

# Development Plan

## Practice Note

PRACTICE NOTE

01

### Introduction: Context for Local Development Plans

April 2015

## Preamble

This Development Plan Practice Note is designed to guide planning officers and relevant users through the key requirements for the preparation of a local development plan and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the **Planning Act (Northern Ireland) 2011** [the 2011 Act] and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.

## 1.0 Introduction

1.1 Local development plans apply regional policies at the appropriate local level and inform the general public, statutory authorities, developers and other interested bodies of the policy framework and land use proposals that will guide development decisions within a specified area.

## 2.0 Legislative Context

2.1 **Part 2 of the Planning Act (Northern Ireland) 2011** (the 2011 Act) provides for the preparation of a local development plan by a council for its district, which will (when adopted) replace current development plans produced by the Department of the Environment. The local development plan (LDP) will comprise of two development plan documents;

- The Plan Strategy (PS); and
- The Local Policies Plan (LPP).

2.2 Public participation and engagement in formulating the LDP and progress through to adoption will be facilitated through a Statement of Community Involvement and Timetable to be agreed between a council and the Department.

2.3 The PS will be prepared first and subjected to public consultation and independent examination before adoption. After the plan strategy has been adopted, the LPP will be prepared and also subjected to public consultation and independent examination before adoption.

2.4 Part 2 of the 2011 Act also makes general provision for the preparation, withdrawal, adoption and approval of the LDP (including joint plans) and their independent examination. The Department will also have powers of intervention.

## 2.5 **The Planning (Local Development Plan) Regulations (Northern Ireland) 2015** (the LDP Regulations) set out:

- the sequence of LDP preparation from the creation of the timetable through to the adoption of the LDP by a council;
- the role of a council, the Department and an independent examiner; and
- the functions post adoption including annual monitoring, review and revision of the LDP.

The key legislative provisions from both the 2011 Act and associated Regulations are detailed in Table 1:

## 2.6 The LDP should fulfil the following functions:

- provide a 15-year plan framework to support the economic and social needs of a council's district 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;
- provide a plan-led 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 a council's current community plan.

**Table 1: Key Legislative Requirements for the Local Development Plan**

| <u>2011 Act</u>  |                | <u>Plan Process</u>                            | <u>Regulations</u> |
|------------------|----------------|--|--------------------|
| Section 7        | <b>STAGE 1</b> | Programme Management - Timetable               | Regs 5 - 8         |
| Section 22       |                | Preferred Options Paper                        | Regs 9 - 11        |
| Sections 8 & 22  | <b>STAGE 2</b> | Plan Strategy                                  | Regs 12 - 19       |
| Sections 10 & 22 |                | Independent Examination of Plan Strategy       | Reg 20 - 22        |
| Sections 12 & 22 |                | Adoption of Plan Strategy                      | Regs 24            |
| Sections 9 & 22  | <b>STAGE 3</b> | Local Policies Plan                            | Regs 12 -19        |
| Sections 10 & 22 |                | Independent Examination of Local Policies Plan | Regs 20 - 22       |
| Sections 12 & 22 |                | Adoption of Local Policies and Plan            | Regs 24            |
| Sections 21 & 22 | <b>STAGE 4</b> | Annual Monitoring Report                       | Regs 25 & 27       |
| Section 13       |                | Review of Local Development Plan               | Regs 26 & 27       |

### 3.0 Role of parties involved in the local development plan process

- 3.1 **The Department:** Under the local development plan process, the Department will have an oversight and scrutiny role. A council will be required to submit its local development plan to the Department to ensure that it is aligned with central government plans, policies and other guidance. The Department will also have general powers to secure the delivery of local development plans and ensure that they are up to date.
- 3.2 **Council:** A council will have responsibility for local planning in their respective areas. As such, Part 2 (8) and (9) of the 2011 Act requires a council to prepare a Plan Strategy and Local Policies Plan which will constitute the local development plan for their area. A council must prepare a local development plan in consultation with consultation bodies and the public.
- 3.3 **Consultation Bodies:** Consultation bodies are set out in Regulation 2 of the LDP Regulations. These include government departments for example DRD and DOE and also council(s) which cover any adjoining district. Meaningful engagement early in plan preparation is considered key to a council producing better informed and locally distinctive plans. As such, consultees will play a key role in providing input at various stages of the plan preparation process including preferred options paper and also the independent examination as they can provide detailed information on potential constraints to development.
- 3.4 **Local Community:** Public participation, particularly at the early stages of local development plan preparation is regarded as crucial in identifying relevant issues and local views in the plan process from the outset. The local community will therefore have an important role to play in the plan preparation process particularly at the preferred options stage and also at the draft plan stage when they will have the opportunity to make representations. A council's Statement of Community Involvement (SCI) will set out the key stages for public engagement and inform the community of how and when they can become involved.

