if required, should best serve the period between the publishing of the draft plan and the proposed plan. After the proposed plan is published there may be limited benefit to mediation at this stage as the proposed plan is to settled view of the Local Authority.

If mediation was to take place after the publication of the proposed plan, it could cause untimely delays to the submission of the Plan for Examination, with a potential for the plan not being up to date. At this stage it would be more practical to allow an independent review through the Examination Process

8. Do you agree with the proposal that the Scottish Government guidance should amend its guidance on Proposal of Application Notices to encourage the use of mediation between parties in any additional consultation activity attached to Pre-Application Consultation?

Yes

The guidance on Proposal of Application Notices should encourage the use of mediation between parties to encourage open discussion and build trust, prior to submitting any planning application. At this stage all mediation should remain between the interested parties

Any guidance should outline who can also instigate mediation, the process involved, and in what circumstances mediation should take place, to both provide clarification on the process and avoid delay to the planning process. Guidance on the Pre-application Consultation report should be amended to address these requirements

9. Do you agree with the proposal that the Scottish Government should provide guidance encouraging the use of mediation between parties in Pre-Application Consultation?

Yes

Mediation should ideally take place between the Proposal of Application Notice and the submission of the application, if required. However, the Planning Authority should not be involved with mediation at Pre-application Consultation stage given they have a duty to determine any forthcoming planning application.

The guidance should set out timeframes for the mediation process during pre-application consultation and the responsibilities of all parties involved to be reasonably available for any mediation meetings so as not to cause untimely delay to the development and planning process. This would give clarity and certainty to both developers and the public on how long the process of mediation should reasonably take.

Informal mediation as opposed to formal mediation should be the option for sites allocated in the LDP. Formal mediation should not be required on these sites as the principle is already agreed. It should be related to details of amenity, where formal mediation would be disproportionate in this circumstance.

10. Please give us any views you have on the content of these partial assessments.

No further comments

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

No

12. Please give us your views on the Island Communities Impact, the Fairer Scotland Duty and Strategic Environmental Assessment screening documents and our conclusion that full assessments are not required.

No further comments

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

Not applicable