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Gwasanaeth Democraidd
Democratic Service
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Cyfarfod / Meeting

CYFARFOD ARBENNIG O'R PWYLLGOR CRAFFU CYMUNEDAU
SPECIAL MEETING OF THE COMMUNITIES SCRUTINY COMMITTEE

Dyddiad ac Amser / Date and Time

2:00PM, DYDD GWENER, 7 CHWFROR, 2014

2.00PM, FRIDAY, 7 FEBRUARY, 2014

Nodwch amser cychwyn y cyfarfod ogydd / Please note the meeting start time

Lleoliad / Location

SIAMBR DAFYDD ORWIG

SWYDDFEYDD Y CYNGOR / COUNCIL OFFICES, CAERNARFON

Noder y man cyfarfod ogydd / Please note the venue

Pwynt Cyswllt / Contact Point

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Dosbarthwyd 31-01-2014

Aelodaeth/Membership (18)

Plaid Cymru (9)

Y Cynghorwyr/Councillors

Craig ab Iago	Annwen Hughes	Gethin Glyn Williams
Dilwyn Morgan	Linda Morgan	Tudor Owen
Caerwyn Roberts	Mandy Williams-Davies	Eurig Wyn

Annibynnol/Independent (4)

Y Cynghorwyr / Councillors

Eric M. Jones	Nigel Pickavance	Angela Russell	Mike Stevens
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Llais Gwynedd (3)

Y Cynghorwyr/Councillors

Louise Hughes	Gruffydd Williams	Robert J. Wright
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Llafur/Labour (1)

Y Cynghorydd/Councillor

Gwynfor Edwards

Democratiaid Rhyddfrydol / Liberal Democrats (1)

Y Cynghorydd/Councillor

Stephen Churchman

Aelodau Ex-officio / Ex-officio Members

Cadeirydd ac Is-Gadeirydd y Cyngor / Chairman and Vice-Chairman of the Council – Y Cynghorwyr / Councillors Huw Edwards a / and Dewi Owen.

AGENDA

1. APOLOGIES

To accept any apologies for absence.

2. DECLARATION OF PERSONAL INTEREST

To receive any declaration of personal interest.

3. URGENT ITEMS

To note any items that are a matter of urgency in the view of the Chairman for consideration

4. THE DRAFT PLANNING BILL (WALES) AND POSITIVE PLANNING: PROPOSALS TO REFORM THE PLANNING SYSTEM IN WALES

A presentation will be given by the Head of the Regulatory Department and the Cabinet Member – Planning
(Background papers and copy of the Consultation Document attached)

5. RESIDUAL WASTE DISPOSAL AGREEMENT

The Second Agreement Between the Five Councils

To scrutinise the principles which will be included in the second contract that the Council will be required to sign in order to proceed with the joint plan.

(Cabinet Members report to follow)

6. EXCLUSION OF PRESS AND PUBLIC

The Chairman shall propose that the press and public be excluded from the meeting during the discussion on the following item due to the likely disclosure of exempt information as defined in paragraphs 14 and 18 A Part 4, Schedule 12A of the Local Government Act 1972. The report deals with the results of a tender process and the consequential appointment of a contractor. Matters of commercial sensitivity such as prices and terms resulting from the competitive process are addressed in the report. Such information as presented in the report relates to the business of the bidders and is commercially sensitive. It is also subject to constraints relating to confidentiality.

Although there is a public interest in gaining an understanding of public expenditure and contracts in areas such as waste management this needs to be balanced against the public interest in the authority maintaining the confidence of bidders to compete for contracts without fear that commercially sensitive information which could of direct value to competitors in the waste market will be made public. Failure to provide such assurance can undermine the confidence of bidders in the process and therefore reduce competition. It is also relevant that that the award process in the procurement has not been concluded. For these reasons the public interest lies with excluding the press and public.

7. RESIDUAL WASTE DISPOSAL AGREEMENT **Select a Contractor to deliver the service**

To scrutinise the recommendation by the North Wales Joint Committee established to run the project regarding the company which should be chosen to deliver the project.

(Report to follow)

Number: **WG20088**



Llywodraeth Cymru
Welsh Government

www.cymru.gov.uk

Welsh Government

Consultation Document

Positive Planning

Proposals to reform the planning system in Wales

Date of issue: **4 December 2013**

Action required: Responses by **26 February 2014**

Overview

This consultation paper contains our proposals to modernise the planning system in Wales and includes changes to primary legislation, secondary legislation, and policy and guidance. The consultation paper identifies the need for culture change, a change in attitude away from regulating development towards encouraging and supporting development.

The consultation start date is 4 December 2013 and will end on 26 February 2014.

How to respond

The consultation response form is available at: www.wales.gov.uk/consultations.

The consultation paper includes specific questions upon which the Welsh Government would welcome your views.

The closing date for replies is 26 February 2014.

You can reply in any of the following ways:

E-mail: Please complete the consultation response form and send it to: planconsultations-d@wales.gsi.gov.uk

(Please include 'Positive Planning – WG20088' in the subject line).

Post: Please complete the consultation response form and send it to the address provided under the 'Contact Details' section.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

Contact details

For further information:

Planning Bill Team
Planning Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email: planconsultations-d@wales.gsi.gov.uk

Telephone: 0300 060 3300 or 0845 010 3300

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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- Statutory Consultees
- Planning Committees, Delegation and Role of Members
- Decision Notices
- Notification of Development
- Amendments to Planning Permission
- Renewal of Planning Permission
- Town and Village Greens
- Enforcement
- Fees and Resources
- Planning Application Fees

7. Financial Impacts

Foreword from the Minister for Housing and Regeneration

The title of this consultation paper - Positive Planning - is exactly what I want the delivery of planning to be. I want to see planning become an enabler of appropriate development that supports national, local and community objectives – whether it be for infrastructure, new homes or development that supports business growth and jobs.

In developing the proposals, I have been in a position to take account of a wide range of evidence for change. There is no shortage of either information or views about the planning system and how it currently operates. Having considered this information, what interests me is the changes we need to make in the law, policy, and culture for planning to become an enabler.

I want Welsh Government to set an appropriate legislative and policy framework which gives clarity to planning authorities, planning applicants and the general public. I also want to see simplification of what is currently a highly complex system and greater collaboration in delivery of planning. I believe that the proposals in this consultation paper, along with those set out in the draft Planning (Wales) Bill, will take us in this direction.

It is important that planning legislation links effectively to other legislation in our programme and I am working closely with Cabinet colleagues responsible for the Environment, Heritage and Future Generations Bills to achieve this.

This consultation is very much part of an on-going dialogue about the planning system - I want to hear from you whether our proposals will help to achieve the objective of an enabling planning system. I would also be interested to hear if you think there is more we might do to achieve this objective



Carl Sargeant, Minister for Housing and Regeneration.

Chapter 1 - Positive Planning

- 1.1 This consultation paper contains our proposals to change the planning system. It acknowledges the important role that the planning system must play in shaping Wales's future by helping to deliver the growth, jobs, homes and infrastructure that we need whilst safeguarding our most important natural resources. To achieve this, planning must be more than a regulatory activity. A system which is purely regulatory will deliver negative outcomes. Planning must be repositioned as a tool to manage change in the public interest and support development by guiding it to appropriate locations.
- 1.2 We are proposing a package of changes that deliver comprehensive reform. This requires changes to primary legislation, set out in the draft Planning (Wales) Bill, which accompanies the consultation paper, secondary legislation, policy and guidance. Most importantly, the consultation paper confirms the need for culture change, a change in attitude away from regulating development towards encouraging and supporting development. This is no easy task; it will involve all participants in the planning system, including government, local planning authorities (LPAs), applicants, statutory consultees and citizens. It is only in this way that planning can help realise our future aspirations for Wales.
- 1.3 The need for a planning system is accepted by all, but there is widespread consensus that it could serve us better. A step change in delivery is urgently required. 'Business as usual' is not an option. Evidence identifies that users of the planning system feel that it has become overly regulatory in nature, unpredictable and inflexible, especially in relation to changing economic circumstances¹. Citizens have expressed concerns that the planning system lacks transparency and does not reflect community needs or aspirations².
- 1.4 Although significant progress has been made to address these concerns, there remains considerable room for improvement. The challenge is to put in place the delivery structures, process and procedures, backed up by sanctions, to provide a planning system for Wales, fit for the 21st Century. The clear message is that we need every LPA to deliver a quality service in a consistent way.

What we want to achieve

- 1.5 ***Our vision is for a planning system which helps us to deliver national, local and community objectives by supporting appropriate development.*** To achieve this we need a planning system which is positive in outlook and facilitates rather than frustrates appropriate development. We want to create a planning system which is an asset by maximising opportunities arising from the devolution dividend. This will help us to face the challenges that are before us, including recovery from the deepest recession in living memory, the urgent need to renew our infrastructure, and the need to provide good quality homes for all. Whilst we have maximised the opportunities that the devolution settlement has presented us with, we will continue to press the UK Government for further devolution in areas such as consenting energy projects over 50mw;

¹ [IAG Towards a Welsh Planning Act: Ensuring the Planning System Delivers](#)

² [Public Attitudes Towards the Planning System in Wales](#)

and the Community Infrastructure Levy (CIL). Our proposals are consistent with and support the proposals to reform public service delivery in Wales.

- 1.6 This is the first time that Wales has had within its control primary legislation as a tool to bring about change. Our proposals are based on a comprehensive evidence base which is briefly described in the next chapter. It includes an extensive expert report prepared by an Independent Advisory Group (IAG) who were invited by us to undertake a comprehensive MOT of the planning system. They received over 100 responses to their call for evidence and held a wide ranging programme of discussions with stakeholders. We are grateful to everybody who took part in the conversation about the future direction of planning in Wales and welcome the degree of consensus which has emerged on the need for change. They concluded that the current planning system should not be scrapped but identified that it requires major repair if it is to become fit for purpose. Many of the proposals put forward by the IAG are being taken forward. They are explained in this consultation paper and, where primary legislation is required, included in our draft Bill. In a number of instances further choices need to be made before we can finalise our legislative proposals. We have identified these and are seeking your views on these as part of this consultation. Any additional legislative proposals that arise from this will be included in the Bill that will be introduced into the National Assembly for Wales during 2014.

Our proposals

- 1.7 In the following chapters of this consultation we describe the key conclusions from the evidence base and set out in detail our proposals for reform of the Welsh planning system.
- 1.8 Our proposals introduce change that:
- Supports culture change, helping to make planning a positive activity which manages and supports appropriate development;
 - Confirms the role of the Welsh Government as an active steward of the planning system;
 - Promotes effective collaboration between LPAs
 - Improves local delivery by reinforcing the plan led approach and promoting efficient development management (DM) procedures; and
 - Enhances engagement by making it easier for citizens to influence the future of their communities.
- 1.9 We have grouped our proposals according to four themes:
- Supporting culture change;
 - Active stewardship;
 - Improving collaboration; and
 - Improving local delivery.

1.10 To **support culture change** we will:

- Establish a national planning advisory and improvement service hosted by the Welsh Government (paragraph 3.18).
- Work with stakeholders to develop a competency framework for planning practitioners and elected members to describe the skills, knowledge and behaviours necessary to deliver planning reform (paragraph 3.24).

1.11 To be **active stewards** of the planning system we will:

- Provide a legal framework for the preparation of a national land use plan, the National Development Framework (NDF) to replace the Wales Spatial Plan (WSP) (paragraph 4.7).
- Introduce a new category of development for the largest infrastructure planning applications (developments of national significance) where Welsh Ministers will be responsible for taking planning decisions (paragraph 4.54).

1.12 To **improve collaboration** we will:

- Update the legal framework which would allow LPAs to be merged to create joint boards covering larger areas (paragraph 5.6).
- Establish a system of Strategic Development Plans (SDPs) to address issues of greater than local importance such as housing land supply (paragraph 5.21).

1.13 To **improve local delivery** of planning services we will:

- Introduce standardised annual performance reporting for LPAs. Where performance is consistently poor there will be an option to submit defined planning applications to Welsh Ministers rather than the LPA (paragraph 6.10).
- Refine the Local Development Plan (LDP) system, and promote collaboration between LPAs and town and community councils to produce Place Plans (paragraph 6.20).
- Increase the effectiveness of the DM system, including frontloading processes to provide effective pre application advice and community engagement for the largest planning applications (paragraph 6.50).

1.14 Our proposed legislation will not include planning policy for specific topics such as housing or the economy. Policy issues are already comprehensively addressed through Planning Policy Wales (PPW) and Technical Advice Notes (TANs). The inclusion of planning policy in legislation would be a backward step, reducing flexibility and the ability to respond to changing circumstances quickly. New legislation would be required every time a change in policy is proposed.

Links to other Welsh Government legislation

1.15 The draft Bill is part of a suite of complementary legislation and policy proposals that have been designed to embed sustainable development as the

central organising principle for decision making in Wales. The planning system is an important tool to achieve the objectives contained in a number of related Bills.

- 1.16 The **Future Generations Bill** will set out the long term goals that the public sector should work together to achieve. The planning system will help to interpret and deliver these goals.
- 1.17 Key objectives for our **Housing Bill** include increasing the supply of homes, delivering more affordable housing and improving the quality of the housing stock³. Our proposals to reform the planning system will help to achieve this by making sustained improvements to the development plan system and improving development management procedures, making it easier to obtain planning consent for the homes that we need.
- 1.18 The **Environment Bill** consultation proposes a new approach to managing natural resources in Wales by ensuring that social, economic and environmental considerations are taken into account when decisions are made about their future use⁴. This will help to ensure that we have a robust evidence base for the preparation of development plans and DM decisions. It will also allow Natural Resources Wales (NRW) to provide timely and consistent advice on development plans and planning applications.
- 1.19 The **Heritage Bill** consultation aims to manage change to the historic environment in a sensitive and sustainable way⁵. The Planning system has a central role to play in conserving and managing the unique historic environment of Wales. The Heritage Bill proposals have been developed in tandem with our intended planning reforms.

Next steps

- 1.20 In chapters 3 to 6 we outline our measures to improve the planning system in Wales. They include a variety of policy interventions, improvements to policy and guidance and legislative proposals (including amendments to secondary legislation).
- 1.21 Following the closing date for this consultation (26 February 2014) all responses will be analysed and considered to refine the content of the Bill to be introduced into the National Assembly for Wales. The Welsh Government intends to introduce the Planning (Wales) Bill into the National Assembly for Wales during 2014.
- 1.22. Existing primary legislation in relation to planning and new legislation proposed by the Bill as introduced relies heavily on secondary legislation for implementation. To ensure that the legislative proposals included in the draft Bill can be introduced quickly we may undertake pre-act consultation on implementing secondary legislation and regulations in areas such as:

³ [Housing \(Wales\) Bill](#)

⁴ [Environment Bill - White Paper](#)

⁵ [The future of our past: A consultation on proposals for the historic environment of Wales](#)

- National Development Framework;
- Development of National Significance;
- Strategic Development Plans ;
- Local Development Plans;
- Direct planning applications to Welsh Ministers;
- Appeals;
- Notification of Development;
- Pre-application discussion;
- Planning Committees;
- Development Management Procedures Wales Order; and
- Planning application fees.

Future ambitions

- 1.23 Our legislative ambition is not limited to the Planning (Wales) draft Bill. We intend to comprehensively restate our planning law in the future. We have already submitted a proposal to the Law Commission, who have unrivalled expertise in this area, as part of the consultation on their 12th Programme of Law Reform.
- 1.24 With devolution, the planning law effective in Wales is increasingly different to the planning law effective in England. The legislative intentions set out in the draft Bill confirms our distinctive approach, but are proposed within the context of the pre-existing law for both countries. Unlike England, government in Wales, both national and local, is much closer to each other and local communities. We consider we could capitalise on the devolution dividend by updating legal structures and restating planning law to provide a legal framework that is fully responsive to the needs of our country. Our proposed approach has cross party support from the National Assembly and planning stakeholders⁶.