**Figure 1: Role of the local development plan**



## 4.0 The Plan-Led System

**Section 6 (4) of the 2011 Act** provides for the plan-led system. It states that where, in making any determination under the 2011 Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4.1 The plan-led system will commence on transfer of planning powers to Councils in April 2015. The plan-led system is one of the fundamental principles that will guide the planning system post-April 2015. Under the plan-led system, the local development plan will be the primary consideration in the determination of planning applications for the development or use of land.

## 5.0 Linkage between the LDP and Regional Development Strategy 2035

5.1 The Regional Development Strategy (RDS) offers a strategic and long term future perspective on the future development of Northern Ireland up to 2035. The RDS contains regional guidance to provide policy direction in relation to the economy, society and environment and spatial framework guidance tailored to each component of the spatial planning framework. It sets the context in which to make policy and development decisions in order to achieve sustainable development throughout the region.

5.2 Ensuring a Sustainable Transport Future (ESTF) – A New Approach to Regional Transportation complements the RDS and contains high level aims and strategic objectives to support the growth of the economy, enhance the quality of life for all and reduce the environmental impact of transport. The document sets out the approach to regional transportation and is used to guide strategic investment decisions beyond 2015.

5.3 Local development plans are a fundamental tool in the implementation of the RDS and ESTF. **Sections 8 and 9 of the 2011 Act** require a council to take account of the RDS and any policy or advice contained in guidance issued by the Department.



## **6.0 Linkage between the LDP and the Strategic Planning Policy Statement (SPPS)<sup>1</sup>**

6.1 The local development plan provides the essential framework for planning decisions and the SPPS (which provides an overarching statement of the general planning principles underlying the planning system) will provide a robust planning policy framework within which a council will be able to both prepare the first round of local development plans and also manage development.

6.2 The SPPS outlines a number of core principles underpinning the reformed planning system in Northern Ireland. These are:

- improving health and well-being;
- creating and enhancing shared space;
- supporting the economy;
- supporting good design and positive place-making;
- preserving and improving the built and natural environment.

6.3 In addition to the core principles, the SPPS sets out the new approach to development plan making and decision taking in the development management system. The latter part of the document contains the subject planning policies which is essentially a consolidation of the existing PPSs, in addition to the introduction of new policy for retailing. Each subject policy area contains a set of overarching policy objectives and guidance on how these are to be delivered through the development plan and development management processes.

## **7.0 Linkage between the LDP and Community Plan**

7.1 The local development plan system aims to move away from a narrow land use focus towards a 'place shaping' approach which incorporates a spatial

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<sup>1</sup> It is important to note that the SPPS is subject to clearance by the Executive Committee

analysis and visioning process. The new style of local development plans provides a unique opportunity for a council to genuinely shape places for local communities and will enable them to adopt a joined up approach, incorporating linkages to other functions such as regeneration, local economic development and community planning.

