

Draft Response

The Council welcomes the opportunity to present views regarding the existing PPS 11 and how it can be reviewed and enhanced. The Council understands that this is an initial consultation but considers the timescale to respond too short. The Council would request that any future consultation period is extended longer than five weeks to ensure effective engagement. In relation to the timing of the PPS11 review process, the Council considers that it should take account of the Review of the Waste Management Strategy for Northern Ireland, (which was originally scheduled for 2010).

An arc21 response to the PPS11 review has also been produced on behalf of the eleven Councils that it represents in the Eastern Region. The Waste Management Service of Belfast City Council has contributed to this response, which is attached in Appendix 2.

Site selection criteria

The Council recognises that a significant number, range and type of waste management facilities are needed in Northern Ireland to manage municipal, commercial and industrial waste. To achieve the targets, a reduction in the amount of waste produced will be required in conjunction with a significant increase in the waste management infrastructure. The Council considers the planning system as having a crucial role in ensuring that the hierarchy of waste infrastructure is delivered to allow waste management targets to be met.

There are three general categories of facilities ranging from the regional, local to the neighbourhood or community level which requires a differentiated approach to their land use implications. The review of PPS 11 should provide clarification to approaches and procedures for location of the hierarchy of waste management infrastructure. The Council would request further consideration is given to site selection and locational criteria to provide greater certainty for the provision of waste infrastructure.

During the draft BMAP process, the Council put forward the view that all local development plans must identify appropriate locations required for waste management facilities where possible allocating specific sites and provide a policy framework which facilitates the development of these facilities.

It is noted that Planning Policy Statement 11, Planning and Waste Management (2002) states in relation to Development Plans, as follows: (page 17) "4.1. During the process of development plan preparation, District Council waste management groups may wish to discuss with the Department the likely extent of future waste management facilities for the particular plan area. As a result, particular sites for the development of waste management facilities may be identified together with the need for appropriate waste management facilities associated with new development."

However draft BMAP made limited reference to waste management facilities and sites in Belfast:

"Belfast City Council own a large landfill site at Dargan Road, which also serves the surrounding Council Areas, which is expected to close in 2006. There are however a number of privately licensed waste disposal sites in the District which substitute the Council site." (page 320. Part 4 Vol 2).

The Council made representations during the draft BMAP process stating that these requirements for waste management sites during the Plan period are likely to include Energy from Waste plant, mechanical / biological treatment plant, anaerobic digestion plant, and in vessel composting provision. In addition, provision is required for transfer stations, recycling and localised composting.

Limited sites have been identified in draft BMAP, therefore it is important that consideration is given to further site selection and locational criteria in Planning Policy Statement 11. This would include the need to separate incompatible land uses.

The need for clarity in the context of planning policy in the area of waste management is essential given the urgent imperative to comply with the relevant European and National environmental legislation

Policy WM1

The Council would seek to ensure that Waste Management Facilities are appropriately located so that they do not cause a statutory nuisance and/or pose an unacceptable risk to human health. The Council supports the criteria in Policy WM1 “the proposal will not cause demonstrable harm to human health or result in an unacceptable adverse impact on the environment”.

However, the Council would like to note that Neighbourhood/ Community facilities such as civic amenity sites, recycling centres, recycling points and other types of facilities should be integral parts of existing and planned developments. Proposals for Neighbourhood/ Community facilities will be permitted within new housing schemes, at major developments used by the public, and in appropriate locations where the environment and amenity of local residents can be adequately protected

Best Practicable Environmental Option (BPEO)

The Council would request further clarification on the use of Best Practicable Environmental Option procedure and Strategic Environmental Assessment. There are waste facilities ranging from the regional to the neighbourhood or community level which require a differentiated approach to their land use implications. The Council considers that the BPEO procedure is not applicable to smaller scale facilities. The Council notes that other jurisdictions in the UK, the BPEO procedure has been replaced by the application of SEAs. The Council would prefer clarification of the process with the use of SEAs or in the case of the retention of the BEPO procedure clearer guidance is required on its scope and application.

Role of PPS

The Council requests clarification on the format and role of the revised PPS 11. Planning reform consultation proposed that planning policy statements would be brief strategic documents with operational issues being dealt with in the local development plan. The Council would support the development of locally appropriate guidance and policies for Belfast.

