

# **Analysis Of Responses To A Consultation On Draft Guidance On The Promotion And Use Of Mediation In The Scottish Planning System**

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The opinions expressed in this report are those of the author.

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# Executive Summary

1. This report presents analysis of responses to a public consultation on draft guidance on the promotion and use of mediation in the Scottish planning system. In total 41 responses were received, of which 31 were from groups or organisations and 10 from individual members of the public.

## Potential scope for mediation

2. Half of those who provided comment agreed with the proposed focus of mediation guidance. These respondents expressed a view that mediation can add most value at the earliest stages of the planning process, and there was particularly strong support for use of mediation at the development plan stage. Some also suggested that limiting guidance to specific stages of the planning process would allow for assessment of its effectiveness to inform any subsequent decisions to expand the role of mediation.
3. However, most respondents suggested amendments or additions to the proposed scope of use of mediation. This included some who were sceptical about the potential for mediation to benefit specific stages, suggesting that the approach would be inappropriate and/or add unnecessary delays to key stages of the planning process. In contrast, some saw scope to consider the role of mediation more widely across the planning system. This included in relation to specific aspects of the planning system such as enforcement notices and appeals, Local Place Plans and Section 75 agreements.
4. Specific amendments suggested to proposed guidance included providing a clear definition of the range of approaches that can be described as 'mediation', more detail on how a 'need' for mediation is to be defined, guidance on which forms of mediation are most appropriate at different stages of development planning and development management, and timeframes for undertaking mediation. Some also wished to see a stronger emphasis on the range of other dispute resolution approaches available to the planning system, alongside mediation.

## Policy support for mediation

5. A large majority of those providing comment agreed with **NPF4 maintaining policy support for mediation**. Some saw a need for national policy support to provide a 'mandate' for planning authorities and other participants to take forward use of mediation, and to ensure that mediation is used effectively across the planning system.
6. Most respondents raised issues or suggested amendments to proposed policy support for mediation. This included concern that mediation should remain a voluntary process for all parties; some wished to see NPF4 make clear whether (and in what circumstances) mediation would be a statutory requirement. Some also expressed concerns regarding potential use of mediation in relation to housing requirements, and suggested that mediation may be unlikely to resolve disputes in these circumstances given the complexity of the assessment process.
7. There were also calls for policy support to clarify when mediation may be the most appropriate approach to resolve disputes or build consensus, and the mechanism for providing mediation services in the planning system (including reference to potential for a national body providing mediation services). Respondents also

wished to see further detail on how use of mediation in the planning system is to be resourced, including concerns that planning authorities may require additional resources.

8. The consultation paper and associated BRIA noted that there is limited evidence available on **the cost effectiveness of mediation**, and asked respondents to describe any prior experience of mediation costs and how these were shared between parties. Respondents raised some concerns regarding the potential cost effectiveness of mediation, and this was related to wider concerns about the ability of planning authorities to fund mediation in the context of limited public sector resources - and the range of unfunded additional duties placed on planning authorities by the Planning (Scotland) Act 2019.
9. A number of respondents reflected on their experience of mediation services. This included suggestions that direct professional costs may form a relatively small proportion of the total cost, compared with the time input required from the parties involved. In this context, concerns were raised that cost estimates included in the BRIA do not include any predicted costs for local communities. There were also suggestions that the BRIA significantly underestimates the number and size of mediation events likely to be required in local development plan preparation.
10. In terms of how costs may be met, some mediation services suggested that costs are typically shared between parties, or are met by the party initiating the process and/or economically advantaged by the proposal. However, some respondents suggested that take-up of mediation may be limited if one or other party is required to meet up-front costs. There were also concerns that a model which required a contribution from communities or individuals could exacerbate existing inequalities in the planning system by limiting participation in mediation to more affluent communities.

### **Potential role of mediation: development planning**

11. A large majority of those providing comment agreed that guidance on Development Plan Schemes should include **mediation as one of a range of innovative techniques and activities for engaging stakeholders**. These respondents wished to see mediation recognised as one of a range of potentially valuable engagement techniques, with potential to reduce the number of issues taken forward to development plan examination. It was also suggested that promotion of mediation is consistent with a move towards greater engagement and consultation across the planning system. However, there were some concerns that policy support could in effect elevate mediation to 'best practice' and raise stakeholder expectations that mediation should be used in all or most circumstances.
12. Some also questioned the potential scale of use of mediation at the Development Plan stage. It was suggested that community interest at this stage is typically low, that there may be limited scope for conflict, and that more open 'round table' engagement may be more appropriate. There were also concerns regarding potential costs and delays given the complexity of issues to be considered and the diversity of stakeholders involved.
13. Most of those providing comment agreed that planning authorities should consider use of **mediation when preparing their Development Plan Scheme participation statement**. Respondents noted that this is consistent with the requirement for planning authorities to consult with the public on the participation statement, and felt that mediation should be part of the 'toolkit' for authorities.

14. However, some were of the view that mediation is not appropriate. This included reference to uncertainty around the Development Plan at this stage, including which policies are likely to give rise to objections or conflict. Concerns were also expressed regarding potential for guidance to add to the burden on planning authorities in preparing Development Plan Schemes, with some of the view that mediation would be likely to delay the process.
15. A large majority of those providing comment agreed with the Scottish Government further investigating the role of **mediation at the Gatecheck stage**. These respondents noted that Gatecheck is still at a formative stage and were of the view that a decision on what, if any, role mediation may have should be made once the operation of Gatecheck is clarified. However, these respondents did see potential for mediation to add value at this stage if clear objectives and parameters are set.
16. Others questioned whether there should be a role for mediation at the Gatecheck stage. These respondents noted that the focus of this stage is on establishing whether there is sufficient evidence for production of a local development plan, and suggested that there is likely to be limited scope for dispute. Some felt that any benefits associated with mediation are unlikely to be worth the additional burden on planning authorities and potential for delay to the Gatecheck process.
17. A large majority of those providing comment agreed with encouraging use of **mediation between parties in advance of development plan examination**. These respondents saw potential for use of mediation at this stage to reduce the number of unresolved issues taken forward for examination. However, this support was tempered by concerns regarding potential delays to production of the development plan, and a view that mediation should not be a requirement.
18. A number of other expressed concerns were raised regarding mediation in advance of development plan examination. Some wished to see guidance focus on mediation during the period prior to production of the proposed plan, and there were concerns regarding potential for mediation to add to the time and cost of development plan examination given the wide range of unresolved issues which the examination stage is often required to address.

### **Potential role of mediation: development management**

19. Most of those providing comment agreed with guidance encouraging use of **mediation between parties during pre-application consultation (PAC)**. These respondents saw potential benefits in fostering more constructive dialogue between developers and local communities, and therefore potentially reducing the number of objections to the subsequent planning application. There were calls for mediation to be encouraged as one of a range of potential engagement approaches.
20. Those opposed to mediation at this stage raised concerns that formal mediation may not be consistent with moves to make PAC more transparent, and suggested that guidance should require the outcome and reasoning of any mediation to be published to ensure transparency. Some also felt that mediation during PAC would be premature, particularly for sites allocated in the local development plan where the principle of development has already been accepted. There were calls for guidance to specify the circumstances where it would be appropriate to encourage mediation, and the process involved including timeframes and allocation of costs.

# 1. Introduction

- 1.1 This report presents summary analysis of responses to a public consultation on draft guidance on the promotion and use of mediation in the Scottish planning system. This includes tabular analysis of responses to all ‘closed’ consultation questions, and a summary of suggested amendments or additions to the draft guidance.