⁶ [National Assembly for Wales Inquiry into Planning in Wales](#)

Chapter 2 - What the evidence tells us

- 2.1 A comprehensive body of evidence has been gathered to inform our proposals. Overall the evidence concludes that the current planning system is conceptually sound and has stood the test of time well. Too much change could create uncertainty and deter investment. The opportunity should be taken to repair a system, which has been under increasing pressure since 1947 and is now perceived as inconsistent, unduly regulatory and negative in outlook.
- 2.2 Our ambitions have been informed by a suite of evidence which includes:
- National Assembly for Wales Inquiry into Planning in Wales
 - Independent Advisory Group Report – Towards a Welsh Planning Act
 - A New Approach to Managing Development in Wales: Towards a Welsh Planning Act
 - Public Attitudes Towards the Planning System in Wales
 - Delivery of Planning Services in Statutory Designated Landscapes in Wales
 - Evaluation of Consenting Performance of Renewable Energy Schemes
 - Study into the Operation of Planning Committees in Wales
 - Research into the Review of the Enforcement System
 - Research to Evaluate the Planning Permission Process for Housing.
- 2.3 The evidence identifies a series of improvements that could be made to the planning system in Wales. This consultation paper and draft Planning (Wales) Bill identify the proposals that we intend to progress. In this chapter we briefly summarise the main conclusion from the evidence base as it relates to:
- Policy development and plan making;
 - Development management; and
 - Public participation.
- 2.4 The evidence reports are available on our web site at the following address:
<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?lang=en>

Policy Development and Plan Making

- 2.5 Overall the Local Development Plan (LDP) system is seen as appropriate, requiring refinement rather than a total revision. The evidence reflected the need to streamline and improve the LDP process through learning from good practice and has highlighted a range of areas of improvement most of which do not require a legislative change. The evidence found that a strong level of leadership from Welsh Government was required with penalties to achieve a more focussed and efficient LDP system.
- 2.6 The evidence highlighted that the LDP system would benefit from greater levels of cross boundary working to address issues of delays in preparation, duplication of work and plan issues, such as housing supply at the most

appropriate scale. Collaborative working is fundamental to achieving an effective planning system in Wales. This acknowledges the fact that administrative boundaries do not reflect the way in which people live. Although there are current examples of successful regional working within Wales such as minerals and waste planning, LPAs are generally unable to deal adequately with issues that are of larger than local significance and there should be improved cross boundary working to address this.

Development Management

- 2.7 The evidence identified that in most cases the planning system should be delivered at a local level to ensure accountability and public engagement. In addition it identifies that the Welsh Government should have an active role to ensure national policies are implemented and delays in delivery addressed.
- 2.8 Complexity and lack of consistency in the delivery of processes can be identified in the evidence within a regulatory style system. The research proposals look to address issues such as consistency and transparency in the development management (DM) process through process simplification and reduced information requirements. The importance of pre-application discussion was stressed in more than one study as a means of preventing delays to the determination of applications.
- 2.9 Evidence concludes that the appeals system in Wales works well but further changes are possible to improve the timeliness of decisions and reduce costs. There were no convincing arguments to support the establishment of a wholly separate Welsh Planning Inspectorate (PINS) or the introduction of third party rights of appeal.
- 2.10 The enforcement process is considered fit for purpose but that LPAs should act in a more proactive manner in the determination of enforcement cases, with more robust enforcement processes to ensure parties cannot take advantage of the system.
- 2.11 The evidence also identified that a lack of specialist skills and the small size of planning teams within LPAs contributed towards issues with processing applications within the statutory periods. This resulted in a lack of confidence in the system and impacted on investment. This complexity and delay is particularly highlighted in relation to renewable energy schemes due to a lack of skills and resources.
- 2.12 Training for both members and officers to avoid inconsistency in application of the process and embed a DM approach was also highlighted by the evidence. A national scheme of delegation, code of conduct, training, limiting the number sitting on planning committees and production of best practice procedure were proposed.
- 2.13 It was identified that formal monitoring and compliance processes are required and a set of incentives and penalties are needed to shape behaviour and facilitate a positive approach to delivering the planning system in Wales. The need for standardised annual performance reporting by LPAs and statutory consultees was identified.

Public participation in the planning system

- 2.14 The evidence highlighted that the majority of citizens were satisfied with the planning system but they felt that they do not have enough say in the process and that it is difficult to engage. It is recognised that engagement in the process, in particular at the LDP stage, and early involvement by those affected by development proposals, is crucial.

Chapter 3 - Supporting culture change

Background

- 3.1 We want to ensure that the planning system is an enabling process, which takes account of the views and needs of communities when preparing development plans, uses these plans to steer appropriate developments to the right locations, and makes decisions on development proposals in the wider public interest. The public expects the planning system to be a process that provides an improved quality of life, a higher standard of living and an enhanced environment.
- 3.2 Whilst we acknowledge that there is a difference between the perception of the planning service and the actual service being delivered by planning practitioners in all sectors, the credibility of the planning system as a whole rests on the principle that planning is about putting the right development in the right place, and that such decisions are made fairly, openly and efficiently.
- 3.3 Beaufort Research⁷, commissioned by us to undertake a review of the public perceptions of the operation of the planning system in Wales in 2012 found mixed views about the planning system. Although there was general satisfaction with the way the planning system works, there were perceptions that the system could be complex, bureaucratic, and reactive. There were also concerns that it did not always operate in a fair and open way.
- 3.4 We accept that planning departments, like any arm of local government, have faced the pressures of operating within the current financial downturn. Fewer applications, especially for larger projects, have resulted in a fall in planning application fee income. The effect of reduced budget allocations and the additional impact of the loss of fee income, has led to diminished resources to support the delivery of planning services. This has impacted on some planning departments with them focusing on statutory requirements and changing practices, for example by withdrawing, or charging for, pre-application advice.
- 3.5 Secondary legislation has already been brought forward to enable a proactive approach to development and further changes are proposed by this consultation paper. This is in order to take forward an enabling planning service that:
 - Pursues a positive approach to development in accordance with the adopted development plan;
 - Provides early and positive engagement with communities and developers in both the development plan and the planning application processes; and
 - Increases accessibility and openness of service delivery and decision making.
- 3.6 To achieve this, the planning system must operate in as open and inclusive a way as possible and must continually improve by sharing learning and embracing best practice.

⁷ [Public Attitudes Towards the Planning System in Wales](#)

- 3.7 We have worked closely with stakeholders to secure improvements to the delivery of the planning service and promote a culture of continual improvement. Some authorities have undertaken continual improvement to aspects of their service to ensure that they operate efficiently and effectively and provide a positive experience to stakeholders and customers. However more could be done to promote a culture of proactive sharing and adoption of best practice.
- 3.8 Elected members and officers within local planning authorities (LPAs) have key responsibilities in ensuring planning's vital enabling role in the continued growth and development of the communities they serve. The leadership they provide to the planning service and the resources they allocate should reflect this.

Our approach

- 3.9 It is not possible to legislate for culture change. Culture change is about ensuring that the planning system as a whole is used in a proactive way. It is about changing from a defensive negative approach to a positive one. The development plan should provide a positive framework for sustainable and quality development, enabling the provision of homes and economic investment, protecting all that is best in local environments. LPAs must ensure seamless integration between development plan and development management (DM) functions. This requires co-location of teams and breaking down any professional barriers that have emerged. This will help to deliver a responsive and transparent planning service that supports new and enhanced development projects to come forward.
- 3.10 The Independent Advisory Group (IAG) amongst other studies identified that the fundamentals of the planning system remained fit for purpose. The skills and experience of practitioners were identified as key to unlocking improvements in the planning service. Identifying and retaining best practice will be just as important, as LPAs seek to learn from the best examples from across Wales and elsewhere. The Arup study acknowledged that culture change is difficult to achieve and requires considerable time to implement⁸. However it noted the views of stakeholders that culture change is equally important to any legislative change in delivering an effective planning system.
- 3.11 Fundamental to cultural change in our plan-led system is the need for LPAs to have up-to-date adopted Local Development Plans (LDP) in place as these:
- provide the local planning framework for sustainable development;
 - give certainty for developers and communities;
 - maximise investment for homes, business, and communities; and
 - assist the efficient determination of planning applications.
- 3.12 For development planning, chapter 4, 5 and 6 set out proposals for delivery of the planning service. These include plan preparation and implementation, particularly the need for a National Development Framework (NDF) for Wales,

⁸ [A New Approach to Managing Development in Wales: Towards a Welsh Planning Act](#)

the introduction of strategic planning, and provisions to secure greater collaboration. These will require new and improving ways of working together by LPAs, developers, consultees and others with a stake in the planning system, including engaging with local communities.

- 3.13 In chapter 6 we have outlined measures to improve the planning application process, including encouraging the use of pre-application discussions. The benefits of improved quality of applications - leading to quicker processing and good design of developments – will only be realised if both LPAs and applicants understand and embrace this approach. The proposed legislative change will not work on its own. We therefore recognise the need for a new planning competency framework and associated training programme to bring about the required culture change, reversing many years of ingrained practice such as negotiating to improve development proposals once an application has been submitted.
- 3.14 Responsibility for bringing about a change in culture does not rest solely with the Welsh Government. Culture change includes all those who have a stake in the planning system. LPAs have the fundamental role in delivering planning services locally, but other organisations have a role to play in supporting improvements. Developers need to play an active role in the development plan process, take part in pre application discussions and community engagement and submit high quality planning applications. Consultees need to provide timely, relevant, meaningful, and evidence-based input to development plan formulation and on individual applications for development. Educational institutions and professional bodies need to fully recognise and support the planning reform agenda in Wales through education courses and opportunities and through continuing professional development focused on the Welsh planning system. Individuals need to keep their skills up to date and adopt a positive attitude towards change.
- 3.15 We do however recognise that a co-ordinating role is needed to target the use of the limited resources available. Our response to the IAG recommendation to set up a planning advisory and improvement service is outlined below. We will take a close interest in whether the changes proposed for the planning system are being effective – whether culture change is actually taking place. It is also in the interest of each LPA to monitor their own performance and monitor the development outcomes that result from their planning activities. We will continue to develop, in conjunction with LPAs, a performance framework and annual reporting mechanism that identify what a good LPA looks like. We have outlined our initial proposals in chapter 6 and Annex A.
- 3.16 Part of culture change is also about managing expectations on what the planning system can deliver: the planning system is often seen to be the solution for delivering many other service areas - what has been termed 'planning plus'. Our planning reform agenda is seeking to reduce the complexity of the planning process that requires ever more supporting information, so that planning can focus on the planning fundamentals of the process, which is the key basis for our planning legislation agenda. We need to remind ourselves that planning is about managing the use and development of land.

- 3.17 Whilst planning can enable delivery of development, it must be about getting the right development to happen in the right place in a timely way. The planning service is not, however, just about quantitative measures; it is about quality too. It is about being responsive, transparent and fair for all users and for our communities. The Design Commission for Wales (DCfW) has a key role championing quality development through the Design Review process and outreach activities.

Planning Advisory and Improvement Service

The case for change

- 3.18 Whilst LPAs are moving towards a DM approach, we recognise that planning applications are becoming increasingly complex, involving a wide range of technical issues. In some cases LPAs do not have the in-house skills or knowledge to deal with these issues; this compromises positive decision making and informed development management.
- 3.19 The IAG report notes that LPAs need additional support to encourage culture change, moving away from a planning application process based on “controlling” development (‘development control’) towards one that “enables” development (‘development management’). The IAG also recognised that LPAs may require direct assistance to deal with particularly complex, technical planning applications and there is a pressing need for additional training in order to enhance skills and knowledge. The IAG recommended that a national planning advisory and improvement body is established in order to address these issues.

Our proposals

- 3.20 We propose the formation of a national planning advisory and improvement service (PAIS) hosted by the Welsh Government. We consider a hosted service, steered by an external advisory group, allows greater flexibility to adapt to future possible changes across local government. It also minimises administrative costs associated with setting up a new organisation.
- 3.21 We consider that the PAIS would have the following broad remit:
- Identify and disseminate good practice and standards, assist sharing of expertise and resources between LPAs;
 - Identify, promote and target training requirements for planning practitioners and members (working with stakeholders);
 - Provide targeted, specialist advice and mentoring; and
 - Publicise, disseminate and educate about Welsh Government planning initiatives, such as changes to DM policies and procedures.
- 3.22 We view the PAIS as having a co-ordinating role primarily by facilitating the sharing of expertise and knowledge between LPAs and other stakeholders, making effective use of existing resources. However we envisage that the service would have a procurement arm in order to address, for example, specific technical issues or training needs. Regular review and identification of

current skills deficits is anticipated, steered by the external advisory group of stakeholders representing a range of interests across the public and private sectors. The establishment of the service including its steering group will be the subject of further separate consultation.

- 3.23 Alongside the establishment of this new service we will review our existing support arrangements for the built environment sector in Wales with a view towards reducing duplication and increasing efficiency.

Q1. Do you agree that the proposed remit for a Planning Advisory and Improvement Service will help LPAs and stakeholders to improve performance?

Q2. Do you agree that existing Welsh Government support arrangements for the built environment sector in Wales should be reviewed?

Planning competency framework

The case for change

- 3.24 We have already noted that the success of our planning reforms will depend more upon the skills and experience of all participants in the planning system than anything else. Of particular importance are two groups, planning practitioners who advise on the process, and decision makers, usually elected representatives.
- 3.25 At present there is a very significant variation in skills, knowledge and behaviours which could act as a barrier to our planning reforms. We want to overcome this inertia and embed change to ensure that planning rediscovers its potential as a tool for positive change.

Our proposals

- 3.26 We consider that there would be significant merit in developing a planning competency framework for Wales that is aligned to our reforms. The competency framework would consist of two complementary parts covering planning practitioners and elected representatives. The competency framework would set out the skills, knowledge and behaviours necessary to ensure that planning becomes a positive enabling activity. The PAIS steering group will have a leading role in developing the framework together with representatives from professional bodies, local government and educational institutions.

Q3. Do you agree that competency frameworks should be prepared for planning practitioners and elected representatives to describe the skills, knowledge and behaviours necessary to deliver planning reform?

Chapter 4 - Active Stewardship

Background

- 4.1 Originally designed on a Wales and England basis, the Welsh planning system has served us well with increasing distinctiveness since devolution. We have sought to capitalise on the devolution dividend by ensuring that our overall approach to planning is appropriate to our needs. Wales is a small nation of just over 3 million people⁹, with 25 local planning authorities (LPAs) currently responsible for the local delivery of planning services. This means that government is much closer to each other and to local communities than elsewhere in the UK.
- 4.2 The role of government has traditionally been largely passive, setting the overall framework for the operation of the planning system through the creation of legislation and by providing national policy, guidance and other support. We have consistently worked with our partners to update and improve the Welsh planning system. In 2002, we became the first country in the UK to produce a consolidated source of national planning policy, Planning Policy Wales (PPW), which we have kept up to date ever since. Wales also benefits from a devolved development plan system. Only exceptionally government intervenes in local delivery of planning services, mainly through adjudicating on appeals against a local refusal of planning permission, by calling-in planning applications for Welsh Ministers to decide where the implications are of more than local importance, or where work on emerging Local Development Plans (LDPs) has run into problems.
- 4.3 Since devolution, there has been a growing expectation from stakeholders and the public that this passive approach should change and that the Welsh Government should play a more active role in the direct delivery of planning services by adopting an **active stewardship** role – capitalising further on the devolution dividend. This has been driven by a desire to see national policies implemented locally and frustration about delays both in preparing LDPs and making decisions on important planning applications. The National Assembly has undertaken inquiries that have identified shortcomings in local implementation of national planning policies. This has been particularly evident with regard to affordable housing¹⁰ and energy¹¹.
- 4.4 The evidence base assembled for the draft Planning (Wales) Bill summarised in chapter 2 has demonstrated a clear desire from stakeholders for the Welsh Government to take an active stewardship role in the delivery of planning services as a way to reduce duplication, increase consistency and improve performance. The evidence indicates now is the right time to build on the

⁹ Source: 2011 Census Data. Office for National Statistics.

¹⁰ [National Assembly for Wales, Environment, Planning & Countryside Committee, Planning aspects associated with the provision of affordable housing and sustainable communities in the countryside. \(February 2004\).](#)

¹¹ [National Assembly for Wales Environment and Sustainability Committee Energy Policy and Planning in Wales Report. \(June 2012\).](#)

existing framework, embracing the recommendations from the studies to deliver a more effective and efficient planning system within the limits set by the current devolution settlement. The Independent Advisory Group (IAG) identified a greater role for incentives and sanctions in achieving this. They also considered that the Welsh Government should directly provide some planning functions currently carried out by LPAs. This included assuming decision making responsibility for large technically complex planning applications where benefits and impacts are of larger than local significance.

Our approach

- 4.5 We consider that it is time for a new approach, a step change in the delivery of planning services in Wales. The approach that we will adopt is based on the principle that planning services must be delivered by the level of government best placed to assess the benefits and impacts of development. In most cases, LPAs, either individually or in collaboration, will continue to provide this role. There will, however, be a greater role for the Welsh Government, and Town and Community Councils in clearly defined circumstances.
- 4.6 The Welsh Government will adopt an active stewardship role through new approaches that include:
- Preparation of a national land use plan, the National Development Framework (NDF) that identifies proposals of national significance including infrastructure. The NDF will have development plan status;
 - The review and restatement of national planning policy to ensure that it continues to provide a clear and consistent basis for planning decisions;
 - Establishing a development hierarchy to ensure that planning applications are dealt with in a proportionate way at the most appropriate level of government, based on the likely impacts and benefits from development; and
 - Improvements to planning appeal procedures to increase efficiency and provide more timely decisions.

