

<b>DFI Guidance – Draft Development Plan Practice Note (DPPN) 10: Submitting Development Plan Documents for Independent Examination</b>	<b>25<sup>th</sup> September 2019</b>
<b>Planning Committee</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	<b>Outcome</b>
Leader & Champion	<ul style="list-style-type: none"> <li>We will establish key relationships with Government agencies and potential strategic partners in Northern Ireland and external to it which helps us deliver our vision for this Council area.</li> </ul>
Resilient and Healthy Communities	<ul style="list-style-type: none"> <li>The Council will work to develop and promote stable and cohesive communities across the Borough.</li> </ul>
Protect the environment in which we live	<ul style="list-style-type: none"> <li>All environments in the area will benefit from pro-active decision making which protects the natural features, characteristics and integrity of the Borough;</li> <li>Our natural assets will be carefully managed to generate economic and social returns without compromising their sustainability for future generations.</li> </ul>
<b>Lead Officer</b>	Local Development Plan Manager
<b>Cost:</b>	N/A

## **FOR DECISION**

### **1.0 Introduction**

- 1.1 The Department for Infrastructure (the ‘Department’) has written to the Council for comment on its draft guidance document ‘Development Plan Practice Note (DPPN) 10: Submitting Development Plan Documents for Independent Examination’ (see Appendices 1-3 attached).

### **2.0 Background**

- 2.1 The Council must prepare a Local Development Plan (LDP) for its area. In doing so the Council must publish for comment two formal Development Plan Documents (DPDs): a Draft Plan Strategy (PS) and a Draft Local Policies Plan (LPP). Following consideration of the representations received the Council must submit these documents to the Department so that it may cause an Independent Examination (IE). An IE is a public examination of a DPD that is commenced, conducted and concluded by an independent examiner.

- 2.2 The Department has prepared a series of guidance documents to assist local councils in undertaking this planning function. These aim to ensure that a consistent approach is undertaken in relation to the procedural and information requirements which are necessary for an effective and efficient LDP process.
- 2.3 The Council has a statutory duty to take account of guidance issued by the Department.

### **3.0 DFI Guidance - Development Plan Practice Note 10**

- 3.1 Published on 22<sup>nd</sup> July 2019 this document deals primarily with procedures as well as good practice and must be applied at both the Draft Plan Strategy (PS) and Draft Local Polices Plan (LPP) stages of the Council's LDP preparation. These documents cannot be adopted until their respective IE process has been completed. When both have been adopted they together comprise the LDP for the Borough.
- 3.2 The practice note covers the requirements for the availability of submission documents and the publicity of the IE, which are the responsibility of the Council. Detailed procedures for the running of the IE are the remit of the appointed independent examiner and are therefore not covered in this document.

### **4.0 Financial Implications**

- 4.1 None.

### **5.0 Other Implications – Published LDP Timetable.**

- 5.1 It is a statutory requirement that both the PS and LPP must be prepared in accordance with the Council's published LDP timetable. The published timetable must include indicative dates for each stage of LDP preparation (from commencement of the LDP process up to its conclusion at the adoption of the last document – the LPP).
- 5.2 The timetable must also set out the timings of the publication for the preferred options paper and the development plan documents as well as accompanying documents such as the Sustainability Appraisal (SA) including Strategic Environmental Assessment (SEA).
- 5.3 This practice note introduces a new non-statutory (good practice) stage to the existing LDP process, known as 'Focussed Changes' (Members will be aware of this additional stage as highlighted at the recent planning training event on 20<sup>th</sup> June this year).
- 5.4 Following the publication of the Draft PS or LPP it may prove necessary for the Council to consider proposing changes to the document prior to submitting it to the Department for IE, for example:

- following the consideration of representations where an unforeseen issue has been raised that impacts upon the ‘soundness’ of the DPD, or
  - where there has been a sudden change in local circumstances, or
  - where new regional planning policy and/or guidance has been introduced.
- 5.5 If the Council deems it necessary to propose changes to the published DPD these changes would be made in the form of ‘focussed changes’. However, focussed changes should:
- only be considered in exceptional circumstances;
  - be small in number;
  - reflect key pieces of evidence,
  - not go to the heart of the DPD; and
  - affect only limited parts of the DPD.
- 5.6 In order for the focussed changes to be considered at the IE satisfactory consultation should take place, therefore the Department advises that the Council should prepare, publish and consult on them.
- 5.7 It is recommended that an 8 week public consultation is carried out to allow for comments. Comments made can only address and relate to the ‘soundness’ of proposed focussed changes, as this consultation is not an opportunity to add to the previous representations or to make new comments on parts of the original DPD (either the PS or LPP).
- 5.8 The Department has been carrying out research into LDP preparation in other jurisdictions. The recent inclusion of this new stage into the Northern Ireland LDP process is likely to have an impact on existing LDP Timetables as it was not previously anticipated (by the Department or local councils).
- 5.9 A separate paper, presented to this month’s committee, will address proposed amendments to the Council’s published LDP Timetable, taking account of the publication of this practice note and other LDP issues.
- 6.0 Recommendation**
- 6.1 **IT IS RECOMMENDED** that Members note the content of the attached consultation document and agree to the head of planning issuing a response on behalf of the Council.

**Appendix 1:** DFI letter to Council.

**Appendix 2:** Draft Development Plan Practice Note (DPPN) 10.

**Appendix 3:** Plan Preparation Checklist: Questions and example evidence (for info only).

**Strategic Planning Directorate**



Department for

**Infrastructure**

An Roinn

**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

To:-  
**Council Chief Executives**  
**Heads of Planning**  
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Your reference:  
Our reference:

22 July 2019

Dear Sir/Madam,

**Draft Development Plan Practice Note 10 – Submitting Development Plan Documents for Independent Examination**

I refer to the above document and to a recent discussion on 17<sup>th</sup> June between the Department and the Development Plan Working Group in relation to advice for councils on preparing for the submission of development plan documents for independent examination. As you may be aware, one of the items discussed was the Department's intention to publish Development Plan Practice Note 10 'Submitting Development Plan Documents for Independent Examination'

I am now pleased to attach the draft guidance document, which has been shared and discussed with the PAC, intended to assist councils with the preparation of your local development plans. It is designed to guide you, and others engaged in the planning system, through the key requirements for the submission of a development plan document to the Department to cause an independent examination. It focuses on the legislative requirements, and aims to ensure a consistent approach is undertaken in relation to the procedural and information requirements which are necessary for an effective and efficient process.