## Background

- 1.2 Primarily used to resolve disputes and build bridges between parties, mediation is one of a range of alternative dispute resolution techniques that include facilitation, arbitration and conciliation. Mediation is a voluntary process, typically facilitated by an independent third party to identify stakeholders’ concerns and needs and, if possible, reach a mutually acceptable solution.
- 1.3 The Scottish Government has supported use of mediation across a range of policy areas. This has included particular use of alternative dispute resolution in the justice system, although mediation has also been increasingly used in other areas such as family disputes, peer to peer mediation for children, and community/neighbour disputes. There has also been support for the role of mediation in the Scottish planning system for a number of years, including policy and guidance supporting use of mediation in community engagement, compensation related to compulsory purchase of land, and in allocating land as part of development planning. Most recently, section 40 of the Planning (Scotland) Act 2019 required Scottish Ministers to introduce guidance on promotion and use of mediation in the planning system. This includes guidance on mediation in areas of the planning system with potential for conflict or disagreement, which may include: preparation of local development plans; pre-application consultation; and determination of planning applications.
- 1.4 Consideration of the role of mediation in the planning system in Scotland sits within Scottish Government’s wider ongoing planning reform programme, which includes a particular focus on reducing conflict and improving community engagement. As such, guidance has potential relevance across multiple aspects of this wider planning reform work, and ultimately in building public confidence in the planning system. For example, the consultation paper makes clear that mediation may have a role in enhancing community engagement in local development plans, in the proposed right for community bodies to prepare Local Place Plans, and in pre-application consultation with communities. Regulations amending provisions for pre-application consultation will come into force shortly, and the Scottish Government consulted on proposals for regulations on Local Place Plans until June 2021.
- 1.5 The draft guidance on promotion and use of mediation is the subject of this consultation. In producing the guidance, Scottish Government has drawn on proposals for promotion and use of mediation developed by Scottish Mediation and PAS, the Guide to the Use of Mediation in the Planning System in Scotland produced in 2009, and outputs from research into mediation published in 2011.

- 1.6 The consultation paper is structured around several key themes considered by the draft guidance, including the definition and function of mediation, policy support for use of mediation in the planning system, the potential role of mediation in specific aspects of the planning system in Scotland, and impact assessments produced alongside guidance. The consultation asks 13 questions across these aspects of the draft guidance, 8 of which include a closed element alongside an opportunity for respondents to provide written comment. In addition, the consultation invited respondents to provide information on any experience of mediation, including any costs incurred (financial or otherwise).
- 1.7 The consultation opened on 15 December 2020 and closed on 12 March 2021. The consultation paper is available on the Scottish Government consultation hub<sup>1</sup>.

## Profile of responses

- 1.8 In total 41 responses were received, of which 31 were from groups or organisations and 10 from individual members of the public. Where consent has been given to publish the response it can be found on the Scottish Government consultation hub<sup>2</sup>.
- 1.9 Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Group respondents were allocated to one of four broad categories (and one of six sub-groups) by the analysis team. A breakdown of the number of responses received by respondent type is set out in Table 1 below, and a full list of group respondents appended to this report.

**Table 1: Respondents by type**

<b>All Respondents</b>	<b>41</b>
<b>Organisations</b>	<b>31</b>
Public sector	10
Planning authorities	8
Other public bodies	2
Planning and other professionals	3
Private sector	12
<i>Mediation services</i>	4
<i>Other</i>	8
Third sector	6
Community Councils/representative groups	3
Other	3
<b>Individuals</b>	<b>10</b>

- 1.10 Most respondents (25 of 41) addressed all nine consultation questions on the content of draft guidance, and a large majority addressed at least seven of these questions (38 of 41). Fewer respondents addressed the four consultation

<sup>1</sup> <https://consult.gov.scot/local-government-and-communities/mediation-in-planning/>

<sup>2</sup> [https://consult.gov.scot/local-government-and-communities/mediation-in-planning/consultation/published\\_select\\_respondent](https://consult.gov.scot/local-government-and-communities/mediation-in-planning/consultation/published_select_respondent)

questions on the impact assessments undertaken in relation to the draft guidance, although most felt able to answer at least one of these questions.

## **Analysis and reporting**

- 1.11 This report presents an analysis of responses received in relation to each of the consultation questions in turn. Tabular results are based only on those responding to each question, hence base numbers vary from question to question.
  
- 1.12 Respondents made submissions in a range of formats, some including material that did not directly address specific consultation questions. This content was analysed qualitatively under the most directly relevant part of the consultation. There was some commonality in themes raised across the consultation questions; we note where this is the case but have not repeated a full account of each theme across all questions.

## 2. Potential scope for mediation

- 2.1 The consultation paper first considered what the mediation process involves, and opportunities for mediation to play a role in the Scottish planning system. It was proposed that the initial focus would be on specific elements of the development planning and development management processes. In relation to **development planning**, draft guidance focused on promoting use of mediation in relation to development planning schemes and development plan examinations. In relation to **development management** guidance focused on use of mediation at the pre-application consultation (PAC) stage including in relation to proposal of application notices (PANs).
- 2.2 The first consultation question asked for views on whether these were the right areas for the guidance, and sought suggestions of other aspects of the planning system where mediation guidance could be introduced.

**Q1. Have we got the range of areas to which the mediation guidance should cover right?**

Please comment on your answer (particularly if you do not agree).

- 2.3 A total of 36 respondents answered Question 1, including 27 organisation respondents and nine individuals. Of these respondents, half (18 of 36) agreed with the proposed focus of mediation guidance, and half disagreed. Those disagreeing with the proposed change included a mix of respondent types; six public bodies, six private sector respondents, three third sector respondents and a planning/other professional.

**Q1. Have we got the range of areas to which the mediation guidance should cover right?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>11</b>	<b>16</b>	<b>27</b>
<b>% of organisations</b>	<b>41%</b>	<b>59%</b>	<b>100%</b>
Public sector	4	6	10
Planning authorities	3	5	8
Other public bodies	1	1	2
Planning and other professionals	1	1	2
Private sector	5	6	11
Mediation services	2	2	4
Other	3	4	7
Third sector	1	3	4
Community Councils/representative groups	1	1	2
Other	0	2	2
<b>Individuals</b>	<b>7</b>	<b>2</b>	<b>9</b>
<b>% of individuals</b>	<b>78%</b>	<b>22%</b>	<b>100%</b>
<b>All respondents</b>	<b>18</b>	<b>18</b>	<b>36</b>
<b>% of all respondents</b>	<b>50%</b>	<b>50%</b>	<b>100%</b>

Note: 5 did not respond to the closed element of Question 1.

- 2.4 A total of 30 respondents provided written comments in support of their response at Question 1.
- 2.5 Around a third of those providing written comment agreed with the proposed focus of mediation guidance. A number of these respondents related their support to a view that mediation can add most value at the earliest stages of the planning process, and there was particularly strong support for use of mediation at the development plan stage, including Gatecheck and development plan examination. It was noted that the planning authority will have a relatively settled view on the scope and content of the development plan at this stage, which can be subject to scrutiny via mediation.
- 2.6 Some also referred to wider benefits of mediation in terms of reducing conflict and clarifying potential misunderstandings, and suggested that these can contribute to a more efficient and effective planning system. Those supportive of proposals also referred to mediation as having potential to enable continued community involvement in the process.
- 2.7 Some also agreed that it was appropriate to limit the focus of guidance to specific stages, given mediation will be a significant new feature for the planning system. It was suggested that this should allow for assessment of the effectiveness of mediation to inform any subsequent decisions to expand its role across the planning system. There was some support for future expansion of the role of mediation across the planning system, including suggestions that it was important not to prevent use of mediation in other elements of the planning system where this offers potential to achieve mutually beneficial outcomes.
- 2.8 Most of those providing comment at Question 1 suggested amendments or additions to the proposed focus of mediation guidance. This included comments from a number of those broadly in favour of the proposed focus of guidance. Issues and suggested amendments raised by respondents are summarised below.
- It was suggested that guidance should provide a clear definition of the range of approaches that can be described as “mediation”, including a distinction between informal and formal mediation. This included some who wished guidance to emphasise that mediation should be a voluntary process for all participants, and to make clear that mediation should not be “required” at any stage of the planning process.
  - It was suggested that guidance should provide more detail on how a ‘need’ for mediation is to be defined, including other dispute resolution methods that should be explored first, and timeframes for arranging and undertaking mediation. This included some who felt that guidance should make clear that mediation is not expected to be used in the majority of cases. Some also wished to see more detail on where mediation can add most value and what ‘good’ mediation should look like, including case study examples to illustrate what mediation can be expected to achieve at different stages of the planning system.
  - Some wished to see more detailed guidance on which form of mediation is most appropriate at different stages of the development planning and management stages, including for example the relative roles of formal and informal mediation. Alternatively, it was suggested that guidance could specify

which party or parties should be responsible for selecting the most appropriate form of mediation for each case.

