



Law Society  
of Scotland

# Consultation response

## Local Place Plan Regulations consultation

June 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Planning Law Sub-committee, with input from our Equalities Law and Mental Health & Disability Sub-committees, welcomes the opportunity to respond to the Scottish Government's consultation on *Local Place Plan Regulations*<sup>1</sup> (LPPs).

## General comments

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### Guidance for community bodies

We consider that clear guidance is needed to support community bodies in the preparation of LPPs.

We note that the *Local place plans – 'How to' Guide: literature review and final report*<sup>2</sup> recommends a number of characteristics that should be incorporated into formal guidance. This includes that "local place plans must, if they are to be registered by your local authority, comply with legal requirements"<sup>3</sup>. As well as the direct legal requirements for the registration of LPPs, it is important for guidance to recognise that planning authorities have certain duties within the existing legal framework with which they will need to comply in the preparation of a local development plan (LDP).

LPPs will need to be robust in order to perform a meaningful role in the planning system. In order for an LPP to be of greatest value when a planning authority is preparing the LDP, it will be appropriate for an LPP to comply with existing legal standards, for example those under the Climate Change (Scotland) Act 2009 and the Equality Act 2010.

One of the features of LPPs is that they may be restrictive in content, covering what a community does not wish to see. It is important that there are checks and balances on this due to the potential for wider implications. It is important that there is clarity as to what community bodies can expect to achieve in an LPP. There may be practical considerations – for example, how can the aspirations of the community body be aligned with priorities for the planning authority such as net-zero or affordable housing targets? This needs clear guidance to be in place, setting out what can and cannot be done, particularly in relation to integration of

<sup>1</sup> <https://consult.gov.scot/local-government-and-communities/local-place-plan-regulations/>

<sup>2</sup> Local place plans – 'How to' Guide: literature review and final report <https://www.gov.scot/publications/local-place-plans-guide-literature-review-final-report/>

<sup>3</sup> Local place plans – 'How to' Guide: literature review and final report, page 6

an LPP with the LDP and NPF. We suggest that an appropriate focus for LPPs is to be on long-term public interest and sustainable development, drawing upon the local knowledge of the community body.

It should be borne in mind that this process is to allow community members who are not legal or planning specialists to prepare a proposal as to the development and use of land. Significant barriers to understanding could exist in simple issues such as the naming protocols, for example, Locality Plan vs Local Place Plan. It is essential that guidance is easy-read and materials are developed to ensure everyone in a community can understand the regulatory position. This is especially important for those who have learning disabilities or those whose first language is not English.

There is a question as to where communities can turn to for guidance in relation to such matters, particularly given the potential complexities involved. It may be that local authorities could act as some kind of gatekeeper, for example, by way of an advisory unit or providing guidance for communities. Inevitably any such guidance would be high level. There are a number of considerations in this regard:

- There would be resourcing requirements for planning authorities in order to provide any support or guidance to communities,
- There is the potential for difficulties for planning officers if they are providing advice on an LPP which conflicts, or has the potential to conflict, with the LDP,
- There may be tensions associated with the role for planning authorities in supporting communities to prepare LPPs, however, there may be benefits in being involved in supporting a community to shape an LPP appropriately from an early stage,
- It will be important for guidance to be kept under review as arrangements for LPPs are implemented and bed-down. For example, there will be a need for local authorities to proactively make relevant community bodies (including those representing disabled people) aware of the opportunity to prepare a LPP under section 15A of the Town and Country Planning (Scotland) Act 1997 and make them aware of the guidance for doing so.

It is also important to recognise that some communities will require greater resource and stimulus than others in order to prepare an LPP. This is likely to be particularly relevant in the context of socio-economic factors, where some communities may have greater direct access to free or low-cost expert resource within their immediate community than others. The requirements on community bodies should not be so onerous as to deter participation. We consider that this broadly favours a 'regulation-light' approach to LPPs with strong supporting guidance to empower communities to prepare an LPP.

## Consultation response

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### **1. Do you agree with the proposal that community bodies should have regard to any Locality Plan that is in place for the area under consideration when preparing their Local Place Plan?**

Yes, we agree that community bodies should have regard to any Locality Plan which exists in their area. We note that Locality Plans are generally project-based plans. In the event that a Locality Plan is not already in place for the relevant areas, it may be that aspects of the usual contents of a Locality Plan could be incorporated into an LPP, for example, local projects.

