
NORTH AYRSHIRE COUNCIL

25th February 2021

Planning Committee

Title: Consultation Paper: Guidance on the Promotion and Use of Mediation in the Scottish Planning System

Purpose: To (1) advise on the draft guidance produced on the Promotion and Use of Mediation in the Scottish Planning System, and (2) seek approval of the response to the consultation on the draft guidance.

Recommendation: It is recommended that Planning Committee:

- 1) Notes the detail of the proposed guidance relating to the use of mediation in the Scottish planning system, and
- 2) Approves the submission of the response to the consultation as set out in Appendix 1 (see attached).

1. Executive Summary

- 1.1 The Planning (Scotland) Act 2019 requires Scottish Ministers to prepare and issue guidance on the Promotion and Use of Mediation in Planning.

The use of mediation in Planning is to be promoted during the early stages of the planning process to help reduce conflict, improve community engagement and build public trust. This committee report outlines the key points of the draft guidance and contains the Planning Authority's consultation response for consideration prior to submitting to the Scottish Government

2. Background

- 2.1 The Planning Scotland Act (2019) requires Scottish Ministers to prepare and issue guidance on the Promotion and Use of Mediation in Planning. The consultation paper therefore relates to the introduction and content of this guidance to assist the Scottish Government in finalising the draft guidance on mediation. The final guidance must be issued by the 25th July 2021 to accord with The Act.
- 2.2 Currently mediation is not routinely used by Planning Authorities, or within planning matters, to resolve conflict and issues. However, Scottish Planning Policy and Planning Advice Note 3/2010: Community Engagement do endorse and support the use of mediation as an engagement tool. Therefore, the aim of this guidance on mediation is to promote the use mediation as a consultation and engagement tool as

part of the wider planning reform. It is hoped that the use of mediation in planning matters will help reduce conflict, improve community engagement and build public trust through positive working relationship within the early stages of the Planning Process.

- 2.3 For the purpose of this guidance “mediation” is defined as any means of exploring, resolving or reducing disagreement between persons involving an impartial person that the Scottish Ministers consider appropriate.
- 2.4 Mediation can take the role of Informal and Formal Mediation. Informal Mediation would see planners and other relevant stakeholders taking a mediation facilitation style approach in appropriate situations. Formal Mediation opportunities (referred to as ‘mediation’ in the guidance) would be carried out by trained and experienced mediators when it is considered necessary.
- 2.5 Mediation will remain a voluntary process between two parties and facilitated by a third/independent party. This third party may in some instances be the Local Authority, particularly when informal mediation is considered the most appropriate course of action. There will however be no legislative requirement to use mediation. Notwithstanding the above Scottish Ministers expect that Planning Authorities will have regard to any requests to utilise mediation as an engagement tool when preparing its participation statement.
- 2.6 It is advised that mediation takes place as early as possible in the planning process.

Within Development Planning:

The guidance suggests that mediation is one of the techniques outlined that Planning Authorities may use for consultation and engagement with stakeholder and the public. An example may be mediation is used if necessary, with communities and developers during the draft plan consultation when deciding on the allocation of sites. The guidance expects Planning Authorities to have regard to any requests made by the public for mediation. Any such scope for the use of mediation should be set out in the Planning Authority’s participation statement and Development Plan Scheme.

Within Development Management:

The guidance states that mediation is a tool available to developers and the community during the pre-application consultation and the Proposal of Application Notices period prior to the submission of a planning application. The aim of using mediation at this stage of the process is to encourage engagement and resolve issues prior to a planning application being submitted to the Planning Authority. It is hoped that this will help reduce tensions and representations through the two parties resolving any issues before a decision is taken on the development. However, the guidance does state that any additional consultation requirements as a result of this guidance and mediation should be proportionate, specific and reasonable in the circumstances.

The above it not exhaustive of when mediation can be used in Planning, but these are the areas considered to be of most benefit i.e. as early engagement in the planning process. The guidance states mediation can be used in other areas where appropriate.

3. Proposals

- 3.1 It is recommended that the Planning Committee notes the detail of the consultation on the proposed guidance on Mediation in the Planning System and approves the response to the consultation as set out at Appendix 1.

