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# **Reform of the Planning System in Northern Ireland: Your chance to influence change**

Government Response to Public  
Consultation July – October 2009

**March 2010**



An Agency within the Department of the

**Environment**

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## **Executive Summary**

1. The Department of the Environment's consultation paper, 'Reform of the Planning System in Northern Ireland: Your chance to influence change', was published on 6<sup>th</sup> July and the consultation period ran until 2<sup>nd</sup> October 2009. The consultation paper set out a range of proposals to improve the planning system (set within the context of the Review of Public Administration (RPA) which will see responsibility for the majority of planning functions move from the Planning Service to local government in 2011), and sought views on a number of issues.
2. Two hundred and sixty-four (264) written responses to the planning reform consultation paper were received from a wide range of interests, including agents, architects, business and development, elected representatives, environment and heritage groups, individuals, and resident, community and voluntary groups.
3. Eleven (11) stakeholder events were also held across the proposed new district council areas, which were attended by approximately 480 people, with an independent report produced by the consultants who managed and facilitated the events (also available at [www.planningni.gov.uk](http://www.planningni.gov.uk)).
4. The wide range of responses indicated broad support for reform of the planning system with many respondents welcoming the proposals. There is no overall consensus on what the key focus of a reformed system should be: business and development interests see speeding up the planning system as being of key importance, while resident and community groups see enhanced community involvement as a priority. There is agreement, however, on the need for improved processes, culture change and capacity building, and more effective and meaningful community involvement. While there was broad support for speeding up and streamlining planning processes, there was concern that this should not be at the expense of quality. Appendix 2 gives a summary of the reform proposals and the government response.

## **Planning Policy**

5. There was a mixed response to the proposal that planning policy statements should set strategic policy direction only. The Department of the Environment (the 'Department')

has decided that planning policy statements should not be reviewed at this time but that, following the transfer of planning powers and functions, the Department will work with district councils and others to determine how best to manage the nature, timing and presentation of future planning policies.

### **Development Plan**

6. In general, there was broad support overall for the development plan proposals from both the consultation responses and the stakeholder events. The Department intends to take forward the development plan proposals as outlined in the consultation paper, with the exception of the proposal that the Department should give the independent examiners the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan, and other minor changes as highlighted throughout this document. Where significant comments have been made and issues raised by respondents on specific proposals, the Department will address these through further subordinate legislation or guidance, as appropriate.

### **Development Management**

7. In general, there was strong support for the development management proposals from both the consultation responses and the stakeholder events. The Department proposes to take forward the development management proposals as outlined in the consultation paper, with the exception of the proposal to reduce the normal default duration of planning permissions and consents from five to three years.
8. In response to concerns raised, the Department will revise details and proposals for the development hierarchy, particularly in relation to amending and aligning some of the thresholds (including housing) and clarifying processes for regionally significant developments dealt with by the Department, and for major (including all social housing schemes) and local developments dealt with by the new district councils. These details will be taken forward through the preparation of secondary legislation and related planning guidance in consultation with the affected parties.

### **Permitted Development**

9. Permitted development proposals have been consulted upon separately and are, therefore, not included in this paper.

## **Appeals**

10. There was a mixed response to the appeals-related proposals. The Department intends to reduce the time limit for submitting an appeal to four months, with legislative powers to vary this time period through subordinate legislation at a later date, if appropriate. The Department does not intend to proceed with legislation to allow the Planning Appeals Commission (PAC) to determine the most appropriate appeal method. In relation to the proposal regarding restricting the introduction of new material at appeal, the Department will review the Scottish experience, monitor the PAC handling of new information and, in the interim, draw the conclusions of the consultation to the attention of the PAC.
  
11. Further detailed policy work is required to fully explore the implications of establishing local member review bodies; therefore, they will not be introduced at this time but the situation will be reviewed following the transfer of planning powers to local government. The Department intends to proceed with the proposals to expand the powers to decline to determine planning applications where a 'deemed application' associated with an enforcement notice appeal is pending, and where the PAC has refused a similar deemed application within the previous two years. Award of costs will also be introduced into Northern Ireland. The Department will issue guidance to accompany the commencement of the provisions.

## **Third Party Appeals**

12. Whilst no formal proposal for third party rights of appeal was included in the planning reform consultation paper, it is evident from the responses received that there is a clear division of opinion with strong views for and against their introduction. However, the context is important and many of the responses raised issues that need to be more fully explored and presented in a separate consultation process which would identify the features of a third party appeal system, including the extent of who could appeal and which decisions would be open to appeal. The Department is of the opinion that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and the transfer of planning functions have settled down and are working effectively.

### **Enforcement, and Criminalisation of Development Without Planning Permission**

13. The Department intends to proceed to introduce legislation so that retrospective planning applications should attract a multiple of the normal planning fee. The final amount will be determined at a later stage and included in subordinate legislation. Fixed Penalty Notice powers in respect of a breach of an Enforcement Notice or Breach of Condition Notice will also be introduced. The Department does not intend to introduce the provisions relating to Notification of Initiation of Development and Completion of Development but will continue to monitor the outworkings of the Scottish 2008 Regulations, together with other recent enforcement measures in Scotland. The Department does not intend to give further consideration to making it an immediate criminal offence to commence any development without planning permission.

### **Developer Contributions**

14. The responses to the consultation identified an appetite for seeking increased contributions to support the delivery of infrastructure necessary to deliver Northern Ireland's economic and social development. Given that infrastructure is currently delivered through several central government departments, the Department considers that this is an issue which should be considered at Executive level in relation to funding and infrastructure responsibilities. The Department will contribute to this future work to investigate what role the planning process might play in any future system of contributions.

### **Enabling Reform**

15. As indicated in the consultation paper, central government will continue to set planning fees centrally with consideration to be given to transferring fee setting powers to district councils after a three year review. There was strong support for the proposal that central government should have a statutory planning audit / inspection function covering general or function-specific assessments.

### **Culture Change, Capacity and Performance Management**

16. Views were also sought in relation to culture change, capacity and related performance management issues. There was widespread recognition amongst respondents that the revised structures for devolved delivery of the planning system will require a change in attitudes among all stakeholders and development of an appropriate culture. There was

also recognition that there is a critical need to ensure that there is sufficient capacity of all key players and stakeholders if the reforms are to be successful.

17. Officials will continue to work with a range of stakeholders, including the RPA implementation structures, to explore how best to enhance capacity within the system to ensure readiness for the changes that will arise through the transfer of planning functions and planning reform.

### **Equality Impact Assessment**

18. The responses received to the draft EQIA at a Strategic Level, which was published at the same time as the consultation paper, were also considered as part of the policy finalisation process. A final EQIA at a Strategic Level has been published at the same time as this government response and is available on the Planning Service's website at [www.planningni.gov.uk](http://www.planningni.gov.uk).

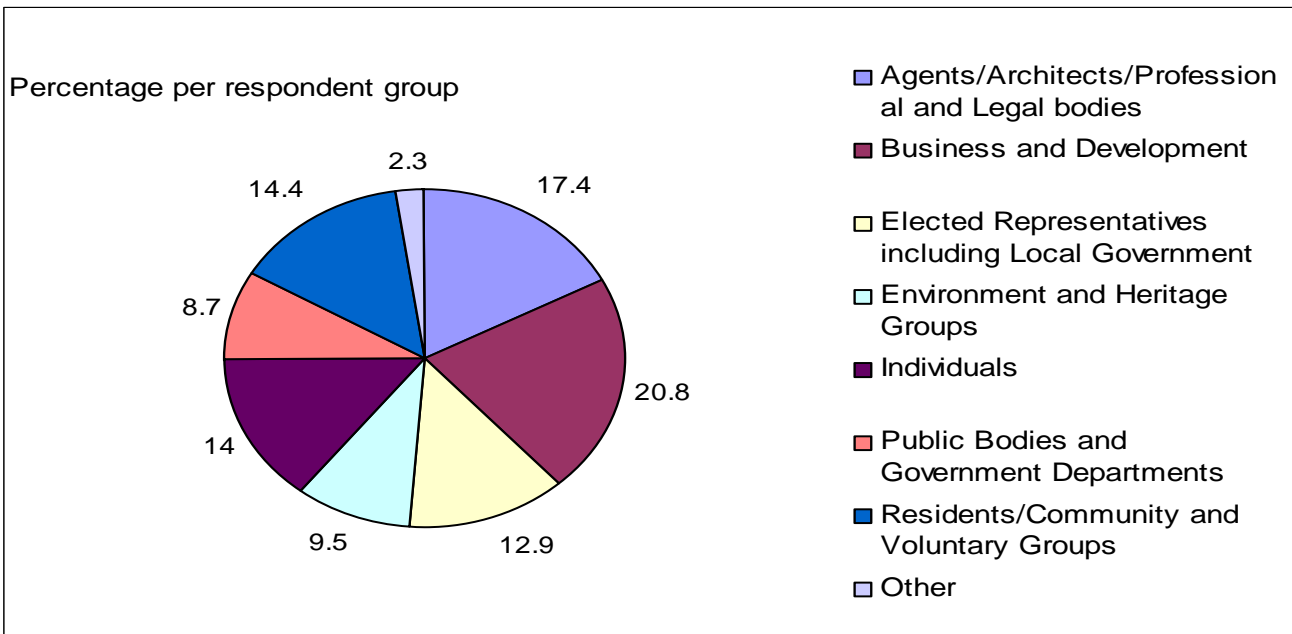
## **Introduction**

1. On 6<sup>th</sup> July 2009, the Department of the Environment (the 'Department') published a consultation paper, 'Reform of the Planning System in Northern Ireland: Your chance to influence change'. The consultation paper sought views on proposed reforms to the Northern Ireland planning system. At the same time, the Department published a draft Equality Impact Assessment (EQIA) at a Strategic Level and sought views from the public on the draft assessment of the equality impacts of the planning reform proposals.
2. The reform proposals impact on every aspect of the planning system: how policy is produced, how development plans are drawn up, how development proposals and applications are managed, and the way in which these functions are delivered. The proposals are set within the context of the Review of Public Administration (RPA) which will see responsibility for the majority of planning functions move from the Planning Service to district councils in 2011.
3. The proposals were formulated by the Department following extensive engagement activities with a number of key stakeholders, research into planning in other jurisdictions in the UK and Ireland, and input from the then Minister's Independent Expert on planning, Professor Greg Lloyd.
4. Over 700 organisations and individuals were notified of the launch of both the consultation paper and draft EQIA at a strategic level. The documents were also made available on the Planning Service website.
5. By the closing date for receipt of comments (2<sup>nd</sup> October 2009), some 235 responses had been received, with the total rising to 264 by 15<sup>th</sup> October. The Department is appreciative of the time and effort spent by respondents on these important proposed changes to the Northern Ireland planning system and wishes to thank all those who participated in the consultation and attended the stakeholder events. The level of detailed input demonstrates the importance of these reforms to all citizens of Northern Ireland. Much goodwill was demonstrated and offers of assistance were made regarding capacity building / working in partnership with professional bodies, community groups, local government and so on.

6. Comments were received from a wide range of interests. To assist in the analysis, the Department determined that the responses would fall into the following categories and be grouped accordingly:

- agents / architects / professional and legal bodies;
- business and development;
- elected representatives / local government;
- environment and heritage groups;
- individuals;
- public bodies / government departments;
- resident / community and voluntary groups; and
- other.

7. The diagram below shows the number of responses from each of these groups as a percentage of the total number of responses.



8. Eleven (11) stakeholder events were also held across the proposed new council areas, which were attended by approximately 480 people, with an independent report being

produced by the consultants who managed and facilitated the events<sup>1</sup>. The findings from these events are included in this report, where applicable.

9. A breakdown of the groups and number of responses received is attached at Appendix 1. Appendix 2 contains a summary of each consultation proposal / question and the government response. A list of respondents is attached at Appendix 3 and a glossary of abbreviations is contained at Appendix 4. All responses to the consultation have been published on the Planning Service website and can be accessed at [www.planningni.gov.uk](http://www.planningni.gov.uk).
10. Generally, most comments referred directly to the proposals detailed within the consultation paper. There were, however, additional comments received relating to issues not specifically dealt with within the paper and these are highlighted in the final section of this paper.
11. This paper provides a comprehensive overview of the findings from the responses to the consultation paper, including points raised by a number of respondents, and incorporates the Department's consideration and response. The format of this paper follows the chapters as set out in the consultation paper. A final EQIA at a Strategic Level has also been published and is available on the Planning Service website.
12. While there were 264 responses to the consultation paper in total, not all questions were answered by every respondent. This paper therefore details the number of respondents to each question and the percentage of those who supported or opposed the proposal / question. In order to illustrate some of the issues raised, comments made by respondents have been quoted throughout the document. All responses were given due consideration to determine what changes to the proposals, if any, were appropriate.

### **Next Steps**

13. Executive clearance of the final policy position for the planning reforms that require legislation was received in February 2010. The next steps will include: bringing forward the necessary legislation and developing an initial suite of guidance (with further

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<sup>1</sup> Available at [www.planningni.gov.uk](http://www.planningni.gov.uk).

development over time) to support all those involved in the development plan and development management processes; publishing a new draft Planning Policy Statement 1; and continuing to work with the local government sector and others, as relevant, to plan and prepare for the transfer of functions to local government. This work will include the development of capacity building, governance arrangements, performance management and other critical areas that will be essential to successful implementation.

14. Copies of this document can be downloaded from the Planning Service website at [www.planningni.gov.uk](http://www.planningni.gov.uk) or requested via the postal address, e-mail or fax numbers below, or by telephone on 028 9041 6767, or by Text phone on 028 9054 0642. This document may be made available in alternative formats - please contact us to discuss your requirements.

**1. Postal Address:**

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## **Planning Policy**

### ***Context***

- 1.1 The consultation paper considered the need for reform of the Department's arrangements for planning policy, particularly in relation to the future role and status of planning policy statements in light of the proposed transfer of key planning functions to local government in 2011.

### ***Consultation paper proposals***

- 1.2 Question 1 asked whether, in future, planning policy statements (PPSs) should provide strategic direction and regional policy advice only, which would then be interpreted locally in development plans. Question 2 asked if there were any elements of operational policy which should be retained in PPSs.

### ***Consultation responses***

- 1.3 There was a fairly mixed response to Question 1 from both the consultation responses and the stakeholder events. Of the 153 who responded to this question, 57 per cent supported the proposal, while 43 per cent opposed it. The elected representatives / local government group was strongly in favour, while environment and heritage groups, and resident / community and voluntary groups were significantly opposed. Many of those opposed, and indeed some of those in support, expressed the concern that the proposal could lead to inconsistency in decision-making across the proposed new district councils.
- 1.4 In response to Question 2, a majority of 76 per cent (of the 123 who responded) considered that there were some elements of operational policy which should be retained in PPSs (only the elected representatives / local government group was opposed). Again, consistency of approach with regard to certain policy areas was given as the reason for this support, either because of a requirement to comply with legislation (e.g. national / international nature conservation designations) or due to the regional importance of issues such as flood risk or major infrastructure provision.
- 1.5 At the 11 stakeholder events there was a recognition that a shift towards a higher level, more strategic framework for planning policy, with operational detail being worked out at

the local level and interpreted in local development plans, was a very positive step forward. On the other hand, reservations were expressed about what these policy documents would look like in future. The Department was urged to move quickly to publish a new PPS 1 (setting out the general principles to be observed in formulating planning policies, making development plans and exercising development management) in time for the handover to district councils, to avoid a policy vacuum being generated, and to provide an agreed framework for planning policy on which everyone can move forward.

***Department's consideration and response***

- 1.6 By March 2011, the Department intends to have in place a fit for purpose suite of PPSs in their current format, as well as a revised PPS 1. The Department considers that this suite of PPSs, together with the revised Regional Development Strategy (RDS), will provide a robust and consistent planning policy framework within which the new district councils will be able both to prepare the first round of local development plans and to manage development. This planning framework will give some scope for local development plans to provide local policies which complement or amplify regional policy.
  
- 1.7 Taking into consideration the mixed response to the issue of PPSs, and the time and resources required to review, consult on and publish new PPSs, the Department considers that PPSs should not be reviewed at this time but that, following the transfer of planning functions, the Department will work with district councils and others to determine how best to manage the nature, timing and presentation of future planning policies.

## **Development Plans**

### ***Plan led system***

#### ***Context***

2.1 The 'plan led' system<sup>2</sup> gives primacy to the development plan as a material consideration when making decisions on planning applications. While this provision has not yet been commenced, it is the Department's intention to commence it in advance of the transfer of the majority of planning functions to district councils. The Department considers that the introduction of a plan led system will provide a greater level of certainty for everyone involved in development, but it will also mean that it is even more important to reform and streamline development plans.

#### ***Consultation paper proposal***

2.2 Question 3 asked if respondents thought it appropriate to commence a 'plan led' system in advance of the transfer of the majority of planning functions to district councils under the Review of Public Administration (RPA).

#### ***Consultation responses***

2.3 Of the 154 respondents who commented on this issue, 59 per cent supported the proposal. There was greater support in the resident / community and voluntary groups, and the environment and heritage groups (with three quarters of both groups in favour of the proposal). Some respondents thought the plan led system should be introduced as soon as possible to give some level of certainty and allow time for it to 'bed-in' before 2011. Some saw the introduction of a plan led system as providing more clarity and confidence in the new planning system, and ensuring consistency in undertaking the new functions, following the transfer of planning functions to local government.

2.4 Some concerns were expressed regarding the timing of introducing the plan led system given that development plans will be at different stages of preparation and will have different administrative boundaries when inherited by the proposed new district councils.

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<sup>2</sup> Introduced into Northern Ireland by the Planning (Amendment) (NI) Order 2003 (amended by the Planning Reform (NI) Order 2006).

It was also stated that the issue of resources needed to be further considered, and that new local development plans should be started as soon as possible by Transition Committees<sup>3</sup> to avoid a vacuum.

- 2.5 Almost a third of respondents were opposed to the proposal, including 50 per cent of the business and development group. The main reason given for this opposition was that so many development plans will be out-of-date and would not enable a plan led system to function properly. A number of respondents, including the Institute of Directors (IoD), believed that the plan led system should be phased in or only introduced once new local development plans are in place. Ten per cent of respondents did not give a clear indication whether they were in support or not.
- 2.6 Some reservations were expressed at the stakeholder events and these focused on urging the Department and the new district councils (as the new local planning authorities) to move quickly to avoid having a vacuum in development plan coverage. Otherwise, it was said, we could have a plan led system but not a full set of plans upon which it would operate.

### ***Department's consideration and response***

- 2.7 The Department considers that a plan led system will work effectively even if there is not full up-to-date plan coverage as district councils will be able to exercise discretion in determining planning applications on the basis of all material considerations. Therefore, there could be circumstances where more up-to-date considerations, such as a planning policy statement, would be given more weight than an older development plan.
- 2.8 The Department notes concerns expressed in relation to the timing of introducing a plan led system given that plans will be at different stages of preparation and will have different administrative boundaries when inherited by the proposed new district councils. It is envisaged that some of these issues and concerns will be addressed through work that will be carried out in conjunction with the Transition Committees on pilot plans. In

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<sup>3</sup> Transition Committees were established to plan and prepare key activities to make sure there are 11 effective district councils in place for the changeover date in 2011.

addition, the Department is content that the transitional arrangements will be adequate to deal with these issues (see Question 24 on transitional arrangements).

2.9 In light of the consultation response and the above analysis, the Department intends to introduce the plan led system as proposed, but will carefully consider when would be the best time to commence it. Many of the key issues and concerns outlined by respondents will be addressed through further subordinate legislation or guidance, as appropriate. In addition, the Department intends to issue guidance on how a plan led system would work as part of the forthcoming revision of PPS 1.

### ***Objectives for local development plans***

#### ***Context***

2.10 The consultation paper set out the following objectives for a reformed local development plan system:

- produce plans which are more strategic in vision and approach;
- indicate how places should change and what they will be like in the future;
- more effective participation from the public and other key stakeholders early in plan preparation;
- more effective programme management and speedier delivery of plan documents;
- a more flexible approach that is responsive to change and capable of faster review;
- a stronger link between the evidence base and plan policies and proposals; and
- a more strategic-based independent examination process that focuses on testing the 'robustness' of the plan.

#### ***Consultation paper proposal***

2.11 Question 4 asked respondents if they agreed that these objectives were appropriate for local development plans.

#### ***Consultation responses***

2.12 Of the 155 who responded to this question, there was very strong support (80 per cent) that these objectives were appropriate for local development plans. However, notwithstanding this support, the following issues were raised:

- the necessity of the strategic element of the plan was questioned, and how strategic issues will be dealt with;
- some stated their support for more emphasis on spatial planning and place shaping;
- clarification was sought on how effective public participation in the plan preparation process will be ensured;
- more clarity was sought on the concept of robustness and the submission of objections on this basis;
- some respondents stated that there should be clear links between the local development plan and the community plan that district councils will be preparing for their area. Councils agreed with this, including Belfast City Council, who stated that they welcomed the reference to the new powers of well-being and community planning; and
- some stated that sustainability should be mentioned in the objectives, and a definition of sustainability provided.

### ***Department's consideration and response***

2.13 Due to the level of support expressed the Department is content to proceed broadly with the objectives as outlined in the consultation paper. However, in light of the comments received, the Department will add sustainability into the first objective and provide a definition of sustainability in guidance. The Department agrees with the importance of the link with community planning but considers that it is more appropriate to deal with this in the list of functions of a local development plan (see Question 5). Regarding comments on the necessity of the strategic element of the plan, the Department intends to proceed with the two document approach, including the Plan Strategy (see Question 9). Regarding other requests for more information, the Department will address these through subordinate legislation or further guidance, as appropriate.

### ***Functions of local development plans***

#### ***Context***

2.14 The consultation paper set out the following functions for a reformed local development plan system:

- provide a 15-year plan framework to support the economic and social needs of Northern Ireland in line with regional strategies and policies, while providing for the delivery of sustainable development;
- facilitate sustainable growth by co-ordinating public and private investment to encourage development where it can be of most benefit to the well-being of the community;
- allocate sufficient land to meet society's needs;
- provide an opportunity for all stakeholders, including the public, to have a say about where and how development within their local area should take place; and
- provide a framework for rational and consistent decision-making by the public, private and community sectors and those affected by development proposals.

