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Document Title	Response to Scottish Government Consultation on Open Space Strategies and Play Sufficiency Assessments Regulations

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REPORT TO: MEMBERS LIBRARY SERVICE

MEETING DATE: May 2022

BY: Executive Director of Place

SUBJECT: Response to Scottish Government Consultation on Open Space Strategies and Play Sufficiency Assessments Regulations

1 PURPOSE

- 1.1 To note the submission of the Council's response to the Scottish Government consultation on Open Space Strategies and Play Sufficiency Assessments Regulations.

2 RECOMMENDATIONS

- 2.1 Members are asked to note the contents of this report and the Council's response to the Scottish Government consultation, which is set out in Appendix 1 of this report.

3 BACKGROUND

The Scottish Government consultation

- 3.1 The Scottish Government published a consultation on 17 December 2021 on Open Space Strategies and Play Sufficiency Assessments Regulations. The consultation, which closed on 31 March 2022, can be viewed at: <https://consult.gov.scot/planning-architecture/os-strategies-ps-assessments/>
- 3.2 The importance of open spaces, greenspace, green infrastructure and outdoor places to play are recognised, in relation to their key roles in successful placemaking and contributions towards creating pleasant, liveable, healthy and resilient communities, and delivering important national and local outcomes.
- 3.3 The Planning (Scotland) Act 2019 introduced new duties on planning authorities to prepare and publish an Open Space Strategy, and to assess the sufficiency of play opportunities in their area for children. The Act outlines the purpose of Open Space Strategies (OSSs) and Play Sufficiency Assessments (PSAs), and gave Scottish Ministers powers to

prepare regulations, concerning a range of detailed aspects around their content, preparation and engagement requirements. This Scottish Government consultation sought views on both sets of draft regulations.

The Council's response to the consultation

- 3.4 In general, the Council's response supports the principles set out in the proposed OSS and PSA regulations, and recognises the importance of OSSs and PSAs in contributing towards key outcomes and multiple benefits including placemaking, health and wellbeing, equalities, enhancing biodiversity, access and green networks, and climate change mitigation and adaptation, which the Council is already working towards.

Open Space Strategies Regulations

- 3.5 The Council's response

- notes that the proposals for an outcomes-based approach through the OSS regulations align with other outcomes-based policies and strategies of the Council;
- states that the proposed definitions of key terms including "open space", "green space" and "green infrastructure" require further clarity and definition to specify 'usable open space' and the importance of these areas for both people and nature, including that they provide Nature-based Solutions;
- supports the proposed Assessment of Current and Future Requirements and highlights the crucial importance of this in strategic planning and future-proofing, particularly in relation to the growth agenda, as East Lothian has one of the fastest growing populations in Scotland. This aspect of the OSS needs to set out the requirements for open space / green space to ensure that future developments adhere to these requirements as a minimum;
- supports the majority of proposals for information to include in open space audits, and the consultation and engagement process.

Play Sufficiency Assessments Regulations

- 3.6 The Council's response

- agrees with the majority of definitions proposed for the PSA regulations, and agrees it is important to give recognition to any suitable, accessible outdoor spaces that offer play opportunities for children; although it should be recognised that the whole environment has a playscape dimension;
- supports the two categories of play spaces proposed, i.e. those play spaces that are specifically for play; and those within areas of open spaces of which the primary function is not play. However the latter needs to be clarified, in particular which open space areas are within and outwith scope for the PSA audit, as all children differ in their play abilities, needs and requirements;

- agrees with proposals to assess play opportunities in respect of age groups, but suggests that gender should be a further consideration to ensure inclusion;
- supports the consultation and engagement proposals, and notes that the Council already always consults with local children during the development / renewal of our play areas: local school pupils vote to choose their preferred design for a new play area, and this is then implemented on the ground. We see this as a best practice model; and in addition we are currently working to further widen our consultation and engagement to ensure even better representation and inclusion going forward.

