<table>
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<th>Report to:</th>
<th>Shadow Planning Committee</th>
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<tr>
<td>Subject:</td>
<td>Planning Reform &amp; Transfer to Local Government: Proposals for Subordinate Legislation The Planning Act (NI) 2011</td>
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<tr>
<td>Date:</td>
<td>21st August 2014</td>
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<tr>
<td>Reporting Officer:</td>
<td>John McGrillen, Director of Development (Ext. 3509)</td>
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<tr>
<td>Contact Officers:</td>
<td>K. Sutherland Ext 3578</td>
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## Relevant Background Information

1.1 The Department of the Environment (DOE) published on the 28th May, Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation The Planning Act (NI) 2011 Phase 1 Public Consultation for 12 weeks (ending on 20th August 2014).

1.2 The consultation document contains a range of proposals for subordinate legislation to exercise powers already established in the Planning Act (Northern Ireland) 2011. This subordinate legislation is required to bring the 2011 Act fully into operation alongside the new two-tier planning system.

1.3 This is a key policy document for the future operation of the Council’s planning functions from April 2015 and is the first phase of consultation. The second phase will take place in Autumn 2014.

1.4 The proposed draft response to the consultation on Planning Reform and Transfer to Local Government is attached in Appendix 1 for consideration. Given the DOE timescale for the public consultation, the draft response has been submitted on the basis that it is subject to consideration by the Shadow Planning Committee and Shadow Council on the 9th September. The Council has stated that the response submitted is subject to change following consideration by elected members.

## Key Issues

2.1 The key Phase 1 proposals relate to the following elements of the planning process:
- Local Development Plans
- Statements of community involvement
- The new three-level hierarchy of development applications i.e. local, major and regionally significant
• The new and revised procedures for managing applications through the system
• Listed buildings
• The management of applications relating to land of interested parties e.g. Council-owned land

2.2 Local Development Plans
The Council will have to prepare the new form of local development plan consisting of the Plan Strategy (PS) and Local Plan Policies (LPP), together becoming the Development Plan Documents.

2.3 The transitional arrangements state that policies contained in extant development plans prepared or adopted under Part 3 of the 1991 Order are retained until such time as they are replaced by a new policy contained in an adopted PS and an adopted LPP.

2.4 The concern for the Council is that Draft BMAP has not been adopted and if it is not adopted prior to the transfer of functions we may have to rely on existing policy or transitional arrangements.

2.5 Statement Of Community Involvement
The Council is required to prepare a Statement of Community Involvement setting out its policy for actively involving the community from the outset in the making of LDPs and in the carrying out of its development management functions. The approach and timing would have to be considered alongside the engagement required for the development of the Community Plan.

2.6 Development Management
The Planning (Development Management) Regulations (NI) 2015 will establish a hierarchy of development based on a 3-tier classification of developments consisting of regionally significant, major and local. Councils will be responsible for determining major and local development applications, whilst DOE will retain responsibility for regionally significant opportunities. Major developments will be given priority and be subject to pre-application consultation.

2.7 The Council will be required to notify the Department of planning applications for development in which the Council is: the applicant or the landowner; has a financial interest; or in circumstances’ where:
• The proposal is significantly contrary to the LDP;
• The Council intends to grant permission contrary to advice from a statutory consultee;
• The proposal involves the loss of outdoors sports facilities; or
• The proposals may have an adverse impact on a World Heritage Site

2.8 The consultation response requests views via 38 questions and the draft response is outlined in Appendix 1 for consideration along with some general comments.
3 Resource Implications

3.1 The resource implications cannot be quantified at this stage. The new legislation will have both financial and staff resource implications arising from the changed administrative and legislative processes required under the new Act. The ongoing work in relation to the transfer under LGR will seek to clarify the resource requirements for comparison with the transferring budget provided by DOE.

4 Equality and Good Relations Considerations

4.1 There are no specific Equality and Good Relations Considerations attached to this report.

5.0 Call In

5.1 This decision is subject to Call In.

6 Recommendations

6.1 Committee is requested:
- to consider the proposed Draft response to the consultation appended and to agree a final response or any amendments to be forwarded to the Department.

6 Key to Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>DOE</td>
<td>Department of the Environment</td>
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<tr>
<td>PS</td>
<td>Plan Strategy</td>
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<td>LPP</td>
<td>Local Plan Policies</td>
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<td>LDP</td>
<td>Local Development Plan</td>
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<td>LGR</td>
<td>Local Government Reform</td>
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<td>BMAP</td>
<td>Belfast Metropolitan Area Plan</td>
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<td>PSNI</td>
<td>Police Service of Northern Ireland</td>
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<td>NIFRS</td>
<td>Northern Ireland Fire and Rescue Service</td>
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<td>PAC</td>
<td>Planning Appeals Commission</td>
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<td>SPPS</td>
<td>Strategic Planning Policy Statement</td>
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<td>POP</td>
<td>Preferred Options Paper</td>
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<td>SCI</td>
<td>Statement of Community Involvement</td>
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<td>DPD</td>
<td>Development Plan Document</td>
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<tr>
<td>GIS</td>
<td>Geographical Information System</td>
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<td>RDS</td>
<td>Regional Development Strategy</td>
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<td>HMO</td>
<td>House of Multiple Occupancy</td>
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<td>PPS</td>
<td>Planning Policy Statement</td>
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<tr>
<td>DETI</td>
<td>Department of Enterprise, Trade and Investment</td>
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<td>DARD</td>
<td>Department of Agriculture and Rural Development</td>
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<td>NIEA</td>
<td>Northern Ireland Environment Agency</td>
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<td>HSE (NI)</td>
<td>Health and Safety Executive (Northern Ireland)</td>
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<td>PAD</td>
<td>Pre Application Discussion</td>
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<td>SAC</td>
<td>Special Areas of Conservation</td>
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<td>SPA</td>
<td>Special Protection Areas</td>
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<td>GDO</td>
<td>General Development Order</td>
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<td>GDPO</td>
<td>General Permitted Development Order</td>
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<td>PD</td>
<td>Permitted Development</td>
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<td>DAS</td>
<td>Design and Access Statement</td>
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Appendix 1

Proposed Response - Proposals for Subordinate Legislation Phase 1 Public Consultation Paper

Strategic Comments

The Consultation Document notes (paragraph 1.4) that the proposals deals with those issues which ‘are necessary to ensure that the new district councils inherit a functioning planning system immediately following the transfer of planning functions from central to local government’.

The Council fully supports the aim of having a ‘fit for purpose planning system effective from the outset of the new councils operating as the local planning authorities’ (paragraph 1.4 of Consultation Document).

Within the above context, the Council would request:

I. that the Department provide the topic list of Departmental guidance being prepared and the range of issues which will form the basis for the second phase of consultation in Autumn 2014 (paragraph 1.9 of the Consultation Document).

II. close liaison between the Council and the Department, prior to the transfer of planning functions, on the preparation of the wide range of guidance being prepared by the Department before it is in final form. The Council would highlight, in particular, the proposed Departmental ‘detailed guidance on the LDP process’ (paragraph 3.7 of the Consultation Document);

III. early engagement with the Department on the ‘soundness tests’, which it is noted are to be ‘elaborated upon in the Department’s guidance’ (paragraph 3.79 of the Consultation Document). The Council recognises that the ‘soundness tests’ are of critical importance in the LDP process and that they are intended, inter alia, to ensure a speedier delivery of LDPs;

IV. that the Department’s Statement of Community Involvement is made available to the Council on or shortly after the transfer of planning functions.

The Council recognises the need for the Department and the Council to engage constructively on a range of policy, procedural and operational matters to ensure a fit for purpose planning system effective from the transfer of functions.