### **2. Do you consider that community bodies should have to have regard to other additional matters beyond the Locality Plan when preparing their Local Place Plan?**

We support a similar approach being taken to Local Outcomes Improvement Plans as to Locality Plans.

### **3. Do you agree with the proposal that an LPP should contain a statement setting out the community's proposals plus a map of the area, setting out the LPP boundary?**

Yes, we agree. We consider that it would also be appropriate for an LPP to contain a statement setting out how the community body has had regard to the NPF and LDP in preparing the LPP.

### **4. Do you think a requirement for the community body to engage and seek the views of people to assist in the preparation of an LPP should be set out in law?**

Yes, we agree.

It is important that the process of engagement includes all aspects of society. It is not a task that the community body should take lightly and is an integral part of the legitimacy of an LPP.

The consultation document highlights in paragraph 10 that “we also understand that language barriers, lack of confidence and dominant characters can discriminate against some people during community engagement; specifically women, minority ethnic groups, young and old people and people with disabilities.” While many community bodies will be well intended, bias is likely to exist. There is a danger that community groups could prepare LPPs that oppose, rather than include, the needs and views of marginalised groups.

It is important that all members of the community have an opportunity to engage and provide views to assist in the preparation of an LPP. This includes individual disabled people, and minority ethnic groups including Scottish Gypsy travellers, and the representative groups and organisations which are more likely to know and understand particular circumstances and needs of disabled people, minority ethnic people in their area and individuals whose own views and experience might be relevant. Steps should be taken to facilitate engagement with organisations for disabled people, organisations of disabled people, and with individual disabled people and similar groups for minority ethnic people as well as individuals who may not be members of such organisations but are likely to have relevant views. Community bodies should be required to indicate

what steps have been taken to engage with disabled people and minority ethnic people and how issues raised were considered by the community body. Guidance should be provided to community bodies which highlights the importance of ensuring that engagement takes place in a way that is fully accessible and supports participation. The full range and diversity of disabilities should be recognised, both in ways to notify disabled people and to support them in expressing their views. Similarly, for minority ethnic people, the diversity of communities should be recognised and their specific needs and support required for each to engage and express their views should be considered. The resource implications of such engagement should be recognised and supported.

Local authorities are under various statutory duties to consult with members of the community, including disabled people and others such as minority ethnic people, when discharging their statutory functions. It should be made clear that such duties continue to apply where local authorities are preparing an LDP, notwithstanding any consultation which may have been carried out by community bodies in the course of the preparation of an LPP

We note that community engagement and empowerment during the course of preparing an LPP may be a necessary step for community bodies that are seeking to secure external funding to support or enable delivery of their plans.

## **5. If a requirement to seek the views of people is put into law, what should any minimum requirement be?**

We support a minimum requirement on community bodies to consult on a draft LPP, including with the public at large, with relevant landowners and with statutory consultees. We consider that it would be of assistance if national guidance set out a list of bodies/groups with whom it would be appropriate for community bodies to consult.

We suggest that the requirements for consultation should be broadly in line with the pre-application consultation requirements which developers require to follow in line with The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021, that being the requirement for at least two public events to be held, evidence as to how consultation was carried out, and a report containing responses and views from consultees and an explanation of how the community body took account of views raised during the consultation process.

## **6. Do you agree with the proposal that there should be a minimum statutory requirement on the community body to consult the community once a draft LPP has been prepared and before submitting an LPP?**

We consider it appropriate that there is a such a minimum requirement for consultation. It is important that there is an opportunity for a community to scrutinise and comment on a draft LPP. It may be that the community do not fully engage in the early stages of consultation and only do so once proposals have been formulated.

That said, as noted above, it is important that consultation processes do not become over-burdensome for community bodies so as to deter them from preparing an LPP.

### **7. If a requirement to consult across the community on the content of a draft LPP is to be put into law, what should any minimum requirement be?**

We consider that at the least, the draft LPP should be publicly accessible, for example on a website and be available for inspection along with supporting documents. In the interests of accessibility, we consider it is appropriate for a minimum requirement of at least one public advert that is non-digital. We favour a minimum period for consultation being set, for example, a minimum of 6 weeks with the draft being placed on 'deposit' during this time.