Environmental Protection Issues

Under the Public Health (Ireland) Act 1878 the Council investigates and, if deemed necessary, takes action over any statutory nuisance and/or accumulations that are injurious to human health. As a key consultee to the Planning Service, the Council also ensures that matters relating to noise, air quality and land contamination are given due consideration during the planning process. During this process additional supporting documentation (contaminated land risk assessments, noise assessments, air quality impact assessments, etc) may be requested. The Council are then in a position to recommend necessary conditions be attached to any planning permission granted in order to protect human health. The Council therefore has experience of addressing nuisance and human health issues relating to waste management developments both through the enforcement route and through the planning process.

The Council considers the safe, sustainable and appropriate management of waste and its supporting infrastructure is critically important. The over-riding consideration by the Council is that Waste Management Facilities are appropriately located so that they do not cause a statutory nuisance and/or pose an unacceptable risk to human health. The Council therefore requests that the Key Principles listed in Paragraph 1.16 remain and that greater emphasis is placed on statements such as that

contained with Paragraph 1.19 “Protecting the environment and human health are key principles in considering the development of waste management facilities or assessing other development in the vicinity of such facilities.”

Paragraph 1.19 suggests that the Department will take into account the most up-to-date research relating to waste management conducted by “responsible government agencies.” The Council would support this consideration of the ever changing and developing science surrounding this subject but would also recommend the inclusion of research from other established and responsible bodies such as Universities, associations and NGOs.

Paragraph 2.4. The Council understands that the Department must make its planning decisions on the basis that pollution control regimes are properly applied and enforced. However, the Department must be aware that the Council recommendations made during the planning process are based on the assumption that planning enforcement is properly enforced and applied. The non-compliance of conditions on granted development is regularly encountered by the Council and the ability to ensure that they are enforced is severely constrained.

Paragraph 2.6 and throughout the Statement reference is made to out-of-date legislation. The Council would recommend a review of PPS11 in light of current legislation and their enforcing bodies such as the Revised Waste Framework Directive and the Landfill Directive. Specific consideration of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 is required. In addition the Department may wish to take into account the implications of forthcoming legislation such as Part III of the Waste & Contaminated Land Order 1997 and the Soil Framework Directive.

Paragraph 2.12 encourages close co-operation between the Department and pollution control authorities. The Council is very supportive of this approach and regularly facilitates pre-application discussions with developers. This continual dialogue is always constructive and benefits all parties. Any future Statement must reflect and encourage this approach.

Point 4 of the Policy WM 1 must include vehicle emissions from the associated traffic movements themselves. Belfast has four Air Quality Management Areas declared on the grounds that two air pollutants exceed UK and EU limit values. These exceedances are predominantly as a result of traffic emissions from busy roads. Waste Management infrastructures have the potential to significantly increase traffic movements and pose a risk to the Council’s ability to meet its statutory obligations under the Environment (Northern Ireland) Order 2002.

Paragraph 6.3. Environmental Impact Assessments produced under the Planning (EIA) Regulations 1999 assist greatly in the Council ability to ensure that any proposed development does not adversely impact on human health. The requirement for such assessments is therefore a fundamental aspect of any such planning application. However, the Department needs to be aware that additional supporting information maybe required by the Council. For instance, where the proposal is to be located on brownfield land it may pose a risk to the future occupiers of that development and the surrounding environment. In these cases the Council would request that contaminated land risk assessments (in-line with Model Procedures for the Management of Land Contamination (CLR11)) are produced to demonstrate that the site is, or can be made, fit for use. An EIA details the significant environmental effects of the proposed development and the measures required to mitigate those effects. As an EIA only relates to the requirements under the Regulations it may not provide the necessary level of information for the Council to fully determine the condition of a site or its suitability for the proposed end-use. An EIA is, therefore, by itself, no guarantee that the potential for contamination at a brownfield site to affect the proposed development has been fully assessed.

Paragraphs 6.6 to 6.8. The Council would agree with the Department's view that advice and opinions of the Councils should be sought in regards to Health Considerations. However, limited resources and time constraints often hinder truly effective consultations. Consequently, the Council would always recommend timely and thorough consultations prior to any formal application being made and encourage the up-front loading of the necessary supporting information.