4. Implications/Socio-economic Duty

Financial

- 4.1 The Scottish Government (SG) has not assessed the cost of mediation in the planning process. Whilst there may be a cost to the Council for third parties, the Scottish Government anticipate that by reducing the number of unresolved issues received prior to a Development Plan Examination, using mediation, the Examination costs to Local Authorities should in turn reduce. The Scottish Government see a similar approach for the planning application process as mediation may reduce the number of representations received when the application is being determined by the Planning Authority.

There is however no evidence to support these views. There is an expectation that mediation will reduce conflict and build trust in the planning process, making the decision making more streamlined and open, and in turn bring savings to the planning process.

Human Resources

- 4.2 Mediation by Officers would be addressed within existing staff resources.

Legal

- 4.3 The guidance on the Promotion and Use of mediation in the Planning System is issued under powers contained within Section 268A of the Town and Country Planning (Scotland) Act 1997, as amended.

Equality/Socio-economic

- 4.4 Scottish Government has considered the requirements for statutory impact assessments, including by screening the proposals in relation to the criteria for Strategic Environmental Assessment, Equalities Impact Assessment, and Children's Rights and Wellbeing Impact Assessment and consider, at this stage, that a fuller assessment is not required given the procedural and technical nature of the proposals.

Environmental and Sustainability

- 4.5 As above.

Key Priorities

- 4.6 Active and strong communities is a key priority of the Council, as set out in the Council Plan. This will be achieved by building stronger relationships between the Council, communities and partners. The forthcoming guidance on Mediation in the Planning System will assist in building strong and active communities by providing a tool for effective engagement which will help address local priorities and increase local decision making.

Community Wealth Building

- 4.7 The guidance will assist local communities, the Local Authority and developers to facilitate fair and open engagement, discussion and decision making on the future of land within North Ayrshire. This guidance will therefore assist in achieving our CWB pillar of Land and Assets to help support fair and equitable land development for businesses and the community.

5. Consultation

- 5.1 None

RUSSELL McCUTCHEON
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For further information please contact **Joanna Glacken, Planning Officer** on joannaglacken@north-ayrshire.gov.uk.

Background Papers

Consultation Paper: Scottish Government: Guidance on the Promotion and Use of Mediation in the Scottish Planning System: December 2020

[Planning system - promotion and mediation: draft guidance - consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/consultations/draft-guidance/consultation-2020-01-20-01/pages/1-10.aspx)

Appendix 1

North Ayrshire Council's Response to the Scottish Government Consultation Paper on Guidance for the Promotion and Use of Mediation in the Scottish Planning System

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

Yes. We agree guidance should cover Development Planning Schemes, the Gate check and Development Plan Examinations. However, mediation could also be best used in the period between consulting on the Draft Plan and before publishing the Proposed Plan. This would allow any unresolved matters to be discussed, and hopefully resolved, before publishing the proposed plan. It is after this stage that the benefit of mediation would be greatest as less unresolved matters would be outstanding at the Development Plan Examination stage making the examination process more timely, efficient and less resource intensive. This would also allow an opportunity for open discussion on outstanding matters

whilst allowing changes to be made to the draft plan before the settled view of the Local Authority is reached when publishing the Proposed Plan. We also agree that the guidance should outline that mediation is a tool available within the Development Plan Scheme.

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

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

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

The setting out of timeframes for the mediation process would allow the Local Authority to properly project manage the LDP process to align with the Development Plan Scheme and also to allow us to notify the Scottish Government of when we intend to submit the LDP for examination an examination. If mediation can be requested at very late stages of the Planning Process, there may be unnecessary delays to the LDP and planning application process.

In relation to enforcement, it is the role of the planning authority to determine if a planning breach has taken place and if it is in the public interest to take enforcement action on the development. In these circumstances there would be no scope for formal mediation. Informal mediation is used currently between the developer and the Planning Authority to resolve issues before proceeding to any formal enforcement action. Mediation would still be open to parties to resolve an issue where the Planning Authority determines not pursue action

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

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

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.

Formal mediation has not been used by Planning Services to date.

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?

Yes, Development Plan Schemes should reference that mediation is one of the tools available that can be used if required to engage stakeholders.

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?

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

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

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

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?

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

As stated in Q1 there is a potential that if mediation was to take place after the publication of the proposed plan that this could cause untimely delays to the submission of the Plan for Examination, with a potential for the plan not being up to date. At this stage it would be more practical to allow an independent review through the Examination Process.

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?

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

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

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?

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

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

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

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

No Comment.

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

No.

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.

No Comment.

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

Not applicable