National Development Framework

The case for change

- 4.7 We published our first national land use plan, the Wales Spatial Plan (WSP) in 2004 and comprehensively updated it in 2008. Although the statutory purpose of the WSP is clear, to set out Welsh Ministers' policies in relation to the development and use of land in Wales, in practice this purpose has been diluted and the impact on LDPs limited.
- 4.8 The IAG considered the effectiveness of the WSP. A key finding was that it did not provide a sufficient steer, at an appropriate scale, to directly influence LDPs. Apart from identifying some broad locations for development, the scale, context and land use implications were not clearly set out, making it difficult to reconcile national and strategic priorities. Similar conclusions were reached

by the National Assembly Environment and Sustainable Development Committee's Inquiry into Planning Policy¹².

- 4.9 There continues to be widespread support for a national land use plan. We agree that there is a need for a concise and focused national land use plan and intend to build on the WSP experience and create a new NDF.

Our proposals

- 4.10 We will introduce a statutory requirement for Welsh Ministers to prepare and keep up to date a national land use plan to be known as the National Development Framework (NDF). We expect our NDF to fulfil the following principal roles:
- To set out the Welsh Government's land use priorities by identifying key locations to accommodate change and infrastructure investment;
 - To provide a national land use framework for Strategic Development Plans (SDPs) and LDPs (the proposals for SDPs are discussed in paragraphs: 5.21– 5.41);
 - To co-ordinate and maximise the potential benefits arising from funding streams including the Wales Infrastructure Investment Plan (WIIP), UK Government infrastructure investment, European Union (EU) assistance and private sector investment; and
 - To provide the development plan context for Welsh Ministers to make decisions on Developments of National Significance (DNS) (the proposals for DNS are discussed in later sections of this chapter).
- 4.11 The NDF will concentrate on those land use issues of national significance which the planning system is able to influence and deliver. It will be a robust tool in the delivery of national policies and programmes by providing a positive steer to development and investment in Wales, clearly articulating what is expected from other parts of the development plan system. The NDF will set out how we should proactively accommodate change for the benefit of the nation over a minimum of 20 years.
- 4.12 Renewing and increasing infrastructure capacity is essential to our future wellbeing and prosperity. We have already made good progress through the Wales Infrastructure Investment Plan (WIIP) which identifies our short and medium term infrastructure priorities. The NDF will complement the WIIP, focusing on the land use implications of the investment priorities necessary to support our long term development. We will identify those transformational projects which will be required in the next 20 years to meet our national goals. We will work with the UK Government and EU to ensure that the NDF fulfils its investment potential.
- 4.13 We do not want the NDF to be solely a public sector plan; it will identify the nationally significant areas of growth and change which will provide the certainty necessary for the private sector to make major investment decisions. We will ensure that preparation and review of the NDF provides opportunities

¹² [National Assembly Environment and Sustainable Development Committee's Inquiry into Planning Policy](#)

for business to put forward the nationally significant projects which they would like to bring forward and finance in Wales in the 20 year plan period. The NDF will place more emphasis on implementation than the WSP.

- 4.14 We propose a direct relationship between the NDF and other tiers of the development plan in the future. This includes giving the NDF 'development plan status'. The NDF will benefit from lessons learnt from the WSP in that it will focus on issues of national significance. It will set the strategic context for development planning and provide the context for the preparation of both the proposed SDPs and LDPs, key outcomes to deliver and spatial implications of national policy priorities. The NDF will take forward and integrate existing area or location specific policies currently in PPW and Technical Advice Notes (TANs) such as Strategic Search Areas for major wind farms.
- 4.15 We will seek to achieve consistency with the NDF through the SDP and LDP examination process and will use our powers of intervention only where necessary. All plans will have to be in conformity with the NDF. The development plan, comprising the NDF, LDP and where appropriate SDP, will be the starting point when making decisions on planning applications. It will also provide a tool for delivery of objectives for natural resource planning where there are land use planning implications.
- 4.16 Whilst change is happening across all of Wales, only those aspects of national significance should be addressed through the NDF including those issues Welsh Ministers determine appropriate, based on robust evidence. This means that the NDF will not have something to say about everywhere in Wales, only those areas where nationally significant issues need to be addressed. This does not mean that certain places 'miss out', rather their more local issues should be dealt with through the SDP or LDP process.
- 4.17 The NDF will not set a national housing target or housing targets for each SDP area. We envisage that the strategic planning panel responsible for preparing the SDP will set a level of housing provision for each LDP which those plans then have to conform to. Where there is no SDP, the current position of an LDP utilising our latest projections to inform its housing provision will be retained. We consider it important that locally elected politicians have an influence on the process.
- 4.18 The NDF will be prepared by the Welsh Government in accordance with a specified timetable. The framework will be evidence based with clear justification for any policies or proposals, accompanied by a Sustainability Appraisal (SA) including a Strategic Environmental Assessment (SEA) and a Habitat Regulations Assessment (HRA). We will adopt an integrated approach to assessing environmental evidence informed by our National Natural Resources Policy. Stakeholders and the general public will be engaged during a statutory 12 week consultation period. As the NDF is an expression of Welsh Government policy, we do not consider it appropriate to scrutinise the plan through a traditional examination process. However we acknowledge the need for scrutiny to ensure transparency and credibility of the framework. Instead, we propose that the NDF is subject to scrutiny via the National

Assembly for Wales. We will keep the NDF under review. Any revised NDF will also be subject to scrutiny by the National Assembly.

- 4.19 This consultation paper proposes a new role for Welsh Ministers in assuming responsibility for planning decisions on the largest and most technically complex devolved planning applications where benefits and impacts are of national significance. The NDF will provide the starting point for these planning decisions. PPW and the TANs will also be very significant considerations. Further detail on our proposed approach can be found in paragraphs 4.54 – 4.75.

Our intended legislation

- 4.20 Our primary legislative proposals in relation to the National Development Framework for Wales are contained in Section 2 of the draft Bill. In summary:

- Section 2 replaces section 60 of the Planning and Compulsory Purchase Act 2004 (which provided for the Wales Spatial Plan) and introduces a statutory basis for Welsh Ministers to prepare and publish a National Development Framework for Wales. The National Development Framework will set out national policies in relation to the development and use of land in Wales, reflecting Government priorities, as well as designating Developments of National Significance, justified by robust evidence to support their inclusion and designation. A sustainability appraisal of the National Development Framework is required. Welsh Ministers must carry out consultation on the National Development Framework and submit it to the National Assembly for Wales for scrutiny. Section 60B requires the Welsh Ministers to keep the National Development Framework under review and enables them to revise it. If no revision of the National Development Framework is published or laid before the Assembly in draft within a specified period, the Welsh Ministers must publish a statement stating whether they think the Framework should be revised and giving reasons; this is to take place every five years following the publication of the Framework or a revised Framework.

Our primary legislative proposals in relation to the duty to consider whether to review a Local Development Plan are contained in Sections 6 and 7 of the draft Bill. In summary:

- Section 6 amends section 62 of the Planning and Compulsory Purchase Act 2004. It requires a Local Development Plan to be in “general conformity” with the National Development Framework for Wales and any Strategic Development Plan where a strategic planning area includes all or part of the local planning authority’s area.
- Section 7 inserts section 68A into the Planning and Compulsory Purchase Act 2004 to include provisions so that following publication or revision of the National Development Framework for Wales; or publication or revision of a Strategic Development Plan a local planning authority must consider whether to carry out a review of their Local Development Plan.
- Section 7 also makes a consequential amendment to section 69 of the Planning and Compulsory Purchase Act 2004 to include provisions so that

following publication or revision of a National Development Framework for Wales, or publication or revision of a Strategic Development Plan, a local planning authority must consider whether to carry out a review of their Local Development Plan as well as such other times as the Welsh Ministers prescribe.

Our primary legislative proposals in relation to the definition of development plan in Wales are contained in Section 8 of the draft Bill. In summary:

- Section 8 amends section 38(4) of the Planning and Compulsory Purchase Act 2004 so that the development plan for an area of Wales consists of the National Development Framework for Wales, the Strategic Development Plan and the Local Development Plan. Under section 70(2) of the Town and Country Planning Act 1990, a local planning authority, in dealing with planning applications, must have regard to the provisions of the development plan, so far as material to the application and any other material considerations, Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to a development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise. If there is a conflict between development plans, section 38(5) provides that the conflict is resolved in favour of the most recent document.

Q4. Do you agree that the NDF will provide a robust framework for setting national priorities and aid delivery?

National Planning Policy and Guidance

The case for change

- 4.21 Wales has led the way in planning policy and guidance. Only where necessary has PPW been supplemented by additional detail in the form of a number of TANs. Our approach to the preparation of policy and guidance is based on evidence, is inclusive through the involvement of stakeholders, and is practical designed to meet the needs and challenges that we face in Wales. We keep our policy and guidance up to date and relevant through regular reviews.
- 4.22 The process that we use to prepare our planning policy and guidance has been subject to independent review.¹³ A key finding of the review was that PPW and the TAN framework is generally supported and should be retained. There is no evidence to support a complete re-think of the national planning policy framework used in Wales.
- 4.23 The National Assembly has held several inquiries into the role of national planning policy in delivering key Government policies. Whilst the reports have been broadly supportive of our national policy approach, a consistent theme

¹³ [Evaluation of the Processes used to Develop National Planning Policy in Wales](#)

has been concern about how it has been translated into local action, through inclusion in LDPs and informing local decisions on planning applications.

Our proposals

- 4.24 We see no reason to make radical changes to our overall approach to the preparation of national planning policy and guidance, but recognise that more can be done, especially when it comes to local implementation. Our proposals build on our existing strengths of a consolidated planning policy document and a limited number of TANs.
- 4.25 We intend to:
- Continue to keep PPW under review to ensure that it remains fit for purpose and supportive of our planning reforms, including providing the policy framework to support decisions on DNS planning applications;
 - Reduce the reliance on national planning policy where more appropriate tools are available;
 - Reassess the number and scope of our TANs, including combining TANs and removing those that are no longer needed; and
 - Explore with local government the scope for preparing a core set of development management policies that can be applied consistently across Wales.

Planning Policy Wales Review

- 4.26 Since we first published PPW in 2002 it has been up dated five times. To help keep PPW up to date and relevant it is now produced as an online document. The primary purpose of PPW is to support LPAs by informing the content of their development plans and identifying national policies that need to be considered when deciding planning applications.
- 4.27 Our proposed planning reforms have implications for our planning policy and guidance. The introduction of the NDF means that we can include our location specific land use planning policies in one document. This will allow PPW and TANs that include location specific policies, such as TAN 8 Renewable Energy, to be revised. We will also ensure that together with the NDF, PPW and the TANs provide a robust framework for Welsh Ministers to make decisions on Developments of National Significance.
- 4.28 We will reduce the amount of planning policy by combining ‘Minerals Planning Policy Wales’ (MPPW) with PPW to create a single document which contains all our land use and mineral planning policies. Minerals Planning Policy Wales pre-dates PPW and has been updated less frequently. It currently does not reflect the introduction of the LDP system. By combining both documents it will ensure that our planning policy is integrated, user friendly and has no areas of duplication.
- 4.29 In the past we have used planning policy and guidance to deliver a number of Welsh Government priorities where more appropriate tools have not been available to us. Two areas where we have taken this approach are energy efficiency and disabled access to new buildings. With responsibility for the

Building Regulations now devolved, we have the opportunity to deliver our simplification agenda by reconsidering our approach. We have already announced our intention to review our sustainable building planning policy in the light of our review of Part L (Conservation of fuel and power) of Schedule 1 to the Building Regulations 2010. We also have also completed research to evaluate how the Design and Access Statement (DAS) process has been implemented locally. Our proposed approach is explained in paragraph 6.85 - 6.87.

Q5. Do you agree that Planning Policy Wales and Minerals Planning Policy Wales should be integrated to form a single document?

Reducing the number of Technical Advice Notes

- 4.30 We currently have 22 TANs and 2 Minerals TANs which support local delivery of our planning policy. We have kept our core TANs up to date and only introduced new ones where absolutely necessary.
- 4.31 With the introduction of the NDF, we will reposition our location specific guidance contained in the TANs. Where appropriate, we will revise and combine existing TANs to provide the complete picture for particular areas of guidance. We think that in future we should have a single TAN covering housing and adopt a similar approach to flooding and coastal issues. We inherited a number of TANs following devolution that have not been revised and may be unnecessary. We intend to critically assess these to identify whether they should be retained.

Preparation of a core set of national development management policies.

- 4.32 In 2006, to accompany the introduction of the LDP system the previous year, we produced a companion guide to PPW. The purpose of the companion guide was to identify national planning policies which do not need to be repeated in individual LDPs. We took this approach to help to reduce the length and complexity of LDPs and increase the speed of preparation. Our monitoring of adopted and emerging LDPs has identified that not all have followed our preferred approach.
- 4.33 We are keen to ensure that in future LDPs are prepared and reviewed quickly. The preparation and agreement of a core set of national development management (DM) policies would help us to achieve this objective. We intend to build on the approach adopted by the residential and householder design guides prepared in collaboration with Planning Officers Society Wales (POSW), to produce a suite of national DM policies that could be used by all LPAs. We consider that this approach would result in real benefits which include:
- A reduction in the length, complexity and cost of LDPs; and
 - Greater consistency and clarity of policy which will be of benefit to applicants and communities.

- 4.34 Only exceptionally and where local evidence justifies it, should LPAs diverge from the core set of national DM policies. This will allow LDPs to focus on local issues such as identifying sites for development and areas for protection and enhancement.

Q6. Do you agree that a core set of development management policies should be prepared for consistent application by all local planning authorities?

A new development management hierarchy

The case for change

- 4.35 We expect the planning system to deliver a multitude of objectives including supporting economic prosperity, promoting sustainable development, addressing the challenges posed by climate change and the basic human need to have access to a good quality home and quality environment. It is our view that the planning system has found it difficult to respond to these challenges in a smart way. Too often we have adopted a one size fits all approach, irrespective of the likely benefits and impacts that a development may bring.
- 4.36 Our response to this challenge is to introduce a clear planning hierarchy which allows different types of planning application to be dealt with in a proportionate way dependent on their likely benefits and impacts. Our overall approach is summarised by the diagram below.
- 4.37 We consider that this new approach will have significant benefits:
- For applicants applying for planning permission it will mean that they are clear at the outset about the level of information that needs to be submitted with the planning application and how and when it will be decided, making it easier to navigate the planning system;
 - For LPAs and statutory consultees it will allow resources to be prioritised towards applications which have the greatest potential benefits and impacts; and
 - For communities it means more opportunities to become involved, ensuring that development reflects the needs of current and future generations.

Our proposals

- 4.38 Our proposals mean that the way in which planning applications will be processed and scrutinised in future will depend on whether they have potential benefits and impacts which are of national, major or local significance. Our proposed application categories are described in Annex B. They exclude development consent order applications for nationally significant infrastructure projects which are currently consented by the UK Government.
- 4.39 Each year around 23,000 planning applications are decided in Wales of which around 40% are submitted electronically through the Planning Portal. The vast majority of applications would be classified as “local” applications under our

new proposals. Around 500 applications would be classified as either “developments of national significance”, or “major” developments.