If you wish to make comments on the draft guidance I would be grateful if you could do so by 30<sup>th</sup> August, as it is the Department's intention to publish in final form in September.

Please also note that the Plan Oversight Privacy Notice, in relation to information received from councils on the plan preparation process, will be available on the Department's website in due course.

E-mail: [planning@infrastructure-ni.gov.uk](mailto:planning@infrastructure-ni.gov.uk)  
Website: [www.planningni.gov.uk](http://www.planningni.gov.uk)

In addition, please find attached for information a self-assessment tool to assist in the preparation of Local development plans. This document, 'Plan Preparation – Key Questions and Example Evidence', was also previously discussed at the Development Plan Working Group and provides advice which councils may find useful in helping assess readiness for independent examination.

I hope you find that this information is of assistance to you.

Yours faithfully



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**ALISTAIR BEGGS**  
Director

Encl

- Draft Development Plan Practice Note 10 – Submitting Development Plan Documents for Independent Examination
- Plan Preparation – Key questions and Example evidence

# Development Plan

## Practice Note

PRACTICE NOTE

**10**

### Submitting Development Plan Documents for Independent Examination

July 2019



Department for

**Infrastructure**

An Roinn

**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## 1. Preamble

1.1. This Development Plan Practice Note (DPPN) is designed to guide planning officers, and others engaged in the planning system, through the key requirements for the submission of a development plan document (DPD) to the Department<sup>1</sup> to cause an independent examination (IE). It deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from the **Planning Act (Northern Ireland) 2011** (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear. In this practice note, any references to sections are references to sections of the 2011 Act and any references to regulations are references to regulations of the **Planning (Local Development Plan) Regulations (Northern Ireland) 2015** (the LDP Regulations), unless otherwise stated.

1.2. Where appropriate, this practice note will therefore highlight:

- 1) Relevant legislation;
- 2) Procedural guidance;
- 3) Definitions;
- 4) Best practice examples / relevant case law.

1.3. This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note<sup>2</sup> and legislation, the provisions of the legislation will prevail.

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<sup>1</sup> Department means the Department for Infrastructure unless otherwise stated. The Department for Infrastructure came into being on 8 May 2016 and the Department of the Environment was dissolved in accordance with the Departments Act (Northern Ireland) 2016 and The Departments (2016 Act) (Commencement) Order (Northern Ireland) 2016.

<sup>2</sup> Please ensure you are considering the most up to date version of Development Plan Practice Note 10 on the Department's website at [www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk) and the Planning Portal at

## 2. Introduction

- 2.1. This practice note focuses on the key legislative requirements for the submission of a DPD by the council to the Department for IE, which is carried out by an independent examiner. It covers requirements for the availability of submission documents and the publicity of the IE, which are the responsibility of the council. However, detailed procedures for the independent examination are the remit of the appointed independent examiner and are not covered within this practice note. This practice note aims to ensure a consistent approach is undertaken in relation to the procedural and information requirements which are necessary for an effective and efficient process.
- 2.2. After a DPD, (the draft Plan Strategy (PS) or draft Local Policies Plan (LPP)), is published and before it can be adopted it must undergo an IE. The PS is initially subject to IE and then adopted, then later in the plan preparation process the LPP is subject to IE and then adopted. When both the PS and LPP have been adopted they together comprise the local development plan (LDP) for a given council area.

## 3. Legislative context

- 3.1. **Part 2 of the 2011 Act** sets out the general requirements for local development plans. Section 10 deals with the IE of the DPD, both the PS and LPP. A council must submit every DPD to the Department to cause an IE. In particular, section 10(2)(b) states that a council must not submit a DPD to the Department unless it considers that the document is ready for IE. Therefore, the council should consider whether the document is ready to be tested for soundness and if it satisfies the requirements relating to the preparation of the DPD. Failure of a council to satisfy itself as to a DPD's readiness for IE may ultimately result in the document being found unsound at IE.



- 3.2. In accordance with section 10(4) the Department must cause an IE to be carried out by the Planning Appeals Commission (PAC) or a person appointed, herein referred to (unless specifically stated) as 'the independent examiner', unless it intends to make a direction under section 11(2) or 15(1) to direct the council to withdraw or modify a DPD, respectively. Under section 10(5), the Department must not appoint a person other than the PAC, to carry out an IE unless, having regard to the timetable prepared by the council under section 7(1), the Department considers it expedient to do so.
- 3.3. An IE is a public examination of a DPD that is commenced, conducted and concluded by an independent examiner. Section 10(6) states that the purpose of the IE is to determine, in respect of the DPD:
- 1) whether it satisfies the requirements of sections 7 (Preparation of timetable) and 8 (Plan Strategy) or, as the case maybe, sections 7 (Preparation of timetable) and 9 (Local Policies Plan), and any regulations under section 22 (Regulations) relating to the preparation of DPDs; and
  - 2) whether it is sound.
- 3.4. Regulations 20-22 set out the requirements for the submission of documents for IE, the availability of submission documents and the publicity of the IE, which are all the responsibility of the council.
- 3.5. It is a statutory requirement that the PS (section 8(4)(a)) and LPP (section 9 (4)(a)) must be prepared in accordance with the plan timetable. Regulation 6 requires the council to include indicative dates for each stage of the preparation of the local development plan from the commencement of the LDP process up to its conclusion at the adoption of the local policies plan. It must set out the timings of the publication for the preferred options paper and the development plan documents as well as accompanying documents such as the Sustainability Appraisal (SA) including Strategic Environmental Assessment (SEA).
- 3.6. It is a statutory requirement that the PS (section 8(4)(b)) and LPP (section 9(4)(b)) must be prepared in accordance with the council's Statement of

Community Involvement (SCI). The preparation of the LDP commences with the publication of the council's Preferred Options Paper (POP), followed by the preparation and adoption of the PS and LPP, respectively.