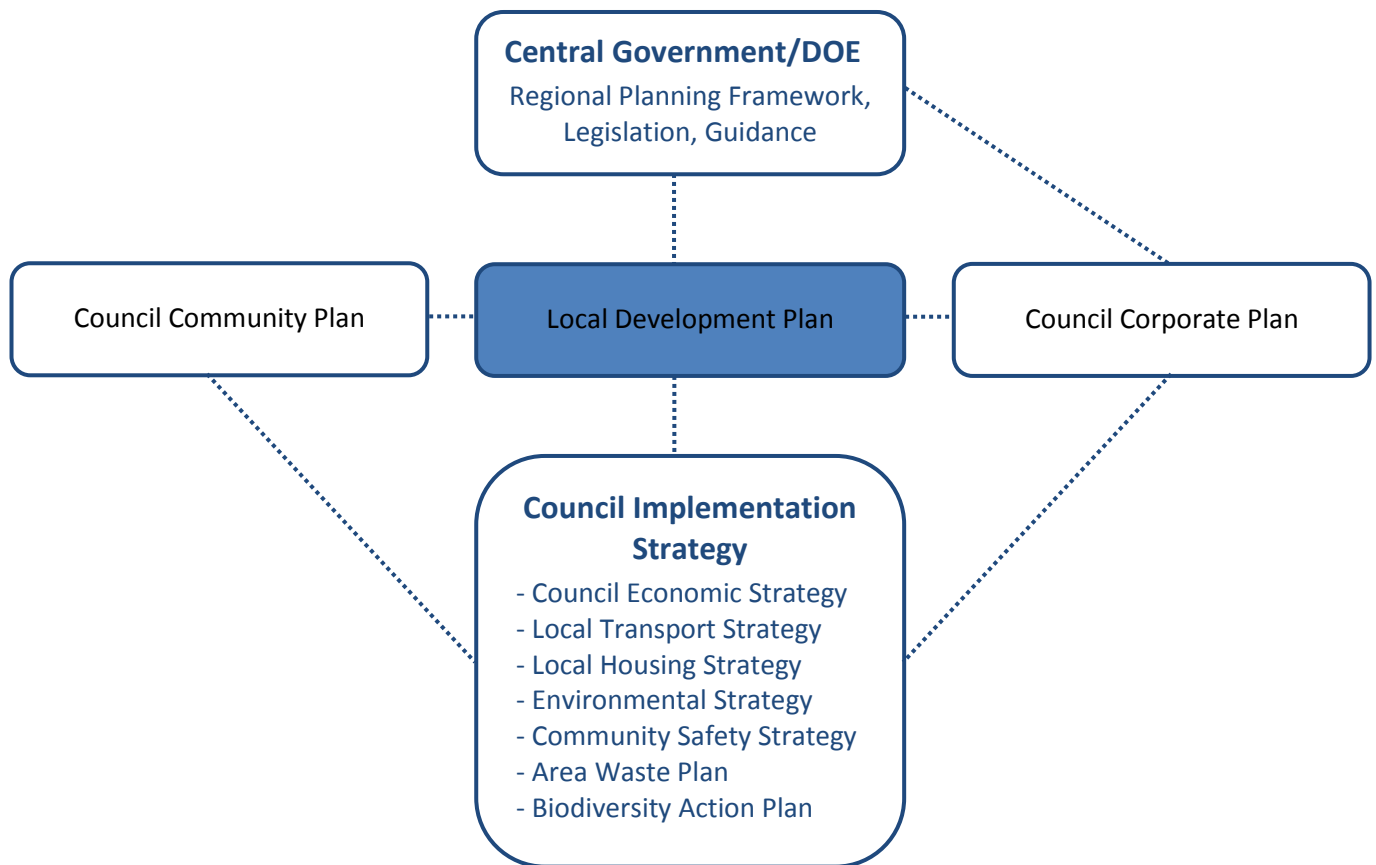
- 7.2 Community planning is “a process led by a council in conjunction with partners and communities to develop and implement a shared vision for their area, a long term vision which relates to all aspects of community life and which also involves working together to plan and deliver better services which make a real difference to people's lives”<sup>2</sup>.
- 7.3 The duty of community planning requires a council to lead the process of creating a long term vision for the social, environmental and economic well-being of their area and its citizens, in partnership with the community and service providers in their area.
- 7.4 The Local Government Act introduces a statutory link between the community plan and a council's local development plan, in that the preparation of the LDP must take account of the community plan. It is intended that the LDP will be the spatial reflection of the community plan and that the two should work in tandem towards the same vision for a council area and its communities and set the long term social, economic and environmental objectives for an area.
- 7.5 The Department supports a council in taking forward preparations for the introduction of the statutory duty of community planning. The Community Planning Foundation Programme sets out key building blocks that a council can put in place ahead of the introduction of the statutory duty. These include assembling baseline information, capacity building to address the culture change, development of effective partnership working and community engagement, and giving consideration to performance management.

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<sup>2</sup> Extract from Northern Ireland Community Planning Foundation Programme Version 1 October 2013

7.6 The power to prepare local development plans in conjunction with new powers of community planning, will give a council 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.

**Figure 2: LDP links with other council plans and strategies**



7.7 Further guidance is provided in the Northern Ireland Community Planning Foundation Programme (Oct 2013). In addition, Community Places produced a “Community Planning Toolkit” in 2012 to explain further what it is, the legal requirements and how communities can become involved.

