

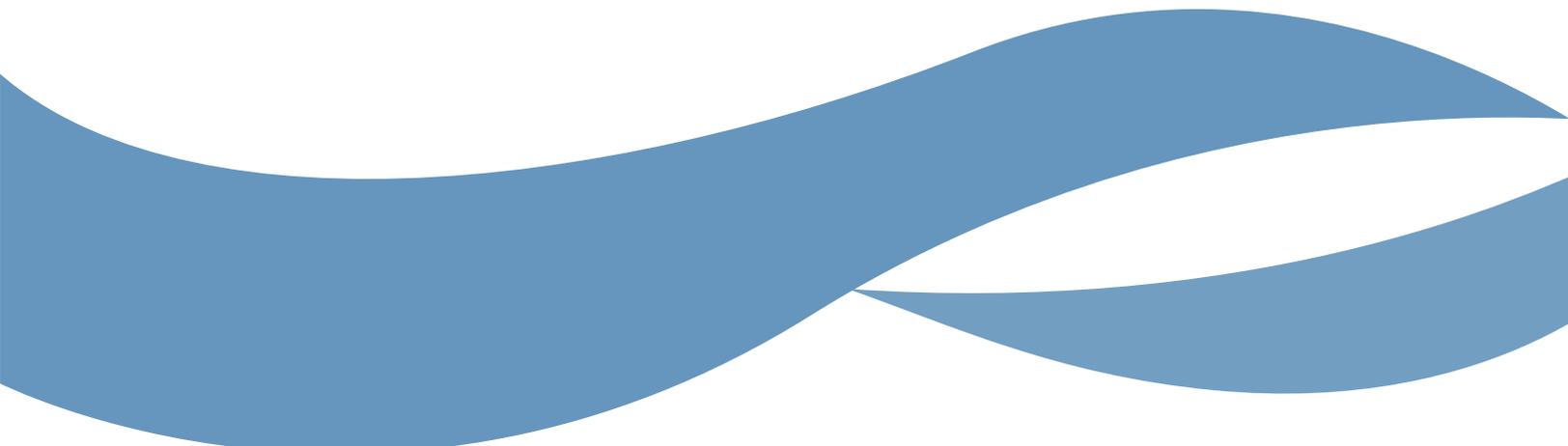


## Permitted development rights – phase 1 priority development types: consultation

12/10/2020

### **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

SLEs vision is for profitable land-based businesses able to contribute to resilient rural economies helping rural Scotland thrive. We consider the planning system is a key aspect of enabling the diverse mix of businesses in which our members are engaged, and ensuring these businesses continue to help our rural communities flourish has never been more important.

SLE welcomes the opportunity to respond to the Scottish Government's phase 1 proposals for extending permitted development rights (PDR). It is our view, that in order to meet changing demands and challenges of the twenty first century, planning authorities should be empowered to apply flexible policies that enable appropriate development rather than restrict it. We believe an enabling approach to rural development is required to help stimulate more diverse and resilient rural communities, helping facilitate Scotland's green recovery.

Whilst we welcome the broad proposals to extend PDR in a number of areas, we recognise that this should be done in a sensitive manner, taking into consideration site and design and ensuring that unnecessary damage to biodiversity can be avoided. In our view, these proposals represent an opportunity to unlock development that will build thriving rural communities and help tackle climate change.

## Digital Telecommunications Infrastructure

### **Q1. Do you agree with an increase in permitted height for new ground based masts to 30 metres outside designated areas, subject to the existing prior approval regime on siting and appearance?**

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In principle, yes, however, we would like to better understand the rationale for increasing mast height by 5 metres. Will five metres be adequate to future proof the technology? In our previous submission we recommended extending the PDR outwith designated areas and retaining existing restrictions where designations apply. We agree with the proposed extension to 30 metres from 25 metres and believe this proposal to include prior notification and approval continues to offer protection against inappropriate development.

### **Q2. Do you agree that existing ground based masts should be able to be increased in height up to 30 metres (i.e. the same maximum height as for new masts proposed in Q.1 above) and that the increase should be limited to no more than 50% of the height of the original mast (whichever is the lower)?**

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Yes. Aligning height with new masts would be appropriate. See our answer to question one for points relating to prior notification and the rationale for a 5 metre increase.

### **Q3. Do you agree that we should allow existing masts which are above 30 metres in height to be increased to up to 50 metres in height?**

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If there is a technical justification which will demonstrably improve the function of the installation then it should be allowed. The prior notification process should apply for installations of this size in designated

areas.