- Respondents referenced the broad range of dispute resolution approaches available to the planning system. These respondents wished to see a stronger emphasis on other techniques such as informal mediation and ‘community mediation’ alongside mediation. Some felt that informal mediation led by planning officers would be better suited to the planning system, rather than formal mediation led by professional mediators for example. Some also referred to “mediative tools” already in use across the planning system, such as hearings and the new Gatecheck stage, and wished to see guidance highlight these as having a role in resolving disagreement.
- It was also suggested that guidance should distinguish between pre-application consultation and proposal of application notices. It was suggested that advice provided at the PAC stage can be informal, contrasting with the legislative requirements of PANs.
- Some felt that clarity is required around who is considered to be an appropriate person to act as a mediator, including relevant qualifications etc. This included a perceived need to recognise that access to suitable persons may vary at a local and regional level.
- There was some scepticism regarding the potential for mediation to benefit specific stages of the planning system:
  - In relation to the development planning process, it was suggested that mediation may add more value when used between consulting on the draft plan and publishing the proposed plan. Some felt that mediation at this stage could help to reduce the number of unresolved matters at development plan examination, and in this way make the examination stage less resource intensive. However, some indicated that their experience of the PAN process did not demonstrate a need for mediation to resolve conflict, and that stronger guidance on the form and extent of PANs would reduce the likelihood of conflict arising at this stage.
  - There was concern that use of mediation in development planning could undermine the role of the reporter in the development plan process.
  - It was suggested that adding mediation to the Development Plan Scheme would not be appropriate as the National Standards on Community Engagement<sup>3</sup> should be sufficient to inform the content of the participation statement and engagement strategy.
  - In relation to development management (including PAC) some suggested that this should be an information gathering process, and that mediation at this stage may be premature, for example if the development proposal is not progressed in its current form. It was also noted that new regulations require PAC events to provide feedback on community views, and

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<sup>3</sup> National Standards for Community Engagement (NSfCE) at [https://www.scdc.org.uk/s/NSfCE-online\\_October.pdf](https://www.scdc.org.uk/s/NSfCE-online_October.pdf)

suggested that this is sufficient opportunity for dialogue between interested parties at this stage.

- Some also raised concerns regarding potential for use of mediation at the development management stage to undermine the role of planning committees and professional officers in making the final determination. In this context, it was suggested that the outcomes of any mediation at this stage should not be binding on the planning authority.
- Also in relation to development management, it was suggested that PAC is generally a confidential process between the planning authority, applicant and relevant stakeholders, focused on provision of factual advice and procedural recommendations. Some were of the view that mediation has little to add to this stage. It was also suggested that development management is already well served in terms of engagement opportunities, and that established tools such as hearings can be used to resolve disagreement.
- Some wished to see use of mediation limited to specific aspects of the planning system. Specific suggestions included enforcement and development plan examinations.
- Some saw scope to expand guidance to consider the role of mediation across other aspects of the planning system. There was support for the initial focus on development planning and management processes, but some raised concerns that an overly cautious approach may not be sufficient to achieve the desired shift in use of mediation. It was suggested that guidance could be more effective by detailing the kinds of dispute where mediation could have a role, allowing for judgement to be exercised on a case-by-case basis rather than limiting mediation to specific stages (although it was agreed that these stages are useful exemplars of the kind of role that mediation can play). Some also wished to see a requirement for planning authorities to have a process in place to initiate mediation when it is considered appropriate.
- Suggestions for further expansion of the scope for mediation focused on areas where respondents saw a need to build consensus and/or resolve disagreement:
  - Enforcement notices.
  - Enforcement appeals.
  - Local Place Plans.
  - Section 75 agreements.
  - Compulsory purchase orders (CPO).
  - Allocation of sites in the early stages of the local development plan process.
  - Masterplans.
  - Design guidance.
  - Core paths.

## 3. Policy support for mediation

- 3.1 The second part of the consultation paper set out the rationale for maintaining policy support for the use of mediation in National Planning Framework 4 (NPF4), including reference to feedback gathered through the NPF4: Call for Ideas and Scottish Mediation/PAS survey. Question 2 asked whether respondents agreed with the proposal to maintain policy support for the use of mediation.

**Q2. Do you agree with the suggestion to maintain policy support for the use of mediation in National Planning Framework 4?**

Please comment on your answer (particularly if you do not agree).

- 3.2 A total of 38 respondents answered Question 2, including 29 organisation respondents and nine individuals. Of these respondents, a large majority (33 of 38) agreed with NPF4 maintaining policy support for mediation, and five disagreed. Those disagreeing included two public sector, two private sector and a third sector respondent.

### **Q2. Do you agree with the suggestion to maintain policy support for the use of mediation in National Planning Framework 4?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>24</b>	<b>5</b>	<b>29</b>
<b>% of organisations</b>	<b>83%</b>	<b>17%</b>	<b>100%</b>
Public sector	8	2	10
Planning authorities	6	2	8
Other public bodies	2	0	2
Planning and other professionals	3	0	3
Private sector	9	2	11
Mediation services	4	0	4
Other	5	2	7
Third sector	4	1	5
Community Councils/representative groups	2	1	3
Other	2	0	2
<b>Individuals</b>	<b>9</b>	<b>0</b>	<b>9</b>
<b>% of individuals</b>	<b>100%</b>	<b>0%</b>	<b>100%</b>
<b>All respondents</b>	<b>33</b>	<b>5</b>	<b>38</b>
<b>% of all respondents</b>	<b>87%</b>	<b>13%</b>	<b>100%</b>

Note: 3 did not respond to the closed element of Question 2.

- 3.3 A total of 27 respondents provided written comments in support of their response at Question 2.
- 3.4 Most of those providing written comment agreed with the proposal for NPF4 to maintain policy support for mediation. Some saw a need for national policy on use of mediation in the planning system to provide a “mandate” for planning authorities and other participants to take this forward at a local level, and to ensure that mediation is used effectively across the planning system. This was seen as particularly important given mediation is a relatively new tool for the

planning system and may be unfamiliar to many participants. It was also suggested that NPF4 should include links to guidance and other relevant resources to support those seeking to use mediation in the planning system.

- 3.5 Some also noted that promotion of mediation fits within the wider aim of a more effective and efficient, plan-led system. This included comments highlighting alignment between promotion of mediation and the introduction of Local Place Plans in terms of ensuring the views of communities are properly considered early in the planning process. It was also noted that national policy support for mediation is an opportunity to emphasise alignment with other policy areas such as Community Planning and the Community Empowerment Act, and Land Reform policy.
- 3.6 A number of those in favour of national policy support for mediation wished to see NPF4 provide clarity on whether mediation would be a statutory requirement, and to set mediation in the context of the full range of dispute resolution techniques available to the planning system. In this context, it was noted that Scottish Planning Policy currently refers to “mediation initiatives” as one of a range of engagement techniques, and some felt that this was an appropriate level of policy support.
- 3.7 Most of those providing comment at Question 2 raised issues or suggested amendments to the proposal for policy support for mediation. This included comments from a number of those broadly in favour of maintaining national policy support. Issues and suggested amendments raised by respondents are summarised below.
- While most supported reference to mediation in NPF4, some felt that mediation must remain a voluntary process for all parties and as such should not be made a requirement. Some wished to see NPF4 make clear whether mediation would be a statutory requirement, and if so in which circumstances. More widely, respondents also wished to see guidance on when mediation may be the most appropriate approach to resolve disputes or build consensus. This reflected a wider view that policy support for mediation should make clear that this is one of a range of approaches to engagement and dispute resolution such as community mediation.
  - It was suggested that policy support for mediation should address (through NPF4 or associated guidance) the mechanism for providing mediation services in the planning system. This included reference to potential for a national body providing mediation services, as was suggested by Scottish Mediation/PAS in consultation supporting documents.
  - Some also felt that policy support must include consideration of how the use of mediation in the planning system is to be resourced, including whether this will be led by a national body. Concerns were expressed that planning authorities will require additional resources to meet their new responsibilities in relation to use of mediation. Some also expressed concerns regarding potential for further inequity in the planning system if the cost of mediation is to be borne by communities or representative groups.
  - There was some concern regarding potential use of mediation in relation to planning for housing, and specifically assessment of housing requirements. It was suggested that mediation may be unlikely to resolve disputes in these

circumstances given the complexity of the assessment process, and that any use of mediation would be likely to add significant delays to the process.

