

# Planning Committee

2.00pm, Wednesday, 23 February 2022

## Scottish Government Open Space Strategies and Play Sufficiency Regulations consultation – City of Edinburgh Response

<b>Executive/routine</b>	<b>Executive</b>
<b>Wards</b>	<b>All</b>
<b>Council Commitments</b>	14,18, 39, 43, 44

### 1. Recommendations

---

- 1.1 It is recommended that Committee agrees the response to the Scottish Government's consultation on its draft regulations on Open Space Strategies and Play Sufficiency Assessments as set out in Appendix 1.

**Paul Lawrence**

Executive Director of Place

Contact: Iain McFarlane, City Plan Programme Manager

E-mail: [iain.mcfarlane@edinburgh.gov.uk](mailto:iain.mcfarlane@edinburgh.gov.uk) | Tel: 0131 529 2419



# Report

## Response to Scottish Government consultation on its draft Open Space Strategy and Play Sufficiency Assessment regulations

### 2. Executive Summary

---

- 2.1 The Scottish Government has recently published draft regulations setting out requirements on what information must be contained Open Space Strategies (OSSs) and Play Sufficiency Assessments (PSAs), the timescales for producing these and what steps Council's must undertake in preparing them. This report and Appendix set out the key parts of the draft regulations, the implications for the Council and the recommended response to the Scottish Government consultation.

### 3. Background

---

- 3.1 The Council has produced two OSSs (including its own version of a PSA called the Play Access Standard), with the most recent approved in 2016. The production of these, however, was not a statutory obligation.
- 3.2 The Planning (Scotland) Act 2019 started the process of introducing the statutory requirement for Planning Authorities to produce OSSs and PSAs, including associated open space audits. There is an associated requirement that these should inform how the Council undertakes various duties it has in relation to green infrastructure and play space.
- 3.3 Secondary legislation is now being progressed in the form of draft regulations that sets out details of what information OSSs and PSAs must contain, how they should be prepared and how often they must be refreshed.
- 3.4 The Scottish Government is presently consulting on these regulations and it is considered appropriate that the Council should provide a response given its implications for the Council and Edinburgh's communities.
- 3.5 This report sets out the main issues for arising from the draft regulations and the recommended responses (summarised in paragraphs 4.1 to 4.11), with Appendix 1 setting out the full list of consultation questions and recommended responses.

## 4. Main report

---

### **General Principles and overall support for the draft regulations**

- 4.1 The draft regulations are broadly supported. They align with Council and National objectives relating to the climate emergency, biodiversity, creating successful and sustainable places, improving health and wellbeing, advancing equality, and improving access to green infrastructure, open space and green networks. Notwithstanding this, an update to the national Greenspace Quality Guide would assist to allow meaningful measurement of the six outcomes. These outcomes should also explicitly note the importance of creating an attractive environment, in addition to simply referring to a successful and sustainable place. It is also recommended that inclusivity be stated alongside accessibility.

### **Areas of alignment with the Council's current OSS and PSA**

- 4.2 The draft regulations generally give discretion to Local Planning Authorities (LPAs) in how they collate data and set out the detailed content of OSSs and PSAs, as long as they still fulfil high-level requirements. This approach generally achieves a suitable balance of setting out the key objectives for OSS and PSAs, whilst allowing LPAs a reasonable level of flexibility over specifics.
- 4.3 In the case of the Council, this will help maintain continuity with most aspects of its previous OSS and PSA, especially for benchmarking metrics to monitor progress. For example, the Council should be able to continue its scoring system of open space and play facilities as contained in its audits.

### **Differences between draft regulations and the Council's OSS and PSA**

- 4.4 The approach the Council has taken in its previous OSSs and PSAs generally aligns with the provisions of the draft regulations, however there are some differences.
- 4.5 Draft regulations require OSSs to consider green networks in addition to open space. Although the Council's OSS maps the strategic green network, regulations propose mapping this network at the neighbourhood scale and for all green infrastructure, including for example tree-lined streets, to potentially be considered part of this beyond open space and core paths. This is considered a positive step. The Council has already completed work to better understand and improve green networks and there is a desire to continue to develop this at both a strategic and 20 minute neighbourhood level.
- 4.6 It is proposed LPAs must update their OSSs within a period of 10 years of the date of their last published OSS. Presently the Council has worked to a five-year cycle, although it will be slightly longer for the next OSS and PSA to avoid the risk of conflicting with regulations coming into effect during their preparation.
- 4.7 There is no objection to a statutory maximum 10 year period for updating OSSs providing the Council is able to produce a wholly or partly refreshed OSS and PSA on a five year cycle. This would allow OSSs and PSAs to better reflect contemporary circumstances in the state of spaces and account for emerging

greenspace data and proposals. This will enable better delivery of proposals through LDPs and planning applications (on site and through financial contributions).