2.15 The consultation paper also stated that the power to prepare local development plans, in conjunction with the new powers of community planning and well-being, will give district councils a new and effective opportunity to develop agreed future visions for their areas and to prepare a co-ordinated and planned approach to delivering this vision.

### ***Consultation paper proposal***

2.16 Question 5 asked respondents if they agreed that the above functions were appropriate for local development plans.

### ***Consultation responses***

2.17 One hundred and fifty-nine (159) responses were received to this question. Of these, there was a majority of 73 per cent who agreed that the functions as set out were appropriate for local development plans. Several respondents commented that they wished to see clear linkages between the community plan and the local development plan, with some calling for a statutory link. Some respondents, including Coleraine, Antrim and Newtownabbey Borough Councils, commented that the 15-year timeframe for the plan was too long, and that there was a need for review of the plan every five or six years. Others stated that there was a focus on economic issues and that there was a need to mention both environmental issues and the facilitation of quality environments. Some asked for a reference to be made to contributing to the alleviation of poverty and disadvantage through the local development plan.

### **Department's consideration and response**

2.18 The Department does not agree that 15 years is too long, given that one of the objectives of the new local development plan system is to produce plans that are more strategic in vision and approach. Also, proposals for the local development plan system include monitoring of the plan on an annual basis, and (at least) 5 yearly reviews, all of which will allow adjustments to be made to the plan in a timely manner, where it is deemed appropriate. The Department recognises the role of the local development plan in contributing to a quality environment and facilitating sustainable development; therefore, an additional function will be added to include the reference to the role of the plan in contributing to / enhancing a quality environment. The Department considers it appropriate to include an additional function in relation to the link between local development plans and community plans. The Department also intends to make this a statutory link to mirror the position in England, Wales and Scotland.

2.19 Due to the level of support expressed, the Department is content to proceed broadly with the functions as outlined in the consultation paper, but will make the following amendments and additions in light of the comments received:

- provide a 15-year plan framework to support the economic and social development of Northern Ireland in line with regional strategies and policies, while providing for the delivery of sustainable development;
- facilitate sustainable development by co-ordinating public and private investment to encourage development where it can be of most benefit to the well-being of the community;
- allocate sufficient land to meet society's needs, in ways that protect and enhance the physical and natural environment and use resources as efficiently and sustainably as possible;
- contribute to building a dynamic, innovative and sustainable economy, while promoting inclusion and equality of opportunity, and assisting in tackling disadvantage and poverty;
- provide an opportunity for citizens and other stakeholders to help shape where and how development within their local area should take place;
- provide a framework for rational and consistent decision-making by the public, private and community sectors and those affected by development proposals; and

- deliver the spatial aspects of the community plan.

## ***Statement of community involvement***

### ***Context***

2.20 Currently the Department is required to prepare a statement of community involvement (SCI) which is a statement of the Department's policy for involving the community in development proposals, including both development control and development plan-making. Following the transfer of planning functions, this responsibility will also fall to district councils who will be required to prepare a SCI for their new planning functions. The Department views the SCI as a fundamental tool in the local development plan process and considers that it will enable district councils to carry out more inclusive and effective community consultation for their local development plans. It will also help to better promote equality of opportunity and community relations through increased awareness of community participation and involvement.

### ***Consultation paper proposal***

2.21 Question 6 asked respondents for their views on the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan.

### ***Consultation responses***

2.22 One hundred and sixty-one (161) respondents answered this question and a significant majority of these (85 per cent) supported the proposal. Some respondents expressed the opinion that this should not become a tick-box exercise, but should be meaningful and effective. It was also stated that the SCI should not be a labour intensive or bulky document and should not cause any unnecessary delay to the process.

2.23 There were also a few concerns amongst councils regarding the resources needed to prepare a SCI, the need to have it agreed with central government, and its potential to cause delay. The Northern Ireland Local Government Association (NILGA) was of the view that the introduction of SCIs will have massive resource and other implications for councils and that clarity on what community involvement will entail is essential. Belfast

City Council saw merit in combining consultation on the local development plan with the Council's community planning functions. Rural Community Network commented that the SCI should include specific reference to how marginalised groups will be engaged; an issue recognised by Belfast City Council. Some respondents stated that the public should be given the opportunity to comment on a draft SCI. The majority of those attending the stakeholder events agreed that SCIs should be in place before the commencement of the local development plan process.

### ***Department's consideration and response***

2.24 In light of the clear majority in support of this proposal, the Department intends to proceed as indicated in the consultation paper. However, in response to concerns raised about resources, the time needed to prepare a SCI, and the size of the document, the Department will address these through further subordinate legislation or guidance, as appropriate. The Department considers that it is very important that the SCI is submitted to, and agreed by, central government to ensure that the district council's policy for involving the community in development proposals is effective, is in line with central government policy and guidance, and is consistent across the region. Following the transfer of planning functions, district councils will have the flexibility to decide how best to give the public an opportunity to input to their SCI.

### ***Programme management scheme***

#### ***Context***

2.25 The consultation paper proposed to introduce a legislative provision requiring district councils to prepare programme management schemes (PMSs) for their local development plans and to submit these to central government for agreement. The Department considered that PMSs would help ensure the plan process is efficiently managed and that the public, stakeholders and consultees are aware of key milestones in the process.

#### ***Consultation paper proposal***

2.26 Question 7 asked respondents for their views on the proposal for a programme management scheme.

### ***Consultation responses***

2.27 One hundred and thirty-nine (139) respondents commented on this issue. Of these, the overwhelming majority (92 per cent) supported the proposal. Of particular note was the business and development group, which was 100% in support. The main issue raised by some respondents, including NILGA and the Social Democratic Labour Party (SDLP), was that of sanctions and rewards for meeting the timeframes set out in the PMS. Some respondents called for more detail on monitoring the effectiveness of the PMS. There were concerns, particularly amongst the elected representatives / local government group, regarding the resources needed to prepare a PMS at the same time as local government was undertaking all the other new functions. For reasons of clarity it was suggested that the PMS should be renamed and should simply be referred to as a 'timetable'.

### ***Department's consideration and response***

2.28 The Department intends to proceed as indicated in the consultation paper. However, in light of the comments made, the PMS will be renamed and will be known as a timetable. The Department will ensure that the timetable is monitored to ensure key milestones are met and will provide guidance on how this will be achieved. The Department will also continue to look in more detail at the possibility of rewards and sanctions.

### ***Preferred options paper***

#### ***Context***

2.29 Public and stakeholder participation, particularly at the start of the process of developing a new local development plan, is regarded as crucial in identifying relevant issues and local views in the plan process. The consultation paper proposed to replace the current issues paper with a preferred options paper. The preferred options paper would contain: a series of options for dealing with the key issues in the plan area; evidence to appraise the different issues and options; and the district council's preferred options and their justification. This preferred options paper would be used as the basis for consulting with the public and stakeholders and it is envisaged that this would help interested parties to become involved in a more meaningful way at this earlier stage of local development plan

preparation and provide them with an opportunity to put forward views and influence the local development plan.

### ***Consultation paper proposal***

2.30 Question 8 asked respondents if they agreed that a preferred options paper should replace the issues paper.

### ***Consultation responses***

2.31 Of the 149 respondents who answered this question, 78 per cent expressed their support. The environment and heritage group was 95 per cent in support. The agents / architects / professional and legal bodies group was the least supportive, with 31 per cent opposed. One area of concern raised was that the preferred options paper may be seen as the district council having already made up its mind and therefore not considering all the options through meaningful consultation. Some respondents, including the Belfast Metropolitan Residents Group, commented that the proposal did not make it clear how the public could influence the preferred options paper prior to publication. It also appeared unclear to respondents whether the preferred options paper referred to the Site Specifics Policies and Proposals document as well as the Plan Strategy (see Question 9). The preferred options paper approach as suggested was welcomed at the stakeholder events.

### ***Department's consideration and response***

2.32 In light of the strong support for this proposal, the Department intends to proceed as indicated in the consultation paper. In response to concerns that the preferred options paper may be seen as the district council having already made up its mind, the Department considers that giving the public viable preferred options to facilitate meaningful comment and engagement is much more beneficial than the broad issues paper approach. It should also be recognised that the preferred options paper is a tool for public engagement and is not intended to represent a district council's set approach. It is perfectly feasible that after the consultation process district councils could change their preferred option. The Department will seek to ensure the public are involved throughout the plan production process and will address this issue in guidance, as appropriate. The Department can confirm that the preferred options paper is intended to

focus on strategic matters, which will then filter down through both the Plan Strategy and Site Specifics Policies and Proposals document.

### ***Proposed local development plan documents***

#### ***Context***

2.33 The consultation paper proposed that the new local development plan should comprise two documents, the Plan Strategy (setting out the vision, objectives and growth strategy for the area, along with strategic policies), and the Site Specifics Policies and Proposals document (incorporating the detailed policies and proposals for the relevant topic areas). The Plan Strategy would be produced first, scrutinised at the independent examination stage and then adopted. Subsequently, the Site Specifics Policies and Proposals document would be completed in line with the Plan Strategy, examined at independent examination and then adopted. The Department considered that this approach would allow the Plan Strategy to be adopted quickly, within approximately two years, to ensure early strategic direction was in place and providing certainty for future development decisions in the area.

#### ***Consultation paper proposal***

2.34 Question 9 asked respondents if they agreed with the proposal to introduce a local development plan process that comprised two separate but related documents to be published, examined and adopted separately and in sequence.

#### ***Consultation responses***

2.35 Of the 153 who commented on this proposal, 62 per cent were in support, 23 per cent were opposed and 15 per cent did not indicate whether they agreed or not. The only group where there was not a majority in support of the proposal was the agents / architects / professional and legal bodies group, with just over half expressing their opposition.

2.36 Some respondents in support of the proposal stated that settling the strategic issues early would provide a degree of certainty, and would assist in speeding up the plan process. Others suggested alternatives to the two document approach, including the suggestion

that a Plan Strategy should only be prepared for sub-regional issues. Some respondents, including Invest NI, commented that there should be simultaneous consultation on the two documents.

2.37 Those opposed to the proposal stated that the new system would be cumbersome, could lead to duplication, and that the timescale for plan preparation was ambitious and would only add delays to the process. A couple of respondents suggested a name change to the Site Specifics Policies and Proposals document, as they considered the name did not properly reflect its proposed content / purpose.

2.38 The move towards a Plan Strategy document which would provide a strategic framework for action was commended at the stakeholder events. Checks and balances from central government were requested to ensure consistency of interpretation of the policies in a way that is consistent with the overarching plan strategy, the RDS and planning policy statements. The statement that local development plans would be produced in three and a half years rather than the current six and a half years was welcomed but it was questioned if this could be achieved.

### ***Department's consideration and response***

2.39 Taking into account the overall majority in support of the proposal, the Department intends to proceed with this approach. After extensive research of planning systems in both the UK and the Republic of Ireland, it is the Department's opinion that the two document approach is the best way forward for Northern Ireland as it ensures that an early strategic overview for development can quickly be in place for each district council area, which will provide a level of certainty on which to base key future development decisions. Regarding the suggestion that the Plan Strategy should be prepared for sub-regions only, proposals allow for district councils to choose to collaborate on local development plans if they so wish. However, in relation to the Belfast Metropolitan area it is considered that the district councils should work together for the effective forward planning of the sub-region. The Department is currently considering how best to move forward on this issue (see Question 23 on Joint Working).

2.40 The Department does not agree that the proposed two document approach will be cumbersome or lead to duplication as it allows for streamlining of the overall plan

preparation process: setting the strategic context for key development decisions in the area first, followed by preparation of the Site Specifics Policies and Proposals document, and dealing with representations at the appropriate stage of the process. With regard to timescales, the consultation paper states that the plan preparation process will be reduced to approximately 40 months (based on research in other planning jurisdictions). While the Department considers that this timescale represents the optimum that can be achieved, it is recognised that it is dependent on the implementation of the combination of proposals set out in the consultation paper, particularly the proposals for the independent examination process. It will also be dependent to some extent on overall district council practice and procedures that will be adopted, once planning functions are transferred. More detail on timescales will be set out in guidance.

- 2.41 Upon reflection, the Department considers that the Site Specifics Policies and Proposals document name does not adequately reflect the proposed content / purpose of the document. Therefore, the name of the document will change to 'Local Policies Plan'.

## ***Amendments to the local development plan***

### ***Context***

- 2.42 The consultation paper set out the flexibility that the two document approach allows, and explained that if an issue or an unexpected development relevant to a small area or topic within the overall plan area needed to be addressed, the Site Specifics Policies and Proposals document could be altered as required where it does not deviate from the Plan Strategy. However, if the alteration does deviate from the Plan Strategy, a re-run of the full local development plan process would be required.

### ***Consultation paper proposal***

- 2.43 Question 10 asked respondents for their views on the proposal dealing with amendments to the local development plan.

### ***Consultation responses***

- 2.44 Of the 136 respondents who commented on this proposal, 51 per cent broadly supported it. Nine per cent opposed it and 40 per cent did not indicate whether they agreed or

disagreed. In all of the groups more respondents were in favour than not. Many respondents commented on a lack of detail in the proposal. A number of respondents, including the Causeway Coast Communities Consortium and Playboard NI, commented that there was a need for criteria to be developed for setting out what types of proposals would be considered minor amendments to the plan, and that there was a need for consistency of approach to dealing with them. The Alliance Party welcomed the ability to amend the plan but commented that the threshold for triggering a full review would need to be clearly defined.

- 2.45 Other respondents commented that there was a need for flexibility in dealing with amendments and alterations to the local development plan to ensure that these were dealt with efficiently. However, in contrast to this, a number of respondents disagreed with the plan amendment procedure stating that it could be abused. Others stated that public participation should still be part of the plan amendments process. The ability of the proposed system to make quicker and easier amendments to the local development plan was welcomed at the stakeholder events.

### ***Department's consideration and response***

- 2.46 While there was only a slim majority (51 per cent) of those who commented in support of the proposal, only nine per cent stated that they opposed it. The Department therefore intends to proceed with the approach as set out in the consultation paper. The Department will take into consideration the concerns expressed regarding time efficiencies and the level of flexibility that should be afforded to plan amendments. More detail will be set out in guidance to ensure there is consistency of approach and that the plan preparation process is not unduly slowed down. Public participation and independent examination will be part of the amendment process, as in all cases it will be necessary to re-run part or all of the local development plan process.

### ***Requirement for representations to demonstrate robustness***

#### ***Context***

- 2.47 The consultation paper proposed to introduce a legislative provision to establish a 'plan robustness' approach as a basis for testing future local development plans. The

Department considered that this approach would permit a greater concentration on strategic issues and lead to a speedier delivery of development plans, a more effective basis for testing plans and ultimately better and more robust plans.

### ***Consultation paper proposal***

2.48 Question 11 asked respondents for their views on the proposal that representations to a local development plan would be required to demonstrate how their proposed solution complies with robustness tests and makes the plan more robust.

### ***Consultation responses***

2.49 Of the 138 who responded on this issue, 62 per cent supported the proposal, 12 per cent opposed it and the remainder did not indicate a preference. A key concern expressed by those opposed to the proposal, including Lecale Conservation Group, was the danger that the requirement would deter the submission of representations and inhibit the ability of groups and individuals to fully engage in the plan process as they may not have the necessary expertise to do so. This in turn would undermine the legitimacy of the plan due to the decreased level of public participation.

2.50 A significant number of respondents highlighted the need for clarification and guidance on the criteria / definition of 'robustness' in order to ensure consistency of approach and avoid legal challenge. Some, like the Northern Ireland Environment Link, assumed that the test would include sustainability and climate change objectives, and conformity with the RDS and the community plan. Capacity building and training for individuals, groups, communities and so on was highlighted as an important issue. Rural Community Network highlighted that section 75<sup>4</sup> needs would have to be taken into consideration. Some suggested introducing a fee structure to help reduce the number of speculative representations.

### ***Department's consideration and response***

2.51 In light of the level of support from the consultation response, the Department intends to proceed with this proposal. The Department considers that this proposal will help improve efficiency, ensure consistency of approach and assist in better quality decision-

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<sup>4</sup> Section 75 of the Northern Ireland Act 1998.

making in the independent examination process. The Department would stress that the aim of this proposal is not to inhibit public participation in the process but rather to make engagement more meaningful and effective by ensuring that consideration is given to the implications of the changes proposed by representations.

- 2.52 The Department will provide further clarification and guidance on 'robustness' and the requirements for submission of representations to address concerns in relation to equality and public participation in order to help ensure a fair and more inclusive process. The Department considers that the introduction of a fee structure for the submission of representations may have negative implications for equality and uptake in the public participation process. Rather than introducing fees for submission of representations, there may be merit in considering penalties for 'no shows'.

### ***Requirement for representations to demonstrate sustainability***

#### ***Context***

- 2.53 The Department proposed to introduce a statutory requirement that sustainability appraisals should be carried out for local development plans which would comply with the requirements of the Strategic Environmental Assessment Directive and the Environmental Assessment of Plans and Programmes Regulations (NI) 2004. Sustainability Appraisal (SA) is a concept which involves assessing the social and economic effects of development plans in addition to environmental effects. It was also anticipated that the introduction of SAs would better fulfil the legislative requirement (introduced by Article 6 of the Planning Reform (NI) Order 2006), which will apply to new district councils, requiring that policy and plan-making functions are exercised with the objective of contributing to the achievement of sustainable development.

#### ***Consultation paper proposal***

- 2.54 Question 12 asked respondents for their views on the proposal that representations to a local development plan should be required to demonstrate how their proposed solution meets the sustainability objectives of the local development plan.

### ***Consultation responses***

- 2.55 Out of the 138 responses, 72 per cent supported the proposal, 19 per cent opposed it and nine per cent did not indicate whether they agreed or not. There was a clear majority who agreed with the proposal across all groups, with the exception of the agents / architects / professional and legal bodies group, where there was only a slight majority (45 per cent agreed and 42 per cent disagreed).
- 2.56 The main reason given by those who disagreed was the perceived danger that the requirement would deter the submission of representations and inhibit the ability of groups and individuals to fully engage in the plan process as they may not have the necessary expertise to do so. This in turn would undermine the legitimacy of the plan due to the decreased level of public participation. The Federation of Small Businesses expressed concern that the introduction of sustainability appraisals would add another layer of red tape to the system. A significant number of respondents, including Ards Borough Council and the University of Ulster, highlighted the need for clarification and guidance on sustainability. Community Places, among others, cited capacity building and training for individuals, groups, communities and others as an important issue.

### ***Department's consideration and response***

- 2.57 In light of the level of support from the consultation response, the Department intends to proceed with this proposal. The Department will provide further clarification on sustainability appraisal and the requirements for the submission of representations through relevant guidance and support. This will help address concerns in relation to equality and public participation and ensure a more inclusive public participation process, not only at the independent examination stage but throughout the plan-making process as a whole.

### ***Power to determine the most appropriate procedures to be used in dealing with representations to the local development plan***

#### ***Context***

- 2.58 The consultation paper proposed that, in order to provide greater flexibility in the independent consideration of representations, examiner(s) should be given the power to

determine the most appropriate procedures to be used. This would include the exercise of discretion as to which representations would be heard orally and which would be considered by way of written submission.

### ***Consultation paper proposal***

2.59 Question 13 asked whether the Department should give the examiner(s) the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan.

### ***Consultation responses***

2.60 One hundred and eighty-five (185) responded on this issue, reflecting the high level of interest. Sixty-six (66) per cent were opposed to the proposal, while only 30 per cent expressed their support. The elected representatives / local government, and public bodies / government departments groups were marginally in support (59 per cent and 57 per cent respectively). Some who supported the proposal, like the Northern Ireland Housing Executive, stated that it would allow for an impartial examination process.

2.61 Many of those who opposed the proposal, including the Royal Town Planning Institute (RTPI), Rural Community network, Community Places and the PAC Users Group, did so on the grounds that they regard the right to an oral hearing as a fundamental human right, ensuring quality, transparency and fairness, and that this proposal would unfairly disadvantage vulnerable groups in society. The General Council of the Bar for Northern Ireland commented that giving examiners this power would be in breach of rights guaranteed by the Human Rights Convention, the Aarhus Convention and Community Law, and would be discriminatory, in breach of section 75 (of the 1998 Northern Ireland Act). Similarly, it was highlighted by some respondents, including the Royal Society of Ulster Architects and the Town and Country Planning Association, that there was a potential danger the proposal would deter the submission of representations which would be at odds with encouraging a more participative process with a higher level of community involvement. This in turn would undermine the legitimacy of the plan process. The PAC, who has been dealing with the problem of 'no shows' at recent independent examinations, was strongly in favour of the proposal.

2.62 Others commented that oral hearings provide an opportunity to properly express views, examine issues, assess evidence, negotiate and explore the potential for compromise and to take on board all viewpoints. A significant number argued that the proposal to remove the right to an oral hearing was essentially an efficiency measure and that other managerial solutions should be introduced to deal with 'no shows', such as the introduction of penalties or fees.

### ***Department's consideration and response***

2.63 This was one of the most controversial and hotly debated issues across both the stakeholder events and the formal responses to the consultation paper. The aim of this proposal was not to stifle debate at the independent examination or to stop certain stakeholders from contributing; it was simply to enable the independent examiners to better manage the examination process.

2.64 However, the Department has taken into consideration the strength of opposition, in particular the potential for detrimental effects on some section 75 groups, and has decided not to proceed with this proposal. Therefore, the current provision for oral hearings will remain. Any person who makes a representation seeking a change to the Plan Strategy or Site Specifics Policies and Proposals document will be given the opportunity, if so requested, to appear at the independent examination and be heard by the PAC or other independent examiner. The PAC or other independent examiner will also provide advice and guidance on the most appropriate method to deal with representations. In addition, the Department considers that some of the other reform proposals for the independent examination will help to ensure that examinations are run more efficiently in the future.