Paragraph 6.12. As with the above comments regarding EIAs, applicants and the Department need to be aware that Traffic Impact Assessments do not necessarily provide the Council with the level of information required to assess air quality impacts of proposed developments. For many waste infrastructure applications Air Quality Impact Assessments will be requested. In 2008, the Council produced a guidance document for developers so that they could conduct thorough and defensible assessments to support planning applications. If any mitigation measures are deemed to be necessary then these would be conditioned at approval stage. This guidance document is available at:

<http://www.belfastcity.gov.uk/airquality/AirQualityandLanduseplanning.pdf>

Paragraph 6.19 Noise – The Council agrees that the operation of waste management facilities is likely to produce noise from both inside and outside buildings and that intermittent and sustained operating noise will be of concern if not controlled especially if night-time working is carried out. It will be necessary in almost all cases to impose planning conditions relating to noise levels and also limiting the hours of operation.

Paragraph 6.21/6.22 Dust and odours – Dust and particulates from waste management facilities can be minimised through the use of well maintained and managed equipment and vehicles. At the planning stage conditions requiring operators to prepare a scheme of measures to suppress dust on site will be most necessary.

In relation to odours from a waste management site good practice is normally sufficient to ensure a satisfactory situation. Such good practice requirements are incorporated into the terms of waste licences and relate to such things as design, operation and permitted emissions. Waste management licences are no longer issued by District Councils, currently being issued by the NIEA. As a result District Councils can only influence the terms of a waste licence at the Planning stage which could be summed up as a broad brush approach, the Council would prefer to be involved in the details of drawing up the license.

Paragraph 6.26. In addition to abandoned mines resulting in land instability the Council would add that old landfills, inter-tidal land reclamation and land-raising activities can result in significant land stability issues that require consideration.

The Council is supportive of the principle set out in point 3 of part (c) of Policy WM 2. The re-development of brownfield land is important if a region is to develop without the undue pressure on greenfield sites. However, this re-development must be both appropriate and protective of human health and the wider environment. Demonstrating that this is the case can only be achieved through the production of suitably robust contaminated land risk assessments carried out in-line with the Environment Agency's Model Procedures for the Management of Land Contamination (CLR11).

Paragraph 7.8 Composting

Depending on the scale of the composting scheme there is the potential for the generation of odour, dust, noise and bioaerosols causing problems to nearby residential and commercial properties. Noise and dust can be controlled through operational measures, however odour is not. An odour management plan could be

required as part of their planning permission to ensure this issue is properly dealt with and controlled.

Paragraph 7.14. The Department may consider the lack of hazardous waste facilities in Northern Ireland for the management and treatment of significantly contaminated soils arising from brownfield sites. Soils arising from brownfield re-developments often fall into the Hazardous Waste category as defined by the EU Directive 91/689/EEC. The lack of hazardous waste facilities has a significant cost burden on brownfield redevelopment, acting as a potential barrier to the re-development of contaminated sites.

Paragraph 7.17. When considering proposals for incinerators the Council would request detailed air quality impact assessments be provided to demonstrate that the facility has no detrimental impact on air quality and prevent the Council from meeting its obligations under the Environment (Northern Ireland) Order 2002. This information would be best provided up front and after detailed discussion with the Council regarding its proposed methodology prior to any application being made.

Point 1 of part (a) of Policy WM 3. The Council would request that all proposed landfill or land raising facilities have no unacceptable adverse impact on human health that cannot be prevented or appropriately controlled by demonstrably suitable mitigation measures.

With regards to Policy WM 4 the Department may wish to take heed of the recent ruling by the English High Courts in R (Birch) v Barnsley Metropolitan Borough Council [2010] EWHC 416.

Paragraph 9.1. The Council would agree that past deposition of reportedly inert waste has been inappropriate. The Council has particular concerns regarding this type of waste disposal activity with regards to the associated and often acute risks to human health. The Council could only recommend approval of such activities if sufficient detailed supporting information was attached to any proposal and, most importantly, any subsequently recommended conditions were rigorously enforced.