#### **4. How a DPD progresses from the representation stage to submission to the Department.**

- 4.1. Regulation 20(1) requires that once the DPD has been published council must consider representations and counter representations.
- 4.2. The council should endeavour to prepare a sound DPD in the first instance, as set out in sections 8 or 9, and also Part 4 of the LDP Regulations. These legislative requirements set out the process and the form and content of the DPD and includes taking account of relevant policies and strategies, preparation of a robust evidence base, and involving stakeholders and the community.
- 4.3. Following receipt of representations to the DPD, the council will consider the issues raised. The impact of any new information and the implications for the soundness of the DPD should also be considered. The council may decide, for example, to revisit the evidence base or engage with the relevant parties to determine how to address the issue(s). Ultimately the council will consider each issue raised and determine whether it:
  - Notes the issue but considers that the DPD as prepared is sound and does not need to be changed.
  - Notes the issue and, while it considers that the DPD as prepared is sound, is content that a compromise could be acceptable which would not impact upon the soundness of the DPD.
  - Disagrees with the issue and considers that the DPD as prepared is sound and does not need to be changed.

- Agrees with the issue which is an unforeseen issue, and considers that changes are required to ensure that issues which impact upon the soundness of the DPD are addressed.
  - Agrees with the issue and, where it is a fundamental issue that goes to the heart of the DPD, withdraw the DPD.
- 4.4. The council should consider the cumulative impact of the range of issues raised and decide if the DPD as prepared is ready for IE. However, where an unforeseen issue has arisen and council considers that changes are required to ensure that issues that impact upon the soundness of the DPD are addressed, then council should consider focussed changes to the DPD.

### **Focussed Changes**

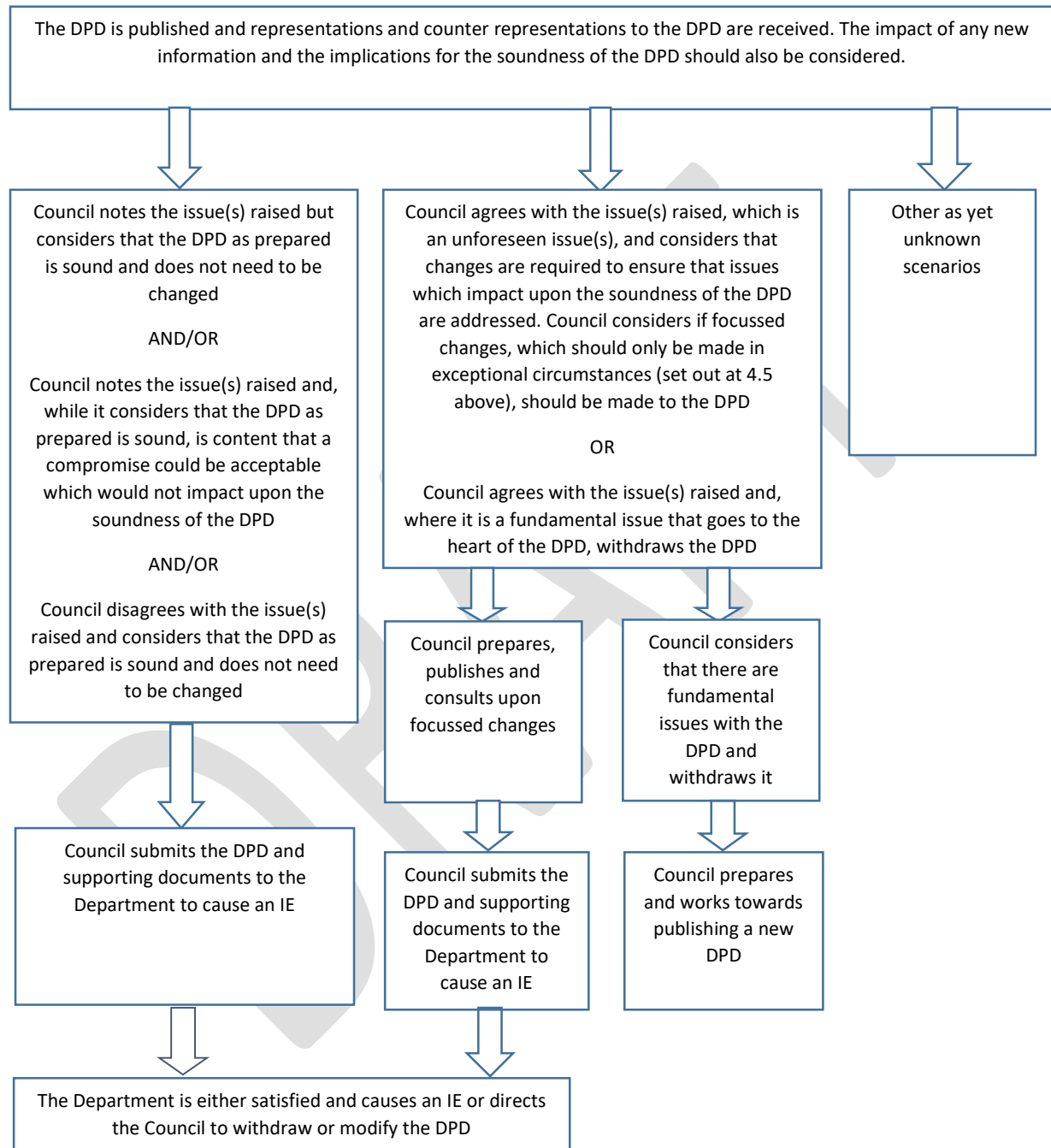
- 4.5. Following publication of and consultation on the DPD, it may prove necessary for the council to consider proposing changes to the DPD to ensure that issues that impact upon the soundness of the DPD are addressed. Focussed changes should only be made in exceptional circumstances, particularly as the DPD should already have been prepared whilst taking account of the tests of soundness. Focussed changes may be necessary, for example:
- following the consideration of representations where an unforeseen issue has been raised that impacts upon the soundness of the DPD, or
  - where there has been a sudden change in local circumstances, or
  - where new regional planning policy and/or guidance has been introduced.
- 4.6. The council may need to revisit and update its evidence base and consider if focussed changes to the DPD would be appropriate to satisfy themselves that the DPD is ready for IE. These focussed changes should be small in number and

reflect key pieces of evidence, but do not go to the heart of the DPD and affect only limited parts of it.

