

FAIRER SCOTLAND DUTY

ASSESSMENT NOT REQUIRED DECLARATION

Policy title	Guidance on the promotion and use of mediation
Directorate: Division: team	Directorate for Local Government and Communities Planning and Architecture Division
Policy lead responsible for taking the decision	Graham Robinson

Rationale for decision
<p>The Fairer Scotland Duty applies to 'decisions of a strategic nature' – these are the key, high-level choices or plans that the Scottish Government makes. The duty normally applies to new strategies, action plans, strategic delivery decisions about setting priorities and/or allocating resources, major new policy proposals, and preparing new legislation.</p> <p>Having considered the Fairer Scotland Duty Interim Guidance, I confirm that the guidance on mediation does not constitute a strategic decision and therefore an assessment is not required.</p>

I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:

Name and job title of Deputy Director (or equivalent)	Date authorisation given
John McNairney, Chief Planner	03/12/2020

ISLAND COMMUNITIES IMPACT ASSESSMENT – SCREENING

GUIDANCE ON THE PROMOTION AND USE OF MEDIATION

Introduction

1. This screening assessment relates to draft guidance on the promotion and use of mediation in the Scottish planning system. The requirement to prepare guidance was introduced in the Planning (Scotland) Act 2019.
2. This document seeks to identify whether there are issues which merit further exploration through an Islands Communities Impact Assessment (ICIA). If significant issues are identified, a full ICIA will be carried out.
3. The background to mediation and what has led to those proposals is set out in the accompanying consultation paper.

The Islands (Scotland) Act 2018 (the 2018 Act)

4. The Islands (Scotland) Act 2018 provides for a duty on the Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation.
5. The 2018 Act lists the following areas that are relevant considerations for islands and islands communities:
 - Depopulation
 - Economic development
 - Environmental protection
 - Health and wellbeing
 - Community empowerment
 - Transport
 - Digital connectivity
 - Fuel poverty
 - Land management
 - Biodiversity
6. The planning system has a role to play in the development and use of land in the long term public interest, including the future development of communities, and so may have a relevance to each of the considerations listed above.

Implications of Proposed Changes for Island Communities

Framing

7. Desk top analysis was undertaken of the evidence gathered for the development of the Planning Bill, including the equality impact assessment¹

¹ <https://www.gov.scot/publications/planning-bill---post-stage-2-equality-impact-assessment/>

and ICIA², plus the integrated impact assessment accompanying the early engagement³ on National Planning Framework 4. Additional information was drawn from the screening ICIA⁴ on changes to pre-application consultation requirements and a report prepared by Scottish Mediation / PAS⁵ containing proposals for the scope of mediation.

8. Key data from the analysis included:

Population demographics: NRS Scotland Mid-Year Population Estimates Scotland, Mid-2019 (2020)⁶ indicate that Na h-Eileanan Siar and the Orkney Islands are among the local authority areas with an older population in Scotland, with Shetland closer to the overall figures for Scotland. The Transport and Travel in Scotland Results from the Scottish Household Survey 2018 (2019)⁷ indicates in turn that older people were less likely to have travelled the previous day. Only 51 per cent of those aged 80 and over had travelled the previous day and 65 per cent of those aged 70 to 79.

That survey also identified a variation in mode of travel by age. The older age group were more likely to catch a bus than younger children (33% compared to 9%), which may indicate older populations are more reliant on public transport.

Settlements data: National Records of Scotland (NRS) - Population Estimates for Settlements and Localities in Scotland, Mid-2016 (2018)⁸ states that:

“The council areas with the lowest proportion of people living in a settlement⁹ are Na h-Eileanan Siar (30%) and Shetland Islands (38%). Many communities in these islands are sparser than those in the rest of Scotland, due to crofting and other factors, and so do not fulfil the density requirements needed to be counted as a settlement.”

Internet use: is less in older age groups than younger, and that there is a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland. (see Appendix A)

² <https://www.gov.scot/publications/planning-bill---post-stage-2-island-communities-impact-assessment/>

³ <https://www.transformingplanning.scot/national-planning-framework/resources/> (under impact assessment tab)

⁴ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/> (Annex D)

⁵ Paper to accompany consultation

⁶ <https://www.nrscotland.gov.uk/files/statistics/population-estimates/mid-19/mid-year-pop-est-19-report.pdf> - Figure 13, page 26

⁷ <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-results-from-the-scottish-household-survey-1/>

⁸ <https://www.nrscotland.gov.uk/files/statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

⁹ A settlement is defined to be a group of high density postcodes whose combined population rounds to 500 people or more. They are separated by low density postcodes

Numbers of planning applications for major applications: Appendix B indicates the location of applications for major development in the different planning authority areas of Scotland. It indicates that the three island authorities are amongst those with the lowest number of such applications. Information for Highland Council, Argyll and Bute Council and North Ayrshire Council is not broken down to allow their island areas to be considered separately.

9. This section considers the potential for differential impacts on island communities of each element of the draft guidance. The two specific areas covered by the draft guidance are:

Development Planning – Development Plan Schemes and Development Plan Examinations

Development Management – procedures around pre-application consultation

Development Planning

10. All of the relevant local authorities (Comhairle nan Eilean Siar, Highland Council, Shetland Islands Council, Orkney Islands Council, Argyll & Bute Council and North Ayrshire Council) are covered by local development plans prepared under the provisions contained in the amended Town and Country Planning (Scotland) Act 1997.
11. Proposals in the draft guidance would provide Scottish Government guidance and require local authorities to consider the potential use of mediation between parties when developing the participation statement element of their Development Plan Scheme. These Schemes are prepared on an annual basis with the participation statement element setting when consultation is likely to take place on the LDP, with whom and of its likely form and of the steps to be taken to involve the public at large in the stages of preparation or review.
12. Proposals in the draft guidance would provide for planning authorities to consider the use of mediation in resolving issues in advance of any development plan examination.

Development management

13. Elements of the draft guidance relating to development management focus on pre-application consultation between the prospective developers of national and major developments and communities. National developments are set out in the National Planning Framework whilst the range and scale of major developments are set out in the planning hierarchy. These include developments relating to housing, renewable energy and retail developments.
14. It is noted that even though the numbers of applications to which PAC applies (see Appendix B) is relatively low in the islands, on an individual basis, the significance of individual cases may as a result be greater.

Potential issues and mitigation

15. The main potential issue for communities is having access to any mediation event proposed by the developer or local authority. This may be similar to communities and the public having access to other public events, such as those organised under PAC requirements.
16. One can anticipate that in locations with more scattered and / or older communities, where convenient locations for such events may be limited, or transport connections are more limited, there may be difficulties in interested members of the public attending such events.
17. The Scottish Mediation / PAS paper asked about the scope for online mediation. Just under 90% of respondents agreed / strongly agreed that online mediation may be an option in appropriate circumstances.
18. There is also evidence that given a more scattered and older population and the availability of, and reliance upon, public transport, may mean island populations may be less able to attend mediation events, or that it is more difficult and costly to do so. However, it is hard to make any conclusion as to the significance of any such challenges compared to other more remote parts of mainland Scotland, where populations may also be more scattered, older and where access to public transport at least may be more difficult compared to larger urban areas.
19. During the COVID-19 emergency, the requirement for a physical public event as part of PAC has been suspended. Guidance indicates online measures for engagement which should be used instead. An evaluation of such measures has yet to be undertaken.
20. We do not plan to require mediation is undertaken face to face, but will note that there is an opportunity for mediation to be undertaken under appropriate circumstances particular to a local area.
21. This would not necessarily be a total solution for island communities. Whilst setting out the way to try to close the gap in digital connectivity, The National Plan for Scotland's Islands (2019)¹⁰, does indicate a gap between premises in the islands able to access superfast and fibre broadband when compared to premises in other parts of rural Scotland – See Appendix A. Also, in their response to the 'Call for Ideas' on the Scottish Government's National Planning Framework 4 (NPF4), Orkney Islands Council indicated "the islands still experience some of the poorest broadband and mobile phone connectivity speeds in the UK. Improved digital connectivity and investment in digital infrastructure to ensure equal coverage across Scotland should remain as a key objective in NPF4"¹¹.

¹⁰ <https://www.gov.scot/publications/national-plan-scotlands-islands/>

¹¹ <https://www.transformingplanning.scot/media/1692/305-orkney-islands-council.pdf> - paragraph 1.20

22. In addition, above we indicated that Na h-Eileanan Siar and the Orkney Islands have a higher proportion of older people in their population, and that older people are less likely or able to travel. The Scottish Household Survey 2020¹² refers to a clear relationship between age and use of internet, with lower rates of internet use among older adults. In 2019, nearly 100 per cent of adults aged 16 to 24 reported using the internet compared to 43 per cent of those aged 75 and over. This gap is, however, narrowing.

Conclusion

23. It seems likely that Island communities would welcome the opportunities provided by guidance on the promotion and use of mediation. There may be some issues around ability to attend face-to-face events, given the specific nature of island communities, such as the potential need to travel between islands. With the information we have identified at this stage, the significance of these issues, as distinct from those in other remote parts of mainland Scotland, is difficult to gauge.

24. Our conclusion at this stage is that there does not seem to be significant implications from the proposed guidance for Island Communities specifically. However, as the scope of the engagement undertaken to date is relatively small, we are keen to carry out further engagement to ensure any issues are fully addressed, and any necessary mitigating measures can be considered. Therefore, the consultation paper seeks views on this screening assessment and conclusions and for any additional data or information.

Planning and Architecture Division
Scottish Government
November 2020

¹² <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/pages/8/>

**APPENDIX A – NUMBERS OF APPLICATIONS FOR MAJOR DEVELOPMENT
DETERMINED BY YEAR AND BY PLANNING AUTHORITY AREA**

	2018/19	2017/18	2016/17
Aberdeen City	16	14	19
Aberdeenshire	18	15	22
Angus	3	4	8
Argyll and Bute	7	5	10
Cairngorms National Park	0	0	3
Clackmannanshire	1	1	0
Dumfries and Galloway	15	11	7
Dundee City	4	7	10
East Ayrshire	6	8	6
East Dunbartonshire	2	4	3
East Lothian	12	13	9
East Renfrewshire	1	7	3
City of Edinburgh	26	26	34
Falkirk	10	6	7
Fife	15	26	20
Glasgow City	39	53	37
Highland	27	17	26
Inverclyde	3	2	1
Loch Lomond and The Trossachs National Park	1	0	1
Midlothian	6	7	6
Moray	9	8	4
Na h-Eileanan Siar	1	1	1
North Ayrshire	6	7	7
North Lanarkshire	16	20	22
Orkney Islands	2	0	0
Perth and Kinross	15	10	14
Renfrewshire	8	3	12
Scottish Borders	6	10	7
Shetland Islands	1	1	1
South Ayrshire	11	12	3
South Lanarkshire	20	15	18
Stirling	5	9	6
West Dunbartonshire	4	4	6
West Lothian	9	5	8
SCOTLAND	325	331	341

APPENDIX B - THE NATIONAL PLAN FOR SCOTLAND'S ISLANDS (2019) - DIGITAL CONNECTIVITY

Percentage of premises with access to broadband

Local Authority	Percentage of premises with access to superfast broadband (2014)	Percentage of premises with access to superfast broadband (2019)	Percentage of premises with access to fibre broadband (2014)	Percentage of premises with access to fibre broadband (2019)
Orkney ¹	11.1	65.7	12.0	82.5
Shetland ²	28.9	74.2	35.1	86.3
Comhairle nan Eilean Siar	1.3	76.5	1.6	89.8
Argyll & Bute	0.9	83.3	0.9	92.5
Highland	20.3	80.1	21.8	93.6
North Ayrshire	40.9	96.3	43.3	99.3

1. Data only available from December 2014.

2. Data only available from September 2014.

Partial Business and Regulatory Impact Assessment

GUIDANCE ON THE PROMOTION AND USE OF MEDIATION IN THE SCOTTISH PLANNING SYSTEM

Purpose and intended effect

Background

1. Business and Regulatory Impact Assessments (BRIAs) look at the likely costs, benefits and risks of any proposed primary or secondary legislation. They also cover voluntary regulation, codes of practice, guidance, or policy changes that may have an impact on the public, private or third sector.
2. This consultation paper relates to the introduction of guidance on the promotion and use of mediation in the Scottish planning system.
3. The draft guidance is part of a wider package of measures to improve community engagement in planning matters, building public trust arising from the Planning (Scotland) Act 2019¹. These include: changes in community engagement in local development plans; the introduction of Local Place Plans; and amendments to legislation around pre-application consultation.

Current Requirements for Mediation in Planning

4. There is currently no legislative requirement for the use of mediation in the Scottish planning system.
5. A guide² on mediation in planning in Scotland, commissioned by the Scottish Government and produced by Core Solutions, was published in 2009. The purpose of the guide was to help those involved in the planning system in Scotland better understand how mediation could be used to enhance the planning process. The use of mediation was also endorsed in Planning Advice Note 3/2010: Community Engagement.³ It recognises that mediation can be used to help to build bridges between stakeholders and resolve issues of dispute with the aim that the various parties understand each other and try to reach an agreement that everyone can live with.

Objective

6. The intention of the guidance is to support one of the overarching themes of the review of planning – collaboration over conflict. The focus of the draft guidance is on front-loading the potential use of mediation, and other similar facilitatory techniques, in the planning system.

¹ <https://www.legislation.gov.uk/asp/2019/13/contents/enacted>

² <https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/pages/1/>

³ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2010/08/pan-3-2010-community-engagement/documents/pan-3-2010-pdf/pan-3-2010-pdf/govscot%3Adocument/pan%2B3%2B2010.pdf>

Rationale for Government Intervention

7. Section 40⁴ of the 2019 Act inserts section 268A into the Town and Country Planning (Scotland) Act 1997. It states that Scottish Ministers may issue guidance on the promotion and use of mediation in the Scottish planning system. It also requires that Ministers must issue such guidance within the period of two years beginning with the date on which the 2019 Act received Royal Assent, namely by 25 July 2021.
8. National Performance Framework - These measures contribute to the following performance indicators:
 - We live in communities that are inclusive, empowered, resilient, and safe.
 - We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
 - We value enjoy and protect and enhance our environment.

Consultation

• Within Government

9. The responsibility for these issues lies mainly with Planning and Architecture Division (PAD). Additionally PAD has engaged with Civil Justice colleagues responsible for Alternate Dispute Resolution, and the Directorate for Planning and Environmental Appeals.

• Public Consultation

10. The independent review of planning reported in May 2016, Empowering planning to create great places⁵ considered the role of mediation, primarily in development planning. This led to a question in Places, People and Planning⁶ asking if consultees considered that professional mediation support the process of allocating land. The analysis of responses⁷ noted that there was not overwhelming support for the use of mediation with 63% of civil society and 63% of business sector respondents supported the use of professional

⁴ Section 40 <https://www.legislation.gov.uk/asp/2019/13/section/40/enacted>

⁵ Empowering planning to deliver great places (2016)
<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf>

⁶ Places, People and Planning (2017)
<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/01/places-people-planning-consultation-future-scottish-planning-system/documents/00512753-pdf/00512753-pdf/govscot%3Adocument/00512753.pdf>

⁷ Planning Review: Analysis of consultation response (2017)
<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june-2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses-pdf/govscot%3Adocument/Planning%2BReview%2Banalysis%2Bof%2Bconsultation%2Bresponses.pdf>

mediation in the process of allocation land. 53% of policy and planning and 61% of development industry respondents disagreed with the use of professional mediation in the process of allocation land.

11. The guidance is based on proposals submitted by Scottish Mediation / PAS. The paper is enclosed in the supporting documents. The Scottish Government supported Scottish Mediation / PAS in preparing the proposals. The proposals were based in part on an online survey which generated between 50 - 124 responses on a range of questions. Respondents came from a variety of backgrounds:

- Individual / Community Group (33%)
- Planner (27%)
- Mediators (16%)
- Other (9%)
- Third Sector / Non-Profit (7%)
- Public Body / Agency (6%)
- Developers (2%)

12. There will be a further public consultation from December 2020 on the draft guidance.

- **Business**

13. The independent review of planning's report, Empowering planning to create great places⁸ considered the role of mediation, primarily in development planning. This led to a question in Places, People and Planning⁹ asking if consultees considered that professional mediation could support the process of allocating land at the Development Plan Examination. In addition, at the proposed Gatecheck stage, it noted that, if necessary and appropriate, consideration could be given to using professional mediation to further resolve any issues arising at this stage. The analysis of responses¹⁰ noted that there was not overwhelming support for the use of mediation with 63% of civil society and 63% of business sector respondents supported the use of professional mediation in the process of land allocation. Whereas 53% of policy and

⁸ Empowering planning to deliver great places (2016)

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/05/empowering-planning-to-deliver-great-places/documents/empowering-planning-deliver-great-places-31-2016-pdf/empowering-planning-deliver-great-places-31-2016-pdf/govscot%3Adocument/Empowering%2BPlanning%2Bto%2BDeliver%2BGreat%2BPlaces%252C%2B31%2BMay%2B2016.pdf>

⁹ Places, People and Planning (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2017/01/places-people-planning-consultation-future-scottish-planning-system/documents/00512753-pdf/00512753-pdf/govscot%3Adocument/00512753.pdf>

¹⁰ Planning Review: Analysis of consultation response (2017)

<https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2017/06/planning-review-analysis-of-consultation-responses-june-2017/documents/planning-review-analysis-consultation-responses-pdf/planning-review-analysis-consultation-responses-pdf/govscot%3Adocument/Planning%2BReview%2Banalysis%2Bof%2Bconsultation%2Bresponses.pdf>

planning and 61% of development industry respondents disagreed with the use of professional mediation in the process of allocation land.