Document Number:
Planning Reform & Transfer to Local Government:
Proposals for Subordinate Legislation
Phase 1 Public Consultation Paper
Response Form

Once you have completed this form please return to:
Planning Reform & Transfer to Local Government Consultation – Phase 1
Planning Policy Division
Department of the Environment
Level 6 Causeway Exchange
1-7 Bedford Street
Town Parks
Belfast
BT2 7EG

By e-mail to: PPDConsultations@doeni.gov.uk

or by text phone to 02890540642

All responses should be submitted to the Department no later than 20th August 2014
RESPONDENT INFORMATION

Please note that returning this form will help in managing your response as part of this consultation.

In keeping with our policy on openness, the Department will make responses to this consultation paper publically available. When publishing responses received on behalf of organisations the Department will also publish the organisation’s name and address. When publishing responses received on behalf of individuals the Department will not publish details of the individual's name and address.

1. Name/Organisation

**Belfast City Council**

Title (Please tick as appropriate)

Mr [ ]  Ms [ ]  Mrs [ ]  Miss [ ]  Dr [ ]  Other [ ]

Surname

Forename

2. Postal Address

**The Cecil Ward Building, 4 Linenhall Street, Belfast**

Postcode:

BT2 8BPP

Phone:

Email:
3. Are you responding:
As an individual ☐
On behalf of a group/organisation ☐

4. Which of the following best describes the capacity in which you are responding:
Developer ☐
Agent/Architect ☐
Business ☐
Member of Public ☐
Community Group/Organisation ☐
Environment Group ☐
Council/Councillor ☑
MLA, MP, MEP ☐
Other ☐ Please state: ______________________________________

5. Acknowledgement
Individual responses will not be acknowledged unless specifically requested.
Questions are numbered as they appear in the consultation paper

Question 1: Do you agree that local advertisement should mean that a council must place an advertisement for two consecutive weeks in at least one local newspaper circulating in its district?

Yes □ No □

The Council would highlight that in Belfast, inclusion in one local newspaper would not ensure adequate coverage throughout the Council area. Currently, DOE Planning use a variety of titles in the Belfast area, including regional and local titles (Belfast Telegraph, Irish News, Newsletter, Andersonstown News (totally circa £8,000 per week), South Belfast News (free placement) and North Belfast News (free placement)) and so transferring budgets would need to reflect this ongoing practise for the new Belfast council area upon point of transfer.

Section 13.11 (page 71) states:

The subordinate legislation will also maintain the current requirement to publish notice of applications on a website maintained for that purpose. It is intended that councils will be able to use the existing Northern Ireland Planning Portal beyond the point of transfer and this should support continuity of the current approach to electronic publishing.

The Council would seek clarification on two main issues:

(i) Currently, DOE planning advertising information is automatically generated from a list of new applications. If advertising becomes a responsibility of local councils from the point of transfer, consideration will need to be given to how this information will be shared between DOE Planning and the relevant council clusters in a timely way on a weekly basis.

(ii) Councils will be responsible for developing planning pages on their corporate websites but the DOE planning portal will continue to house the notice of applications – consideration will be needed on the ease of use for the customer when marrying these two functions together on council sites. More information is needed from DOE Planning on what will sit of the planning portal post 1 April 2015.

In relation to advertising placement rates, exploration is needed regarding current advertising rates and how these will be impacted when split into 11 cluster areas. There may be an argument for one council to take the lead for designing and placing all advertising on a regional basis – this may help to conserve a more competitive placement rate with newspapers and ease the data transfer that will be necessary between the planning portal and local councils (as mentioned above).

In relation to public access to plans and information, the Council would highlight that there is a strong customer service element that needs to be considered in relation to this aspect of the proposals. As these will attract interest from developers, members of the public and elected members, appropriate facilities will need to be in place.
photocopying facilities, refreshments such as tea and coffee facilities as well as appropriate staff on hand to answer queries.

**Question 2:** Do you agree with the list of statutory consultees for LDP preparation and are there any bodies/persons we have missed?

Yes [ ]  No [✓]

The Council would query the requirement for consultation with all NI departments as some NI Department may have little interest in the LDP or the resources to review and respond within an appropriate timescale. This may result in a delay in receiving responses and subsequent delays in the overall timetable.

In relation to the requirements in Regulation 14(2) of the Planning (LDP) regulations to prepare a plan strategy in accordance with the objectives of preventing major accidents and limiting the consequences of such accidents consideration should be given to the addition of the PSNI & NIFRS as statutory consultees.

Where the responses from the Departments are required to inform the preparation of the plan and provide an important contribution to the overall soundness there should be a responsibility on the consultees to provide up to date information in a timely manner. The role of the Departments in any Inquiry processes should be considered.

The Council would request clarity on the role of the following in relation to their status or otherwise as ‘Statutory Consultees’: Northern Ireland Water, River Agency, Health Boards & Trusts, Education & Library Boards, Northern Ireland Tourist Board, Translink and Invest Northern Ireland.

**Question 3:** Do you agree with the preparation, content, agreement and publicity arrangements for the development plan timetable? If not, can you identify amendments which would offer greater benefits?

Yes [ ]  No [✓]

The Council would highlight that the consultation document does not set out the mechanism to tie the statutory consultees to programme delivery and the requirement to provide a substantive response. It would appear that the only possible consequence is that failure to respond will become apparent in the annual monitoring report to the Department. The Council would request that a provision is included within the Planning General Development Procedure) Order that should a statutory consultee not respond within the prescribed timescale it will be presumed they have no objection. This approach would mean there are direct consequences for consultees if they do not respond or fail to provide a substantive response within the agreed timescale.

The Council would seek clarification on the requirement outlined in Para 3.23 in the case of a revision which requires the same procedure to be followed for the preparation and agreement of a full timetable. The requirement to go through the
whole process in the event of an amendment may be unnecessary and should depend on what stage the plan has reached.

The Council should be party to all discussions with the PAC in relation to the scheduling and potential timescales for its LDP.

In para 3.24 the requirement for the Department is to notify the Council of any likely delay – this should be at an early stage and if appropriate highlight any additional information that may be required.

The Council considers that the agreement of the timetable by the Department should have regard to the range of factors, a number of which are outside the control of the Council, which can have a significant influence on a Local Development Plan (LDP) timetable. The Council notes that the Consultation Draft ‘A Strategic Planning Policy Statement for Northern Ireland’ (Diagram 1, page 24 of the Draft SPPS), published by the Department in February 2014, noted an ambitious ‘Indicative Timeframe’ of 40 months from programme management to an adopted Local Policies Plan. In light of the forthcoming plan-led system and the need for a suite of up-to-date LDPs, the Council would request that the Departmental guidance (paragraph 3.20 of Consultation Document) is prepared as a matter of urgency in association with Local Authorities. The Council suggests that the guidance should be user-friendly and well-illustrated so that the process and key stages are clearly understood by all stakeholders and, critically, so that the Council and the Department can properly undertake their Stage 1 Programme Management functions.

**Question 4:** Do you agree with this approach in relation to the involvement of statutory consultees in the preparation of a POP?

Yes ☐ No ☑

The Council would highlight that the Planning (LDP) Regulations do not set out the process for engagement with statutory consultees before a Council publishes its Preferred Options Paper (POP). It is difficult to see the benefit of any extra burden of a statutory consultation requirement at such an early stage of the process given the extensive consultation that will take place on the Preferred Options Paper once it is published, together with the consultation on the Statement of Community Involvement, the Planning Strategy and the Local Policies Plan.

Whilst it is important to consult early, the Department should be cautious of the potential for consultation fatigue especially where there may be multiple requests from a number of councils. The Council would in the development of the SCI and the preferred options wish to engage with the key stakeholders and develop the relationships necessary to take the plan through the process. The emphasis should be on the responsibility for statutory consultees to support the process and provide the required information at an early stage.

The Council would seek clarification on a point outlined in Para 3.27 which refers to consultation at an early stage on preferred options for “growth and development”. The Council would recommend the need to include ‘protection against development’ which is viewed as an important consideration in the consultation stage for the POP.
Question 5: Do you think that the proposed publicity and consultation arrangements for the POP are appropriate / adequate?