## 8.0 Linkage between the LDP and other Central Government Strategies

8.1 The 2011 Act provides that the Department, in exercising its policy formulation functions, must do so with the objective of furthering sustainable development and promoting or improving well being and as such should have regard to policies and guidance issued by the DOE, DRD, OFMDFM and any other matters that appear to be relevant. There are a number of key central government plans and strategies that a council must have regard to in the formulation of their local development plans. These include:

- Section 75 of the Northern Ireland Act 1998, Equality of Opportunity;
- Everyone's Involved - Sustainable Development Strategy (May 2010);
- Northern Ireland Biodiversity Strategy (currently under review)
- The Marine Policy Statement (March 2011) and the Marine Plan for Northern Ireland when adopted;
- The revised Northern Ireland Waste Management Strategy "Delivering Resource Efficiency" (October 2013);
- Lifetime Opportunities – Government's Anti Poverty and Social Inclusion Strategy for Northern Ireland (November 2006); and
- Thinking Rural - The Essential Guide to Rural Proofing (March 2011).

8.2 **Section 75 of the Northern Ireland Act 1998**, Equality of Opportunity places a statutory requirement on each public authority to:

- 1). Carry out their functions with due regard to the need to promote equality of opportunity:
  - a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - b) between men and women generally;
  - c) between persons with a disability and persons without; and d) between persons with dependents and persons without.

2.) Without prejudice to its obligation under subsection 1, a public authority shall, in carrying out its functions relating to Northern Ireland, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

8.3 A council is therefore required to ensure that their local development plans are prepared in accordance with Section 75 statutory obligations. Consequently, a council will have to undertake an Equality Impact Assessment (EQIA) to determine if there will be any potential impacts upon Section 75 groups as a result of the policies and proposals contained in their local development plans<sup>3</sup>.

8.4 Everyone's Involved – Sustainable Development Strategy, aims to put in place economic, social and environmental measures to ensure that we can continue to grow our economy, improve our society and communities and utilise our natural resources in an environmentally sustainable manner. The Strategy also intends to strengthen the framework to address global issues such as climate change and sets out the following six principles:

- living within environmental limits;
- ensuring a strong, healthy, just and equal society;
- achieving a sustainable economy;
- promoting good governance;
- using sound science responsibly; and
- promoting opportunity and innovation.

8.5 These principles will be addressed through the application of six Priority Areas for Action which will provide the framework for actions that departments will take in support of the achievement of sustainable development. These are:

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<sup>3</sup> Further guidance is provided in Section 75 of NI Act 1998 - A Guide for Public Authorities, April 2010 and also Section 75 of the Northern Ireland Act 1998: Public Authorities Outline Guide, February 2012.

- building a dynamic, innovative economy that delivers the prosperity required to tackle disadvantage and lift communities out of poverty;
- strengthening society so that it is more tolerant, inclusive and stable and permits positive progress in quality of life for everyone;
- driving sustainable, long term investment in key infrastructure to support economic and social development;
- striking an appropriate balance between the responsible use and protection of natural resources in support of a better quality of life and a better quality environment;
- ensuring reliable, affordable and sustainable energy provision and reducing our carbon footprint; and
- ensuring the existence of a policy environment which supports the overall advancement of sustainable development in and beyond government.

8.6 **Section 5 of the 2011 Act** places a duty on a council to further sustainable development in the preparation of local development plans. In doing so, a council must take account of any relevant central government policy, advice and guidance.

8.7 The 'Northern Ireland Biodiversity Strategy' was published in 2002 and aims to protect and enhance biodiversity up to 2016. In summary, it examines threats to biodiversity, provides an analysis of issues, sets out goals and discusses appropriate mechanisms and the role of key departments and stakeholders in biodiversity conservation. Critical to those mechanisms are the Species and Habitats Action Plans [SAPs and HAPs] which provide guidance on where and how to direct resources, and sets targets to be achieved by Government Department and Agencies, public bodies and partnerships e.g. with the Woodland Trust/Forest Service.

8.8 Following a number of reports on the progress of the Strategy such as 'Delivery of the NI Biodiversity Strategy 2005 – 2009', a new biodiversity strategy is being prepared to help halt the loss of biodiversity and degradation of ecosystems up to 2020.