14. As noted above, the Scottish Government supported Scottish Mediation / PAS in preparing the proposals. There was a relatively low response from developers (2% of respondents).

15. Further discussions with a number of specific companies will be conducted during the public consultation to get a firmer idea of the potential impacts on business of the guidance.

Options

16. This section looks at each of the measures and the options for each. For each proposal we have identified the same initial option.

Option 1 Do nothing.

17. The Scottish Ministers are required to prepare and consult on guidance under Section 268A of the amended 1997 Act within two years of the coming into force of the Act. There is therefore a legislative imperative to act.

Guidance on the use of mediation in development plan schemes

Option 2 Promote the use of mediation in Scottish Government guidance

18. We consider there is scope for the Scottish Government to supplement its guidance on the contents of planning authority development plan schemes in order to encourage the use of mediation in the development plan system, the Scottish Government is proposing to amend its guidance to planning authorities to make specific reference to mediation as one of the range of techniques and activities for consulting stakeholders.

Guidance on the use of mediation in development plan schemes

Option 2 Promote the use of mediation in local authority participation statements

19. The aim of the guidance is to encourage planning authorities to consider using mediation as one of the methods it uses when setting out its plans to consult on its local development plan. The Government is proposing that planning authorities consider and set out, in light of the local circumstances, the role that both informal mediation and mediation may have to play in its engagement strategy as set out in the participation statement. As the DPS is refreshed annually, there is scope for the potential role of both informal mediation and mediation to change over the course of the period of plan preparation.

Guidance on the use of mediation in advance of development plan examinations

Option 2 Promote the use of mediation in Scottish Government guidance

20. We have considered that there is scope for the Scottish Government to supplement its guidance to planning authorities in advance of the Development Plan Examination. Planning authorities should look to resolve differences and build support for proposals through discussion and negotiation, and where possible prior to the publication of the proposed plan.

Guidance on the use of mediation in proposal of application notices

Option 2

21. The Scottish Government is to amend guidance on additional consultation activity at PAC to encourage parties to consider both informal mediation and mediation as methods to resolve any disputes / conflicts at this stage of the planning process. The Government is supporting prospective applicants to consider what scope there may be for the use of mediation in advance of submitting a PAN.

Guidance on the use of mediation in pre-application consultation

Option 2

22. The Scottish Government is to amend guidance on additional consultation activity at PAC to encourage parties to consider both informal mediation and mediation as methods to resolve any disputes / conflicts at this stage of the planning process.

Sectors and groups affected

Communities

23. There will be an opportunity for communities to further engage constructively in the planning of the areas they live and work. With the voluntary nature of mediation, it will be for communities themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Developers

24. For developers, the proposed guidance will impact upon prospective applicants for major and national developments in that they will be asked to consider mediation as part of their engagement strategy under PAC. For developers or representative bodies who make representations on the proposed plan, the guidance will encourage the use of mediation as a method of dealing with unresolved matters in advance of the LDP examination.

25. With the voluntary nature of mediation, it will be for developers themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Mediators

26. The guidance will promote mediation through the assistance of an impartial person. Trained mediators are likely to be well placed to take up the opportunities which may arise.

Planning authorities

27. Planning authorities will be encouraged to consider mediation as a tool to engage with communities, developers and other public bodies in order to reduce matters which are unresolved in advance of a development plan examination. They will also be encouraged to consider the role of mediation when responding to proposal of application notices submitted by prospective applicants for national and major developments.

Other public bodies

28. Public bodies may be developers themselves and promote major or national developments. They will be encouraged to consider mediation as a tool to engage with communities in PAC and planning authorities in order to reduce matters which are unresolved in advance of a development plan examination.
29. With the voluntary nature of mediation, it will be for public bodies themselves to consider whether using mediation as a potential tool to engage with other parties in the planning system is appropriate in the circumstances.

Benefits

30. This section looks at each of the measures and the options for each. For each proposal we have identified the same initial benefit.

The Scottish Ministers are required to prepare and consult on guidance under Section 268A of the amended 1997 Act within two years of the coming into force of the Act. There is therefore a legislative imperative to act.

Promote the use of mediation in Scottish Government guidance on Development Plan Schemes

31. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example, mediation initiatives. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the

planning process. The guidance's support for the use of mediation will support this.

Promote the use of mediation in local authority participation statements

32. Planning authorities should ensure that appropriate and proportionate steps are taken to engage with communities during the preparation of development plans. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example, mediation initiatives. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. The use of mediation will support this.

Promote the use of mediation in Scottish Government guidance in development plan examinations

33. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Planning authorities should look to resolve differences and build support for proposals through discussion and negotiation, and where possible prior to the publication of the proposed plan. The use of mediation will support this.

Guidance on the use of mediation in proposal of application notices

34. All those involved with the planning system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example mediation. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Developers should ensure that appropriate and proportionate steps are taken to engage with communities when development proposals are being formed. The use of mediation will support this.

Guidance on the use of mediation in pre-application consultation

35. All those involved with the planning system have a responsibility to engage and work together constructively and proportionately to achieve quality places for Scotland. Throughout the planning system, opportunities are available for everyone to engage in the development decisions which affect them. Such engagement between stakeholders should be early, meaningful and proportionate. Innovative approaches, tailored to the unique circumstances are encouraged, for example mediation. Effective engagement can lead to better plans, better decisions and more satisfactory outcomes and can help to avoid delays in the planning process. Developers should ensure that appropriate and

proportionate steps are taken to engage with communities when development proposals are being formed. The use of mediation will support this.

Costs

Mediation costs

36. We have not been able to identify any publicly available information on the costs of mediation specifically related to the planning system. This may in part be due to a lack of reported cases, but also that costs are a circumstance of the particular cases. There are examples of mediation being free, such as this example in Fife¹¹, but that is primarily in the community mediation sector.
37. References online tend to compare costs of mediation against the costs of litigation where it is stated that mediation comes out cheaper. We have gathered the following indicative information from public sources on the cost of a range of mediation practices:
- £300 – 1,500¹²
 - £115 per hour (family mediation example)¹³ Quotes the average cost of family mediation as £140 per hour
 - From £550¹⁴ per party per day (lists planning as one of the areas that the company covers)
38. We have therefore assumed that the costs of mediation will be around £500 per party per day.
39. This however does not including preparation time in advance and staff time of the parties plus costs of venue hire etc. Such costs could be in the region of an additional £2,500 per party. This may be lower for community groups where representatives tend to be volunteers, though indirect costs may be incurred.

Planning authorities

Local Development Plan engagement

40. The Updated Financial Memorandum to the Planning Bill¹⁵ suggests that the cost of producing LDPs varies widely depending on the area covered by the planning authority, the complexity of the issues they face and the approach taken, including the amount of community and public engagement. Examples suggest that the total cost of an LDP currently could be around £500,000 to £750,000, including staff time, legal costs, examination and printing costs. We will assuming that the total cost of preparing an LDP is £625,000 the annual cost of preparing 34 LDPs over the next five years would be:

¹¹ <https://www.sacro.org.uk/services/mediation/community-mediation-service>

¹² <https://www.resolutionpeople.co.uk/know-cost-court-v-cost-mediation/>

¹³ <https://www.mediateuk.co.uk/costs-payments/>

¹⁴ <http://www.mediationscotland.com/fees.html>

¹⁵ [https://www.parliament.scot/S5_Bills/Planning%20\(Scotland\)%20Bill/SPBill23AFMS052019.pdf](https://www.parliament.scot/S5_Bills/Planning%20(Scotland)%20Bill/SPBill23AFMS052019.pdf)

$\text{£}625,000 \times 34 \text{ PAs} / 5 \text{ years} = \text{£}4,250,000 \text{ per year}$

41. We have no firm figures on the cost of engagement on the LDP. Based around figures from the National Planning Framework, we have estimated a figure of around £80,000 per plan for the cost of consulting on an LDP.

$\text{£}80,000 \times 34 \text{ PAs} / 5 \text{ years} = \text{£}544,000 \text{ per year}$

42. The costs of examination vary depending on the number of unresolved issues to be considered at the end of the LDP preparation process. Examination costs ranged from just over £9,000 for Orkney Islands Council, to £50,000 for Glasgow City Council, to around £200,000 for Fife Council. We have assumed a figure of £50,000 per LDP.

$\text{£}50,000 \times 34 \text{ PAs} / 5 \text{ years} = \text{£}340,000 \text{ per year}$

43. We have no figures available which allow us to project forward with any certainty how many mediation events will support the preparation of local development plans. We will assume a range of 3 – 5 mediations per LDP. This equates to a possible cost of £61,000 - £102,000.

$3 \text{ to } 5 \times \text{£}3,000 \times 34 \text{ PAs} / 5 \text{ years} = \text{£}61,200 - \text{£}102,000 \text{ per year}$

44. By removing a number of unresolved matters from the development plan examination, it is suggested that costs would be reduced to the planning authority. We are not able to estimate that potential saving.

Costs of Pre-application consultation

45. Appendix A¹⁶ to the recently completed consultation paper on pre-application consultation procedures noted that there were 325 applications for major developments across Scotland in 2018-19. The numbers ranged from 0 for the Cairngorms National Park Authority to 39 for Glasgow City Council. The average number of applications for major development¹⁷ between 2016/17 to 2018/19 is 332 applications.

46. The costs to planning authorities will be incurred in the consideration of the prospective applications proposal of application notice. We do not hold any figures for the cost of considering these documents, but have assumed that there will be little additional cost to the planning authority.

Developers

Engaging in the Local Development Plan

¹⁶ <https://www.gov.scot/publications/proposed-changes-pre-application-consultation-requirements-planning-consultation/pages/14/>

¹⁷ Planning applications for national development are small in number and not separately identified in our statistics. Many such developments are subject to alternative consent procedures rather than the planning application process.

47. The updated financial memorandum suggests that the level of engagement developers have with the preparation of LDPs seems to be entirely discretionary and dependent on the number, value and complexity of sites they are promoting for inclusion. Current costs quoted ranged from £11,500 to £250,000 for dealing with one LDP, £15,000 to £50,000 per year for involvement with five or six, or between £10,000 to £80,000 per site or £180,000 to £230,000 for two sites.
48. We have no figures available which allow us to project forward with any certainty how many mediation events developers are likely to support in the preparation of local development plans. We will assume a range of 3 – 5 mediations per LDP. This equates to a possible cost of £61,000 - £102,000.

$3 \text{ to } 5 \times £3,000 \times 34 \text{ PAs} / 5 \text{ years} = £61,200 - £102,000 \text{ per year}$

Costs of pre-application consultation

49. As noted above, there were there were 325 applications for major developments across Scotland in 2018-19.
50. The Scottish Land Commission has published a research report¹⁸ on early engagement in planning, which indicated that respondents did not separately identify the costs of PAC sufficiently to do a cost benefit analysis. Fifteen respondents did make estimates, and indicated a range of £20,000 to £50,000, with most being at the lower end of that range. The report did not indicate if this was purely for meeting the statutory requirements or included additional, voluntary consultation measures. For the purposes of this assessment we will take a figure of £35,000. The average number of applications for major development between 2016/17 to 2018/19 is 332 applications.
51. This would suggest an annual figure of £11,620,000.

$£35,000 \times 332 \text{ applications} = £11,620,000$

52. We are estimating that around 5% of PACs will involve the use of mediation. This equates to around 17 per year which estimates to additional cost to developers of £49,800.

$£3,000 \times (5\% \text{ of } 332 \text{ applications}) = £49,600$

Scottish Firms Impact Test

53. This guidance may affect the costs for individual businesses of seeking to engagement in a local development plan. The voluntary nature of mediation will provide businesses with the opportunity to weigh up in individual circumstances the costs and potential benefits.

¹⁸ <https://www.landcommission.gov.scot/our-work/housing-development/early-engagement-in-planning>

54. This guidance may affect the cost of obtaining planning permission, applying to national and major developments, but not to local development, i.e. they apply to the larger developments in the planning hierarchy.

55. This guidance will not affect the number of projects subject to PAC procedures, but may add to the costs of those firms who do seek planning permission for national and major developments. The costs are not insignificant. However, it seems unlikely that the scale of costs compared to the overall costs of pursuing a development will be a deciding factor in whether to pursue that project.

Competition Assessment

56. There are no obvious impacts on competition of this guidance. The guidance would not favour one such business over another per se. Whether a business benefits from the guidance will depend on the circumstances of the case.

- Will the measure directly or indirectly limit the number or range of suppliers?

57. No. It does not involve significant additional costs in the overall context of the scale of projects involved.

- Will the measure limit the ability of suppliers to compete?

58. No. As above.

- Will the measure limit suppliers' incentives to compete vigorously?

59. No. As above

- Will the measure limit the choices and information available to consumers?

60. No. As above.

Consumer Assessment

61. The costs involved seem to have limited effect on the purchasers of goods and services. To the extent that the public are consumers of planning services in relation to another party's development, then the proposed changes should improve that engagement, or avoid disproportionate engagement which might be frustrating rather than productive.

- Does the policy affect the quality, availability or price of any goods or services in a market?

62. No. This does not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy affect the essential services market, such as energy or water?

63. Not significantly. Developers in such sectors when pursuing national or major developments will be affected as regards the potential for using mediation. The changes do not involve significant additional costs in the overall context of the scale of projects involved.

- Does the policy involve storage or increased use of consumer data?

64. No.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

65. No.

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

66. In so far as the Planning system is a service and the public are its consumers, yes. The use of mediation should improve public information on proposals.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

67. No.

Test run of business forms

68. No new forms.

Digital Impact Test

69. The use of mediation on/off line is not prescribed in the guidance. Which method is used will be for parties to decide in the circumstances of the case.

- Does the measure take account of changing digital technologies and markets?

70. Yes

- Will the measure be applicable in a digital/online context?

71. The use of mediation on/off line is not prescribed in the guidance. Which method is used will be for parties to decide in the circumstances of the case.

- Is there a possibility the measures could be circumvented by digital / online transactions?

72. No.

- Alternatively will the measure **only** be applicable in a digital context and

therefore may have an adverse impact on traditional or offline businesses?

73.No.

- If the measure can be applied in an offline **and** online environment will this in itself have any adverse impact on incumbent operators?

74.No.

Legal Aid Impact Test

75. These changes would seem unlikely to affect claims for legal aid.

Enforcement, sanctions and monitoring

76. As mediation is voluntary, there are no sanctions should parties not wish to mediate. There is the potential that should a prospective applicant fail to comply with additional requirements for consultation then the planning authority is required to decline to determine the application.

77. The Scottish Government is pursuing changes in the planning system which will come into force after this guidance has been issued. We remain keen to build up further details of the use of mediation in the planning system and will review the guidance in light of such experience.

78. The intention is that the guidance will come into force in July 2021. Stakeholders will receive notice of the publication through the Government's media channels such as its website, e-mail alerts and other social media channels.

Post-implementation review

79. The Scottish Government will conduct a review of the first 24 months of the operation of the guidance. As well as approaching planning authorities and the development industry, a survey of public views will also be carried out.

Summary and recommendation

80. The guidance has emerged from legislative requirements set out in the Planning (Scotland) Act 2019 and following an extensive review of the planning system.

81. Whilst this partial BRIA has identified the potential for extra financial costs to all parties, the benefits of using a collaborative engagement approach such as mediation has the potential to improve trust in the planning system and support collaboration over conflict.

Summary Costs and benefits Table

Summary and recommendation

The Scottish Government proposes to publish guidance on the promotion and use of mediation to help improve engagement between parties in the Scottish planning system.

It is a challenge to estimate the costs and benefits of mediation accurately as the guidance doesn't impose requirements on mediation, which is recognised as being voluntary. Based on the figures received and estimated thus far on the costs of mediation and the costs of current engagement in the planning processes, the suggested overall annual net cost to business of the changes is £110 – 150,000, with similar costs to other parties.

There is a legal imperative for the Scottish Government to act. Subject to the views received in the forthcoming public consultation, the proposals, as a package, would appear to represent a proportionate response.