Yes ✓ No □

The Council considers the POP as a significant part in the preparation of the LDP and not a separate exercise which is implied in Para 3.32.

The preparation/consultation indicated as being required for the POP stage combined with the consultation requirements (including pre consultation with Departments) means the illustrative timetable for Stage 1 (4 months) is impracticable.

Question 6: Do you agree with the form, content, publicity and consultation arrangements for the DPDs?

Yes ✓ No □

The Council would seek clarification or further guidelines on arrangements if an amendment is considered necessary to the existing plan during the transitional period.

The Council would emphasise the importance of considering waste issues in the DPD’s.

The Council would welcome a focus on the use of mapping and GIS systems in the development and maintenance of the DPD. The adoption by consultee Departments could contribute to an integrated approach from the outset and support the more effective exchange of spatial information.

The Council considers that the Department should confirm and regularly update the policy and guidance relevant to Local Development Plans. The Council considers that this will remove uncertainty, ensure a consistent approach and, importantly, help to avoid serious procedural issues under the soundness test for LDPs. The Council would request clarification as to whether or not the preparation of a Local Development Plan (apart from basic information gathering) can commence in parallel with and before a Community Plan is completed.

Question 7: Do you agree with the arrangements for making representations and counter representations?

Yes ✓ No □

The Council would request clarification in relation to late representations. It appears to be implicit that the Council can take late objections into account as Regulation 17(2) and 19(2) state that the Council does not need to publish late representations. However, Regulations 16 & 18 state that representations must be made within 8
weeks. The Regulations should provide clarity on the issue of late objections as it has troubled the courts in England in the context of both entertainment licensing and planning.

**Question 8:** Do you agree with the publicity requirements and other arrangements for independent examination?

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The Council considers it as duplication to submit the timetable or SCI to the Department again as part of the process for independent examination.

The Council would request clarification on the arrangement that it is the Council’s responsibility to notify any person who has made representations on the DPD’s. The rationale for the notification requirement upon Councils once a plan goes to independent examination is difficult to understand. Given the potential legal challenges that can arise on procedural grounds it would seem far more prudent for the decision maker, i.e., the independent examiner, to be satisfied the part of the process for which it is responsible is procedurally correct and lawful.

As noted above it is not clear how the Department will ensure there is sufficient capacity within the PAC (or other independent examiners) to conduct what could potentially be 11 LDPs concurrently should all of the new local planning authorities commence plans according to the timetable set out in the legislation.

The Council would highlight the importance of the independent examination both in the Local Development Plan process and, at a wider level, for the integrity and transparency of planning. The Council notes that other examiners, rather than the Planning Appeals Commission (PAC) can be appointed and would highlight the need for consistency between the PAC and other examiners in relation to the independent examination process.

**Question 9:** Do you agree with the proposed soundness tests which will be elaborated upon in guidance? Are there other tests that you feel should be applied to the examination of the DPD?

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In general, the Council finds it difficult to comment on the soundness test until the proposed guidance is available. It should however be recognised that it represents a significant culture change for all stakeholders that will require support and effective engagement by all parties to deliver a successful programme. The following specific comments should be noted:

**Procedural test**
P1 requests consideration if the DPD has been prepared in accordance with the timetable and SCI. The Council considers that the timetable is indicative, being dependent on issues outside of our direct control, and should not be considered as
part of the procedural test. In relation to the SCI the Council considers this as a matter for the courts taking account of any guidance produced by the Department.

P2 requests consideration if the Council has prepared its POP and taken into account any representations made. The Council considers the relevant information for the inquiry is that the Council has prepared the plan in accordance with the legislation and shown that it has taken account of the representations made. The Council does not consider it appropriate for the inquiry to investigate the POP.

These issues necessitate further engagement and the development of guidance to support the new process and contribute to successful reviews of the procedural aspects of the new processes.

**Consistency Test**

C4 states that the plan should have regard to other relevant plans, polices and strategies relating to the Council’s district or to any adjoining councils district. The Council would request clarification on how priorities are set between adjoining councils in the event there is no agreement and the matter is not addressed in Regional Guidance through the RDS.

The Council considers C5 – did the council comply with the regulations on the form and content of its DPD and procedure for preparing the DPD as a procedural test rather than consistency test.

The Council is concerned that the provisions in relation to consistency only refer to taking into account other planning policy documents and do not impose a requirement to consider whether Development Plan Documents are consistent with other planning policy documents. It is essential that consistency with other planning policy documents is a paramount consideration in any soundness test.

The Department should produce Guidance in partnership with local government to establish a list of strategies / plans to be considered when developing the DPD. This could provide clarity around the relationship with the Community Plan and other strategies that have spatial implications.

**Coherence and effectiveness tests**

CE3 states that there are clear mechanisms for implementation and monitoring. The Council considers that this is not a relevant issue for the inquiry and that monitoring is a legal requirement and does not need to be considered.

The Council notes that the ‘soundness’ test is a critical element of the reformed planning system and is aware of the failure of a large number of draft plans in England which have been withdrawn on the basis of soundness concerns. The Council considers that the proposed guidance needs to be clear and capable of consistent interpretation so that the serious consequences of a draft plan failing the soundness test are avoided. In this context, the Council would note the potential, under CE 1 as drafted, for a draft plan to readily fail the cross boundary test.

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**Question 10:** Do you agree with the withdrawal arrangements for a DPD?

Yes [✓]  No [ ]

Document Number:
The Council notes the power of the Department to direct a Council to withdraw a DPD before it causes an independent examination if it considers that the DPD is not sound. The Council considers that this power should only be used in exceptional circumstances to ensure, under the two-tier planning system, that the role of the Council and the planning process is not undermined. The Council would highlight again the need for the proposed guidance on the soundness test to be clear and capable of consistent interpretation by Councils, the Department and the independent examiner.

**Question 11:** Do you agree with the adoption arrangements for a DPD?

Yes [ ] No [✓]

The Council should have the formal opportunity to engage with the Department in respect of any modifications proposed by the PAC report prior to any recommendations or adoption.

Regulation 24 of the Planning (LDP) Regulations only requires the independent examiner to send recommendations and reasons to the Department. The Council feels it is important that those should be sent to the relevant Council at the same time as this will afford an informal mechanism for consultation and agreement in relation to any such recommendations.

Failure to involve the Council at this point will lead to the complete absence of any consultation or dialogue at a crucial stage of the process, when the majority of the anticipated resource and effort will have already been expended by the Council, the Department, the independent examiner and the consultees.

**Question 12:** Do you agree with the arrangements for the monitoring, review and revision (if required) of the LDP?

Yes [ ] No [ ]

The Council recognises the need to regularly review and monitor local development plans to ensure up to date coverage. However, the Council would be concerned in relation to the significant resources that will be required by Councils and wider agencies involved in the process. Commitment must be given to ensure adequate resources are available to meet this regulation.

In para 3.90 a list of topics that should feature in the monitoring report are identified. The emphasis and detail is on housing with the limited reference to economic development and a vague requirement in relation to ‘other issues which appear to the Council to be relevant’. Brownfield land, open space, industrial land supply and other thematic policy areas should also be monitored and linked to the Regional Strategy.

In addition there should be clearer guidance in respect of Sustainability Appraisal and the Strategic Environmental Assessment aspects referred to in para 3.92.
The circumstances under which a review could be initiated before 5 years as detailed in para 3.93 should be clearly established as being optional and not form the basis for independent challenge. The Council would support the flexibility for early review where there is clarity around the discretion lying with the Council.

The Council considers that the Monitoring Report should include, under ‘other issues’ the availability of up-to-date Departmental policy and guidance and the use, by the Department, of its call-in procedure and notification directions.

Question 13: Do you agree with the Department’s intervention/default powers?

Yes [ ] No [ √ ]

The Council would be concerned about incurring expenditure by the Department which is beyond the Council’s control. The Council considers that the focus by the Department should be on supporting Councils in plan development rather than powers to intervene and impose extra costs.