- 4.8 Scottish Government proposes that draft OSSs and PSAs go through a consultation period of 12 weeks, with this accompanied by an initial period of advertisement in local newspapers. The consultation the Council undertook on its last OSS was over a period of eight weeks and was accompanied by engagement and promotion via stakeholder groups. Despite this difference, there are no objections to the proposed 12 week period as it would provide ample time for representations. They also still allow for additional engagement and promotion of the type the Council would wish to continue and build upon from previous OSSs, such as that done online. This combination of approaches would help with reaching both younger and older age demographics.

### **Parts of draft regulations which are not supported**

- 4.9 The proposed definition of 'green space' (and, by extension, 'open space') omits horticulture and so does not cover allotments or community growing spaces. These features should be included.
- 4.10 It is proposed that OSSs should consider issues of maintenance. However, LPAs often cannot enforce existing or proposed maintenance arrangements. There would consequently be a misleading impression given of local planning authority powers. It may also result in OSSs setting out proposals that cannot be implemented.
- 4.11 The proposed regulations require PSAs to include two forms of playspace: one where the *primary* function is play and one where play is possible but not the *main* purpose. Including this latter category is not supported. There is too much subjectivity about what such spaces should be counted, with the probable outcome that many spaces will be argued as being incorrectly assessed despite best efforts and engagement with children. Moreover, there are a large number of spaces which could fall into this category and each would require bespoke consideration using a significant level of resource that is not currently available.

## **5. Next Steps**

---

- 5.1 If the draft response is approved, it will be submitted to the Scottish Government's consultation on its draft Open Space Strategies and Play Sufficiency Regulations.
- 5.2 Once the regulations become statute, the Council shall proceed with its OSS and PSA in light of the legislative framework and report to Planning Committee accordingly.

## **6. Financial impact**

---

- 6.1 There are no direct financial impacts arising from approval of this report.

### **Indirect financial risks**

- 6.2 The proposed regulations being consulted upon would introduce some additional work for the Council that go beyond what it does currently as part of its OSS and PSA,
- 6.3 A clearer picture of resource impact will emerge once the final form of this legislation emerges. Presently, it is hoped that future OSS and PSAs can continue to be resourced within the Planning Service budget.

## **7. Stakeholder/Community Impact**

---

- 7.1 The Council has not undertaken community consultation in relation to the draft regulations, however the regulations are currently subject of an open public consultation by the Scottish Government.
- 7.2 Community impacts from the draft regulations are considered positive overall and broadly meet Council priorities relating to the Climate Emergency, biodiversity, creating successful and sustainable places, improving health and wellbeing, advancing equality of access to open spaces and green networks. As mentioned in paragraph 4.1, it is recommended that inclusivity is explicitly stated as a priority alongside accessibility.
- 7.3 The agreement of a Council response to this consultation in itself does not directly have any significant equalities, health and safety, governance, compliance or regulatory implications.
- 7.4 The introduction of legislation that is being consulted upon would, however, have implications in some of these respects. It would introduce a new statutory duty upon the Council to timeously produce an OSS and PSA and set out detail as to how these should be undertaken. It is expected the Council should be able to comply with these legal requirements, although there will be additional work and steps that need to be undertaken compared to the Council's approach to previous OSSs and PSAs.
- 7.5 The proposed regulations would have positive impacts in relation to reducing greenhouse gas emissions, adaptation to climate change and sustainable development as it would put into law a duty for Councils to consider these issues when considering preparing its OSS and PSA.