13.1 Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	No benefit	No cost
2. Require planning authorities to consider the use of mediation in development plan schemes and early engagement on the development plan examination	Improved accessibility of information with potential benefits for proposals and outcomes.	Increased costs across all sectors of £120 – 200,000 for all parties
3. Encourage prospective applicants to consider mediation in PAC.	Improved engagement and feedback for the prospective applicant and the public	Increased costs across all applications subject to PAC: £50,000 per year across the development industry

Declaration and publication

I have read the business and regulatory impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been/will be assessed with the support of businesses in Scotland.

Signed:

Date:

Kevin Stewart, Minister for Local Government, Housing and Planning
Scottish Government Contact point: Graham Robinson
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PRE-SCREENING NOTIFICATION

SEA PRE-SCREENING DOCUMENT

Responsible Authority:

Scottish Government

Title of the plan:

Draft guidance on the promotion and use of mediation in the Scottish planning system

What prompted the plan:

(e.g. a legislative, regulatory or administrative provision)

Provisions in Section 40 of The Planning (Scotland) Act 2019 require Scottish Ministers to prepare guidance on the promotion and use of mediation in the Scottish planning system by 25 July 2021.

The 2019 Act also requires in advance of publishing the guidance, Ministers are to consult planning authorities and other such bodies as are considered appropriate. Due to the scope of the draft guidance, this should additionally include: the general public; community councils; developers; and key agencies.

Plan subject:

(e.g. transport)

Town and Country Planning

Brief summary of the plan:

(including the area or location to which the plan related)

The draft guidance focusses on the use of mediation as a means of exploring, resolving or reducing disagreement between persons in the Scottish planning system. Persons can include: planning authorities; the general public; community councils; developers; and key agencies. It will apply across the whole of Scotland with local authorities needing to have regard to the guidance.

The advice in the guidance will focus particularly on the potential use of mediation in development planning (consultation arrangements as set out in the participation statement and resolving issues in advance of the development plan examination) and development management (promoting the use of mediation in pre-application consultation on national and major developments with communities). Local Development Plans are developed by all Scottish planning authorities. There were in the region of 325 applications for major developments in Scotland in 2018/19.

Brief summary of the likely environmental consequences:

(including whether it has been determined that the plan is likely to have no or minimum effects, either directly or indirectly)

The intention of the guidance is to support one of the overarching themes within the review of planning – collaboration over conflict. The focus of the draft guidance is on identifying the potential use of mediation in the planning system in areas where it is clear there is the potential for conflict or disagreement. Due to the inherent voluntary nature of mediation, there is no statutory requirement to enter into mediation by parties.

In response to the criteria in Schedule 2 of the SEA (Scotland) Act 2005, the aim of the guidance is to support decision-making processes in the planning system. Mediation has the potential to influence decision making through the consideration of the views of all relevant parties. It has the potential to form one element of the consultation on the development plan. Though the final decision on the plan rests with the planning authority.

With regard to pre-application consultation, it has the potential to influence the prospective applicants planning application. However, the decision on the planning application rests ultimately with the decision-maker.

If any changes to the plan or any mitigation was required in order to resolve potential points of conflict these would be subject to their own SEA requirements, as part of the planning process. It is therefore our view that the guidance would have no or minimal environmental effects once implemented.

Contact details:

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Date of opinion:

3 December 2020

When completed send to: SEA.gateway@scotland.gsi.gov.uk or to SEA Gateway, Scottish Government, Area 2H (South), Victoria Quay, Edinburgh, EH6 6QQ

A Potential Framework for Integrating Mediation into the Scottish Planning System

Report prepared by Scottish Mediation and PAS for
the Scottish Government Planning and Architecture Division

September 2020

Background and Introduction

In July 2019 the Planning (Scotland) Act gained Royal Assent, bringing in a range of reforms to the planning system. Notably, the new Act introduces mediation into the Scottish planning system for the first time, stating that 'Scottish Ministers may issue guidance in relation to the promotion and use of mediation' (Planning (Scotland) Act 2019, Section 40) for a range of planning situations. Work is now ongoing to determine the appropriate means of taking mediation forward within the Scottish Planning System and considering how this could work in practice.

The legislation requires Ministers to prepare guidance on the promotion and use of mediation by July 2021. PAS and Scottish Mediation (SM) have been asked by the Scottish Government to develop some proposals on how this could be taken forward.

As a result of this request, PAS and SM have put together this report which outlines some recommendations for taking mediation forward within the system. To develop these recommendations, PAS and SM developed and disseminated an interactive survey (total 142 responses) which asked interested parties to comment on some initial suggestions put forward and to make any additional suggestions of their own. The survey ran from 22 July to 21 August 2020.

This report offers some recommendations for a possible way of embedding a mediation structure into the planning system. It outlines our approach to the survey and how the responses have impacted upon the final recommendations that we are putting forward. A brief analysis of some headline figures from the survey is provided but for those wishing to review the survey responses in full, the full raw data in an easily accessible format, is provided in the appendix at the end of this report.

Our Approach to the Survey

The survey was split into 6 sections - Introduction, Context, Practicalities, Development Planning, Development Management, Local Place Plans and Thank you/Other Ideas. For each section there was some initial text and a short audio clip to listen to which outlined some initial ideas for how mediation might be embedded into the planning system. It was made clear that these were initial suggestions put forward by SM and PAS to trigger discussion and in no way finalised proposals.

When we commenced the work, our focus was very much on identifying key parts of the planning process where mediation may be supportive with a focus upon encouraging the use of mediation at the early stages of the planning process when mediation has the potential to work best. We also wanted to outline a practical framework for how mediation could be offered as part of the system, for example looking at aspects such as how it might be accessed and who might mediate.

How have the responses changed our approach?

In reviewing all of the responses it has become evident that mediation could help across the planning system in a wide variety of different situations. Whilst we maintain our belief that mediation works best at an early stage in any process, ideally before conflict has become entrenched, we do not want to limit our recommendations to specific areas of the planning process when it could also be effective in other areas.

An example is enforcement which was suggested multiple times by respondents and appears to be an area of the system which could readily benefit from mediation. While some enforcement cases, such as those that arise as a result of a lack of understanding of the need to seek planning permission, might be considered to be early in the planning process, others, perhaps those relating to a planning condition which has not been adhered to, would be considered later in the process. We believe that mediation could potentially be effective in both of these types of situation, preventing conflict from escalating, despite one being later in the process.

Our recommendations therefore focus on the practical introduction of mediation which we believe should be an option across the system when considered appropriate. They also outline a process where formal mediation, carried out by a full trained and experienced mediator, would only be the chosen route in certain circumstances. At other times, the wider use of mediation will be about encouraging planners, other relevant professionals and other relevant stakeholders (including community councils and community groups) to develop, use and maintain mediation skills and techniques that can be used to support a planning process. These groups will also need support to be able to recognise conflict and to identify when further support, such as that of a formal mediator, may be required.

Who responded to the survey?

Whilst the survey respondents remained anonymous, we asked them to identify their background in relation to their response to the survey. We are pleased that respondents came from a variety of backgrounds and that 33% of respondents identified themselves as either an Individual or from a Community Group. Similarly, we have been pleased by the response rate of mediators at 16%. Developers were the smallest group at only 2% while around 27% identified themselves as a planner of some description. While some groups are not as represented in the numbers, we welcome the wide mix of respondents and that they are balanced across various categories of respondent. The full list and figures can be found in the appendix at the end of this report.

How supportive were respondents of mediation in planning?

The survey responses show strong support for the use of mediation in some format in the Scottish planning system. The following table highlights the percentage of people (out of 94 respondents who answered this question) who agreed (either ticked 'agree' or 'strongly agree') with the following statements in the context section:

Option	Level of agreement (agree or strongly agree)
I support the use of mediation in the Scottish planning system.	80%
Mediation is a tool that can help improve decision making in planning	77%
Mediation should be used as early in the planning process as possible.	79%
Mediation would be more effective later in the process.	17%
Mediation should be visible throughout the planning process.	81%
A standalone mediation guide will be sufficient.	19%

The table shows that 80% support the use of mediation in Scottish planning in some way and strongly indicates that people would like to see conflict in the planning system be addressed through a more mediative approach.

It must be recognised, however, that some respondents were not in favour of mediation being included at all and expressed some valid concerns regarding it being more widely embedded. For example, some felt that it would slow down what can already be a slow process and that it would add another layer of administration. Others felt that it should be up to the planners to deal with these situations and that bringing in people who are not trained in this area would create more issues than it would solve. We appreciate all of the responses received and indeed those responses which highlighted potential concerns have played an important part in our consideration of the recommendations.

While we still believe in the benefits of mediation more widely in the planning system, we have adapted our suggestions to accommodate the valid concerns that have been expressed throughout the survey responses, with a particular focus on planners using their mediation skills to the greatest extent possible, only bringing in independent mediators when necessary.

The table above sets the overall picture of responses received to the survey. For further detail about the responses to each section of the survey, please see the appendix at the end of this report.

Summary and Recommendations

When we first set out on this process, we thought the best approach was to look at specific areas of the planning system and to consider how mediation might fit into those areas most appropriately. Having gone through the process and considered the large number of survey responses, we have changed our approach.

Whilst we still believe that mediation should be encouraged mainly in the early stages of any planning process, and that guidance is required to support stakeholders to understand when it might work best, based on our consideration of the responses we now also believe that mediation should be accessible when there is a conflict at any stage of the planning process. The following information sets out our suggested approach to make this possible.

Planning Mediation Service

There should be some form of national body which provides a 'Planning Mediation Service'. The administration of such a service could be funded by Scottish Government, however it would ideally be coordinated independently.

The role of this service would be to:

- Provide advice, support and guidance (including online guidance) to all relevant stakeholders on any aspect of conflict and mediation within the planning system.
- Provide information regarding possible training and learning opportunities (and potentially offering training and learning directly depending on funding available).
- Provide access to formal mediation (through a panel of appropriately trained mediators) where conflict has been identified and this is considered appropriate to the situation.
- Be a focal point for mediation in planning, visible and accessible to those seeking support with conflict situations.

We believe that a mediation approach could be applied in two main ways in planning – we will call these *Informal Mediation* by which we mean planners and other relevant stakeholders taking a mediation approach in their work in appropriate situations and *Formal Mediation*, which is mediation carried out by trained and experienced mediators when this is considered necessary. Both informal and formal approaches could be supported overall by a Planning Mediation Service.

Informal Mediation

- In the early stages of any planning process, planners (and other relevant professionals such as those working for statutory consultees etc.) should use their mediation skills to support stakeholders and to help with any areas of conflict that arise. They will not

be acting as mediators but using the skills and techniques they have learned to take a mediation approach in appropriate circumstances.

- Planners (and other relevant professionals) should be supported to develop their mediation skills – this could be through ongoing learning opportunities such as CPD and/or a short training course specifically designed for this purpose. Through developing their skills in mediation approaches, planners can become confident in the use of mediation (informal and formal) in the planning system.
- It would be beneficial for there to be a requirement to introduce mediation for all students on planner training courses/degrees.
- Planning professionals will need support in how to recognise conflict so that they know when to apply mediation skills and techniques. They will also need support in recognising when something else is needed to support a situation, such as formal mediation, for example if conflict has escalated and it is impacting upon the process or if there is an impasse, perhaps because there are such a mixture of opposing views within a community which is preventing a planning process from progressing.

Formal Mediation

- Where conflict escalates and planners don't feel able or equipped to deal with a situation and/or it is thought to be more appropriate for an independent person to mediate a situation for whatever reason, then those involved could be supported to access a mediator via the Planning Mediation Service.
- It is worth noting that in some circumstances, formal mediation may be appropriate on a specific, single aspect of a development proposal, rather than dealing with a proposal or application in its entirety. In this way, mediation could have a very defined and targeted remit.
- Through a Planning Mediation Service, people can access a panel of experienced mediators. Mediators will either have experience of the planning system or could be offered a short training course to support them to gain a better understanding of the planning system and the types of conflict situation that regularly arise.
- Mediators could be allocated directly by the Planning Mediation Service or those who contact the service could be supported to search for an independent mediator directly if preferable.
- Some mediation could be offered online or over the phone to make it as accessible as possible (whilst recognising that an online approach may not be appropriate for all planning situations and also that some stakeholders, especially those from the local community may not have ready access to the internet).

How could this be funded?

Respondents to the survey suggested a range of different funding options, many of which were a mixed model with part national, local and developer funding. The approach taken will depend on whether there is any national funding available. If there is no clear route to funding, the option exists for all parties in a mediation process to fund the process equally. However, this has the potential to exacerbate existing resource and power inequalities within the planning system.

A Planning Mediation Service could act as a focal point for advice, training and, where appropriate, access to formal mediation. Such a service could be funded at the national level, however specific aspects could nonetheless be funded through a variety of other means. Indeed, mediation in other areas of public life operate on a variety of different funding models, including some where costs are lower for certain groups or are split, which could offer suggestions for how mediation could be funded in the planning system.

- We recommend some level of national funding for a Planning Mediation Service to act as a hub to coordinate mediation in the planning system, including advice and training, not just formal mediation.
- We support some level of national funding for mediations, particularly to offer mediation at a reduced rate if it is requested by an individual or community group in an appropriate circumstance. This could be topped up by the parties themselves, by the relevant local authority or by a developer, depending on the particular situation.
- Another option may be for mediation to be offered for free up to a certain level, after which those involved could top it up. For example, an initial consultation plus an initial hour of mediation could be offered free followed by a paid-for mediation at a staggered rate relative to who is involved i.e. a sliding scale fee.
- Whilst there was no real consensus on the use of planning fees for this purpose in the survey responses, it may be an option for a slice of planning fees to be put towards a mediation fund.

Ensuring Visibility in the System

Our final recommendation is the importance of making mediation as visible as possible in the planning system. Mediation has always been possible within the planning system but is in practice rarely used. Previous research and guidance into mediation in planning, whilst very useful, has, in our minds, not been well established within the system and has mostly been accessed by those with a pre-existing interest in the area.

The survey responses indicate a high level of support for mediation in the planning system (80% in favour), however only 19% of respondents considered it sufficient to simply issue a standalone guide. In our view, standalone guidance would not adequately raise the awareness of mediation in the system. We would propose mediation having a variety of policy and guidance hooks in order to embed it in the planning system. These need not be onerous.

To increase the visibility of mediation in the system, a cross-cutting reference to mediation is required across all planning policy, guidance and other relevant documents. If each document included the option of mediation and how it can be accessed, we feel that this would go a long way to ensuring that it becomes more visible and seen as a positive option for supporting conflict situations.

The National Planning Framework 4 (NPF4), currently being prepared, is an opportunity to set a policy context for mediation across the planning system, which could then also link into relevant circulars on development planning, development management and enforcement. This could be as straightforward as a similarly worded paragraph on mediation inserted into the various documents. Whilst some responses to the survey considered NPF4 to be more about outcomes than process, we believe NPF4's expanded role to include Scottish Planning Policy will enable it to also consider how we arrive at those outcomes.

For mediation in the planning system to be effective, planners need to be confident in their understanding of mediation and confident to recommend more formal mediation where appropriate. By ensuring visibility across the system and consistency of the message and mediation references, this will help planners to gain and maintain this confidence.

Other ways to support greater visibility of mediation include having greater information on mediation within the Scottish Government planning web pages and on each local planning authority website. If these could link directly to the website of a Planning Mediation Service with matching and clear information, this could go a long way towards raising awareness of mediation as an option, and towards supporting a more mediative approach to conflict in the Scottish planning system.