- 8.9 In addition to the Northern Ireland Biodiversity Strategy, LDPs should also have regard to any Local Biodiversity Action Plans (LBAPs) which have been prepared for the district council area. LBAPs aim to conserve biodiversity through local partnerships, taking into account both national and local priorities by involving local people and local organisations through the practical delivery of biodiversity conservation.
- 8.10 Consideration of the Northern Ireland Biodiversity Strategy and LBAPs will help to address legislation requirements such as the biodiversity duty stemming from the **Wildlife and Natural Environment Act (Northern Ireland) 2011**.
- 8.11 'The Marine Policy Statement and Marine Plan for Northern Ireland' - The interaction between the land and sea planning systems is important. Terrestrial planning extends to the Mean Low Water Mark while marine planning and licensing extend to the Mean High Water Mark. Therefore, the requirement to work effectively together to achieve harmonisation is recognised. Of particular relevance are the legal requirements of the **Marine & Coastal Access Act 2009 (Art 58)** and the **Marine Act (Northern Ireland) 2013 (Art 8)** that:
- All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the Marine Policy Statement (MPS) (and the Marine Plan once in place) unless relevant considerations indicate otherwise; and
  - All public authorities must have regard to the MPS (and the Marine Plan) when taking any other decision (e.g. the development of an area plan) which is capable of affecting the UK marine area.
- 8.12 To fulfil the statutory requirements, planning officers making decisions that affect or might affect the marine area must familiarise themselves with the

Marine Policy Statement. The UK Marine Policy Statement published in March 2011 provides the high-level policy context within which all marine plans in the UK will be developed, implemented, monitored, amended and/or withdrawn. The MPS is also the key document, until such times as Marine Plans are in place, for making decisions capable of affecting the marine area and is a material consideration. Significantly, this includes terrestrial decision making by public authorities where decisions have the potential to affect the marine area.

- 8.13 The combination of the Marine and Coastal Access Act 2009 and the Marine Act (NI) 2013 sets out the framework for Northern Ireland's seas based on: a system of marine planning that will balance conservation, energy and resource needs; improved management for marine nature conservation and the streamlining of marine licensing. It applies to Northern Ireland's offshore and inshore regions. The inshore region includes all the tidal rivers and sea loughs (including Lough Foyle and Carlingford Lough).
- 8.14 The revised 'Northern Ireland Waste Management Strategy Delivering Resource Efficiency' is set firmly in the context of sustainable development policy and other key government policy documents and initiatives. It is founded on the principles of the EU Waste Framework Directive and sets out the policy framework for the management of waste in Northern Ireland, and contains actions and targets to meet EU Directive requirements and the Department's Programme for Government commitments.
- 8.15 This Strategy follows the priority order for waste treatment set out in the Waste hierarchy, a cornerstone of EU waste policy and legislation, with Part 2 divided into seven sections containing policy measures that build on the core principles of the 2006 Strategy. The Strategy has a renewed focus on waste prevention (including re-use), preparing for re-use and recycling, and moves the emphasis of waste management in Northern Ireland from resource management to resource efficiency i.e. using resources in the most efficient way while minimising the impact of their use on the environment. Additionally



it recognises the need for better regulation and enforcement; communication and education; and delivery and governance.

- 8.16 Planning can contribute to the timely provision of an integrated network of waste facilities which are essential if EU targets are to be met. Central government and councils have an important role to play in implementing the Waste Management Strategy. A key aspect of delivery of the revised Strategy will be through the Waste Management Plans prepared by the three regional District Council Waste Management Groups (Arc 21; North West Region Waste Management Group; and Southern Waste Management Partnership).
- 8.17 In preparing local development plans, a council should have regard to the Waste Management Plan to ensure that policies and proposals are consistent with the Strategy, and where considered necessary, identify or designate sites for waste management in their respective council areas.
- 8.18 'Lifetime Opportunities - Government's Anti Poverty and Social Inclusion Strategy for Northern Ireland' - The Strategy sets out goals tailored specifically for various age groups in order to meet the objective of working towards the elimination of poverty and social exclusion by 2020. These include underlining the importance of early intervention as a means of preventing poverty and recognising the priority of removing barriers to people joining or rejoining the labour market. The Strategy recognises different priorities at different stages in people's lives and the need for policies and programmes to be tailored to these specific needs and targeted at those in greatest objective need.
- 8.19 The Strategy also highlights a number of general challenges which become the priorities for future policy and action. These are:
- Eliminating poverty;
  - Eliminating social exclusion;
  - Tackling area based deprivation;

- Eliminating poverty from rural areas;
- Shared future – shared challenges;
- Tackling inequality in the labour market;
- Tackling health inequalities; and
- Tackling cycles of deprivation.

