HIGHLAND COUNCIL

Committee: Economy and Infrastructure

 Date: 2 May 2024

Report Title: Masterplan Consent Areas

Report By: Executive Chief Officer Infrastructure, Environment & Economy

1 Purpose/Executive Summary

1.1 This report explains the Scottish Government’s proposed introduction of discretionary powers to establish Masterplan Consent Areas (MCAs) under new planning legislation. MCAs are seen as a tool to positively influence and accelerate the unlocking of key sites where there is a need to unlock and respond dynamically to strategic opportunities. The consultation document can be found here. The report outlines the potential implications and potential applicability of MCAs in Highland and seeks approval for a draft response to the current Scottish Government consultation.

1.2 The current consultation on MCAs by Scottish Government outlines that MCAs are intended to better coordinate and expedite development, transport, design and built environment issues in defined areas. Scottish Government describes MCAs as a “new upfront consenting mechanism for development proposals” and which are similar to the previous Simplified Planning Zone mechanism. If and when adopted then an MCA would set clear parameters, conditions and principles for development that - if met - would remove the need for planning permission, roads construction consent, and potentially other consents. The detailed circumstances for such considerations would be prescribed by a council within an MCA “Scheme.”

2 Recommendations

2.1 Members are asked to:-

 i. Agree the Council’s response to the current Scottish Government MCAs consultation as detailed within Appendix 1;

 ii. Agree that the statement in Paragraph 5.3 is published to indicate the Council’s intent, as required by the legislation;

iii. Note the potential application of the MCA model within Highland; and

iv. Agree that the Council continues to investigate the role of MCAs to address emerging development requirements, and that further reports on this matter will be brought to this Committee before any commitment is made.

3. Implications

3.1 Resource – section 6 below considers the potential loss of future planning application fee income but the likely ability to recoup this from landowners and developers. This does require further clarification from Scottish Government and is likely to be considered as part of a separate consultation on Resourcing the Planning System. Otherwise, existing Service resources can be utilised to progress any MCAs within Highland.

3.2 Legal – Schedule 5A Paragraph 5 of the Planning (Scotland) Act 2019 requires planning authorities to consider periodically (which is identified as at least once in each five-year period) whether it would be desirable to make an MCA scheme. Although the provisions have not been implemented the first five-year period will end on 24 July 2024. \*The report recommends adoption and publication of a statement confirming the Council’s intention to consider MCA schemes once the legislation is enacted and supporting regulations finalised. This will ensure the Council discharges this statutory obligation. There are no immediate legal consequences or implications arising from submission of the proposed response to the consultation which offers broad support for the introduction of MCAs. \*\*Once the legislation is enacted and the regulations are in place further consideration will require to be given to ensuring the Council has the processes in place to meet the requirements of the regulations addressing matters such as consultation and publication. \*\*\*Ancillary work will be required on hearing processes and the Council’s Scheme of Delegation will require to be revised. \*\*\*\*Further Committee Scrutiny will be put in place prior to any significant work being undertaken on the new arrangements and future reports will identify the legal implications arising.

\* What is the statement the Council intends to publish? Is it this paper i.e. Para 9 Potential Application of MCAs within Highland? Who is the targeted audience?

\*\* Who determines the processes in place to meet the requirements and how will this be done?

\*\*\* Who determines the ancillary work required on hearing process and will the full Council be asked to amend the Scheme of Delegation? This paragraph is contradictory/confusing when read in conjunction with Para 8.2

\*\*\*\* Should such scrutiny be required to ANY work being undertaken rather than just ‘significant’ work? Who determines these scrutiny parameters and what they should be? Should the criteria not be specified and agreed first and then the work carried out?

3.3 Community (Equality, Poverty, Rural and Island) – the implications of individual MCA proposals will be subject to a full Impact Assessment at the time of being implemented. \*There are no specific implications arising from the response to the Regulations themselves.

\* The response from the Council deals wholly with out of town developments and does not include for example Town Centres, Brownfield and derelict sites, land for business/industry expansion and jobs.

3.4 Climate Change / Carbon Clever – the related national legislation has been subject to Strategic Environmental Assessment. Parallel Environmental Impact Assessment regulations are being progressed.