Prior to any Department intervention and exercise of default powers, the Council should have the opportunity to make representations in relation to these. Prior to the Department making any mandatory direction or intervention it should respond to any challenges or clarifications by the appropriate Council.

The Department should provide greater clarity or guidance in relation to the “situations” under which DPD may be considered unsatisfactory (para 3.102) to ensure the Council are addressing the full scope of the likely requirements for monitoring and plan review.

The Council notes the intervention and default powers but would highlight the critical importance of clarity in relation to what might comprise, ‘exceptional circumstances’ and ‘very extenuating circumstances’ paragraph 3.100 and 3.109 of the Consultation Document).

Question 14: Do you agree with the provisions relating to joint plans?

Yes [ √ ] No [ ]

There should be clear guidance in relation to specific policy areas for joint work in LPP i.e. waste etc. The guidance should also provide the basis for the Department exercising the power of direction and clarify the relationship to regional policy.

The Council would note the response under Q.9
**Question 15:** Do you agree with the provisions relating to the Department’s power in relation to joint LDPs?

Yes [✓]  No [ ]

The 2001 Act enables the Department to direct two or more councils to prepare joint plans. The Council considers that decision on the joint plan strategy process should be made in close consultation with the local authorities to gain agreement and support and the emphasis should be on voluntary cooperation by councils.

As in the previous response in respect of the Department’s power and responsibilities Councils should be have the opportunity to engage with the Department prior to any direction being issued.

The Council considers that the Department should provide direction at the earliest opportunity in light of the implications for all stages of the Local Development Plan process including the Stage 1 Programme Management timetable and the Stage 2 and Stage 3 soundness-based Independent Examination.

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**Question 16:** Do you agree with the transitional arrangements for a LDP. If not, can you identify amendments which would offer better arrangements?

Yes [ ]  No [ ]

The Council would request clarification on the process if Draft BMAP has not been adopted by the Department prior to the transfer of powers. The Council would be concerned that the lack of an up to date plan will make it difficult to operate an effective plan led system.

If BMAP is not adopted before April 2015, the Council will be working on the basis of a development plan which was adopted in 1989, a quarter of a century ago which is considered inappropriate. In the case that BMAP is not adopted, the Council would recommend that the Regulations are amended so that draft developments plans should be taken into account.

The Council would seek clarification if there will be a possibility of introducing an amendment to existing plans (i.e HMO Subject Plan) as an interim measure prior to a new PS being available.

The Council recognises the need for transitional arrangements but would highlight the associated uncertainty that would apply during the transitional period and the increased likelihood of appeals and legal challenges.

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**Question 17:** Do you agree with the proposed content of the SCI?

Yes [✓]  No [ ]

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Document Number:
The Council would strongly support engaging with communities as an essential part of an effective and inclusive planning system.

In relation to the matters identified in para 4.8 the Council considers that guidance should be provided on the how representations should be dealt with at the different stages of the LDP development.

The Council notes that the Department is to prepare and publish an SCI in relation to its planning functions. The Council considers that the Department’s SCI should be available when powers are transferred so that the context is set for the two-tier planning system. The Council notes and welcomes the reference to a ‘light regulatory touch’ of the Department (paragraph 4.8 of the Consultation Document) in relation to the SCI.

**Question 18:** Do you agree with the publicity, consultation and agreement requirements for the SCI?

Yes [ ] No [ ]

The Council would highlight that a minor amendment is required to Regulation 6(d) of the draft Statement of Community Involvement Regulations. It should state “until such times as the Department agrees, or is deemed to agree, the statement of community involvement...” That will bring the wording into line with Regulation 7 of the said Regulations.

**Question 19:** Do you agree with the proposed classes and thresholds for major developments indicated in the Schedule at Annex C?

Yes [ ] No [ ]

The Thresholds would appear to be sufficiently sized to capture major development proposals. However, the Council would note that the description of one of the development classes in the consultation document, namely ‘Retailing’ in No.6, differs from the wording in the equivalent class in the proposed 2015 Regulations, which is more wide ranging and is described as Retailing, Community, Recreation and Culture’.

Related to the above point, it is also noted that the category “retailing” in the consultation document now applies to “commercial leisure” use which has no formal definition in PPS 5 and draft SPPS. However, Draft PPS 5 previously defined it as “indoor or covered recreation and leisure facilities including swimming baths, skating rinks, gymnasium and other sport halls; cinema, concerts and dance halls, theatres, amusement arcades and centres, restaurants, cafes and licensed premises.” The Council would consider this definition to be fairly reflective of commercial leisure uses.

Mindful of the above, it is clear that definitions in the subordinate legislation need to be consistent with existing and proposed legislation and policy, particularly the Use Classes legislation and the impending SPPS. Clarity in the definition of categories.
would also minimise any potential for overlap or confusion with the No.9 catch-all category in Annex C entitled “all other development”.

The Council considers that the use of an ‘N/A’ heading in relation to the housing, retailing, business, industry, storage & distribution and all other development categories is could be misleading. It appears to suggest, wrongly, that it is not possible to have a regionally significant retail development in Northern Ireland. The Council suggests that the ‘N/A’ heading should be replaced with comment on the Department’s notification and call-in powers to avoid misunderstanding.

The Council would request clarification in relation to wind energy projects i.e. are they included within ‘Energy Infrastructure’.

Question 20: Do you agree with the definition for determining local developments?
Yes  √    No

Question 21: Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?
Yes  No

The Council would express concern on future development at Sprucefield which is designated as a regional shopping centre. The Council would consider that proposed development at Sprucefield should be considered by the Department as it is the only non-city centre designated as “Regional” in the RDS.

The Department should include guidance to address incremental approach to development to ensure applicants are not able to phase proposals to avoid hierarchy trigger points.

Section 26 of the Act requires an applicant for any major development to consult with the Department. It goes on to provide that regulations may be prescribed in relation to that procedure.

The Council requires clarification on Para 6.11 of the consultation document which states that developments which involve a substantial departure from a Local Development Plan will be considered to be regionally significant. However, the draft Development Management Regulations do not state that a major development includes those where there is a substantial departure from a Local Development Plan (Regulation 3 of the said Regulations refers). Therefore there is no requirement to consult with the Department, despite the intention as set out within the consultation document that such applications should be considered to be of regional significance.

The Development Management Regulations should be amended to reflect the intended position as set out in the consultation document.
There are no thresholds for 4 out of the 9 development classes and it is therefore left to the discretion of the Department to determine if a major proposal is regionally significant or not. In this regard, it is factually incorrect to state in Column 3 of the Annex C that regionally significant thresholds do not apply to these 4 development classes. With this in mind the N/A wording should be replaced with “to be determined by the Department”

The wording in Section 3 (a) and (b) of the Planning (Development Management) Regulations (Northern Ireland) (2015) needs to be amended because it refers to thresholds in Column 3 which are not stated. Suggested rewording by the Council is outlined below

(a) Development described in Column 1 of the table in the Schedule, where any applicable thresholds or criterion in that table is met or exceeded; and

(b) any change to or extension of development of a class described in paragraphs 2 to 8 of column 1 of the table in the schedule where such a change or extension itself meets or exceeds the thresholds or criterion in that table.