- 4.7. The focussed changes should be set out in an addendum to the original DPD including reasoning and robust evidence for the proposed changes. The council should consider the impact of such changes on the overall soundness of the DPD, the integrated Sustainability Appraisal process and other supporting assessments.
- 4.8. In order for the focussed changes to be considered at the IE satisfactory consultation should take place, therefore council should prepare, publish and consult upon the focussed changes. It is recommended that an 8 week public consultation is carried out to allow for comments. Comments made can only address and relate to the soundness of proposed focussed changes, as this consultation is not an opportunity to add to the previous representations or to make new comments on parts of the original DPD.
- 4.9. The purpose of this non-statutory administrative stage is to assist in dealing with exceptional circumstances that may arise between publication of a DPD and its submission to the Department, in order that the council has considered the full range of options and policy approaches before the DPD is considered ready for IE.

Figure 1 (below) sets out the various possible scenarios outlined above leading to the submission of a DPD to the Department, however as this is a new process it may be the case that with the passage of time other routes to IE will emerge.

Figure 1 – Indicative Illustration of How a DPD Progresses from the Representation Stage to Submission of a DPD to the Department.



## **5. Requirements to be met by the council before submitting the DPD and other documents for Independent Examination to the Department**

- 5.1. The council has the following statutory requirements to meet before it submits a DPD to the Department for IE:
- 1) Under section 10(2)(a), it has complied with any relevant requirements contained in regulations under Part 2; and
  - 2) Under section 10(2)(b), it thinks the DPD is ready for IE.
- 5.2. Regulation 15 specifically states that before submitting a DPD to the Department for IE in compliance with section 10, the council must make the DPD and other documents available for inspection. It also states the places at which the documents are to be made available for inspection, send a copy of those documents to the statutory consultation bodies, give notice in the Belfast Gazette and by local advertisement of the title of the DPD and where and when it is available for inspection, and the requirements for publication of the DPD on the council's website.
- 5.3. The council should thoroughly assess and check the DPD prior to its submission to the Department in order to satisfy itself that it meets the legislative requirements and reduce the potential need for the DPD to be withdrawn by the council. Likewise, this approach should be applied to other documents, including supporting documents, which are submitted with a DPD.
- 5.4. Under section 11(1) a council can withdraw a DPD at any time before it is submitted to the Department for IE. Where these powers are exercised and a DPD is withdrawn, it must be done so in accordance with regulation 23. Withdrawing a DPD may occur, for example, if a council is not satisfied that it will meet the statutory requirements for the submission of the DPD and other documents for IE and/or the tests of soundness. A council may review and address any issues and submit the new DPD and other documents at a later date in accordance with the statutory requirements. An action to withdraw by a

council would necessitate a revision of the plan timetable, which is provided for under regulation 7(5).

## **6. Submission of documents for Independent Examination to the Department.**

- 6.1. Section 10(3) states that (in addition to the submission of the DPD in accordance with section 10(1)) the council must also submit to the Department such other documents, or copies of documents and information as prescribed in regulations. This is to ensure that there is the necessary information for proper scrutiny of the DPD during the IE. **The Department will require one hard copy and one electronic copy of all documentation.**
- 6.2. For the purposes of section 10(3), regulation 20(2) prescribes the documents which a council must submit, along with the DPD, to the Department for IE and they are as follows:
- 1) the Plan Strategy Sustainability Appraisal report or, as the case may be, the Local Policies Plan Sustainability Appraisal report;
  - 2) the council's statement of community involvement (SCI);
  - 3) evidence that the council has complied with its SCI;
  - 4) copies of notices as follows:
    - a) notice of the address to which representations are to be sent in relation to the public consultation on the Preferred Options Paper
    - b) notice of the address to which representations are to be sent in relation to the public consultation on the DPD (i.e. Plan Strategy or, as the case may be, the Local Policies Plan)
    - c) notice of the address to which counter representations are to be sent in relation to representations made during the public consultation on the DPD (i.e. Plan Strategy or, as the case may be, the Local Policies Plan)
  - 5) the timetable;
  - 6) a statement setting out:

- a) a summary of the main issues raised in representations made in accordance with regulation 11(2) on the council's Preferred Options Paper, and
  - b) how those main issues have been taken into account in the preparation of the DPD;
- 7) a statement setting out:
- a) if representations/counter representations were made in accordance with regulation 16(2) or 18(2) respectively, the number of representations made and a summary of the main issues raised in those representations, or
  - b) that no such representations were made;
- 8) copies of any representations/counter representations made to the proposed development plan document, and
- 9) such supporting documents that in the opinion of the council are relevant to the preparation of the development plan document.

6.3. The Plan Strategy Sustainability Appraisal report and Local Policies Plan Sustainability Appraisal report incorporates Strategic Environmental Assessment (SEA).

6.4. Further to the requirements under section 10(1) and (3) and regulation 20(2), regulation 20(3) states that the council must also send to the Department the following documents:

- 1) where the development plan document is a plan strategy, a copy of that plan strategy, or
- 2) where the development plan document is a local policies plan:
  - a copy of that local policies plan, and
  - a copy of the adopted plan strategy.