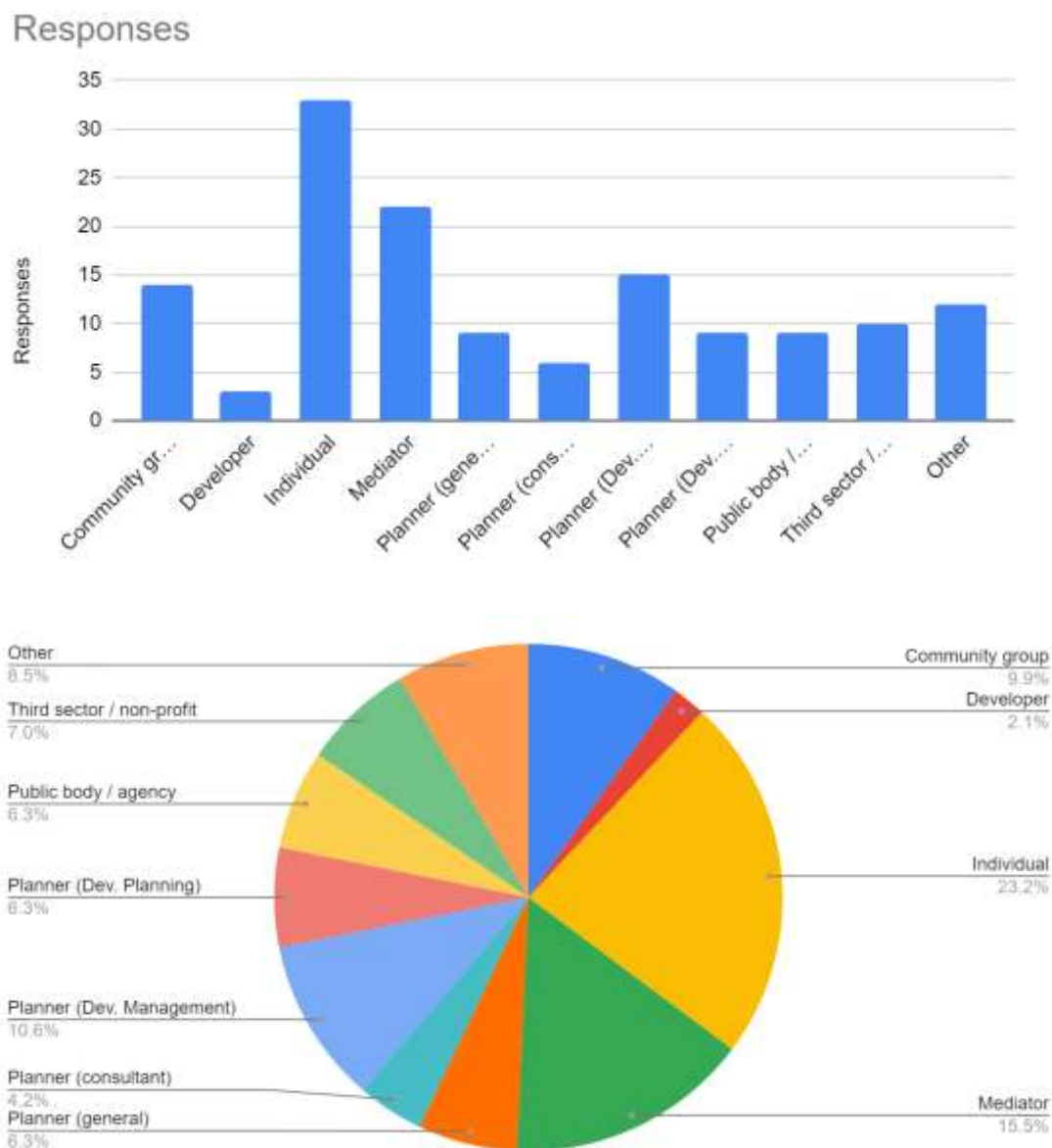
Appendix 1 – Survey Response Data in Full

Part 1 - Who responded to the survey

Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=Dm0yyzFTEhU>

Number of responses: 142



The 'other' category includes: Membership organisation; Planning student; Architectural technician; Membership organisation; Public Engagement Specialist; solicitor - local authority planning; Trade Association; Agent; Planning Lawyer; Academic; Association of Mediators.

Part 2 - Context: Mediation in the Planning System

Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=onXpxui1G34>

Number of responses: 94

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
I support the use of mediation in the Scottish planning system.	3.2%	4.3%	12.9%	29.0%	50.5%
Mediation is a tool that can help improve decision making in planning	2.2%	4.4%	16.3%	37.0%	40.2%
Mediation should be used as early in the planning process as possible.	4.3%	5.4%	11.8%	31.2%	47.3%
Mediation would be more effective later in the process.	17.6%	41.8%	24.2%	11.0%	5.5%
Mediation should be visible throughout the planning process.	4.4%	3.3%	11.1%	36.7%	44.4%
A standalone mediation guide will be sufficient.	21.4%	32.6%	27.0%	14.6%	4.5%

If you've been involved in mediation in planning, how did you feel about it?

- My Community Council was informally involved in a dispute about the length of a Lease for a local authority Common Good property. This may not be regarded as strictly a planning matter and therefore not relevant to this survey. However, the mediation, suggested by the local Sheriff, who heard the petition for an extension to the Lease, organised by the local authority, and involving the CC and the applicant for the extension, was useful, and resulted in a compromise agreement about the length of the Lease.
- We are heard but there was no feeling of co-operation and coming to an agreed solution or discussing possible options.
- N/A
- n/a
- Yes very successful
- n/a
- N/A
- Not been involved

- I feel it's important to continue having discussion on mediation in order to further progress mediation in the future as widely as possible.
 - Good It helps everyone understand other people's views
 - Not been involved but have been in situations where it may have been useful.
 - Not formally but even "mediating" a Client's Expectations requires thought, experience and resilience to achieve pragmatic outcomes.
 - It was a lot about information sharing and discussing priorities... it can be very intense... I felt that as a decision maker it did not alter my perspective or my decision but was very good for communities.
 - N/A
 - n/a
 - Yes. Trustworthy. Flexible. Win win.
 - Positive re working together for agreement.
 - I've been involved in a couple of situations that were commissioned by a local authority and called 'mediation'. In both situations the local authority wanted an independent mediator to help break an impasse amongst the parties. In both cases it helped to break the impasse, although the solutions were not as straightforward as the local authorities hoped.
 - I've also been involved in literally dozens more situations where my, or another person's, mediation skills helped to agree a way forward and/or improve placemaking proposals. These weren't referred to as formal mediations; the mediation just happened as part of the process of preparing a plan or designing proposals. But the cumulative impact of all those situations was far bigger than the two-three 'formal' mediations that I've been involved with."
 - Never been involved - insufficient information on a recent development provided before its completion, so no opportunity, anyway.
 - Not applicable
 - No
 - Never been involved in planning
 - As an organisation supporting flood risk communities it can be complex and difficult to understand all the flood risk technicalities.
 - The mediation process helped participants to share their views in a non confrontational way
 - It was a good process that ultimately created less work for the planning authority and ended up with positive third and private sector benefits.
 - Never been involved in mediation in planning
 - No. I have mediated in other settings but not in the planning system.
 - It has always been part of the process with planners undertaking that role and there is a danger that the mediation solution is not secured during the planning process.
 - The issue is that planners don't have enough support or resource to make it effective.
 - Enforcement is all about mediation
 - Good
 - Mediation is part of a planner/enforcement officer's job. It is not new. A guidance note would be helpful but mediators (separate from planners who mediate) may confuse issues, or make situations worse.
 - I have been involved in the policy debate and in training but not in case work.
 - I haven't
 - We are mediators, regularly engaged to undertake hands on mediations, particularly planning & architectural mediations. We have a long-standing experience in doing so.
 - positive - giving me the opportunity to hear different points of view
-

Please share any further comments.

- RICS supports the proposal for a flexible approach to mediation. We recommend that mediation should be flexible enough to accommodate a wide range of issues and party dynamics. Mediation should, where appropriate, be geared to channelling parties towards a viable and mutually acceptable solution, e.g. by allowing mediators, who have expertise and knowledge in planning, to provide impartial recommendations on options to resolve specific points or overall disputes.
- The use of mediation in the Scottish planning system is an excellent opportunity to promote alternative means of resolving disputes between parties, particularly those which are less costly and time consuming than the litigation route.
- Mediation should be available at any stage of the process when disagreement arises, if required by one or both parties or if the parties fail to agree the agenda and issue to be considered at the application stage within a prescribed timescale. Early adoption, i.e. before disputes emerge, would prevent disputes from becoming embedded and acrimonious. The protection and promotion of amicable working relationships that are free from conflict is an important factor to consider in the planning process. Mediation could be used to help both sides organise and structure their negotiations, identify and narrow the range of issues between them, and essentially set them up for constructive negotiations and timetable going forward."
- Mediation should not be the focus. Avoiding the need for mediation should be the primary concern. If people are too conscious of the availability of mediation it will be used as another tool to block development.
- the developers, planners and community need to be brought round the table as equals and a mediator could facilitate this
- It is unclear what benefit professional mediation would add to the existing process and how the additional costs would be covered.
- Ultimately there will always be differing views on the use and allocation of land and it is unlikely that any process will necessarily result in opposing parties agreeing. The gatecheck and examination should allow for consideration of opposing views and determination of the best way forward."
- Concern that legislation is set and in many circumstances legislation would not allow deviation from this. It is also impossible in many respects for PA's to force the wants of a community on a developer or vice versa.
- There needs to be clarity about who can be involved in mediation and also the grounds on which requests for mediation can be made.
- This seems to very much resemble the ideas behind communicative planning theory - what I would say to this is that a key problem is that of power, and its perniciousness when even trying to establish a communicative, collaborative decision-making environment. I don't see how mediation can be of much value without strict 'non-mediative' controls and obligations that address power imbalances.
- Can't see mediation resolving yes/no decisions late on in planning process. Value if any is upstream but is that really mediation or a conversation about choices such as a seminar or community stakeholder evidence gathering programme or an outcome of pre-application consultation?
- We must not forget that mediation should form part of every day life for a planner but sometimes it has to be elevated to the level of a formal independent process. The formal process is however time consuming and expensive.
- NZ experience confirms mediation is not helpful in situations where the parties view the dispute as a heroic battle, or have become extremely irrational which is so often the case when people's property rights are deemed to be affected as a result of a development proposal (whether that is true or not)

- Mediation used early will ensure all parties have an understanding of the proposal allowing all an objective approach and understanding of issues.
- An adopted Guide and early Stage Engagement Steps would be very useful. The transition will be demanding especially as Local Authorities in Scotland are progressing revised Development Plans and Call For Sites reviews to differing timelines. Mediation may in some cases be seen or viewed as a "Late Corrective Tool" - a soft appeal process. Therefore, restricting its use in the Guide to new applications along with Place Making Initiatives should be the preferred way forwards, I would suggest.
- Being part of the conversation from the outset is important to know that there aren't any secret handshakes taking place or hidden deals based on Money not facts
- Guidance will be required setting the boundaries to what is possible/permitted and giving examples.
- In our experience few community groups are not sufficiently aware of the planning process to be able to engage at the appropriate stage where they can effect change. They tend to engage too late when the options to influence are limited.
- Trouble seems to be that the public are not generally sufficiently concerned about development until after it happens. It is difficult for many to grasp what is happening even if they do attend "consultations". And in any case, where their views appear repeatedly to be ignored, they become demoralised. It is not entirely clear how mediation will help unless we can get through the barrier of indifference.
- The "usual channels" exist, but are not effective, and solitary protestors are considered unworthy of attention even although the concerns they express are of the silent majority. "
- I would very much support mediation earlier in the planning process.
- As a community council we find it very helpful to have dialogue early in the process. Answers fears/worries and often helps the developer
- Independent support through mediation for communities is vital.
- Participants were not 100% keen to begin with as the process of mediation was an unknown factor to them
- Who pays and provides the training? This adds more work to already stretched planning departments. It doesn't help the balance between timescale and quality of decision making. I welcome mediation but cautiously so.
- mediation is not binding in law in terms of the planning acts and the ultimate decision will rest with the decisions makers i.e committee and this should be made clear to all parties. you would hope the outcome of mediation would be acceptable to decision makers.
- There is enough transparency in the process and the public and communities have ample opportunities to engage and to influence. We cannot reasonably expect to conceive a system where each and every party will be happy because we have to accept that some parties will not want to see any development of anything anywhere and will object accordingly, while other parties will want to develop everything everywhere. If we reasonably accept this as at the extremities, we must accept there will be conflict. And if we accept that, then we must also accept that we will not find a resolution. It is the role of local and national government to be the arbiter of such situations, and that is what the existing system reasonably achieves.
- If someone is completely against development no amount of mediation will resolve that and mediation should be done by the planner as it can be managed as part of the planning process if we are given the support to make it viable.
- Issue of digital exclusion.
- We have run a pilot mediation service for tenant farming disputes which has been very successful. we set parameters around who (when, what) would be eligible for the service - this may be helpful in planning too.
- Breaches of planning control can be resolved through mediation.
- Clearly mediation is the brainchild of academia or someone who has never worked in the real world. It will inevitably lead to delays and at a time when workload is already well beyond

manageable, this will just add another unnecessary layer of work. You'd be far better to concentrate on getting Reporters to issue decisions in a timeous manner. Some appeals I know of have taken over a year to issue and Mr Ferrie seems to be particularly adept at that. It's high time the Reporters were brought to account on their woeful performance.

- skills training is needed
- "Mediation", does this mean giving developers scope to get around rules, regulations and requirements?
- Often planning applications are like covid ops going under the radar of the community until its to late, would mediation prevent developers doing this?
- sound volume could be better
- Mediation can have an important role to play early in some parts of the process or in dealing with the consequences of planning decisions. It has NO ROLE in statutory decision making. However, planning authorities MUST engage with it at early stages in policy and plan making where communities request it.
- This should not be a text book exercise as it has been in the past. It has fallen at multiple hurdles because it is treated as an academic exercise. Using mediators who are experienced in mediating in Scottish planning would be a start.
- There will be a need to carefully manage expectations where communities appear vehemently opposed to any development despite strong land use planning reasons to promote a development (including LDP allocation / shortfalls in housing land). This may need assessed at a pre-application stage either during pre-app enquires or pre-app consultation. Mediation has the clear potential to ensure all voices within a community are heard (not just the loudest) but if the mediation outcomes do not address the loudest opponents then there could remain a highly visible opposition.
- It's important to get buy-in right at the start and to explain why its worthwhile to be involved. This can be tricky if there are entrenched attitudes/egos.

Part 3 - Practicalities

Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=IlMoRT2ChW4>

To help make mediation accessible in the planning system, it would benefit from:

Number of responses:73

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Some degree of national-level coordination.	2.78%	2.78%	12.50%	56.94%	25.00%
The option of online mediation in appropriate situations.	1.37%	4.11%	5.48%	58.90%	30.14%
A dedicated role to take it forward at both the national and local levels.	1.37%	5.48%	17.81%	54.79%	20.55%

A national panel of mediators, ensuring mediators are appointed independently.	2.74%	6.85%	9.59%	52.05%	28.77%
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With regards to who should mediate and ensuring appropriate learning opportunities for key stakeholders...

Number of responses: 74

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Mediators working on planning cases would benefit from some knowledge of the planning system.	0.00%	5.41%	9.46%	39.19%	45.95%
It would be beneficial to develop a specific mediation course focusing upon mediating within the planning system.	0.00%	5.48%	12.33%	46.58%	35.62%
There should be an increase in formal learning about mediation for planners both through their initial training and ongoing CPD.	0.00%	0.00%	6.85%	50.68%	42.47%
Planners will need support to recognise potential conflict so that they feel confident signposting people to mediation when appropriate.	0.00%	6.85%	4.11%	56.16%	32.88%
Communities will need support to understand mediation and their potential role within it.	0.00%	0.00%	4.11%	42.47%	53.42%

How do you think mediation in the planning system should be resourced?

- There should be clarity around how much mediators are to be paid and by whom. If the Government is making mediation a key party of the statutory regime, then they should be prepared to fund it, or at least contribute towards it. We suggest a fee scale whereby the dispute resolver's hourly rate and the number of hours they are permitted to spend on it will vary depending on the value of the dispute. This will keep the cost of resolving the dispute proportional to dispute value. An appointing body's application fee should either be borne by the parties in equal measure, or payable by the mediator as a percentage of their total fee charged.
- It must be resourced from cCentral Government
- I'm not sure that it can be given the already stretched resources of the planning authorities.

- I do not have the expertise to comment on this; but I would suggest that some form of mutually-agreed funding, shared between local authorities, national government, and developers (based on the size/type/value of the development), should be proposed for the benefit of all concerned.
- The idea of Scottish Government funding a panel that community groups as well as planners and developers could access could be an initial resource. It could also be part of the requirement for the pre-application events.
- However not all community groups can access online facilities easily and face -to - face meetings are essential to hear all the voices. Community councils and anchor organisations must be able to gain knowledge of the mediation process and support for engaging their members. "
- Delivery could be coordinated by an independent organisation, eg PAS could be approached. Training for Planners and Mediators could be coordinated by an independent organisation, eg could the Improvement Service and Planning Schools be approached?
- I agree if resourcing is coordinated by an independent panel payment could be split between Local Authorities (on behalf of planning authorities), Scottish Government (on behalf of communities) and developers. "
- By National Government
- Mediators should either have a planning background and understanding of the systems and processes or if untrained should be supported by experienced planners during the mediation process.
- Depends who the mediator is - a planner (we should all have this skill and help each other) who would be cheaper or an external person - probably a role in itself if they mediate other things the Council does. So is the mediator for the Council or an external person like a Reporter and the Council is billed when used.
- It would be unfair to put much of a strain on, say, community groups and other 'third parties' given that they enjoy far fewer resources than planning authorities or developers, and are also in theory served by the planning authority when it makes planning decisions. A flexible, pooled resourcing approach seems sensible, and should be funded by local and national government, perhaps using taxed contributions from developers.
- Absorbed within costs of local place planning, evidence-gathering events, development planning, PAC, and enforcement. It should be excluded from development management.
- New resources need to be identified as a budget holder I could not afford more than one event per year, even if cost are split, and the potential demand is much larger. All parties should contribute to feel they have a stake in it but communities and voluntary bodies will need to access support.
- Either Central or Local Funding. Financial independence away from developers is essential.
- A fee based approach depending on the time and input required to reach a resolution. This could be discounted for online mediation session or where resolution is reached within a certain time period.
- This depends on the proposal being mediated. if a site is allocated for housing in an adopted LDP and mediation is proposed because parties object to the principle of housing development on the site mediation should not be an option. Funding should not be via increased planning application fees. If mediation is accepted by all parties then all parties should meet their own costs.
- I think it should be resourced at government level.
- From development management fees which should be set at a more realistic level to truly reflect costs.
- Possibly via PAS - that way would offer a detached and Scottish Government reference or accreditation capacity in the roles and people without becoming another reason or excuse for "Specialists" as in CDM, planning supervisors etc. "We sought government support to add value" to the Planning System to expedite the process and NOT slow it down and add cost.