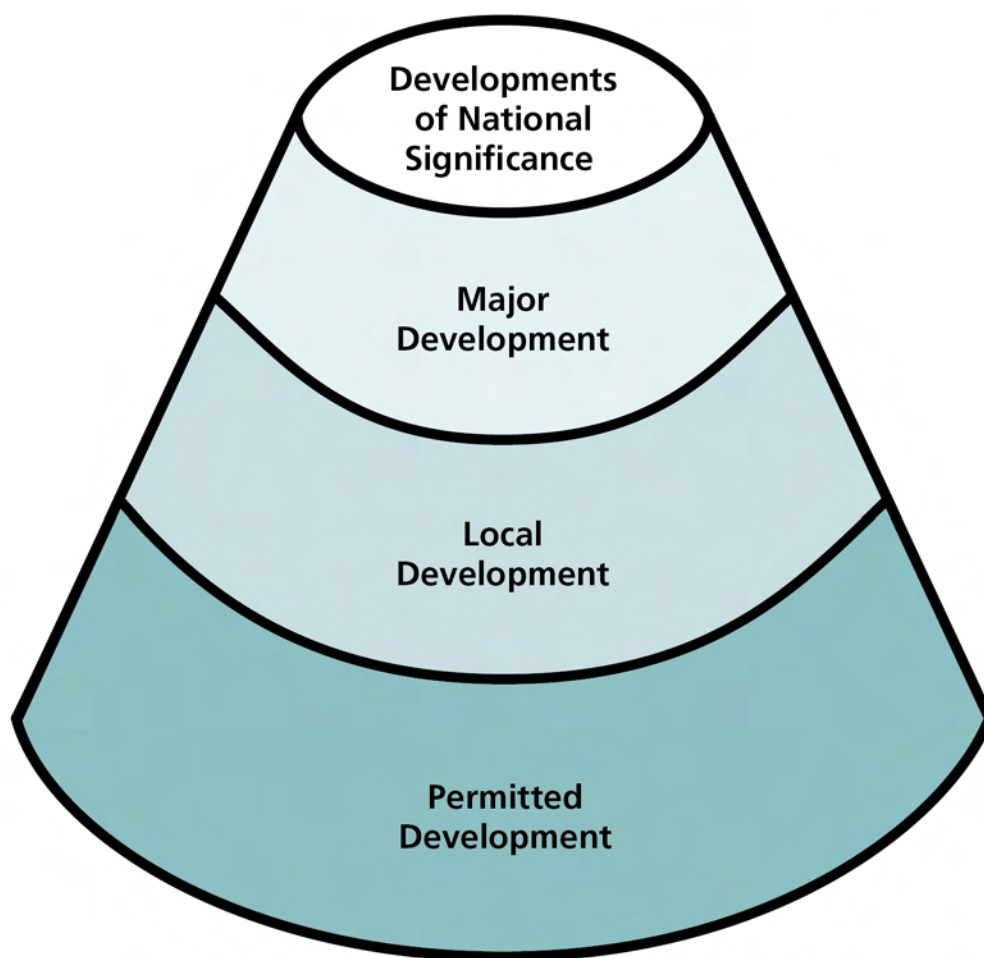
Q7. Do you agree that the proposed development hierarchy will help to ensure that planning applications are dealt with in a proportionate way dependent on their likely benefits and impacts?

Developments of National Significance

- **Applications** – determined by Welsh Ministers;
- **Determination framework** – National Development Framework (NDF) and Planning Policy Wales;
- **Application process** – mandatory pre-application consultation (including community);
- **Target for decision** – dependent upon the procedure followed – written representations presumed;
- **Challenge** – Judicial review only.

Major Development

- **Applications** – determined by local planning authorities;
- **Determination framework** – NDF, Strategic Development Plan (where applicable) and Local Development Plan;
- **Application process** – option to engage in pre-application service and mandatory pre-application consultation (including community);
- **Target for decision** – 8 weeks from receipt of a valid application (16 weeks where Environmental Impact Assessment required);
- **Appeal route** – decided by PINS.



Local Development

- **Applications** – determined by local planning authorities;
- **Determination framework** – principally LDP
- **Application process** – changes to improve efficiency;
- **Target for decisions** – 8 weeks from receipt of a valid application (16 weeks where Environmental Impact Assessment is required);
- **Appeal route** – decided by PINS. Usually written representations or householder/commercial appeals service.

Permitted Development

- Planning application not required;
- Welsh Ministers determine categories of permitted development (General Permitted Development Order).

Developments of National Significance

- 4.40 These are developments which are few in number but of greatest significance to Wales because of their potential benefits and impacts. They may raise complex technical issues, which LPAs may not have the necessary skills to assess. Ultimately, many of these applications already fall to Welsh Ministers to decide, either as a result of being called in, or, on appeal following refusal by the LPA – this is clearly an inefficient approach. We think it is right that in future these applications should be submitted to, and determined by, Welsh Ministers.
- 4.41 These developments may include projects identified by national policy statements issued by Welsh Ministers such as the WIIP, Transport Plan, NDF or Natural Resources Policy. Any unforeseen projects of national significance will be identified through the thresholds and criteria set out in Annex B. The projects likely to fall within the definition of a DNS application include significant water storage and treatment facilities, waste management installations, strategic scale energy projects (as defined by PPW fig 12.3) and Liquid Natural Gas storage complexes.
- 4.42 The proposed process for considering these applications is described in paragraphs 4.54 – 4.75.

Q8. Do you agree with the proposed categories and thresholds for Developments of National Significance set out in Annex B?

Major Development

- 4.43 These are large-scale developments where the potential benefits and impacts are significant, although not of national importance. They will continue to be dealt with by LPAs and include many of the developments that are essential for our economic prosperity. They must be prioritised by LPAs and statutory consultees.
- 4.44 We currently define ‘major’ development in secondary legislation to include:
- Mineral extraction;
 - Waste development;
 - Dwelling houses of 10 or more units or site area 0.5 ha or more;
 - Buildings with a proposed floor space of 1,000 sq metres or more; or
 - Development on a site of 1 hectare or more.
- 4.45 Applications will be considered against the backdrop provided by the LDP and in some cases a SDP. We expect 80% of major applications to be determined within 8 weeks (16 weeks where Environmental Impact Assessment (EIA) is required). For more complex applications, we will encourage the use of planning performance agreements to set out timetables for processing the application. This will help to ensure that applications are dealt with in a timely and efficient way, reducing uncertainty for developers and communities.
- 4.46 Where planning permission is refused by the LPAs, applicants will be able to appeal to Welsh Ministers as now. The Planning Inspectorate (PINS) will

administer the appeals system on behalf of Welsh Ministers and will determine the majority of them. We wish to increase the flexibility and efficiency of the appeals system and intend to allow the inspector to decide the most appropriate process to conduct the appeal. This could be by inquiry, hearing, written representations, or any combination of them. We expect most appeals to follow the written representations procedure. Our proposed reforms to the planning appeal system are explained in paragraphs 4.76 – 4.89.

Q9. Do you agree with the proposed categories and thresholds for Major Developments of set out in Annex B?

Local Developments

- 4.47 The vast majority of applications will be categorised as ‘local developments’ and form the bulk of the work load for LPAs. They include smaller housing schemes, commercial developments and some householder improvements. The benefits and impacts of these developments are likely to be local in nature, often not extending beyond the immediate area.
- 4.48 We want to see a smarter, risk-based approach to be applied to local developments. In most cases, local developments can be assessed by reference to an up-to-date development plan which has been prepared with the full involvement of the community and elected representatives. We expect at least 80% of local applications to be determined within 8 weeks (16 weeks where Environmental Impact Assessment (EIA) is required). There should be no need for most local developments to be considered by planning committee.
- 4.49 All LPAs currently operate delegation schemes which allow decisions on straightforward applications to be made by officers. We see no reason why all authorities should not be able to achieve delegation rates of over 90%. The IAG received significant evidence that many applications that were initially delegated to officers were in fact being referred to planning committee for decision, often through the use of a local member call-in process. The inconsistency in practice between authorities hinders transparency, certainty and the speed and quality of decision making. To overcome this criticism we intend to introduce a national scheme of delegation to ensure that across Wales the same type of application is considered in the same way. Critically the national scheme will set down the circumstances when a delegated application may be referred to planning committee for decision. Our proposals are set out in paragraphs 6.99 – 6.108.
- 4.50 We also want to ensure that the appeal process for local developments is proportionate. The majority of appeals will be considered by the PINS using either the Householder or proposed Commercial Appeals Service approach. PINS will have the discretion to adopt other appeal methods for more complicated cases. Our proposals are set out in paragraphs 4.76 – 4.89.

Permitted Development

- 4.51 Permitted development rights grant a general planning permission for specified developments, removing the need to apply for planning permission. We have recently comprehensively overhauled the system of permitted development rights to extend the scope for householders to improve and extend their homes without the need to apply for planning permission. We have also extended the scope of permitted development to include small scale domestic and commercial renewable energy projects and will finalise our proposals to extend permitted development for business premises and broadband infrastructure.
- 4.52 Our approach to the extension of permitted development has been based on the likelihood of impact beyond the property concerned. Unnecessary controls have been removed from home owners and businesses, whilst maintaining appropriate safeguards to protect local environmental quality and amenity. We do not propose further significant changes to householder and commercial permitted development at this time, as the recent changes need time to bed in. We also consider that any further changes could have detrimental impacts on local amenity and communities.
- 4.53 We also intend to consider the permitted changes between use classes through a review of the use classes order. The review will include looking at how retail classes are sub-divided, building on our research on town centres. It will also look at issues surrounding residential uses such as conversion of other uses to housing and at houses in multiple occupation. Included in the review will be the use of agricultural buildings and whether permitted development has a role to support diversification schemes. We intend to undertake a number of research projects during 2014 to support the review.

Developments of National Significance

The case for change

- 4.54 We have already described our intention to introduce a new category of development to be known as developments of national significance. Welsh Ministers will be responsible for processing and deciding this category of planning application.
- 4.55 The IAG endorsed the establishment of a separate application procedure for nationally significant development schemes, other than those which are not currently devolved. It recommends introducing a procedure to allow for the determination of such applications, along with associated development and ancillary consents, by one authority. It considered that such a process would allow for timely decisions and would provide more certainty and rigour in the decision-making process.
- 4.56 The research project “Evaluation of Consenting Performance of Renewable Energy Schemes in Wales” (January 2013)¹⁴ also raised a number of concerns about the ability of the current planning system to support the

¹⁴ [Evaluation of Consenting Performance of Renewable Energy Schemes.](#)

delivery of renewable energy developments within an acceptable time scale. The research suggested that due to the complexity, and often contentious nature of such projects, they comprise some of the most challenging and high profile aspects of the planning system.

- 4.57 It identified that the protracted period of time taken to determine applications is due to a combination of factors, not all within the control of the LPAs, including:- poor response rates from statutory consultees, revisions to the scheme by the applicant, decisions held up whilst call-in is being considered and delays in agreeing Section 106 legal agreements. A number of recommendations to address these issues, including the establishment of a new consenting regime for major renewable energy projects, were proposed.
- 4.58 The IAG also commented on the role played by Welsh authorities in the UK Government's consenting regime for Nationally Significant Infrastructure Projects (NSIPs). It suggested that Welsh Ministers should reach co-ordinated decisions on ancillary consents and associated developments with the UK Minister on UK NSIPs.

Our proposals

- 4.59 We propose that in future applications for the category of devolved development defined as DNS will be determined by the Welsh Ministers or person(s) appointed by them. Any decision of the Welsh Ministers will be final, as is currently the case for certain other decisions under the Planning Acts.
- 4.60 Three main stages to the application process are proposed:
- Pre-application
 - Processing; and
 - Post-determination

4.61 The stages of the process are explained below:

Pre-application

- 4.62 When preparing an application for DNS, the developer must first notify the Welsh Ministers of the intention to submit an application. The notification must include sufficient information to confirm whether the development proposed constitutes a DNS and whether an Environmental Impact Assessment (EIA) and/ or Habitats Regulation Assessment (HRA) is required.
- 4.63 Following notification, the Welsh Ministers and/or their appointed person(s) and LPA will be under a duty to provide pre-application advice upon request. This advice shall take the form of an exchange of information, the content of which will be prescribed by Welsh Ministers, to ensure that the developer gives consideration to relevant social, economic and environmental issues and identifies the relevant bodies or persons to be consulted. It will not provide an assessment of the merits of the proposal.
- 4.64 Taking into account the pre-application advice given, the developer will submit a preliminary version of the planning application to statutory consultees, who

will be required to comment on the adequacy of the information as well as the planning merits of the proposal within a defined timescale. The developer will be required to report on the outcome of the consultation in the form of a Statement of Pre-application Consultation (SPC). Information shall also be provided to the public for comment in line with minimum statutory requirements to be prescribed by the Welsh Ministers. The SPC will set out whether and how the views expressed in the pre-application consultation have informed the final scheme.

Q10. Do you agree DNS applications should be subject to mandatory pre-application notification, and consultation?

Q11. Do you agree that a fee should be charged for pre-application advice for prospective DNS applications?

Processing

- 4.65 Applications will be formally submitted to the Welsh Ministers and validated by them. The submitted application must meet minimum statutory requirements, to be set out in secondary legislation. At this point, the valid submission and any invalid applications will be entered onto the LPA planning register.
- 4.66 To minimise the number of separate applications required to enable a project to go ahead and to provide greater clarity for all parties, a developer will have the option of submitting certain connected applications to be considered by the Welsh Ministers at the same time and following the same process as the main DNS application. It will enable the Welsh Ministers or appointed person(s) the opportunity to consider these applications as part of one examination process by the same examining authority, rather than a number of authorities, for example the LPA and Natural Resources Wales (NRW). We are currently exploring the types of application included within such a scheme. As a minimum we are looking to include planning applications for associated development such as electricity sub-stations, common land consents, listed building consent, scheduled ancient monument consent and hazardous substances consent.
- 4.67 We also propose to amend our call-in policy and procedure to permit the Welsh Ministers to call-in identified application types if they are considered to be connected with an application for DNS and the developer has not already submitted that matter as a connected application to the primary DNS application.
- 4.68 Following the registration and validation of an application, interested parties would be notified in writing. This notification will include details of the arrangements for formal public and statutory consultation on the application. The LPA will be required to compile a Local Impact Report (LIR), setting out the impact of the proposed development on the local area and suggested

draft conditions and legal requirements that may be needed to make the development acceptable.

- 4.69 The LPA and its members may also make separate representations on the merits of a proposal outside the LIR process in the same way as the public and other bodies. This round of consultation may prompt minor amendments to the submitted scheme. The Welsh Ministers will have the discretion to require additional consultation on those amendments they consider necessary. There will be a single opportunity to make minor amendments to a scheme once a formal application has been registered as the pre-application process provides opportunities for major issues to be identified and addressed at that stage. Depending on the extent of such amendments, the Welsh Ministers may undertake a second round of consultation.
- 4.70 Once the consultation stage is completed the proposal will be examined by the Welsh Ministers and/or their appointed person(s). The Welsh Ministers will have the discretion to determine the most appropriate method for examining the DNS application. Where possible it will proceed by way of written representations although specific issues, because of their complexity, may require examination through a hearing or a more formal inquiry procedure. It is the intention that the method of examination follows a similar procedure to that proposed for appeals and call-ins (paragraph 4.76 - 4.89).
- 4.71 Once the examination of the application has been completed, it is proposed that the appointed person(s) will compile a report for the consideration of the Welsh Ministers, who will determine the application.

Q12. Do you agree that the Planning Inspectorate Wales is the most appropriate body to undertake the processing of a DNS application?

Q13. Do you agree that only one round of amendments to an application for DNS should be permitted after it has been formally registered?

Q14. Do you agree with the proposals for handling connected consents?

Q15. Do you agree that examination should follow a similar procedure to that proposed for call-ins and appeals?

Post-determination

- 4.72 At the post-determination stage the Welsh Ministers will be responsible for determining any subsequent renewal application which requires the principle of development to be revisited.
- 4.73 The LPA will retain responsibility for other post determination decisions including the variation or removal of a condition, the discharge of conditions and enforcing against breaches of planning control. They will also retain responsibility for considering proposals for minor material and non-material amendments.

4.74 Many decisions on DNS planning applications will require a legal agreement under Section 106 of the Town and Country Planning Act 1990 between the LPA and the developer to make a development acceptable in planning terms. Often additional work is needed at the post decision stage to ensure that the agreement is legally enforceable. The time taken to agree undertakings can become protracted and the process can add a considerable delay to projects. We wish to explore mechanisms to minimise delays. We will also recover the costs incurred by the Welsh Ministers, where they are minded to approve an application, in facilitating such agreements and ensuring they are legally enforceable.

Q16 Do you agree with the proposed division of responsibilities between the Welsh Ministers and the local planning authority at the post-determination stage?

Our intended legislation

4.75 Our primary legislative proposals in relation to Developments of National Significance are contained in Sections 16 and 17; 19 to 23; and Schedules 2 and 3 of the draft Bill. In summary:

- Section 16 of the draft Bill inserts Sections 62D and 62E into the Town and Country Planning Act 1990.
 - Section 62D requires planning applications for developments of national significance (“DNS applications”) to be made to the Welsh Ministers. It allows “developments of national significance” status to be ascribed to a development either by virtue of meeting particular criteria prescribed in regulations; or by way of being specified as such within the National Development Framework for Wales. The section provides that the decision of the Welsh Ministers on an application made to them under the section will be final.
 - Section 62E requires that any person who proposes to make a DNS application must notify the Welsh Ministers of the proposed application. Any step taken in respect of a DNS application before notification is not to be treated as constituting consultation under section 61Z. The effect of this restriction is, for all practical purposes, that an application cannot be made until the notification has been given. The form and contents of the notification may be prescribed in a development order.
- Section 17 of the draft Bill inserts sections 62F, 62G and 62H into the Town and Country Planning Act 1990.