### ***Requirement for representations to be submitted in full***

#### ***Context***

2.65 The consultation paper proposed a more streamlined approach to the form and content of representations about the draft Plan Strategy or the draft Site Specifics Policies and Proposals document and the way they are dealt with at independent examination.

### ***Consultation paper proposal***

2.66 Question 14 asked respondents if they agreed that representations to the plan should be submitted in full within the statutory consultation period, with no further opportunity to add to or expand on them, unless requested to do so by the independent examiner.

### ***Consultation responses***

2.67 Out of the 149 responses to this issue, 64 per cent supported the proposal. The only group with a majority against the proposal was the agents / architects / professional and legal bodies group, with 47 per cent opposed and 44 per cent in support. Some of those opposed, including the Environmental and Planning Law Association for Northern Ireland (EPLANI) and Strategic Planning, considered that the proposal would diminish the legitimacy of the plan process as it may exclude those without the necessary expertise to submit representations and participate in the independent examination process. The Northern Ireland Tourist Board expressed concerns that there would be no opportunity to update representations to reflect changing circumstances between submission of representations and their determination at independent examination. Consequently, this could lead to a reduced standard of representations, to inaccurate and poor quality decision-making, and, ultimately, to legal challenge.

2.68 There were also suggestions, largely from the agents / architects / professional / legal bodies group, that the time limit to submit representations should be increased to periods ranging from three to nine months in order to prepare for the submission of representations in full. A number of respondents from this group, including Pragma Planning and Todd Architects, also argued that it was not always possible to provide the information required from the outset and that proposals often evolved through consultation and response to new information as a result of the debate at independent examination. Those in support of the proposal, including Sainsbury's Supermarkets Ltd. and the Mobile Operators Association, commented that it would help to reduce the volume of representations but also called for flexibility to deal with changing circumstances.

### ***Department's consideration and response***

2.69 In light of the level of support from the consultation response, the Department intends to proceed with this proposal. The Department considers the proposal will enhance the

quality and efficiency of the decision-making process as it will enable all information to be considered by all parties involved from the outset to help ensure a fairer, more comprehensive and thorough debate of issues at independent examination. The Department accepts that there should be a degree of flexibility for the submission of additional information at independent examination and therefore proposes that representations may be expanded upon at the request of the PAC / other independent examiner. The Department will liaise with the PAC / other independent examiners in relation to proposals for the submission of representations and will issue relevant guidance and advice, as necessary. The Department considers that the current period of eight weeks for submission of representations is sufficient as the majority of representations are submitted in full within this period.

## ***Counter representations***

### ***Context***

2.70 At present, following the submission of representations to the draft plan, the current development plan process allows a further eight weeks for the submission of counter representations to all the objections. This has led to a protracted and complex process of independent examination / public inquiry which requires lengthy rebuttal preparation and exchanges of evidence, all of which further delays the process.

### ***Consultation paper proposal***

2.71 Question 15 proposed that there should be no provision for counter representations other than those relating to site specific zoning issues.

### ***Consultation responses***

2.72 Out of the 143 who responded on this issue, 47 per cent supported the proposal and 20 per cent opposed it. The remainder did not indicate whether they agreed or not. The majority of respondents in the environment and heritage group, and the business and development group supported the proposal. The main concerns expressed by those opposed, including the Construction Employers Federation, included the removal of the fundamental democratic right to object to all proposals. It was suggested by some, including Deramore Holdings, that the proposal would diminish the legitimacy of the plan

process as it would prevent all views from being expressed and hinder public participation. Other comments, such as that from the School of Planning, Architecture and Civil Engineering (Queen's University, Belfast), suggested that a degree of flexibility should be retained to allow the PAC and other independent examiners to accept counter representations in exceptional circumstances or for complex issues, at their discretion.

### ***Department's consideration and response***

2.73 In light of the majority in favour of the proposal, the Department intends to proceed as indicated in the consultation paper. The Department considers that the proposal will not remove any rights to object to the local development plan. The provision for counter representations in relation to site specific zonings will allow sufficient opportunity for members of the public to become aware of any potential new plan proposals in the form of representations to the plan and also allow them the opportunity to comment on these representations, if they so wish.

2.74 The Department will provide further clarification and relevant guidance on the requirements for the submission of representations and counter representations in order to help ensure a fair and more inclusive public participation process, not only at the independent examination stage but throughout the plan-making process as a whole. On balance, the Department considers that a discretionary approach to this proposal may have implications for equality and consistency of approach which may be subject to legal challenge.

### ***Plan scrutiny – basis for testing plans (robustness)***

#### ***Context***

2.75 The Department proposed to change the basis for testing plans by moving away from the objection-based examination process towards one which tests the 'robustness' of the Plan Strategy and Site Specifics Policies and Proposals document.

### ***Consultation paper proposal***

2.76 Question 16 asked respondents if they agreed that the basis for examining plans should be changed from an objection-based approach to one which tests the 'robustness' of local development plans.

### ***Consultation responses***

2.77 One hundred and forty-six (146) responded on this issue and 75 per cent supported the proposal. There was a majority in support across all groups, with the exception of the agents / architects / professional and legal bodies group, where views were slightly more balanced, with 35 per cent in support and 20 per cent opposed. Some respondents were concerned that the process could become overly bureaucratic and may deter representations. Furthermore, some respondents, including the Town and Country Planning Association, Turley Associates, and Greenisland Heritage and Environment Group, suggested that the terminology should be changed from 'robustness' to 'soundness' as is the case in England and Wales.

### ***Department's consideration and response***

2.78 In light of the level of support from the consultation response, the Department intends to proceed with this proposal. However, in response to comments received, the Department intends to change the terminology from 'robustness' to 'soundness', although the approach to testing the plan in terms of its content, conformity with central government plans, policies and guidance, and also the process by which it is produced, will remain as indicated in the consultation paper. The Department considers that this approach will be advantageous to the overall process of local development plan preparation. The introduction of a 'soundness' based approach will permit a greater concentration on strategic issues and lead to a speedier delivery of local development plans, a more effective basis for testing plans and ultimately better and more robust plans. The Department recognises that capacity building and training for district councils, stakeholders and all those engaging in the local development plan process will be essential and will provide further guidance as to the definition and tests of soundness in due course.

## ***Plan scrutiny - examining local development plans***

### ***Context***

- 2.79 In order to improve the overall independent examination process, the consultation paper proposed that legislation should be put in place to require district councils to submit draft local development plans to the Department for scrutiny to ensure they are aligned with central government plans, policy and guidance. The existing legislative requirement that development plans prepared by the Department of the Environment (DoE) must be in general conformity with the RDS, and the provision of statements on their conformity, would not be carried forward for local development plans prepared by the district councils. However, the current requirement that the DoE shall have regard to the RDS in exercising its functions in relation to development would continue to apply to the DoE, following the transfer of planning functions to local government.
- 2.80 As part of the scrutiny process, the Department proposed appointing independent external examiners to examine the local development plan on the basis of robustness criteria and provide an advisory report to the Department. The Department would then consider the advisory report and issue a binding report to the district council. The district council would adopt the plan on the basis of the binding report. While it is envisaged that the PAC would be the main body examining local development plans, the Department considered there were benefits in being able to appoint other examiners, where necessary.

### ***Consultation paper proposal***

- 2.81 Question 17 asked respondents for their views on the recommended approach for examining local development plans.

### ***Consultation responses***

- 2.82 Comments focused largely on three distinct issues: appointment of external independent examiners; the Department issuing a binding report to district councils; and not bringing forward the existing legislative requirement that development plans must be in general conformity with the RDS.

- 2.83 Only 71 respondents highlighted appointment of external independent examiners as an issue. Fifty-six (56) per cent of these were in broad agreement with the proposal, while 44 per cent broadly disagreed. A higher proportion of respondents from the business and development group welcomed the proposal. Those opposed to the proposal, such as Lisburn Borough Council and Exitoso, stated that the PAC has an established reputation and is impartial, and should therefore remain the only examining body for local development plans. A number of respondents, including the Royal Society for the Protection of Birds, Ulster Architectural Heritage Society and Coleraine Borough Council, stated that the PAC should be expanded and better resourced instead of introducing independent external examiners.
- 2.84 With regard to the Department issuing a binding report to district councils, only 47 respondents commented on this issue, with a narrow majority of 24 (51 per cent) in support. Respondents from the agents / architects / professional and legal bodies group were mostly opposed. A number of respondents, such as the RTPI, Rosetta Design and DRD Roads Service, were of the opinion that central government should have no role in plan adoption as this goes against the principle of devolved planning.
- 2.85 Ten respondents, including the Construction Employers Federation, highlighted their support for district councils submitting local development plans to the Department for scrutiny. The Ulster Wildlife Trust commented that it was in agreement with this as a means of oversight, and to ensure district council plans are in line with regional, national and European priorities, strategy and legislation. In contrast, seven respondents outlined their concerns that this may slow down the process.
- 2.86 Fifty-seven (57) respondents highlighted the role of the RDS as an issue. Of these, 20 (35 per cent) supported the proposal to not carry forward existing legislative requirements that development plans must be in general conformity with the RDS, and the provision of statements on their conformity. However, 37 respondents, including the Northern Ireland Housing Executive and the Belfast Metropolitan Residents Group, were opposed, citing concerns over the possible downgrading / reduction in the role of the RDS.

***Department's consideration and response***

- 2.87 The Department sees it as critical that there is flexibility to appoint external independent examiners regardless of the level of resources which the PAC may have, as there may be unforeseen circumstances where a large number of plans are submitted for independent examination at the same time. This proposal would allow independent examinations to take place expediently, thus reducing lengthy delays to this stage of the development plan process. The PAC would remain the first point of contact for conducting independent examinations; however, given the significant work load pressures recently faced by the PAC, it is considered that it would be beneficial to be able to appoint other independent examiners, if required. The Department will produce clear guidance on the use of other independent examiners.
- 2.88 The Department considers it to be an important part of the new devolved planning system that central government has an appropriate oversight role, as is the case in other planning jurisdictions. This will ensure regional policies and objectives are implemented and that a consistent approach is applied to planning and, in particular, to local development plans, across the region. It is imperative that policy and direction which are set at the centre, such as planning policy statements and the RDS, are adhered to and achieved through local development plans. Therefore, it is necessary for central government to have a role in assessing local development plans and, if necessary, intervening in their production to achieve these objectives. As the plan process allows the Department to be involved throughout, and to input at the independent examination, it is anticipated that any changes at the binding report stage would be minimal and exceptional.
- 2.89 The Department would stress that it is not trying to downgrade the role of the RDS. The proposed procedure for scrutiny would be more simplified than that at present and would still ensure consistency and alignment of local development plans with the RDS. The RDS will continue to play an important role and there will remain a statutory requirement for local development plans to be aligned with the RDS. This statutory requirement will require district councils to take account of the RDS in their local development plan preparation.

## ***Plan monitoring and review***

### ***Context***

2.90 The monitoring and review of local development plans are seen as essential elements in establishing how plans are being implemented and whether any changes are required. At present in Northern Ireland there is no legislation requiring monitoring and review of development plans, unlike Scotland, England and Wales, where it is a statutory requirement.

### ***Consultation paper proposal***

2.91 The consultation paper proposed to introduce legislative provisions to ensure regular monitoring of the implementation of the local development plan through key indicators such as housing, environmental protection and employment land, and the production of an annual monitoring report by district councils. Regular review of the Plan Strategy and Site Specific Policies and Proposals document would take place at least every 5 years, on the basis of the annual monitoring report(s), and alterations to the plans would be brought forward as required. Question 18 asked respondents for their views on this proposal.

### ***Consultation responses***

2.92 Out of the 148 respondents who commented on this issue, there was overwhelming support (90 per cent) for the proposal. Some respondents, including Orange PCS Ltd, stressed the importance of a legislative requirement being put in place for monitoring. Others commented that clarification was required as to what the monitoring and review process would entail, what indicators would be monitored and what data would be assessed. Rural Community Network highlighted that section 75 and rural proofing considerations would need to be taken into account.

### ***Department's consideration and response***

2.93 In light of the very high level of support from the consultation response, the Department intends to proceed with this proposal. The monitoring and review of development plans are seen as essential elements in understanding how plans are being implemented and

whether any changes are required. The Department will address calls for clarity through guidance in relation to monitoring and review of local development plans.

## ***Content of local development plans***

### ***Context***

2.94 The consultation paper proposed that new local development plans should contain a number of basic components within the Plan Strategy document and / or Site Specific Policies and Proposals document.

### ***Consultation paper proposal***

2.95 Question 19 asked respondents if they agreed with the proposed content of local development plans.

### ***Consultation responses***

2.96 Out of the 143 respondents, 69 per cent supported the proposed content. The business and development group, and the elected representatives / local government group were particularly positive (100 per cent and 90 per cent respectively). Some suggested that the district council, as the plan-making authority, should be allowed to decide the appropriate content for their local development plan. There was widespread support across all groupings for the local development plan to have regard to the community plan. Many respondents disagreed with the proposed content on the basis that there was no distinction in detail between the Plan Strategy and the Site Specifics document.

### ***Department's consideration and response***

2.97 In light of the broad level of support from the consultation response, the Department intends to proceed with this proposal. The Department will address some of the issues raised through legislation, policy and guidance, as appropriate. Guidance to be published at a later date will address issues such as the level of detail needed in the Plan Strategy and Site Specifics Policies and Proposals document. Again, the Department agrees that district councils should have the flexibility to include content that is applicable within their area. The proposed contents list is not exhaustive and allows for some of the suggestions for additional content, such as the historic environment, marine planning etc.

to be considered. In light of the responses received, it has been agreed that the link between the local development plan and the community plan will be added to the list of functions of a local development plan (see Question 5).

## ***Topic areas for local development plans***

### ***Context***

2.98 The recommended topic areas which may be covered by the Plan Strategy and the Site Specifics Policies and Proposals document were highlighted in the consultation paper. It indicated that the Plan Strategy would set out strategic policies for housing, retailing, environment and conservation aspects etc., and that the Site Specifics Policies and Proposals document would set out the detailed policies and proposals for these topic areas.

### ***Consultation paper proposal***

2.99 Question 20 asked respondents if they considered that the topic areas contained in the consultation paper were appropriate for inclusion in local development plans.

### ***Consultation responses***

2.100 Of the 145 who responded, 75 per cent were in favour of the proposed topics areas. Some reservations were expressed, including suggestions that the district council, as the plan-making authority, should be allowed to decide which to apply to their area. Several respondents, including the Town and Country Planning Association, disagreed on the plan topics and stated that there was no distinction in detail between the Plan Strategy and Site Specifics Policies and Proposals document. Others called for additional topic areas: for example, the Historic Monuments Council suggested the historic environment should be included, and the Strangford Lough Management Advisory Committee requested that flood management and protected area management should be included. While the inclusion of 'design' as a topic area was welcomed, some respondents, including the Royal Society of Ulster Architects, were in favour of it being included in legislation to add weight to the topic area.

### ***Department's consideration and response***

2.101 In light of the broad level of support from the consultation response, the Department intends to proceed with this proposal. The Department agrees that district councils should have the flexibility to include topic areas that are applicable within their area. It should also be noted that the proposed topic areas list is not exhaustive and guidance will explain that additional topics, such as the historic environment, the coast etc. can be included in the local development plan. Guidance to be published at a later date will address issues such as the level of detail appropriate for inclusion in the Plan Strategy and Site Specifics Policies and Proposals document.

### ***Sustainability appraisal***

#### ***Context***

2.102 The consultation paper proposed the introduction of a statutory requirement that sustainability appraisals should be carried out for local development plans which will also comply with the requirements of the Strategic Environmental Assessment Directive and the Environmental Assessment of Plans and Programmes Regulations (NI) 2004. Sustainability Appraisal (SA) is a concept which involves assessing the social and economic effects of development plans in addition to environmental effects. It was also anticipated that the introduction of SAs would better fulfil the legislative requirement (introduced by Article 6 of the Planning Reform (NI) Order 2006), which will apply to new district councils requiring that policy and plan-making functions are exercised with the objective of contributing to the achievement of sustainable development.

#### ***Consultation paper proposal***

2.103 Question 21 asked respondents if they agreed that district councils should be required to prepare sustainability appraisals as part of their local development plan preparation process.

#### ***Consultation responses***

2.104 One hundred and fifty-five (155) responded on this issue and an overwhelming majority of 92 per cent were in support of the proposal. There were some concerns that the proposal would promote economic perspectives over broader environmental concerns. A

significant number of respondents, including the Causeway Coast Communities Consortium and Playboard NI, highlighted the requirement for sustainability appraisals to demonstrate how the local development plan is delivering the community plan. It was suggested that community relations, equality and health indicators should also be included in the consideration of social sustainability. Furthermore, a number of respondents raised concerns in relation to the provision of further clarification and the need for sufficient guidance and support.

### ***Department's consideration and response***

2.105 In light of the very high level of support from the consultation response, the Department intends to proceed with this proposal. The Department notes the concerns raised in relation to the need for further clarification on the definition of sustainability, the weighting of social, economic and environmental effects, and mechanisms for monitoring and review. The Department will provide relevant guidance and support on the requirements for sustainability appraisals to help ensure an effective and consistent approach towards the integration of social, economic and environmental considerations in the plan preparation process. There will be a statutory requirement for district councils to take account of community plans in the preparation of their local development plans for their area. In light of this, the Department will consider whether there is any merit in including community plan issues, as well as equality and health indicators, as part of the consideration of social sustainability. The Department considers that this issue can be addressed through relevant guidance and support in due course.

## ***Role of the Department***

### ***Context***

2.106 The consultation paper proposed to introduce a power for the Department to secure the delivery of local development plans where the district council was not making progress. It was envisaged that these powers could be exercised at any time in the plan process; however, it was anticipated that these would be rarely used. This proposal is in parallel with other UK jurisdictions.

### ***Consultation paper proposal***

2.107 Question 22 asked for views on the proposal that the Department should have the powers to intervene in the making, alteration or replacement of a local development plan by the district council.

### ***Consultation responses***

2.108 Of the 143 who responded on this issue, 83 per cent were in support. Many respondents in support of the proposal, including Sainsbury's Supermarkets Ltd and the Quarry Products Association, acknowledged that Departmental intervention powers would be an effective safety mechanism, serving as a check and balance measure for district councils preparing local development plans. Twenty-seven (27) per cent stressed that intervention powers should be exercised with caution and used only as a last resort, in exceptional circumstances with reasoned justification. Only four per cent opposed the proposal, commenting that it would undermine the system of democratic accountability. A number of respondents commented that further guidance should be provided in relation to how and when Departmental intervention might take place.

### ***Department's consideration and response***

2.109 In light of the high level of support from the consultation response, the Department intends to proceed with this proposal. The Department considers it imperative that it has appropriate powers to intervene in the local development plan process in order to secure the objectives of the planning system. The Department envisages that this power would be used only in exceptional circumstances. Furthermore, in response to comments raised in relation to how and when Departmental intervention might take place, this will emerge through legislation and guidance in due course.

### ***Joint working***

#### ***Context***

2.110 In a post-RPA context, it was considered that there may be advantages in joint working arrangements between district councils in the making of local development plans. There may be instances where neighbouring district councils would consider it beneficial to work together: for example, where an important natural resource, such as the Mourne or

Lough Neagh, crosses district council boundaries, or where the planning issues pertaining to an area would be better dealt with jointly, such as in the Belfast Metropolitan area.

### ***Consultation paper proposal***

2.111 Question 23 asked if respondents agreed that district councils should be given the power to make joint local development plans if they so wish and if they considered that such powers would adequately deal with instances where neighbouring district councils would consider it beneficial to work together.

### ***Consultation responses***

2.112 Ninety-four (94) percent (of the 150 who responded) supported the proposal that district councils should be given the power to make joint local development plans if they so wish. Eighty-eight percent (of the 138 who responded) agreed that such powers would adequately deal with instances where neighbouring district councils would consider it beneficial to work together. Eleven (11) respondents, including the Rural Community Network, Construction Employers Federation and Queen's University, Belfast commented that the Department should have powers to require district councils to work together jointly where circumstances merit it, as this could lead to more sustainable planning outcomes. Furthermore, a number of respondents, including Bill Morrison, Belfast Healthy Cities and the RTPI, suggested that joint working is of particular relevance to the Belfast Metropolitan area.

### ***Department's consideration and response***

2.113 In light of the high level of support from the consultation response, the Department intends to proceed with the proposal to allow district councils to choose to collaborate on local development plans, if they so wish. The Department considers joint working between district councils to be particularly advantageous as this would allow for greater agreement on policy issues and could be effective in addressing spatial issues which cut across local boundaries in a collective and decisive manner. Such cross-cutting issues could include transport, infrastructure, retailing, economic development, agriculture, minerals extraction, waste treatment and disposal, and so on. The Department believes that joint working powers could allow for expertise and resources to be shared between

district councils which could reduce duplication of effort in plan-making and reduce the risk of contradictory local development plans.

2.114 In response to comments raised regarding the power to **require** joint working between district councils, the Department considers that it would be appropriate to introduce a power for the Department to direct councils to work jointly in particular circumstances. Such circumstances would include the Belfast Metropolitan area where district councils are so closely linked functionally and spatially that they should work together for the effective forward planning of the sub-region. There may be other circumstances, such as National Parks or other cross boundary issues.

## ***Transitional arrangements***

### ***Context***

2.115 The consultation paper set out proposed arrangements for dealing with DoE plans which will be at different stages of their preparation at the time of transfer of the majority of planning functions to local government. It also stated that the Department was keen to undertake some preparatory work with the new district councils through the RPA transition management structures, in order to allow an early start to the formal local development plan process as soon as powers transfer to district councils.

### ***Consultation paper proposal***

2.116 Question 24 asked for views on the proposed transitional arrangements for development plans.

### ***Consultation responses***

2.117 Of the 143 who commented on this proposal, 52 per cent indicated that they agreed with it, 13 per cent indicated they did not, and 35 per cent did not indicate one way or the other. In all groups there were more respondents in broad support than were opposed.