### **Other Supporting Documents**



- 6.5. In addition to the Sustainability Appraisal report, other assessments that support the preparation of the DPD, whether PS or LPP, include the Equality Impact Assessment (EQIA), Habitats Regulations Assessment (HRA) and Rural Proofing.
- 6.6. The council should consider how to document its consideration of the representations and counter representations and its views on the main issues raised. It would be good practice to detail the representations to the DPD, the issues raised, and the council's consideration of those issues, for example in the form of a series of topic papers or a consultation report.
- 6.7. The council may prepare a Schedule of minor textual changes which are minor editing changes for factual correction, such as typos and grammatical errors, which do not impact upon the soundness of the DPD and do not require public consultation.
- 6.8. Statements of Common Ground can be used to establish the main areas of agreement between two or more parties on a particular issue. These can be a useful way to evidence commitment and deliverability and can be refined as work on the DPD progresses.
- 6.9. Where the council has prepared, published and consulted upon focussed changes, an Addendum containing focussed changes, amendments to the Sustainability Appraisal and necessary changes to other supporting assessments (where relevant), and comments made upon the focussed changes should be submitted.
- 6.10. When submitting a DPD, the council should also satisfy themselves that they are meeting the requirements of the independent examiner's procedures in relation to the information that will be required for IE (the PAC 'Procedures for Independent Examination of Local Development Plans' contain an Information Checklist for documents that will be needed by the Commission before the IE can proceed. The Procedures can be found on their website [www.pacni.gov.uk](http://www.pacni.gov.uk)).

6.11. The council must not submit a DPD unless it considers that the DPD is ready for IE. It may assist the council to use self-assessment documents and submit these to the Department as supporting documents to a DPD. Such documents will be useful in demonstrating a DPD has fulfilled legislative requirements.

### **The Department's Role at Submission**

6.12. The 2011 Act states that the Department must cause an IE unless it intends to direct the Council to modify or withdraw the DPD (sections 15(1) and 11(2)). The IE will determine whether or not the DPD satisfies the preparation requirements of the Act and LDP Regulations, and whether it is sound.

6.13. In its capacity as a statutory consultation body, the Department will assess the DPD in line with regional policy throughout the LDP preparation process, and will indicate through its representations if there are concerns in relation to the soundness tests, and this will be considered at the IE.

6.14. Following receipt of the DPD the Department, in its oversight role, must cause an IE unless it determines it is necessary to direct a council to withdraw or modify the document. Such consideration may include instances where the Department is of the opinion that the DPD is fundamentally flawed, for example where there is insufficient evidence to support proposals which represent significant departure(s) from regional policy, or other obvious procedural omissions contained in the LDP regulations or set out within a council's LDP timetable or SCI. This is not intended as an exercise in determining 'soundness' of a DPD or to fetter the role of the independent examiner, but rather to be satisfied that there is nothing in the body of documents which would prevent the DPD from progressing to independent examination.

6.15. Under section 11(2) the Department has the power to direct the council to withdraw the DPD at any time after it has been submitted by the council to the Department. Where these powers are exercised and a DPD is withdrawn, it must be done so in accordance with regulation 23. The council may submit the new DPD and other documents at a later date in accordance with the statutory

requirements. Subsequently, a council should ensure that their LDP timetable is kept up to date and should not undertake a key stage in the preparation of their LDP if their timetable requires a revision.

6.16. It should also be noted that under section 15(1) the Department may direct the council to modify a DPD at any time before it is adopted under section 12 if it thinks that the document is unsatisfactory. If the Department gives such a direction it must give reasons for doing so and the council must comply with the direction.

6.17. If the Department causes an IE it will notify the Council of that decision and advise them who will be appointed to carry out the IE<sup>3</sup>. The Department will also notify the independent examiner of its decision to cause an IE. The Department will then request that the council forward the necessary documentation, as set out in paras 6.1-6.7 of this document, to the independent examiner. At this point the Department is content that the independent examiner and the council shall correspond directly in terms of administration of the IE.

6.18. The independent examiner will set a date for the commencement of the public hearings and notify the council. Subsequently, a council should ensure that their LDP timetable is kept up to date and should not undertake a key stage in the preparation of their LDP if their timetable requires a revision.

## **7. Availability of submission documents**

7.1. Regulation 21 sets out the statutory requirements for the availability of a DPD after a council submits it to the Department to cause an IE.

7.2. As soon as reasonably practicable after a council submits a DPD to the Department the council must make the following documents available for

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<sup>3</sup> Section 10(4) states that an IE will be carried out by (a) the planning appeals commission; or (b) a person appointed by the Department. Section 10(5) states that the Department must not appoint a person under subsection (4)(b) unless, having regard to the timetable prepared by the council under section 7(1), the Department considers it expedient to do so.

inspection at its principal offices and such other places in the district of the council as it considers appropriate:

- 1) a copy of the DPD,
- 2) the documents specified in regulation 20(2), and
- 3) such other documents as in the opinion of the council are relevant to the preparation of the DPD.

7.3. The council must notify the consultation bodies of the fact that the DPD and the documents (as detailed in paragraph 7.2 above) are available for inspection and the places and times at which they can be inspected. Furthermore, the council must notify any person who has made (and not withdrawn) a representation or counter representation in accordance with regulation 16(2) or 18(2), respectively, of those matters.

7.4. In accordance with regulation 21(e)-(f), the council must also give notice in the Belfast Gazette and by local advertisement<sup>4</sup> of the fact that the DPD has been submitted to the Department. Furthermore, the council must publish this notice on its website.

7.5. In relation to making the submission documents available, the Council must comply with the requirements of its own SCI. It is important to note that if a Council gives a commitment to go beyond the minimum statutory requirements in its SCI, it must comply with that commitment.

## **8. Publicity of the Independent Examination**

8.1. Regulation 22 sets out the statutory requirements for the council in reference to the publicity of the IE.

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<sup>4</sup> Under regulation 2 of the LDP Regulations, "local advertisement" means an advertisement for two successive weeks in at least one newspaper circulating in the district of the council.

8.2. The council is responsible for the publicity of the IE for a DPD. Publicity allows those who have an interest in a DPD to be made aware of the forthcoming IE and to be able to prepare for it accordingly.

8.3. At least four weeks before the opening of an IE, the council must make public the time and place at which the examination is to be held and whether the PAC or a person appointed will carry out the IE and if the latter, the identity of that person. In relation to this information, council must:

- 1) notify the consultation bodies,
- 2) give notice in the Belfast Gazette and by local advertisement,
- 3) publish it on its website, and
- 4) notify any person who has made (and not withdrawn) a representation or counter representation in accordance with regulation 16(2) or 18(2), respectively.