4 POLICY IMPLICATIONS

- 4.1 The proposed regulations will set out the requirements on planning authorities in preparing the Open Space Strategy and Play Sufficiency Assessment required under the Planning (Scotland) Act 2019. The implementation of the new regulations will result in policy implications for the Council, and it is anticipated that there will be guidance on the measures proposed.
- 4.2 The Council has an Open Space Strategy 2017–2022 in place, and work is already underway to revise and update the Council’s Open Space Strategy. This will take cognisance of any new duties or requirements arising following the consultation.
- 4.3 The Planning Act introduced the requirement that planning authorities must undertake a Play Sufficiency Assessment in preparing the Evidence Report for their local development plan (LDP). East Lothian’s next LDP is in preparation. Given their interlinkages the preparation of the Play Sufficiency Assessment is a key document that will impact on the LDP timescales. Although the gathering of background information can commence immediately the preparation of the full Play Sufficiency Assessment will need to wait for the publication of the final regulations, expected later in 2022.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 This report is not applicable to the wellbeing of equalities groups and an Integrated Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – There are no resource implications directly arising from this consultation. However, the Scottish Government has confirmed there will be financial implications for planning authorities arising from the requirements under the Planning Act of preparing the Open Space Strategy and Play Sufficiency Assessment. It is expected that

consultancy support will be required to undertake the considerable work associated with the preparation and engagement on the Play Sufficiency Assessment and Open Space Strategy.

It should also be noted that any discussion on the importance, requirement and expansion of open space must take into account the revenue risk to the Council. Open space gained as part of capital provision through the development process does not include associated revenue funding to cover the ongoing maintenance and operation. This is particularly concerning given the level of growth and the expectation placed on the Council's Amenity Services team, and is therefore highlighted here as a financial and operational risk.

6.2 Personnel – None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 The Council's response to the Scottish Government consultation on Open Space Strategies and Play Sufficiency Assessments Regulations is set out in Appendix 1 of this report.

AUTHOR'S NAME	Jennifer Lothian
DESIGNATION	Team Manager – Strategy, Policy & Development (Amenity Services)
CONTACT INFO	jlothian1@eastlothian.gov.uk
DATE	11 May 2022

Appendix 1: East Lothian Council response submitted to the Scottish Government consultation on Open Space Strategies and Play Sufficiency Assessments Regulations

Consultation Questions and East Lothian 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** Any Comments*

East Lothian Council is grateful for the opportunity to contribute to this consultation and recognises the importance of Open Space Strategies and Play Sufficiency Strategies in contributing towards key outcomes and multiple benefits including place-making, health and wellbeing, equalities, enhancing biodiversity, access and green networks, and climate change mitigation and adaptation. All of these are among key outcomes which East Lothian Council is already working towards.

An outcomes-based approach would enable us to align our OSS and PSA with other outcomes-based policies and strategies of the council, including but not limited to the East Lothian Plan, East Lothian Council Climate Change Strategy, East Lothian Poverty Plan, Local Housing Strategy.

*b) Do you agree with the suggested outcomes? **Yes** Any Comments*

As above. We are supportive of all of the proposed outcomes, which align with key outcomes which East Lothian Council is already working towards. However the outcomes need to be supported by indicators to measure how well they are achieved. The outcomes should also link to Community Planning outcomes and Scotland's National Performance Framework National Outcomes.

Consultation Question 2 Do you agree with the proposed definition of

*a) 'open space' **No** Any Comments*

Whilst 'open space' is defined as having a "civic function", this definition is too vague and should specify "usable" open space. Cemeteries, allotment sites, SuDS ponds are all types of open space, however these are not 'usable open space' in the sense of fully accessible for public informal recreation. Clarity is required on the meaning of the term 'open space' in relation to its use. Not doing so risks developers bringing forward proposals for development sites that include SuDS, cemeteries, allotments within their 'open space allocation' – which would reduce the area available to the public for informal outdoor recreation in open and fully accessible green spaces.

In addition there is a need to define maximum distance from settlements, as “on the edge of settlements” is too vague.

The definition needs to be clear in order to clarify which areas of green space should be included in the OSS audit. For example, there may be areas of green space which do not have a “civic function” but which are still important to communities and to achieving the outcomes.