PAS offering a benchmark skill set at agreed rates per hour/day as a Charity makes sense. The skill is mediation and not necessarily Planning.

- Development Management Planners are ideally placed to act as mediators and indeed they mediate (to one degree or another) in their everyday role. DM Planners need to be better resourced to allow them the time and knowledge to perform this function adequately. DM planning is being under used and being side-lined.
- Partially by Scottish Government with free initial interview for planning applicants with a trained mediator. Then subsidised by savings in time elsewhere in system (e.g. appeals)
- Paid for by the planning applicant on a sliding scale to the local council or national government depending on the scale of the development
- Have a panel of Mediators so that they can be selected from the Mediator Network
- From planning fees
- As highlighted, currently the costs are shared between the developer and local authority. Consideration should be given to how communities will be able to afford to participate in this - if they have to pick up costs associated with the service. This will be particularly true of disadvantaged communities who may not have the same access to response and expertise to navigate through the system.
- by council - it would save the costs of prolonging the planning process.
- As part of the planning fee.. if people felt that it has been paid for they will use it. If there were a differential for those applications that were approved without the need for an appeal/objection process that would be helpful
- It depends. Costs should be shared by all those accessing the service or required to use it. Developers could pay if promoting a development that raises a lot of local interest and mediation might be useful to help guide local representation to the salient points. LPAs
- I suspect privately may have t be the way to go.
- I think we need to differentiate between mediation as a formal activity (with an appointed mediator) and encouraging all planners to be mediators.
- The first can be itemised as a cost in development management or development planning budgets, and paid for through planning application fee income or LA/SG LDP budgets.
- The second is about education and awareness raising, through training, planning education and inclusion of the need for mediation skills in consultancy briefs for masterplans etc. "
- To avoid the appearance of the tune being called by the piper, costs may have to be shared on some fair basis, i.e. in proportions which do not bankrupt the weaker party.
- Developer contribution
- It should be funded through a independent organisation and its vital that the mediator has decision making power or influence on planning decisions!
- The local authority can't pay for it. Why should a private developer pay? Communities won't have the resources. Scottish Government?
- Mediators need to be completely financially independent and have no personal interest in the planned development. At the moment there is plenty of opportunity for officials to mediate intelligently but most have been bought off or don't have the time or breath of education to do the job.
- I am not sure...
- it would need to be resourced by the applicants as ultimately planning authority is under no obligation and existing mechanism i.e appeals to move matters onwards. There is also no additional budget within constrained planning authorities to pay for this
- It should be paid for by developers.
- Central Government
- It should be done by planners. Can't see the point of having someone unqualified in planning trying to mediate as I think that would cause more trouble than helping.
- Scottish Government should resource in planning authority cases. However, alternative funding required for SG projects or where SG handling appeal or call-in application.

- Definitely should not be up to the parties involved, often a community and a developer, who are likely to have very different access to financial resource
- Central funding with parameters set at a regional level for who can access and when. In our pilot we funded the mediators time but parties had to fund their own professional representatives. Mediators ensured that there was a balance of professional reps between parties.
- Through a planning fee
- We shouldn't expect applicants to pay for it, nor should we expect local authorities to pay for it. Perhaps whoever dreamt this up could put forward some ideas about finance?
- training up existing staff
- From developers fees.
- I believe the mediation course could be self funded as a continued learning programme by the individual and the planning applicant should cover the costs of mediation.
- Through public funding with potential for a contribution from a developer
- Tricky one - either through a central SG source or by another council department eg community planning (not planning)

Please share any other thoughts you have about the practical considerations of mediation in the planning system.

- It is RICS's view that parties will be confident in mediation, and readily use it, only if their mediators can demonstrate both competency in mediation practice and procedures, and knowledge and understanding of technical planning. Our experience is that the credibility of mediation and mediators depends on parties having confidence in their ability to understand technical issues relating to their disputes. Planning is a highly specialised and technical subject area. It follows that mediators should have much more than a passing knowledge of the subject. They should be credible experts.
- Professionals who are appointed to act as mediators should command high levels of trust from parties because (a) their expertise in disputed subject matters enable them to quickly grasp the issues and understand the strengths and weaknesses of each side's case; and (b) they have no personal or other interest in the outcome of disputes where they are appointed and can talk candidly to each side in a fair and objective manner.
- With regards to the national register, If the suggestion is that planning mediators could only be sourced through one appointing body, then it could reduce the choice parties have about who their mediator will be and create an unnecessary and improper control over mediation in this sector by a single entity. However, if intention is that standards around planning mediation are monitored by an overarching body and that body is responsible for promoting mediation and quality mediators, then that might be ok. (e.g. like the CMC in England). Parties should be able to choose their mediator, or source a mediator from any provider, but perhaps an overarching body could vet such providers against a common set of standards.
- Training of planners in mediation is important if the process is to work effectively. A mediation course which is geared specifically to planning matters and the types of disputes which may arise would be necessary. This would not be difficult to organise for any organisation with an existing mediation training programme, and certainly would not require a complete drafting of a training programme from scratch. For example, RICS's 7-day mediation training programme is already designed for professionals working in construction and the built environment and could be easily adapted to focus solely on planning matters, e.g. by using planning related scenarios in roleplay exercises.

- The Land Commission protocols should be disseminated and understood by all those involved - this would perhaps mean mediators had files of background material including videos that could be shared in pre-mediation meetings.
- Community Groups, voluntary organisations and charities are unlikely to have the finance required to pursue a costed mediation, accordingly if the Scottish Government are genuine in their desire for community engagement they will need to put in place a support package accessible to groups of this type.
- Depends on the scale of the issue. Many parties could feel aggrieved and seek mediation if they know about it. House extension to a new town.
- I agree that online mediation would improve its accessibility. However, its impact on accountability should be managed, in that there is a more meaningful experience when participants have put the effort in to meet in person, and this can have an impact on how people think and what people propose or concede.
- Developer pre-consultation events sometimes have a reputation for being showy propaganda setpieces. This is not the right tone for mediation and I would question the neutrality of mediation at such an event - it's not just who the mediator is that matters, it's where and when the mediation takes place.
- LAs must be resourced to deliver and it should be focused on the Development Plan system as it is to late usually when it comes to applications.
- Mediation has to be accessible to all. Mediation should only be used where a breakdown of dialogue between parties is arising. Evidence should be required as a pre-cursor to outline why community has broken down and clearly set out the matters sought to be resolved via the mediation. The mediation session should be limited to those matters. Where a party is not happy with the direction of travel that the mediation is headed then there needs to be clear protocol put in place to manage expectations.
- Mediation should not be an excuse for delay. Mediators should be from a variety of backgrounds - not like the DPEA which is stuffed full of ex Local Government Officers. Proposals submitted in accordance with the LDP should be exempt.
- The planning report submitted by the applicant should contain a clear and concise concept brief and a synopsis of the project brief so that the aims and objectives of the proposed project are clear.
- To place this role within Local Authorities would be counter productive and may / would be seen as "not independent." Offer PAS as being similar to the Building Control LABSS service might be a good reference point from which to start.
- A coordinator funded by Government through PAS of Scottish Mediation (like the CAB funding in the Civil Courts) offering a module for existing mediators on planning rules would be helpful. This would ensure that the context (other planning system options) would be known (i.e. like the civil courts) to those mediating.
- Timescales should be given as a road map at each stage so it's open and clear. There should be no surprises. If an application is pulled before any decision the previous details aren't lost and are attached to the site. The real owners of land should be available to the mediator and what other land is owned. So a scale is taken into consideration. A real person is presented instead of a faceless shell company. Mediators need to have some local understanding to grasp the issues or history of a situation. Previous planning issues with the applicant should be available so other mediations can be reused or discussed. This should weed out bad faith players or money only motivated builders and land bankers. Mediators need to know the "tricks" of the trade on both side to reach a fair end point for the builder making a profit and the local wanting the best for their community
- There are so many fingers in the pie at present, another one will just add to the frustration..... unless, it can bring something meaningful to the table., perhaps eliminating some of the existing stages that have lead to the conclusion tht there is need for mediation.
- None at the moment.....

- Just wondering whether there would continue to be a need for the Reporter's office. Recent experience has led me to question whether planning decisions should be made by one person, who takes no responsibility for the results of his or her decision.
 - Bigger role for Community Councils
 - Mediation must have formally recognised role, power or influence in planning decisions!
 - Work out the cost benefits and what happens when things go wrong and who currently provides this service and what potential cost savings could be generated
 - Mediation concerns pragmatic balance and ensuring equity in the provision of basic needs. If we can mediate for Bats then surely we can do so for Humans. It takes a special person to be able to mediate effectively so there are winners all. My advice is to find the right people for the job and get rid of those with destructive hidden agendas.
 - Planning is an emotional process and a big part of it is about managing expectations. Developers don't listen to planners at the best of times and the enforcement process is slow and complicated. The current PAN process has become a tick box exercise with developers undertaking minimum consultation. So before trying another thing why not improve what is already in place?
 - Participants must be able to "sign off" on proposed outcome. It is no good if for example planning authority participant has to take proposed outcome away for approval by line manager.
 - It's sounding to me very much as if this is aimed at providing jobs for mediators, rather than a real belief that mediation could work in planning!
 - pilot schemes. regionally based.
 - May cause delay in determination
 - Waste of time. The very fact that you have framed one of the questions above about the benefit of having "some knowledge of the planning system" shows that this is going to be a car crash. Consultation is a waste of time as well because you are going to introduce it come what may so I might as well say what I feel.
 - it's difficult at times and uses a lot of energy so commitments to finding workable solutions is found.
 - Will local authority planning departments have to suffer mediation to stop unwanted developments, e.g. below standard proposals?
 - Agree that there is massive distrust with local planning depts so totally independent mediators should be trained to fill the role ensuring and promoting trust in the system
 - can't hear it
 - It shouldn't be a tick box; it shouldn't involve the usual suspects as they say, it should be progressive not restrictive. We have reservations as to how open those leading this are to a dialogue between experts in mediation to start with
 - How to start off having individual discussions with a group and still maintaining trust - it's so much easier to do this in a group setting - but important to speak to individuals so that everyone has their say.
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Part 4 - Development Planning

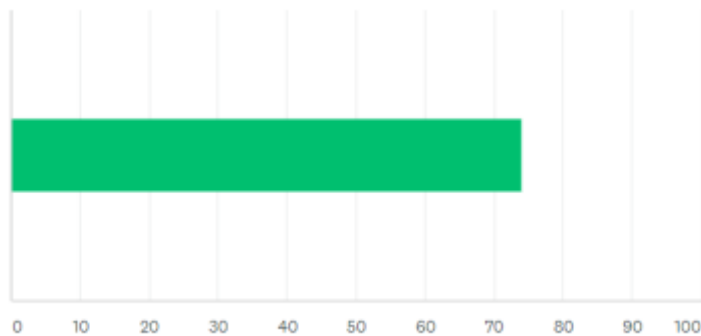
Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=xE63L1TIXxY>

To what extent do you agree with mediation being integrated into the development planning system to encourage front-loaded meaningful engagement? (from 0 - 100)

Number of responses: 60

Average response: 74.1/100



Please tell us more:

Number of responses: 68

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
NPF4 should set a policy framework for the use of mediation.	7.46%	4.48%	14.93%	41.79%	31.34%
Consideration of mediation should be written into the guidance for development plan schemes.	4.41%	0.00%	8.82%	54.41%	32.35%
Mediation should be encouraged at both the early engagement and gatecheck stages of the process.	4.41%	7.35%	5.88%	47.06%	35.29%

If conflict arises there should be a specific option to provide mediation at the development plan examination stage.	5.88%	1.47%	8.82%	41.18%	42.65%
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Further comments:

- Mediation should be encouraged at any stage of the process when disagreement arises. Raising awareness of the option to mediate a dispute is essential to the success of mediation in planning; guidance and signposting throughout the planning process will ensure parties are aware of their right to refer a dispute to mediation at any stage.
- Focusing on consensus building through good design and effective engagement is where scant resources should be prioritised. Mitigation should be available at the development plan examination stage should be available only as a last resort.
- While I agree with all these suggestions, I think they would all be resisted by developers, on the grounds of cost and 'hold-ups' during the planning application process.
- Having suffered an inquiry in front of a reporter where the developer engaged a QC to present their argument, the local authority had a solicitor and the community group relied on their members I feel mediation is essential so all voices are heard and agreement that all can accept is reached.
- Mediation is a procedural tool and it may be appropriate to provide an outline of when and how to apply it and other sources of more detailed guidance in any updated Scottish Government circular on Development Planning. NPF4 could then highlight mediation as a procedural tool and refer to any circular for more guidance.
- If mediation is to be at the heart of the planning process then the policy applicable to it should be included in NPF4. Mediation may not be appropriate at every stage of the planning process, however its role in conflict resolution at predetermined stages of the process should be clearly defined.
- The role of a mediator sounds more like a Reporter negotiating between different parties. Earlier the better so that sites can come out. But it could extend the Dev Plan process if many parties are agreed and what to discuss a site/place. What is appropriate to mediate? Only major developments? Concerned this could grow arms and legs. Just coming back to this topic after finishing the questions and the planning Delivery Teams could include mediating in their remit and act more independent from Policy and DM teams.
- I like the idea of front-loading at early engagement and gatecheck stages. Funnily enough, I don't really think of these stages as mediation as such, more a sort of 'muscular consultation'. I associate mediation with specific situated conflicts between limited parties seeking resolution. If mediation is the kind of thing that can make these early engagement and gatecheck stages actually meaningful and democratic work with affected communities, I would support it.
- Waiting for further guidance about mediation and gatecheck isn't good enough. There's the risk of drift if mediation is supported in the policy section of NPF4 in the absence of guidance. Scottish Mediation and PAS should develop ideas first to take the lead. Equally if it is considered mediation can flow through to plan examination then explain why in a draft guide. It may not be appropriate to mediate simply on housing numbers as these are moderated by quality, density and place-making considerations.
- The time taken to prepare a development plan could be significantly impacted if mediation is required for a number of sites. A large authority with a number of allocations across a number of communities may mean that you never get beyond mediation to prepare the Plan. Mediation should be reserved for the examination stage where any unresolved issues are addressed.

- Local communities have to understand the basis of the housing land requirement. At public consultation events when local communities are asked where development will go the answer is always 'we're not bothered as long as it doesn't go here'. If all communities in a LDP area respond on this basis where does the development go? Once local communities are aware of the size of the cake they may be more inclined to accept 'their share'. Mediation at the Examination is likely to be unsuccessful. A local community will be unlikely to support development when it can be pushed elsewhere and a Developer is unlikely to compromise over a site which they are contractually obliged to promote.
- The above would enable and encourage a collaborative approach.
- Mediation should not supersede a gate check but it should be clear that it is available
- Recent Call For Sites and preparation of Updated Local Development Plans shows, to me at least, a change in tone and techniques: ""East Ayrshire Council as an example - We have assessed the balance on demand v land use, what are your views please? And, here is how we have arrived at this conclusion."" This is different from the bland: tell US what you want and WE WILL consider it, type of approach of old.
- Supporting statements are possible and should offer informed public dialogue in creating a robust outcome Revised DP. It is a two way process and the earlier it begins the better."
- I think the existing system includes options for mediation which Planners can perform. Other priorities and time constraints means this aspect is pushed aside. Creating another administrative box to tick will not mean mediation is better undertaken when it is required.
- At the end of the day, mediation must be voluntary to encourage a positive attitude but the parties should be 'nudged' to consider it seriously as it can give a quicker, less adversarial, way forward and consideration of all viewpoints. The other traditional options need to be available but offered only at a much longer time frame and greater cost to the parties. Perhaps traditional options should only be available before mediation for those planning applications over a certain value. Objectors who wish to use it could be required to demonstrate community support before it would be an option.
- "Perform more investigation up front rather than the end stage heavy current system. Actually might save silly uncaring and unthought through applications being raised. It should improve the quality of applications and final development. And local buy in and adoption.
- It's about no surprises on either side.
- There aren't winners and losers, there are contented players who have been heard"
- In my opinion, mediation should be available throughout all stages of development planning. Whilst there may be certain trigger points where it is likely that conflict will arise, conflict can arise at any point and accessibility to mediation should be 'fluid' enough to allow for quick and timeous resolution of disputes and continuity of planning processes.
- "1. I'm slightly uneasy about the wording of question 1, i.e. mediation being ""to encourage front-loaded meaningful engagement"".
- I'm 100% for mediation skills being part of the front-loaded engagement in development planning - because planners with mediation skills should be able to spot conflict and help those involved work through them.
- But I don't think appointing formal mediators should happen until mediation skills have run their course - in other words, conflicts have emerged that aren't going away. If you appoint mediators at the very outset, it's effectively telling everyone that there will be conflict and you won't be able to fix it yourselves without independent support. I don't think that's a good message to send out. For me, the starting point should always be for the planners involved to have the knowledge and skills to support parties to resolve issues without having to appoint independent mediators.
- 2. For me, mediation feels more relevant to include in national guidance about development planning/management than NPF4. That's NPF4 is about outcomes (what we want Scotland to be like), but guidance is about process (how planning delivers those outcomes). Mediation isn't an outcome, it's a process.