The Council is supportive of Policy WM 5 and the Department needs to be aware when considering the location of future waste management facilities that adjoining future developments maybe restrained or curtailed. This factor further strengthens the need for measured and considered locating of future waste management facilities in the first instance. Applicants for developments adjoining such facilities will require additional supporting evidence to support the assertion that future residents will not be adversely impacted. This burden may not be immediately evident to future developers of adjoining sites.

Annex A. The Council regularly recommends detailed development-specific conditions be attached to planning permissions. Each application is considered on its own merits and circumstances. The development of targeted, appropriate and specific conditions is an integral aspect of ensuring that human health is afforded the necessary level of protection. Consequently, the Council is of the opinion that 'model conditions' cannot be written to encompass all circumstances and waste management practices. It is recommended that this approach is strongly avoided by the Department.

Annex C of PPS 11 requires fully updating.

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Annex A. The Council regularly recommends detailed development-specific conditions be attached to planning permissions. Each application is considered on its own merits and circumstances. The development of targeted, appropriate and specific conditions is an integral aspect of ensuring that human health is afforded the necessary level of protection. Consequently, the Council is of the opinion that 'model conditions' cannot be written to encompass all circumstances and waste management practices. It is recommended that this approach is strongly avoided by the Department.

Annex C of PPS 11 requires fully updating.

Appendix 2



DRAFT CORPORATE RESPONSE TO THE REVIEW OF PLANNING POLICY STATEMENT (PPS) 11 – PLANNING AND WASTE MANAGEMENT

Report

The Department is undertaking a review of Planning Policy Statement (PPS) 11 - Planning and Waste Management and have invited comments on existing policies, their operation and how they could be improved.

The arc21 response is as follows.

Executive Summary

We welcome the opportunity to comment on this preliminary consultation on the review of PPS11.

We consider that there is an opportunity to examine the Policy Statement in a more holistic way as we feel that the current PPS focuses too narrowly on issues relating to sites and facilities only.

In this context we would consider it appropriate that the scoping of the Review extends to the following areas:

- The Strategic context and particularly the interaction between EU Waste Law, the Northern Ireland Waste Management Strategy, the Regional Development Strategy and the various Area Plans.
- The relationship / interaction / potential for further integration of land-use planning and waste management planning in terms of infrastructural development for waste.
- The timing and sequencing of the outcome to the Planning Policy Statement in relation to the Review of the Waste Management Strategy for Northern Ireland and the sub-regional Waste Management Plans.
- The impact of the Planning Reform Agenda, and transfer of planning function under RPA.
- The relationship between planning and permitting regimes.
- The concept of Best Practicable Environmental Option in the context of the Planning Policy Statement.
- The need to ensure that current policies around site selection do not change.
- The respective roles of district councils and sub-regional waste management groups particularly in relation to the planning / statutory consultation process.
- The potential role of planning gain and / or community infrastructure levy in the context of waste management planning applications.

- The issue of pre-application dialogue / community engagement in the planning process in relation to waste management facilities.
- The stated planning principle of a “presumption in favour” in the context of the wording of the policies.
- The principles of “Need” and “Essential Interim Landfill Capacity” in the Northern Ireland waste management context.
- The interaction with the other Planning Policy Statements, Plans and guidance e.g.:
 - Existing Area and draft Area Plans.
 - PPS3 and PPS7 particularly regarding vehicular access to developments for the purposes of waste management.
 - The relevance to the Renewable Energy Agenda, particularly PPS18 and the Strategic Energy Framework.
 - The significance of waste management in the context of economic development as articulated in PPS4 and Draft PPS24.
 - The relationship with the General Development Order in the context of permitted waste management development.
 - The provisions for waste handling and storage in developments as articulated in the recently issued Local Government Waste Storage Guide.
- Notwithstanding all of the above, we consider that it is critical that the timing, methodology and outcome of the review do not undermine the approaches taken by the Waste Management Groups and their partners in the context of land assembly, procurement and statutory consents, in the interests of maintaining the momentum to deliver mission-critical waste infrastructure. Rather, the process should be designed to reinforce these programmes.

Discussion

These points are expanded below.

1. Strategic Context

We consider that there needs to be a reaffirmation of the strategic context for the Policy Statement with particular reference to the legal imperatives cascading from Europe through the Revised Waste Framework Directive and the Landfill Directive in terms of the need for the provision of waste management plans and an integrated network of critical infrastructure as articulated through the Northern Ireland Waste Management Strategy; and the interaction with regional and spatial planning through the Regional Development Strategy and the various Area Plans.