2.118 There was broad agreement on the transitional arrangements at the four stages of plan preparation identified in the consultation paper. However, some, including Invest NI, stated that the loss of work already carried out on DoE plans was a concern, as were the gaps in plan coverage, and suggestions were made as to how to deal with this issue.

There was agreement that work should begin on new plans as soon as possible in co-operation with the Transition Committees, but more information was required by the SDLP and other respondents on how this would be taken forward. There was also broad support for allowing district councils to implement the new plan process immediately upon transfer.

2.119 Concerns were also expressed regarding existing plans being at different stages in one district council area and how large areas without up-to-date plan coverage will be dealt with. It was stated that it would be prudent to prepare new plans as soon as possible for these areas and prioritise them as pilot plans. Clarification was sought by several councils, including Belfast and Newtownabbey, and developers such as Fraser Homes (NI) Ltd, on how strategic issues relating to the Belfast Metropolitan Area Plan will be taken forward.

2.120 Regarding the overall approach to transitional arrangements, many expressed concern at the uncertainty that transition from one system to another will cause, and at the short timescales, lack of resources and training needed for the new district councils to be able to take development planning forward.

### ***Department's consideration and response***

2.121 In light of the general support from the consultation response, the Department intends to proceed with this proposal. The concerns regarding potential lack of development plan coverage and lack of policy coverage are noted. However, dealing with plans that are already in progress is a complex issue, and the Department has endeavoured to set out transitional arrangements that will allow the district councils to operate their planning powers immediately upon transfer in 2011, in line with RPA principles. The Department will address the main issues and concerns through further legislation or guidance, as appropriate.

2.122 Subject to available resources, Planning Service will be co-operating with Transition Committees on preparatory forward planning work for all of the new district council areas. Pilot preparatory studies will be prepared for the new district council areas of Antrim and Newtownabbey, Fermanagh and Omagh, and Derry and Strabane, with a further pilot study due to commence later this year on Armagh, Banbridge and Craigavon. For all

remaining new district councils, baseline data collection relevant to existing plans will be undertaken and reports prepared to help identify any significant issues or potential land shortage for development in these areas. This will effectively carry forward existing work already carried out in the majority of areas where there is concern regarding out-of-date plan coverage. An added benefit of this approach is that it provides the opportunity for the Transition Committees, along with Planning Service, to develop their community planning powers alongside the local development plan system.

2.123 In relation to concerns about the Belfast Metropolitan Area Plan, it will be dealt with according to the transitional arrangements set out in the consultation paper. Regarding strategic issues of a sub-regional nature, proposals allow for district councils to choose to collaborate on local development plans, if they so wish. However, in relation to the Belfast Metropolitan area it is considered that councils should work together; therefore, the Department is currently considering how best to move forward on this issue (see Question 23 on Joint Working).

## **Development Management**

### ***A new hierarchy of development***

#### ***Context***

- 3.1 Enhancing the ability of the system to deal speedily with key planning applications that have real economic and social benefit is central to delivering the vision of a planning system that is fit for purpose and which will underpin a modern and prosperous Northern Ireland. The consultation paper proposed a concept of development management for handling planning applications, with a greater emphasis on facilitating and shaping development, rather than mainly controlling it.
- 3.2 As part of this new development management approach, the consultation paper proposed the creation of a three-tier hierarchy of development (consisting of regionally significant, major and local development). The hierarchy is intended to ensure that application procedures are proportionate and responsive to these three different types of development category, with appropriate resources and decision-making mechanisms, tailored according to the scale and complexity of the proposed development.

#### ***Consultation paper proposals***

- 3.3 Respondents were asked if they agreed with the introduction of the three-tier hierarchy (Question 25), with the proposed categories of regionally significant, major and local (Question 26), and with their respective thresholds (Question 28). They were also asked if the four legislative criteria (paragraph 4.14 of the consultation paper) were sufficient to identify potential regionally significant development (Question 27), and if they agreed with the proposed approach to urban / rural variation in setting the proposed housing thresholds for major development (Question 29).

#### ***Consultation responses***

- 3.4 Overall, there was very strong support, in principle, across all groupings for the introduction of the development hierarchy (with 85 per cent of the 159 respondents who commented in support) and the three categories of development (80 per cent of the 142 respondents who commented in support). The Federation of Small Businesses

commented that, as the majority of small business-oriented applications would fall into the local category, this would hopefully lead to a quicker delivery time. The Northern Ireland Chief Environmental Health Officers Group recognised that a more proportionate application system would allow resources to be directed to applications requiring greater scrutiny and input.

- 3.5 Comments were made that the hierarchy would benefit from having timescales for each category of development so that performance could be monitored. There were also concerns that the hierarchy should be applied consistently across all district council areas to avoid different local interpretation which could lead to inequity and district councils competing unfairly against one another for development proposals.
- 3.6 Eighty-five (85) per cent of the 146 respondents who commented were in support of the proposal that the four legislative criteria were sufficient to identify potential regionally significant development.
- 3.7 Seventy-five (75) per cent of the 112 respondents who commented were in support of the proposed approach to urban / rural variation in setting the proposed housing thresholds for major development. All of the elected representatives / local government group supported this proposal, as did the Ulster Farmers Union. Those with most concerns was the agents / architects / professional / legal bodies group, with 39 per cent expressing their opposition to the proposal. Some respondents commented that rural / urban differences should be considered in relation to all classes of development, not just housing, but others were opposed to having any rural / urban differentiation.
- 3.8 The proposed thresholds for the different types of development categories drew a number of comments and concerns. For example:
- Concerns were expressed about the presentation (in terms of area and numbers) of brownfield and greenfield housing thresholds and there were suggestions that these should be removed as the higher threshold would inadvertently favour greenfield development.
  - Housing thresholds under major developments were seen as too high, which would mean a large number of applications would not benefit from community consultation.

- Housing thresholds for regionally significant developments were seen as not being high enough: some councils stated that they would lose the power to make the decision on a number of applications which they, as the local planning authority, would wish to deal with.
- Thresholds must be flexible to allow for mixed use development and take account of social housing.
- Infrastructure should be broadened to include projects such as water, gas and electricity.
- Concerns were expressed over retailing thresholds being too low for regionally significant development.
- There were concerns over no thresholds being included for development affecting the built heritage or the natural environment.
- There were concerns over energy production from renewable resources, and a strong case was put forward in relation to lowering the threshold for electricity generating stations to be considered as regionally significant.
- It was suggested that tourism should be included under regionally significant developments.
- All vital strategic programmes that sit under other government departments, such as those identified through the RDS, waste infrastructure, renewable energy, and investment strategy programmes should be dealt with as regionally significant developments.
- Concerns were expressed over possible manipulation / abuse of thresholds (so as to avoid community consultation, for example), phasing of development, and the cumulative impact of development.
- The Northern Ireland Housing Executive wanted to see social housing applications included as major applications, irrespective of size.

3.9 The stakeholder events also highlighted strong support for the principle of the planning hierarchy and broad support for the three categories of development. Much of the concerns focused on the thresholds, and certain categories either being too high (therefore excluding them from community consultation) or absent altogether, with general concern around issues such as protection of the built heritage and nature conservation sites. Concerns were also expressed that the processes surrounding the

categories and thresholds should be clear, easily understood, and not open to different local interpretation. Other concerns included a lack of flexibility, with the thresholds being too prescriptive to account for local circumstances.

### ***Department's consideration and response***

3.10 Due to the strong overall support for the new planning hierarchy the Department intends to proceed as indicated in the consultation paper. The Department will revise details and proposals for the hierarchy taking into account some of the views expressed, particularly in relation to amending and aligning some of the thresholds (including housing), and clarifying processes for regionally significant developments dealt with by the Department, and for major (including all social housing schemes) and local developments dealt with by the new district councils. Further work will also be carried out to address those regional strategies which impact directly on land use planning to ensure that policies are joined-up and achievable.

3.11 The Department will also refine the definition of regionally significant development to make it more easily understood. The following two criteria will replace the four criteria referred to under paragraphs 4.14. and 4.15 of the consultation paper:

- Developments which are of strategic significance to the whole or substantial part of Northern Ireland or have significant effects beyond Northern Ireland.
- Developments which involve a substantial departure from the local development plan for the area to which it relates.

The other two criteria will be included as part of the arrangements for notifying the Department of certain types of major applications under call-in procedures (paragraphs 3.32 – 3.42 refer).

## ***Performance agreements***

### ***Context***

3.12 To help create the conditions for a more efficient, robust and better quality decision-making process, the Department proposed that performance agreements (PAs) should be made available to developers proposing regionally significant development. PAs would be a voluntary agreement between the developer and the Department which would

provide a project management framework for processing applications by identifying what should be done, when and by whom, to reduce problems and speed up the handling of these large and complex applications.

- 3.13 The consultation paper also proposed that the processes for performance agreements should apply to applications for major development. Components of a performance agreement could be tailored to reflect the individual circumstances of a major development, as a simple project plan-based approach would likely be sufficient for less complex schemes.

### ***Consultation paper proposals***

- 3.14 The consultation paper asked respondents if they agreed that performance agreements should be in place before the submission of regionally significant applications (Question 30), whether they should be voluntary agreements between the developer and the Department (Question 32), and whether the processes for performance agreements should also apply to applications for major development (Question 43). The consultation paper also sought views on what a performance agreement should contain and on setting a timescale specific to each individual application (Question 31).

### ***Consultation responses***

- 3.15 There was overwhelming support for the proposals that performance agreements should be in place before the submission of regionally significant applications (95 per cent of those who responded) and that the processes should apply to applications for major development (94 per cent of those who responded). The RTPI commented that the use of performance agreements would ensure that key issues are raised as early as possible and would help secure meaningful consultation. Sinn Fein agreed with the principle of performance agreements and proposed that periodic reviews should be conducted into public confidence in them and how successful they were working in practice. There was a clear preference for performance agreements to remain voluntary, with almost two thirds of those who responded in favour of this approach. A majority of the comments received were in support of the proposed content of a performance agreement.
- 3.16 Concern was expressed that, while one of the benefits of performance agreements would be to commit statutory consultees to fixed timescales, without the cooperation and

agreement of statutory consultees the performance agreement would be worthless. Others commented that there should be penalties for non-compliance.

- 3.17 Views from the stakeholder events were generally in support of performance agreements. However, there were some concerns from community groups that these would not be open to the public and there was, therefore, some suspicion that ‘deals’ might be struck between developers and the planning authorities. It was explained, however, that the purpose of a performance agreement would be to engage with developers on key timescales as part of the pre-application discussion and application stages in order to ensure better project management of large applications, not to agree to a development proposal.

***Department’s consideration and response***

- 3.18 Given the level of support for voluntary performance agreements being in place prior to the submission of regionally significant development applications, the Department intends to proceed with this proposal. The processes for performance agreements will also apply to applications for major development. The content of a performance agreement will be as outlined in the consultation paper, and will be flexible to each application, as appropriate. This will be set out in detailed guidance by the Department.
- 3.19 The Department agrees that performance agreements for major developments should vary in scope according to the scale of development, and flexibility will need to be given to the level of detail each agreement contains. District councils will have discretion to set out the content of each agreement for major development, within the approach set out by the Department in the new policy guidance to be produced.
- 3.20 The role of statutory consultees throughout the planning application process is being addressed as a separate issue within the planning reform agenda. It is intended that benefits from this work will feed into the development of best practice guidance for the operation of performance agreements.

## ***Pre-application community consultation***

### ***Context***

3.21 The Department wishes to encourage improved trust and more open, positive working relationships from the earliest stages in the application process. Providing an early opportunity for community views to be reflected at the pre-application stage will be key to this relationship. The Department considers that the early involvement of local communities, particularly when combined with the new arrangements for pre-application discussion through performance agreements, can bring about significant benefits for all parties.

### ***Consultation paper proposals***

3.22 Respondents were asked if they agreed that developers should carry out pre-application consultation with the community for all regionally significant applications (Question 33), whether this should be a statutory requirement (Question 34), and whether the processes for statutory pre-application community consultation should also apply to applications for major developments (Question 44). Respondents were also asked whether the Department should have the power to decline to determine regionally significant applications where pre-application community consultation had not been carried out or the applicant had not complied with the requirements of pre-application community consultation (Question 36). The Department also asked for views on what form the process for verifying and reporting the adequacy of pre-application consultation with the community should involve (Question 35).

### ***Consultation responses***

3.23 Overall, there was general support for all proposals in this area. Seventy-eight (78) per cent of the 175 who responded supported the proposal that developers should carry out pre-application consultation with the community for all regionally significant applications, and 74 per cent of the 157 who responded were in support of this being a statutory requirement. Seventy-eight (78) per cent agreed that the processes should apply to proposals for major developments as well. Seventy-three (73) per cent of the 146 who responded supported the power to decline to determine an application which had not met the pre-application consultation requirements. Some respondents, such as the Historic

Buildings Council, did not agree that pre-application community consultation should be statutory as they thought this could give undue weight to the pre-application stage and lead to pressure for a bad planning decision. The Confederation of British Industry argued that it should be 'best practice' rather than statutory, otherwise it could lead to legal arguments about who or what is the community to be consulted.

- 3.24 Many of those in support of the proposals expressed concerns over the definition of 'community' within the statutory requirements: how to ensure that it was sufficiently wide to include all interested parties beyond the immediate geographical area of the development, yet not so general that the developer was unsure who to consult with. The issue of capacity building for community and resident groups was also raised by several respondents.
- 3.25 Whilst in support of pre-application community consultation, the Equality Commission for Northern Ireland raised the importance of engaging with the Traveller community, children and young people and to bear in mind racial equality when proposals are being drawn up. NILGA commented that that it is vital to be clear on the 'weight' community consultation will have and that guidelines are needed on the level of consultation that will be regarded as necessary. The Ulster Farmers Union thought the process could help all parties as it would be an opportunity to deal with many issues in advance and could help strengthen the robustness of applications.
- 3.26 Some respondents, for example Northern Ireland Environment Link, the Causeway Coast Communities Consortium, Clonard Residents Association and the Ulster Farmers Union objected to developers carrying out pre-application community consultation as they are not independent. There was also some concern that a statutory requirement would make the process into a 'tick-box' exercise for developers. It was generally considered that the requirements for major developments should be less onerous than those for regionally significant development, with flexibility introduced for the scale and scope of the developments.
- 3.27 Pre-application community consultation was discussed at the stakeholder events in the context of the need for tighter controls and stricter arrangements in future to ensure meaningful community engagement. Developers and agents were in praise of the current

system of pre-application discussions (known as PADs) but several asked about resourcing and facilitating these in future.

### ***Department's consideration and response***

- 3.28 Due to the level of support expressed, the Department intends to introduce a statutory requirement for pre-application community consultation to be undertaken by the developer prior to the submission of regionally significant and major applications. A power to decline to determine applications which have not satisfied their statutory requirements in this area will be introduced for regionally significant and major applications.
- 3.29 The Department considers that the requirements for pre-application consultation will vary for specific developments. However, in order to maintain consistency, certain minimum requirements will be specified in legislation to ensure that any consultation engages as much of the affected community as possible (for example, at least one public meeting will be required to take place). Planning authorities will be able to require additional elements, depending on the application. Also, developers will have to ensure their consultation reaches all relevant section 75 groups<sup>5</sup> that may be impacted by the proposals and take their views into account.
- 3.30 The legislative requirements will be supplemented with guidance on how the consultation should be carried out and reported on, who should be involved and what issues the consultation should address, and will provide sufficient flexibility for varying the extent and requirements of pre-application consultation, depending on the nature of the application itself. The planning authority will have a scrutiny role over the consultation report, and will be able to decline to determine an application if it is of the opinion that the developer did not fully meet the statutory requirements for pre-application community consultation.
- 3.31 The consultation report will be required to be submitted with the formal application. Developers will therefore have to factor in costs for carrying out the consultation as part of the overall project requirements. Currently, the Planning Service does not charge

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<sup>5</sup> Section 75 of the 1998 Northern Ireland Act.

separately for pre-application consultation; however, a review of funding will be required, which may lead to fees and funding changes.

## ***Procedure for regionally significant applications***

### ***Context***

3.32 Following the transfer of planning functions to local government, the Department will have responsibility for processing applications for regionally significant development. The consultation paper set out the background for procedures relating to regionally significant developments which are essentially set out in two parts consisting of:

- those applications processed through direct submission to the Department based on exceeding thresholds (identified in the paper as the upper thresholds for major developments), with a requirement on the prospective applicant to submit a screening determination to the Department; and
- those applications submitted to district councils requiring notification to the Department, i.e. where a district council is minded to approve a major development which either is subject to an objection from a statutory consultee, or it involves development in which district councils have an interest and where the proposal would be contrary to the development plan for that area.

### ***Consultation paper proposals***

3.33 The consultation paper asked if respondents agreed:

- that the Department should determine applications for regionally significant development in association with the proposed statutory screening mechanism (Question 37);
- that district councils should be designated as statutory consultees where they are affected by an application for regionally significant development (Question 38);
- with the proposed notification and call-in mechanism (Question 39); and
- that if the Department decides not to call-in a notified application it should have the option to return the application to the district council, either with or without conditions, for the district council to grant permission subject to conditions that may be specified by the Department (Question 40).

### **Consultation responses**

- 3.34 Overall, there was very strong support for these proposals. Eighty-seven (87) per cent of those who responded supported the proposal that the Department should determine applications for regionally significant development in association with the proposed statutory screening mechanism. Strong support was shown throughout all the groupings, particularly from the environment and heritage, and resident / community and voluntary groups. While supportive of the proposal, the Alliance Party suggested that the power should be used sparingly to maintain democratic accountability.
- 3.35 There was overwhelming support (96 per cent of those who responded) for the proposal that a district council should be designated as a statutory consultee where it is affected by an application for regionally significant development. Eighty-nine (89) per cent of those who responded agreed with the proposed notification and call-in mechanism, and 73 per cent of those who responded agreed that if the Department decides not to call-in a notified application it should have the option to return the application to the district council, either with or without conditions, for the district council to grant permission subject to conditions that may be specified by the Department. The elected representatives and local government group was least in favour of this proposal.
- 3.36 Some respondents commented that the proposed screening mechanism was confusing and bureaucratic and that it should be simplified in order to work effectively and not cause delays. Concerns were expressed over district councils having to accept conditions imposed on them by the Department if an application is notified but not called-in. There was also a concern that there could be delays in processing regionally significant applications due to longer lead-in times and it was asked how applications such as listed buildings and scheduled monuments would be factored into the call-in process.
- 3.37 The stakeholder events highlighted general support for the principle of direct submission of regionally significant development to the Department and call-in of certain major developments from district councils. Concerns were primarily focused on processes not being clear enough, or being overly prescriptive, with community groups expressing concerns that there should be greater flexibility and scope for the Department to call-in an application which ran contrary to community views. The opposite concern was also expressed, however, that there was still too much power for the Department to intervene

in planning applications which should be dealt with primarily by the district council in which the development is located as they would be best placed to assess the local impacts.

***Department's consideration and response***

- 3.38 The Department intends to proceed to introduce these proposals but with some amendments to simplify procedures. Further detail will be prepared as part of the ongoing work in producing secondary legislation and detailed guidance.
- 3.39 The Department does not consider it expedient to have all planning applications submitted to district councils in the first instance as this could lead not only to delays, but to greater use of call-in, which it is intended to be used sparingly and according to specific notification criteria. The Department, however, notes the concerns expressed by individuals and some councils to have better joined-up working procedures and arrangements whereby the views of district councils are considered in a meaningful way at the outset as part of pre-application procedures in addition to when an application is submitted. The Department will produce guidance on these issues.
- 3.40 In order to simplify procedures, any prospective applicant with an application that exceeds statutory thresholds for regionally significant development would be required to enter into consultation with the Department to ascertain if the proposal is of a scale and significance to be deemed regionally significant.
- 3.41 With regard to call-in of major developments, the Department also takes note of comments for this to be a simplified and easily understood procedure; one that is not working against district councils, but with them, in order to encourage consistency of decision-making and fairness in the process. Call-in would be applied very sparingly and in limited circumstances, and only through notification by the district councils. The criteria for notification for certain types of major applications will be developed by the Department as part of preparing secondary legislation and related guidance.
- 3.42 To help prevent unnecessary delay in the notification process and resolve matters of concern to the Department, without the need to subsequently call-in an application, the Department will be able to direct district councils to consider attaching conditions when

granting planning permission in these circumstances. This would apply to applications subject to notification to the Department and where call-in would not be considered necessary by the Department, if a condition, which a district council had not previously proposed, was to be attached to the consent.

## ***Appointment of independent examiners***

### ***Context***

3.43 The consultation paper proposed that the Department should have the option to appoint appropriately qualified and trained independent examiners, other than the PAC, for inquiries and hearings for regionally significant applications.

### ***Consultation paper proposals***

3.44 Respondents were asked if they agreed with the proposal giving the Department the option to appoint independent examiners to hold a hearing or inquiry into applications for regionally significant development (Question 41) and whether they agreed that the Department should prepare hearing and inquiry procedure rules for use by independent examiners (Question 42).

### ***Consultation responses***

3.45 These proposals did not attract any comment during the round of stakeholder events. Out of the 138 who responded to the consultation paper, 27 per cent were in support and 25 per cent were opposed. The remainder who commented did not make it clear whether they were in support or not. Those who responded to Question 41 invariably went on to answer with a corresponding yes or no to Question 42.

3.46 Those who supported the proposal accepted the need for the Department to have the flexibility to manage the timetabling of regionally significant development decisions with greater certainty, given the previous resourcing difficulties faced by the PAC. Some respondents from the resident / community and voluntary group considered that the Department should only appoint independent examiners where a particular technical expertise was not available within the PAC; for example, in relation to waste or energy developments.