**Q4. Do you agree that we should allow existing masts which are greater than 50 metres in height to be increased by up to 20% of the height of the original mast?**

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Again, if there is technical justification of improved functionality it should be allowed. In designated areas, a prior notification system should apply.

**Q5. Do you agree that we should allow an increase in the width of existing masts by up to 2 metres or, if greater, one half of the width of the original mast (i.e. the increase is on the widest part of the mast and including any equipment)?**

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This is acceptable if can be justified as above. Prior notification should be applied in designated areas.

**Q6. Do you agree that any height or width increase within a designated area should be subject to prior notification/prior approval in order that visual impacts can be assessed?**

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Yes.

**Q7. Do you agree that we should increase the maximum distance that replacement masts may be from their original location from 6m to 10m, outside designated areas?**

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This seems reasonable if the existing site has enough information (based on prior notification and approval) to determine whether a 10 metre relocation will have a visual impact.

**Q8. Do you agree that in the case of replacement masts, in designated areas the current 6m distance from the original location should be retained?**

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Yes.

**Q9. We propose to retain the current approach to mitigating potential impacts on safeguarded sites on PDR for masts. Do you agree?**

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Yes.

**Q10. Do you agree that the PDR for antenna systems on buildings outside designated areas should be as set out in Table 3 below?**

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Yes.

**Q11. Do you agree with extending PDR for antenna systems on buildings to all or some of the designated areas to which restrictions on PDR for such infrastructure currently applies?**

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We consider that some restrictions must apply in the form of prior notification.

**Q12. What controls should apply in designated areas for antenna systems on buildings and should there be any differentiation between area type (e.g. size and number limits, prior notification/ prior approval or greater restrictions in designations such as conservation areas and world heritage sites, to avoid any detrimental impact on the built environment in terms of any potential visual clutter etc.)?**

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SLE considers prior approval for antenna systems to be appropriate for designated sites, particularly in settings of Category A listed buildings and scheduled monuments.

**Q13. Do you agree that we should extend PDR to small cell systems on dwellinghouses (rather than just for small antennas)?**

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Yes.

**Q14. What limitations and restrictions should apply to small cell systems on dwellinghouses (e.g. smaller units, fewer in number than small antennas under PDR)?**

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Outwith designated areas a lower limit on the number of antennas permitted would be the preferred option.

**Q15. In conservation areas, what limits or requirements should apply to small cell systems on dwellinghouses and other buildings (e.g. prior notification/ prior approval to assess the visual impacts or smaller/lower limits, different provisions for dwellinghouses compared to other buildings)?**

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Prior notification and approval to assess the visual impacts should be required in designated areas.

**Q16. Do you agree that extending PDR for small cell systems as proposed and the proposed changes to PDR for new ground based cabinets in designated areas would meet the requirements of Article 57 of EU Directive 2018/1972?**

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No strong view.

**Q17. Are there any other potential amendments, comments or observations you wish to make in relation to potential changes to PDR that you consider necessary to be compliant with the requirements of Article 57 of EU Directive 2018/1972?**

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No strong view.

**Q18. Do you agree that we should extend existing PDR in designated areas to allow for new equipment housing up to 2.5 cubic metres volume?**

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Yes, but this should be subject to prior notification / approval in order to assess the visual impacts.

**Q19. Should this be subject to prior notification/prior approval on the siting and appearance to mitigate visual impacts?**

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Yes. (See answer to Q18).

**Q20. If this were to be introduced do you agree that we should differentiate between types of designated areas by, for example, having smaller size limits in conservation areas than in National Parks?**

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This might be overly complicated and difficult for planning authorities to implement. For example, National Parks tend to have many conservation areas within their boundaries so it may be difficult for applicants to understand why they need to submit different information for applications that are relatively close together.

**Q21. Do you agree that we should extend PDR for new equipment housing on buildings in designated areas, with a limit on size of up to 2.5 cubic metres volume?**

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Provided this is technologically justified and can be supported through a prior notification and approval process, SLE would be supportive of this.

**Q.22 Should this be subject to prior notification/ prior approval requirements on the siting and appearance to mitigate visual impacts?**

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Yes. See our answer to question 21.

**Q.23 Do you agree that PDR for other apparatus should be extended in designated areas, beyond the basic 'like for like' alteration or replacement that currently applies?**

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Yes. Technological advances will mean the need to like-for-like replacements will occur less frequently.

**Q.24 Should any new PDR for other apparatus in designated areas have specific limits and restrictions regarding size and visual intrusion?**

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Yes. General restrictions on height that apply on such works outside designated areas should also apply within designated areas.