- Section 62F makes provision about the preparation of a local impact report. The Welsh Ministers may require a local planning authority in whose area a DNS is to be situated to produce a local impact report.
- Section 62G places a duty on the Welsh Ministers to have regard to the contents of any local impact report submitted to them. This will be the case whether the report was submitted to them in consequence of a requirement under section 62F, or voluntarily. But in the case of a report submitted voluntarily, the duty to have regard to it will apply only if it submitted to the Welsh Ministers in accordance with any requirements in a development order. This is because there need to be some controls on, for instance, the timing of voluntary local impact reports to which the Welsh Minister are to be required to have regard.
- Section 62H details that a local impact report in respect of an application is a report in writing that gives details of the likely impact of the proposed development on the area, or part of the area, of the authority submitting the report and complies with any requirements specified in a development order made by the Welsh Ministers.
- Section 20 of the draft Bill inserts Sections 62M and 62N into the Town and Country Planning Act 1990.
 - Sections 62M and 62N would apply where an application has been made to the Welsh Ministers under section 62D, 62I or 62J. The Welsh Ministers must make a determination as to the procedure by which the application is to be considered before the end of a period prescribed in regulations to made by the Welsh Ministers. The application could be considered by local inquiry, at a hearing or on the basis of representations in writing. The Welsh Ministers will publish the criteria that are to be applied in making a determination under this section.
- Section 62N gives the Welsh Ministers the power to make rules regulating the procedure to be followed in connection with a local inquiry, other hearing or written representations on an application under section 62D, 62I or 62J. The rules may make provision about the procedure to be followed in connection with matters prior to or subsequent to an inquiry, hearing or the making of written representations.
- Section 21 of the draft Bill inserts Section 62O into the Town and Country Planning Act 1990.

- Section 62O provides the Welsh Ministers with the power to make provisions by development order about the way in which an application made directly to them under sections 62D, 62L or 62J is to be dealt with.
- Schedule 2 of the draft Bill inserts Schedule 4D into the Town and Country Planning Act 1990.
 - Schedule 4D provides that certain functions in relation to an application for DNS under section 62D are to be exercised by a person appointed for that purpose by the Welsh Ministers. Where such a person is so appointed, their decision is to be treated as being the decision of the Welsh Ministers. The Welsh Ministers may revoke that appointment and may either appoint another person to carry out those functions or carry out those functions themselves.
- Schedule 3 of the draft Bill makes a number of consequential amendments to the TCPA 1990
- Schedule 3 inserts section 75A into the Town and Country Planning Act 1990 which provides for applications for DNS under section 62D to be subject to the same procedural provisions (set out in a development order) as those which apply to applications made to a local planning authority.
- Schedule 3 also amends the Town and Country Planning Act 1990 to provide that neither a simplified planning zone under section 87 nor an enterprise scheme under section 88 has the effect of granting planning permission for development that is development of national significance.
- Schedule 3 also inserts section 303ZZA into the Town and Country Planning Act 1990 to allow the Welsh Ministers to make regulations for a fee to be charged for the performance of any function the Welsh Ministers have in respect of an application made to them under sections 62D.

Planning Appeals

The case for change

- 4.76 The planning appeals system is generally well respected, but there is room for further improvement. Applicants want faster decisions to facilitate development and stimulate economic growth whilst the public requires an appeal system that provides greater fairness and transparency and is less confrontational.
- 4.77 The IAG report considered the role of PINS in the appeals system and agreed that the current arrangements have considerable merit and command the confidence of users of the system. The Group received no convincing

arguments in favour of creating a separate Inspectorate in Wales. The overwhelming majority of LDP examinations and DM case work is dealt with by a dedicated team of Welsh Planning Inspectors. Appeals and call-in cases are determined on the basis of the adopted development plan and Welsh Government planning policy.

- 4.78 In 2012-13 662 planning appeals and 116 enforcement appeals were received by the Inspectorate in Wales. During that year 80 % of planning appeals and 67% of enforcement appeals proceeded by way of written representations, 16% and 5% respectively by a hearing and 4% and 28% respectively by the more formal inquiry process. The Welsh Ministers set timeliness targets for determination of appeals. In 2012-13 the Inspectorate either met or exceeded those targets.
- 4.79 To help to identify further areas for improvement we have reviewed the planning appeal processes from across the UK and Ireland. We have identified changes to provide a unique system appropriate to the particular circumstances in Wales.

Our proposals

- 4.80 We will introduce measures to reduce the time taken to determine an appeal and ensure greater transparency in decision making. Our proposed changes include:
- A requirement for appellants to submit their full statement of case when an appeal is made;
 - The submission of a draft Statement of Common Ground when an appeal is made, where a hearing or inquiry is requested;
 - The LPA and interested parties to submit their response to the appeal and formal comments on the draft Statement of Common Ground (where applicable) within 4 weeks of the start of the appeal; and
 - The appellant to submit comments on the LPA's response within 6 weeks of the start of the appeal.
- 4.81 The current system where the appellant and the LPA are able to insist on appearing before an Inspector results in cases unnecessarily delay and cost. To provide greater flexibility and to improve the efficiency of the appeals system, PINS will in future take a more pro-active role in determining how an appeal is handled. We will introduce a number of changes to ensure that appeals are determined through the most appropriate and proportionate method. Our proposals include:
- The right to appear before an Inspector to be removed;
 - The method of examination of appeal to be determined by PINS to ensure that the most appropriate and cost effective method for all parties is used;
 - The examination method will be tailored to the specific requirements of an appeal, which may include more than one method in a single appeal. An example could be an appeal proceeding by way of written representations with specified issues identified by the Inspector proceeding by way of a hearing or an inquiry; and

- Procedures for the methods of appeal examination to be merged into a single guidance document.
- 4.82 To enhance the transparency and fairness of the appeals process Welsh Ministers will deal with an application in the form it was considered by the LPA. Revisions to applications should be considered by the LPA in the first instance, rather than through the appeals route, to ensure that the community has the opportunity to be fully involved in the decision making process. To effect these changes we will amend the appeals procedure rules to ensure:
- No changes can be made to the content of an application under any circumstances once an appeal has been submitted; and
 - No new information may be raised at an appeal unless it can be shown by the appellant that it could not have been raised at the time the application was under consideration by the LPA.
- 4.83 At present some cases go through the full appeal procedure despite the LPA coming to a view after submission of the appeal that it would have granted permission. There are instances where applicants have lost their ability to appeal because of delays in determining the planning application. This is due to not being aware of the need to agree a revised time period with the local authority to preserve their right to appeal on grounds of non determination. To overcome these problems we propose to amend secondary legislation to allow:
- The 6 month maximum time limit for appeals for non-determination by the LPA will be removed. Appeals will be able to be submitted any time up to the point of decision; and
 - The LPA to continue to have the power to determine an application which is subject to a non-determination appeal within a prescribed timescale set out in secondary legislation following the submission of the appeal.
- 4.84 Currently costs awards can only be made in appeals where an inquiry or hearing is held. Allied with the proposed changes to remove the right to be heard we consider the costs regime should be extended to appeals conducted by written representations. This will ensure that the ability to seek costs is not limited by the Inspectorate's choice of procedure. The aim of the costs regime, to instil discipline into the process, reduce the incidence of unreasonable behaviour and prevent unnecessary and spurious appeals, is not being fully realised. Removing the need for a claim for costs to be made and allowing the Inspector to initiate an award of costs would go some way towards addressing this. We propose to allow:
- Costs to be awarded for appeals proceeding by way of written representations; and
 - The Welsh Ministers and the Inspectorate to initiate awards of costs.
- 4.85 The changes to the costs regime proposed will ensure that the costs to the appellant, including any fees charged, where permission is ruled to have been unreasonably withheld by the LPA can be recovered. In addition to this, we

consider that further measures are required to enable a proportion of the £3.8 million annual cost of the appeals service to the public purse in Wales to be recovered. Appeals are made because some benefit would be derived if permission for a development proposal is granted. We consider it is appropriate for appellants to contribute to the costs of the appeal in the same way as they would for planning applications.

4.86 The current regime does not cover the costs incurred by the Welsh Ministers for handling an appeal. We consider it important to recover the costs of the Welsh Ministers in order to deter frivolous and spurious appeals from being submitted and to recover the wasted and unnecessary cost to the public purse. We consider that there are two mechanisms which would enable the Welsh Ministers to recover their own costs resulting from the submission of an appeal. Those are:

- To use a provision in the Planning Act 2008 to allow for the Welsh Ministers to charge a fee for the submission of a planning or listed building consent appeal; or
- To amend primary and secondary legislation to allow for Welsh Ministers to recover their own costs when an award of costs is made.

4.87 The Welsh Government's 'Improving the Planning Appeal Process' consultation issued in November 2009 proposed an expedited appeals process for smaller householder appeals, known as the Householder Appeals System ("HAS"). Most respondents to the 2009 consultation supported the introduction of the Householder Appeal System pilot in Wales. The pilot to test a HAS, which involved all LPAs, proved to be very successful and resulted in all appeals in 2012/13 being determined within 8 weeks, a significant improvement on the target of 12 weeks.

4.88 It is our intention to formalise the Householder Appeal System through secondary legislation. In view of the improvements gained in speed and efficiency for these appeals we propose to expand the regime to cover certain small scale commercial applications within specified parameters. PINS is currently running a pilot scheme in Wales for appeals against refusals of planning permission seeking the change of use of commercial properties below 250 sq m within use Classes A1, A2 and A3. We propose therefore to:

- Establish a Commercial Appeal System ("CAS") to follow a similar procedure as the HAS for small scale commercial applications.

Our intended legislation

4.89 Our primary legislative proposals in relation to appeals in Wales are contained in Sections 29, 30 and 31 of the draft Bill and apply to the following appeal types:

- Appeals against the refusal of or non-determination of a planning application (Section 78 of the Town and Country Planning Act 1990);

- Appeals against the refusal of or non-determination of an application for a certificate of lawfulness (Section 195 of the Town and Country Planning Act 1990);
- Appeals against the refusal of or non-determination of a listed building consent application (Section 21 of the Planning (Listed Buildings and Conservation Areas) Act 1990); and
- Appeals against the refusal of or non-determination of a hazardous substances consent application (Section 21 of the Planning (Hazardous Substances) Act 1990).
- Section 29 inserts the following subsections into the relevant acts:
 - Section 78(4BA) into the Town and Country Planning Act 1990;
 - Section 195(1DA) into the Town and Country Planning Act 1990;
 - Section 21(4A) into the Planning (Listed Buildings and Conservation Areas) Act 1990; and
 - Section 21(3E) into the Planning (Hazardous Substances) Act 1990.
- The effect of these insertions is that an application may not be varied following service of notice of appeal for the above list of appeal types.
- Section 30 inserts subsections (5) and (6) into section 323 of the Town and Country Planning Act 1990. The effect of subsection (5) is that it allows the Welsh Ministers to make regulations which prevent appellants from raising new matters at an appeal which have not been previously raised during the application stage unless it has been shown that the matter could not have been raised at that time. The Welsh Ministers may also prescribe the circumstances where new matters may be raised. This provision applies to all of the appeal types which are listed above. Subsection (6) contains procedural provision about the making of regulations.
- Section 31 inserts section 322C into the Town and Country Planning Act 1990. This is a standalone provision for costs to be awarded in respect of an appeal or reference to the Welsh Ministers in Wales. It can relate to an appeal considered at an inquiry, or hearing or on the basis of written representations. Subsection (2) enables the Welsh Ministers to direct that their own costs be recovered from the local planning authority or party to an appeal. Subsection (3) allows the Welsh Ministers to recover costs in respect of an inquiry or hearing that does not take place. Further, subsection (4) enables the Welsh Ministers to direct that the costs of the appellant, applicant or any other party to an appeal (such as the local planning authority and statutory consultees) be paid and by whom. This provision applies to all of the appeal types which are listed above. It also applies where other reference are made to the Welsh Ministers, for example under section 77 of the Town and Country Planning Act 1990.

Q17. Do you agree that the statement of case and draft statement of common ground should be produced when submitting an appeal?

Q18. Do you agree that the Planning Inspectorate should decide how to handle the examination of an appeal?

Q19. Do you agree no changes should be made to the content of an application once an appeal has been submitted?

Q20. Do you agree with the proposal for the Welsh Ministers to initiate awards of costs?

Q21. Should fees be introduced to cover the costs of the Welsh Ministers associated with an appeal?

Q22. Do you agree that a Commercial Appeals Service (CAS) should be introduced?

Third Party Rights of Appeal

4.90 We have considered very carefully whether there should be a right for a third party to challenge the granting of planning permission for development. The IAG discussed at length a number of arguments in favour and against introduction. They came to the unanimous view that the examples put forward in support of the need for third party rights of appeal were in reality instances where the existing planning system had not worked as it should. They felt that the introduction of a third party right of appeal risks overburdening the system and shifting resources away from decision and plan making. Importantly, they did not consider that a third party appeal right would benefit those sections of the community who are traditionally seldom heard. None of those arguing in favour were able to produce a set of clear criteria that did not run the risk of abuse.

4.91 The IAG concluded that measures are needed to ensure those who may be affected by a development are made aware of it from the earliest stage and those who consider they might be affected are given every opportunity to be heard. Front loading the planning process and involving third parties in planning decisions from the earliest stages would address the types of problems that have been identified and improve public confidence in the planning system. They suggested a number of ways to achieve this which include:

- The introduction of pre application community consultation for large planning applications;
- An enhanced role for Town and Community Councils in planning matters;
- Improved community engagement during the preparation of the LDP;
- Improving the accountability of Planning Committee Members ensuring that decisions are lawful, based on sound judgment and are in the public interest; and

- Use of Welsh Government ‘call-in’ powers.

4.92 We agree with the IAG that it would be wrong to introduce third party rights of appeal. We consider that the arguments in favour of introducing a third party right of appeal are more properly addressed by making existing processes work better and ensuring that the rights of the public to be involved in decisions affecting them are properly protected. To address these concerns we have proposed a number of changes to the planning system. Our proposed changes are described in Chapter 6: Improving Local Delivery.

Chapter 5 - Improving Collaboration

Background

- 5.1 Effective collaboration must become a cornerstone of the Welsh planning system. We have consistently underlined the importance of collaboration in local service delivery, which includes the planning service. We first set out our vision in 'Making the Connections' in 2004, which was endorsed in 2006 by the Beecham Report. We have legislated to bring forward the Local Government (Wales) Measure (2011) which gives us powers to combine councils and to issue statutory guidance on collaboration. The 2011 Simpson Review made several recommendations proposing further joint working arrangements between local authorities. It concluded that change should be through collaboration rather than reorganisation, due to the continuing need for services to be organised locally.
- 5.2 Building on this approach we have encouraged greater collaboration in the local delivery of planning services including:
- Securing legislation to enable neighbouring Local Planning Authorities (LPAs) to prepare Joint Local Development Plans (LDPs);
 - Providing funding through the Planning Improvement Fund (PIF) for specific collaboration projects;
 - Supporting strategic planning initiatives including the regional planning groups in South East, South West and North Wales; and
 - Requiring the preparation of Regional Waste Plans and Regional Aggregate Technical Statements.
- 5.3 There have been some notable initiatives where LPAs have used efficient approaches to collaboration such as the establishment of minerals and waste planning centres of excellence in North and South West Wales. The Independent Advisory Group (IAG) provided some further advice on how the principle of sharing resources, as advocated in the Simpson Review, could be improved. More fundamental change to the structure of local planning services was outside the IAG's terms of reference.
- 5.4 Despite some areas of success, across the public service as a whole, informal collaborative arrangements have not taken us as far as we had hoped. The increasingly challenging financial circumstances and growing demand pressures mean that there is a clear need to examine how services and systems can be sustained and standards of performance increased, so that people in Wales can continue to receive and influence the public services that they need and value. The Commission on Public Service Delivery and Governance has been established to provide those who are involved in delivering services, those politically accountable for them and users of them, an opportunity to examine how services should be delivered and governed in the future. Local Authority and National Park Authority (NPA) functions, including the local planning service are within the scope of the Commission's work. The Commission is expected to report by December 2013, but any significant change to service delivery arrangements is unlikely before the election of the next National Assembly in 2016.

Our approach

5.5 Our approach to planning reform is to act now where we have evidence which supports the need for change. We do not need to wait until implementation of the outcome the Commission on Public Service Delivery and Governance. We intend to put in place legislation which supports improved local planning services. Our proposals are capable of implementation regardless of any change in future delivery arrangements. The evidence base has identified three areas where collaboration needs to be improved. These areas are:

- Much closer working between neighbouring local planning services, including formal merger;
- Better joining up between National Park planning services and host local authority social and economic functions; and
- Working together more effectively to plan issues which are of greater than local importance.