8.20 In the preparation of local development plans, a council should have regard to this Strategy in order to create a planning framework to facilitate development and target investment and resources to tackle poverty and social deprivation in the local area.

8.21 ‘Thinking Rural – The Essential Guide to Rural Proofing’ - Rural proofing is the process by which all major policies and strategies are assessed to determine whether they have a differential impact on rural areas and, where appropriate, adjustments are made to take account of particular rural circumstances.

8.22 The objective of the rural proofing process is to ensure robust consideration and integration of rural issues at the outset of the policy making process. It should help to ensure fair and equitable treatment for rural areas through the development of policies which are proportionate to need.

8.23 Thinking Rural sets out the various stages of the rural proofing process and provides a template for the preparation of a Rural Issues Statement. A council should ensure that the needs and any potential for differential impacts on the rural community have been considered from the early stages of the local development plan preparation process.

## **9.0 Summary of Key Stages in the Local Development Plan System**

9.1 There are 4 key stages in the local development plan process which are summarised as follows:

### Stage 1: Initial Plan Preparation

- 9.2 This stage includes the preparation of the Timetable and Statement of Community Involvement (SCI) and the production of the preferred options paper (POP). The Timetable will set out a council's programme for the production of the Plan Strategy and Local Policies Plan including key milestones and timelines for plan production, covering all elements of the process through to adoption. The SCI will promote a more meaningful and effective approach to enable interested parties and the local community to engage early in the plan process and throughout its preparation.
- 9.3 At this early stage in the local development plan process, a council must prepare a POP and undertake the initial stages of sustainability appraisal. The POP will indicate a council's preferred options for growth and development in their area and will be the basis for consulting with the public and stakeholders. At this stage in the process, interested parties will have an opportunity to put forward views and influence the local development plan from the outset.

### Stage 2: Preparation and Adoption of Plan Strategy

- 9.4 This stage of the local development plan preparation process consists of the preparation and publication of the draft Plan Strategy which will be independently examined prior to adoption. A council will prepare a draft Plan Strategy based on both the information gathered and also the public and stakeholders responses to the preferred options paper. As part of this process, a council will also carry out a range of assessments including Sustainability Appraisal (SA) incorporating Strategic Environmental Assessment (SEA), Equality Impact Assessment (EQIA), Habitats Regulations Assessment (HRA) and Rural Proofing. A council will then publish their draft Plan Strategy, SA and other assessments for public consultation.
- 9.5 The Department will appoint the PAC or other independent examiners to hold the Independent Examination (IE). The IE will examine the Draft Plan Strategy against soundness tests which will relate to how the Plan Strategy

has been produced, and how it has taken account of central government plans, policy and guidance, and also its coherence, consistency and effectiveness. Following the IE, the examiner will issue a report of its findings to the Department which will in turn consider this and issue a binding report to a council. On this basis, a council must incorporate any changes outlined in the binding report and subsequently adopt the Plan Strategy.