3.5 Risk – there is a risk that MCAs are seen as a way of by-passing the normal Local Development Plan process. \*The Regulations are set out to ensure that The Council is responsible for the identification and the delivery of the MCAs – \*\*this maintains local democratic control of the process. \*\*\*Given the significant pressures being felt from stakeholders to ensure that appropriate housing and other infrastructure is in place to support the Green Freeport, \*\*\*\*it is considered that the MCA will provide a useful tool to ensure that demand does not outstrip supply. \*\*\*\*\*The very significant investment that is anticipated was not foreseen at the time the Inner Moray Firth Local Development Plan was prepared.

\*\*\*\*\*\* Members should note however that the delivery of a small number of MCAs will not replace the normal preparation of the Highland Local Development Plan.

\* Does this imply that LPPs and Communities have no say in the matter only the Council? What about local members?

\*\* What is meant by local democratic control – i.e. Community, Highland Council

\*\*\* Who are the stakeholders - surely the most important stakeholders are the people who live and work in the area? Are the stakeholders being inferred here, housing developers and green freeport businesses?

\*\*\*\* Does this refer to housing supply and if so what methodology is contained within an MCA that would ensure demand does not outstrip supply, ie. many of these jobs will be temporary. How does this relate to the housing land requirement set out in the Local Development Plan?

\*\*\*\*\* This infers that the Reporter’s recommendations on the IMFLDP2 which is about to be adopted by the Council are now irrelevant and have been superseded by the Freeport scenario. The Reporter’s recommendations are binding on the Council.

\*\*\*\*\*\* This infers that the sites identified, albeit without proper scrutiny and assessment, will be included in the HLDP with an MCA scheme attached. Who identified these sites? What input or engagement would there be with communities and at what stage – after the site has been decided and communities are presented with a *fait accompli*? What regard has been given to Local Place Plans. Would local members have the opportunity to question or restrain the process?

3.6 Health and Safety (risks arising from changes to plant, equipment, process, or people) – not applicable.

3.7 Gaelic – in line with the Council’s Gaelic Language Plan, all publicity and documentation associated with any future MCA will contain titles and main headings in Gaelic.

4 Legislative Background

4.1 The Planning (Scotland) Act 2019 introduced the concept of Masterplan Consent Areas (MCAs) as a new proactive consenting mechanism. However, the provisions have not, to date, been brought into effect.

4.2 A significant difference to planning applications - which are typically led by a developer - is that the preparation of MCA schemes will be led by the planning authority \* but can be taken forward through collaboration with interested parties such as landowners.

\* This could be read as a Developer/Landowners charter to the exclusion of Communities, their representatives, and Local Place Plans. As MCAs are seen as a delivery mechanism for the Local Development Plan, does this mean that MCAs can only be applied to allocated sites within the LDP?

4.3 \*Once in force the new provisions will allow the Council to prepare an MCA ‘Scheme’ setting out for particular places, the detail of what they are giving consent for, through the MCA scheme. There will be specific requirements for publicity and consultation on individual schemes.

\* Do Members get a say; do communities get a say; what regard will be given to LPPs. Who decides which places either need or want an MCA -is it Highland Council Planning Officers or a Committee of Members or some other group?

4.4 The purpose of MCA schemes will be to streamline consent and to allow issues to be considered as part of a joined-up approach. Whilst MCAs will be tailored to the individual circumstances \*there will be the option to grant:-

 • planning permission,

 • roads construction consent,

 • listed building consent, and

 • conservation area consent

\* Will Communities and Members be advised of prospective permissions and consents or will this come straight via Planning Officers? Will any planning proposals come before SPAC? OR Will this be managed through delegated officer consent? It is unclear whether listed building/conservation area consent is in relation to modifying, protecting or removing consent?

4.5 The consequence is that within adopted MCA areas, \*development could be brought forward without the need for a full application as long as it is in line with the agreed scheme.

\* There needs to be a clear definition of the minimum requirements for a development otherwise inconsistency of approach will develop. Will such a definition form part of the MCA scheme? Will this be decided as part of the engagement process at the time the MCA scheme is agreed or is it intended to be at the discretion of Planning Officers? We consider that SPAC should determine the sufficiency and viability of the proposal.

5 Consideration of the Duty to periodically consider making MCA schemes

5.1 Part 2 of the Planning (Scotland) Act 2019 sets out the legal framework for preparing MCAs. The full provisions from the Act relating to MCAs and the associated regulations are not yet in force.