**Q.25 Do you agree that PDR for new development of other apparatus on buildings in designated areas should be subject to prior notification/prior approval to mitigate visual impacts?**

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Yes. As with our other answers, we consider prior notification to be necessary to ensure visual impacts withing designated areas are appropriately mitigated.

**Q.26 In which designated areas do you consider that PDR for underground development could be extended?**

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From the list of designated areas we would consider PDR for underground development to be extended to:

- National Scenic Areas
- National Parks
- Conservation Area

Each case should be considered on their own merits (via prior notification / approval) but the above areas are more likely to just have an aesthetic value which can be mitigated / restored after works are complete whereas some of the other designations raise the potential for other impacts on biodiversity.

**Q.27 In those areas where PDR for underground development could be extended, what limitations, restrictions or requirements should apply (e.g. prior notification/ prior approval, a requirement for an archaeological assessment or specific limitations)?**

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Prior notification / approval should apply in these circumstances.

**Q.28 Do you have any further comments to make which are specifically related to the potential changes to PDR for Digital Communications Infrastructure which have not been addressed in the questions above?**

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No further comments.

## **Agricultural Developments**

**Q.29 Do you agree with our proposal to increase the maximum ground area of agricultural buildings that may be constructed under class 18 PDR from 465sqm to 1,000sqm?**

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Yes. Generally, these proposals would meet the objective of supporting the rural economy. We would welcome the increased floorspace threshold to 1,000sqm given that this reflects the increased size and scale of farming businesses. This is the most straightforward of the proposals to implement from a legal perspective and we think it is sensible to retain the general structure that the agriculture industry is already familiar with.

We note that the proposal looks to retain the 12m height restriction for PDR even if the structure is extended to 1,000sqm. In our view, much will depend on the degree of pitch required for the roof and what that will translate into in terms of height on a building of 1,000sqm. Professionals within SLE advise

that generally, the minimum roof pitch on livestock buildings would be 15 degrees, while some dairy buildings are up to 22 degrees. Therefore, depending on the footprint of the building, we consider it might be more appropriate to raise the restriction to something like 15-18m.

**Q.30 Do you agree with our proposal to retain other existing class 18 conditions and limitations?**

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The retention of the existing class 18 conditions and limitations, as well as the requirement for prior approval in respect of siting, design and external appearance are reasonable measures and allow for the local authority to retain an element of control.

**Q.31 Do you think that the new 1,000sqm size limit should apply in designated areas (e.g. National Parks and National Scenic Areas)?**

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Yes. We consider the prior notification / approval process to be adequate protection.

**Q.32 Do you agree with our proposal to increase the scale of extensions or alterations to agricultural (and forestry) buildings that may be carried out without requiring prior approval?**

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Yes. We believe that the proposed new definition of 'significant extension or alteration' is clear and measurable.

**Q.33 Do you agree with our proposal to discourage developers from erecting new buildings for the sole purpose of converting them by limiting class 18 and 22 PDR where a residential conversion has taken place under PDR on the same farm within the preceding 10 years?**

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There is perhaps something of a disconnect between the phrasing of question 33 and the proposed text, as the phrasing of the question implies that where PDR have been used to convert an agricultural building to residential uses within 10 years, the farm in question loses the benefit of any PDR under class 18. Our understanding is that this is not the intention of the proposals, which are instead only to restrict the right of farms to convert newly constructed agricultural buildings to residential buildings within a 10-year period. All other benefits under the PDR would be retained.

We assume that the proscription of such conversions is the only aim of the proposed discouragement measures and that these would not cover other aspects under Class 18. On this basis yes, the restrictions where a residential conversion has taken place should be included to protect the quality of residential accommodation, as well as the wider environment.

**Q.34 Do you agree with the proposed new PDR for conversion of agricultural buildings to residential use, including reasonable building operations necessary to convert the building?**

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Yes. We very much welcome the intention of this policy, but we have concerns over its ability to deliver the desired outcome. While the proposals are similar to what is already in force in England, there are concerns they will be unlikely to make things significantly simpler and quicker to get approval. The

various conditions and limitations mean that there is still going to be a need to provide a lot of detail as part of the prior approval process and it will likely need to involve professional advisors.

It is not set out on the face of the proposals what type of agricultural buildings this specifically relates to. It may be interpreted that a modern farm building could be used to convert to residential purposes when this might not be entirely appropriate – and would certainly require a lot more by way of detail in a prior notification. It might be better to suggest that the proposals cover traditional buildings only, and this could remove the need for measures to discourage ‘gaming’ or allow for less conditions to be attached.