- Some of those who disagreed with continuing policy support for use of mediation in planning reiterated their view that mediation will not contribute to a fairer, more effective and efficient planning system, and raised concerns regarding potential for mediation to add to delays and costs.

### The cost of mediation

3.8 The consultation paper and associated Business and Regulatory Impact Assessment (BRIA) noted that there is limited evidence available to support an assessment of the cost effectiveness of mediation. This includes evidence of the cost to parties involved (in terms of financial cost and time input), and current practice around who meets financial costs. It was also noted that there is limited evidence relating to potential savings achieved by mediation, where it is successful in removing or reducing dispute.

3.9 Question 3 asked respondents to describe any prior experience of using mediation, including costs incurred and how these were shared between parties.

Q3. 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.

3.10 A total of 27 respondents provided comment at Question 3, including 21 organisation respondents and six individuals. The 21 organisation respondents included eight private sector, eight public sector, three third sector respondents, and two planning/other professionals.

### Q3. Please tell us about your experience of using mediation including any financial / non-financial costs incurred.

Respondent type	Answered	Not answered	Total
<b>Organisations</b>	<b>21</b>	<b>10</b>	<b>31</b>
<b>% of organisations</b>	<b>68%</b>	<b>32%</b>	<b>100%</b>
Public sector	8	2	10
Planning authorities	7	1	8
Other public bodies	1	1	2
Planning and other professionals	2	1	3
Private sector	8	4	12
Mediation services	4	0	4
Other	4	4	8
Third sector	3	3	6
Community Councils/representative groups	2	1	3
Other	1	2	3
<b>Individuals</b>	<b>6</b>	<b>4</b>	<b>10</b>
<b>% of individuals</b>	<b>60%</b>	<b>40%</b>	<b>100%</b>
<b>All respondents</b>	<b>27</b>	<b>14</b>	<b>41</b>
<b>% of all respondents</b>	<b>66%</b>	<b>34%</b>	<b>100%</b>

- 3.11 Comments from these respondents included some concerns regarding the potential cost effectiveness of mediation, with some noting that the consultation paper states that overall cost effectiveness is unclear. This was related to wider concerns regarding the ability of planning authorities to fund mediation in the context of limited public sector resources. Reference was made to the scale of reduction in planning services in recent years, and the range of unfunded additional duties placed on planning authorities by the Planning (Scotland) Act 2019.
- 3.12 Some with experience of mediation services suggested that direct professional costs may form a relatively small proportion of the total cost, for example as compared with the time input required from all parties involved. In this context, concerns were also raised that rough cost estimates included in the BRIA do not include any predicted costs for local communities.
- 3.13 Concerns were raised regarding other assumptions made in the BRIA, particularly around use of mediation in local development plan preparation. It was suggested that the number of representations typically received by planning authorities, and the range of unresolved issues carried forward, mean that the BRIA significantly underestimates the number and size of mediation events required. It was also suggested that the complexity of issues considered by local development plans is likely to add further to the cost of any mediation.
- 3.14 Some of those providing comment made direct reference to the potential costs of mediation services, including how these might be apportioned between interested parties. These comments are summarised below.
- Mediation service respondents cited experience of mediation across a broad range of policy contexts and participants. These respondents claimed that mediation can reduce costs in comparison to other forms of dispute resolution, including suggestions that the initial expenditure on mediation can generate future returns by improving outcomes.
  - Respondents outlined a number of potential approaches to sharing of mediation costs. This included some raising specific concerns regarding the potential for take-up of mediation to be limited if one or other party is required to meet up-front costs. Some were also concerned that a model which required a contribution from communities or individuals could exacerbate existing inequalities by limiting participation in mediation to more affluent communities.
  - Some mediation service respondents suggested that costs are typically shared between parties, or are met by the party initiating the process and/or economically advantaged by the proposal. However, another noted that the planning authority met all costs in a recent use of mediation in a planning dispute. Reference was also made to a range of other funding models which were seen as potentially applicable to the planning system:
    - National level funding is currently used in health services, with a provider funded to deliver an agreed volume of mediation and ancillary services such as advice services.

- Part national and part local government funding is currently used by the Tenant Farming Commission, whereby national funding contributes a set percentage of mediation costs for eligible cases, with the remainder met by local government.
- Party funding is typically shared between parties, although it was noted that one party may fund the full cost in some circumstances. It was noted that in these circumstances it is important to be clear that the mediator remains impartial.
- Few respondents provided specific costs for mediation services. For example, four planning authorities cited experience of using mediation but only one included reference to a specific cost. Similarly, only one mediation service respondent provided reference to specific costs.
  - £5,000 for professional mediation in relation to a specific case.
  - Professional costs of £100 (plus VAT) per hour.
- Some of those with direct experience of mediation services expressed concerns regarding the effectiveness of the approach in those cases.

## 4. Potential role of mediation

- 4.1 The consultation paper considered in further detail specific opportunities to embed mediation in the planning system. In relation to development planning these included proposals for the inclusion of mediation in the preparation of Development Plan Schemes and at the development plan examination stage. In relation to development management, it was proposed that mediation would be recommended at the pre-application consultation (PAC) stage, including in additional consultation activity around proposal of application notices (PANs).

### **The potential role of mediation in development planning**

- 4.2 The consultation paper included four specific consultation questions relating to the role of mediation in development planning processes. Question 4 sought views on proposals relating to Development Plan Schemes, that mediation should be one of the engagement techniques to be considered in the participation statement.

Q4. 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?

Please comment on your answer (particularly if you do not agree)

- 4.3 A total of 32 respondents answered Question 4, including 24 organisation respondents and eight individuals. Of these respondents, a large majority (26 of 32) agreed that guidance on Development Plan Schemes should include mediation as one of a range of innovative techniques and activities for engaging stakeholders. Those disagreeing included three private sector, a public sector and a third sector respondent, and a planning/other professional.

**Q4. 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?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>18</b>	<b>6</b>	<b>24</b>
<b>% of organisations</b>	<b>75%</b>	<b>25%</b>	<b>100%</b>
Public sector	9	1	10
Planning authorities	7	1	8
Other public bodies	2	0	2
Planning and other professionals	1	1	2
Private sector	6	3	9
Mediation services	4	0	4
Other	2	3	5
Third sector	2	1	3
Community Councils/representative groups	2	1	3
Other	0	0	0
<b>Individuals</b>	<b>8</b>	<b>0</b>	<b>8</b>
<b>% of individuals</b>	<b>100%</b>	<b>0%</b>	<b>100%</b>
<b>All respondents</b>	<b>26</b>	<b>6</b>	<b>32</b>
<b>% of all respondents</b>	<b>81%</b>	<b>19%</b>	<b>100%</b>

Note: 9 did not respond to the closed element of Question 4.