5.2 However, Schedule 5A Paragraph 5 is in force and \*requires planning authorities to consider whether it would be desirable to make a scheme for a part or parts of their district, and to publish a statement as to their consideration of that, by 25 July 2024.

\* While planning authorities are required to consider whether it would be desirable to make a scheme for a part or parts of their district, it does not require the Council to pre-empt the MCA scheme process by proposing sites which the paper at Para 5.3 already states have not been properly assessed and have regard to LPPs.

5.3 Accordingly and in order to ensure compliance with the 2019 Act it is proposed that the planning authority agree and publish the following statement:-

‘’As the MCA regulations are not yet in place,\*the Council has not yet fully identified or assessed potential locations for which it may be desirable to bring forward an MCA scheme. The Council recognises the potential benefits preparation and implementation of MCA schemes \*\*could offer Highland, in particular in support of the development of the Inverness and Cromarty Firth Green Freeport and supporting infrastructure. \*\*\*The Council intend to reconsider this once the legal basis for preparing MCAs is in place. The Scottish Government has indicated that MCAs could be used to support delivery of the local development plan. The Council will consider whether it would be desirable to make any Masterplan Consent Areas as part of our work on delivery linked to the Local Development Plan’s Delivery Programme. This Statement fulfils the Council’s legal requirements under Schedule 5A Paragraph 5 of the Town and Country Planning (Scotland) Act, as amended.’’

\*Having stated that the regulations are not yet in place and the Council has not yet fully identified and assessed potential locations, why has the Council then listed 4 specific sites which were removed by the IMFLDP2 Reporter in her recommendations? It begs the question what is the point of the Examination process if the Reporter’s recommendations are so easily dismissed/set aside.

\*\*Why are the Council primarily concerned with benefitting the ‘Highlands’ in the generic sense rather than the individual communities who will be impacted by MCAs particularly as in the case of Nairn. It is unclear whether the prospective MCA will permit development before the Bypass is completed. What thought has been given to the viability of existing local businesses in Nairn. What consideration has been given to the wider A96 economy if traffic congestion is exacerbated by further housing development?

\*\*\*Why identify proposed sites before the regulations are in place and could be seen to be flying in the face of LPPs. Once this paper is approved does this give the green light to Officers to commence assessments and proposals immediately or will they wait until the regulations are in place?

6 Masterplan Consent Areas - Draft Regulations: Consultation

6.1 As noted above the provisions within the 2019 Act in respect of Masterplan Consent Areas have not, to date, been enacted. However the Scottish Government has indicated that they anticipate the MCA provisions will be fully in place later in 2024. The Scottish Government is undertaking a consultation on the proposed regulations on the procedures to be followed to prepare Masterplan Consent Areas (MCA). It sets out the proposed procedures and includes two sets of regulations: covering the main process for making MCA schemes and relating to environmental impact assessment. The consultation document can be found here. The suggested Council response to that legislation is set out within Appendix 1. The deadline for the response is 22 May 2024.

7. Masterplan Consent Area - Benefits, Process and Consultation

7.1 MCAs are promoted as a \*delivery mechanism to unlock complex or presently constrained development sites or wider areas via a coordinated, inclusive but expedited masterplanning process. \*\*Complexity and constraints to delivery arise from a number of factors such as: multiple landownerships, inadequate infrastructure capacity, viability, environmental issues, local community concern, contamination, and marketability. MCAs should save time by front loading and targeting assessment, consultation and decision making. \*\*\* MCAs should also reduce risk for those choosing to invest in Highland. No types of development are excluded but certain designations are. MCAs cannot be established within National Scenic Areas, and international and national nature conservation sites. \*\*\*\*MCAs can be operative for no more than 10 years.

\* How does an MCA unlock the Nairn bypass. This is not under the control of THC. Likewise, water, sewerage, energy are also not under the control of THC. The national financial position will have a significant bearing on progress on all infrastructure projects/improvements.

\*\* There is no mention of the Local Development Plan nor Local Place Plans.

\*\*\* Undue concern for ensuring viability of investment programmes in the Highlands rather than health, wellbeing and quality of place.