In addition, we would query whether beaches should be included as open space – particularly local beaches immediately adjacent to towns which form an important part of the town’s recreational space and which are usable and accessible (examples in East Lothian might include Fisherrow Beach at Musselburgh, North Berwick’s West and East Beaches, or Dunbar’s East Beach).

b) ‘green space’ **No** *Any Comments*

Green spaces do not only provide a recreational function, an amenity function, or aesthetic value to the public. They are also fundamental to nature, wildlife and enhancing biodiversity. They are also fundamental to climate change mitigation and adaptation. In a climate and nature emergency this must be acknowledged equally in addition to the benefits to people (these are not mutually exclusive), and must therefore be part of the definition of ‘green space’. The definition could therefore be linked back to the outcomes. “Green space” can also comprise of “green infrastructure” and if that is agreed then the proposed definition of “open space” would not require a further clarification that open space can form parts of green infrastructure e.g. a linear park may have a number of functions including ecosystem services functions.

It is also necessary to specify water, ideally in a separately defined category of ‘blue space’ which includes rivers, ponds, etc. which have important recreational and amenity functions, in addition to their functional and biodiversity importance. For example, in East Lothian the River Tyne and the Boating Pond at Levenhall lagoons, Musselburgh, are important for water-based recreation and as such form important aspects of our ‘open space’.

c) ‘green infrastructure’ **No** *Any Comments*

The definition of ‘green infrastructure’ should include that green infrastructure also provides Nature-based Solutions (NbS). NbS is not mentioned at all in the consultation paper. The definition could be expanded to include examples of what is meant by ‘green infrastructure’.

d) ‘green networks’ **No** *Any Comments*

The definition of ‘green networks’ should also include ‘green space’. It might be useful to specify the functions of green networks. These generally include in

particular recreation, biodiversity and active travel, however the outcomes here are wider.

e) 'ecosystem services' **No** Any Comments

This definition is too vague. Ecosystem services are context dependent, and underpinned by biodiversity. The definition could be expanded to include examples of what is meant by 'ecosystem services'. Nature-based Solutions (NbS) (the tangible and intrinsic benefits provided by nature) are actions to maintain and enhance ecosystem services and it is important to include NbS in the definition.

Consultation Question 3 Do you agree with proposed thresholds for open space audits in Draft Regulation 4(2)? **Yes** Any Comments

The 0.2 ha threshold is appropriate; it is also helpful to be able to include other smaller spaces that are of benefit, should the local authority wish to include these.

Consultation Question 4

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

b) Do you agree with Regulation 4(5) on the other information planning authorities may include in the audit? **No** Any Comments

Whether the open space area is located in / in close proximity to a SIMD area (e.g. 10% or 20% most deprived areas) should be included.

Consultation Question 5

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

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

These are the same aspects as in our current Open Space Strategy so will enable comparisons to be made and consistency. An additional aspect to consider/assess could be 'value' of the open space; this would be separate to 'quality' as high quality open space could be poorly used and therefore of low value.

Consultation Question 6 Do you agree with the list of consultees for the open space audit? **Yes** Any Comments

The consultation identifies women and people from ethnic minority groups as using open space less, so they could be specifically added to the consultees. This should include gypsy travellers.

Consultation Question 7 *Do you agree with the Assessment of Current and Future Requirements should*

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

This aspect is of crucial importance in strategic planning and future-proofing, particularly in relation to the growth agenda – East Lothian has one of the fastest growing populations in Scotland. This aspect of the OSS needs to set out the requirements for open space / green space to ensure that future developments adhere to these requirements as a minimum.

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

During the development of our strategies, East Lothian Council always seeks to engage with stakeholders including the general public, young people and other relevant groups/stakeholders, to seek their views and feedback and amend a draft strategy accordingly, and we agree with this as a way forward.

Consultation Question 8 *Do you agree Open Space Strategies should*

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

b) *identify strategic green networks?* **Yes**

However a definition of 'strategic green networks' is required to clarify whether this means 'green networks of open space'? Clarification is also needed of how this links with local authorities' existing Green Networks Strategies, Biodiversity Action Plans, etc.