- 4.4 A total of 29 respondents provided written comments in support of their response at Question 4.
- 4.5 Most of those providing written comments were in favour of development plan guidance referencing mediation as one of a range of innovative engagement techniques and activities. These respondents expressed a view that mediation should be recognised as one of a range of potentially valuable engagement techniques, with potential to reduce the range of issues to be taken forward by the planning authority. It was also suggested that promotion of mediation is consistent with a move towards greater engagement and consultation across the planning system.
- 4.6 However, some questioned the potential scale of use of mediation at the Development Plan Stage. It was suggested that community interest in the Development Plan Scheme is typically low, that there may be limited scope for conflict at this stage, and that any unresolved issues are unlikely to involve a simple disagreement between two parties. However, others suggested that “less formal” mediative approaches may have a role to play.
- 4.7 The majority of those providing comment at this question raised issues or suggested amendments to the proposal for development plan guidance to reference mediation. This included comments from a number of those broadly in favour of the proposal. Issues and suggested amendments raised by respondents are summarised below.
- Some wished to see guidance provide clarity on the purpose and most appropriate use of mediation, as one of a range of approaches available to resolve conflict. This was seen as crucial in assisting stakeholders to identify

the most appropriate approach for each case. This included calls for detail on the various forms that mediation can take, and how it can support stakeholder engagement and ensure communities feel that their views have been heard. Some also wished to see guidance emphasise that mediation is not intended to replace open, public consultation methods, and that planning authorities retain the ability to select the engagement approaches to be used.

- There were some concerns that policy support could in effect elevate mediation to “best practice” and raise stakeholder expectations that mediation will or should be used in all or most circumstances. Some wished to see guidance make clear that mediation may not be the best option in all circumstances, and should not be assumed to be the primary or “default” approach to stakeholder engagement.
- Some questioned whether formal mediation can have a role in development planning, suggesting that there is limited scope for conflict, and that more open “round table” engagement with stakeholders may be more appropriate at this stage. It was suggested that, if mediation is to be referenced in the participation statement, this should be limited to the development plan examination process only.
- Concerns were also expressed regarding potential costs and delays given the complexity of issues to be considered and the diversity of stakeholders involved – and the need to update Development Plan Schemes annually. It was noted that there is no evidence that formal mediation can support production of a spatial plan, as this did not form part of the pilot case studies. It was also noted that 2009 mediation guidance advises that the process should not be used where “there are significant issues of public interest which need to be resolved in a formal manner”, with some of the view that this applies to development planning. Some also raised concerns that use of mediation at this stage may not help to better engage communities, for example if they do not trust the process.
- Some commented on how mediation might most effectively contribute to the Development Plan Scheme, including suggestions that mediation may be appropriate to resolve issues ahead of formal stages such as Gatecheck and publication of the proposed plan. Some also suggested that dissemination of good practice and learning points could help to inform planning authorities’ use of mediation.
- It was suggested that any guidance relating to use of mediation should ensure consistency with forthcoming guidance on the scope and content of the Development Plan Scheme.
- Some raised concerns that guidance should seek to maintain transparency of the Development Plan Scheme process if mediation is used. This included calls for the results of mediation being made public, and subject to comment.

4.8 Question 5 sought views on a proposal that use of mediation should be considered by planning authorities in the preparation of the participation statement element of their Development Plan Schemes.

**Q5. 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?**

Please comment on your answer (particularly if you do not agree).

4.9 A total of 30 respondents answered Question 5, including 22 organisation respondents and eight individuals. Of these respondents, most (20 of 30) agreed that planning authorities should consider use of mediation when preparing their participation statement, and ten disagreed. Those disagreeing included five public sector, three private sector and a third sector respondent, and a planning/other professional.

**Q5. 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?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>12</b>	<b>10</b>	<b>22</b>
<b>% of organisations</b>	<b>55%</b>	<b>45%</b>	<b>100%</b>
Public sector	5	5	10
Planning authorities	3	5	8
Other public bodies	2	0	2
Planning and other professionals	1	1	2
Private sector	5	3	8
Mediation services	4	0	4
Other	1	3	4
Third sector	1	1	2
Community Councils/representative groups	1	1	2
Other	0	0	0
<b>Individuals</b>	<b>8</b>	<b>0</b>	<b>8</b>
<b>% of individuals</b>	<b>100%</b>	<b>0%</b>	<b>100%</b>
<b>All respondents</b>	<b>20</b>	<b>10</b>	<b>30</b>
<b>% of all respondents</b>	<b>67%</b>	<b>33%</b>	<b>100%</b>

Note: 11 did not respond to the closed element of Question 5.

4.10 A total of 27 respondents provided written comments in support of their response at Question 5.

4.11 This included a number of respondents expressing support for the proposal that planning authorities should consider use of mediation in preparing their participation statement. Some of these respondents noted that this is consistent with the requirement on planning authorities to consult with the public on the participation statement, and felt that mediation should be part of the “toolkit” of approaches available to planning authorities. This included support for a role for “formal mediation” and other mediative approaches that may be appropriate to resolve disputes prior to production of the proposed plan. This also reflected a wider view that mediation may be most effective when used early in the development planning process.

4.12 However, as noted at question 4, some wished to ensure mediation would not be a requirement on planning authorities, for example if other engagement approaches are sufficient to resolve outstanding issues. This also reflected

concerns noted below that excessive use of mediation could delay production of the development plan.

4.13 Most of those providing comment at Question 5 raised issues or suggested amendments to the proposal for mediation to be considered by planning authorities in preparing their participation statement. This included comments from a number of those broadly in favour of the proposal. Issues and suggested amendments raised by respondents are summarised below.

- Some were of the view that mediation is not appropriate at this stage. This included reference to the level of uncertainty around the Development Plan, and whether planning authorities will be aware of which site allocations or policies are likely to be controversial. It was also suggested that there may be potential for subsequent change to timetables or engagement methodologies for the participation statement. There were some concerns that promoting mediation in the preparation of the participation statement could raise stakeholder expectations regarding the degree of certainty that a Development Plan Scheme can realistically provide. Moreover, it was suggested that this could lead to the Development Plan Scheme being “weaponised” if disagreements emerged regarding the proposed engagement approach and timetabling.
- It was noted that planning authorities should be adhering to the National Standards on Community Engagement, and some were of the view that further guidance on engagement approaches is not required.
- Some wished to see guidance make clear that mediation is not a requirement for preparation of the participation statement, and set out the range of other approaches that may be more appropriate dependent on specific circumstances. Some also preferred to see guidance support a broader range of more “collaborative” engagement approaches with a focus on facilitating discussion and exploring solutions, rather than singling out mediation for specific support.
- Concerns were expressed regarding potential for guidance to add to the burden on planning authorities in preparing Development Plan Schemes, with some of the view that introducing mediation at this stage was likely to delay the overall preparation of the development plan. In this context, some wished to see mediation used selectively to avoid unnecessary delays. For example, it was suggested that mediation should be referenced by the participation statement where the authority intends to revise policy, as a means of encouraging stakeholder engagement.

4.14 Question 6 sought views on proposals for further investigation of the potential role for mediation at the new ‘Gatecheck’ stage. This stage involves production of an evidence report in advance of preparing a local development plan.

**Q6. Do you agree that the Scottish Government should further investigate the potential role of mediation at the Gatecheck stage?**

**Please comment on your answer (particularly if you do not agree).**

4.15 A total of 30 respondents answered Question 6, including 21 organisation respondents and nine individuals. Of these respondents, a large majority (25 of

30) agreed with the Scottish Government further investigating the role of mediation at the Gatecheck stage, and five disagreed. Those disagreeing included three private sector and a third sector respondent, and a planning/other professional.

**Q6. Do you agree that the Scottish Government should further investigate the potential role of mediation at the Gatecheck stage?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>16</b>	<b>5</b>	<b>21</b>
<b>% of organisations</b>	<b>76%</b>	<b>24%</b>	<b>100%</b>
Public sector	7	0	7
Planning authorities	5	0	5
Other public bodies	2	0	2
Planning and other professionals	1	1	2
Private sector	6	3	9
Mediation services	4	0	4
Other	2	3	5
Third sector	2	1	3
Community Councils/representative groups	2	1	3
Other	0	0	0
<b>Individuals</b>	<b>9</b>	<b>0</b>	<b>9</b>
<b>% of individuals</b>	<b>100%</b>	<b>0%</b>	<b>100%</b>
<b>All respondents</b>	<b>25</b>	<b>5</b>	<b>30</b>
<b>% of all respondents</b>	<b>83%</b>	<b>17%</b>	<b>100%</b>

Note: 11 did not respond to the closed element of Question 6.