## **8. Background reading/external references**

---

- 8.1 [Consultation on Open Space Strategies and Play Sufficiency Assessments Regulations](#) – December 2021.
- 8.2 [Planning \(Scotland\) Act 2019](#).
- 8.3 [Open Space 2021: Edinburgh's Open Space Strategy](#) – December 2016.
- 8.4 [Planning Advice Note 65: Planning and Open Space](#) – May 2008.

## **9. Appendices**

---

- 9.1 Appendix 1 – List of Scottish Government’s consultation questions and recommended Council responses.

# Appendix 1: List of Scottish Government's consultation questions and recommended Council responses

## Open Space Strategies Regulations

### **Consultation Question 1**

#### **a) Do you agree with the idea of promoting an outcomes-based approach through the OSS Regulations?**

Yes, although it would be good if there were a way to meaningfully measure success in the delivery of these outcomes. The proposed update to the national Greenspace Quality Guide would represent a good opportunity to do this, however it would be important that any new approach to measurement are backwards compatible with the current system of monitoring.

#### **b) Do you agree with the suggested outcomes?**

Yes, however, a more explicit reference to creating attractive environments would be welcomed. The closest the present outcomes come to this is a reference to successful places, but it might not be evident to everyone this should include creating *attractive* places. Attractive places are important to encourage use of open spaces and, in turn, help with delivery of many of the other outcomes listed.

Inclusivity should also be stated alongside accessibility in the title of the outcome relating to accessibility. Although the consultation paper does explain that improving inclusivity is part of assessing accessibility (as shown in the table below para. 46), it would help to highlight the importance of inclusivity and for it to be noted in the title of outcome itself.

### **Consultation Question 2**

#### **Do you agree with the proposed definition of:**

#### **a) 'open space'**

No. The definition of open space is linked to the definition of greenspace and there are concerns with that definition (see answer to question 2b below).

#### **b) 'green space'**

No. This definition does not include horticulture. Horticultural areas can be an important form of open space in urban areas, including allotments and community growing areas. Horticulture should not be included in the exclusion at the end of the definition set out in the draft regulations.

c) ***'green infrastructure'***

Yes

d) ***'green networks'***

Yes

e) ***'ecosystem services'***

Yes, although it would help to list in guidance some of the main examples of the benefits that can be derived from ecosystem services.

### ***Consultation Question 3***

***Do you agree with proposed thresholds for open space audits in Draft Regulation 4(2)?***

Yes. Guidance however should be make it clear that LPAs have discretion in how they structure their audit in relation to how it groups different sizes and types of spaces. It is inferred from legislation that this is the case, however confirmation would be welcomed.

### ***Consultation Question 4***

a) ***Do you agree with suggested information to include about each open space (location, size and type)?***

Yes

b) ***Do you agree with Regulation 4(5) on the other information planning authorities may include in the audit?***

Yes

### ***Consultation Question 5***

a) ***Do you agree with suggested approach to require locality level place based information?***

More discretion over the maximum size of population that can be considered to exist in a single neighbourhood would be welcomed, however it is appreciate that the definition of localities comes from existing legislation and so redressing this would

require a breaking from an established definition and may present issues of inconsistency.

**b) Do you agree with the three high level aspects that should be covered in these statements 'accessibility', 'quantity' and 'quality'?**

Yes

### **Consultation Question 6**

**Do you agree with the list of consultees for the open space audit?**

Yes

### **Consultation Question 7**

**Do you agree that an Open Space Strategy should contain an Assessment of Current and Future Requirements that should:**

**a) have regard to how open spaces and green networks in their area are contributing to the outcomes?**

Overall yes, however there is reference to issues of maintenance. It is proposed that OSSs should consider issues of maintenance. Local planning authorities often cannot enforce existing or proposed maintenance arrangements however. There would consequently be misleading impression given of local planning authority powers. It may also result in OSSs setting out proposals that cannot be implemented.

**b) be informed by engagement with the groups set out?**

Yes

### **Consultation Question 8**

**Do you agree Open Space Strategies should:**

**a) include a statement setting out how they contribute to the outcomes?**

Yes, although it should be made clear that OSSs and PSAs can make reference to other related strategies where these set out further details on how these outcomes are addressed; for example Forestry and Woodland Strategies.

