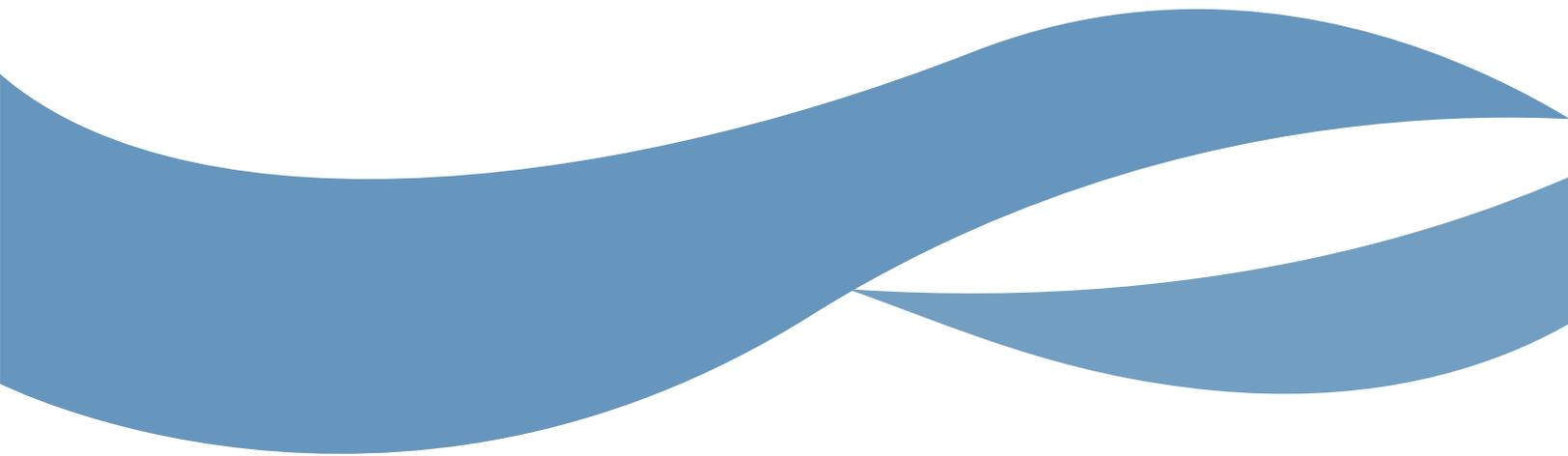


## Guidance on the promotion and use of Mediation in the Scottish planning system - consultation

12-03-2021

### **About Scottish Land & Estates**

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



## Introduction

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Many SLE members are involved in bringing forward development, large and small, across rural Scotland. Some are delivering small housing developments while others are creating new towns, and many more are delivering employment opportunities through re-purposing traditional buildings or creating new ones. For more information and examples, see [here](#).

It is in relying on these experiences that SLE takes the view that we should focus on early engagement in the planning system, creating an atmosphere of mutual benefit and collaboration instead of conflict, rather than settle for the early promotion of mediation which could disincentivize engagement. In general, we have concerns that raising the prospect of mediation early in the planning process will raise unrealistic expectations and potentially discourage communities from engaging early through conventional means.

Nonetheless, in the interests of ensuring that the proposals embedded in the Act are delivered in a proportionate and appropriate manner, we make the following suggestions.

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

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In our view the proposal is generally acceptable in that it limits to certain sections of development planning and development management rather than right across the whole planning system. We consider it may be beneficial to reduce the scope slightly to the Development Plan Examination process and Pre-Application Consultation process respectively. Doing this would ensure that both the development planning and development management sections have opportunities for mediation but they are not promoted throughout to allow the planning process to be significantly slowed.

Opportunities for mediation outlined in the consultation should only be afforded to those who have already engaged in the process and not be offered to those using it as a means of initial engagement.

While the focus for this consultation appears to be on processes that involve community / developer / planning authorities, it is also worth considering opportunities for mediation in conflicts between applicants, and mediation to help a number of parties to find solutions to “stuck sites” and to infrastructure provision.

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

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This seems appropriate.

### **3. Please tell us about your experiences of using mediation including any financial / non-financial costs incurred. Please set out also how any costs were shared between parties.**

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No direct experience.

**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?**

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It is SLE’s view that mediation should not be considered as a form of ‘engaging stakeholders’ in the traditional sense. We are of the opinion that there should be a clear distinction between engaging with stakeholders which includes consultation, drop-in session, workshops, etc. and mediation which is a specific set of tools designed to overcome problems. In our view if mediation is to be mentioned in the participation statement, it should be in reference to the Development Plan Examination process only (as outlined in our answer to question 1).

**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?**

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We do not see a real need in including mediation here. We agree with the consultation which suggests “there may be limited opportunity for conflict and therefore limited role for mediation in sections 20B(4)(a) and (b)”. In our view, focusing on more inclusive engagement at this stage would be the preferable approach instead of opening the door to mediation.

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

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We are not against the idea of further investigation as to the suitability of mediation at the gatecheck stage, and agree that Government should not agree to including a mediation process before detailed requirements and associated guidance for the gatecheck process has been set out. In our view the gatecheck is intended as an evidence-led process which may not give rise to much opportunity for mediation, and we would therefore advise against its future inclusion.

**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?**

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This is potentially the most suitable area in the Development Planning process for mediation. Since the removal of the MIR stage of the development planning process, it is vital that there remains an

opportunity to solve issues that arise. In our view the Development plan examination represents the best place for this as they are already intended as the principle means of independently examining any unresolved issues arising from representations on proposed local development plans etc.

**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 PAC?**

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No. We do not consider it is necessary to include an additional activity to consider informal and formal mediation at this stage of the process. In our view, this could undermine motivations to engage collaboratively in the process if this is highlighted early.

**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?**

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In our view, this is the most appropriate place for mediation guidance in the proposals for the Development Management process. Although any guidance in this respect should be light touch bearing in mind that PAC applicants will now be expected to hold a second consultation event. Focus should remain on getting these consultations right not on raising expectations at the prospect of mediation.

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

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No view

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

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No view

**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.**

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No view

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

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Not applicable.

**For more detailed information**

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