- What I'm suggesting is that I could understand why the SG might not want to include mediation in NPF4. If, however, they do have a section in NPF4 about process, it should include mediation."
- Suspicious of "policy frameworks", as these may be designed to restrict the use of mediation.
- The mediation process, planners, and developers should all sign up to the national standards for community engagement and at least have completed training on community engagement.
- It takes time for mediation to be embedded in any area of potential conflict if its supported from the start in all ways it is more likely to be successful
- Currently developers are trusted to self mediate. They are good at recording that they think they have mediated. They generally don't mediate or consult in any meaningful way because they are beneficiaries. This is why we need independent mediators.
- If you could invoke mediation on every proposed site in the LDP which is impracticable as could face hundreds of mediations
- Mediation shouldn't be compulsory, and should be used at a stage when both the developer and the objector take it seriously.
- Mediation is key but managing expectation is just as important. Visibility is important but effectiveness is more important. With local plans communities tend not want to get involved. I've attended many an empty room where we have set up opportunities to communicate with communities and no one comes. People are interested in their own back yard issues and dont tend to want to get involved in issues facing their community at large. Community councils are an example of this and most of the time are attended by a relatively small amount of people who may not be representative of the community in which they sit.
- Current lack of clarity about what is involved in ""gatecheck"
- Questions do not appear to factor in absent party who might be content with current development planning proposals only to find position altered via mediation."
- I'm not convinced that mediation could offer communities more than a good local authority offers now
- Consider resourcing. Full mediation could be offered only if dispute arises; the other options you discuss seem to including a mediatory approach in early engagement processes. This is different to holding a full traditional mediation to resolve disputes. Both would be appropriate
- Of course there will be "conflict". When you get communities which don't want development, such as social housing or you get serial objectors to windfarm developments, like Stephen Lucking, mediation will never be able to resolve those "conflicts". It's just going to prolong the process.
- Transparency in engagement is key to finding the right development in the right place
- Planning officers should retain proper authority.
- Agree that very early consultation and mediation will carry community's along with the plan provided the mediation is totally independant of that councils planning dept.
- It just makes sense to encourage dialogue / help better understand each other/ work together on a way forward

Please tell us about any other areas of development planning where you feel that a mediation approach might be beneficial.

- "In the NPF4 Call for ideas we emphasised that planning can best support our quality of life, health and wellbeing in the future? It should ensure that
- (i) Food growing spaces are provided within all new Housing Developments (ii) The use of public land is reconceptualised and re-organised to support
- greater community involvement in growing.

- (iii) Land is not left vacant and derelict indefinitely, according to the vagaries of the market, but reverts to public use (including social enterprise).
- However we have found that master plans and allocation of resources do not support growing spaces unless there is 'a demonstrated demand' but this demand which is escalating is not captured as evidence. Communities want to be consulted as equal partners in the use and development of land. "
- It may be applicable to any Place Plans produced by the Planning authority and or local communities. Further Scottish Government guidance is to follow on the production of these documents. However they are likely to need to fit within a framework of Local Development Plan policy and strategy, which include controversial elements such as housing land requirements, regeneration and growth areas.
- Earlier the better.
- Regards the point about making it mediation options clear to the public at different planning stages - it should also be clear what the criteria are for a rejection of mediation, to make rejection of applications for mediation transparent.
- Local Place Planning - where communities are adverse to new development but there is a clear need for new development to be planned to ensure a sustainable mixed community is established/ maintained.
- Setting out clearly the type of proposal where mediation is an option. Mediation cannot be available for every proposal irrespective of planning status
- Between official consultees to the planning process and the local community. Planning seems to encourage disputes between say highways and the views of the local community.
- In a changing Post Covid19 world, flexibility will be required for a whole range of issues that will influence land use and demands to change "agreed planning strategies." If these instances are referenced back to the SG National Planning Framework (not planning as in RTPI) but main SG policy; this would offer flexibility but a clear set of terms of reference that may be used to define "when specific types of Development demand policy changes."
- Mediation can be integral in the existing system.
- "Local considerations are understood and taken into consideration, the applicant doesn't need to show any understanding or consideration currently. This may bring a level of up front fact finding and appeasement rather than the backend heavy approach currently. Both side should feel part of the conversation and not that there is a winner and loser. It should make better thoughtout thoughtful caring applications. A builder can just keep pushing the same development through hoping the previous objections have magically disappeared. Pulling it at the last minute when they think is not going to go there way. Replications should be taken into consideration noting why they were removed and at which point.
- Understanding where the application fits into the local framework, the applicant needs to understand the structural plan before putting an application forward. The application is measured very early on to the structural plan and graded as such. This gives the mediator a level of context and likelihood that a good to continue decision will be made. Saves backend time and effort. The applicant needs to present the plans to the mediator and distractor before a final planning meeting. The distractors will then get an understanding of why the application has been sort and the applicant why there is pushback.
- Mediation isn't just about someone not wanting something in their back yard, it allows other groups to bring a voice. Local resilience regarding flooding, other local impacts that the applicant or local council aren't directly aware of or just don't care about."
- I feel that a mediation approach should be available to all affected parties throughout all areas of development planning.
- On Planning Policy
- I don't know enough about development planning to provide an answer to this request.

- On making suggestions on how community engagement within the planing system can be improved and the statutory list of consul-tees must be widened to recognise the definition of community bodies under community empowerment legislation.
- Mediation should be available for all forms of human engagement. It is essential to have 3 perspectives to avoid escalating conflict. That is why 2 parents are usually better than one.
- none
- Still seems to me to have the aim of creating jobs for mediators again
- local place plans such as
- Regeneration Frameworks etc
- Action plans and delivery plans
- When a development is proposed a mediator should be identified with contact details throughout the affected community, local libraries, dr surgeries to involve the people, not just online as many do not have internet access.
- again sound difficult to hear details

Part 5 - Development Management

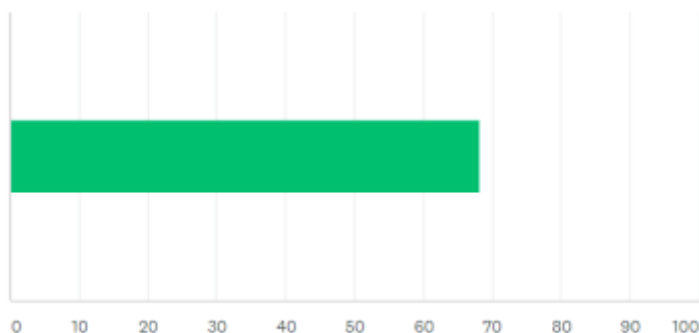
Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=N5Mvg0bi8g>

To what extent do you agree with the proposal that pre-application is the most appropriate opportunity for mediation within the development management process?

Number of responses: 56

Average response: 68.2/100



Please tell us more:

Number of responses: 64

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
Mediation should be written into the guidance for Proposal of Application Notices.	4.69%	3.13%	20.31%	45.31%	26.56%
Local authorities should suggest the use of mediation to applicants at the pre-application stage.	7.81%	4.69%	12.50%	53.13%	21.88%
Mediators should be present at pre-application consultation events.	6.25%	6.25%	40.63%	26.56%	20.31%
Reference should be made to the use of mediation in pre-application consultation reports.	6.25%	3.13%	12.50%	48.44%	29.69%

Please tell us more about any of your answers above.

- While I agree with all these proposals, once again I think they would be strongly resisted by developers, who largely rely on the existing modes of consultation/objection/support.
- There are often many different needs for land use and infra-structure in a development and a way of bringing these voices together to hear each other and come to an agreed plan would be a big step towards change in the planning system
- Planning applications are likely to differ in nature, size, cost and impact and smaller scale applications may be delayed or cause the applicant unnecessary expense if mediation is required to early in the process.
- Not my area of expertise!
- What's missing here is the post-application sequences. What happens:
 - - When a planning authority is not satisfied with an applicant's rationale for not using mediation? Could this be a grounds for rejection, particularly if it's in the planning authority's policy? What about if other stakeholders are not satisfied with the rationale?
 - - When mediation has not resolved conflicts? What are the controls and structures that ensure mediation does not become a source of disillusionment (much as 'consultation' has)?
 - - How does mediation relate to planning enforcement? It seems to me that mediation should produce planning-enforceable outcomes.
- It's more important that PAC sees real involvement and change rather than an assumption that it is a conflict-resolution event. A second event could be mediated but this glosses over key developments that undershoot the requirement for any form of PAC. The idea that the community council for the area should be present at a PAC event seems to me to balance up the value of the process even though it is the developer's gig.
- It is NOT appropriate for every housing application over 50 units or 2 Ha to include mediation proposals. If a site is allocated in an adopted LDP (which presumably may already have had

some form of mediation) a second mediation should not be mandatory as it will inevitably result in the aggrieved party (whoever that it) running the same arguments ran at the LDP. Mediation should be the exception and not the rule and applicants should not be required to justify on PAN's why mediation is not proposed. Mediation should be on a criteria basis. Does anyone actually know how long all this will take if mediation is the norm?

- The use of mediation where appropriate as early as possible would enable applicants to feel that they have some ownership of the process.
- I am not supportive of the current pre-application process. It seems purely an opportunity for the applicant to sell their project. How it is currently reported is biased. Comments are taken out of context to support the project. Pre-application needs to be a formal process before mediation can take a part.
- During MasterPlan pre-apps meetings in the Highlands having an objective specialist who can inform, guide and mentor the process and offer justification of present policy and why benchmark criteria cannot simply be ignored such as SNH, SEPA and Archaeology factors are "Not for Removal" but can wider Community Benefits be offered workin with other Key Place Stakeholders to bring value without the need for S75 agreements.
- Mediation isn't generally understood but should be considered. A trained mediator needs to go through the circumstances with each stakeholder (party group) at the earliest point. It may be that it will become clear to them if mediation is inappropriate. An hour with each stakeholder group should (which could be via zoom) would allow a trained mediator to assess whether mediation might resolve the issues. If it cannot then appropriate traditional routes could be endorsed by the mediator. However, most cases could then progress through a mediation channel at every stage thereafter.
- No Consultation at Present from Planning no communication, no recommendatnions just a refusal result
- All of these would help to give focus to the material planning considerations and may end up reducing the length of time applications take to determine.
- I think we need to be very clear about the difference between mediation and facilitation.
- This question (and the audio clip) suggest that there is a role for mediators at PAC events.
- I don't think there is normally a role for independent mediators at PAC events (because it's basically an admission of failure amongst the planners and others to resolve conflicts themselves, as I explained in response to the previous section). But in some situations, where conflict is clear and entrenched, there might be a role for mediators at the PAC event. Just not as a matter of course.
- But I do see a role for those facilitating PAC events to have mediation skills. The critical difference is that they aren't independent mediators - I see the role for mediators as being once planners/facilitators have got as far as they can in resolving conflict using their mediation skills."
- i wouldn't like an impression to be gained by any party that mediation at this stage was a "final solution.
- As part of meaningful community engagement in the planning system the earlier the better!
- I'm concerned that this might lead to more detail being required at an earlier stage which might make it look like a scheme is finalised when the PAC process is there to help shape / mould the final proposals.
- mediation should be an exception and not the norm
- Development Management stage should not be about or perceived to be about disturbing plan-lead allocation. As regards details this should be left to planners to assess the "mediation of spece" etc.
- The main problems with PACs as I have experienced them is
- 1) that the Developer has already done lots of preparation and determined for themself how it's all going to be and work for their purposes. Communities are coming with very little knowledge or expertise. 2) Developers then usually go away ('disappear') for weeks or even months, maybe having lots of consultations with planners in the mean time. At this stage there seems

to be a total absence of transparency as far as a community is concerned. Not sure what role anyone but the very best and trusted individual could contribute. And we have to remember there are mediators and mediators. Not all have the same attributes or ability to build rapport and trust"

- Depends on your definition of mediation - mediatory approaches in early engagement are different to "a mediation"
- You might get the feeling that I think mediation is a touchy feely waste of time. You're right. As I said though, you'll introduce it and the academic (probably from UofG) will pat themselves on the back and write a paper about it whilst us mugs on the front line will have to deal with all the nonsense.
- Earlier engagement the better
- Mediation should be a last resort.
- Agree with all of the above except for the word ^suggest^ which implies that a developer can refuse to mediate and that planners will make the decision as to which development warrants mediation. This is the problem with the current system, wide open to abuse which has enhanced distrust.
- Not sure how it would work having mediators present at PAC events given these tend to be presentation boards in a community hall...

Please tell us about any other areas of development management where you feel that a mediation approach might be beneficial.

- It is not only that some applications are contentious but also that the planners and developers are not hearing a need for land use from the people. Communities often do not have experience of the options (such as benefits of growing spaces). A mediator who could also ensure that those involved fully understand the opportunities, that it is never an either/or situation but how different needs can be met.
- Where selected applications called in by the Scottish Government or goes to a Local Review Body for decision, it could be beneficial to have an independent mediator involved, at the request of the local authority. This could be a useful tool for addressing any significant conflicting opinions.
- Enforcement stage. Had experience there, but I was new back then and you need planning and local knowledge, and confidence to say tough things when neighbours object.
- Planning enforcement - making mediated outcomes enforceable.
- From the point of view of planning as a force for social mobilisation, there's something to be said for inserting mediation later into the process when conflicts have become clearer - when communities realise their power and capacity through rallying around a defined issue, rather than at earlier stages when sometimes issues can be hard to predict or conceive of. Doing mediation at the pre-application stage should definitely not be a rationale or excuse for eschewing mediation later on. ""We've already mediated so we don't need to again.""
- Training on the discretionary component of enforcement would manage expectations.
- If an application is lodged on a non-allocated site either as a result of a plan being out of date or due to less than 5 years effective housing land supply being available then a mediator would be useful to help try and explain why an application has been lodged which conflicts with the Development Plan
- Finishes, appearances styles etc enhancing the vernacular local architecture, landscape shape and use rather than having an "Us & Them" approach to "This is our Design Guidance, you must comply with it - how else to be embrace improvements, POST Covid19 in technology, Styles, energy conservation and accessibility?"

- If developers' amendments are made to planning applications after a development has commenced then these need to be mediated unless they are within agreed variations. Therefore, the scope for variations needs to be clear and built in to the original permission otherwise any mediated settlements will lose their credibility.
- I do not have sufficient knowledge or experience to be able to provide a response.
- none
- Discharging planning conditions and enforcement, developer obligations
- You asked this already. I left it blank. Hint.
- Enforcement
- Development briefs
- Departmental collaborations
- sound again!
- Sometimes there will be cases where parties will be unable to reach common ground and as such the expectation of mediation should be clear to all - ensure all parties who wish to be heard have had an opportunity to be heard. Mediation must also be able to identify and address unreasonable positions taken by any party.

Part 6 - Local Place Plans

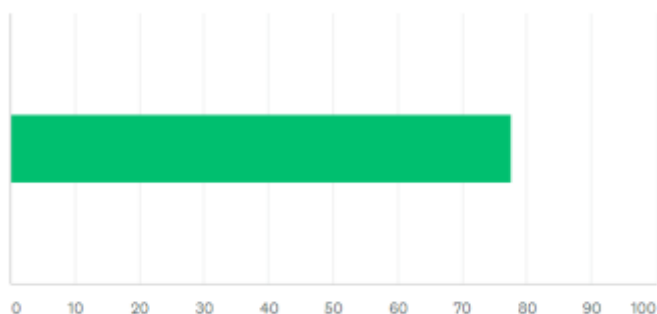
Link to the audio clip included with this part of the survey:

<https://www.youtube.com/watch?v=VolSebDxZUo>

To what extent do you agree that mediation could be a good tool to encourage a collaborative approach to the preparation of local place plans?