It may be of assistance for a standard style of advert to be prepared either nationally or at local level in order to assist community bodies. We recognise that care is required around minimum requirements for advertising so as not to make the process overburdensome for community bodies. The potential challenges around advertising are reflective of need for communities to have support (both technical and financial) to produce an LPP.

### **8. Do you agree with the proposal that the community body should seek the views of ward councillors when preparing the LPP?**

We are concerned about this possible requirement and note a potential for conflict for ward councillors who are involved in giving views on a proposed or prepared LPP and then will be considering an LDP for approval at later stage. An LDP may or may not incorporate the relevant LPP.

### **9. Do you agree that, alongside the LPP itself, the community body should submit a statement on how it has complied with the legal requirements?**

Yes, we agree.

### **10. Do you agree the requirements planning authorities have to keep the register of local place plans should be aligned to the existing arrangements for registers?**

We broadly support similar provisions for the register of LPPs as the existing arrangements for registers. That said, planning applications themselves are not always easily located or prominent on planning authority websites and therefore we consider it would be most appropriate for LPPs to be available on planning authority websites alongside the LDP and link to the NPF.

### **11. Do you agree that the additional information provided by the community body alongside the LPP should be kept on the register of local place plans?**

We agree that the additional information required by law should be kept on the register. This is likely to provide greatest transparency for those seeking to access information related to the LPP.

## **12. Please provide your views on the level and content of information to be placed on the register.**

We consider that the LPP itself and a statement of conformity should be placed on the register. We do not think it necessary for the suite of background documents to be displayed as that may lead to confusion particularly as there may be many LPPs on display on the register.

## **13. Do you agree with the proposal that a planning authority may remove an LPP from the register once it has been taken into account in the LDP, and must do so when requested by the community body that prepared it?**

This question gives rise to a number of assumptions in regard to the existence of an LPP in its own right as a material consideration, its life span and its potential absorption into an LDP. We note that under Schedule 19 of the Town and Country Planning (Scotland) Act 1997 as amended, Scottish Ministers may by regulations make provision about when a planning authority may, or must, remove an LPP from their register, causing it to cease to be a registered LPP.

We are having some difficulty in identifying when such a power to remove an LPP would be exercised and what the consequences of that may be. While the absorption of an LPP into an LDP may be a desirable outcome, it is unlikely that an LPP will be repeated fully and *de plano* into an LDP. There may be disagreements about whether an LPP has been incorporated fully into an LDP and this has the potential to create tensions between the community body and planning authority concerned. In order to minimise this tension and the possible frustrations of a form of appeal process to arbitrate on this, it is sensible for the LPP to exist in its own right as a material consideration.

We note that the removal of an LPP from the register removes the means by which local communities may validate that the material they have spent time collecting has been included in the LDP.

An LPP is dependent on the LPP being on the register. However, it would be useful to clarify in what circumstances Scottish Government understands an LPP will be brought to an end or should be reviewed or replaced. This could mean that an LPP would be a material consideration for multiple LDP cycles in the future, albeit perhaps with reducing weight, if not removed from the register. It therefore may be considered appropriate for Scottish Government to specify the lifespan of LPPs.

## **14. Do you agree the requirements planning authorities have for making the map of local place plans available should be aligned to the existing arrangements for registers?**

Yes, we agree, subject to our comments at Question 10 above.

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

No comment.

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

We note that the partial Equality Impact Assessment (EIA) focuses on physical barriers and accessibility to engaging in the process. We recommend that the EIA is expanded to consider other barriers which may exist for specific groups and communities. It is noted that some groups and communities may encounter attitudinal barriers in that they may not have an understanding of or confidence that planning issues in their local area are issues for them to become involved in.

Further, it is noted that equalities groups may experience challenges in accessing this consultation as some of the language is complex and technical. Our comments in the General Comments section about using clear and easily read language for the consultation process for LPPs are relevant here.

It would be helpful for the Equality Impact Assessment to include data on the make-up and diversity of the community groups and councils that are likely to develop LPPs.

## **17. Please give us your views on the Fairer Scotland Duty and Strategic Environmental Assessment screening documents and our conclusion that full assessments are not required.**

No comment.

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

No comment

**For further information, please contact:**

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