\*\*\*\* If any restrictions are longer than 10 years will MCA developments go ahead despite timeframe restrictions? For example if the Nairn Bypass is not completed by 2037 i.e. the timeframe of the forthcoming HLDP, will any developments still be allowed to continue.

7.2 \*An MCA Scheme is subject to community and statutory agency engagement. There are no “shortcuts” proposed relative to existing planning application and road construction consent processes. The following are still required: Environmental Impact Assessment (at least to screening stage); two public events (if endorsing at least major scale applications); landowner and neighbour notification; community council consultation; press advertisement; a 30-day period for representations; and notification of maintained statutory agency objections to Scottish Ministers.

\*The engagement referred is nothing more than that which would be applied to a planning application. There is no obligation on the Council to MUST HAVE REGARD TO the comments/objections of the Community or have regard to the aspirations set out in Local Place Plans. Who will decide whether comments/objections are relevant? Will it be Planning Officers, SPAC, or another group?

The time saving should be via early and collaborative consensus building through the masterplanning phase and dealing with statutory objections \*\*once for each MCA not for each individual planning application or other consent application.

\*\* This needs clarification. Communities, other stakeholders and local members will have one opportunity to comment on a proposed MCA scheme and thereafter any plan which comes forward for development will automatically be assessed and consented against the parameters without the requirement for a full application or without the knowledge of local members and the community. Who decides that the plan meets the MCA requirements? Planning Officers? There is no mention of Planning enforcement and its application where a plan meets ‘broad’ criteria. This leaves it open to Developers to stretch the boundaries to suit their own particular circumstances and to extend and grow developments beyond the initial plan.

8 MCA Decision Making and Resourcing

8.1 The MCA is seen as a tool to positively influence and accelerate the unlocking of key sites where there is a need to respond dynamically to strategic opportunities. \*They are considered to hold considerable potential in setting the broad criteria, principles and parameters for development whilst still allowing the Council to lead and steer the scope and detailed methodology for the preparation and approval of the MCA. Whilst they can therefore reduce the scale and resource burden of planning applications, it is likely that planning applications for detailed matters may still be required.

\* Where an LPP is in place, it should be leading the scope of the development otherwise it Nullifies Community empowerment & LPPs.

8.2 The draft Regulations provide that in drafting an MCA the planning authority must consider validly submitted representations but there is no appeal process. There is still notification of maintained statutory agency objections and council property interest MCAs to Scottish Ministers and a Ministerial “veto” stage, but the Regulations do not provide for an independent hearing or examination of objections by a Reporter. The consultation proposes that Ministers may require an authority to grant objectors a hearing before a committee of the authority, but this is intended to be \*limited to MCAs that authorise national category developments. The authority will be obliged to \*\* establish its own rules for such a hearing.

\* What about major developments?

\*\*Surely there must be some form of national guidance to ensure consistency between all Local Authorities.

8.3 There are a number of resource implications that will require to be assessed and balanced. Whilst an authority would forgo future planning application fees within an MCA officers believe there should be an appropriate mechanism for full cost recovery to resource the time and commitment incurred in the preparation and implementation. This would need to cover the cost of all Council input to the MCA process, including:- • setting the methodology and providing ongoing input to their preparation including project meetings; • reviewing and finalising drafts, with appropriate Committee approval; • assessing the suitability of development against the finalised MCA; and • the planning application fees for any detailed application required.

8.4 Scottish Government has recognised this potential shortfall and is considering allowing authorities to recover the costs of setting up an MCA from \*landowners and developers likely to benefit from its establishment. Resource is a key consideration, and the Council would welcome greater certainty of the proposed means of recovery.

\*If landowners and developers are to pay the costs for setting up an MCA, clarity will be required to deal with multiple developers and phases where new Developers could join the scheme two/three years after the MCA scheme is established?

9 Potential Application of MCAs within Highland

9.1 The predecessor Simplified Planning Zone mechanism had limited applicability and success in Highland. However, Scottish Government has explicitly highlighted that MCAs could play a wider role and have greater potential impact in Highland. Specifically, its current consultation, at paragraph 26, states “MCAs have significant potential to\* enable large scale infrastructure projects, including green freeports and development required to support ScotWind.”