- 3.47 Some of those who supported the proposal in principle (across all respondent groups) also had concerns about standards and transparency. It was recognised, for example, that where independent examiners needed to be used the Department must ensure that they are appropriately qualified, trained and competent to conduct inquiries and hearings. The Department should also provide advice and recommendations within clear and well understood procedures and guidelines.
- 3.48 Those respondents who were not in favour of the proposal held the view that the PAC plays an important role in ensuring consistency in planning decision-making. A view expressed in common by these respondents was that, as the final decision on a regionally significant application is taken by the Department, an independent examiner appointed by the Department would not be considered truly independent. This was one of the reasons advanced by the PAC for not supporting the proposal.

***Department's consideration and response***

- 3.49 The consultation exercise demonstrated a mixed response to these proposals. However, the Department considers that it is essential to have the option to appoint appropriately qualified independent examiners for regionally significant development applications (including applications notified to the Department) where the PAC is unable to hold a hearing or inquiry, or commit to providing an advisory report, within a timetable acceptable to the Department. Without this additional flexibility the duration of a critical part of the regionally significant development decision-making process would remain unpredictable and uncertain.
- 3.50 To meet the clear requirement for ensuring high standards of fairness and impartiality in decision-making (where the PAC is not involved in conducting a hearing or inquiry) the Department will consider appointing examiners from either the Planning Inspectorate for England and Wales or the Scottish Reporters Office. The Department accepts that common guidance on procedural rules for conducting hearings and inquiries for regionally significant development applications would be of considerable value in ensuring consistency of approach between the PAC and appointees of the Department. The Department will consult further with the PAC on the best way of achieving common

procedures for governing hearings and inquiries to achieve efficiency, timeliness, fairness, equal treatment and proportionality for the benefit of all parties.

### ***Pre-determination council hearings***

#### ***Context***

3.51 As part of new measures to enhance scrutiny for applications for major development which may raise issues with particular sensitivity for a local area, the Department proposed to enable district councils, at their discretion, to hold informal hearings prior to major developments being determined by the district council. It was suggested that the scope to hold the hearings might need to apply only to those applications for major developments which had attracted a significant body of relevant planning-based objections. It would be for an individual district council to judge when a pre-determination hearing was warranted and how such a hearing would operate.

#### ***Consultation paper proposals***

3.52 Question 45 asked if there was support for district councils to hold pre-determination hearings where they consider it appropriate for major developments, and Question 46 asked if there were any other circumstances in which district councils should have the scope to hold such hearings.

#### ***Consultation responses***

3.53 Of the 145 respondents who commented, 83 per cent were generally in support of district councils holding pre-determination hearings. Sixty-two (62) per cent of 120 respondents considered that district councils should be given a wider power than that proposed to hold hearings.

3.54 Some respondents were concerned that pre-determination hearings may be excessive for some developments. It was also suggested that pre-determination hearings should be held for local developments whose impact, when considered with other sites, would be similar to those for major developments. It should be noted that some councils already hold pre-determination meetings for major projects. Belfast Healthy Cities commented that this could help strengthen local ownership of, and confidence in, the process.

However, a broad regional framework for how hearings should operate should be established to ensure consistency. The RTPPI also supported the principle of devolving this function to district councils but also called for a framework and good practice advice, as well as training.

- 3.55 Those opposed suggested the organisation of such events would put a strain on resources and there was a risk that they could become quasi-appeal hearing environments. Hearings would lead to an expensive process involving professional representation, and they did not consider that hearings could be conducted in an entirely objective manner by councillors. Some were of the opinion that the current arrangements should be sufficient as a means of allowing interested parties to be heard.

### ***Department's consideration and response***

- 3.56 The Department intends to include a mandatory requirement for pre-determination hearings for those major developments which have been subject to notification (i.e. referred to the Department for call-in consideration) but which have been returned to a district council. All other applications will be at the discretion of each district council as to whether they wish to undertake a pre-determination hearing, as circumstances will vary from council to council.
- 3.57 Given the comments received, district councils may wish to consider other types of development applications for which they could hold pre-determination hearings, using their power to do so under the Local Government legislation. This could include applications such as those subject to an environmental statement, those with a large number of objections, or developments within sensitive areas, such as conservation areas or areas of townscape or village character. The Department will produce best practice advice to indicate to district councils when it might be considered appropriate to hold such a pre-determination hearing where it is not a mandatory requirement.

### ***Timescales for non-determination appeal***

#### ***Context***

- 3.58 The consultation paper set out the background for procedures relating to the proposal for

extending the timescale for making a non-determination appeal on a major development to 16 weeks, where a performance agreement had not been entered into. This was intended to reduce the possibility of appeals on the grounds of non-determination and to allow a more reasonable amount of time to determine a major planning application.

### ***Consultation paper proposal***

3.59 Question 47 asked respondents if they considered it appropriate to extend the non-determination appeal timescale for applications for major development to 16 weeks.

### ***Consultation responses***

3.60 Out of the 136 respondents who commented on this proposal, 77 per cent supported it. The resident / community and voluntary group was 100 per cent in support. Some suggested that this should be a statutory timescale for all major developments regardless of whether a performance agreement was in place or not. Some questioned what penalties would there be for those district councils not making decisions within 16 weeks. Strabane District Council thought that this would benefit councils to the extent that their performance in these more complex cases would not be judged on unrealistic time periods.

### ***Department's consideration and response***

3.61 The Department does not want the proposal to act as a disincentive to a developer wishing to enter into a performance agreement (which is a voluntary agreement and not a statutory requirement). In addition, it is not the intention to increase uncertainty or unpredictability in dealing with major developments and to have different rules depending on whether a performance agreement has formed part of the application process or not. The Department considers that 16 weeks is a realistic timescale and accords with developments requiring environmental impact assessments, the majority of which will fall under major developments. For these reasons, and in light of the consultation feedback, the Department considers that the 16-week time period should apply to all major developments, whether a performance agreement has been reached or not.

## ***Officer delegation***

### ***Context***

3.62 In order to ensure that arrangements for decision-taking on applications for local developments are efficient, whilst retaining a high quality of decision-making, the consultation paper proposed that district councils should introduce schemes of officer delegation for local developments. The intention was that district councils should delegate decisions on straightforward applications to officials, allowing elected members to focus attention on the more complex or controversial applications.

### ***Consultation paper proposal***

3.63 Question 48 asked respondents if they agreed that, post RPA, district councils should be required to introduce schemes of officer delegation for local applications.

### ***Consultation responses***

3.64 Of the 151 respondents who commented on this proposal, the overwhelming majority (91 per cent) were in support, including the Federation of Small Businesses and the RTPI. Concerns were expressed that councillors should not have an unrestricted right to refer an application to the planning committee but that this should be based on a planning reason (e.g. where contrary to a development plan or policy, or where there are objections based on planning reasons). While each district council should have the scope to largely decide the circumstances in which determination of an application is to be delegated to officials the importance of ensuring consistency was widely recognised.

3.65 The stakeholder events highlighted support for the principle of officer delegation. However, it was voiced clearly by community representatives and individuals that this should only be where there are no objections to the application. Consistency of interpretation was also raised as a potential issue, and concerns were expressed that district council areas would operate their own scheme which could potentially differ substantially from a neighbouring district council's scheme. It was also expressed that the quality of decision-making, rather than speed, should be the main concern.

### ***Department's consideration and response***

- 3.66 Due to the level of support, the Department intends to proceed with this proposal and build further on current practice and arrangements for streamlined consultation by requiring district councils to produce a scheme of officer delegation. The Department recognises that clarity is essential in terms of setting out conditions for such schemes and that consistency of interpretation will be required across all district council areas.
- 3.67 District councils will be required to prepare a scheme of officer delegation describing the classes and types of development which would be suitable for delegation to an appointed official of the council. The Department accepts that district councils will be able to tailor their scheme of delegation to suit their local circumstances and administrative procedures but that minimum requirements will be provided in secondary legislation to indicate those applications which would not be appropriate for officer delegation. In this respect, the Department also considers that it would be reasonable for district councils to include certain applications for major developments (provided they were not subject to a pre-determination hearing) in their schemes of officer delegation. Regulations and guidance will be prepared setting out the form, content and procedures for preparing and adopting a scheme of officer delegation.

### ***Role of consultees***

#### ***Context***

- 3.68 The Department examined the arrangements by which planning authorities (whether district councils or the Department) will consult other bodies on applications for planning permission, approval and consent and the process by which consultee bodies will be required to respond to such consultations.

#### ***Consultation paper proposals***

- 3.69 The Department proposed, following the transfer of planning functions, to extend the list of statutory consultees to ensure that planning authorities consult relevant bodies and to introduce categories of development, linked to the development hierarchy, that require such consultation (Question 49). It was also proposed to introduce a statutory obligation on the statutory consultee to reply within a specified timeframe (Question 50).

Respondents were also asked what the specified timeframe should be (Question 51).

### ***Consultation responses***

- 3.70 Of the 156 respondents who commented, 85 per cent supported the proposal to extend the list of statutory consultees and 87 per cent (out of 151 who responded) supported the proposal to introduce categories of development. There was overwhelming support (96 per cent of 152 respondees) for the proposal that, following the transfer of planning functions, statutory consultees should be required to respond within a prescribed timeframe. Suggested timeframes ranged from one day to 12 weeks, with most suggesting 21 days.
- 3.71 A number of respondents commented that statutory consultees must be properly resourced to allow them to comply with the duty to respond. Several also suggested that there should be penalties for not responding in time and several went further to say that if no response was received in time the planning authority should decide the planning application without the consultees' input.
- 3.72 At the stakeholder events, the proposal that statutory consultees must respond within a stated timescale was largely supported, with comments from consultees and government departments that the finances required for such an improved and speedy system should come in part from the revenue generated from planning applications.

### ***Department's consideration and response***

- 3.73 Due to the strong support for these proposals the Department intends to proceed as indicated in the consultation paper. The requirement that statutory consultees should respond within a specified timeframe will be as prescribed in subordinate legislation or such time as may be agreed between the consultee and the planning authority. The Department, in bringing forward these proposals, will consider if any sanctions should be imposed on statutory consultees who continually fail to respond within the required timeframes.

## **Management of development in conservation areas and areas of townscape or village character**

### **Context**

3.74 Current legislation<sup>6</sup> provides that unlisted buildings in conservation areas must not be demolished without conservation area consent. Broadly similar control has been extended to unlisted buildings in areas of townscape or village character (ATC / AVCs)<sup>7</sup> where planning permission is required prior to demolition. In addition, it is a requirement that development in conservation areas should preserve or enhance the character or appearance of those areas. The Department's policy approach has, however, been affected by two House of Lord's rulings<sup>8</sup>. The Shimizu ruling classified *partial* demolition as structural alteration, therefore the need to obtain conservation area consent for such action was removed. The South Lakeland ruling held that local planning authorities could not insist that developments are beneficial to conservation areas, merely that they do not harm them.

### **Consultation paper proposals**

3.75 Question 52 asked respondents if they agreed that the existing legislation should be clarified and amended to confirm that *partial* demolition of an unlisted building in a conservation area or / ATC / AVC requires conservation area consent or planning permission, and Question 53 asked if they agreed that the planning authority should be able to require, that, where possible, proposed development should enhance the character of a conservation area.

### **Consultation responses**

3.76 Out of the 140 respondents who commented on Question 52, 77 per cent supported the proposal. Majority support was expressed across most of the respondent groupings, while the agents / architects / professional and legal bodies group and the business and development group were divided approximately 50 / 50. Some respondents were concerned that the proposal could impact on minor renovation works to very ordinary buildings of little intrinsic, special or historic value in ATCs / AVCs.

<sup>6</sup> Article 51(2) of the Planning (Northern Ireland) Order 1991.

<sup>7</sup> Via the Planning (Northern Ireland) Order 1991 – Planning (Demolition – Description of Buildings) Direction 2009.

<sup>8</sup> Shimizu (UK) Ltd v Westminster City Council 6/2/1997 and South Lakeland v SoS 30/1/92.

3.77 Of the 142 respondents who commented on Question 53, 68 per cent supported the proposal. Only the agents / architects / professional and legal bodies group and the business and development group opposed it. It was clear some respondents within these categories were concerned about the requirement for development to enhance a conservation area, as they perceived a difficulty in defining 'enhancement'. Some, for example the Northern Ireland Fair Rates Campaign, said the proposal did not go far enough and wanted the enhancement requirement extended beyond conservation areas to include ATCs / AVCs.

### ***Department's consideration and response***

3.78 The Department would wish to make it clear that the intention is not to take new, stronger powers but instead to clarify and maintain the legislative basis for its existing policy approach. Therefore, while noting the reservations expressed by the development industry, the Department intends to proceed as indicated in the consultation paper. While the planning authority will be able to require, that, where possible, proposed development should enhance the character of a conservation area, the Department does not consider that this duty should be extended to ATCs / AVCs as these are considered to have a lower status than conservation areas and extending the duty would constitute a significant policy change which has not been considered as part of this consultation exercise.

### ***Duration of planning permissions and consents***

#### ***Context***

3.79 Under current arrangements, planning permissions and consents are normally issued with a condition requiring development to commence within a specified number of years. This is usually five years from the grant of permission or consent. The Department proposed, in line with other UK jurisdictions, to reduce the normal default duration of planning permission, listed building and conservation area consents from five to three years, with the aim of encouraging development to be undertaken more speedily and ensuring new policies are delivered more quickly.

### ***Consultation paper proposal***

3.80 Question 54 asked respondents if they agreed that the normal default duration of planning permission, listed building and conservation area consents should be reduced from five to three years.

### ***Consultation responses***

3.81 There was a slender majority of 53 per cent (out of 163 respondents) who supported the proposal. Within the respondent groups the range of support proved significantly diverse, with a low of 11 per cent from business and development interests to a high of 90 per cent from resident, community and voluntary organisations. There was a substantive swell of opinion from particular respondent groups (including key stakeholders) who were opposed to the proposal.

3.82 Generally those opposed to the proposal, and even those who saw merit in it like the SDLP, did not think it was appropriate to reduce the duration of permissions / consents in the current economic circumstances and urged caution, with some stating that this could lead to increased numbers of applications with potential resource implications. Some commented that it could lead to an increase in 'technical starts' to preserve permissions. The Construction Employers Federation was strongly opposed stating that the proposal would reduce the flexibility of developers in managing the development process. NILGA acknowledged the varying views within local government and, while recognising that synergy with the three year building control consent regime would be useful, thought that the current economic situation pointed to a case for five years. At the stakeholder events, this proposal also drew a mixed response.

### ***Department's consideration and response***

3.83 In a buoyant market the proposal would have the clear benefit of ensuring policy changes take effect sooner on the ground by encouraging development to commence more quickly. However, in the current economic climate, with a slow down in development, it could lead to increasing numbers of applications, including those to renew permissions, and increased numbers of technical starts to preserve existing permissions. The Department has, therefore, decided not to pursue a change of policy at this time.

3.84 In response to the small number of respondents who suggested extending the duration of permission, the Department considers that five years is a reasonable timeframe within which to commence development and that the existing legislation provides for a longer timeframe if there are particular circumstances which dictate this.

### ***Making minor amendments to planning permissions***

#### ***Context***

3.85 Minor changes to a planning permission may become necessary to comply with certain changes associated, for example, with the physical nature of the site which was not anticipated at the time the original permission was granted. These changes may be common in complex, large scale developments and in many cases the minor changes required will not significantly change the scheme that was originally granted, have little effect on public amenity and are therefore non-material. Currently, however, the change may require the developer to submit a new planning application.

#### ***Consultation paper proposals***

3.86 Question 55 proposed bringing forward specific legislative provisions to enable the planning authority, on receipt of an application by or on behalf of a person with an interest in the land, to change an existing planning permission where the authority is satisfied that the change is not material. Question 56 asked respondents if they had any comments on the details of such a provision.

#### ***Consultation responses***

3.87 There were 155 responses to the first question, 86 per cent of which were in support. Of the 97 who responded on the details of such a provision, 81 per cent were either wholly or partly in agreement with the Department's proposals on how such a provision should operate.

#### ***Department's consideration and response***

3.88 The Department intends to proceed as indicated in the consultation paper. A statutory provision will be introduced to allow a simple and quick mechanism for non-material

amendments to be made to a planning permission where only a very small change is sought, which has little or no impact on public amenity.

## ***Correction of errors***

### ***Context***

3.89 While legislation is in place which allows the Department to correct minor typographical errors in its decision documents / notices<sup>9</sup>, it is required to obtain the written consent of the applicant or, as the case may be, the applicant and the landowner. The Department wishes to allow the correction of minor errors to planning decision documents without first obtaining the consent of the applicant / landowner.

### ***Consultation paper proposal***

3.90 Question 57 asked respondents if they would be in favour of enabling the planning authority to correct errors in its planning decision documents without the consent of the landowner or applicant.

### ***Consultation responses***

3.91 Of the 155 responses received, 61 per cent supported the proposal. This support was spread across the majority of the respondent groupings, but there was opposition from the business and development group and the agents / architects / professional and legal bodies group. Some of those who supported the proposal stated that the changes should be to minor errors only and all applicants, landowners or interested parties, should be informed of the changes. Much of the opposition was based on the misconception that the changes could be of a material nature which could impact upon the planning permission.

### ***Department's consideration and response***

3.92 The Department intends to proceed with this proposal. Guidance will be produced to ensure that the corrections are confined to correctable errors as defined in Article 20 of the Planning Reform (NI) Order 2006, i.e. an error which is contained in any part of the decision document which records the decision but which is not part of any reasons given

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<sup>9</sup> via Article 17 of the Planning Reform (NI) Order 2006 – not yet commenced.

for the decision. In effect, these will be typographical errors only and not matters that could impact upon the planning decision.

## **Appeals and Third Party Appeals**

### ***Reducing the time limit for appeals***

#### ***Context***

4.1 An applicant currently has six months in which to appeal to the PAC if an application is refused. This appeal period has remained at six months for more than thirty years and is now out of step with similar practice in Scotland, where the appeal period was reduced to three months in 2008. It was also reduced to three months in England in 2003 but was returned to six months in 2004 following an increase in appeal numbers. England has since reduced the appeal period for householder appeals to 12 weeks from April 2009.

#### ***Consultation paper proposal***

4.2 Question 58 asked if respondents agreed that the time limit to submit appeals should be reduced, and, if so, what it should be reduced to – four, three or two months.

#### ***Consultation responses***

4.3 Of the 160 respondents who commented, 65 per cent supported a reduction in the time limit, including the Northern Ireland Human Rights Commission. Majority support came from most of the respondent groupings, with only the business and development group and the agents / architects / professional and legal bodies group expressing opposition. Many of those opposed (including the PAC) quoted the experience in England where an increase in appeal numbers in 2003 prompted a return to six months. Two months was the main choice for environment and heritage groups, individuals, and resident / community and voluntary groups. Business and development, agents / architects / professional and legal bodies, and elected representatives / local government favoured three or four months to provide an opportunity for post decision negotiation with the planning authority. Sinn Fein supported a minimum of three months.

#### ***Department's consideration and response***

4.4 While there was majority support for this proposal, with those in favour pointing out that this would give more certainty to the process, the Department recognises the concerns of the development industry regarding reduced negotiation opportunities and the possible

impact on appeal numbers as emerged in England. Consequently, the Department intends to implement a staged approach which involves reducing the appeal period to four months in primary legislation, while also providing the legislative powers to change this through subordinate legislation, if required.

## ***Determining the appeal method***

### ***Context***

4.5 Appeals are processed either by written representation (with or without an accompanied site visit) or hearing (formal or informal). The current system allows the appellant and the Department to request the method they prefer. Written representations are quicker and less costly to all concerned; however, appellants often choose a hearing, even for appeals which could be processed by the written representation route. To ensure the appeal procedure used is that which is best matched to the complexity of the subject matter the Department proposed to provide the PAC with the statutory powers to enable it to decide the appropriate method.

### ***Consultation paper proposal***

4.6 Question 59 asked respondents if they agreed that the PAC should be given the powers that would allow it to determine the most appropriate method for processing the appeal or whether appellants should be allowed to choose the appeal method.

### ***Consultation responses***

4.7 This proposal provoked one of the highest responses across the range of questions, with 142 respondents (72 per cent) strongly opposed to a change in the current arrangements. A number of respondents chose to comment on this proposal, and the complementary development plan question (Question 13), alone. The strongest support came from elected representatives / local government at 50 per cent, followed closely by public bodies / government departments at 47 per cent. The lowest support, at 7 per cent, was from business and development interests.

4.8 Some respondents interpreted the proposal as solely the removal of the right to appear and be heard at an appeal, rather than providing for the PAC to determine the most

appropriate appeal method. Others were concerned that an existing right was to be removed for the sake of efficiency measures and focused on the view that a hearing provided the appellant the opportunity to explain in person the complexity of the case.

- 4.9 Those opposed included the Royal Town Planning Institute, Disability Action, the Consumer Council and the Equality Commission for Northern Ireland. Concerns were expressed that this could potentially disadvantage up to 25 per cent of adults in Northern Ireland with the lowest levels of literacy competence. This issue also proved to be controversial during the stakeholder events. The proposal was, however, supported by half of the councils who responded, the River Faughan Anglers Ltd, the Northern Ireland Housing Executive and the Northern Ireland Human Rights Commission.

#### ***Department's consideration and response***

- 4.10 Having carefully considered all the responses and in light of the widespread opposition and concerns raised, the Department does not intend to proceed with legislation to allow the PAC to determine the most appropriate appeal method. The PAC may wish to consider further administrative measures to ensure the most appropriate appeal method is promoted in any particular appeal case.

### ***Restricting the introduction of new material at an appeal***

#### ***Context***

- 4.11 There are occasions when an appeal is made and the proposed scheme is changed during the course of the appeal or new material is introduced. The Department views this as advancing alternatives which should have been submitted as a new or amended application and believes this can leave both the Department and objectors at a disadvantage as they may have limited time to respond.

#### ***Consultation paper proposal***

- 4.12 Question 60 asked respondents if they agreed that parties to an appeal should not be allowed to introduce new material beyond that which was before the planning authority when it made its original decision. The appeal body would still be required to have regard to the development plan and any other material considerations in reaching its decision

and parties to the appeal would be allowed to submit additional material if they could demonstrate that this could not have been submitted earlier.