The need for clarity in the context of planning policy in the area of waste management has never been more acute given the urgent imperative to comply with the relevant European and National environmental legislation.

2. Land-Use and Waste Management Planning

We consider that there is an opportunity to re-visit the debate around the need or otherwise for the integration of land-use and waste management planning in Northern Ireland as we consider that the separation in policy terms has arguably led to a lack of clarity in the application of spatial planning for waste facilities. It should be noted that the Northern Ireland region takes a somewhat different approach to that in the rest of the UK where spatial plans do address waste management issues in an integrated fashion.

3. Timing

As noted in the Minister's recent statement there is a commitment in the 2006 Waste Management Strategy to review PPS11 before the next review of Waste Management Plans in 2011. In addition there is a scheduled review of the Waste Management Strategy itself in 2011. It was hoped that the appropriate sequence would be to revise the PPS before the Strategy and subsequent Waste Management Plan reviews. It is therefore concerning to note that the current consultation is purely primarily scoping and that it is unlikely that the outcome of the review process will be completed before the end of 2011.

4. Planning Reform and Transfer of Planning Functions

The Minister has made some recent statements about proposals regarding the implementation of Planning Reform and the Transfer of Planning Functions. It is considered appropriate that the review of the PPS takes cognisance of these proposals in a strategic context.

It is for example considered appropriate that the PPS follows the paradigm recommended in Planning Reform for a more strategic focus to PPS's with operational issues being deferred to Area Plans.

It should also be noted that the Planning Reform Agenda aspires to a more expeditious PPS process. Accordingly, we would express our concern at the likely time horizon for the current process.

We would also recommend that consideration should be given to the relevance of some of the specific waste policies currently contained in the PPS as well as the context presented therein (subject to our comments on WM2 elsewhere). In addition, the commentary of legislative provisions will require updating e.g. rWFD; SEA Directive; Habitats Directive; Environmental Liability Directive.

5. Planning and Permitting

One of the main thrusts outlined in section 2 of the current PPS, addressing the relationship between planning and pollution control regimes, in our view remains appropriate. For example, we consider that there may be an opportunity for greater connectivity between the Planning Service and NIEA.

We feel that consideration should be given to improving the content of this section to enhance understanding and application, through the inclusion of some practical examples.

6. Best Practicable Environmental Option

In our opinion one of the main technical focuses in the context of the review should be how to address the principle of Best Practicable Environmental Option. There has been much debate and some confusion about the application of the principle of BPEO in planning terms in Northern Ireland. Government BPEO guidance focuses on generic technical solutions. This guidance and approach has been used and developed in the formulation of the Waste Management Plans.

Some statutory agencies, however, appear to seek to interpret BPEO at a site specific level.

Accordingly, we consider it is imperative that the new PPS gives clarity and robustness in this context and is supported by a policy position from the Department.

We consider that otherwise there is a danger of inconsistency of interpretation of BPEO and its application particularly in the context of individual planning submissions.

In our view it is important that the historic strategic application of BPEO by the Waste Management Groups is not undermined.

7. Site Selection Criteria

Waste Management Groups (and others) have to date used current location criteria (WM2) to assess sites. It is important that the parameters for this do not change in view of the current Waste Management Groups' procurement and land assembly process.

8. Respective Roles of District Councils and Sub-Regional Waste Management Groups

District councils are the competent authorities for waste management functions while sub-regional waste management groups, as voluntary coalitions, have adopted the role of waste planning and delivery vehicles and have also taken on the role of procurement of relevant services and infrastructure.

We consider that there is a need to define the respective roles of district councils and sub-regional waste management groups in the context of the planning and statutory consultation process.

The Local Government (Miscellaneous Provisions) Act (Northern Ireland) 2010 clarified the statutory status of the sub-regional Waste Management Groups and their capacities to enter into long-term contracts (with associated commitments) to facilitate the provision of waste related infrastructure.

District councils are statutory consultees but there has in the past been a protocol for also consulting with sub-regional groups in parallel in respect to relevant applications.