Ideally, the Council would welcome the introduction of thresholds for regionally significant applications, particularly in respect of retailing. However, the Council fully recognises the difficulties and risks attached to applying a threshold figure to the ever changing dynamic of retailing. Previous Departmental correspondence has suggested a retail floor space threshold of 3,000 gross sq. m (Draft Reform Paper 2009). However, this might appear somewhat small when compared to the 50,000 sq m. figure quoted for regional shopping centres in GB. This perhaps explains why a figure is not cited in Annex . Nevertheless, both the RDS and draft SPPS embrace a precautionary approach to retailing and with this in mind it might be worth inserting the qualification in column 2 of Annex C that all major retail applications of 2,500 gross sq. m. or more (which PPS 5 quotes to define superstores) will have the status of a ‘Call in ‘ application. In other words, it will be determined by the Department, as per Section 29 of the 2011 Act. This would be the most robust way to proceed given the aforementioned difficulty in ascribing a threshold size for regionally significant applications and given the open- ended wording of the determining criteria for regionally significant proposals stated in Section 26 of the 2011 Act (see below)

Under Section 26 of the Act the Department decides if a major application is regionally significant on the basis of its “significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or (b) involve a substantial departure from the local development plan for the area to which it relates”. Clearly, these criteria require more detail in order to reduce the scope for misinterpretation. Importantly, clarification has to be provided in what meant by “substantial part” and “substantial departure” from the plan. In relation to the former, it might be appropriate to indicate that it could apply to population levels as well as geographical coverage. Otherwise, it might be assumed that oil could only apply to at least 6 or more of the 11 districts? Equally, the Department needs to provide advice on what constitutes a “substantial departure” from the Plan. Examples may include an application that effectively seeks to rezone land or a proposal that is in direct contravention of the strategy and objectives in the LDP? These matters need to be outlined in greater detail, preferably in the Regulations but also possibly in the form of an explanatory guidance note to accompany the Act and Regulations.
The Council would request clarification in relation to the process for a major application which is a substantial departure from the Development Plan but is not of regional significance.

**Question 22:** Do you agree with the proposed consultation, publicity and information requirements for pre-application community consultation?

Yes [ ] No [ ]

The Council would request clarity over the process for and, more importantly, the status of the Department’s determination on the need for an environmental statement which should be included in the proposal of application notice. The Council would note that such a ‘determination’ would be on the basis of a scheme which could significantly change through the pre-application process and which would be the subject of a determination after a scheme is submitted for planning.

Regulation 5(2) of the Regulations sets out the process for pre application community consultation, which is required for all major developments as per Section 27(1) of the Act. However, Regulation 5(1) refers to regionally significant applications only. The Council would request clarification if Regulation 5(2) explicitly stated that it refers to prospective applications for all major developments.

The Council would suggest that further guidance is given on the requirements to ensure a standardised approach.

The Council considers that older people views should be reliability sought as part of any statutory pre-application consultation carried out by the applicant to provide them the opportunity to influence at an early stage. The Department should ensure any guidance considers this group as it is a demographically large and growing population.

**Question 23:** Do you agree that applications made by the council or an elected member and applications relating to land in which the council has an interest should not be delegated to an appointed officer?

Yes [ ] No [ ]

The Council notes that this is a necessary safeguard to demonstrate the integrity of the planning process.

**Question 24:** Do you agree with the proposed approach to preparing and adopting a scheme of delegation?

Yes [ ] No [ ]

Document Number:
The Council is concerned there is not enough flexibility for modification or changes that may be required to a Scheme of Delegation. There should be provision within the Regulations that a change to the Scheme may be made in urgent or exceptional circumstances without the consent of the Department if it not possible to obtain the Department’s approval for an amendment beforehand.

**Question 25:** Do you agree with the proposed call-in criteria for a Notification Direction? Should any other classes of development be included and, if so, why?

Yes [√] No [ ]

The Council would consider that proposed development within the area of an adjoining authority that could have significant impact on that Council could be requested for consideration by the Department under call-in. This could address proposals such as that for Sprucefield which due to their impact could be appropriate for the Department for call at the request of another Council due to the regional impact or potential impact on identified regional centres.

The Council notes that a notification requirement would include where a Government Department or statutory consultee has raised a ‘significant objection’ to a major development application. The Council would request clarification as to how an ‘objection’ by a Government Department or statutory consultee would be classified as a ‘significant objection’. The Council would be concerned to ensure that the role of the Council as a decision-maker, in making a balanced decision, is not undermined.

**Question 26:** Do you agree that the current neighbour notification process should be made statutory?

Yes [ ] No [√]

The Council considers that making neighbour notification a statutory requirement would involve added costs and operational difficulties with little resultant benefit when compared with the current non-statutory process. The Council considers that the existing non-statutory system is flexible and preferable.

**Question 27:** Are you content with the proposed definitions of “neighbouring land” and “affected occupier”? If not, please suggest an alternative explaining what additional benefits this would bring by way of enhanced engagement in the planning system.

Yes [ ] No [ ]

Document Number:
The Council supports proposals to enhance notification processes. However, the enhanced neighbour notification catchments could have additional resource implications.

The Council considers that the proposed definition of an “affected occupier” is unhelpful and misleading as it implies that an occupier outside a 90m radius is not affected. In addition, the Council considers that it would have significant administrative and resource implications (particularly with small applications) with limited resultant benefits. Notwithstanding the above, the Council would note the need for clarity on the service of the notice by a Council so that it can be served by first class post and not by either personal service or recorded delivery.

If as suggested in the consultation that it will be statutory to notify those occupiers of premises situated on neighbouring land and who meet the criteria that qualifies them as affected occupiers, if the proposed definition of “affected occupier” as “the occupier of premises within a 90 metre radius of the boundary of the application site” is brought into force this will result in large numbers of consultees in urban areas. For example at 180 Spamount Street in North Belfast if a 90 metre radius is brought into force this would require 256 notification letters to be sent compared with 6 notification letters with a 20 metre radius.

**Question 28:** Do you believe that councils should be required to advertise all applications for planning application in at least one newspaper circulating in the local area?

Yes ☐ No ☐

The Council considers that the advertisement of all applications in newspapers in the local area is of public benefit and would refer to the response to Q.1.

**Question 29:** Are the proposed lists of new statutory consultees set out in Annex D appropriate?

Yes ☑ No ☐

The Council considers this appropriate but would suggest flexibility to extend consultation in some areas where appropriate.

For Schedule 3 part 1 (G) it may be appropriate to consult Departments such as DETI or DARD for major application which are close to the threshold levels and this flexibility should be included.
**Question 30:** Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?

Yes [ ] No [√]

The Council would request clarification as to how the duty to respond applies to the NIEA in the context that it has no legal identity separate from the Department.

The Council would welcome an explanation of the rationale for restricting the involvement of HSE(NI) in smaller developments where there are toxic, highly reactive, explosive or inflammable substances present. The Council understands that most health and safety accidents occur in smaller premises where there is not the same level of expertise/resource to deal with health and safety issues.

**Question 31:** Do you believe that the proposed standard timeframe of 21 calendar days is appropriate in order to provide statutory consultees with enough time to make a substantive response?

Yes [ ] No [ ]

The Council would seek clarification on when the 21 days begins, is it the date the application was submitted or the date it was registered and uploaded on EPIC.

The Council would request clarification on the consultation period for regionally significant applications as 21 days would not fit in the timetable for consideration at Council committee to formulate a corporate response.

The Council would request further guidelines on the PAD process which may impact on response time if appropriate information is not provided upfront from the applicant in order to make a response within the timeframe.

**Question 32:** Do you believe that the definitions of a substantive response are satisfactory or do you have other suggestions that the Department could consider?

Yes [ ] No [ ]

The Council would highlight that the draft Planning (General Development Procedure) Order does not provide an option for statutory consultees to recommend refusal of an application. Failure to do so unnecessarily fetters the discretion of those who are consultees and the absence of such a provision may be considered unlawful. A consultee should be able to recommend refusal and/or object, provided they explain the grounds on which they do so.
Furthermore, the Council would suggest that the Regulations should make provision for circumstances in which the consultee cannot make a decision because not enough information has been provided.

**Question 33:** Do you consider that the proposed reporting requirements are appropriate or are there other requirements you believe would offer further benefits?