### ***Consultation responses***

4.13 Of the 151 respondents who commented, 58 per cent supported the proposal. Support was evident across the majority of the respondent groupings, with only the business and development group, and the agents / architects / professional and legal bodies group opposed. Individuals, and resident / community and voluntary groups expressed strong support, many of whom considered that the ability to submit new material at appeal disadvantaged third parties. Developers, including the Confederation of British Industry, who opposed the proposal stressed the importance of negotiation. They saw the ability to introduce new information as adding flexibility to the system and allowing it to respond to changing circumstances. The PAC was also opposed, stating that their procedures do not leave any participants at a disadvantage and all participants are given a reasonable opportunity to respond to amendments.

### ***Department's consideration and response***

4.14 It is clear from the responses that some individuals and resident / community and voluntary groups believe they have been disadvantaged by the introduction of new material at appeal. Alternatively, some developers believe strongly in a system with the flexibility to deal with sensible amendments and updated information. In an attempt to provide a balanced approach, the Department intends not to adopt the proposal at this time, but to review the impact of similar provisions in Scotland. The Department will also monitor the PAC handling of new information and draw the conclusions of the consultation exercise to the attention of the PAC. Given the concerns raised, the PAC may wish to explore further administrative arrangements to ensure that participants at appeals are not disadvantaged, or perceived to be so.

## ***Linking retrospective planning applications and enforcement notice appeals***

### ***Context***

4.15 Once an appeal is made against an enforcement notice, the appellant is deemed to have made an application for planning permission for the development in question. However,

the person can also lodge a parallel planning application for the same development with the planning authority. Enforcement action may be suspended until this parallel planning application has been determined. These circumstances can allow a breach of planning control to continue for some time. The Department proposed to address this by extending the power to decline to determine an application to include a parallel planning application where the same development is the subject of a deemed planning application arising from an enforcement notice appeal.

### ***Consultation paper proposal***

4.16 Question 61 asked respondents if they agreed that the planning authority should be able to refuse to consider an application where a deemed application associated with an appeal against an enforcement notice is pending.

### ***Consultation responses***

4.17 A substantial majority (82 per cent of the 140 who responded) supported this proposal, with majority support being expressed across all respondent groupings. Some of those opposed were of the opinion that an applicant should not be denied the opportunity to have their planning application determined by the planning authority if they had paid the fee. Others believed that a planning application submitted to the planning authority would be a way of regularising a development.

### ***Department's consideration and response***

4.18 The Department intends to proceed with this proposal. In response to the comments above, the Department would generally return the application and fee if it declined to determine an application; furthermore the submission of a parallel retrospective application is unlikely to be an appropriate method of regularising a development as the planning authority would be unlikely to grant planning permission for a development against which they had issued an enforcement notice.

## ***Power to decline repeat applications***

### ***Context***

4.19 Currently the Department has the power to decline to determine any planning application deemed to be the same or substantially the same as an application which has been refused within the previous two years for the same development. However, this does not extend to repeat applications submitted after a deemed application has been determined by the PAC. The Department wishes to address this anomaly.

### ***Consultation paper proposal***

4.20 Question 62 asked respondents if they agreed that the planning authority should have the power to decline repeat applications where, within the last two years, the PAC has refused a similar deemed application.

### ***Consultation responses***

4.21 Of the 151 respondents who commented, 85 per cent supported the proposal. Some of those opposed suggested that a deemed application, as processed by the PAC, may not be determined in the same way as an application determined by the planning authority. It was suggested that a deemed application would not allow for full consultation to be undertaken or allow full responses from neighbouring businesses and properties.

### ***Department's consideration and response***

4.22 Due to the level of support the Department intends to proceed with this proposal. The PAC is required to take representations into account in the same way as applications made to the Department. The PAC, when considering whether to grant planning permission, is also required to have regard to the development plan, so far as material to the subject matter of the enforcement notice, and to any other material considerations.

## ***Time for certificate of lawful use or development appeals***

### ***Context***

4.23 An applicant can currently apply to the Department for a certificate of lawful use or development (CLUD) to establish if an existing or proposed use or development of land is

lawful for planning purposes. If the Department refuses the certificate, or fails to arrive at a decision within six months (or an extended period as agreed with the applicant), the applicant may appeal to the PAC. However, unlike other appeals there is no time limit for making such an appeal.

### ***Consultation paper proposal***

4.24 Question 63 asked respondents if they agreed that a time limit of two months should be introduced for certificate of lawful use or development appeals.

### ***Consultation responses***

4.25 Sixty-six (66) per cent of the 137 respondents who commented supported the proposal. Majority support was expressed across most of the respondent groupings, with only the business and development group, and the agents / architects / professional and legal bodies group expressing opposition. There appeared to be some confusion over the wording of the question. The Department's intention was to suggest a time limit for CLUD appeals that aligned with other appeal periods and two months was suggested as a possible limit for all appeals in an earlier question (Question 58). Others believed that there already is a time limit for CLUD appeals which the Department intends to reduce to two months. Many developers wanted six months and some suggested three.

### ***Department's consideration and response***

4.26 This proposal had majority support even though there was some confusion surrounding the proposed time limit. Consequently, the Department intends to place a four month time limit on submitting CLUD appeals in keeping with the approach for other appeals outlined at paragraph 4.4 above.

### ***Award of costs***

#### ***Context***

4.27 The consultation paper explained that, in GB, parties to appeal proceedings can apply for costs to be awarded against another party in the appeal if they believe that they have been left out of pocket by that other party's unreasonable behaviour. Such behaviour could result in a hearing being adjourned, unnecessarily prolonged, or cancelled, wasting

resources and causing unnecessary expense to the aggrieved party. Similar behaviour also impacts upon the Northern Ireland appeals system.

### ***Consultation paper proposal***

4.28 Question 64 proposed introducing a power that would allow the PAC to award costs where a party has been put to unnecessary expense and where the PAC has established that the other party has acted unreasonably. This would apply to parties involved in appeals that use either the written representation route or formal / informal hearings.

### ***Consultation responses***

4.29 There was overwhelming support of 90 per cent (out of 142 who responded) for this proposal. Some concern was expressed about how 'unreasonable' would be defined and what would constitute appropriate costs. Others were concerned that the introduction of award of costs would concentrate too much power in the hands of the PAC.

### ***Department's consideration and response***

4.30 Due to the high level of support, the Department intends to introduce the award of costs into Northern Ireland. Some of the concerns expressed can be addressed by taking a closer look at the costs system as currently operated in GB. The systems in England and Scotland are accompanied by extensive separate guidance which provide examples of unreasonable behaviour which can extend to the planning authority as well as to appellants. The Department intends to adopt a similar approach and to issue guidance to accompany the commencement of the provisions.

### ***Local member review bodies***

#### ***Context***

4.31 Following the transfer of planning powers to the new district councils, and in keeping with strengthening local accountability, the Department sought views on providing for certain minor appeals (as in Scotland) to be determined by the district council itself.

### ***Consultation paper proposals***

4.32 Question 65 asked if respondents thought that the new district councils should be able to establish local member review bodies (LMRBs) to determine certain minor local planning appeals. Question 66 asked what types of applications this should apply to.

### ***Consultation responses***

4.33 This proposal attracted minimal support across all respondent groups, with 70 per cent (of the 148 respondents who commented) opposed and only 30 per cent in support. The largest percentage support was from elected representatives / local government at 67 per cent, although opinion was significantly divided. The lowest support, at 15 per cent, was from agents / architects / professional and legal bodies.

4.34 Those opposed were concerned that local councillors currently may not have the skills, knowledge, experience or degree of impartiality required for LMRBs to operate fairly and effectively. A significant number of responses suggested that the need for LMRBs should be reviewed and consulted upon at a later date once planning functions had been transferred and capacity and trust established. The Law Society of Northern Ireland questioned whether a LMRB would be considered an independent and impartial body. The views from councils were against the general trend, with 14 in support while three were opposed. NILGA expressed concerns that this proposal might undermine the democratic decision already made. Most of the councils, including NILGA and some political parties, wanted further consideration and clarity on the composition, roles and responsibilities of LMRBs. The stakeholder events raised concerns about the composition and membership of LMRBs and the potential for abuse or misuse of powers.

### ***Department's consideration and response***

4.35 The response to the consultation clearly indicated strong and widespread concern about the appropriateness of LMRBs in the newly emerging planning system. Even those in support argue that more clarity is needed on the implications for councillors as well as practical issues such as the cost implications, resourcing requirements and training needs. Consequently, the Department has decided that LMRBs should not be introduced at this time but that the situation may be reviewed following the transfer of planning functions when district councils have had an opportunity to adjust to and evaluate their

new and wider responsibilities, as well as the emerging experience of the operation of LMRBs in Scotland.

### ***Third party planning appeals***

#### ***Context***

4.36 The consultation paper took the view that given the Department's assessment of the likely impacts of the introduction of third party appeals on the planning system and its objectives for planning reform, which include more proportionate processes, a 'front loaded' planning system and greater speed and efficiency in decision-making, the Department was not, at this stage, proposing to make provision for third party appeals in the current package of reforms to be brought forward by 2011. However it undertook to obtain the views of all stakeholders on the issue and to fully consider those views before a final decision is reached.

#### ***Consultation paper***

4.37 The Department invited views on whether third party appeals should be an integral part of the Northern Ireland planning system (Question 67), and, if so, whether it should be an unlimited right of appeal, available to anyone in all circumstances or whether it should be restricted (Question 68). If it should be restricted, to what types of proposals or on what basis / circumstances should be it be made available (Question 69).

#### ***Consultation responses***

4.38 There was a high response rate to these questions. Opinion was split, with 59 per cent of respondents saying that provision should be made, while 40 per cent opposed the concept (the remaining 1 per cent were undecided). Importantly, 78 per cent of those who were in favour felt that any third party appeal rights should be restricted in some way. The overwhelming majority of respondents identified as representing environment and heritage groups, and resident / community and voluntary groups were in favour of third party appeals, while the majority of respondents representing agents / architects / professional and legal bodies, and the business and development sectors were firmly against, mainly on the basis that this would adversely impact on economic recovery. As far as respondents who represented local political interest were concerned, two thirds

were in favour. While expressing support for third party appeals, NILGA expressed concern that attempting to introduce such a system in the run up to 2011 may be too ambitious and that the introduction of pre-application discussions may circumvent the need for third party appeals. The Northern Ireland Human Rights Commission, on balance, supported the introduction of a limited right of appeal.

### ***Department's consideration and response***

- 4.39 Whilst no formal proposal for third party rights of appeal was included in the consultation paper, it is evident from the responses received that there is a clear division of opinion, with strong views for and against their introduction. However, the context is important and many of the responses raised issues that need to be more fully explored and presented in a consultation process which would identify the features of a third party appeal system, including the extent of who could appeal and which decisions would be open to appeal.
- 4.40 Given that the Department made it clear that there were no proposals to make provision for third party appeals in the current package of reforms, and on the basis of the analysis of responses, there does not appear to be any immediate compelling reason to proceed in the public interest towards making provision for third party appeals in the current round of planning reform proposals. However, given that the majority of respondents supported their introduction, the Department considers that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of the RPA have settled down and are working effectively. In addition, this approach would ensure that third party appeals would not present an opportunity to hinder the recovery and delivery of a productive and growing economy in Northern Ireland. Third party rights at this stage could well be a competitive economic disadvantage to Northern Ireland, given that third party appeals have not been introduced in England, Scotland or Wales and there is a suggested significant risk of potential adverse impact upon investment in the Northern Ireland economy if they were to be introduced.

## **Enforcement, and Criminalisation of Development Without Planning Permission**

### ***Multiple fees for retrospective planning applications***

#### ***Context***

5.1 Although planning law allows retrospective planning applications, this facility can be, and is, abused when it should be the exception, not the norm. The Department again considered charging a greater or multiple of the normal fee for retrospective planning applications however they might arise, including as a result of enforcement action or following an appeal against an enforcement notice. This would be a premium fee to deter commencement of development prior to submitting a planning / consent application and as a means of encouraging developers to seek relevant permission / consent at the appropriate time.

#### ***Consultation paper proposal***

5.2 Question 70 asked respondents if they agreed that a premium fee should be charged for retrospective planning applications and, if so, what multiple of the normal planning fee they thought it should be.

#### ***Consultation responses***

5.3 There were 172 respondents who commented on this proposal and a significant majority (75 per cent) were in support. Some suggested that fees should be dramatically high in certain circumstances to make enforcement a more effective deterrent. The suggested multiple ranged from an additional 20 per cent to 100 times the normal planning fee, with many suggesting that the fee should be doubled or tripled.

5.4 The consultation response indicated widespread support from councils, NILGA, environmental and other groups, such as the Royal Institution of Chartered Surveyors. Some councils commented that provision should be made not to punish an applicant with an expensive fee where mitigating circumstances applied. Fees should not be overly burdensome on small applicants and a business case should be created to introduce a

fee system. In addition, there were comments that the fee should be proportionate to the valuation of a development in all but the most minor of single residential applications.

- 5.5 Some respondents opposed to the proposal commented that breaches of planning control are in many cases not deliberate or that a premium fee would punish many applicants whose retrospective applications merely flow from changes between initial design and construction. The Construction Employers Federation expressed concern that this could encourage the search for breaches of planning control in order to raise revenue. It is worth noting, however, that the stakeholder events indicated some support for applying a multiple of the planning application fee.

### ***Department's consideration and response***

- 5.6 The Department intends to proceed to introduce legislation so that retrospective planning applications should attract a multiple of the normal planning fee. However, the relevant amount will be determined at a later stage and will be included in subordinate legislation. A retrospective planning application may require to be defined in legislation (probably in terms of development on site having already started at the date of the application). The Department may prescribe circumstances where a premium fee would not apply, e.g. where works were urgently needed in the interests of safety or health. The Department also intends that the proposed change to fees will be reflected, as appropriate, in applications for a certificate of lawful use or development.

## ***Notification of initiation of development and completion of development***

### ***Context***

- 5.7 The consultation paper explained that provisions were introduced into Scottish legislation requiring developers to submit a start notice to the planning authority notifying it of their intention to commence development and that they have met any pre-conditions. The developer is further required to notify the planning authority when certain agreed stages of the development are completed, and again when the entire development is complete.

### ***Consultation paper proposal***

5.9 Question 71 sought views from respondents on whether they thought the Department should consider developing firm proposals for introducing powers similar to those in Scotland requiring developers to notify the planning authority when they commence development and complete agreed stages.

### ***Consultation responses***

5.10 One hundred and sixty-three (163) respondents commented on this issue, with 69 per cent in support. Of those opposed, some commented that, once planning functions are transferred to the new district councils, such proposals will be unnecessary given that building control already carry out these checks. It was also stated that the proposals would potentially add to the workload of the planning authority without any significant gain. At the stakeholder events, although the proposals were welcomed by many, some developers did say that they would find this an unworkable scheme.

### ***Department's consideration and response***

5.11 The Department considers that the practicalities and outcomes of the Scottish experience would need to be examined carefully before reaching conclusions as to the appropriateness of similar provisions for Northern Ireland. In particular, the Department would wish to consider the resource implications and to explore the potential for closer links with the building control notification system, and any benefits that might come from this, particularly as both functions (not just building control) will be the responsibility of district councils, following the transfer of planning functions. The proposals will not, therefore, be brought forward at this time.

### ***Fixed penalty notices***

#### ***Context***

5.12 The Department has been monitoring the position in Scotland, where the Planning etc. (Scotland) Act 2006 introduced powers for planning authorities to issue Fixed Penalty Notices, giving a person the opportunity to pay a penalty as an alternative to prosecution in cases where they are in breach of an Enforcement Notice or fail to comply with a Breach of Condition Notice, subject to certain conditions being met. The Scottish

Government considered such powers would provide an alternative to the costly and potentially lengthy process of seeking a prosecution through the Courts.

### ***Consultation paper proposal***

5.13 Question 72 asked respondents if they thought that the Department should consider developing firm proposals for introducing Fixed Penalty Notice powers similar to those in Scotland. The consultation paper highlighted, however, that introduction of such provisions in Northern Ireland would require careful consideration: for example, how would the penalties be set and what criteria would be used when deciding when a Fixed Penalty Notice would issue as opposed to proceeding to prosecution.

### ***Consultation responses***

5.14 One hundred and fifty-seven (157) respondents commented on this issue, with 64 per cent in support. Of the 36 per cent who opposed this proposal, some suggested that the Scottish experience should be assessed before it is considered for Northern Ireland. There were some concerns that the system could be abused, with developers opting to pay fairly small fines, rather than face proportionate and effective penalties through the Courts. The proposal was supported by the Alliance Party, who commented that district councils should be able to exercise discretion as to when they would be used. At the stakeholder events some participants were in favour of the proposals, while others believed they could be seen or misconstrued as 'pay offs' and did not favour this move.

### ***Department's consideration and response***

5.15 While the Department is aware that the governing legislation in Scotland has only recently been operated by Scottish planning authorities, it has carefully reviewed the responses to the consultation and considers that to adopt similar provisions in the current package of reforms has significant potential to strengthen the Department's enforcement powers. The Department therefore proposes to introduce powers to issue Fixed Penalty Notices drawing closely on the scheme now operating in Scotland.

## ***Criminalisation of development without planning permission***

### ***Context***

5.16 The consultation paper set out the background and arguments for and against universal criminalisation of development without planning permission. The paper highlighted that the creation of a new offence required careful consideration as it is one that is likely to have many consequences, both in terms of the possible resource implications of policing it and, of course, for individuals who have breached planning control. Any extension of the criminal law needs to be very clearly justified.

### ***Consultation paper***

5.17 The Department wished to gauge current public opinion on the whole issue and Question 73 sought views from respondents on whether they thought the Department should give further consideration to making it an immediate criminal offence to commence any development without planning permission.

### ***Consultation responses***

5.18 One hundred and eighty (180) respondents commented on this issue and 52 per cent indicated that the Department should not give further consideration to making it an immediate criminal offence to commence any development without planning permission. Some of those opposed commented that this would be a draconian step that is unwarranted at present. There were comments that some breaches of planning control are a result of an innocent error. Other respondents stated that they would prefer more robust enforcement procedures.

5.19 Of the 48 per cent of respondents who were in support of this issue, some expressed concerns as to how it would be implemented. The Law Society of Northern Ireland was concerned that the differences between lawful and unlawful development could pose problems for legal certainty. The Society stated that, if introduced, this proposal would also have significant practical implications for the professionals responsible for advising members of the public on the planning law. The Northern Ireland Court Service supported the view that a comprehensive policy review and public consultation would be necessary to allow full consideration of any change to the current legislative framework.

5.20 The stakeholder events highlighted that criminalisation of commencing development without planning permission first being in place was seen by many as a step too far. Various scenarios were described where inadvertent mistakes could be made and a criminal offence would in that case have been committed. This was by and large rejected as a concept even worth considering, although a few participants did say that developers at times behave so irresponsibly that criminalisation was perhaps the only way forward. Overall, it was recognised that the power would be so restrictive and inflexible for the inevitable grey areas that could arise that it could not be introduced. Enhanced enforcement powers, or indeed fuller use of existing powers, were offered instead as a means of controlling the 'offenders' in the planning process.

***Department's consideration and response***

5.21 The Department considers the main purpose of creating any new enforcement offence is for the deterrent effect - it would not remove the need for enforcement action to remedy a breach of planning control. Such a proposal as criminalisation requires careful consideration and would require a full and comprehensive policy review. It is a policy which would have a number of consequences, in terms of the possible resource and legal implications and, of course, for individuals who have breached planning control. The current legal framework for enforcement in Northern Ireland is based on remedying the undesirable effects of unauthorised development and bringing it under control. Very good evidence is needed to assess the value in moving from this position.

5.22 The Department does not, therefore, intend to pursue universal criminalisation of development without planning permission, but to continue to use and consolidate its existing suite of enforcement powers. In addition, the Department intends to give consideration to measures which would help ensure that levels of fines are commensurate with the breach of planning control. The existing suite of enforcement powers should be supported by the introduction of further new strengthening powers, i.e. multiple fees for retrospective planning applications and Fixed Penalty Notices.

## **Developer Contributions**

### ***Context***

6.1 While not intrinsic to planning reform, the issue of developer contributions was included in the consultation paper following the withdrawal of UK-wide proposals for a Planning Gain Supplement (PGS) at the end of 2007.

### ***Consultation paper***

6.2 The consultation paper did not set out firm proposals but included a number of questions designed to ascertain whether there was an appetite for seeking increased contributions from developers to support infrastructure provision, beyond that necessary to mitigate the impact of a specific development, and, if so, whether this should be on the basis of extending the use of individually negotiated Article 40 agreements with developers or through some form of levy system (Questions 74 - 76).

6.2 Respondents were also asked to comment on the types of wider infrastructure which should be funded through any subsequent system of increased developer contributions; whether any levy system to be introduced in Northern Ireland should be on a regional or sub-regional basis; and whether, under such a levy system, all developments should be liable or only certain types or levels of development (Questions 77 – 79).

### ***Consultation responses***

6.3 Of the 188 who commented, 71 per cent agreed that there is a case for developers to make a greater contribution towards the provision of infrastructure in Northern Ireland; however, a recurrent theme was the need for further work to be carried out and more details to be provided. Submissions from NILGA and 21 of the 22 councils who responded welcomed the principle of increased developer contributions but requested further details, particularly on how any future levy system would be implemented.

6.4 Opinion amongst those from the business and development industry was divided: 43 per cent agreed that there is a case for increased contributions while a third believed there is no such case. The Construction Employers Federation did not think this was an appropriate time to consider developer contributions. The Carvill Group, who supported

the concept of increased developer contributions, commented that this needed to be done with care to ensure that the costs were absorbed in the land value and not placed on the cost of the homes resulting in a reduction in their affordability. The highest levels of support for increased contributions came from resident / community and voluntary groups, and environment and heritage groups, 90 per cent of whom supported such an approach.