4.16 A total of 28 respondents provided written comments in support of their response at Question 6.

4.17 Around half of those providing comment supported further investigation of the potential role of mediation at the Gatecheck stage. These respondents noted that Gatecheck is still at a formative stage and were of the view that a decision on what, if any, role mediation may have should be made once the operation of Gatecheck is clarified. However, these respondents did see potential for mediation to add value at this stage if clear objectives and parameters are set, although some reiterated concerns regarding potential for delay to production of the development plan.

4.18 Most of those providing comment at Question 6 raised issues or suggested amendments to the proposal for the Scottish Government to further investigate the potential role of mediation at the Gatecheck stage. This included comments from a number of those broadly in favour of the proposal. Issues and suggested amendments raised by respondents are summarised below.

- It was noted that the focus of the Gatecheck process is to establish whether sufficient evidence has been presented to progress to production of a local development plan. Some suggested that there is likely to be limited scope for dispute, and that it was therefore unclear what value mediation could add to Gatecheck. This included a view that any benefits are unlikely to be worth the additional burden on planning authorities and potential for further delay to the process. Some were also of the view that it should be the Reporters' role to

ascertain if the evidence base for the development plan is sufficient, and that use of mediation would be more appropriate following production of the proposed plan.

- It was suggested that a pilot exercise may be useful in assessing the potential for mediation to contribute to the Gatecheck stage.
- Some expressed concern that mediation may not significantly reduce the number of unresolved representations taken forward to the development plan examination stage.
- It was suggested that Gatecheck should be conducted in public to ensure it receives full scrutiny. Some were concerned that formal mediation will not provide the necessary transparency.
- It was noted that the Evidence Report submitted for Gatecheck may already incorporate the outcomes of mediation, for example if this has been used in preparation of the participation statement. Some questioned what role further mediation might play at this stage.

4.19 Question 7 sought views on proposals for guidance to encourage use of mediation in advance of the development plan examination stage, for example to resolve differences between parties relating to the planning authority's development plan proposals.

Q7. 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?

Please comment on your answer (particularly if you do not agree).

4.20 A total of 32 respondents answered Question 7, including 24 organisation respondents and eight individuals. Of these respondents, a large majority (26 of 32) agreed with encouraging use of mediation between parties in advance of development plan examination, and six disagreed. Those disagreeing included two public sector, two private sector and a third sector respondent, and a planning/other professional.

**Q7. 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?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>18</b>	<b>6</b>	<b>24</b>
<b>% of organisations</b>	<b>75%</b>	<b>25%</b>	<b>100%</b>
Public sector	8	2	10
Planning authorities	6	2	8
Other public bodies	2	0	2
Planning and other professionals	1	1	2
Private sector	7	2	9
Mediation services	3	0	3
Other	4	2	6
Third sector	2	1	3
Community Councils/representative groups	2	1	3
Other	0	0	0
<b>Individuals</b>	<b>8</b>	<b>0</b>	<b>8</b>
<b>% of individuals</b>	<b>100%</b>	<b>0%</b>	<b>100%</b>
<b>All respondents</b>	<b>26</b>	<b>6</b>	<b>32</b>
<b>% of all respondents</b>	<b>81%</b>	<b>19%</b>	<b>100%</b>

Note: 9 did not respond to the closed element of Question 7.

4.21 A total of 27 respondents provided written comments in support of their response at Question 7.

4.22 Most of those providing written comment agreed with the proposal to encourage use of mediation between parties in advance of development plan examination. These respondents expressed support for the potential benefits of mediation at this stage in terms of reducing the number of unresolved issues taken forward for examination, and noted that current guidance on this stage does not include any reference to mediation. It was also suggested that there may be an increasing need for in-person discussion between planning authorities and developers regarding allocated sites, as local development plans move to a longer ten-year cycle. However, this support was tempered by concerns regarding potential delays to production of the development plan, and a view that guidance should not require the use of mediation. It was also suggested that informal mediation may be more appropriate at this stage to inform the Reporters’ work, rather than a formal mediation process with a binding outcome.

4.23 The majority of those providing comment at Question 7 suggested amendments or additions to proposals, including suggestions from some of those broadly in favour of proposals. Issues and suggested amendments raised by respondents are summarised below.

- Some wished to see guidance focus on use of mediation during the period prior to production of the proposed plan. These respondents were sceptical about the usefulness of mediation after publication of the proposed plan, as this represents the settled view of the planning authority and producing a revised plan would require significant time and resources.

- There were some concerns regarding the potential for use of mediation to delay development plan examination timescales, particularly given the wide range of unresolved issues often considered at this stage. Some wished to see guidance specify a timeframe for any use of mediation, to avoid undue delays.
- There were also concerns that use of mediation could add to the overall cost of the development plan examination stage. This reflected some scepticism regarding the potential for mediation to significantly reduce the number of issues to be taken forward for examination. Moreover, some raised concerns that mediation could harden opposing positions and add to conflict if the process is unsuccessful. This included a suggestion that housing land supply is a key cause of conflict at this stage, and that mediation is unlikely to resolve these complex issues.
- It was suggested that local communities may be unwilling to use mediation in some circumstances, for example if they cannot see a means by which strongly held opposing views can be resolved.
- It was suggested that guidance should ensure that mediation does not undermine the role of the Reporter in the development plan examination process, and should specify how mediation outcomes should be reported as part of the examination process.

### **The potential role of mediation in development management**

4.24 Question 8 sought views on proposals for amendment of guidance on Proposal of Application Notices to encourage use of mediation to resolve any disputes at the pre-application consultation stage.

Q8. 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?

Please comment on your answer (particularly if you do not agree).

4.25 A total of 36 respondents answered Question 8, including 27 organisation respondents and nine individuals. Of these respondents, most (26 of 36) agreed with amending guidance to encourage use of mediation at the pre-application stage, and ten disagreed. Those who disagreed included five private sector, two public sector, and two third sector respondents, and one individual.

**Q8. 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?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>18</b>	<b>9</b>	<b>27</b>
<b>% of organisations</b>	<b>67%</b>	<b>33%</b>	<b>100%</b>
Public sector	7	2	9
Planning authorities	5	2	7
Other public bodies	2	0	2
Planning and other professionals	3	0	3
Private sector	6	5	11
Mediation services	4	0	4
Other	2	5	7
Third sector	2	2	4
Community Councils/representative groups	2	1	3
Other	0	1	1
<b>Individuals</b>	<b>8</b>	<b>1</b>	<b>9</b>
<b>% of individuals</b>	<b>89%</b>	<b>11%</b>	<b>100%</b>
<b>All respondents</b>	<b>26</b>	<b>10</b>	<b>36</b>
<b>% of all respondents</b>	<b>72%</b>	<b>28%</b>	<b>100%</b>

Note: 5 did not respond to the closed element of Question 8.

4.26 A total of 29 respondents provided written comments in support of their response at Question 8.

4.27 The majority of those providing comment supported the proposed amendment of guidance to encourage use of mediation to resolve any disputes at the pre-application consultation (PAC) stage. These respondents referred to the potential benefits of mediation in resolving conflict or disagreement at this stage. Mediation was seen as having a particularly useful role in fostering more constructive dialogue between developers and local communities, potentially reducing the number of objections to the subsequent planning application.

4.28 It was also suggested that current planning policy and guidance places little onus on developers to resolve any concerns raised before they submit a planning application, and that revising guidance is an opportunity to encourage use of mediation (where appropriate) to seek a resolution to any concerns.

4.29 Most respondents commenting at Question 8 suggested amendment or addition to proposals, including a number suggested by those broadly in favour of use of mediation at the pre-application consultation stage. Issues and suggested amendments raised by respondents are summarised below.