Yes [ ] No [ ]

The Council considers that the annual reporting arrangements are appropriate but that the reporting should also include baseline and in-year monitoring so that the Department and Councils are made aware of problems at the earliest opportunity rather than after year end. The Council considers that this is important in a situation where a statutory consultee is regularly failing to deliver substantive responses within the agreed period and an appropriate response by the statutory consultee is needed. The Council notes that there can be significant delays in the planning system caused by the slowness of responses from consultees and that, in a number of instances, this is due simply to lack of resources. It should be readily apparent to a consultee, in light of the historic planning application caseload, whether or not it will have sufficient staff to meet the 21 day timeframe without waiting for the first annual monitoring.

The Council would suggest that the Department provides the Council with a copy of the performance reports.

**Question 34:** Do you agree with the application categories and types of applications which should, and should not, be accompanied by a Design and Access Statement?

Yes [ ] No [ ]

The Council would suggest that Para 15.4 Designated Areas needs to include European designated areas such as SACs, SPAs, Ramsar sites and Marine Conservation Areas.

The Council would support a statutory requirement for certain types of applications to be accompanied with a Design & Access Statement. Further guidance and standards should be developed to take account of standards to create age friendly environment, designing out crime and access to open space and recreational areas.

**Question 35:** Do you agree with the proposals in relation to form and content and the requirement to take environmental sustainability into account in relation to design principles and concepts?

Yes [ ] No [ ]
Question 36: Do you agree with the proposals for handling applications for non-material changes to a previous planning permission?

Yes ☑ No

The Council would recommend that the proposed guidance is non-prescriptive. The Department recognised in the consultation paper that it is inappropriate to attempt to define non-material as it can depend upon a number of factors which will vary from one application to another. The Department should not unreasonably fetter a Council’s discretion to take into account any consideration which it deems relevant and that should be clearly stated in the guidance.

Question 37: Do you agree that councils’ own applications, in the circumstances outlined above, should be subject to notification to the Department for consideration?

Yes ☐ No ☑

The Council considers Regulation 8 of the draft Planning (General) regulations as too prescriptive.

It would preclude the Council from entering into arrangements with third parties to develop sites or run premises on behalf of the Council. It would also fetter the Council’s powers in relation to economic development and potentially act as a deterrent to co-ordinating public and private investment as a way to facilitate sustainable growth, which is a purported function of Local Development Plans (see paragraph 4 of the consultation document).

If the provision is to be retained, the Council would request that it only applies to permissions which were granted within a small number of years before a transfer of the land/property.

The Council notes that para 17.3 quotes the draft Planning General Regulations (Northern Ireland) 2015, stating that ‘any grant of planning permission by a Council shall have effect only for the benefit of that council itself and not with the land, except in the case of an application for planning permission jointly with another person’

The Council have concerns over land which the Council may intend to dispose of with the benefit of planning permission. Under the Local Govt Act (NI) 1972 Section 96 (5)(a) Councils are required to get best price for disposals. Disposal of a site without the benefit of planning permission adds risk for the developer which results in reduced price. Alternatively, the developer could make an offer subject to planning permission being obtained, which they would then apply for after their conditional offer is accepted. Although this is sometimes acceptable for the Council as seller, it is not always in the Council’s best interests as it defers the capital receipt. We note...
the provision for applying jointly with another party who would also have the benefit of the permission. This however would only be suitable in a very limited number of cases such as an off market deal, which cannot often be used by the Council due to the requirement for best price.

The draft Planning General Regulations on which the draft subordinate legislation is based appear to recognise this and provide an exemption: Paragraph 4 of the Regulations provide that applications made by the Council (wholly or jointly) where they are not the developer, are not limited to the Council or joint applicant, and would therefore run with the land. The draft Subordinate Legislation should similarly provide the exemption.

The Council would also have concerns in relation to Para 17.3 due to the consequences when the Council is the developer but disposes of the site at a future date. There are occasions when we would develop a facility and then dispose of it or part e.g. sports facilities which we develop and at a future date, lease out to a sports club, who was not specifically named on the planning application (eg we may have developed it for our own occupation in the first instance). Under the 17.3, it would appear that such an occupier would be occupying a facility without planning permission. Given that 17.3 is based on the draft Planning General Regulations, we would request that the Council also object to the relevant part of these Regulations (contained in clause 8).

Para 17.4 states that applications are notifiable if the Council is the applicant, owner, or have financial or other interest. The Council would agree with this in principle but there are occasions where the Council may have an interest and the planning function of the Council may not be aware. The Declaration of Land Ownership submitted with a planning application does not require information on interests beyond 40 years. This would not therefore pick up on long leases where the Council are landlord and receive an equity or ground rent. Not all Council leases require our consent as landlord before a tenant makes a planning application so it wouldn’t necessarily be picked up by the Council’s Estate Management Unit. There may also be occasion where there is Council interest but the applicant is unaware for example if a property comprises a chain of leaseholds interests from which we receive an equity rent.

Also, the council provide funding for a large number of projects in the city through its investment fund and local investment fund, clarification would be requested on this situation.

Question 38: Do you agree that councils should be required to consult the Department on all applications for listed building consent?

Yes [ ]  No [ ]

The Council agrees but consider it to be excessive that where the Council intends to grant permission for alternations to a listed building it is required to notify the Department and then wait 28 days even where the permission is in line with the consultation from NIEA.

There is no provision within Section 99 of the Planning (NI) Act 2011 with regard to what happens to an existing consent where a Council serves Notice that it intends to
make an order revoking or modifying a consent to do works to a listed building. Nor is there any such provision within the draft Planning (Listed Buildings) Regulations (NI) 2015. Given the Council would only issue such a notice where there is an issue as to whether the works should proceed; it would seem prudent to provide that where a Council serves such Notice, the consent is suspended pending a determination by the PAC. Otherwise, an owner could proceed to carry out works on foot of the existing consent as he is not expressly prohibited from doing so by the draft Regulations.

All responses should be submitted to the Department no later than 20th August 2014.
Summary- Planning Reform & Transfer to Local Government: Proposals for Subordinate Legislation

Purpose of the document is to introduce the improvements in the planning process and establish the two-tier planning system in Northern Ireland. This is the first phase of consultation and discusses the subordinate legislation. The second phase will take place in Autumn 2014.

This subordinate legislation is required to bring into effect the 2001 Act fully into operation and the new two-tier planning system. From 1st April 2015, councils will be the planning authorities responsible for:

- local development planning – creating a clear vision of how the council area should look in the future by establishing what type and scale of development should be encouraged in the council area and where it should be located;
- development management – determining the vast majority of planning applications; and
- planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.

This summary extracts some of the key points throughout the document which impact or outline the expectations which the Council will need to carry out following the transfer of power or which state the powers of the Department to intervene with the workings of the Council as the planning power, an issue raised in previous consultations.

3 Local Development Plans- An Effective Plan-led System

The council will have to prepare the local development plan consisting of the Plan Strategy and Local Plan Policies together becoming the Development Plan Documents. Before the Plan Strategy the Council must prepare a Preferred Options Paper.

Transitional agreements for development plans

After the transfer of the majority of planning functions to councils, section 6(4) of the 2011 Act requires that in making any determination under the Act, where regard is to be had to the LDP, the determination must be made in accordance with the LDP unless material considerations indicate otherwise. Section 45 of the 2011 Act requires that in determining a planning application regard must be had to the LDP so far as it material to the application.

A LDP is an adopted PS and an adopted LPP however, the LDP will not be formally in place until such time as the council has prepared and adopted both the DPDs in accordance with the 2011 Act and the proposed regulations. The Department therefore requires transitional arrangements to be put in place to ensure that the policies contained in an extant development plans prepared or adopted under Part 3 of the 1991 Order are retained until such time as they are replaced by a new policy contained in an adopted PS and an adopted LPP.
During the transitional period, before the council has adopted both its PS and its LPP, the LDP for the purpose of the 2011 Act will be taken to be the following documents:

(i) the Department’s existing development plans previously adopted by the Department under the 1991 Order; and then
(ii) the Department’s existing development plans previously adopted by the Department under the 1991 Order and the council’s PS which was adopted under section 12 of the 2011 Act.