## **9. The Next Steps**

9.1. An IE is a public examination of a DPD that is commenced, conducted and concluded by the independent examiner. The IE will examine 'soundness' of the DPD in terms of testing the principles, content and the preparation process against a list of key criteria. The 'Soundness' tests are set out in full in Development Plan Practice Note (DPPN) 06 'Soundness'.

9.2. Primarily, the role of the independent examiner is to determine:

- 1) whether a DPD satisfies the requirements for the preparation of a plan timetable and plan strategy or, as the case may be, the preparation of a plan timetable and local policies plan, together with the requirements for the preparation of a DPD as prescribed by the LDP Regulations;
- 2) whether a DPD is sound.

- 9.3. Any person who makes a representation seeking to change a DPD must, if they so request, be given the opportunity to be heard at the IE in line with section 10(7).
- 9.4. The independent examiner must consider representations and counter representations made in relation to a DPD. Representations and counter representations are made on the basis of the soundness tests. Therefore, in considering the representations, if it is identified that any aspects of the DPD are unsound, then the independent examiner may identify the need for modifications to the DPD to ensure it meets the soundness tests. These modifications will be reflected in the recommendations to the Department at the end of the IE.
- 9.5. Procedures for carrying out an IE as well as the timetable and general arrangements for each IE are matters for the independent examiner. Procedures for when the PAC hold an IE can be found on their website [www.pacni.gov.uk](http://www.pacni.gov.uk).
- 9.6. The independent examiner, after concluding the public hearings and, in accordance with section 10(8), must make recommendations and give reasons for those recommendations (herein referred to as the “advisory report”).
- 9.7. In accordance with regulation 24(1) the independent examiner must send the advisory report to the Department for its consideration in terms of making a direction to the council regarding the adoption of the DPD. The time period for preparing and the submission date for the advisory report are a matter for the independent examiner.

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## Plan Preparation – Key Questions and Example Evidence

- 1 This document is intended as a self-assessment tool to assist in the preparation of Local Development Plans. It may be further developed in light of experience gained through the plan preparation process and Independent Examination. Whilst every effort has been made to reflect statutory requirements, officers should refer to the relevant provisions of the Planning Act (NI) 2011 and the Planning (Local Development Plan) Regulations 2015 and other relevant legislation for full legislative requirements
- 2 While it is the Development Plan Document that will be tested for Soundness in terms of its content and the process by which it was prepared, there should be regard to Soundness at each stage of the plan preparation process, from evidence gathering and formulating the Timetable and Statement of Community Involvement (SCI), Preferred Options Paper (POP) and Plan Strategy or Local Policies Plan. This document outlines some of the Soundness considerations that may be relevant to each stage of plan preparation. It also poses key questions and provides examples of evidence that that may be used to demonstrate Soundness at Independent Examination. Some Soundness tests are more relevant to particular stages of plan preparation than others and where this is the case they are highlighted, however other tests may also apply. Further key questions and example evidence may be gathered to supplement a council’s demonstration of how a DPD is considered sound.
- 3 Detailed guidance in relation to Soundness is set out within Development Plan Practice Notice 06 ‘Soundness’ Version 2, published May 2017. The Soundness Tests are set out as follows:

	<b>Procedural Tests</b>
P1	Has the DPD been prepared in accordance with the timetable and Statement of Community Involvement?
P2	Has the council prepared its Preferred Options Paper and taken into account any representations made?
P3	Has the DPD been subject to sustainability appraisal including Strategic Environmental Assessment
P4	Did the Council comply with the regulations on the form and content of its DPD and procedure for preparing the DPD?
	<b>Consistency Tests</b>



C1	Did the council take account of the Regional Development Strategy?
C2	Did the council take account of its Community Plan?
C3	Did the council take account of policy and guidance issued by the Department?
C4	Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?
	<b>Coherence and effectiveness tests</b>
CE1	The DPD sets out a coherent strategy from which its policies and allocations logically flow and where cross boundary issues are relevant it is not in conflict with the DPDs of neighbouring councils
CE2	The strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust evidence base.
CE3	There are clear mechanisms for implementations and monitoring; and
CE4	It is reasonably flexible to enable it to deal with changing circumstances

## SURVEY AND EVIDENCE GATHERING

Soundness Test	P1	P2	P3	P4	C1	C2
	C3	C4	CE1	CE2	CE3	CE4
<b>KEY QUESTIONS</b>			<b>EXAMPLE EVIDENCE (these examples are not exhaustive and maybe supplemented by other sources of evidence)</b>			
Has baseline data been gathered on matters affecting the development of the district or the planning of development?			<p>Should include those matters set out in Section 3 (1) – (3) of the Planning Act (Northern Ireland) 2011. These include the principal economic, social and environmental characteristics of the council’s district; the purposes for which land is used within the district; the size, composition and distribution of the population of the district;</p> <p>Evidence gathering is an ongoing process and should be kept up-to-date during the course of plan preparation. The planning authority taking forward the work will be best placed to judge the extent of the evidence required at this stage, however that evidence considered key to the generation and testing of options for the POP should primarily be collected at this point. Survey work/ evidence gathering should be proportionate and limited to that necessary to justify plan proposals.</p>			
Has the Council kept under review (in relation to their district and neighbouring districts) those matters that may affect the preparation of the DPD (sharing information and working collaboratively will assist in this regard).			Information in relation to engagement structures, records of meetings or a memorandum of understanding. This could include information or shared evidence/commissioned research or work completed on a joint basis where there are cross boundary matters affecting more than one council.			

Evidence gathering has commenced informed by the need to consider the Sustainability Appraisal (SA) requirement in Sections 8(6) and 9(7) of the 2011 Act.	Gathering evidence for SA at this early stage to facilitate preparation of interim SA report will help support the formal stages of both plan and SA preparation.
Evidence meets requirements of the Strategic Environmental Assessment (SEA) set out in Schedule 2(2) (3) of the Environmental Assessment of Plans and Programmes Regulations ( Northern Ireland ) 2004	Early consideration and clarification of the relevant aspects of the current state of the environment including the environmental characteristics of any areas likely to be significantly affected.