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

In our view these are fundamental aspects of what the Open Space Strategy must achieve.

Consultation Question 9 *Do you agree with the proposed consultation requirements on draft Open Space Strategies?* **Yes** Any Comments

As above.

Consultation Question 10 *Do you agree with the proposed publication requirements for the OSS?* **Yes** Any Comments

Consultation Question 11 Do you agree the Regulations should set a 10 year minimum review period for updating open space audits and strategies? **Yes**

Any Comments

Play Sufficiency Assessments Regulations

Consultation Question 12 Do you agree with the proposed definitions?

“children” **Yes** *Any Comments*

“localities” **Yes** *Any Comments*

“open space” **No** *Any Comments*

As per question 2a above.

“play spaces” **See below** *Any Comments*

We agree it is important to give recognition to any suitable, accessible outdoor spaces that offer play opportunities for children.

However, the type of play will differ depending on the age, gender and abilities of the particular children.

The PSA should give greater recognition to play as a ‘state of being’ rather than only defining it in relation to a ‘space’. The PSA should recognise that the whole environment has a playscape dimension and consider how we can audit how children experience play, in order to fully understand all of the opportunities for play that an environment / local area may provide. We recognise that this approach was considered and rejected by the Working Group, however we feel that further consideration of how this could be recognised and incorporated in some way in the audit would be important.

Consultation 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)? **See below**

We support the two categories of play spaces and agree with the “desire for embracing the wider concept of play, both formal and informal”. However, play spaces “which are within areas of open space and not specifically for play” [Draft Regulation 3(2)(b)] need to be clarified, in particular which open space areas are within and outwith scope for this aspect of the audit, including how non-playable areas should be selected, as all children differ in their play abilities, needs and requirements.

Consultation Question 14 Do you agree with the proposed requirement to assess play opportunities in respect of their suitability by age groups? **See below** *Any Comments*

We are supportive of assessing play opportunities in respect of age groups and we recognise the differing needs of different age groups. However, it will be difficult for local authorities to assess whether play spaces are suitable for 'age 12 – 15' compared with '16 – 17'. Detailed guidance is required to assist with this aspect of the audit.

However, we believe it is important to also consider gender. Accessibility to open spaces, and feelings of safety and security in parks and open spaces, differ for males and females (particularly older children / teens); and the types of play may also differ for males and females. The group 'Make Space for Girls' sets out a good case for better consideration of the requirements for girls in open spaces / play areas to ensure inclusion, and this could also be a consideration in assessment of play sufficiency.

Consultation Question 15

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

As above (Q14) 'accessibility' and inclusion should also take account of gender: different requirements that may be required by boys and girls in terms of play and access to play spaces / open spaces.

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

Provision of this information at locality level (in addition to local authority level) will enable identification of local areas requiring targeted improvements, which will be useful for strategic forward planning of play space improvements.

Consultation Question 16

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

East Lothian Council already always consults with local children during the development / renewal of our play areas – we liaise with the local primary school(s), the pupils vote to choose their preferred design for the new play area, and this design is taken forward and implemented on the ground. We see this as a best practice model; and in addition we are currently working to further widen our consultation and engagement to ensure even better representation and inclusion going forward.

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

The list of consultees could include the need to consult specifically with girls, people from ethnic minority groups and disabled children to ensure their views are heard.

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 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.

Consultation Question 20 Do you agree with the Fairer Scotland Duty screening and our conclusion that full assessment is not required?
Agree/Disagree Any Comments

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? Agree/Disagree Any Comments

[If you consider full assessments are required please suggest any additional sources that could help inform these assessments]

Consultation Question 22 Any other comments

Additional comments:

Cultural and heritage benefits of open space - the link between open space and heritage is not explicitly mentioned in the regulations (other than by a reference to NPF4s 6 qualities of successful places [and that would be under no.4 Distinctive]); it may be worth emphasising that on-site and offsite heritage assets can play an important role in influencing the design of new open spaces.