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Delivered by email.

22 May 2024

Re: CIfA response to Masterplan Consent Areas consultation on draft regulations

Dear MCA team,

Thank you for the opportunity to provide input on the proposals for Masterplan Consent Areas (MCAs). We recognise and support Government's intent to streamline planning and provide new tools for local authorities to exert leadership over strategic development and place-making, while streamlining processes and reducing risks for developers. However, we have serious concerns about how this proposal will be implemented in a way that will not risk undermining currently effective processes for managing the impact of development on the historic environment.

We feel unable to respond to the consultation via Citizenspace as the questions are too specific for us to raise our key issues relating to the impact of the introduction of MCAs on processes for managing impacts on the historic environment – particularly below-ground heritage assets with archaeological interest. We strongly encourage officials to set up meetings to discuss the proposals for MCAs with historic environment sector representatives to examine how some of these challenges can begin to be addressed.

Key issues

- 1. Data on the historic environment is usually not of sufficient detail to make front-loaded decision-making at the point where MCAs would be selected, and it is not clear how necessary site-specific evaluation would be conducted in the proposed plans. The proposed MCA approach risks negative impacts on the historic environment and undermines the precautionary principle of the existing planning process.**

We believe the proposals, as currently articulated, have not grappled with some of the key issues that will arise when trying to front-load consent for MCAs. For the historic environment, chiefly, this relates to the fact that detailed data on the historic assets on a site and their significance (especially below ground archaeological remains), is not likely to be sufficiently detailed at the point that MCAs sites are brought forward. It will be necessary to obtain information about these assets through processes of 'desk-based assessment' of known information, and often a 'field

evaluation' prior to consent being given. It is not clear that MCAs will have a process for obtaining this information.

We recognise that Government's intention is not to cut corners or reduce protections expected from other types of consent. We also note that Schedule 2 clause 2.c notes that the absorption capacity of the 'natural' (a misnomer) environment should be addressed with reference to (viii) "landscapes and sites of historical, cultural or archaeological significance". However, it is not clear how this would be possible in a system which front-loads consent and has not acknowledged how site-specific evaluative data will be obtained prior to consenting.

It is vital to note that most heritage assets are undesignated, and many buried heritage assets will not be recorded, not known, or not well understood at the point at which a site may first be considered for development. While some record of known assets on a site may be recorded in the Historic Environment Record, this data is likely to be incomplete and is not sufficient data on which to make a decision on consent.

For a normal planning application, evaluative work (usually conducted by archaeological contractors working for developers) is required as part of a development's pre-application work. Without this process generating a detailed site-specific evaluation on above and below ground archaeological remains, it would be difficult or impossible, in many cases, to accurately assess what impacts development on a site would have.

Front-loading the considerations for design, natural and historic environmental impact, and other processes for proposed MCAs would put an enormous pressure on what data is already available. In some cases this data – held in Historic Environment Records – may be sufficient to provide at least an in-principle decision about the likely acceptability of development, especially in areas where there has been a lot of previous development. However, usually there will be important questions that need to be addressed before precise impacts are known, and permission can be given as a certainty.

While the need to conduct archaeological mitigation almost never means that a development cannot go ahead, it is likely that knowledge of below-ground assets will shape the nature and design of that development (for example, to change a design to leave the most archaeological valuable remains undisturbed) and to scope the need for archaeological mitigation works that will need to be carried out under planning conditions.

Front-loading the consent, and masterplan design, is likely to restrict developer's flexibility to respond to a sites buried archaeological remains. This may mean that archaeological mitigation could cost developers more, and cause more physical impact that would have been necessary. In essence, a front-loaded decision-making process increases the burden of information earlier in the process, and reduces flexibility later in the process.

2. Solutions for mitigating the risk of front-loading consent are possible, but will have a cost, and are not articulated in the draft regulations or consultation.

There would be ways to mitigate the additional risk of front-loading decision-making for MCAs. We recommend:

- **Improving baseline information on the historic environment & make Historic Environment Records a statutory requirement:** For example, making Historic Environment Records a statutory requirement and investing in improving the level of data held in those records, and how integrated this data was with masterplanning processes. This would help ensure that the data that we do have is as useful as possible at directing MCA design and consents. This is, however, not a short-term solution.
 - **Build in historic environment advice to the MCA process:** The consultation document refers to the consideration of ‘environmental matters’ and indicates some information in relation to MCA site selection criteria (Schedule 2. We would welcome more detailed confirmation of how processes of obtaining historic environment specialist advice would work. This would help to avoid the most obvious areas of *known* archaeological sensitivity and highlight areas of archaeological potential. We would also welcome specific answers on what happens when specialist historic environment advisors indicate that more information is required (eg from a specific evaluation of a site). Local authorities will need to ensure that local authority historic environment advisors are appropriately resourced to advise on the location and potential need for mitigation.
 - **Fund rapid assessment of sites being considered as MCAs in order to gather information where existing records are not detailed enough:** Where an authority wishes to designate an MCA, and recognises that there are unknown levels of below-ground archaeological remains on a site, the MCA process will need to make provision to fund evaluative work to assess the site prior to the involvement of a developer. This work could potentially be designed into a new type of ‘rapid, light touch assessment methodology’, designed to clarify only the broad suitability of a site to be designated as an MCA and scope possible mitigations to be undertaken. However, this work would still have a cost implication, and would need to be funded. If funded by local authorities, on the expectation that it would be paid back in fees by developers when development comes forward, that may work. However, at present, the proposals do not seem to have considered this need and therefore we are concerned that evaluation would simply not happen.
 - **Be as flexible as possible with a process of post-consent conditions:** NPF4 requires development to follow the ‘mitigation hierarchy’ seeking to avoid harm as preference, reduce harm as much as possible where it cannot be avoided, and offset any remaining harm with public benefit gain (eg in knowledge gain through excavation and dissemination of information about the past). The MCA should be capable of enacting avoidance and reduction of harm at later stages. This hopefully means that it would be possible to vary masterplan design as information comes to light at a post-consent stage. However, this reduces the degree of design control that MCAs promise local authorities.
3. **The extent to which the above issues have extensive historic environment implications depends on the intended nature and use of MCAs.** If MCAs are considered for a relatively narrow scope of use (similar to Simplified Planning Zones) – especially if focussed on low impact development types or low sensitivity sites, then the impacts may be relatively modest. However, it is not clear how they would work and where they would be used. Certain indications in the consultation suggest that they could be used quite widely, in a range of complex contexts, such as in historic urban areas, for intensive development purposes, like new large scale housing developments. If this is the case, MCAs could lead to a significant proportion of major development being brought forward through a process which is not held to the same standard of sustainability as development subject to planning controls and NPF4.

Consultation questions:

As stated above, most of the questions are not relevant to our expertise. We wish to provide selective responses as follows:

1 A). To what extent do you agree with the principle that regulations be kept to the minimum necessary and that more advice be offered in guidance and kept updated?

Disagree

1 B). Please explain your view.

It will be vital to ensure that regulations are in place to prevent lower quality outcomes/lack of sustainability from MCA development, when compared to development such to full planning application. We recognise that this is not Government's intention, but – as we have highlighted – there are significant areas of risk that appear to have been overlooked.

This will include scoping responsibilities for local authorities to obtain sufficient information about historic environment assets prior to MCA consent being given. Regulations will also need to explain the use of conditions, and how cost recovery for any up-front work local authorities may need to undertake in order to ensure sustainable decision-making.

At present it is also not clear how MCAs will interact with wider legal frameworks. For example, it is implied that MCA consent would negate the need for Listed Building Consent under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

2 A). We are not proposing to regulate to exclude any form of development from having potential to be within a MCA. To what extent do you agree with this approach?

Disagree.

2 B). Please explain your view.

We are concerned that MCAs appear, at present, to have fundamental weaknesses in terms of providing consent for development prior to an adequate understanding of the impact of that development having been obtained. The sustainability of development on a given MCA site must therefore be questionable. Given this, we are concerned that there are potentially no limits being placed on the use of this tool. We are concerned that this may sidestep the planning protections for a potentially large amount of major development, reducing safeguards for the historic and natural environment.

We would be much more likely to support a more limited system which could be applied to areas of lower sensitivity, or bring forward development types which are likely to be of lower impact.

7 A). To what extent do you agree that the regulations should require reasons for conditions to be set out in the MCA scheme?

Strongly agree.

7 B). Please explain your view.

As stated above, it is vital that clear expectations are set in regulations to ensure that appropriate information about the historic environment is available at the point that an MCA is designated. This will be necessary to ensure sustainability and minimise the chance of development becoming unviable as a result of historic environment assets requiring extensive mitigation. While we would support detailed guidance that reflects how expectations for conditions may work, we would not be happy to defer the need to consider such provisions until guidance is drafted at a later stage.

We therefore recommend that a specific reference in Schedule 5A paragraph 1 should include reference to “information relating to site evaluation”. It will also be important to ensure that there are reasonable responsibilities on local authorities to obtain relevant information necessary to judge whether a site is suitable in principle for development before designating it as an MCA.

8. Are there any further aspects you consider should be required to be included in a MCA scheme? Please specify and explain why.

Reference should be made to the necessity of obtaining specialist advice, including from local authority specialist advisors (eg archaeological advisors) and external specialists (eg archaeological contractors) as well as the sources of data and evaluation of sites to be brought forward as MCAs needs to be included.

Yours sincerely,



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RESPONDENT INFORMATION

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: **Publish response with name**

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise? **YES**

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy. **I CONSENT**