- Some of those opposed to PAN guidance encouraging use of mediation expressed concerns that mediation should not be made compulsory, and should remain a voluntary additional activity.
- Some expressed concerns that use of formal mediation may not be consistent with moves to make the PAC process more consistent and transparent. It was suggested that formal mediation is typically a confidential process, and parties may not assume that written documentation submitted as part of a mediation

process would be made public. Some wished to see guidance note that parties would need to agree to the outcome and reasoning of any mediation to be published to ensure the transparency of the PAC process.

- Some also suggested that use of mediation at the PAC stage would be premature. These respondents noted that proposals at this stage have not been finalised, and suggested that the purpose of PAC should be to refine the subsequent planning application to minimise conflict. Some also suggested that formal mediation should not be used in relation to development of allocated sites identified through the development plan (which may itself have been the subject of mediation).
- Some wished to see guidance provide more detail on the circumstances in which it would be appropriate for local authorities to encourage mediation at the PAC stage, and the process involved. This included suggestions that guidance should address timescales for mediation (to avoid delays to the PAC process), who can instigate or request mediation, how the impartiality of the mediator will be ensured, and how transparency of the process will be maintained.
- Some wished to see detail on how mediation costs will be met. This included a suggestion that, where mediation is between developers and the local community, costs should be met by the developer as the main beneficiary of planning approval. It was also suggested that meeting these costs would be unsustainable for planning authorities.
- There were some concerns that communities must have confidence in the mediation process, and in particular that communities must feel that it will enable their ideas to be fully taken into account. Specific suggestions to build this trust included allowing the community to select from a list of prospective mediators, and conducting mediation in public with outcomes and reasoning published following completion of the process.
- Some wished to see clarity on the legal status of the outcome of mediation at this stage, specifically that any decision reached through mediation would not be binding on subsequent planning application determination.

4.30 Question 9 sought views on proposals to encourage use of mediation between parties in pre-application consultation, including as part of developers' approaches to community engagement.

**Q9. Do you agree with the proposal that the Scottish Government should provide guidance encouraging the use of mediation between parties in Pre-Application Consultation?**

Please comment on your answer (particularly if you do not agree).

4.31 A total of 36 respondents answered Question 9, including 27 organisation respondents and nine individuals. Of these respondents, most (27 of 36) agreed with guidance encouraging use of mediation between parties in PAC, and nine disagreed. Those who disagreed included four private sector, two public sector and two third sector respondents, and one individual.

**Q9. Do you agree with the proposal that the Scottish Government should provide guidance encouraging the use of mediation between parties in Pre-Application Consultation?**

<b>Respondent type</b>	<b>Yes</b>	<b>No</b>	<b>Total</b>
<b>Organisations</b>	<b>19</b>	<b>8</b>	<b>27</b>
<b>% of organisations</b>	<b>70%</b>	<b>30%</b>	<b>100%</b>
Public sector	7	2	9
Planning authorities	5	2	7
Other public bodies	2	0	2
Planning and other professionals	3	0	3
Private sector	7	4	11
Mediation services	4	0	4
Other	3	4	7
Third sector	2	2	4
Community Councils/representative groups	2	1	3
Other	0	1	1
<b>Individuals</b>	<b>8</b>	<b>1</b>	<b>9</b>
<b>% of individuals</b>	<b>89%</b>	<b>11%</b>	<b>100%</b>
<b>All respondents</b>	<b>27</b>	<b>9</b>	<b>36</b>
<b>% of all respondents</b>	<b>75%</b>	<b>25%</b>	<b>100%</b>

Note: 5 did not respond to the closed element of Question 9.

4.32 A total of 31 respondents provided written comments in support of their response at Question 9.

4.33 The majority of those providing written comment supported the Scottish Government providing guidance to encourage use of mediation at the PAC stage. Similar to comments in support of proposals at Question 8, these respondents saw potential benefits of mediation as part of this process, and supported the promotion of mediation as one of a range of potential engagement approaches.

4.34 However, most of those commenting at Question 9 raised issues or suggested amendments to proposals, including from some of those broadly in favour of the use of mediation at the PAC stage. Issues and suggested amendments raised by respondents are summarised below.

- A number of the issues and concerns raised at Question 8 were repeated in relation to Question 9. Specifically, respondents felt that that guidance should set clear expectations of what mediation might achieve at the PAC stage, how use of mediation at this stage would be funded (including particular concerns

regarding planning authority resources), potential impact on the transparency of the process, that use of mediation should remain voluntary, and that any decision reached should not be binding on the planning authority. Some also reiterated a view that the focus of guidance should be on ensuring meaningful engagement between relevant parties, rather than recommending a specific engagement approach.

- Other amendments or suggestions raised specifically in relation to Question 9 are summarised below.
  - Those objecting to proposals suggested that mediation would be better used in response to the final planning application. These respondents noted that proposals have not been finalised at the PAC stage, and that this stage should focus on gathering feedback to inform final proposals rather than coming to a resolution. It was also suggested that it is too early to evaluate the impact of recent changes to PAC requirements, and that it has not been proven that mediation could add value to PAC.
  - Some felt that mediation may be appropriate at the PAC stage where sites have not been identified by the local development plan. There were also calls more generally for guidance to specify the kinds of circumstances where mediation may be most appropriate, potentially including use of best practice examples.
  - It was suggested that formal mediation should not be recommended for sites allocated in the local development plan, where the principle of development has already been agreed. However, some saw a role for informal mediation where this is focused on the details of the proposal.
  - It was suggested that guidance should specify timeframes for the mediation process as part of PAC, and make clear that all parties have a responsibility to support these timeframes.
  - It was suggested that guidance should be clear on which parties are expected to participate in mediation at the pre-application stage, including whether this should be the community council or other community groups or individuals. Some noted that it may not be appropriate for the planning authority to participate, given their role in determining any subsequent planning application.

## 5. Impact Assessments

5.1 The final section of the consultation sought views on impact assessments undertaken for the draft guidance. These included a partial Business and Regulatory Impact Assessment, and partial Equalities Impact Assessment (combining Child Rights and Wellbeing Impact Assessment).

5.2 Question 10 sought views on the content of these partial assessments.

**Q10. Please give us any views you have on the content of these partial assessments.**

5.3 A total of 17 respondents provided comment at Question 10, including 11 organisation respondents and six individuals. The 11 organisation respondents included four public sector, four private sector and a third sector respondent, and two planning/other professionals.

**Q10. Please give us any views you have on the content of these partial assessments.**

Respondent type	Answered	Not answered	Total
<b>Organisations</b>	<b>11</b>	<b>20</b>	<b>31</b>
<b>% of organisations</b>	<b>35%</b>	<b>65%</b>	<b>100%</b>
Public sector	4	6	10
Planning authorities	4	4	8
Other public bodies	0	2	2
Planning and other professionals	2	1	3
Private sector	4	8	12
Mediation services	2	2	4
Other	2	6	8
Third sector	1	5	6
Community Councils/representative groups	1	2	3
Other	0	3	3
<b>Individuals</b>	<b>6</b>	<b>4</b>	<b>10</b>
<b>% of individuals</b>	<b>60%</b>	<b>40%</b>	<b>100%</b>
<b>All respondents</b>	<b>17</b>	<b>24</b>	<b>41</b>
<b>% of all respondents</b>	<b>41%</b>	<b>59%</b>	<b>100%</b>

5.4 In relation to the **Business and Regulatory Impact Assessment (BRIA)**, the following points were raised.

- There were concerns regarding the cost estimates set out in the BRIA, and the extent to which these present a realistic account of the likely impact of proposals. Some suggested that mediator costs may be over-estimated, but others noted that cost estimates exclude significant elements such as staff time input (and are therefore likely to underestimate overall costs).
- Specific concerns were raised regarding estimates of additional costs for planning authorities, including that estimated costs do not include time input, that no cost estimate is given regarding expected individual additional costs

for local authorities, and that there is no quantification of any potential savings (for example to the cost of development plan production if the number of unresolved issues is reduced).