#### TIMETABLE AND STATEMENT OF COMMUNITY INVOLVEMENT

Soundness Test	P1	P2	P3	P4	C1	C2
	C3	C4	CE1	CE2	CE3	CE4
<b>KEY QUESTIONS</b>		<b>EXAMPLE EVIDENCE (these examples are not exhaustive and may be supplemented by other evidence or resources)</b>				
Does the Timetable detail the main DPD Stages and has it been prepared in accordance with Part 2 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015?		Development Plan Practice Note (DPPN) 03 'Timetable'  Whilst the Timetable is not tested for Soundness, a key procedural test of the DPD is that it has been prepared in accordance with the agreed Timetable. Ensuring that the Timetable reflects the minimum requirements set out in Part 2 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 is therefore important.				
Is the Timetable realistic and does it take account of available resources? Has it had regard to statutory and organisational processes including the necessary approvals to progress through each stage of the plan preparation? While some flexibility is necessary, where slippage is more than 3 months the Timetable should generally be revised		Soundness Test P1 requires that the DPD is prepared in accordance with the agreed Timetable. It is therefore important to consider this Soundness Test when formulating the Timetable to ensure that it remains realistic and achievable taking account of the need for review based on the experience as the plan proceeds through its formal processes.				

<p>Has the Timetable been prepared in consultation with the PAC and other such consultation bodies considered appropriate?</p>	<p>Confirmation that the PAC have been consulted in preparing the Timetable.</p>
<p>Does the SCI set out how the community will be involved in the local development plan formulation in accordance with the Planning (Statement of Community Involvement) Regulations (Northern Ireland) 2015.</p>	<p>Development Plan practice Note (DPPN) 02 'Statement of Community Involvement'</p>
<p>Where an SCI makes engagement commitments that go beyond statutory provisions, the process and relationship to statutory requirements should be clear</p>	<p>Soundness Test P1 requires that the DPD is prepared in accordance with the Council's SCI. It is therefore important to consider this Soundness Test when formulating/revising the SCI to ensure that its provisions are realistic and achievable under the agreed Timetable for preparation of the LDP and the provisions of the</p>
<p>Have the terms of the SCI and timetable been adopted and also agreed with the Department for Infrastructure.</p>	<p>Correspondence confirming formal agreement of Department should be retained.</p>

## PREFERRED OPTIONS PAPER

Whilst it is the Local Development Plan which is subject of Soundness testing through IE, because the POP will influence both the PS and the LPP it is important to consider Soundness at this stage.

Soundness Test	P1	P2	P3	P4	C1	C2
	C3	C4	CE1	CE2	CE3	CE4
<b>KEY QUESTIONS</b>	<b>EXAMPLE EVIDENCE (these examples are not exhaustive and maybe supplemented by other evidence or resources)</b>					
Has the POP been prepared and consulted upon in accordance with the Timetable and SCI?	The POP /SCI and any self-assessment or summary of consultation					
Do the POP and associated documents set out a distinctive Vision, Objectives as well as a range of options and a preferred option?	<p>The POP should take account of the main social, environmental and economic issues within the district. Options should take account of the community plan, the RDS 2035, SPPS and other policy and guidance published by the Department.</p> <p>An Interim SA report assists with the selection and justification of the Preferred Option.</p>					
Are Options founded on a robust evidence base?	<p>Position Papers setting out the results of evidence gathering or relevant studies undertaken or independently commissioned. The majority of initial data gathering required to establish the baseline position of the District should have been completed by this stage.</p> <p>Contents of Interim SA Report</p>					
Where only one relevant option is presented does the POP outline, why no alternative has been considered?	Depending upon circumstances it may be possible to demonstrate that the adopted approach to a particular matter is constrained by other factors					

<p>Do options, including the preferred option, take account of the Community Plan?</p>	<p>The content of the LDP establishes clear linkages with the objectives of the Community Plan.</p> <p>Guidance for The Operation of Community Planning provides further information on achieving the statutory link.  <a href="https://www.communities-ni.gov.uk/publications/circular-lg-2815-%E2%80%93-statutory-guidance-operation-community-planning">https://www.communities-ni.gov.uk/publications/circular-lg-2815-%E2%80%93-statutory-guidance-operation-community-planning</a></p>
<p>Do options, including the preferred option, take account of the Regional Development Strategy and Strategic Planning Policy Statement? Departures are identified, explained and supported by robust evidence.</p>	<p>The POP refers to relevant regional planning policy and guidance as contained in RDS and SPPS in order to demonstrate how formulation of options has taken them into account.</p> <p>There may be instances where, due to local circumstances, the options depart from the approach in regional guidance and strategic policy. Where this is the case evidence should be provided to outline why the departure is proposed.</p>
<p>Do options have regard to other plans and policies relating to the district or to any adjoining district?</p>	<p>Evidence of consultations with adjoining authorities and / protocols for working together in relation to the content of the extant plan and emerging LDP and Community Plan.</p>
<p>Has the POP been subject to an interim Sustainability Appraisal which identifies and compares the sustainability effects of the relevant alternatives?</p>	<p>SA Interim report</p>

**DEVELOPMENT PLAN DOCUMENT**

Soundness Test	P1	P2	P3	P4	C1	C2
	C3	C4	CE1	CE2	CE3	CE4
<b>KEY QUESTIONS</b>			<b>EXAMPLE EVIDENCE (these examples are not exhaustive and maybe supplemented by other evidence or resources)</b>			
Have the relevant requirements contained with the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 been met?			The planning authority's self-assessment of soundness			
Has account been taken of any representations received in relation to the POP and have representations and counter-representations received on the draft DPD been considered? [Regulation 20(1)]			<p>Contents of the Preferred Options Paper and the Summary Report detailing how consultation responses have been taken into account in the preparation of the draft DPD.</p> <p>A summary of the main issues received in response to the consultation on the draft DPD and views on the issues raised, for example in the form of topic papers.</p> <p>Where appropriate an addendum detailing focussed changes in response to exceptional circumstances which could include matters raised in representations.</p>			
In the case of a Plan Strategy does it set out a distinct Vision, Objectives, strategic policies and, where relevant, strategic allocations which are realistic and founded on a robust evidence base.			<p>In order for the strategy and policies of the DPD to be realistic and appropriate, evidence should be provided to show how they will help to deliver higher level objectives of the DPD.</p> <p>Evidence of information which has been taken into account and assessments undertaken to inform policy development.</p> <p>Position Papers setting out the results of evidence gathering or relevant studies undertaken or commissioned independently.</p> <p>Depending on the issues raised technical supplements may provide a useful source of evidence to justify the strategy, policies and proposals of the DPD.</p>			