Number of responses to this question(s): 60

Average response: 77.7/100



If you have had any experience of community-led planning in the past, please tell us whether you feel that process could have benefited from the use of mediation.

- the mediator could bring together groups with apparent conflict of interest - play areas, football pitches, growing spaces, dog walkers etc - to ensure that the participants are aware of all the options and that finally a plan will address all the needs in community
- I have not but it may be worth checking with local authorities, developers and community groups involved in the Scottish Government Charette pilots, eg Lochgelly in Fife.
- I think this is just a need for facilitation not mediation. If a mediator has training in facilitation that's fine. What's more important is capacity-building and resourcing.
- Most definitely, assuming parties involved are understanding on the purpose and demonstrate a willingness to participate. Clarity needs to be given as to the materiality of the agreement reached during mediation processes. It would be too easy for one party to dismiss the conclusion simply because they did not agree with it. If mediation fails, this may be worse than entering into it in the first place.
- Discussion in community groups can become very heated. A mediator would help to keep discussions focussed on areas agreed on that are important.
- I have had experience and the presence of a mediation opportunity would definitely have benefitted the community.
- In a small scale project: a retired planner and myself as RICS surveyor had great difficulty gaining acceptance of SNH, SEPA and Marine Scotland's roles and legal powers. Once understood and appreciated that these were positives for a Better Community things moved on a pace. The Council official sent to inform the meeting was not a planner, had not explained things accurately: the imperfect knowledge left took some considerable work to correct. Basic guidance with a few appropriate worked examples - rural, town conservation and housing or industrial and farm Brownfield sites would be good.
- A dangerous road was only going to be improved if a local builder would foot the bill off the back of a near by application. When they didn't it was taken off the strategic plan. Local community council asked why it was taken off, no real answer was given only the council can't afford to resolve it. A percentage of all applications large or small should be put into a local pot to finance very local improvements.
- Recently the council have been telling the community council that we are part of the planning process and always have been. Why this year have they only just told us this. We should be a tick box to ensure it's taken place"
- N/A
- Again, I think we need to be clear about distinguishing between facilitation and mediation.
- For me, facilitation is about helping people to come to a conclusion, and is therefore an essential part of any LPP process. Mediation is about resolving a conflict - which may or may not be required in an LPP.
- I've been involved with a number of LPP-style community actions plans and the like. In every single one, I've used mediation skills to facilitate the process. But in none of them has there been any need for a formal mediator.
- Arguably, if a mediator is needed in an LPP, the process has failed. Facilitation should obviate the need for a mediator in an LPP. It should always be possible to produce an LPP without having an independent mediator."
- No experience.
- Yes
- Yes
- Planning For Real events haven't generated confidence that community views have been properly balanced against those of developers. That confidence could have been developed through active facilitation by someone with no connection to developers.
- No.
- yes - at the stage where you have ideas and you're trying to work out priorities

Please tell us more:

Number of responses: 63

	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
The preparation of Local Place Plans has the potential to result in tension which could potentially be reduced by the use of mediation.	0.00%	1.59%	9.52%	44.44%	44.44%
Mediation would be a positive tool to encourage a collaborative approach to the preparation of local plan plans.	6.35%	0.00%	6.35%	47.62%	39.68%
Information regarding mediation and how to access it should be written into the guidance for Local Place Plans.	3.17%	1.59%	11.11%	38.10%	46.03%

Please tell us more about your answers above or any other thoughts you have about the use of mediation in the preparation of Local Place Plans.

- I'm not sure how mediation will help the development of LLPs. Would this be mediation between community members who disagree with the shape of a plan? If so I don't see mediation being an appropriate use of resources in this instance - the final plan may never be adopted by the planning authority.
- Local Place plans should be based on Green Assemblies (like the Citizens assemblies) which take time and deliberation. For instance if these took place over 3 meetings the mediator could attend the last decision making meeting. They could also ensure that the Scottish Land Rights and Responsibilities Statement principals were understood. The Place Standard is not sufficient to empower citizens in their local place plans.
- Further information is needed to clarify the benefit professional mediation would add to the existing process and how the additional costs would be covered.
- Ultimately there will always be differing views on the use and allocation of land and it is unlikely that any process will necessarily result in opposing parties agreeing. The Local Development Plan gatecheck and examination should allow for some consideration of opposing views and determination of the best way forward.
- Key question is who will mediate? People may be suspicious of planners saying no, but will there be enough people to act as mediators across Scotland? Could Delivery Teams in planning act as mediators, expanding their role and act more independantly from the regular planning teams?
- I am much more supportive of mediation in the preparation of Local Place Plans than I have been for mediation in other contexts previously in this survey. Primarily this is because I have fundamental concerns about power disparities between developers, planning authorities, and 3rd party stakeholders that challenge mediation. However, these disparities, while by no means absent at the local level, are far narrower and therefore more manageable. In addition to this,

mediation for Local Place Plans seems a good place to start in addressing the 'localism trap', where decisions made locally are assumed to be intrinsically 'good', whatever the conditions or divergences on the ground are. Mediation, if used with a variety of other community development tools, could be a good way of bringing out these often concealed differences into the open, working with them, and producing new solutions that bring communities together.

- See 2.
- I thought it was illuminating that the audio identified mediation as being appropriate where communities next door to each other could not agree or even people within communities couldn't agree!!! It does leave you wondering what positive contribution LPP's will make to the process. I'm always intrigued why landowners and developers are never seen to be part of the local community
- Mediation may offer a useful tool but imposes two sides and a mediator whereas a more collaborative structure may be a better solution
- I think I have covered these reasonably well.
- Mediation could mean that issues are "taken away" and considered rather than the planning officer attempting to back track at local meetings when questioned, looking a bit silly. There an air gap for input or answers. Knowing the overall plan and being presented it before the strategic plan is discussed would be helpful to understand the specifics.
- planning Advisors stick to Policy which is antiquated and doesn't reflect the modern changing environment
- I think it sits well with the concept of front loading
- The key technique in producing an LPP should, for me, always be facilitation not mediation. But mediation skills might be an important part of the facilitator's skillset.
- None of the above addresses the question of whether the local authority has sufficient control over land to be able to ensure safe access and egress (for instance) of for the construction of appropriate forms of junction - hence many of the poor layouts that are scattered around the land. Ignoring road engineers advice (which isn't necessarily available to lay men anyway) is routine in the experience I do have.
- Local plans must be taken seriously and there must be a mechanism to ensure they are formally considered by developers and local authorities if they are to be serious about being a empowering opportunity.
- We have great examples of community type mediation in Scotland and the use of consensus building
- Might be considered premature to assess in light of the lack of detail about Local Place Plans.
- Mediation 'could' be, rather than 'would' be a positive tool.
- Use of mediatory approaches should be promoted in LPPs as with early engagement processes. Full mediation should only be made available where dispute is irreconcilable.
- Oh come on! People will not get involved with the planning system unless it affects them directly. First you try to get youngsters involved and now communities. Community councils represent a significant body of self interest and they are the sort of bodies which will lap this up and thwart otherwise good schemes. I feel sorry for developers who will see this as another burden on them. Are we really open for business?
- Meaningful engagement is critical
- Is Consultation done away with?
- Notification in community areas, drs, pharmacy, post office, library, shop notice boards, not just online .
- sound difficulties inhibit concentration
- Whilst it still remains unclear how and how LPPs might be prepared, there is a real risk that one part of a community who wish to promote a LPP have views that are directly contrary to other parts of a community. Being clear what a LPP needs to do and the relationship between a LPP and the LDP needs to be fully explored through the LPP preparation process.

- Build it into the budget - which often comes from a 3rd party anyway - which helps deals with impartiality.

Part 7 - Concluding questions

Is there anywhere else in the planning process that you would see the value of mediation being included? Please explain your answer.

- you have made it clear that mediation is required throughout the planning process
- Any disagreements between Central and Local Government
- Already mentioned enforcement, but it's been so long since I've done it, I'm not sure of their process.
- Development Management is often where conflicts arise. Mediation may also be required between developers, planning authorities and key agencies. It is not always the community. Mediation should be open to all groups.
- Planning gain requirements
- Post community discussions mediation may be helpful.
- The various actors in the planning process need to be mapped. The points of conflict and with whom could then be identified.
- Today a great many "Planning Advisers" still do not do all of the required "Pre-Consultation" work. This needs stopped if LA Planners are to be able to do what Parliament desired via the 2019 Act.
- Ticking a box that Mediation has been undertaken and across prescribed topics in "The Guidance" is essential."
- In an ideal world there should be local planners available for 'mediation'/ comment / explanation at all development stages (before, during and after Local Plan adoption and Planning Permission.
- Final sign off and building warrant, this should be performed by applicant and local community to verify all the agreed points are met.
- Any factor or deed agreements made known to community as house estates are sold to the general public. The new local community shouldn't be left with something that will harm them (Greenbelt factoring and the mess they make is the case in point)
- All agreements must be met within a given timeframe during the build and heavy local financial penalties imposed if not that are added to a local pot for Community Council to spend on Community improvements"
- I think mediation should be available to the parties at any stage but with particular emphasis on those stages / trigger points when it is most likely that the scenario would be 'ripe' for mediation.
- Planning in general officials have no time for individual interest they are only interested in complying with planning policy i.e ticking boxes
- N/A
- I don't know enough about it.
- Mediation should also be used at the strategic planning stage and with local development plans as this is the best opportunity for communities to influence outcomes and make a impact and gain influence.
- Working collaboratively with other services to provide good quality assured training is essential
- Planning enforcement is the obvious one.
- No
- none

- Mediation should also be brought in for Structure Plan development, particularly where incompatible interests (e.g. conservation/environment v developers) are predictable.
- Enforcement - although this is a very under resourced aspect of the planning system
- Planning enforcement. Seek a resolution which is not always possible given planning authority perceived as being unwilling to compromise as complainant might initiate SPSO complaint.
- Enforcement
- This is at least the third time you have tried to get an answer on this or a variation of it. There is nowhere I can see mediation as being of value. Leave it in the academic's shelf gathering stoor.
- no
- An independant mediator s view of all council planning on the impact, and effect on the community prior to implementation.
- it should be apparent throughout

Is there anything that you feel we have missed that must be included in our report to the Scottish Government?

- Not at present, but we've not had long to consider this proposal. We are sure that there will be some issues, however you do seem to have covered everything.
- This is probably not relevant to the topic of mediation - BUT - surely one of the most unfair aspects of planning in Scotland is the continuation of the lack of third party right of appeal? Is there any way that this could be incorporated in some way?
- That this could underpin their Scottish Land Rights and Responsibilities Statement and the Land Commission Protocols if only ensuring that all those engaged have relevant knowledge.
- If mediation is to be cascaded throughout the system, community councils and anchor organisations should have people who can mediate at a local level. Many local people have skills and experience they could draw on in this area, it need not only be a professional panel. Recognising the need for mediation in community groups and between professionals (such as housing association managers) and the local people in use of land. "
- "You haven't discussed power in these clips, and it's a problem that underlies everything else here. From what I know of mediation (and maybe I'm mistaken), it assumes a sort of communicative rationality that places everyone round the table in positions of equality, and expects this to be the foundation for resolving conflicts. I'm rather more pessimistic - planning applicants, planning authorities, and those affected by planning decisions all have very different social, economic and political power that makes mediating their conflicts a minefield.
- Mediation was introduced into the planning reform as a way to make communities feel more involved in planning decisions. If that's going to be achieved - if mediation is not going to go down the same cynical rejection as poorly attended consultation events - then communities need to have confidence their engagement makes a difference. If mediation can't reckon with the fundamental disparities that disempower communities, they won't make a difference."
- Annual reports or embedded in LA planning performance reports.
- The need to emphasise that mediation is part of the toolkit but cannot be used in all circumstances particularly when local communities object to the principle of development irrespective of the prevailing planning circumstances.
- No
- There will continue to be an increasing local an for voluntary groups involvement in projects as "Post Covid19 Capital begins to focus on locally generated circular economies. Having PAS support these roles is most certainly essential otherwise, the lack of funding required in project start-ups and Scoping Reports may well see this fall at the first hurdle.

- Put the focus for this on Local Planners... and resource them properly.
- There should be no more surprises and a better collaborative approach.
- National and even local councils don't know the very local concerns"
- Rural Development building guidelines is discriminatory
- N/A
- Mediation between local authority departments involved in development?
- Statutory guidance on standards for community engagement for all parties must be visible and transparent.
- The existing offer of training from a number of agencies which would prevent reinventing the wheel and be more cost effective
- No
- Key requirements of impartiality, knowledge of subject matter. Recognition that mediation in planning is not a panacea and that it may in practice be difficult to resolve "dispute" absent from process the content non-participant.
- Having a referral process to full mediation in dispute resolution can be very useful as it provides credence to the process and can enable participants to have more control
- Enforcement
- Yes. You forgot to ask if this was a waste of time. Answer, yes.
- Key agencies involvement
- The Final agreed development approval must rest with local authority.
- The need to regain the trust and faith that planning depts have lost with their disregard of community objections in favour of developers to the detriment of local communities.

Any other comments?

- See my comment above; I accept it may not be relevant...
- Thank you I found this very interesting and an excellent survey. Best of luck in persuading Scottish Government to support your ideas.
- Further information would be useful to clarify the benefits professional mediation would add to the existing planning process and how the additional costs would be covered.
- Ultimately there will always be differing views on the use and allocation of land and it is unlikely that any process will necessarily result in opposing parties agreeing. The Local Development Plan gatecheck and examination should allow for consideration of opposing views and determination of the best way forward.
- To summarise the above a bit - I don't think I'm being cynical in identifying that mediation is a reform designed for communities in response to their demands and needs. If it's going to meaningfully meet those, rather than be placatory, it needs to have some teeth and it needs to actually make developers meet communities where they are, and challenge planning authorities to take communities' demands seriously, with a truly impartial, public stance that doesn't assume towards pro-development. I'm open-minded, but if it can't do those things it's a waste of time.
- Clarity needs to be provided over the status of the end result and what procedure follows an unsuccessful mediation.
- No
- Look at LABSS and possibly reference the Awareness of LA Planning Councillors and their understanding of the 2019 Act. Ultimately, they need to understand that Front End Loaded Mediation will save Committee Time, reduce stress for Staff and create a more formative environment within which development can occur. These folks need to "Sign-up" to it if it's going to be pressed through in a period of restricted economy and austerity.

- There are special techniques that can be used for group mediations and these are known to Scottish mediation. These techniques assist the progression of the parties towards a settlement whilst allowing all viewpoints to be heard. It is essential that the introduction of mediation is properly funded so that training modules can be undertaken by 'generalist mediators' who would like to participate in specific specialised areas of mediation beyond the 2 party situation.
- In the village of Longriggend Airdrie you are not permitted to build a house even although you have been born there and there is no housing supply complete discrimination
- Nothing else to add.
- N/A
- "My fear is that, by focussing on frontloading, the report will introduce ambiguity about what mediation is.
- As you can probably tell from my answers, I see mediation as the use of an independent mediator once a conflict is visible; 'before' that point in the process, I think the key skill is facilitation, albeit that the facilitator could benefit from having mediation skills.
- It feels to me that you're expanding the definition of mediation to include facilitation.
- It doesn't really matter whether I'm right or wrong - the point is that what I feel is an expanded definition makes me unclear and uncertain about how you define mediation. If I feel that, I suspect some others will too!
- That said, it's great that you're doing this piece of work. I'm just keen that it has as much effect as possible. We've had at least two false starts with trying to embed mediation in planning before, let's aim for third time lucky!"
- Failures seem to go unrecognised and mistakes are repeated. It might be a good idea to identify some of these and learn from them. Many seem to stem from the contempt planners have for other professions closely involved in development.
- All the very best indeed and I wish everyone involved nothing but positive outcomes that shifts the balance of power so communities can influence the planning process at all levels.
- I would like to be kept informed of developments in this area
- Research use of mediation in land-use planning elsewhere. In some places very much part of a court/tribunal service. Is there any other equivalent local authority use such as housing? Recognise the resource implication in not only monetary terms but also time taken by mediation. Current performance statistics are not something to be proud of and mediation (which should be voluntary and not imposed) has the potential to make periods for determinations longer and to put Scotland at a competitive disadvantage with elsewhere.
- Leave it alone. DO NOT BURDEN THE PLANNING SYSTEM FURTHER.
- Sort out the dreadful performance of the Reporters."
- no
- How will mediation stop so many eyesores get approved?
- Think i have said enough.
- Raise the sound levels/tone !
- I don't see any mention of enforcement in this survey. Not really surprising - it's generally overlooked

PLANNING

Mediation in Planning Pilot Project

Output Paper

August 2011

MEDIATION IN PLANNING PILOT PROJECT

OUTPUT PAPER

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1. Background and Rationale

1.1 This short report looks to bring together some of the lessons from the Scottish Government's mediation pilot project and the three completed cases studies. The aim of the pilot was to provide robust evidence of the possible effectiveness of the application of formal mediation to a range of planning issues. It also makes reference to other related work being undertaken in the land use planning system in Scotland.