- It was suggested that the BRIA underestimates the number and size of mediation events that are likely to be required as part of the local development plan preparation process. This was with specific reference to the number and complexity of issues often raised at this stage, and the potential diversity of stakeholders involved.
- There was a perceived need for further research to improve the evidence base related to costs, and the proportion of PACs where mediation may be required. It was also suggested that benchmarking should be undertaken with comparable policy areas or systems where mediation is used.
- There was concern that the BRIA does not include any assessment of costs for local communities.
- It was suggested that the BRIA should be extended to include the role of guidance on mediation beyond the PAC stage, including other parts of the development management process.
- Some questioned the claim that mediation costs are unlikely to be sufficient to be a deciding factor in whether a developer pursues a project. In particular, it was suggested that this may be the case for regeneration projects.

5.5 In relation to the **Equalities Impact Assessment (EqIA)**, the following points were raised.

- It was suggested that guidance should highlight the need to adopt different mediation approaches to take account of the requirements of all those who wish to engage with the process. This included reference to the needs of those with protected characteristics such as ethnicity and language use, age and disability. Specific reference was made to the Scottish Government's obligations under the UN Convention on the Rights of Persons with Disabilities.
- Some questioned the assumption that use of mediation will result in better inclusion of children and young persons in the planning system.
- It was suggested that, dependent on funding arrangements, use of formal mediation could worsen existing inequalities in the planning system. This included concerns regarding the extent to which access to mediators is likely to vary across rural locations, for example.

5.6 Question 11 asked respondents to provide any information sources that may assist in finalising the impact assessments.

Q11. Do you have or can you direct us to any information that would assist in finalising these assessments?

5.7 A total of nine respondents provided comment at Question 11, including five organisation respondents and four individuals. The five organisation respondents included two private sector, a public sector and a third sector respondent, and a planning/other professional.

**Q11. Do you have or can you direct us to any information that would assist in finalising these assessments?**

Respondent type	Answered	Not answered	Total
<b>Organisations</b>	<b>5</b>	<b>26</b>	<b>31</b>
<b>% of organisations</b>	<b>16%</b>	<b>84%</b>	<b>100%</b>
Public sector	1	9	10
Planning authorities	1	7	8
Other public bodies	0	2	2
Planning and other professionals	1	2	3
Private sector	2	10	12
Mediation services	1	3	4
Other	1	7	8
Third sector	1	5	6
Community Councils/representative groups	1	2	3
Other	0	3	3
<b>Individuals</b>	<b>4</b>	<b>6</b>	<b>10</b>
<b>% of individuals</b>	<b>40%</b>	<b>60%</b>	<b>100%</b>
<b>All respondents</b>	<b>9</b>	<b>32</b>	<b>41</b>
<b>% of all respondents</b>	<b>22%</b>	<b>78%</b>	<b>100%</b>

5.8 Comments on information sources that may assist in finalising the BRIA and EqIA assessments are summarised below.

- Reference was made to the potential value of cross-referencing local statistical datasets, spatial data and business intelligence. This included reference to evidence held by economic development stakeholders and community planning services.
- Reference was also made to data held by third sector organisations such as Living Streets and The Cockburn Association.
- Specific sources cited by respondents were:
  - The Ministry of Justice report, Evaluating the use of judicial mediation in Employment Tribunals.  
<https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/evaluating-judicial-mediation-march10.pdf>

5.9 Question 12 sought views on the Island Communities Impact, the Fairer Scotland Duty and Strategic Environmental Assessment screening documents, and the conclusion that these do not require full assessments.

Q12. 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.

5.10 A total of five respondents provided comment at Question 12, including four organisation respondents and one individual. The four organisation respondents included two third sector, a public sector and a private sector respondent.

**Q12. 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.**

Respondent type	Answered	Not answered	Total
<b>Organisations</b>	<b>4</b>	<b>27</b>	<b>31</b>
<b>% of organisations</b>	<b>13%</b>	<b>87%</b>	<b>100%</b>
Public sector	1	9	10
Planning authorities	1	7	8
Other public bodies	0	2	2
Planning and other professionals	0	3	3
Private sector	1	11	12
Mediation services	1	3	4
Other	0	8	8
Third sector	2	4	6
Community Councils/representative groups	2	1	3
Other	0	3	3
<b>Individuals</b>	<b>1</b>	<b>9</b>	<b>10</b>
<b>% of individuals</b>	<b>10%</b>	<b>90%</b>	<b>100%</b>
<b>All respondents</b>	<b>5</b>	<b>36</b>	<b>41</b>
<b>% of all respondents</b>	<b>12%</b>	<b>88%</b>	<b>100%</b>

5.11 In relation to the **Island Communities Impact screening document**, the following points were raised.

- It was suggested that island communities may see more stakeholder interest in the mediation process, and may therefore be subject to a greater impact on timescales than other areas.
- It was suggested that guidance should recognise potential for development proposals in environmentally sensitive areas to require mediation involving environmental or other professionals.
- It was noted that work may be required to ensure access to digital connectivity required to enable island residents to participate in remote mediation.

5.12 No comments were received specifically in relation to the **Fairer Scotland Duty screening document**.

5.13 In relation to the **Strategic Environmental Assessment screening document**, the following point was raised.

- It was suggested that full Strategic Environmental Assessments should be required if requested by local communities or individuals with good grounds for concern.

5.14 The final consultation question sought views on any relevant information sources, if respondents feel that full Island Communities Impact, Fairer Scotland Duty and/or Strategic Environmental assessments are required.

**Q13. If you consider that full assessments are required, please suggest any information sources that could help inform these assessments?**

5.15 Two respondents answered Question 13, a planning authority and a third sector respondent. Neither respondent referred to specific information sources that could help inform the assessments.

**Q13. If you consider that full assessments are required, please suggest any information sources that could help inform these assessments?**

Respondent type	Answered	Not answered	Total
<b>Organisations</b>	<b>2</b>	<b>29</b>	<b>31</b>
<b>% of organisations</b>	<b>6%</b>	<b>94%</b>	<b>100%</b>
Public sector	1	9	10
Planning authorities	1	2	8
Other public bodies	0	2	2
Planning and other professionals	0	3	3
Private sector	0	12	12
Mediation services	0	4	4
Other	0	8	8
Third sector	1	5	6
Community Councils/representative groups	1	2	3
Other	0	3	3
<b>Individuals</b>	<b>0</b>	<b>10</b>	<b>10</b>
<b>% of individuals</b>	<b>0%</b>	<b>100%</b>	<b>100%</b>
<b>All respondents</b>	<b>2</b>	<b>39</b>	<b>41</b>
<b>% of all respondents</b>	<b>5%</b>	<b>95%</b>	<b>100%</b>

## Annex 1 Organisations responding to the consultation

<b>Public sector: Planning authorities</b>
Aberdeen City Council
City of Edinburgh Council
Fife Council
Glasgow City Council
North Ayrshire Council
North Lanarkshire Council
Perth & Kinross Council
South Lanarkshire Council
<b>Public sector: Other public bodies</b>
Historic Environment Scotland
Scottish Public Services Ombudsman
<b>Planning and other professionals</b>
Heads of Planning Scotland (HOPS)
Law Society of Scotland
RTPI (Scotland)
<b>Private sector: Mediation services</b>
Core Solutions
CoxMediation
Eskhill & Co Mediators and Coaches
Scottish Mediation
<b>Private sector: Other</b>
Aggregate Industries UK Limited
Barratt David Wilson Developments
Homes for Scotland
Mineral Products Association (Scotland)
Persimmon Homes
Scottish Land & Estates (SLE)
Scottish Property Federation
Statkraft UK Ltd

<b>Third sector: Community Councils and representative groups</b>
Fossoway and District Community Council
Hillhead Community Council
Kinross Civic Trust
<b>Third sector: Other</b>
National Trust for Scotland
PAS
Scottish Alliance for People and Places



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