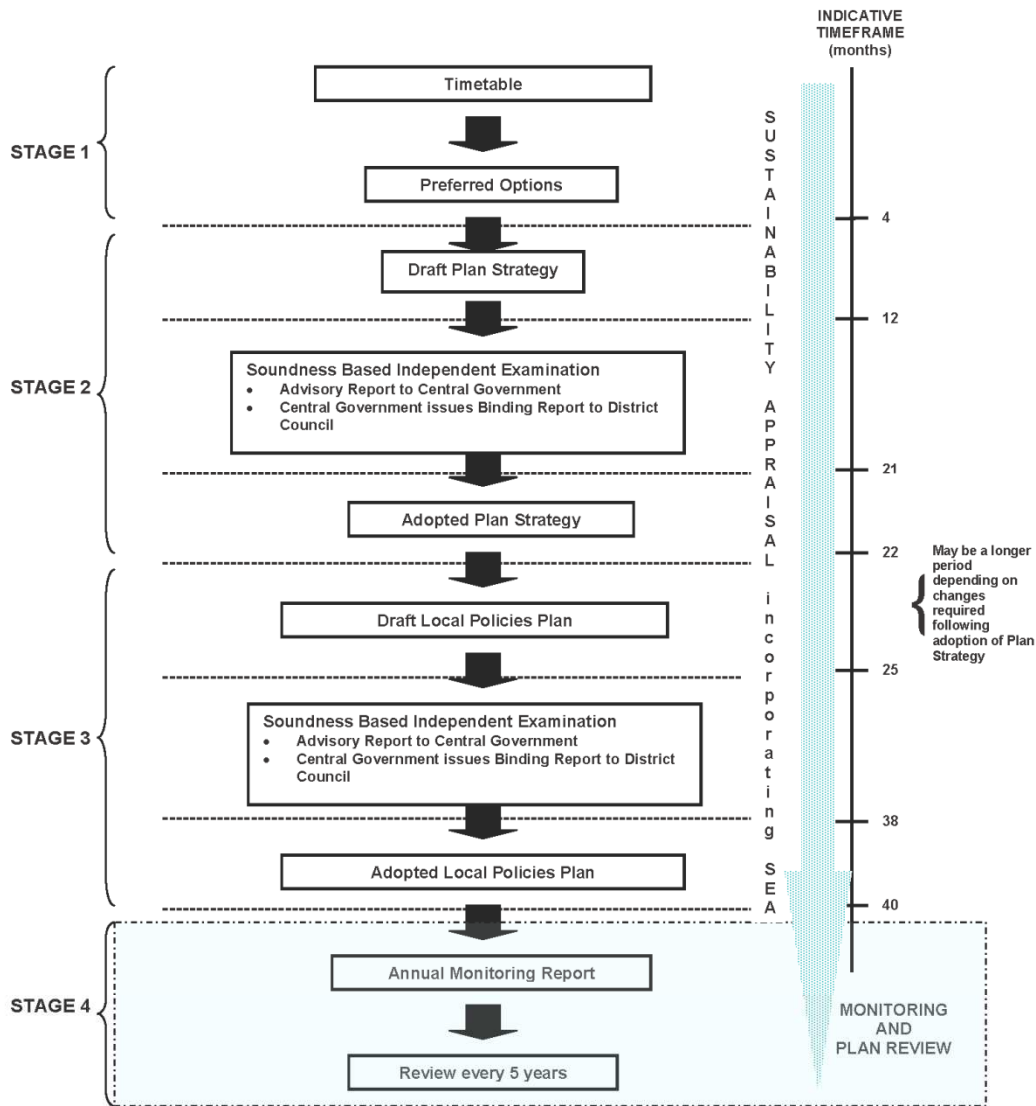
### Stage 3: Preparation and Adoption of Local Policies Plan

- 9.6 The Local Policies Plan must be consistent with the adopted Plan Strategy and incorporate detailed site specific proposals for the plan area. The Plan Strategy must be adopted before the draft Local Policies Plan is published for consultation, subjected to IE and adopted. The process for the preparation of the Local Policies Plan is largely similar to that of the Plan Strategy outlined above. The draft Local Policies Plan and associated assessments will also be published for public consultation. Following this, the process for IE and adoption of the Local Policies Plan will be similar to that of the Plan Strategy.

### Stage 4: Monitoring and Review

- 9.7 The final stage in the local development plan preparation process is monitoring and review which are essential in establishing how the objectives in the local development plan are being achieved and whether any changes are required. A council will be required to ensure regular monitoring of the implementation of their plans through key indicators such as: housing, employment land, and environmental protection. A council must also prepare an annual monitoring report which specifies the amount of housing and economic land, the number of housing completions and any other relevant information regarding the implementation of the local development plan. The annual monitoring report must also be submitted to the Department. A council will also be required to undertake regular reviews of their local development plan at least every 5 years from the date of adoption of the Local Policies Plan and submit its findings to the Department.

**Figure 3: Key Stages in the Local Development Plan Process**





# DOE

Department of  
the Environment  
[www.doeni.gov.uk](http://www.doeni.gov.uk)

## **Planning Guidance Team**

**Causeway Exchange  
1-7 Bedford Street  
Belfast  
BT2 7EG**

**Tel: 0300 200 7830  
Email: [planning@doeni.gov.uk](mailto:planning@doeni.gov.uk)**



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