Closer working between neighbouring local planning services

The case for change

5.6 There are few examples of effective collaboration between LPAs when it comes to the delivery of planning services. Where collaboration has taken place the focus has been on sharing technical expertise, with differing IT systems adding to the challenge. One of the reasons for limited collaboration to date is that it requires significant investment of resources, whilst outcomes can be variable. In large part, this is due to the voluntary approach where all parties need to agree.

5.7 A number of studies have demonstrated that local planning services are under significant strain and are finding it challenging to deal with the increasing range and complexity of issues that need to be addressed. We have already started to look critically at what we expect from the planning system and will remove policy burdens and reduce complexity where more appropriate tools are available to us.

5.8 Financial constraints, both in terms of falling planning application fee income and reduced UK Government support for public services, including IT systems, means that innovative approaches need to be considered to sustain good local planning services in the future. The UK Government's recent spending review included some difficult news for Wales, with a further 2% cut to the Welsh Government's revenue budget. Although we have protected local services from the worst of the UK Government cuts so far, we will not be able to maintain this approach in the future.

5.9 In these difficult financial circumstances there is a clear need to focus limited resources on the delivery of statutory functions, which means LDPs, development management (DM) and enforcement. We propose to review planning application fees received by LPAs but we must balance any increase against the prospect of deterring investment in the homes, jobs and

infrastructure that we need. Our proposals for planning fees are explained in Chapter 6.

- 5.10 To ensure service delivery in the future there must be a much higher level of innovation and efficiency across the public sector than we have seen so far. This includes the introduction of new delivery arrangements, including formal merger of services. Local planning services cannot be excluded from this. We already have powers that would allow us to merge local planning services, with the exception of National Park planning functions, to create larger and more sustainable local delivery arrangements.

Our proposals

- 5.11 Broadly speaking, each county council or county borough council is the LPA for its area, except where there is a national park authority (NPA). National park planning functions are considered more fully in paragraph 5.17 - 5.20. There is significant variation in LPA size, ranging under 23,000 (Pembrokeshire Coast) to just under 350,000 (Cardiff) (Annex C population served by each LPA). Where LPAs are very small this can make it difficult to sustain and resource local planning services. When this is combined with strong relationships with neighbouring authorities, particularly in terms of local housing markets and travel to work patterns, a powerful case can be made to formally merge local planning services. Merger would also promote greater self containment by allowing more planning issues, which currently cross LPA boundaries, to be properly addressed by a single larger authority when LDPs are prepared and decisions on planning applications made.
- 5.12 We propose to update existing powers to enable us to reduce the number of LPAs to increase the efficiency and sustainability of local planning services in the face of both fresh demands and diminishing resources. Our existing powers lie within Section 2 (Joint Planning Boards) of the Town and Country Planning Act 1990. It provides the Welsh Ministers with powers to establish a joint planning board as the LPA for two or more areas, each of which is the whole or part of a Welsh county or county borough.
- 5.13 The powers in Section 2 do not currently extend to the inclusion of any area which is within a National Park for which there is an NPA or to the performance of certain modern LPA functions. We propose to update legislation to enable a joint planning board to perform all modern LPA functions such as the preparation of a LDP and the collection of the Community Infrastructure Levy (CIL).
- 5.14 We would welcome proposals from LPAs to merge their planning services and will use our powers under Section 2 to formally establish them. Although we have no current proposals to initiate the merger of LPAs, we do not rule this out in the future.
- 5.15 A joint planning board would be served by a single planning department. Membership of a joint planning board would be drawn from contributing local authorities on a proportionate basis linked to population. A joint planning board would have sole responsibility for all planning functions except, where a Strategic Development Plan (SDP) is to be prepared (paragraph 5.21 – 5.41).

In this case the SDP Panel will be responsible for the preparation of the SDP only.

Our intended legislation

5.16 Our primary legislative proposals in relation to Joint Planning Boards are contained in Section 12 of the draft Bill. In summary:

- Section 12(2) amends section 78 of the Planning and Compulsory Purchase Act 2004 to enable a joint planning board to prepare a local development plan for its district. It does this by making a joint planning board a local planning authority for the purpose of Part 6 of the Planning and Compulsory Purchase Act 2004

Q23. Do you agree that local planning authorities should be merged to create larger units?

Better collaboration between national park authorities and local authorities

The case for change

- 5.17 Since 1996 the three Welsh National Park Authorities (NPAs) have been the sole LPA for their area whilst social and economic responsibilities are retained by the host local authority. This separation of duties has led to tensions and difficulties when preparing LDPs or making planning decisions. These tensions were displayed when the IAG received evidence from stakeholders on the future delivery of the planning service and have surfaced during debates in the National Assembly on the Welsh planning system. A number of stakeholders representing business and community interests have advocated that NPAs should lose their planning powers. The NPAs argue that they need planning powers to give the necessary degree of protection to these nationally important areas and to ensure a consistent approach to plan making and DM.
- 5.18 To explore these issues in greater depth we commissioned research 'The Delivery of Planning Service in Statutory Designated Landscapes in Wales'. The Statutory Designated Landscapes include the 3 National Parks and 5 Areas of Outstanding Natural Beauty (AONBs). For planning purposes both designations are of equal status. However, the delivery of the local planning service is undertaken by the county or county borough council in the case of AONBs, rather than by a specific landscape management authority.
- 5.19 The research concluded that there were advantages and disadvantages to both approaches and made a number of recommendations for improvement. The main strength of the existing National Park model is that LDPs reflect the full extent of the designation and have specific policies which promote a consistent approach to planning applications. However, with host local authorities retaining social and economic responsibilities close collaborative working is essential to ensure that sustainable decisions and outcomes are achieved. The evidence of effective collaboration is mixed, especially where

the National Park has to work with a significant number of local authorities. Local communities and some businesses also expressed opinions that their interests were often overlooked, which they felt in part was due to the absence of effective local representation on the NPAs. In the case of the AONBs social, economic and environmental functions are integrated within the constituent local authorities. Planning policies relating to the AONB are contained within the LDP for the LPA area. Local communities and businesses did not display the same concerns about the local planning service in these areas.

Our proposals

- 5.20 We have not reached a final view on whether NPAs should retain a planning function, so no measures are included in the draft Bill. We would like to hear your views on the future delivery of the planning function in National Parks as part of this consultation. National Park Authorities are also within the scope of the review of Public Service Delivery and Governance. The Commission may come to its own view on the future of National Park Authorities and their planning functions which we will take into account before we make our final decision on whether to include provisions within the Bill when introduced to the National Assembly. We will ensure that the special qualities of the National Parks are protected.

Q24. Do you think that a National Park Authority should continue to have responsibility for planning in its area?

Strategic Development Plans

The case for change

- 5.21 The dynamics of modern society are constantly changing, reflecting a variety of pressures. Increased personal mobility, technological advances, higher aspirations and the globalisation of business have resulted in a more mobile workforce and flexible housing markets. Freedom of choice regarding where we live, increased employment mobility, educational options and competing leisure and retail destinations are examples that reflect a more mobile population, locating on the basis of personal choices, not historical or traditional values. This means that lifestyles and businesses requirements do not necessarily respect local authority boundaries.
- 5.22 We need a planning system that can span local authority boundaries and tackle larger than local issues, reflecting how people live their lives today and in the future. There needs to be a strategic approach which sets the broad agenda for individual LDPs to deliver. LDPs will remain the implementation tool, providing the framework for development management and allocating sites of local significance.
- 5.23 The Planning and Compulsory Purchase Act 2004 allows LPAs to prepare a joint LDP on a voluntary basis, to ensure that cross boundary issues can be taken into account. A joint plan does not mean the amalgamation of individual

authorities, loss of identity or decision-making, rather it reflects the need to deal with cross boundary issues in a more holistic manner – reflecting the actual way that people live and work. To date, only Gwynedd and Anglesey County Councils have chosen to pursue this option and prepare a joint LDP. We propose to introduce a power to enable Welsh Ministers to direct authorities to prepare a joint LDP where voluntary agreement at the local level has not been achieved (paragraphs 6.28 - 6.34).

- 5.24 We also need to reduce complexity and repetition currently contained in LDPs, to make more effective use of resources, reduce costs and preparation time. Rather than considering housing provision numerous times, as is currently the case in South East Wales for each LDP examination, it would be more efficient to have the discussion once on a strategic basis. Although some authorities have drawn upon regional technical expertise and set collaboration agreements, many have not.
- 5.25 A number of reports have made a convincing case for the introduction of a tier of strategic plan making. The National Assembly Environment and Sustainability Committee's Inquiry into Planning in Wales (January 2011) and the Simpson review both recognise the need to strengthen collaborative working. Roger Tym & Partners review 'Planning for Sustainable Economic Renewal' (2011)¹⁵ recommends the introduction of a higher tier of planning above the LDPs whilst the City Regions¹⁶ and IAG reports concluded that a formalised structure for strategic planning is required.

Our proposals

- 5.26 We consider that the strategic elements of LDPs, such as housing, employment, transport, gypsy and traveller provision, minerals and waste, should be elevated for discussion and conclusion in a SDP. This will result in a consistent, effective and efficient approach, reflecting strategic priorities, with key decisions taken once rather than numerous times. We do not think that SDPs are needed across the whole of Wales. They should only be prepared in areas where there are matters of greater than local significance. SDPs will be informed by national natural resources policy and the area based approach for natural resource management.
- 5.27 We propose to identify the focus for three SDPs:
- Cardiff;
 - Swansea; and
 - A55 Corridor.
- 5.28 Although we will set the geographical focus for SDPs, we will not specify the precise physical extent. A nominated lead local authority will work collaboratively with other local authorities within the area of focus to identify the boundary of the plan area based on robust evidence which must be submitted for approval by Welsh Ministers.

¹⁵ [Planning for Sustainable Economic Renewal](#)

¹⁶ [Advice and recommendations from the City Regions Task and Finish group.](#)

5.29 The NDF will specify key issues that SDPs will have to cover including:

- Housing provision on LPA basis, thus avoiding discussion at LDP stage;
- Employment land on LPA basis to provide a coherent approach;
- Strategic allocations (i.e. housing/employment);
- Gypsy and traveller provision (number of pitches, both permanent and transit) on LPA basis;
- Identification of cross LPA boundary infrastructure and links to the WIIP;
- Assessment, charging and collection of a CIL on a consistent basis;
- Waste facilities and mineral requirements including safeguarding;
- Identification of strategic environmental opportunities including Green Belt, if appropriate; and
- Single Annual Monitoring Schedule (AMS).

5.30 In terms of governance arrangements it is essential that local communities remain engaged and their representatives make key decisions. There are a number of approaches that could be used to achieve this. Our preferred option is that responsibility for preparing an SDP resides with representatives from LPAs nominated to a 'Panel' which has the relevant statutory development plan making powers, including responsibility for approval of the Plan. Such powers will provide the 'Panel' with decision making capability, avoiding the need to refer back to parent authorities. This is important to avoid delay and frustration of the process and instil responsibility and accountability.

5.31 The 'Panel' will comprise locally elected members from the LPAs within the geographical area, with representation reflecting population. The precise number of members on the 'Panel' will be for Welsh Ministers to determine following designation of the boundary. Funding and resource arrangements to support operational activities will be for the 'Panel' to determine. The 'Panel' will be a corporate body. We also propose that economic, social and environmental partners are part of the 'Panel'; comprising around one third of the total membership, with all members having equal voting rights.

5.32 The 'Panel' will require professional and technical support to prepare an SDP and facilitate a scrutiny process. The evidence to support the plan will require specialist technical expertise, for example in the areas of demography, economics and finance. We envisage that experts from the constituent LPAs will be seconded and/or employed to undertake preparation of the plan under the auspices of the 'Panel'. We are also considering reserve provisions so that, if necessary, the leadership of technical experts could be by a person appointed by Welsh Ministers. This could prove particularly advantageous to demonstrate impartiality.

5.33 Other governance options include strengthening the current voluntary approach through providing a statutory framework for LPAs to jointly produce a SDP, which requires agreement by all constituent authorities. This approach is similar to current collaborative working arrangements for LDPs and the risk of frustration to the process is significant. Alternatively, a completely separate body with plan making and decision making powers could be established. This could be seen as being too distant from local communities and could result in conflict with lower tier development plans.

- 5.34 To ensure that the preparation of an SDP is transparent and that the outcomes are deliverable, we consider that there should be public scrutiny of the plan making process and its conclusions. The plan will be subject to a public examination, led by an independently appointed Planning Inspector, from the Planning Inspectorate (PINS) Wales.
- 5.35 All interested parties who object to the plan within the specified consultation period will have a right to appear at the formal hearings. Both oral and written representations will carry equal weight. The actual structure of the hearings and information required will be for the appointed Inspector to decide. It is important that plans and policies can be tested as they can only be delivered through financial investment from both the public and private sectors. Ensuring change is financially achievable and investors are prepared to support the plan is essential.
- 5.36 The decision on whether the SDP can be adopted will be for the appointed Inspector to determine. The 'Panel' must approve the SDP in accordance with the Inspector's binding recommendations.
- 5.37 Each SDP should have appropriate monitoring indicators that demonstrate how the policies of the plan are being delivered. They should be constructed in a way that provides for action to be taken if implementation of the plan does not proceed as expected. The Welsh Government does not propose to identify the complete range of appropriate indicators, albeit they should go beyond any national indicators specified by us. It will be for the 'Panel' to determine an appropriate monitoring system that enables an effective and efficient mechanism to be in place.
- 5.38 An Annual Monitoring Schedule (AMS) must be submitted to Welsh Ministers at the end of each October. This will cover the preceding financial year; commencing after the first full financial year following adoption of the plan. Actions identified in the AMS may require a partial or complete review of the SDP. This will be particularly important where national policy is not being met. The significance of the policy and degree of variance will be the key influence as to the nature of the appropriate corrective action necessary. It will be for the SDP 'Panel' to determine what action is appropriate, although the AMS will be publicly available enabling others to call for action, including the Welsh Government.
- 5.39 LDPs will be required to be in conformity with the relevant SDP. Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters, particularly site specific allocations, in accordance with the scale and location of growth set out in the SDP. Issues such as the overall level of housing, employment, retail provision and strategic sites will have already been addressed and do not need to be repeated. This should result in a much slimmer LDP in scope and content.
- 5.40 There will be areas of Wales where there is no SDP coverage, as there are no cross boundary strategic issues that need to be addressed other than through the LDP. This means that the issues to be dealt with are likely to be more self contained in nature. Where there is no SDP, an LDP should be prepared in conformity with the NDF and national policy, as set out in PPW. There will be

a need to cover all relevant issues, meaning that these plans will be more expansive in scope and content.

Our intended legislation

5.41 Our primary legislative proposals in relation to Strategic Development Plans are contained in Sections 3, 4 and 5 of the draft Bill. In summary:

- Section 3 inserts the following sections in the Planning and Compulsory Purchase Act 2004. Section 60C enables Welsh Ministers to make an order designating a strategic planning area and establishing a Strategic Planning Panel for that area. To make the order, Welsh Ministers must have issued a direction as set out in section 60D, and the lead authority must have either submitted a proposal for an area to be designated or have failed to do so within the specified period. (These requirements do not apply to an order which amends or revokes a previous designation order.) The Welsh Ministers must also have undertaken consultation, if required.
- The strategic planning area must include all of one local planning authority's area and all or part of at least one other authority's area. Section 60D enables Welsh Ministers to direct one or more LPAs to submit a proposal for a strategic planning area. Welsh Ministers must set out their reasons for the direction. The local planning authority or authorities receiving the direction will be known as the "lead authority". The lead authority will be required to prepare a proposal for the designation of a strategic planning area, consult on their proposal as specified and submit all of the information to the Welsh Ministers within a set time period. This time period may be extended if agreed by Welsh Ministers. Welsh Ministers will then consider the proposal and may agree the submission and establish by order the Strategic Planning Panel and define the area.
- Section 60E sets out how Welsh Ministers are to proceed if they do not agree with the proposal submitted by the lead authority; if no proposal has been submitted in the set time period by the lead authority; or a previous order is amended or revoked. If Welsh Ministers are to establish a different strategic planning area from that proposed by the lead authority they must consult those LPAs within the area that they intend to designate and, if it is the amendment of an existing strategic planning area, the LPAs within that area. Section 60E also provides that the Welsh Ministers are able to request further information from LPAs that they need to carry out their functions relating to the designation of strategic planning areas.
- Section 60F states that strategic planning panels must keep under review matters which are expected to affect the planning of the strategic planning area. It does this by applying section 61 of the Planning and Compulsory Purchase Act 2004 to strategic planning panels. Section 61(2) lists matters such as the principal characteristics of an area, purposes for which land is used, population, communications and transport systems.