9. Planning Gain / Developer Contributions

The issues of planning gain / community infrastructure levies are discussed in detail in the Planning Reform document. They are also discussed to some extent in PPS18.

We consider it appropriate in the context of waste management to further expand on this debate as it would relate to waste management, in terms of scoping the current review.

10. Pre-application Dialogue / Community Engagement

The pre-application discussion process has already been implemented. We are also cognisant of the focus in the Planning Reform document on community engagement, the relationship with the Public Participation Directive and the underlying Aarhus Convention. We would consider that the scoping exercise should include consideration of these issues as they relate to waste management facilities.

11. Presumption in Favour

We are aware of the principle of the “Presumption in Favour” of the planning applications as a tenet of planning policy in Northern Ireland. In the context of the current PPS we feel that in places the wording of the current policies could lead the reader to make a contrary inference.

We would also consider that some of the terminology around impacts appears to be absolute (i.e. do not always express extent) in terms of mitigation measures. We therefore feel that there is a need to review the language and nomenclature utilised in the current document.

12. Need and Essential Interim Capacity

The demonstration of Need is again a principle espoused in planning policy in Northern Ireland, not only for waste management but for many other significant applications. If a proposal is connected to public procurement this can be an issue in terms of potentially having several applications competing for one service. Accordingly, we would recommend that this is included in the scope of the consultation.

We note the policy direction in GB towards a National Policy Statement setting our strategic need for mission-critical waste infrastructure and would support a similar approach in Northern Ireland.

Similarly the principle of Essential Interim Capacity for landfill would appear to us to have less relevance than it did when included in the current PPS. Indeed this seems to us to be inappropriate in a market-driven economy and again we would recommend this is included in the scope.

13. Interaction with Other Policy Statements / Guidance / Area Plans

a. Area Plans

We have concerns that current delays in completing draft Area Plans (which remain material considerations) could create delays in determining regionally significant waste applications due, amongst other things, to the issue of prematurity. Accordingly, we would recommend that this issue is included in the scope of this consultation.

13.2 PPS3 and PPS11

We feel that there is a potential tension between the Quality Initiative and the need for access for service vehicles particularly in residential applications and specifically in the context of waste management collection and servicing. We consider it would be appropriate to include this in the scoping.

13.3 Renewable Energy

We consider that there is an opportunity to optimise waste as a resource in terms of integration of energy and waste management policies in Northern Ireland. We feel this is pertinent in the context of, inter alia, the Sustainable Development Strategy for Northern Ireland and the Sustainable Energy Framework. Accordingly, we recommend that the issue of integration of Land-Use, Waste Management and Energy Policy in the planning context is addressed in the consultation with specific reference to PPS18 and the Strategic Energy Framework.

13.4 Relevance to Economic Development

The current debate relating to economic development as it relates to planning is very pertinent in the context of waste management. The Northern Ireland Waste Management Strategy alludes to the potential for economic activity and job creation through the development of infrastructure and services in Northern Ireland and this has been further reinforced by the recent Green New Deal Initiative.

Economic development is also a headline objective in the Northern Ireland Programme for Government and other cross cutting policies and is obviously very much in the mind of the current Executive. Some of the planning issues are articulated in PPS3 and the Draft PPS24. Accordingly, we consider that in the current review, consideration should be given to including in the scope of the current process in the context of waste management.

13.5 General Development Order

We would consider it appropriate to consider the relevance of the General Development Order, particularly permitted development activities as they relate to waste management e.g. Local Government operations including mini recycling centres and bring banks. We would recommend that this is included in the scope of the consultation.

13.6 Waste Handling and Storage

The Minister recently announced the launch of the Waste Storage Guide which was formulated by Local Government. We feel there is an opportunity for this to be mainstreamed in planning terms through the auspices of PPS review. We would therefore recommend its inclusion in the scoping.

14. **Maintaining Stability**

As stated above, while we welcome the opportunity to comment on this review, we consider that it is critical that nothing in the process serves to undermine the progress being made by the Waste Management Groups to deliver mission-critical waste infrastructure for the treatment of residual waste. Conversely, we feel that the review itself potentially represents an opportunity to reinforce the work of the Groups to date, in the context of land assembly, procurement and the statutory consent process.

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23 December 2010