Background

1.2 Planning guides the future development and use of land. It is about where development should happen, where it should not and how it interacts with its surroundings. It is essential to recognise that planning issues, by their very nature, will often bring differing interests into opposition and disagreement and the resolution of those issues will inevitably disappoint some parties.

1.3 Mediation is one of a number of methods which has the potential to cost-effectively resolve disputes in the planning system. Other examples of dispute resolution include the use of facilitation, brokerage or arbitration. There has been a growing interest in the application of mediation in a planning context with, most recently, the publication by the National Planning Forum / Planning Inspectorate of *Mediation in Planning*, which comprised a study of mediation in planning in England¹.

1.4 In his speech to the Scottish Mediation Network in March 2011, Fergus Ewing MSP, the then Minister for Community Safety, stated that "The Scottish Government firmly supports and encourages the use of mediation and other forms of Alternative Dispute Resolution." The 2005 White Paper 'Modernising the Planning System' identified mediation as a tool which could help improve the speed and quality of the planning process. This will support the role that the Government sees the planning system playing in facilitating sustainable economic growth. This is a key element in the Government's Economic Recovery Plan update published in February 2011².

1.5 In 2009 the Scottish Government, as part of a wide ranging reform of the planning system, published *A Guide to the Use of Mediation in the Planning System in Scotland*³. The purpose of the guide is to help those involved in the planning system in Scotland better understand how mediation can be used to enhance the planning process.

Rationale

1.6 Alternative Dispute Resolution (ADR) – which includes techniques such as mediation and arbitration - is increasingly used throughout the world. There is anecdotal evidence of the effectiveness and benefits of the application of mediation to a wide range of policy areas, including civil justice and housing matters. In addition, the EU Directive on certain aspects of mediation in civil and commercial matters seeks to promote the use of mediation by citizens and businesses for all cross-border civil and commercial law disputes. Regulations to ensure the requirements of the Directive are met in Scotland came into force on 6 April 2011⁴.

¹ <http://www.natplanforum.org.uk/projects.html>

² <http://www.scotland.gov.uk/Publications/2011/02/24095442/0>.

³ <http://www.scotland.gov.uk/Publications/2009/03/10154116/0>

⁴ <http://www.legislation.gov.uk/ssi/2011/234/contents/made>

1.7 The Scottish Government is actively seeking to promote the use of ADR and has set up an ADR Working Group to consider the most appropriate way to encourage greater use of types of ADR both within the SG and externally.

1.8 It was recognised by the Scottish Government that practitioners would find it useful to see practical examples of how mediation is being used in practice. The purpose of the Mediation Pilot Project was therefore to explore the use of mediation in the planning system by funding its application to live planning cases.

2. *Project Methodology*

2.1 In early 2010 the Scottish Government commissioned experienced practitioners Core Solutions to undertake up to three mediations as part of the pilot project. Each of the cases would be subject to evaluation by ODS Consulting. The evaluations would record the participants' views of the experience and also identify key lessons learned which may be of interest to parties looking to use mediation in the planning system in the future. The project ran from spring 2010 to spring 2011

Obtaining the Case Studies

2.2 The Scottish Government sought potential cases through the following means: the Scottish Government e-mail alert system; letters to local authorities (Heads of Planning and Community Council Liaison Officers); and publicising the study through the "Scottish Planner", the magazine of the Royal Town Planning Institute. In addition, organisations with a community focus were advised of the Pilot and invited to submit suggestions for cases.

2.3 Around a dozen firm expressions of interest were received from a range of parties including; members of the public; a community council and a planning consultancy. However, the primary source of potential mediation cases came from planning authorities. The nature of the cases ranged across the full scope of the planning system – from pre-application consultation to appeals.

2.4 Potential participants were provided with information on the project and asked to complete a proforma setting out some basic information about the particular dispute. Seven proforma were subsequently submitted to the Scottish Government for consideration.

2.5 The participants were asked to provide information including:

- the case details;
- why mediation is seen as a potential option; and
- the potential of other parties to be willing to participate in mediation.

Evaluating the case studies

2.6 The information contained in the proforma was evaluated against a series of pre-determined criteria with the assistance of a Steering Group comprising those with practical experience of mediation including trained mediators, representatives from planning authorities and developers. The selection criteria included:

- opportunity for mediation (e.g. to help build a consensus, to help resolve a specific dispute)
- willingness of parties to participate in mediation and evaluation; and
- type and nature of the planning issue or problem.

2.7 As part of the project, the Scottish Government was looking to evaluate the participants' experiences of mediation. Participants were therefore asked to agree to participate in an additional evaluation of the project. Such evaluation would not form part of a normal mediation.

Further information

2.8 Three of the cases where proforma were submitted were taken forward to mediation and information can be found in section 4. In addition four proforma were submitted for cases which did not subsequently progress to mediation. Of these: two didn't proceed as not all the relevant parties would agree to mediate; one case was put on hold by the local authority; whilst the other led to informal discussions involving the mediator and the parties involved.

2.9 The evaluation reports prepared by ODS Consulting form part of the outputs of the project.

2.10 Further information is available on the Mediation in Planning⁵ page on the Scottish Government website including:

- the leaflet to participants on the mediation process; and
- the case study evaluations for each of the three cases.

3. *Lessons learnt from the project*

3.1 This section looks at lessons learnt from:

- the organisation of the project itself; and
- those cases which did not progress to evaluation.

3.2 Lessons learnt directly from the case studies which proceeded to evaluation can be found in section 4.

Project organisation

- Number of cases – there was an expectation within the Scottish Government project team that three cases which would be translated into mediations could be identified easily and early in the project timetable. Despite this, the main risk identified in the research brief was a potential inability to identify examples of planning disputes to which formal mediation might be applied and where all involved parties were willing to participate.

It was anticipated that one of the main disincentives to mediation could be the potential up front costs. There was an attempt to mitigate against this concern by

⁵<http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/Med11>

ensuring that literature attached to the project was clear that the mediation was at no cost to participants.

Learning Point – Despite the provision of funding for the mediator, a large number of potential cases did not materialise during the project. This could have been due to a number of reasons:

- the level of interest in and understanding of mediation in planning is limited;
- an uncertainty among potential participants about the risks and benefits of mediation;
- there are a limited number of applicable cases; or
- the pilot project was not advertised sufficiently broadly.

It was suggested by the mediation team that due to the current economic downturn, the pool of potential issues which could be drawn on was unexpectedly small. Another potential reason for the lack of cases coming forward may have been the additional project requirement for the cases to be evaluated. Whilst this was not mentioned in the evaluations, it was mentioned as a side issue in related correspondence with one of the parties.

- Range of cases – Table 1 identifies the element of the planning system which the cases related to. It also indicates the number of: expressions of interest; proforma submitted; and evaluations completed in each category.

Learning Point – The Scottish Government's guide to mediation lists a number of areas of the planning system where mediation may be applicable. From the information in Table 1, it would appear that practitioners also see the potential for mediation to be used across the whole of the planning system.

It is interesting to note that the three cases which went forward to mediation were those where the planning authority played a proactive role in bringing forward the case and were involved as one of the parties in the mediation. It should also be noted that in each of the three cases, local community councils were also willing to play an active role as one of the parties.

Table 1: Type and number of cases

Type of case	Number	Proforma	Evaluated
Development Planning	2	2	2
Pre-application consultation	1	1	
Development Management ⁶	5	3 ⁷	
Appeals	1		
Relationship building	3	1	1

⁶ One of the development management cases involved a linked enforcement issue.

⁷ Case actively taken forward by the mediator, but no formal mediation (see Learning Point – Opportunity for an exchange of views)

Cases not taken forward

- Mediation between neighbours – two of the cases which came forward, but did not progress to mediation, involved mediation on planning cases between neighbours. In part this related to mis-trust either of the process or a view that the other party would not want to get involved.

Learning Point – Despite the offer of mediation in the planning context, we don't have any examples in the project of this form of mediation.

- Opportunity for an exchange of views – one of the development management cases which was taken forward didn't result in formal mediation. In this case, informal discussions were held between the mediator and the developer / local authority. In summary, the planning application had already been received by the local authority but there was disagreement about the design / scale of development on the site. This was suggested as a possible case by the local authority with both parties willing to engage in formal mediation. Following a three-way telephone conversation between the parties and the mediator, the developer decided that there was scope for a full design review and re-engagement with the local authority before taking a formal mediation route. The subsequent application was granted planning permission following officers' recommendations to approve, subject to conditions and a legal agreement to secure developer contributions.

Learning Point – irrespective of the use of formal mediation, there may be scope for the positive involvement of an independent "mediator" to facilitate discussion.

- The role of mediation at pre-application consultation (PAC) – whilst this case did not go to mediation, it does offer some relevant lessons. The example was suggested by a community council which was seeking to hold discussions with the developer and the local authority. However, neither the developer nor local authority wished to be involved in mediation at that stage. The developer had already set out, and begun to implement, their strategy for PAC in its proposal of application notice which had been submitted to the local authority. In responding to the invitation, the local authority noted its statutory role in PAC and that it considered involvement in mediation did not sit comfortably with this role. In coming to a view as to the use of mediation, the developer considered that only once the proposal was refined, would the topics for discussion be clear.

Learning Point – The Scottish Government guide suggests that pre-application consultation may be an appropriate point in the planning process for mediation. Additionally, Scottish Government Circular 4/2009: *Development Management Procedures*⁸ suggests that at the PAC stage, the engagement should be between the developer and the community, with a limited role for the local authority. From the example above, it could be suggested that at the PAC stage, any mediation may be best directed between the developer and community and considered at an early stage. Agreement that mediation is to be used as one of the consultation techniques may be most appropriately arranged in advance of the submission of the proposal of application notice.

⁸ <http://www.scotland.gov.uk/Publications/2009/07/03153034/0>

4. *Lessons learnt from the three case studies*

4.1 Three cases were taken forward for mediation and can be summarised as:

- Case 1 – Involving community members, local authority representatives and landowner representatives and advisors, the mediation revolved around the land allocation for the provision of housing within a new local development plan in the extension of a village in rural Scotland.
- Case 2 – Involving community members, local authority representatives and landowner representatives and advisors, the focus of the case was on a pre-mediation meeting to discuss amending land allocations within a proposed Local Plan for the development of brownfield land within a medium-sized town.
- Case 3 – Looking to improve relations between a local authority and the community councils within its area, this case involved an initial meeting between the local authority (both councillors and officers) and community council representatives.

Case 1

4.2 The case study evaluation highlights a number of positive outcomes including the building of trust, understanding, confidence and a shared voice. The evaluation also recognises that with regard to the speed of decision making, mediation led to decisions being made sooner. However, it was also suggested that despite the Scottish Government providing funding, there were additional costs for parties relating to the preparation for the day, and that value for money could not be ensured in the current budgetary climate.

4.3 A number of lessons were identified in the case study evaluation. They are not presented in any particular order.

- The importance of a skilled, independent mediator.
- It was suggested that the use of mediation style techniques, but not a mediator may have led to some but not all of the outcomes.
- People involved having experience of putting views forward in a “public” space.
- The use of break out groups which allowed parties, such as community representatives, to reflect upon what had happened and think about what to do next.
- The positive aspect of a neutral venue supplemented by regular breaks and refreshments.
- It was suggested that being asked to consider a written agreement to mediate in advance could be intimidating. It would be much better to have it stressed that the agreement would be explained and signed on the day.
- Issues of confidentiality and being clear about what participants may disclose about the mediation session.
- All parties indicated that they would advise others to think about using mediation. All participants would use mediation again, and suggested that it had saved them time and energy. There were however some reservations about potential costs and value for money in this type of scenario.

Case 2

4.4 Whilst this case did not lead to formal mediation, the potentially complex nature of the case led to the pre-mediation stages being evaluated as part of the study. The case study evaluation highlights a number of positive outcomes including an increase in the understanding between some of the parties, that it was seen as being positive that parties were willing to engage proactively and that the sessions demonstrated that mediation could have potential. However, many participants were concerned that in this case, mediation would make no difference to what would happen in this area in the future. In addition, it was suggested that the lack of progress to mediation had frustrated some parties.

4.5 A number of lessons were identified in the case study evaluation. They are not presented in any particular order.

- The critical importance of timing in the statutory processes – before firm positions are set out or at least when the outcome of mediation can influence outcomes.
- Where mediation does not take place, it can lead to disappointment that the potential had not been realised.
- Those attending the mediation process should be those who are able to make decisions on behalf of an organisation.
- The importance of a skilled mediator in providing balanced and fair written and verbal summaries.
- Participants advised that there may be cases where the issues were too complex, that it was important to be well prepared, to agree the scope of the discussions and respect that people (especially community representatives) are giving their time to attend.
- Most parties indicated that they would agree to participate in mediation again.

Case 3

4.6 Within the timeframe of the project, the third case study did not lead to a formal mediation agreement between the parties. The meeting held between the parties provided a useful starting point for further discussion which we understand is being taken forward. The case study evaluation sets out a number of future actions which were agreed by the parties.

4.7 A number of lessons were identified in the case study evaluation. They are not presented in any particular order.

- All parties recognised the value of having a skilled mediator who was independent.
- Participants highlighted that more time to prepare would have been helpful.
- The need for an informal venue set out where participants could face each other.
- There was a need for an appropriate level of pre-mediation support and discussion – this could include ‘private sessions’ with the parties in advance.
- The need for sufficient time for participants to adequately discuss the issues on hand.
- Participants tended to be positive about the mediation session in that it was a useful starting point.

4.8 In summary, the two common comments highlighted by the evaluated cases were:

- The value of an independent and skilled mediator; and
- Participants were positive about mediation.

5. Other relevant issues

5.1 As noted above, there has been a growing interest in the use of mediation in planning. As an example, Planning Aid for Scotland has responded by offering training to its volunteers and corporate members on mediation techniques. Also, as noted above, the Scottish Government has also sought to promote mediation in the compulsory purchase process in its recent consultation paper - *Guidance on the use of compulsory purchase*⁹.

5.2 March 2011 saw the launch of the Scottish Mediation Network Helpline. The Scottish Mediation Network also provides information on registered mediators, including those which specialise in environmental and planning mediation¹⁰. Whilst it also includes a general guide to suggested fees for mediators, these are based on monetary values which may be difficult to assess in planning cases.

5.3 There are a number of similar examples of dispute resolution / consensus building techniques which have been taken forward independently of the Government's mediation pilot:

- Regulatory Review Group – Powharnal Pilot Project. The use of multi-partnership working in the replacement of an open-cast coal mine at Powharnal in East Ayrshire¹¹.
- Shetland Islands / South Ayrshire Councils – Both authorities provide examples of using facilitated workshops to support discussions on their Local Development Plan Main Issues Reports. Further information is available at: the Shetland Islands¹² and South Ayrshire Council¹³ websites.
- The use of brokerage – In the Scottish Government's Economic Recovery Plan¹⁴, a commitment was made to investigate the potential of a brokerage service. Work is ongoing across public and private sectors to ensure that any potential brokerage activity adds value, and can deliver positive outcomes for Scotland and its economy. The Chief Planner has also been involved in brokering planning solutions (subject to the statutory role of Scottish Government in planning cases).

6. Conclusion

6.1 The main aim of the pilot study was to provide robust evidence of the effectiveness of the application of formal mediation to a range of planning issues. This aim has only partly been met as the cases evaluated in the study did not include one specifically relating to development management.

⁹ <http://www.scotland.gov.uk/Topics/Built-Environment/planning/National-Planning-Policy/themes/ComPur>

¹⁰ <http://www.scottishmediation.org.uk/mediators/index.asp>

¹¹ <http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group/publications/PowharnalPilotProject>.

¹² www.planshetland.org

¹³ <http://www.south-ayrshire.gov.uk/planning/mainissuesreport.aspx>

¹⁴ <http://www.scotland.gov.uk/Topics/Economy/economic-situation>

6.2 However, despite the lack of a development management example, there is evidence of an interest in the use of mediation across the planning system. It would appear that mediation may be best employed where there is a real prospect of parties being in a position to re-consider their positions. This would suggest that, for example, in development planning, mediation may be best employed early in the statutory process.

6.3 The use of formal mediation techniques were generally supported by participants who also attributed value to an independent skilled mediator. However, there is also evidence that these skills have also been beneficial even where mediation has not been formally undertaken.

6.4 One issue raised by participants is the financing of mediation and particularly who pays for mediation. This issue was outside the remit of the study and evidence of a cost-benefit appraisal of mediation in planning does not appear to be available.

Scottish Government

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