- Section 60G makes provision for a strategic planning panel to prepare a Strategic Development Plan, setting out their objectives in relation to the use and development of land in their area and their general policies for the implementation of those objectives. The Strategic Development Plan must be in general conformity with the National Development Framework for Wales. The Strategic Development Plan must set out the plan period during which it has effect as a development plan. The section sets out matters to which Strategic Planning Panels must have regard when preparing Strategic Development Plans. Strategic Development Plans must be subject to a sustainability appraisal. Welsh Ministers may make regulations about the form and content of Strategic Development Plans, the plan period and matters which the Panel must have regard to when preparing Strategic Development Plans. The Strategic Development Plan is a development plan once it is adopted by the Strategic Planning Panel or when is approved by the Welsh Ministers. A Strategic Development Plan ceases to be a development plan on the expiry of the plan period.
- Section 60H sets out how the sections within Part 6 of the Planning and Compulsory Purchase Act 2004 that outline how a Local Development Plan is produced will also apply to Strategic Development Plans. Most of those sections will apply in the same way that they apply to Local Development Plans, with the result that the overall process for preparing, adopting and revising a Strategic Development Plan will be the same as that for a Local Development Plan. Certain details of the process will be set out in regulations under the various powers in Part 6.

Our primary legislative proposals in relation to the duty to consider whether to review a Local Development Plan are contained in Sections 6 and 7 of the draft Bill. In summary:

- Section 6 amends section 62 of the Planning and Compulsory Purchase Act 2004. It requires a Local Development Plan to be in “general conformity” with the National Development Framework for Wales and any Strategic Development Plan where a strategic planning area includes all or part of the local planning authority’s area.
- Section 7 inserts section 68A into the Planning and Compulsory Purchase Act 2004 to include provisions so that following publication or revision of the National Development Framework for Wales; or publication or revision of a Strategic Development Plan a local planning authority must consider whether to carry out a review of their Local Development Plan.
- Section 7 also makes a consequential amendment to section 69 of the Planning and Compulsory Purchase Act 2004 to include provisions so that following publication or revision of a National Development Framework for Wales, or publication or revision of a Strategic Development Plan, a local planning authority must consider whether to carry out a review of their Local Development Plan as well as such other times as the Welsh Ministers prescribe.

Our primary legislative proposals in relation to the definition of development plan in Wales are contained in Section 8 of the draft Bill. In summary:

- Section 8 amends section 38(4) of the Planning and Compulsory Purchase Act 2004 so that the development plan for an area of Wales consists of the National Development Framework for Wales, the Strategic Development Plan and the Local Development Plan. Under section 70(2) of the Town and Country Planning Act 1990, a local planning authority, in dealing with planning applications, must have regard to the provisions of the development plan, so far as material to the application and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where regard is to be had to a development plan, the determination must be in accordance with the plan unless material considerations indicate otherwise. If there is a conflict between development plans, section 38(5) provides that the conflict is resolved in favour of the most recent document.

Q25. Do you agree that strategic development plans should only be prepared in certain areas?

Q26. Do you agree that the scope of SDPs should be limited to the key issues identified in paragraph 5.29?

Q27. Do you agree that a partnership between local planning authorities and social, economic and environmental stakeholders should oversee preparation of SDPs?

Q28. Do you agree that a light touch LDP focussing on matters of local significance should be prepared in areas where there is a SDP?

Chapter 6 - Improving Local Delivery

Background

- 6.1 Planning services are best provided at the level of government closest to the benefits and impacts, which should create the most effective conditions for delivery. The current system gives Local Planning Authorities (LPAs) responsibility for delivery of local planning services. Local communities and their elected representatives remain best placed to make local decisions, with consistency assured by reference to the Local Development Plan (LDP) and national planning policy. The proposed changes to this general rule have already been outlined in Chapter 4 Active Stewardship and Chapter 5 Improving Collaboration.
- 6.2 LPAs remain entrusted with this vital local service, but significant improvements to both the delivery of LDPs and operation of the development management (DM) service are necessary to increase efficiency and provide consistency across Wales. The Welsh Government's role is to create the conditions that enable LPAs to deliver planning services. Where local performance is consistently poor we will use our existing and proposed powers of intervention to ensure that everyone receives the quality local planning service that they deserve.
- 6.3 LDPs remain the essential tool to identify the land required to meet society's need for homes and jobs and are key to sustainable development. Thirteen out of 24 LDPs have either been adopted or are in the process of adoption. Of the remaining LPAs only two do not have a Unitary Development Plan. Delays in preparing LDPs are unacceptable, as is the failure of LPAs to adhere to the timetables set out in their delivery agreements.
- 6.4 Across Wales over 90% of planning applications are granted consent and some LPAs are able to determine over 80% of applications within an 8-week period. There is scope for improvement in service delivery performance and consistency of process.
- 6.5 The Independent Advisory Group (IAG) report noted insufficient reward for good performance and a lack of sanctions where performance is persistently poor. Frustrations also exist regarding the different processes found in each LPA. A drive for greater consistency is seen as essential to improve the delivery of local planning services for customers.
- 6.6 The need for improved efficiency and consistency also extends to statutory consultees who play a vital role in the delivery of local planning services. The IAG received evidence about delays due to late responses to consultation and disproportionate responses and recommendations. There was also concern about the power statutory consultees wield over the planning system, with some LPAs hesitant to depart from the views of an expert body.

- 6.7 Overall the IAG felt that a common LPA performance framework was needed to drive self improvement and identify where sanctions may be necessary if performance is persistently poor.

Our approach

- 6.8 Our approach is to provide the conditions necessary to allow LPAs to deliver effective local planning services. We have identified a series of changes that will make local delivery more efficient or consistent. We will also measure local performance more rigorously, but accept that improving performance is challenging, particularly at a time when resources are decreasing. Local service failure is not an option. In Chapter 5 we have already described our proposals for better collaboration, including the possibility of merging LPAs increase the efficiency and sustainability of local planning services.
- 6.9 We want to drive greater consistency and efficiency with every customer receiving a good local planning service. With this in mind we propose to:
- Introduce a common performance framework that sets out what a good local planning service should deliver, with each LPA being required to produced an annual report on service delivery;
 - Make changes to the LDP system to improve efficiency and local delivery; and
 - Make further improvements to the Development Management system to improve efficiency and local delivery.

Elements of a good local planning service

The case for change

- 6.10 Our evidence has identified significant variation in the quality of local planning services. We think that everybody should receive a good local planning service wherever they are and we have already spoken with key stakeholders, including LPAs and business representatives, to help to establish what it looks like. Common emerging themes include the need to:
- Have an up-to-date development plan in place;
 - Decide planning applications within statutory time limits;
 - Ensure that sufficient land is available to meet our future needs; and
 - Provide ample opportunities for communities and stakeholders to influence the planning process.
- 6.11 We agree with the IAG that it is necessary to produce a common performance framework to measure and assess effective delivery. The framework must focus on both quantitative and qualitative measures, recognising that qualitative measures are generally harder to measure.

Our proposals

6.12 We have identified the essential elements of what a good local planning service should include. It is described in detail in Annex A and covers key indicators in the following areas:

- Plan making;
- Decision taking;
- Efficiency;
- Quality;
- Engagement; and
- Enforcement.

6.13 Building on the essential elements of a good local planning service, each LPA in future will be obliged to produce an Annual Performance Report (APR) to nationally agreed standards. Statutory consultees will be subject to a similar requirement. Further details of the proposed performance framework are set out in Annex A and the reporting arrangements for statutory consultees described in paragraph 6.91. We will compile this information to create an overview for Wales.

6.14 Whenever possible we have suggested existing statistics and systems, including the LDP Annual Monitoring Report, to reduce administrative burdens and costs. The APR will allow individual planning authorities to consider identified issues and undertake self-improvement.

6.15 As a last resort, penalties may be imposed in cases of persistent poor performance. These could include direct intervention and taking control of certain aspects of the local planning service, including the submission of planning applications direct to Welsh Ministers.

Q29. Do you agree with the essential elements of a good planning service identified in Annex A?

Q30. Do you agree that each LPA should produce and publish an annual performance report to agreed standards?

Direct Planning Applications to Welsh Ministers

The case for change

6.16 The IAG report identified the need for Welsh Ministers to intervene in the delivery of local planning services where performance is persistently poor. Poor performance has serious consequences including acting as a barrier to economic growth, increasing costs and reducing certainty for both developers and the local community.

Our proposals

- 6.17 We consider that Welsh Ministers should have the power to take direct action when there are clear and persistent failures in LPA performance. We will give applicants the option to apply for planning permission directly to the Welsh Ministers, rather than to the LPA, when a LPA is designated by us as 'poorly performing'.
- 6.18 Designation of a LPA as poorly performing will be based on evidence obtained from our indicators of a good local planning service. Welsh Ministers will have the power to decide the type of developments for which there will be an option to make a direct planning application and also the determination process for applications made directly to them. The designation will be revoked when Welsh Ministers are satisfied that the 'poorly performing' LPA has taken significant measures to improve its performance.

Our intended legislation

- 6.19 Our primary legislation proposals are contained in Sections 18 to 22 and Schedules 2 and 3 of the draft Bill. In summary:
- Section 18 of the draft Bill inserts Sections 62I, 62J and 62K into the TCPA 1990.
 - Section 62I allows an application for planning permission and an application for reserved matters consent to be made direct to the Welsh Ministers, when the local planning authority has been designated by them for the purpose of that section. It enables the Welsh Ministers to describe in regulations the type of development to which such provisions apply. It also provides for the publication of the criteria to be considered in deciding whether a local planning authority should be designated.
 - Section 62J allows for 'connected' applications to be made direct to the Welsh Ministers. These applications are essentially applications that relate to land in Wales and are connected with the application referred to in Section 62I. The section enables the Welsh Ministers to describe in regulations the types of 'connected' applications that may be made direct to them. Where an application is made to the Welsh Ministers under this section, but is not considered by them to be connected with the application referred to in Section 62I, the section makes provision for the Welsh Ministers to refer the application to the authority to which it would normally have been made for determination.
 - Section 62K states that a decision of the Welsh Ministers on an application made to them under Sections 62I and 62J will be final (resulting in no right of appeal to the Welsh Ministers). It also enables Welsh Ministers to direct a designated local planning authority or hazardous substances authority to do things in relation to an

application made to the Welsh Ministers under Section 62I or 62J that would otherwise have been made to the authority.

- Section 19 of the draft Bill inserts Section 62L into the TCPA 1990.
 - Section 62L imposes a duty on the Welsh Ministers to notify a community council of any applications for planning permission, or a reserved matters approval, that are submitted directly to them and that relate to land in the community council's area (where the community council have previously asked the relevant local planning authority to be notified of applications submitted to that authority). It also requires a local planning authority to which an application made to the Welsh Ministers would normally have been made, if requested to do so by the Welsh Ministers, to let the Welsh Minister know which community councils have asked to be notified in this way.
- Section 20 of the draft Bill inserts Sections 62M and 62N into the TCPA 1990.
 - Section 62M requires Welsh Ministers within a time period (to be prescribed in regulations) to make a determination as to the procedure by which individual applications made under section 62I (option to make application direct to Welsh Ministers) and section 62J (connected applications) are to be examined. It enables Welsh Ministers, as they think appropriate, to examine an application made direct to them by means of local inquiry, hearing or written representations.
 - Section 62N makes provisions for the Welsh Ministers to make rules on the procedures to be followed in connection with a local inquiry, hearing or written representations, when used as a means of examining applications made directly to them under sections 62I and 62J.
- Section 21 inserts section 62O into the Town and Country Planning Act 1990
 - Section 62O allows the Welsh Ministers to make provision in a development order about the way in which applications for planning permission made to them are dealt with.
- Section 22 of the draft Bill inserts Schedule 2, which in turn inserts Schedule 4D into the Town and Country Planning Act 1990.
 - Schedule 4D provides that, unless the Welsh Ministers direct otherwise in a particular case, an appointed person will determine applications submitted directly to the Welsh Ministers under sections 62I and 62J (connected applications). (It is anticipated that persons will be appointed from the Planning Inspectorate Wales.) It also sets out the functions of the appointed person and clarifies that they will have the same powers and duties as the Welsh Ministers in relation to their determination of an application. The Schedule also allows the Welsh

Ministers to 'recover' for decision by them any case that would otherwise be determined by an appointed person.

- Schedule 3 of the draft Bill makes a number of consequential amendments to the Town and County Planning Act 1990.
 - In particular, Schedule 3 inserts section 75A into the TCPA 1990 which allows applications submitted directly to the Welsh Ministers under sections 62I and 62J to be subject to the same procedural provisions (set out in a development order) in the same way as applications made to a local planning authority.
 - Schedule 3 also inserts section 303ZZA into the TCPA 1990 to allow the Welsh Ministers to make regulations so that a fee may be charged for the performance of any function they have in respect of an application made to them under sections 62I and 62J.

Q31. Do you agree that where a LPA is designated as poorly performing there should be an option to submit planning applications for major development to Welsh Ministers?

Improving the Local Development Plan process

Background

- 6.20 In 2004 we introduced a bespoke LDP system tailored to the needs of our communities, economy and environment. LDPs provide a clear direction of travel, reconciling competing demands for the development and use of land for 10 – 15 years ahead. We wish to retain this positive approach, maximising the benefits which an up to date LDP provides for current and future generations and remain fully committed to a plan-led approach, which is essential to give certainty for both communities and business.
- 6.21 Growing familiarisation with the LDP process, greater appreciation of the need for relevant evidence and learning from early adopters is leading to more responsive plans, better able to benefit from economic opportunities and maximise gains for local communities.
- 6.22 Both the IAG report and LDP Process Refinement Exercise have separately concluded that there is nothing fundamentally wrong with the current LDP system. It is about learning from experience and evolving current processes. In light of this, we do not propose to scrap or alter significantly the current LDP process; rather we propose further evolution based on shared experience.

Our approach

6.23 Our approach is to move from the establishment of the LDP system towards maintenance of the system. Our focus will be on ensuring that we attain full coverage of plans at the earliest possible opportunity and that where we already have plan coverage, it is kept up to date. LPAs should now be tailoring adopted plans to be more responsive to changing circumstances. This means, moving forward, the efficient review and where necessary modification of plans will become very important. To this end national LDP guidance will be refocused to facilitate swift and effective review.

6.24 Our proposals include:

- Implementation of the results of the LDP Refinement Exercise;
- Welsh Ministers to have the power to direct two or more LPA to prepare a joint LDP;
- Prior notification to Welsh Ministers before a LDP can be withdrawn;
- Introduction of an end date for LDPs beyond which they cease to be part of the development plan; and
- Additional opportunities for community engagement working with LPAs to prepare Place Plans.

Local Development Plan Refinement

The case for change

6.25 The LDP Process Refinement Exercise fully complements our legislative proposals. We have already engaged extensively with stakeholders from both the public and private sectors, alongside those with a statutory duty and financial interest in development to identify where improvements can be made. The overwhelming consensus was that the existing system is not flawed. There was and remains no appetite for the abandonment of the LDP system or radical change. We recognise that there is always room for improvement, learning from past experiences. It is vital that the LDP system is improved to deliver the right outcomes for Wales, ensuring both time and costs of plan preparation are reduced. A number of areas are being taken forward; the main focus being the clarification of existing guidance.

Our proposals

6.26 The Refinement Exercise has focussed on the key technical aspects of the LDP preparation process and the associated review of national guidance contained in Local Development Plans Wales (2005) and the LDP Manual (2006). Later in 2014 we will consult on specific proposed changes to LDP process matters. The focus will be on refining current regulations and improving the associated guidance, including incorporating various updates issued since 2004. We have published a Report on the LDP Process

Refinement Exercise that can be found at LDP Process Refinement Exercise: Report¹⁷

6.27 Our changes will include:

- Enhanced front-loading, especially with regard to making the Preferred Strategy stage (Regulation 15) a more meaningful stage for consultation and with earlier site consideration to enable the alternative sites stage (Regulations 20 & 21) to be removed;
- For plan review & revision, reducing the required stages for plan revision, where appropriate, to enable rolling forward of the plan period with the existing strategy to be confirmed, any additional sites brought forward and avoiding the Preferred Strategy (Reg15) stage. (Dependent on SEA procedural requirements); and
- Soundness tests to be repackaged for clarity and simplicity with a reduced number of tests.

Joint Local Development Plans

The case for change

6.28 It is disappointing that limited use has been made of existing legislation that allows neighbouring LPAs to prepare Joint LDPs. The evidence from the IAG report and the experience of the LDP examination process has clearly demonstrated that effective collaboration between neighbouring authorities is weak or non-existent. We think that better collaboration is essential and have already outlined our proposals for SDPs and Joint Planning Boards.