- 6.5 The consultation paper identified two possible options for any future system of developer contributions, i.e. a levy-based system or the increased use of individually negotiated planning agreements. Of these two options a slight preference was expressed for the investigation of a levy system of financial contributions, with 27 per cent of respondents opting for this approach. The Confederation of British Industry agreed that a levy system should be investigated but stated that it would need more research and consideration. A further 14 per cent of respondents were in favour of extending the use of individual Article 40 agreements with developers on a case by case basis. The Northern Ireland Housing Executive commented that Article 40 agreements were the most appropriate mechanism to achieve developer contributions for social and affordable housing. A significant number of respondents (29 per cent) selected both options for securing greater contributions from developers, with many highlighting the need for Article 40 agreements to continue to be used alongside any future levy system. However, the same number (30 per cent) selected neither option, and 12 per cent considered that further work was needed before any decision could be taken on the way forward.
- 6.6 The majority of respondents listed several types of infrastructure which they considered could be funded through increased developer contributions, although several respondents stated that this required further development and should be the subject of separate public consultation. Affordable and social housing was cited by the highest number of respondents (40 per cent), while other types of infrastructure mentioned were roads or transport (23 per cent), water, sewerage, drainage or flood defences (18 per cent), education / schools (15 per cent) and medical facilities (14 per cent).
- 6.7 A regional basis for any future levy system was the preferred option for 37 per cent of respondents, with many of those who favoured this approach commenting that it would avoid competition between district councils. A small number (13 per cent) opted for a

sub-regional basis, while 50 per cent of respondents had no views on the issue. Similarly, 47 per cent of respondents expressed no views on the types and levels of development that should be liable to make a financial contribution under any future levy system. Just over a third (36 per cent) considered that only certain types or levels of development should be liable, with the majority of these specifying regionally significant and major developments (under the proposed new development hierarchy). Others (17 per cent) felt that all developments should be required to make a financial contribution.

- 6.8 Many of those who attended the stakeholder events were of the view that the current system of negotiated planning agreements is under-used at present and that consideration should be given to both enhanced use of Article 40 agreements and the introduction of a levy-based system. Community groups wanted to see financial contributions made under any future levy system ring-fenced for community projects, while developers urged a degree of caution over the introduction of disproportionate levies which could constrain future development.

#### ***Department's consideration and response***

- 6.9 The issue of developer contributions is not intrinsic to either planning reform or the transfer of planning functions to district councils. It is essentially an issue which centres on the identification, funding and delivery of infrastructure necessary to support Northern Ireland's economic and social development. Its inclusion in the planning reform consultation paper had been agreed with the Department of Finance and Personnel (DFP) following the withdrawal of the PGS proposals. Departments with responsibility for infrastructure provision will be particularly interested in the outcome of the consultation and how this issue will be taken forward. In their responses to the emerging proposals paper in June 2008, DFP, DSD and DARD (Rivers Agency) identified developer contributions as an issue of key concern for each of their respective departments. Given that infrastructure is currently delivered through these and several other central government departments, it is recommended that this is an issue which should be considered at Executive level in relation to funding and infrastructure responsibilities.

## **Enabling Reform**

### ***Capacity***

#### ***Context***

7.1 A key area will be building capacity, both within the existing Planning Service and working with stakeholder bodies, district councils, consultees, developers, agents and the public to deliver reform, including the new roles and responsibilities emerging from RPA implementation. It is particularly important that all planning staff continue to develop and enhance the necessary skills and competences required to take forward planning reform.

#### ***Consultation paper***

7.2 Question 80 invited views on how we (and other stakeholders) might ensure that all those involved in the planning system have the necessary skills and competencies to effectively use and engage with a reformed planning system.

#### ***Consultation responses***

7.3 One hundred and sixty-four (164) comments were received. There was strong recognition of the need for capacity building for planners, councillors, the community and indeed for all users of the system. Some of the suggestions were as follows:

- investigate planning systems in other jurisdictions;
- build design in as a key component of planning education;
- closer working relationships/partnership/secondments with councils pre-RPA;
- clear, consistent guidance and information for all users;
- performance based incentives for good performance and penalties for poor performance;
- training needed for councillors in their new roles;
- some form of planning advisory service;
- major public and community information campaigns;
- review of competencies required by planners before transfer;
- second staff to private sector for a period of time;
- clear codes of conduct for elected representatives;
- engage specialists to advise councillors on e.g. landscape/architectural design;

- joint training events with key stakeholders;
- closer liaison with universities/professional bodies;
- funding for independent planning advice bodies.

7.4 Culture change was also recognised as being of key importance – particularly for planners and councillors taking on their new and enhanced roles. Adequate resourcing and funding of any capacity building programme was frequently raised as being vital. While many respondents advocated that capacity building measures should begin now through to 2011, several referred to the timing of capacity building for newly elected members who will only be appointed in May 2011. Capacity for community engagement was also seen as vitally important.

#### ***Department's consideration and response***

7.5 The Department recognises the importance of culture change (i.e. changing the way the planning system operates) and capacity building for all users of the planning system. Of key importance will be continuing to develop the relationships that it has with all stakeholders, particularly to improve awareness of the new approach to planning and their role in helping to deliver it.

7.6 The Department was pleased to see offers of support and assistance from respondents, offering to work with the Department in capacity building and helping to raise awareness and understanding of planning, e.g. PLACE (the Architecture and Built Environment Centre for NI), the Chartered Institute of Housing Northern Ireland and others. The Department will continue to work in partnership with local government through the RPA structures and with other professional bodies, such as the Royal Town Planning Institute, to address these issues.

7.7 The Department will endeavor to work in partnership with all key bodies across all sectors in championing planning reform and implementing a modernised planning system for Northern Ireland. This will include influencing attitudes and behaviours and communicating information and key messages through specific awareness raising campaigns. In addition, the Department will undertake to draft guidance and provide best practice advice on how the new processes and systems will be put in place to ensure the

success of the reform agenda and its intended outcomes.

## **Funding**

### **Context**

7.8 The transfer of planning functions to local government, in conjunction with the reform programme, will inevitably have implications for the funding of the planning system, and for the fee structure. We need to assess how these proposed reforms and the decisions made as a result of the RPA will impact on funding and what revisions may be required as a result.

### **Consultation paper proposal**

7.9 Question 81 proposed that fees should be set centrally for the first three years following transfer of responsibility of planning functions to district councils. This would ensure consistency of fees across all district council areas. However, in line with the concept of devolving power to local government, it was proposed that this arrangement would then be subject to a full review, and consideration given to transferring fee setting powers to district councils.

### **Consultation responses**

7.10 There were 140 respondents who commented on this proposal and a significant majority of these (74 per cent) were in support. Of those who responded from the business and development sector, 91 per cent supported the proposal. 70 per cent of respondents from elected representatives / local government, were also in support. A few respondents commented that fee setting should be devolved immediately to district councils. However, those opposed (26 per cent) and, indeed, many of those who were in support, were concerned about consistency of fees across district councils, with some expressing the view that district councils might use fees to attract developers. Safeguards, guidance and an oversight role for the Department were suggested as means of allaying some of these fears. Some respondents suggested the review should be carried out after five years instead of three. Concerns were also expressed over the overall funding and resourcing of the planning system.

### ***Department's consideration and response***

7.11 The Department intends to proceed with the proposal to continue to set fees centrally, for at least the first three years following the transfer of planning functions to local government. The Department will ensure that the concerns expressed by respondents are taken into account in any future review.

### ***Audit / inspection***

#### ***Context***

7.12 A key way to demonstrate the effectiveness and integrity of the planning system will be through governance and performance management arrangements. The role of audit, inspection, performance management and monitoring will be critical in ensuring that planning functions are carried out and are seen to be carried out in a clear, fair and consistent manner and that best practice is applied across the new district councils. These functions will also be important in providing a quality assurance service for the councils.

7.13 At present, the Department has its own planning audit function which undertakes regular reviews of planning processes within the Planning Service. In relation to councils, the Local Government Auditor is currently responsible for financial and value for money audits. However, the nature of these local government audits is very different from the planning audit function, which focuses primarily on specialist planning issues. In light of the views expressed by political representatives, including the Environment Committee, industry representatives and others in relation to the need for strong governance arrangements, the Department proposed that central government should have a statutory audit / inspection function. An audit / inspection function of this nature could cover general or function-specific assessments of both central and local government's planning functions, reviewing planning processes and the application of policy, with a focus on quality assurance, advice and the promotion of best practice. It is the Department's view that this approach would help to provide further assurance to the public that the planning system is open, fair and transparent.

### ***Consultation paper proposal***

7.14 Question 82 proposed that central government should have a statutory audit / inspection function and that it should collate, analyse and possibly publish Northern Ireland-wide planning information on performance, application numbers, local development plan preparation etc.

### ***Consultation responses***

7.15 Out of the 148 respondents who commented on this proposal, there was overwhelming support with 92 per cent in favour. Several respondents saw an audit function as being essential to provide assurance that the planning system is open, fair and transparent. A few respondents commented that any audit function should be independent of the Department. Resident / community and voluntary groups, and environment and heritage groups stated that the function of community planning should be included. Belfast City Council, while agreeing with the proposal, stated that this should be carried out in conjunction with monitoring of statutory consultee performance and that the emphasis should be on providing assistance to district councils in enhancing performance rather than highlighting poor performance.

### ***Department's consideration and response***

7.16 Due to the overwhelming support for this proposal the Department will proceed to introduce legislation setting up an audit function within central government. In addition, the Department will continue to work with local government, through the RPA implementation structures, to develop a system of performance management for planning, following the transfer of planning functions to local government.

## **Other Issues Arising from the Consultation**

8.1 A number of comments were made, either in response to the consultation paper or during the consultation events, which did not relate to specific questions.

### ***Purpose of planning***

8.2 Some respondents made suggestions as to what the purpose of planning should be and offered different or amended principles; for example, identifying a statutory purpose to deliver sustainable development, objectives for the mitigation of, and adaptation to, climate change. Rural Community Network called for greater clarity on the role of planning in promoting equality, building more diverse communities and growing good community relations.

### ***Review of public administration***

8.3 It was highlighted by some respondents that the paper does not quantify the resources likely to be required under the proposed transfer of planning powers to local government. Some, like the Town and Country Planning Association and the Environmental and Planning Law Association Northern Ireland, considered that planning should remain a unitary function. The Institute of Directors also expressed concern that transfer will increase the cost of planning functions and give rise to the potential for corruption. Others, like the Development Planning Partnership LLP, do not support the level of retention of applications within central government as this undermines the desire for more democratic accountability.

### ***Timing***

8.4 Several respondents commented that the timing for both the reform proposals and the transfer of the majority of planning functions to local government in 2011 was very tight, with some calling for a more phased approach. Professor Greg Lloyd commented in his response that there was a powerful and compelling argument that the reform and RPA should be disentangled. The reform programme was significant on its own and there was a case to consider reform in isolation from RPA and allow for subsidiarity in the fullness of time (i.e. ensuring that central government performs only those functions which cannot be performed at a local level). The Murdock Group Ltd suggested that reform and RPA should proceed separately and that planning functions should be transferred perhaps on

a phased basis. NILGA also expressed concern regarding timing issues: especially with regard to the existing development plans and the development of new plans.

### ***Governance***

- 8.5 There was some concern expressed over governance issues when the new district councils take over planning functions. The Environment Committee supported in principle the 'devolution' of planning matters to district councils and greater community involvement within the planning process. However, members expressed concern in respect of the necessary checks, balances and integrating mechanisms required to ensure an effective, efficient and transparent planning system.

### ***Departmental response***

- 8.6 Departmental officials are working closely with the structures set up under the RPA to look at all issues affected by the transfer of functions to the new district councils. This includes examining governance arrangements, including decision-making structures, codes of conduct for councillors, training etc.

### ***Funding and resources***

- 8.7 Several respondents, including Professor Lloyd, drew attention to the current economic reality that the anticipated public expenditure restrictions will pose serious questions for the land use planning system and will impact on the resourcing of the new system. NILGA and councils expressed concern over resources, both to implement the changes and to build capacity to ensure the changes are successful.

### ***Departmental comment***

- 8.8 The Department recognises that we are now in a very difficult and challenging economic climate which will impact on both the reform programme and RPA. Work will be undertaken by the Department during the coming year to review Departmental structures and to work with local government regarding how best to transfer planning functions. Part of this work will entail reviewing finance and funding for reform and RPA.

### ***Neighbour notification and site notices***

8.9 There were a number of other issues raised by respondents, including NILGA, Sinn Fein, NIEL and South Belfast Residents Group, such as neighbour notification being made a statutory obligation and notices of development being put in public places.

### ***Departmental comment***

8.10 These issues are not part of the current extensive planning reform agenda. However, one of the objectives of the planning reform agenda is addressing community participation and involvement in order to allow full and open consultation and actively engage communities.

### ***Ward plans***

8.11 A small number of respondents suggested that a fundamentally different system of development plans should be introduced. They proposed a 'bottom up' system in which planning decisions would be made on a ward / neighbourhood level based on ward plans. Subsequently, they suggested that these ward plans should be taken together and used as a basis to create a 'visionary plan for the district council area'.

### ***Departmental comment***

8.12 The difficulty with this approach is that if these ward plans were to be statutory and used as a basis for decision-making there would be no strategic overview and it would result in a situation where ward / neighbourhood plans may not be compatible with each other and may not meet the needs of the district council area as a whole; for example, in relation to housing, infrastructure, services etc. It is important that a strategic overview of an entire district council's area is drawn up as proposed in the consultation paper, but which also allows communities to help shape where and how development takes place in their local area. Therefore, the Department does not consider that a statutory ward plans approach would be an appropriate basis for the new local development plan system. The Department favours a strategic approach to forward planning for district council areas that enables overall needs to be met and an integrated approach to be adopted for key land use issues such as transportation and housing.

8.13 However, the Department welcomes the model set out for community engagement and involvement in forward planning at a ward / neighbourhood level and would have no

objection to district councils making appropriate use of such an approach within the strategic framework of statutory local development plans. Clearly, in any forward planning system a balance needs to be struck between the need for community involvement and the timely publication of plans.

### ***Spatial planning***

8.14 It was questioned how 'spatial planning' fitted into the new system and more clarity was required on the spatial planning agenda in general. While some respondents welcomed 'spatial planning', others asked why the Department was not introducing it and what exactly it means. Regarding place shaping and community planning, it was stated that there is a lack of clarity and joined-up approach, and a huge opportunity is being missed to fundamentally transform the planning environment in Northern Ireland. Specifically, it was stated by a couple of respondents that the two-tier framework in Professor Lloyd's paper was not clearly enunciated, regarding the robust regional spatial planning agenda, and without such a foundation proposals for new plans and the plan led system must be of questionable value. It was stated that spatial planning objectives would be better aligned with priorities identified in the community plan.

### ***Departmental comment***

8.15 The Department considers that the proposed new local development plan system represents a significant step forward in the direction of the spatial planning agenda for Northern Ireland. The objectives and functions set out for the new local development plan system (see Questions 4 and 5) are indicative of the move in this direction. It will be possible for district councils to adopt a spatial planning approach in their use of the new plan system to a greater or lesser extent as they see fit. Further clarity on this issue will be provided through guidance that will be developed over time on the new planning system.

Appendix 1

**Consultation Paper Response Statistics**

<b>Groups</b>	<b>Totals</b>	<b>% age</b>
Agents / Architects / Professional and Legal bodies	46	17.4
Business and Development	55	20.8
Elected Representatives including Local Government	34	12.9
Environment and Heritage Groups	25	9.5
Individuals	37	14.0
Public Bodies and Government Departments	23	8.7
Residents / Community and Voluntary Groups	38	14.4
Other	6	2.3
<b>Totals</b>	<b>264</b>	<b>100</b>

## Appendix 2

## Summary of Reform Proposals and Government Response

Ques	Proposal	Government Response
1.	Do you agree that, in future, planning policy statements should provide strategic direction and regional policy advice only, which would then be interpreted locally in development plans?	Taking into consideration the mixed response to the issue of PPSs, and the time and resources required to review, consult on and publish new PPSs, the Department considers that PPSs should not be reviewed at this time but that, post RPA, the Department will work with councils and others to determine how best to manage the nature, timing and presentation of future planning policies. □
2.	Do you consider there are any elements of operational policy which should be retained in planning policy statements?	As above.
3.	Do you think it appropriate to commence a 'plan led' system in advance of the transfer of the majority of planning functions to district councils under the Review of Public Administration?	The Department intends to introduce the plan led system as proposed, but will carefully consider when would be the best time to commence it. Many of the key issues and concerns outlined by respondents will be addressed through further subordinate legislation or guidance as appropriate.
4.	Do you agree that the objectives contained in paragraph 3.6 are appropriate for local development plans?	The Department is content to proceed broadly with the objectives as outlined in the consultation paper. However, the Department will make some minor amendments and additions in light of the comments received, including adding sustainability into the first objective and providing a definition of sustainability in guidance. The Department will develop appropriate guidance as necessary
5.	Do you agree that the functions contained in paragraph 3.7 are appropriate for local development plans?	The Department is content to proceed broadly with the functions as outlined in the consultation paper, but will make some amendments and additions in light of the comments received.
6.	What are your views on the proposal that a district council's statement of community involvement must be in place before any public consultation on the local development plan?	The Department intends to proceed as indicated in the consultation paper. However, in response to concerns about resources, the time needed to prepare a SCI, and the size of the document, the Department will provide clear guidance and a template document.

Ques	Proposal	Government Response
7.	What are your views on the proposal for a programme management scheme?	The Department intends to proceed as indicated in the consultation paper. The Department will ensure that the PMS is monitored to ensure key milestones are met and will provide guidance on how this will be achieved. The Department will also continue to look in more detail at the possibility of rewards and sanctions.
8.	Do you agree that a preferred options paper should replace the issues paper?	The Department intends to proceed as indicated in the consultation paper. The Department will seek to ensure the public are involved throughout the plan production process and will address this issue in guidance, as appropriate.
9.	Do you agree with the proposal to introduce a local development plan process that comprised two separate but related documents to be published, examined and adopted separately and in sequence?	The Department intends to proceed with this approach.
10.	What are your views on the proposal to deal with amendments to the local development plan?	The Department intends to proceed with the approach as set out in the consultation paper. More detail will be set out in guidance to ensure there is consistency of approach and that the plan preparation process is not unduly delayed.
11.	What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution complies with robustness tests and makes the plan more robust?	The Department intends to proceed with this proposal. The Department will provide further clarification and guidance on 'robustness' and the requirements for submission of representations to address concerns in relation to equality and public participation in order to help ensure a fair and more inclusive process.
12.	What are your views on the proposal that representations to a local development plan will be required to demonstrate how their proposed solution meets the sustainability objectives of the local development plan?	The Department intends to proceed as indicated in the consultation paper. The Department will provide further clarification on sustainability appraisal through relevant guidance and support.
13.	Should the Department give the examiner(s) the power to determine the most appropriate procedures to be used in dealing with representations to the local development plan?	The Department has taken into consideration the strength of opposition, in particular the potential for detrimental effects on some section 75 groups, and has decided not to proceed with this proposal.

Ques	Proposal	Government Response
14.	Do you agree that representations to the plan should be submitted in full within the statutory consultation period, with no further opportunity to add to or expand on them, unless requested to do so by the independent examiner?	The Department intends to proceed with this proposal. The Department accepts that there should be a degree of flexibility for the submission of additional information at independent examination and therefore proposes that representations may be expanded upon at the request of the PAC / other independent examiner.
15.	What are your views on the proposals for counter representations?	The Department intends to proceed with this proposal. The Department will provide further clarification and relevant guidance as required.
16.	Do you agree that the basis for examining plans should be changed from an objection-based approach to one which tests the 'robustness' of plans?	The Department intends to proceed with this proposal. In response to comments received, the Department intends to change the terminology from 'robustness' to 'soundness'.
17.	What are your views on the recommended approach for examining local development plans?	The Department intends to proceed as indicated in the consultation paper.
18.	What are your views on the proposals to ensure regular monitoring and review of local development plans?	The Department intends to proceed with this proposal. The Department will address calls for clarity on what the review process will entail and what indicators will be monitored through the development of legislation, policy and guidance in due course.
19.	Do you agree with the proposed content of local development plans as set out on paragraph 3.44?	The Department intends to proceed with this proposal. The Department will address some of the issues raised through legislation, policy and guidance as appropriate.
20.	Do you consider that the topic areas contained in paragraph 3.46 are appropriate for inclusion in local development plans?	The Department intends to proceed with this proposal. Guidance to be published at a later date will address issues such as the level of detail appropriate for inclusion in the Plan Strategy and Site Specifics documents.
21.	Do you agree that district councils should be required to prepare sustainability appraisals as part of their local development plan preparation process?	The Department intends to proceed with this proposal. The Department will provide relevant guidance and support on the requirements for sustainability appraisals.
22.	What are your views on the proposal that the Department should have the powers to intervene in the making, alteration or replacement of a local development plan by the district council?	The Department intends to proceed with this proposal. Further guidance and detail will be provided in respect to how and when Departmental intervention might take place in due course.