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**Q.35 Do you agree that the proposed new PDR should be subject to a prior notification/prior approval process in respect of specified matters?**

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It is right that development should be subject to prior notification / approval, however we do not think it is proportionate to require the process to include all the specified matters (see below). To elaborate on the response above, if the prior approval becomes a proxy for a planning application then the practical benefit of the PDR will be diluted.

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**Q.36 Do you agree with the proposed range of matters that would be the subject of a prior notification/prior approval process?**

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The proposed range of matters appear overly complex and risk failing to deliver on the policy intention of simplifying development. Instead, potential options are:

1. Leave the proposed conditions as they are, and risk not meeting policy intentions
2. Remove the need for some of the conditions for developments under certain size (for example, do transport and highways need to be involved for a development of one or two properties where traffic might actually be reduced as far as the buildings former use is concerned?). Effectively, apply the conditions on a case-by-case basis determined by the specifics of each development. For example, it is quite likely that most developments would require prior notification of design & external appearance (if building operations are proposed) as well as provision of natural light within proposed habitable rooms. On the basis of that information a planning authority should be able to determine the need for further information in the other areas (particularly transport and flood risks) and ask for them if required.
3. Use the advertising consents model which only needs to consider appearance and safety. This is perhaps a more flexible model which could be adapted to suite small developments of up to five dwellings.
4. Remove need for Prior notification entirely, however this removes protection from ‘gaming’ as well as other potential environmental risks etc.

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**Q.37 Do you agree with the proposed maximum number (5) and size (150sqm) of units that may be developed under this PDR?**

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No. We would suggest there might be merit in retaining flexibility based on the size of the agricultural unit without the need for a maximum cap on overall floorspace of existing buildings that may be converted. A maximum of 150sqm may be consistent with an average 3-4 bedroom new build, but that is when it is designed from scratch and you are able to make maximum use of all the space available. Our understanding is that many family homes in particular are considerably larger than this. In our members’

experience, when you are converting old buildings you are in effect shoehorning something into a structure that was not built for that purpose and this creates inefficient use of the space, the suggested 150sqm of an old building may not give you three or four bedrooms. Further, it is not clear what planning purpose is served by restricting the build size in this way. If a conversion takes place, the impact of the changed use will be greater on refuse collection and other services if there are more units created. While in some instances it would be good to have a larger number of smaller properties, there are also circumstances where there are advantages to a fewer number of larger properties.

Our experience suggests that 150sqm would generally be acceptable if the development was intended for short term lets, however, as the intention is to provide permanent homes 200sqm would be a more comfortable living space, and that is usually the size of a decent cottage. One member advises 300sqm is the size of the average houses they sell (they are usually 4-5 bedrooms). To tie in with this and ensure that houses are built to a good standard with optimum space, we think it prudent to include extensions up to 30% of existing floor space within this particular PDR.

### **Q.38 Do you agree with the proposed protection for listed buildings and scheduled monuments?**

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There may be some benefit to restricting PDR for listed buildings. In reality, listed buildings do not benefit from PDR across any of the other PDR classes. Therefore, we can see the logic in applying this restriction from the standpoint of consistency.

However, we are concerned that this would negatively impact on the ability to deliver on the policy objectives. It is our view that the buildings most suited to conversion for residential property are older buildings which often have a listing. If they are to be excluded from these proposals, we may be left with a shortfall of suitable property.

In addition, restricting the PDR to conversion (rather than rebuilding or extension) of buildings will be restrictive for many landowners, and perhaps lead to buildings which are less appropriate for residential accommodation being developed as opposed to a better located/suited building which would fall outwith PDR. Our members experience shows us that a small extension to the original build is often required to make the space function efficiently and we think that that ability to do this should come under PDR, providing it is in a sympathetic manner.

Perhaps a 'bubble' arrangement (as is the case with flats under PDR) is allowed to enable small adjustments and extensions to allow rooms to become more habitable/adaptable to modern needs. Perhaps a 2 metre bubble around the building under the PDR would allow for some flexibility to allow an old building to become fit for purpose for modern living.

### **Q.39 Do you agree with the proposed measures to discourage developers from erecting new buildings for the sole purpose of converting them?**

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Yes, subject to the intention of the proposed change as articulated under question 33 above.

**Q.40 Do you agree with the proposed new PDR for conversion of agricultural buildings to flexible commercial use, including reasonable building operations necessary to convert the building?**

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Yes.

**Q.41 Do you agree with the proposed cumulative maximum floorspace (500sqm) that may change use?**

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On balance, this seems reasonable.