\* MCAs can also be used for Town Centre Regeneration, Brownfield and derelict sites, land for expansion of businesses and jobs. Paper solely focused on housing

9.2 Whilst at a very preliminary stage \*officers’ initial assessment is that one area where MCAs have the potential to be used as a \*\*delivery mechanism to seek to unlock presently constrained development sites could be in support of strategic employment growth associated with the Inverness and Cromarty Firth Green Freeport (ICFGF) project and specifically the Green Freeport Tax Sites. These sites are located at:

• Ardersier

• Cromarty Firth (Deephaven)

• Cromarty Firth (Invergordon)

• Cromarty Firth (Nigg)

• Inverness (Harbour, Longman and Campus)

\*Where are Councillors in this stage of the process?

\*\* What is the definition of a constrained site i.e. is it trees/environmental, is it lack of infrastructure, is it a Scottish Reporter’s recommendation, is it dependent on the development of another site?

9.3 Given the possibility that early successes in generating net additional employment from the ICFGF project may \*test the current availability and viability of development plan allocated housing land then a number of additional locations may be suggested once the Regulations are in place and initial scoping has been carried out. These could, subject to a thorough and inclusive masterplanning process under the MCA, help deliver additional housing to accommodate new workers and their families. Examples of sites that may be brought forward to a future Committee include locations relatively close to the expected new employment at Tain, Alness, Invergordon and east of Nairn. These sites have been subject to previous landowner, agency and community consultation and \*\*received in-principle support from Council Committee(s) at the time of the time the Local Development Plan was finalised for Examination.

\*Presently there is no information available which could inform the requirements of worker accommodation. Housing Land requirement for the Inner Moray Firth area in terms of the MATLHR allocation for whole of Highlands – housing should go where the need is greatest and to meet new employment demand. Any projections for new job creation and additional housing need is entirely speculative and potentially at least 10-15 years away and beyond the scope of the forthcoming Highland Local Development Plan.

\*\*These sites were all examined and removed from the Allocation Table for the IMFLDP2 by the Reporter in her recommendations published in January and to be adopted shortly by the Council.

9.4 They include some \*sites that the Reporter for the Examination opted to remove from the Intention to Adopt IMFLDP2. The inclusive masterplanning process associated with an MCA would provide an opportunity to directly address the barriers, conditions and requirements for delivery to unlock any concerns and constraints that prevented their identification and/or implementation. Specific sites that could be considered in this context include:-

1. Land at Nairn East (previously identified within the Inner Moray Firth Proposed Local Development Plan (IMFpLDP2) as allocation NA05).

2. Land at Croft Arthur and Viewfield, Tain (previously identified within the IMFpLDP2 as allocation TN04 and part of TN06).

3. Land at Culcairn, Evanton (previously identified within the aIMFLDP as allocation EV3).

4. Land at Alness East (previously identified within the aIMFLDP as allocation AL3, AL6 (part) and AL4).

\*If the Reporter considered them so constrained as to remove them then how could a masterplanning process unlock such constraints i.e. Bypass, Water, Sewerage. Does this mean they will be again included in the HLDP but this time with an MCA in support?

There is no mention of either Tornagrain which has the capacity for a further 4500 homes to be built over the next 10/20 years or the potential for growth at Ardersier.

9.5 Any decision to bring these sites forward will be subject to further scrutiny and assessment of the housing demands arising from the Green Freeport development.

10 Response to Consultation

10.1 Appendix 1 sets out the Council’s proposed response to Scottish Government consultation. Members are asked to agree the response, noting that the Council welcomes the additional discretionary power, will consider its application, supports the streamlined process set out in draft regulations but also welcomes the prudent checks and balances retained within the proposed legislation.

11 Next Steps

11.1 Subject to approval by Committee Appendix 1, along with the content of this report, will be sent to Scottish Government by the 22 May deadline.

11.2 If agreed by Committee, officers will continue to investigate the potential benefits of MCAs and carry out further work in refining or adding to the potential locations for such MCAs. This will ensure that the Council is in position to bring forward proposals for future committee approval to take any specific MCA through its statutory process once Regulations are in place.

Designation: Executive Chief Officer Infrastructure, Environment & Economy

 Date: 5 April 2024

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Background Papers: Masterplan Consent Areas: Consultation Paper and Draft Regulations: Scottish Government: February 2024

Appendices: Appendix 1 – Draft Response to Scottish Government’s Masterplan Consent Areas Draft Regulation