**b) identify strategic green networks?**

Yes

**c) identify how green networks may be enhanced?**

Yes

**Consultation Question 9**

**Do you agree with the proposed consultation requirements on draft Open Space Strategies?**

Broadly yes, however see response to questions 7b and 19 in relation to the need for more details on the minimum requirements in relation to consultation with the identified key groups.

**Consultation Question 10**

**Do you agree with the proposed publication requirements for the OSS?**

Yes

**Consultation Question 11**

**Do you agree the Regulations should set a 10 year minimum review period for updating open space audits and strategies?**

The reference to a *minimum* review period in this question and the consultation paper is confusing. It would be clearer if it was stated that 10 years is the *maximum* period of time which can elapse between the production of new OSSs so as to reflect the wording of the draft legislation itself which is appropriate in this regard.

Notwithstanding this, there is no objection to the 10 years period but only on the condition there is the option for interim updates to particular parts of OSSs, PSAs and/or associated audits. This would ensure they remain fit for purpose. In particular this would assist monitoring and evaluation of the standard of open spaces and green networks. It would also allow new greenspace proposals to be added as they emerge and for the status of existing proposals can be updated as they go through the different stages of design and delivery.

Up to date information on proposals is important in ensuring cross-linkages with other strategies such as local development plans, as well as ensuring new developments deliver and contribute to greenspace proposals where appropriate through the development management process. This would support the aspiration in the consultation paper that OSSs and PSAs should link to planning, but would

ensure this happens through the development management process as well as local development plans.

## **Play Sufficiency Assessments Regulations Consultation**

### **Question 12**

***Do you agree with the proposed definitions?***

***"children"***

Yes

***"localities"***

See response to question 5a

***"open space"***

No. See response to question 2a.

***"play opportunities"***

Yes, although it could be expanded to be explicit about whether facilities such as Multi Use Games Areas and Skateparks are considered part of this definition or whether they are classed as sports areas. The definition of sports areas does not explicitly say whether it includes these types of facilities either, although it does say sports facilities are generally those which have to be booked which means– in the absence of explicit confirmation – sports facilities does not cover MUGAs and skateparks. To avoid ambiguity however clarification would be helpful.

### **Question 13**

***Do you agree planning authorities should map the locations of the two categories of play spaces, and how they are described in Draft Regulations 3(2)(a) and (b)?***

Yes for 3(2)(a), but no for 3(2)(b).

It will be difficult for officers as adults to judge what play opportunities a child may find in a public space. It should be left for children to judge themselves which spaces they wish to play in rather than a strategy setting this out for them.

Consultation with a section of group of children also does not solve this problem as once child may find a play opportunity in a space where another child may not.

It is also impracticable to make judgements on the very large number of potential spaces in a local authority area which may fall into the category of 3(2)(a).

**Question 14**

***Do you agree with the proposed requirement to assess play opportunities in respect of their suitability by age groups?***

Yes.

**Question 15**

***a) Do you agree to the proposed three aspects of assessment - 'accessibility', 'quantity' and 'quality'?***

Yes

***b) to provide them in written statements in respect of the totality of the local authority area and at each locality level?***

Yes

**Question 16**

***a) Do you agree with the requirement to consult as part of the process of carrying out the play sufficiency assessment?***

Yes

***b) Do you agree with the proposed list of consultees on play sufficiency assessment?***

Yes

**Consultation Question 17**

***Do you agree with the publication requirement for play sufficiency assessments?***

Yes

## **Impact Assessments**

### ***Consultation Question 18***

***Do you have or can you direct us to any additional information that would assist in finalising these assessments (BRIA, EQIA, CRWIA, ICIA)?***

***Consultation***

No

### ***Consultation Question 19***

***Please give us your views on the content of these assessments and how they have informed the draft provisions, or if you think changes are needed to the Regulations to further respond to the issues.***

No

### ***Consultation Question 20***

***Do you agree with the Fairer Scotland Duty screening and our conclusion that full assessment is not required?***

Yes

### ***Consultation Question 21***

***Do you agree with the Strategic Environmental Assessment pre-screenings, that the Open Space Strategies and Play Sufficiency Assessments Regulations are exempt from the Environmental Assessment (Scotland) Act 2005, as the environmental effects are likely to be minimal?***

There should be minimal *negative* impacts.

### ***Consultation Question 22***

***Any other comments?***

No