**Q.42 Do you agree that the proposed new PDR should be subject to a prior notification/prior approval process in respect of specified matters where the cumulative floorspace changing use exceeds 150sqm?**

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We consider this approach would be more appropriate for larger sites – anything above 250sqm.

**Q.43 Do you agree with the proposed range of matters that would be the subject of prior notification/prior approval?**

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Given the size and scale of the development, this seems more appropriate. However, it would make sense to have a nuanced approach where certain use classes require more information than others, for example, a storage unit might not require the same level of information as a food and drink business.

**Q.44 Do you agree with the proposed protection for listed buildings and scheduled monuments?**

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See our answer to question 38.

**Q.45 Do you agree with the proposed measures to discourage developers from erecting new buildings for the sole purpose of converting them?**

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Yes.

**Q.46 Do you agree that we should take forward separate PDRs for the conversion of forestry buildings to residential and commercial uses?**

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Yes.

**Q.47 Do you agree that the same conditions and limitations proposed in respect of the PDR for the conversion of agricultural buildings should apply to any separate PDR for the conversion of forestry buildings, insofar as relevant?**

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We have the same concerns on conditions and limitations as outlined above.

**Q.48 Do you agree with our proposed approach to providing greater clarity as to the planning status of polytunnels?**

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We generally support these proposals. It would be very helpful for measures to be put in place to clarify the planning status of polytunnels. Whether planning permission is needed for polytunnels is probably the top planning related query that comes through to some of our professional members.

We agree with the proposals that a new use class is unnecessary. Keeping polytunnels within class 18 PDRs (agricultural buildings) whilst providing additional guidance seems like a sensible approach.

## **Peatland Restoration**

**Q.49 Do you agree with the general approach to PDR for peatland restoration, (i.e. wide ranging PDR given the likely oversight via Peatland Action and via the Peatland Code)?**

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Yes.

**Q.50 Do you agree with the approach to PDR for peatland restoration that relies on a general understanding of what will constitute peatland?**

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While the process is to be guided by Peatland Action and the Peatland Code, this approach is sufficient.

**Q.51 Do you agree with this approach to a blanket PDR for 'peatland restoration'?**

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Yes.

**Q.52 Do you agree that as peatland restoration projects will likely be subject to oversight from Peatland Action, or validation under the Peatland Code, there is no need for additional controls on related PDR in designated areas?**

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Yes.

**Q.53 Do you think there should be PDR for new temporary access tracks (private ways) which may be necessary to carry out peatland restoration projects?**

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Yes. They are only temporary and good practice can be overseen by Peatland Action or Peatland Code, using up to date guidance on hill tracks from NatureScot.

**Q.54 What sort of time limits and restoration requirements do you consider should apply to any PDR for temporary access tracks (private ways) for peatland restoration projects?**

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Temporary tracks should only be in operation for the duration of the peatland restoration works and must be restored after completion.

**Q.55 If possible, should any PDR for temporary access tracks (private ways) for peatland restoration only apply to projects which have been approved for funds provided by the Scottish Government, through Peatland Action or other bodies?**

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No. All temporary tracks used for restoring peatland should be afforded the same PDR because peatland restoration, regardless of how it is funded, brings the same public benefit.

**Q56. Do you agree that the peatland restoration PDR should allow for the transfer of peat within the restoration site and for peat to be brought into the restoration site?**

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We support PDR allowing the transfer of peat within an areas as it then allows you to get the best outcome by regrading and reseeding bare sites using translocation of vegetation.

**Q57. Do you agree that the peatland restoration PDR should not grant permission for the extraction of peat outside the restoration site or for removal of peat from the restoration site?**

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If the peat is being brought in is primarily intended to achieve a better restoration outcome on the PDR site, and it is not being harvested from an extraction site but sympathetically removed without long term harm, we do not see why it should not be granted permission.

**Q.58 Are there any other forms of development which could be granted planning permission by the PDR for peatland restoration as proposed, which should be restricted or controlled?**

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There is potential to include signage / interpretation for restoration schemes within PDR.

**Q.59 Do you have any other views or points to make about the proposed PDR for peatland restoration?**

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No strong view.

**SEA Post-adoption Statement Summary**

**Q.71 What are your views on the findings of the Update to the 2019 Sustainability Appraisal Report that accompanies this consultation document?**

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No strong view.

**Assessment of Impacts**

**Q.72 Do you have any comments on the partial and draft impact assessments undertaken on these draft Phase 1 proposals?**

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No strong view.

**Q.73 Do you have any suggestions for additional sources of information on the potential impacts of the proposals that could help inform our final assessments?**

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No strong view.

**For more detailed information**

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