It is proposed regulations will provide that during the transitional period any reference to a LDP in the 2011 Act will be construed as a reference to:

(i) the Department’s development plan for the district made under Part 3 of the 1991 Order; or
(ii) where a PS has been adopted or approved, that PS together with any policies forming part of the development plan for that area made under Part 3 of the 1991 Order which have not been expressly replaced by a policy in the PS.

4 Statement Of Community Involvement

The council is required to prepare a Statement of Community Involvement setting out its policy for actively involving the community from the outset in the making of LDPs and in the carrying out of its development management functions.

Guidance will be prepared to assist councils in the preparation of an SCI, addressing such matters as its purpose, the content of the document and the preparation process. This will include guidance for the councils if they wish to issue a draft SCI for public consultation. It is proposed that the final SCI prepared by councils will be agreed with the Department before it is published. The councils would also be expected to periodically review the SCI in accordance with the new guidance.

5 New approach to Development management

- Hierarchy of development: 3 tiers of developments
- Pre-application community consultation: major category developers obliged to consult community in advance
- Pre-determination hearings: hearing before council pre-application
- Scheme of delegations: appointed officers giving approval rather than council.

6 A new hierarchy of development

The Planning (Development Management) Regulations (NI) 2015 will establish a hierarchy of development based on a 3-tier classification of developments consisting of regionally significant, major and local.

An application which is deemed to be of regional significance must be made to, and will be determined by, the Department. Councils will be responsible for determining major and local development applications which will account for the vast majority of application numbers.

Major developments will be given priority and all subject to pre-application consultation. The statutory timeframe for the determination of major applications will
be extended to 16 weeks, allowing a longer default period in case of appeal and a more realistic processing time for these usually detailed or complex applications. The time period for determination of local developments will be expressed as 8 weeks rather than 2 months in consistency with major developments.

If a proposed development falls above the proposed threshold (see Annex C) for major developments then the prospective applicant must consult with the Department to establish if the Department considers the development to be regionally significant. Regionally significant development applications will be similar to existing Article 31 applications under the 1991 Order, in that, if the Department is of the opinion that the proposed development if carried out would:
(a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland; or
(b) involve a substantial departure from the LDP for the area to which it relates;

then the Department will confirm that the proposed development is of regional significance and be determined by it. If the Department does not consider the development to be regionally significant it will serve a notice on the prospective applicant to that effect and indicate that the application must be made to the appropriate council.

All ‘large scale investment planning proposals’ should be decided within 6 months.

7 Pre-application Community Consultation

Section 27 of the 2011 Act will place a statutory duty upon applicants for planning permission to consult the community in advance of submitting an application, if the development falls within the major category. This includes those major developments which the Department will determine because they are of regional significance.

This process is hoped to:

• improve the quality of planning applications coming into the system;
• mitigate negative impacts where possible;
• address community issues or misunderstandings; and
• provide smoother and faster decision making

Applicants must give 12 weeks’ notice of their intention to submit a planning application for determination.

Additional notification and consultation- Council may request additional notification and consultation within 21 days.

Pre-application consultation report- must be submitted showing compliance with requirements

It is recommended that the report, in summary should:
• specify the persons who have been consulted in respect of the proposed application;
• include an account of what steps were taken in order to comply with the consultation requirements as set out in regulations and any requirements in accordance with section 27 of the 2011 Act;
• include an account of how comments received to it were responded to indicating if any changes or mitigating measures have been included to
address issues raised in the responses to consultation with the community; and
• provide appropriate evidence that the various steps have been undertaken – including copies of the advertisements for the public events and reference to material made available at such events.
• include an account of how comments received to it were responded to indicating if any changes or mitigating measures have been included to address issues raised in the responses to consultation with the community; and
• provide appropriate evidence that the various steps have been undertaken – including copies of the advertisements for the public events and reference to material made available at such events.

Power to decline to determine an application- If not complied with council can decline to determine an application and must provide a reason for doing so or request additional information.

Transitional arrangements

At the date of transfer of planning powers to councils, sections 27 and 50 of the 2011 Act will commence. However, as prospective applicants will not have had an opportunity to submit a proposal of application notice to the relevant council, or the Department in the case of regionally significant development, it is the Department’s intention that this requirement will not apply to planning applications received before 1st July 2015. This will allow a period of bedding in, and the minimum amount of time for the applicant to start the pre-application community consultation process.

Therefore, any such application received between 1 April 2015 and 1 July 2015 will not have to comply with the statutory pre-application community consultation requirement, although applicants may wish to informally engage with the local community in developing their proposals and realise the benefits that may bring. However, from 1 July 2015, it will not be possible to submit an application for planning permission for a major development until at least 12 weeks have elapsed from the date that the applicant served the proposal of application notice on the relevant council or the Department and the applicant has complied with the requirements of the Act and regulations. If not, then the council, or the Department, can refuse to determine the application under section 50 of the 2011 Act.

8 Pre-determination Hearings

These are hearings prior to a decision being made on certain types of applications. It is at the councils discretion over how they wish the hearings to operate. 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 council.

9 Schemes of Delegation

Section 31 of the 2011 Act requires a council to prepare a scheme of delegation where decision-making for local, generally non-contentious, applications is delegated to an appointed officer rather than the council, excludes major or regionally significant applications. The scheme must include provision that prohibits an appointed officer from determining an application for planning permission in the following circumstances:
• the application is made by the council or an elected member of the council; or
• the application relates to land in which the council has an interest.

Regulations will provide that where a council proposes to adopt a scheme of delegation they must send a copy to the Department to be approved. Once approved by the Department and adopted by the council, the council must make a copy of the scheme of delegation available for inspection at an office of the council. The approved scheme must then be published on the relevant council’s website.

A council will be required to prepare a scheme of delegation at intervals of no greater than every three years.

10 Call-in of Certain Applications to the Department

This provision allows the Department to call-in any planning application including those not in the regionally significant threshold. This practice should be the exception but may be circumstances where proposed development raises issues of significant impact regardless of threshold.

11 Notification Direction- Potential call-in of applications by the Department

The Department is empowered to give directions to councils restricting the grant of planning permission and requiring the council to send information to the Department in instances where it proposes to grant planning permission for certain types of development.

It is proposed that councils will be required to notify the Department of certain applications they are intending to approve under a Notification Direction. The proposed details of such notification requirements are where:

(a) a major development application which would significantly prejudice the implementation of the LDP’s objectives and policies, including land in which councils have an interest;

(b) a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013;

or

(c) a government department or statutory consultee (see Chapter 14 and Annex D) has raised a significant objection to a major development application.

The legislation will set out when a council is required to notify the Department of an application, the council must not grant planning permission on the application until the expiry of 28 days from the date the Department received all the relevant information to determine whether to call-in an application.

In addition, where an application is not considered to be of such significance for the Department to deal with, it can be returned to the council with conditions to be applied if necessary. The Department will liaise with the relevant council regarding the use of conditions to ensure an agreement is reached.

12 New development management procedures

The procedural aspects of the 1993 GDO need to be recast in the new 2015 GDPO to facilitate the new two-tier planning system. The GDPO is also the vehicle through which the Department will provide the detail on how a number of new provisions under the 2011 Act will be brought into operation. These include:
• setting out the particulars on publicity arrangements which had previously been established in primary legislation but which will in future be set out in subordinate legislation (thereby providing greater flexibility in future to manage any necessary changes given the relatively speedier nature of the subordinate legislation process);
• establishing the time period within which a statutory consultee must meet its new duty to respond to a consultation request while at the same time expanding the number of consultees who will be placed under this new duty and required to report on their performance;
• introducing the requirement for certain types of application to be accompanied by a design and access statement setting out how the proposal meets planning requirements and good design principles and also provides for access for disabled persons; and
• empowering councils to make non-material changes to an existing grant of planning permission to remove the requirement to submit a new planning application.