<p>DPD policies and allocations give spatial expression to the Community Plan, highlighting where specific policies/ allocations deliver aspects of the Community Plan.</p>	<p>The Guidance for The Operation of Community Planning provides further information on achieving the statutory link.</p> <p><a href="https://www.communities-ni.gov.uk/publications/circular-lg-2815-%E2%80%93-statutory-guidance-operation-community-planning">https://www.communities-ni.gov.uk/publications/circular-lg-2815-%E2%80%93-statutory-guidance-operation-community-planning</a></p> <p>Clarity within the documents in relation to those parts of the LDP that give spatial expression to the Community Plan</p> <p>Other evidence of alignment between the community plan and LDP, for example linking LDP objectives to the delivery of community planning outcomes.</p>
<p>Do plan policies and allocations take account of the Regional Development Strategy and Strategic Planning Policy Statement?</p> <p>Where an aspect of the DPD departs from the approach of the RDS or SPPS does the plan evidence base support a different approach?</p>	<p>Evidence of how policy formulation and development have taken account of regional guidance and strategic policy.</p> <p>Relevant regional strategic guidance and planning policy is referred to in the DPD as evidence of the linkage between plan policies and proposals and how they help to implement higher level vision, aims and objectives of regional spatial guidance and planning policy.</p> <p>Position papers forming the evidence for the DPD provide analysis and justification in support of DPD policies and allocations. Depending on the issues raised technical supplements may provide a useful source of evidence to justify the strategy, policies and proposals of the DPD.</p>
<p>Does the DPD include provisions for implementation and monitoring; including how this relates to the later preparation of an Annual Monitoring Report?</p>	<p>Inclusion of a section on monitoring and implementation and identifies relevant indicators, linked to DPD policies and objectives, as well as appropriate triggers for plan review.</p>



<p>DPD policies are projected to have a realistic prospect of implementation.</p>	<p>Reference to key site requirements and more detailed consideration in LPP. Statement of self-assessment on soundness and the approach to the review of the plan to ensure the ongoing viability is monitored.</p> <p>The DPD outlines the approach to assessment of the availability of allocated housing land, including a 5-year supply of developable housing land. The DPD demonstrates how the district housing requirement might be delivered over the plan period through existing commitments, zonings and windfall sites.</p> <p>Where appropriate, plan policies/ allocations contain targets or trigger points in relation to their implementation or review.</p>
<p>Does the DPD include separate justification for the policies and/or allocations it contains? ( required under S12 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015</p>	<p>The Development Plan Document sets out justification and amplification in relation to the policy contained within. In respect of the Plan Strategy this will include supporting justification for the growth strategy and spatial framework and any other policies/ allocations. Justification/amplification should include reference to regional policy/guidance issued, the findings of the survey of district or other evidence gathered as justification for the policy approach set out.</p>
<p>Are DPD policies consistent with one another and do they support the plan's spatial strategy?</p>	<p>Relevant sections of the DPD demonstrating the link between Plan Objectives and corresponding growth strategy and policies and allocations and show how together they help to implement the high level vision and objectives of the plan.</p> <p>As an example, policies and allocations in relation housing take account of those in relation to economic development or infrastructure.</p>
<p>In the case of a Local Policies Plan, is it consistent with the strategic policies and allocations of the Plan Strategy?</p>	<p>The Provisions of the adopted Plan Strategy</p>

<p>Have cross boundary issues been considered to ensure that the plan is not in conflict with the DPD of neighbouring district councils?</p>	<p>Consideration of the likely cross boundary implications of policies and proposals within the DPD to help ensure compatibility with that neighbouring councils. This could include minutes of meetings or a statement highlighting areas of agreement/ common ground in respect of cross boundary issues.</p> <p>Working groups that promote a cooperative/collaborative approach to wider regional issues and how such issues have been addressed;</p>
<p>Does the DPD have regard to other plans and policies relating to the district or to any adjoining district?</p>	<p>Evidence of how objectives are integrated with and add value to assist the delivery of national, regional and local policies and strategies both within and beyond the plan its council area.</p> <p>Evidence that the council has had regard to other plans and strategies, for example, those in relation to, for example, transport, recreation and economic development.</p>
<p>Where applicable, has consultation taken place with planning authorities in the Republic of Ireland?</p>	<p>A planning authority in the Republic of Ireland is not a Council for the purposes of the Planning (Local Development Plan) Regulations 2015 or Soundness Tests C4 and CE1.</p> <p>As a matter of good practice, cross boundary consultation with planning authorities in the Republic of Ireland should be explored where it would support the sustainable development of the plan area.</p> <p>Evidence may include relevant working groups/workshops Meetings Engagement/ consultation with Local Authority led cross border groupings</p> <p>Where formal transboundary consultation is required this should take place in accordance with the Environmental Assessment of Plans and Programmes Regulations (NI) 2004.</p>

How flexible is the plan to unexpected changes in circumstances?

Provision of an appropriate contingency allowance to support flexibility and promote robustness of plan proposals to unforeseen circumstances.

Where appropriate, the identification of trigger points in respect of contingency options that will help to achieve plan objectives in the event that plan policies/allocations are not delivered as expected.

Analysis of the robustness of policies to any change in the assumptions underpinning them. This could take the form of risk analysis identifying the risk to plan objectives of certain key policies/ allocations not being implemented as expected. This should be proportionate and reflect the fact that some policies/allocations may be more important to the achievement of plan objectives than others.