Ques	Proposal	Government Response
23.	Do you agree that district councils should be given the power to make joint local development plans if they so wish and do you consider that such powers would adequately deal with instances where neighbouring district councils would consider it beneficial to work together?	The Department intends to proceed with this proposal.
24.	What are your views on the proposed transitional arrangements for development plans?	The Department intends to proceed as indicated in the consultation paper. The Department will address the main issues and concerns raised through further legislation or guidance as appropriate.
25.	Do you agree with the introduction of a new planning hierarchy to allow applications for the three proposed categories of development to be processed in proportion to their scale and complexity?	The Department intends to proceed as indicated in the consultation paper.
26.	Do you agree with the 3 proposed categories of development (regionally significant, major and local) and their respective definitions?	The Department intends to proceed as indicated in the consultation paper.
27.	In relation to applications for regionally significant development, do you consider that the 4 legislative criteria (see paragraph 4.14), in association with a pre-applications screening requirement, are sufficient to identify potential developments?	The Department will refine the definition of regionally significant development to make it more easily understood.
28	Do you have any comments on the proposed thresholds for the different types of development categories, particularly in relation to the classes of major development described in table 2?	The Department intends to proceed as indicated in the consultation paper. The Department will revise details and proposals for the hierarchy taking into account some of the views expressed, particularly in relation to amending and aligning some of the thresholds, and clarifying processes for the three categories of development. Further work will also be carried out to address those regional strategies which impact directly on land use planning to ensure that policies are joined up and achievable

<b>Ques</b>	<b>Proposal</b>	<b>Government Response</b>
29.	Do you agree with the proposed approach to urban / rural variation in setting the proposed housing thresholds for major development?	The Department intends to proceed as indicated in the consultation paper.
30.	Do you agree that performance agreements should be in place before the submission of regionally significant applications?	The Department intends to proceed with this proposal.
31.	What are your views on the suggested elements contained within a performance agreement, and setting a timescale specific to each individual application?	The content of a performance agreement will be as outlined in the consultation paper, and will be flexible to each application, as appropriate. This will be set out in detailed guidance by the Department as part of ongoing work required for implementation.
32.	Do you agree that this should be voluntary (i.e. non-statutory) agreement?	Performance agreements will be on a voluntary basis.
33.	Do you agree that developers should carry out pre-application consultation with the community on regionally significant applications?	The Department intends to introduce a statutory requirement for pre-application community consultation to be undertaken by the developer prior to the submission of regionally significant and major applications.
34.	Do you agree that pre-application community consultation should be a statutory requirement?	The Department intends to introduce a statutory requirement for pre-application community consultation to be undertaken by the developer prior to the submission of regionally significant and major applications.
35.	Do you have any views on what form the process for verifying and reporting the adequacy of pre-application consultation with the community should involve, particularly in relation to the elements indicated at paragraph 4.32?	The Department considers that the requirements for pre-application consultation will vary for specific developments. However, in order to maintain consistency, certain minimum requirements will be specified in legislation to ensure that any consultation engages as much of the affected community as possible (for example, at least one public meeting will be required to take place). Planning authorities will be able to require additional elements, depending on the application.

Ques	Proposal	Government Response
36.	Do you agree with introducing the power to decline to determine applications where pre-application community consultation has not been carried out or the applicant had not complied with the requirements of pre-application community consultation?	A power to decline to determine applications which have not satisfied their statutory requirements in this area will be introduced for regionally significant applications.
37.	Do you agree that the Department should determine applications for regionally significant development in association with the proposed statutory screening mechanism?	The Department intends to proceed to introduce these proposals as outlined in the consultation paper. Further detail will be prepared as part of the ongoing work in producing secondary legislation and detailed guidance.
38.	Do you agree with the proposal to designate a district council as a statutory consultee where it is affected by an application for regionally significant development?	The Department intends to proceed to introduce these proposals as outlined in the consultation paper. Further detail will be prepared as part of the ongoing work in producing secondary legislation and detailed guidance.
39.	Do you agree with the proposed notification and call-in mechanism, including the pre-application and application stages indicated in diagram 2, for applications for regionally significant development?	The Department intends to proceed to introduce these proposals as outlined in the consultation paper. Further detail will be prepared as part of the ongoing work in producing secondary legislation and detailed guidance.
40.	Do you agree that if the Department decides not to call-in a notified application it should have the option to return the application to the district council, either with or without conditions, for the district council to grant permission subject to conditions that may be specified by the Department?	The Department intends to proceed to introduce these proposals as outlined in the consultation paper. Further detail will be prepared as part of the ongoing work in producing secondary legislation and detailed guidance.

Ques	Proposal	Government Response
41.	Do you agree with the proposal giving the Department the option to appoint independent examiners to hold a hearing or inquiry into applications for regionally significant development?	The Department intends to proceed with this proposal. The Department considers that it is essential to have the option to appoint appropriately qualified independent examiners for regionally significant development applications (including applications notified to the Department) where the PAC is unable to hold a hearing or inquiry, or commit to providing an advisory report, within a timetable acceptable to the Department.
42.	Do you agree that the Department should prepare hearing and inquiry procedure rules for use by independent examiners?	The Department accepts that common guidance on procedural rules for conducting hearings and inquiries for regionally significant development applications would be of considerable value in ensuring consistency of approach between the PAC and appointees of the Department. The Department will consult further with the PAC on the best way of achieving common procedures for governing hearings and inquiries to achieve efficiency, timeliness, fairness, equal treatment and proportionality for the benefit of all parties.
43.	Do you agree that the processes for performance agreements should also apply to applications for major development?	The processes for performance agreements will also apply to applications for major development.
44.	Do you agree that the processes for statutory pre-application community consultation should also apply to applications for major development?	The Department intends to introduce a statutory requirement for pre-application community consultation to be undertaken by the developer prior to the submission of regionally significant and major applications.
45.	Do you support a power for district councils to hold pre-determination hearings, with discretion over how they will operate, where they consider it appropriate for major developments?	The Department intends to include a mandatory requirement for pre-determination hearings for those major developments which have been subject to notification (i.e. referred to the Department for call-in consideration) but which have been returned to a district council. All other applications will be at the discretion of each district council as to whether they wish to undertake a pre-determination hearing.

Ques	Proposal	Government Response
46.	Do you consider that there are other circumstances in which district councils should have the scope to hold such hearings?	District councils may wish to consider other types of development applications for which they could hold pre-determination hearings, using their power to do so under the Local Government legislation. The Department will produce guidance to indicate for district councils when it would be considered best practice to hold a pre-determination hearing.
47.	Where a performance agreement has not been reached, do you consider it appropriate to extend the non-determination appeal timescale for applications for major development to 16 weeks?	The Department considers that the 16 week time period should apply to all major developments, whether a performance agreement has been reached or not.
48.	Do you agree that district councils, post RPA, shall be required to introduce schemes of officer delegation for local applications?	The Department intends to proceed with this proposal as indicated in the consultation paper.
49.	Do you agree that, post-RPA, the list of statutory consultees should be extended; and categories of development, linked to the development hierarchy, that require consultation (including pre-application consultation) before applications are determined by the planning authority, should be introduced?	The Department intends to proceed as indicated in the consultation paper.
50.	Do you agree, post RPA, that statutory consultees should be required to respond to the planning authority within a specified timeframe?	The Department intends to proceed as indicated in the consultation paper.
51.	If so, what do you consider the specified timeframe should be?	The requirement that statutory consultees should respond within a specified timeframe will be as prescribed in subordinate legislation or such time as may be agreed between the consultee and the planning authority. The Department, in bringing forward these proposals, will consider if any sanctions should be imposed on statutory consultees who continually fail to respond within the required timeframes.

<b>Ques</b>	<b>Proposal</b>	<b>Government Response</b>
52.	Do you agree that the existing legislation should be amended and clarified to ensure that anyone wishing to demolish any part of an unlisted building in a conservation area / ATC / AVC should require conservation area consent or planning permission?	The Department intends to proceed as indicated in the consultation paper.
53.	Do you agree that the planning authority should be able to require, that, where possible, proposed development should enhance the character of a conservation area?	The Department intends to proceed as indicated in the consultation paper.
54.	Do you agree that the normal default duration of planning permission and consent should be reduced from five to three years?	The Department has decided not to pursue a change of policy at this time.
55.	Do you agree that a statutory provision should be introduced to allow minor amendments to be made to a planning permission?	A statutory provision will be introduced to allow a simple and quick mechanism for non-material amendments to be made to a planning permission where only a very small change is sought, which has little or no impact on public amenity.
56.	Do you have any comments on the details of such a provision as outlined at 4.101?	As above.
57.	Would you be in favour of enabling the planning authority to correct errors in its planning decision documents without the consent of the landowner or applicant?	The Department intends to proceed with this proposal. Guidance will be produced to ensure that the corrections are confined to correctable errors as defined in Article 20 of the Planning Reform (NI) Order 2006, i.e. an error which is contained in any part of the decision document which records the decision but which is not part of any reasons given for the decision.
58.	Do you agree that the time limit to submit appeals should be reduced, and, if so, what do you think the time limit should be reduced to – 4, 3 or 2 months?	The Department intends to implement a staged approach which involves reducing the appeal period to four months in primary legislation, while also providing the legislative powers to change this through subordinate legislation, if required.

Ques	Proposal	Government Response
59.	Do you agree that the PAC should be given the powers that would allow it to determine the most appropriate method for processing the appeal or that appellants should be allowed to choose the appeal method?	The Department does not intend to proceed with legislation to allow the PAC to determine the most appropriate appeal method. The PAC may wish to consider further administrative measures to ensure the most appropriate appeal method is promoted in any particular appeal case.
60.	Do you agree that parties to an appeal should not be allowed to introduce new material beyond that which was before the planning authority when it made its original decision?	In an attempt to provide a balanced approach, the Department intends to not adopt the proposal at this time, but to review the impact of similar provisions in Scotland. The Department will also monitor the PAC handling of new information and draw the conclusions of the consultation exercise to the attention of the PAC.
61.	Do you agree that the planning authority should be able to refuse to consider a planning application where a 'deemed application' associated with an appeal against an enforcement notice / appeal is pending?	The Department intends to proceed with this proposal.
62.	Do you agree that the planning authority should have the power to decline repeat applications where, within the last two years, the PAC has refused a similar deemed application?	The Department intends to proceed with this proposal.
63.	Do you agree that a time limit of two months should be introduced for certificate of lawful use or development appeals?	The Department intends to proceed with this proposal but to provide a four month time limit.
64.	Do you agree that the PAC should be given a power to award costs where it is established that one of the parties to an appeal has acted unreasonably and put another party to unnecessary expense?	The Department intends to proceed with the proposal and to issue guidance to accompany the commencement of the provisions.

<b>Ques</b>	<b>Proposal</b>	<b>Government Response</b>
65.	Do you think that the new district councils should be able to establish local member review bodies to determine certain minor local planning appeals?	The Department has decided that local member review bodies should not be introduced at this time but that the situation may be reviewed post RPA when district councils have had an opportunity to adjust to and evaluate their new and wider responsibilities as well as the emerging experience of the operation of local member review bodies in Scotland.
66.	If so, what types of applications this should apply to?	As above.
67.	Should provision for third party appeals be an integral part of the Northern Ireland planning system or not?	The Department considers that further consideration of third party appeals should be deferred until the extensive changes to the planning system under planning reform and implementation of the RPA have settled down and are working effectively.
68.	If you do support the introduction of some form of third party appeals, do you think it should be an unlimited right of appeal, available to anyone in all circumstances or should it be restricted?	As above.
69.	If you think it should be restricted, to what types of proposals or on what basis / circumstances should be it be made available?	As above.
70.	Do you agree that a premium fee should be charged for retrospective planning applications and, if so, what multiple of the normal planning fee do you think it should be?	The Department intends to proceed to introduce legislation so that retrospective planning applications should attract a multiple of the normal planning fee.
71.	Do you think the Department should consider developing firm proposals for introducing powers similar to those in Scotland requiring developers to notify the planning authority when they commence development and complete agreed stages?	This proposal will not be brought forward at this time. The Department considers that the practicalities and outcomes of the Scottish experience would need to be examined carefully before reaching conclusions as to the appropriateness of similar provisions for Northern Ireland.

Ques	Proposal	Government Response
72.	Do you think the Department should consider developing firm proposals for introducing Fixed Penalty Notice powers similar to those in Scotland?	The Department proposes to introduce powers to issue Fixed Penalty Notices drawing closely on the scheme now operating in Scotland.
73.	Do you think the Department should give further consideration to making it an immediate criminal offence to commence any development without planning permission?	The Department does not intend to pursue universal criminalisation of development without planning permission, but to continue to use and consolidate its existing suite of enforcement powers.
74.	Do you agree that there is a case for seeking increased contributions from developers in Northern Ireland to support infrastructure provision?	Given that infrastructure is currently delivered through several central government departments, it is recommended that this is an issue which should be considered at Executive level in relation to funding and infrastructure responsibilities.
75.	If so, should any increase be secured on the basis of extending the use of individually negotiated Article 40 agreements with developers on a case by case basis?	As above.
76.	Alternatively, should a levy system of financial contributions from developers be investigated in Northern Ireland to supplement existing government funding for general infrastructure, e.g. road networks, motorways, water treatment works etc., in addition to the requirements already placed upon developers to mitigate the site-specific impact of their development?	As above.
77.	What types of infrastructure should be funded through increased developer contributions, e.g. should affordable housing be included in the definition?	As above.
78.	If such a levy system were to be introduced in Northern Ireland should it be on a regional, i.e. Northern Ireland-wide, or a sub-regional level?	As above.

<b>Ques</b>	<b>Proposal</b>	<b>Government Response</b>
79.	If such a levy system were to be introduced should all developments be liable to make a financial contribution or only certain types or levels of development, e.g. residential, commercial, developments over a certain size?	As above.
80.	The Department invites views on how we (and other stakeholders) might ensure that all those involved in the planning system have the necessary skills and competencies to effectively use and engage with a reformed planning system.	The Department recognises the importance of culture change (i.e. changing the way the planning system operates) and capacity building for all users of the planning system. Of key importance will be continuing to develop the relationships that it has with all stakeholders, particularly to improve awareness of the new approach to planning and their role in helping to deliver it.
81.	Post-RPA, do you agree that central government should continue to set planning fees centrally but that this should be reviewed after three years and consideration given to transferring fee setting powers to councils?	The Department intends to proceed with this proposal.
82.	Do you agree that central government should have a statutory planning audit / inspection function covering general or function-specific assessments?	The Department intends to proceed to introduce legislation setting up an audit function within central government.

## Appendix 2

### List of Consultation Respondents

49 individuals / members of public

A&D A Association – Antrim & District  
Angling Association  
Airtricity Developments (UK) Ltd  
Alliance Party  
Andrew Nesbitt Architects  
Anna Lo MLA  
Annmar Ltd  
Antrim Borough Council  
arc21  
Architecture - Space – QUB (Queens University Belfast)  
Ards Borough Council  
Armagh City & District Council  
Arqiva Services Ltd  
Ballyloughan Residents Association  
Ballymena Borough Council  
Ballymoney Borough Council  
Ballynafeigh Community Development Association  
Banbridge District Council  
Bangor West Conservation Group  
Barnabas Ventures  
BDP Ltd (Building Design Partnership)  
Beechview Developments Ltd  
Belfast City Airport Watch  
Belfast City Council  
Belfast Conflict Resolution Consortium  
Belfast Healthy Cities  
Belfast Hills Partnership Trust  
Belfast Holyland Regeneration Association  
Belfast Interface Project  
Belfast Metropolitan Residents Group  
Big Picture Developments  
Blackstaff Community Development Association  
Braniff Associates  
Bryan Orr Developments  
BTW Cairns  
BTW Shiells  
Bushmills Townscape Heritage Initiative Partnership  
Canavan Associates  
Carey Consulting (NI) Ltd

Carrickfergus Borough Council  
Carvill Group Ltd  
Castlereagh Borough Council  
Castlerock Community Association  
Causeway Coast Communities Consortium  
Confederation of British Industry  
Construction Employers Federation  
Chartered Institute of Housing  
Cleaver Fulton Rankin Solicitors  
Cllr Cadogan Enright  
Cllr Randal McDonnell  
Clonard Residents Association  
Council for Nature Conservation and the Countryside  
Coleraine Borough Council  
Coleraine Rural & Urban Network  
Community Places  
Community relations Council  
Coogan & Co Architects Ltd  
Cookstown District Council  
Craigavon Borough Council  
CT Lindsay Chartered Architect Ltd  
CWSAN - Cookstown & Western Shores Area Network  
Department. of Culture, Arts & Leisure  
Ministerial Advisory Group  
Deramore Holdings Ltd  
Deramore Residents Association  
Derryhale Residents Association  
Disability Action  
Down District Council  
Development Planning Partnership  
DSD Housing Division (Dept. for Social Development)  
Dungannon and South Tyrone Borough Council  
Elevate Planning  
Environment Committee of the Northern Ireland Assembly  
EPLANI - Environment and Planning Law Association N.I.  
Equality Commission for NI  
ESB Wind Development (Electricity Supply Board)  
Ewart Properties  
Exitoso

F.P. McCann Ltd  
Ferguson Homes  
Fermanagh District Council  
Finaghy Community Development Association  
Forum for an Alternative Belfast  
Frank Donaghy (Auctioneers) Ltd  
Fraser Houses (NI) Ltd  
FSBNI – Federation of Small Businesses NI  
Gaelectric Developments Ltd  
Glen Road Residents Environmental Action Team  
Green Party  
Greenisland Heritage and Environment Group  
Grove Housing Association Ltd  
Henderson Group  
Hensons Ltd  
Heron Property Ltd  
Historic Buildings Council  
Historic Monuments Council  
HKR Architects  
Holywell Trust  
Holywood Conservation Group  
IHBC - Institute of Historic Building Conservation  
International Tree Foundation  
Invest NI  
IoD - Institute of Directors  
Irish Planning Institute  
Irish Wind Energy Association & British Wind Energy Association  
Jermon Developments  
Jim Wells MLA  
John P Hagan Solicitors  
Lagan Valley Group Residents Association  
Landscape Institute  
Larne Borough Council  
Lavelle & McAlinden  
Lecale Conservation  
Lenadoon Community Forum  
Ligoniel Improvement Association  
Limavady Borough Council  
Lisburn City Council  
Lough Neagh & Lower Bann Advisory Committees  
Lower Castlereagh Community Group  
Lower Malone Residents Association  
Marlborough Park Residents Association  
McAleer & Rushe Group  
McCloskey and O'Kane Building Company Ltd  
MCE Public Relations  
Michael Burroughs Associates  
Mobile Operators Association  
Moyle District Council  
Murdock Group Ltd  
N.I. Federation of Housing Associations  
National Association for AONBs  
NE Consultancy  
Newcastle Sustainable Community Planning Forum  
Newry & Mourne District Council  
Newtownabbey Borough Council  
Newtownards Chamber of Trade  
NI Chief Environmental Health Officers Group  
NI Co-Ownership Housing Association Ltd  
NI Human Rights Commission  
NICVA - N.I. Council for Voluntary Action  
NIE plc - Northern Ireland Electricity  
Northern Ireland Environment Link  
Northern Ireland Housing Executive  
Northern Ireland Independent Retail Trade Association  
Northern Ireland Local Government Association  
Northern Ireland Tourist Board  
North Down Borough Council  
Northern Ireland Archaeology Forum  
Northern Ireland Court Service  
Northern Ireland Fair Rates Campaign  
Omagh District Council  
Omagh Trade Unions Council  
Orange PCS Ltd  
Planning Appeals Commission  
PAC Users Group  
Parker Green International  
Participation and the Practice of Rights Project  
PLACE – Planning, Landscape, Architecture, Community and Environment  
Playboard NI  
Portballintrae Residents Association  
Portstewart Vision - The Community Forum  
Povall Worthington  
Pragma Planning and Development Consultants Ltd  
Prehen Historical & Environmental Society  
PSNI – Police Service of Northern Ireland

Quarry Products Association Ltd  
Quarryplan Ltd  
Queens University Belfast  
Ravenblack Developments Ltd  
RES UK & Ireland Ltd (Renewable Energy Systems Ltd)  
RICS - Royal Institution of Chartered Surveyors  
River Faughan Anglers Ltd  
Roads Service  
Rosetta Design Services Ltd  
Rossim Ltd  
Roy Beggs MLA  
Royal Society of Ulster Architects  
RPS Planning & Environment  
RSPB Northern Ireland – Royal Society for the Protection of Birds  
RTPI –Royal Town Planning Institute  
Rural Community Network  
Sainsbury's Supermarkets Ltd  
Social Democratic & Labour Party  
Shelter NI  
Simpson Developments Ltd  
Sinn Fein  
South Belfast Residents Groups  
Strabane District Council  
Strangford Lough Management Advisory Committee  
Strategic Planning  
Supporting Communities NI  
SWS Energy  
TCI Renewables Ltd  
Tesco Stores Ltd  
The Boyd Partnership Chartered Architects LLP  
The Consumer Council  
The General Council of the Bar of N.I.  
The Law Society of NI  
The National Trust  
The Port of Belfast  
The School of Built Environment - University of Ulster  
The Town & Country Planning Association (TCPA)  
Todd Architects & Todd Planning  
Trevor Roberts Associates Ltd  
Triangle Housing Association  
Turley Associates  
Ulidia and Park Road Residents Group  
Ulster Angling Federation  
Ulster Architectural Heritage Society  
Ulster Farmers' Union  
Ulster GAA (Gaelic Athletic Association)  
Ulster Society for the Protection of the Countryside  
Ulster Wildlife Trust  
University of Ulster  
W.J. Law  
West Belfast Partnership  
Westfield Shoppingtowns Ltd  
Woodland Trust  
WYG Environmental & Planning (NI)Ltd

## Appendix 4

### **Glossary of Terms / Abbreviations**

ATC – Area of Townscape Character

AVC – Area of Village Character

CIL – Community Infrastructure Levy

CLUD – Certificate of Lawful Use or  
Development

DARD – Department of Agriculture and  
Rural Development

DFP – Department of Finance and  
Personnel

DOE – Department of the Environment

DRD – Department for Regional  
Development

DSD – Department for Social Development

EIA – Environmental Impact Assessment

EQIA – Equality Impact Assessment

IE – Independent Examination

IOD – Institute of Directors

LMRBs – Local Member Review Bodies

NILGA – Northern Ireland Local  
Government Association

PA – Performance Agreement

PAC – Planning Appeals Commission

PADs - Pre-application Discussions

PGS – Planning Gain Supplement

PI – Public inquiry

PLACE - Architecture and Built Environment  
Centre for NI

PMS – Programme Management Scheme

PPSs – Planning Policy Statements

RDS – Regional Development Strategy

2025

RIA – Regulatory Impact Assessment

RPA – Review of Public Administration

RTPI – Royal Town Planning Institute

RSPB – Royal Society for the Protection of  
Birds

SA – Sustainability appraisal

SDLP – Social Democratic and Labour Party

SEA – Strategic Environmental Assessment

SCI – Statement of Community Involvement

SEA – Strategic Environmental Assessment