As the Department needs to amend the procedural elements of the new planning system to accommodate the two-tier system and a number of reforms it is also taking the opportunity to separate the procedural elements of the 1993 GDO from the PD elements to provide greater clarity. The new Planning (General Permitted Development) Order (Northern Ireland) 2015 will not involve any significant changes to the existing system of PD and therefore the Department regards this new PD Order as technical and not subject to consultation requirements.

13 Revised Publicity Arrangements for Applications for Planning Permission

Arrangements for publicising and giving notice of applications will in future be set out in subordinate legislation namely development order rather than primary legislation. Neighbour notification the Department is establishing as a clearly defined and unambiguous statutory requirement.

The proposed legislation will provide clarity for the new councils by establishing these two definitions, “neighbouring land” and “affected occupier”, in statute. The subordinate legislation proposes to define “neighbouring land” as “land which directly adjoins the application site, or which would adjoin it but for an entry or road less than 20 metres in width”. It is also proposed to define “affected occupier” as “the occupier of premises within a 90 metre radius of the boundary of the proposed application site”.

Newspaper advertising
Existing requirement maintained to publish notice of applications for planning permission in at least one local newspaper circulating in the local area.

The subordinate legislation will also maintain the current requirement to publish notice of applications on a website maintained for that purpose. It is intended that councils will be able to use the existing Northern Ireland Planning Portal beyond the point of transfer and this should support continuity of the current approach to electronic publishing.

The Department is not proposing to introduce a statutory requirement for the use of site notices; however, it will keep this further method of publicising applications under consideration.

14 Duty to respond to consultation

Document Number:
Section 229 of the 2011 Act establishes for the first time a statutory duty for consultees to provide a substantive response to a consultation request within a prescribed timescale. The detail of how the new duty will operate, and on whom the duty will be placed, will be set out in the GDPO which will:

- extend the list of statutory consultees;
- specify the circumstances when they should be consulted on applications for planning permission;
- set out the criteria for a substantive response;
- specify the time period for providing a substantive response; and
- set out the requirements for a consultee to publish a report on their performance in meeting their duty to respond.

**Extending the list of statutory consultees**

The new legislative provisions propose to extend the current list of statutory consultees to include those bodies that historically have been identified as handling the bulk of consultation requests.

The new legislation will require statutory consultees to make a ‘substantive response’ within a standard period of 21 calendar days of the consultation request issuing. New provisions under section 59 of the 2011 Act will restrict the information considered at appeal to that which was available to the planning authority at the time of its determination. The provision of new material will only be permitted in exceptional circumstances.

**Requirement of a substantive response**

The legislation will propose that a substantive response is one which:

- States that the consultee has no response to make;
- States that, on the basis of the information available, the consultee is content with the development as proposed;
- Refers the planning authority to current standing advice by the consultee on the subject of the consultation; or
- Provides advice to the planning authority to enable the determination of the application.

**Duty on statutory consultees to report to the Department on their performance**

The proposed development order will also place each statutory consultee under an obligation to report to the Department on their performance in meeting their duty to respond during the previous year. It is proposed that the report shall contain:

- a statement as to the overall number of occasions on which the consultee was statutorily consulted;
- a statement as to the number of times a substantive response was given within the prescribed default timeframe;
- a statement as to the number of times a substantive response was given within a period agreed between the planning authority and the consultee; and
- a summary of the reasons as to why the consultee failed to respond within any of the specified or agreed timescales.

**15 Design and Access Statements**

Document Number:
A core planning principle of the reformed two-tier planning system is to support good design. The planning system has a significant role in making successful places through its influence on the type, scale, location and design of development, and the use of land. Design is an important material consideration and planning permission may be refused solely on design grounds. Sections 40(3) and 86(2) of the 2011 Act will require certain descriptions of applications for planning permission and all listed building consent applications to be accompanied by a design and access statement (DAS).

16 Power to make non-material changes to existing grants of planning permission

Section 67 of the 2011 Act introduces a mechanism which would enable councils to agree non-material changes to planning permissions which have been granted. In deciding whether a change is material the council must have regard to the effect of the change together with any previous changes which may have been made. The new power will also allow councils to:

(a) impose new conditions; and
(b) remove or alter existing conditions.

The responsibility for determining whether a proposed change is non-material will lie with the council. It must be satisfied that the amendment sought is non-material in order to grant an application under this provision.

As an application under section 67 of the 2011 Act will not be an application for planning permission, the existing provisions relating to statutory consultation and publicity will not apply. Given that the requirements for consultation and publicity will have already been applied and undertaken to the original planning application, and the fact that the amendment is non-material in nature, it is not proposed that further consultation or publicity will be required.

The Department proposes to issue guidance tests that councils may wish to consider in assessing and determining whether or not a proposed change would qualify as a non-material amendment. The following tests are proposed:

• is the proposed change significant in terms of its scale in relation to the original approved development scheme?;
• would the proposed change result in a detrimental impact either visually or in terms of amenity?;
• would the interests of any third party or body who participated in or were informed of the original decision be disadvantaged in any way?; and
• would the proposed change conflict with national or development plan policies?

17 Councils’ Own Applications for Planning Permission

The draft regulations (the Planning (General) Regulations (Northern Ireland) 2015) provide that an application for planning permission by a council itself or by a council jointly with another person shall be determined by that council unless the application is called in by the Department under a Direction made under section 29 of the 2011 Act for determination by it. To allow the Department sufficient time to reach a decision on whether or not to call in an application, a 28 day period shall apply from receipt of all the required information from the council, within which to reach that decision.
Councils will be required to notify the Department of planning applications for development in which the council is: the applicant or landowner; has a financial or other interest; or in circumstances where:

- the proposal is significantly contrary to the LDP;
- the council intends to grant planning permission contrary to advice from a statutory consultee;
- the proposal involves the loss of outdoor sports facilities; or
- the proposals may have an adverse impact on a World Heritage Site.

18 Listed Buildings

Councils will be empowered to direct applicants to provide additional information necessary to consider the applications in relation to listed buildings.

Consultation with the Department on applications for listed building consent

NIEA has a detailed knowledge of Northern Ireland’s buildings of special architectural or historic interest. It is proposed that councils will be required to consult the Department on all applications for listed building consent with such consultations being managed by NIEA. Councils must take account of the Department’s response in forming their opinion on the application.

Section 89 of the 2011 Act requires councils to notify the Department of all applications where the council is minded to grant consent. The council cannot determine such applications until the expiry of at least 28 days from notification, or any extended period as may be agreed, unless notified by the Department that it does not propose to call in the application. It follows that the Department may decide within such time period to call in the application and proceed to determine the application itself.

Publicity of applications for listed building consent and unopposed revocation or modification orders

Publicity of applications

Before determining any application for listed building consent or change of conditions associated with a current listed building consent the council must advertise details of the application in at least one newspaper circulating in the area in which the building is situated and on the council’s website.

Publicity of unopposed revocation or modification orders

Section 98 of the 2011 Act gives councils the power to make an order of revocation or modification which in essence provides councils with powers to remove or modify a consent which has previously been granted.

Section 100(2) of the Act requires the Department to set out in regulations how councils will publish such orders which are made with the consent of the owner. It is proposed that the regulations will require councils to publicise the details of any such order that has been made in at least one newspaper circulating in the area in which the building is situated and on the council’s website.

Document Number:
Transitional arrangements

At the date of transfer of planning powers to councils, there will be a number of applications for the range of listed building consents in the planning system, which were submitted to the Department under the 1992 Regulations, and remain undetermined. It is proposed that the regulations will include transitional arrangements requiring councils to determine these applications under the 2011 Act.

Enforcement

Under the 2011 Act primary responsibility for taking enforcement action in the public interest will rest with councils. However, section 158 provides the Department with a reserve power to issue a listed building enforcement notice with the same effect as a notice issued by a council. Before issuing an enforcement notice under section 158 the Department will consult the relevant council.