6.29 We consider that production of Joint LDPs makes good sense. It allows a strategic overview to be taken on issues such as housing supply, reflecting the realities of the local housing market rather than local authority administrative boundaries. Efficiency savings can also be realised through sharing of skills and resources and commissioning technical studies.

6.30 There are existing powers under section 72 of the Planning and Compulsory Purchase Act 2004 which allows two or more LPAs to voluntarily prepare a Joint LDP. Despite these powers, with the exception of Gwynedd and Anglesey County Councils, LPAs have proved unwilling to embrace the approach.

Our proposals

6.31 In future Welsh Ministers may direct two or more LPAs to produce a Joint LDP. This decision would be based on evidence of the issues that need to be addressed. It could include the need for housing supply to be planned for across the entire local housing market area, employment requirements within the travel to work area, or retail provision.

¹⁷ [LDP Process Refinement Exercise: Report](#)

- 6.32 Where a direction is issued, the constituent LPAs must immediately cease work on their existing LDP and move as quickly as possible to produce a Joint LDP. Joint LDPs cannot be produced through the revision of an individual LDP.
- 6.33 The governance of a Joint LDP will remain with the constituent authorities. An advisory committee would be formed to support the development of the joint plan and would be made up of elected members from the constituent authorities.

Our intended legislation

- 6.34 Our primary legislative proposals in relation to Joint Local Development Plans are contained in Section 11 of the draft Bill. In summary:
- Section 11 amends section 72 of the Planning and Compulsory Purchase Act 2004 by introducing provision which will enable Welsh Ministers to direct two or more LPAs to produce a joint LDP and requires them to state their reasons for doing so.
 - The authorities receiving a direction must act jointly in exercising their functions relating to local development plans, (including the functions of preparing, adopting and revising a local development plan). There are other amendments which deal with the situation where a direction is withdrawn in relation to one or all of the authorities (by applying existing provisions about what happens if an authority withdraws from an agreement to prepare a joint local development plan).

Q32. Do you agree that Welsh Ministers should be able to direct preparation of a joint LDP?

Prior Notification of LDP Withdrawal

The case for change

- 6.35 At present LPAs can decide to withdraw their LDP, without giving prior notice, at any time before they submit the plan to Welsh Ministers for examination. Once a plan has been withdrawn both the plan and the evidence that support the plan are removed from the public arena. This action should only be taken if the plan is considered 'unsound'.
- 6.36 The withdrawal of evidence from the public arena means that Welsh Ministers would not be able to progress the LDP if it were considered to be appropriate to do so. The LDP process would need to start from the beginning through the commencement of a new plan. Additional time and money would be required to replace the evidence, increasing delay and expense to the public purse. The absence of an up-to-date LDP would result in a lack of policy framework for decision making, reduced confidence for investors and planning on an ad-hoc basis through an appeal process, potentially incurring higher costs. This is incompatible with a plan-led approach.

Our proposals

- 6.37 In future, we propose that if a LPA resolves to withdraw their LDP, before doing so they must notify the Welsh Ministers. Welsh Ministers would then have 6 weeks to decide whether to direct that the LDP must be submitted to the Welsh Ministers for approval (section 65 of the Planning and Compulsory Purchase Act 2004) or call-in the LDP for examination (section 71 of the 2004 Act). If Welsh Ministers do not exercise these powers within the 6 week period then the LDP can be withdrawn.
- 6.38 Welsh Ministers would be able to request further information from a LPA to inform their decision and if required notify them of an extension to the 6 week period to make their decision.

Our intended legislation

- 6.39 Our primary legislative proposals in relation to Local Development Plan withdrawal are contained in Section 10 of the draft Bill. In summary:
- Section 10 replaces section 66 of the Planning and Compulsory Purchase Act 2004 with a new section 66 that gives Welsh Ministers the power to direct a local planning authority to withdraw their Local Development Plan at any time before the plan is adopted; justified by reasons to support the direction.
 - Section 10 also inserts section 66A into the Planning and Compulsory Purchase Act 2004 which sets out how a Local Development Plan can be withdrawn if there is no direction from Welsh Ministers.
 - A local planning authority may withdraw their Local Development Plan before it is adopted as long as Welsh Ministers have not intervened using their powers under section 65 (4) (intervention by the Welsh Ministers) or section 71 (Welsh Ministers' default power). However, there are other restrictions on withdrawing a plan that has reached certain stages in the Local Development Plan process.
 - Once a plan has reached a stage specified in regulations, but before it has been submitted for independent examination the local planning authority must notify Welsh Ministers of their intention to withdraw their Local Development Plan. Welsh Ministers will then have a defined period of time to decide whether to use their intervention powers. Welsh Ministers will have the power to request further information from the local planning authority and extend the time period for consideration. If Welsh Ministers do not intervene then the local planning authority will be able to withdraw their Local Development Plan.
 - After the Local Development Plan has been submitted for independent examination, it can be withdrawn only on the recommendation of the person carrying out that examination and if the Welsh Ministers have not overruled this recommendation.

- The Welsh Ministers will have powers to make regulations to set out how notices and directions are given and specify what the notice period is.

End Date of LDP

The case for change

- 6.40 An LDP should cover a 10 to 15 year period from adoption, setting out a strategy and policy framework to accommodate change. The further the plan moves away from its base date the weaker its connection to the evidence base and the less responsive it is to circumstances. It is essential that LDPs are reviewed quickly, kept up-to-date and are responsive to local issues. There must be no complacency by relying on a plan prepared a significant time ago.
- 6.41 LDP Wales states that plans should take 4 years to prepare. Although not all first-round LDPs have been prepared within this timescale, experience gained should enable shorter preparation periods to be achieved for the remaining LDPs and plan revisions. There is no justification for waiting until, or close to, expiry of a LDP before commencing on a review. We must in future avoid policy vacuums and reliance on an out-of-date plan for decision making.
- 6.42 PPW already states that “Where development plan policies are outdated or superseded LPAs should give them decreasing weight in favour of other material considerations, such as *national planning policy*, in the determination of individual applications” (PPW paragraph 2.7.1 – 2.7.2). This is important because planning applications must continue to be assessed against up-to-date and relevant policies rather than development plan policies that may have been approved many years earlier.

Our proposals

- 6.43 We propose that LDPs should have a specific duration beyond which they cease to be the extant development plan. In practice, we should not reach this point if plans are reviewed and updated regularly. Where necessary we will use our existing powers to direct that a review should take place. Expired development plans will no longer be the first point of reference when making decisions on planning applications, but the evidence may continue to be a material planning consideration, depending upon its robustness. To ensure there is clarity that a plan is the adopted development plan, it must clearly state the date of adoption and the plan period.

Our intended legislation

- 6.44 Our primary legislative proposals in relation to an end date for Local development plans are contained in Section 9 of the draft Bill. In summary:
- Section 9 amends section 62 of the Planning and Compulsory Purchase Act 2004 so that it requires a local planning authority to specify the plan

period for their Local Development Plan after which the plan will cease to be a Development Plan. It gives Welsh Ministers the power to make regulations to set out further details about the plan period

Q33. Do you agree that LDPs should plan for at least 15 years ahead and have a set end date beyond which they cease to be the development plan?

Community Engagement

The case for change

- 6.45 Engagement with stakeholders is already a cornerstone of the LDP process. It is essential that local communities, businesses and all interested parties are able to actively contribute and influence the plan. The current system requires the LPA to prepare a Community Involvement Scheme (CIS) as part of the LDP Delivery Agreement to explain how the local community and other stakeholders can become involved in preparation of the plan.
- 6.46 We have a rich history of non statutory 'bottom up' plans in Wales which includes town and village plans and design statements. We want to build on this history as a way to ensure that local communities can have a greater say in local decisions and also, importantly, to reduce the number of very detailed or locally specific policies that are currently included in LDPs.

Our proposals

- 6.47 We consider that Town and Community Councils are well placed to work with LPAs to produce locally relevant Supplementary Planning Guidance (SPG) or Place Plans. Any SPG or Place Plan would have to be in conformity with and adopted as SPG alongside the LDP. We see no place for the introduction of new organisations, or structures, or the need for community referenda. If local communities are unhappy with what is proposed they have the opportunity through their political representatives to make appropriate amendments.
- 6.48 SPG in the form of Place Plans produced by the community could fulfil a number of roles. It could specify the finer grain detail to be considered at detailed planning application stage, ensuring that development reflects local distinctiveness. It could also be used to identify priorities for investment in community infrastructure, ensuring that best use is made of any funds obtained through Community Infrastructure Levy (CIL) receipts.
- 6.49 We propose to establish a small number of pilot projects drawing on technical assistance from the Design Commission for Wales and Planning Aid Wales. We intend to invite joint expressions of interest from LPAs and Town and Community Councils.

Q34. Do you agree that LPAs should work with town and community councils to produce place plans which can be adopted as supplementary planning guidance?

Improving the Development Management Service

Background

6.50 Development management (DM) is the process which the community uses to assess whether development proposals are acceptable. It lies at the heart of the land use planning system in Wales. In recent years we have seen a system that has become increasingly complex with the addition of more and more requirements. The process has become too legally focused and difficult for non professionals to follow or understand. We have taken the views of the general public across Wales to provide an insight on what needs to happen¹⁸. The key conclusions from this work include:

- There is a general lack of knowledge about the purpose of the planning system but the broad perception is that it allows LPAs to “control” development;
- A perception that public interest is not taken into account;
- The system is perceived as complex with lengthy timescales for decision making.

6.51 Central to improving the service is a need to move practice swiftly from **development control** to **development management**. We need to get away from the regulatory culture that has become established, which can hinder development and move to a service delivery approach that enables. We are clear that our priority is delivery; the DM system must help to deliver both national and local policies to provide the jobs, homes and infrastructure that we require to meet the needs of citizens of Wales both now and in generations to come.

6.52 As a starting point for improvement we need a shared understanding of what DM involves. Our definition of DM, which we intend to incorporate into national guidance, is set out below:

“Development management is a positive and proactive approach to shaping, considering, determining and delivering development proposals. It is led by the local planning authority, working collaboratively with those proposing developments and other stakeholders. It is undertaken in the spirit of partnership and inclusiveness, and supports the delivery of key priorities and outcomes”.

6.53 DM requires collaboration from project inception to completion of construction and beyond. The first stage of DM occurs a long time before a formal planning application is submitted. The success of the plan-led approach critically

¹⁸ [Public Attitudes Towards the Planning System in Wales](#)

depends on developers, LPAs, statutory consultees and communities proactively considering how projects should come forward in order to deliver the plan. Our proposals are intended to create the conditions necessary to enable this to happen. In chapter 3 we outlined our proposals to support culture change with moving swiftly to a DM approach being a key part.

- 6.54 Our evidence has shown that the legislative framework which supports the DM system is essentially sound but the system as a whole is under strain.¹⁹ We want to build a system which is based on the core principles of transparency, accessibility, timeliness and democratic accountability. The system must also deliver our three pillars of performance: speed, quality and customer care.

Delivering the plan

The case for change

- 6.55 Delivery is rightly at the centre of the LDP process. In preparing the plan, LPAs must talk with developers to understand what can be delivered when. This dialogue should continue past plan adoption, right up to the point a planning application is decided. By the time the planning application is submitted, the development proposal should have been refined through on-going discussion between the developer, the LPAs, statutory consultees and importantly the public, to arrive at a final deliverable proposal that has taken into account everyone's views.
- 6.56 To commit the resources necessary to support the dialogue and design process, developers need reasonable certainty that their proposal will be granted planning permission. The development plan provides much of that certainty, although legislation does not rule out material considerations leading to a decision which is not in accordance with the plan.
- 6.57 The quantity of information necessary to justify the inclusion of a site allocation in a LDP can be significant, with more detail again required before the design is completely signed off. If a good proposal is to be achieved and planning permission granted a developer needs to be in discussion with the LPAs and community.

Our proposals

- 6.58 The realisation of a plan-led approach to development means that we can look afresh at our DM process. We commissioned research to review the management and control of the use of land in Wales in a plan led system - 'A New Approach to Managing Development in Wales: Towards a Welsh Planning Act.'²⁰ The report highlighted that often the same process is applied to all planning applications regardless of whether they have been

¹⁹ [Study to Examine the Planning Application Process in Wales](#)

²⁰ [Towards a Welsh Planning Act: Ensuring the Planning System Delivers](#)

subject to rigorous appraisal through the LDP process or not, with little account being taken of their size or complexity. As a result a 'simple' or 'compliant' application, which is in conformity with an adopted development plan can receive excessive treatment and result in unnecessary duplication and costs.

6.59 We consider that the investment in the LDP process needs to produce dividends by simplifying the DM process. Where the plan has established the principle that a certain form of development is acceptable, this should not be debated again at planning application stage. Instead, discussions should focus on detailed design matters to ensure that a quality development is granted planning consent. We consider there to be two options:

- A new type of planning consent be introduced for applications which are in accordance with an adopted development plan; or
- No change to consents but all planning applications in accordance with an adopted development plan would be delegated to officers to determine.

6.60 Our preference would be the first option where a reserved matters type application would be submitted in respect of development in accordance with the adopted development plan allocation. The principle of development would not therefore be revisited. We will issue a further consultation paper to explain our proposals in detail.

Q35. Do you agree that where a development proposal accords with an allocation in an adopted development plan a new planning application process should be introduced, to ensure that only matters of detail such as design and layout are considered?

Before the planning application is submitted

Background

6.61 Our evidence has demonstrated that the DM system should be frontloaded to ensure that communities can influence development proposals and to speed up the processing of planning applications. It is already best practice for LPAs to offer pre-application advice and for developers to undertake pre-application engagement, particularly where major developments are proposed. We want to ensure that this becomes the norm for the largest developments.

Pre-application advice

The case for change

6.62 The planning system is often blamed for holding up development. There are many causes of delay, including slow or ineffective working practices on the part of the LPA, or the submission by the developer of a proposal which is ill-conceived and not worked through.

- 6.63 Our evidence has identified the importance of pre-application advice in improving the speed of decision making and quality of development proposals. Pre-application advice involves planning officers offering a view about how the proposed development complies with legislation and planning policy. It allows the LPA to set out early in the development process the information that should accompany the planning application. It also provides an opportunity to identify local issues that could influence the design of the development or help to address community concerns. Such discussions mean that problems are foreseen early and at a time when solutions are more readily found.
- 6.64 Currently, pre-application advice is a discretionary service that is offered by most LPAs. The GVA Grimley report²¹ highlighted the role of pre-application advice in enabling planning applications to be dealt with more quickly whilst retaining design quality. The IAG reported an inconsistent approach across Wales with a small minority of LPAs not offering pre-application advice.

Our proposals

- 6.65 An important way to improve the speed of decision making and quality of development is to provide developers with the opportunity to seek the view of the LPAs on the acceptability of a development proposal before the planning application is submitted. This should result in a better informed application that has a greater chance of gaining planning permission.
- 6.66 We are not proposing a requirement for developers to enter into pre-application discussions with LPAs but strongly advise them to do so. Current practice demonstrates that most developers will seek pre-application advice from LPAs as they appreciate the benefits that it brings.
- 6.67 Instead, we are proposing that LPAs will have a legal duty to provide a pre-application advice service to prospective applicants when requested. We have already explained our pre-application advice proposals for developments of national significance in Chapter 4 (paragraph 4.62 – 4.64). To ensure that a consistent service is provided across Wales each LPA will be required to produce a pre-application advice service statement. The service statement will need to reflect and be in accordance with any secondary legislation and guidance produced by us.
- 6.68 We consider that it is reasonable for LPA to recover the cost of providing the new statutory pre-application service. However we want to encourage prospective applicants to engage with LPAs to discuss development proposals.
- 6.69 At this stage we are considering two charging options:

²¹ [Study to Examine the Planning Application Process in Wales](#)

- Option 1 – no charge for the initial request for statutory pre-application advice but if a planning application is subsequently submitted, a charge (in addition to the planning application fee) will be payable to the LPA; or
- Option 2 – a charge would be levied for all requests for statutory pre-application advice whether or not they result in a planning application.

6.70 A consultation paper on fees will be issued shortly that will provide further detail on the level of charges for the pre-application service.

Our intended legislation

6.71 Our primary legislative proposals in relation to pre-application services are contained in Section 15 of the draft Bill, which inserts Sections 61ZA, 61ZB and 61ZC into the Town and Country Planning Act 1990. These provisions apply to Developments of National Significance and Direct Planning Applications in the same way that they do to applications made to LPAs. In summary:

- Section 61ZA gives the Welsh Ministers the power to make regulations about the provision of pre-application services by LPAs or the Welsh Ministers to a prospective applicant in respect of prescribed types of proposed application.
- The regulations may set out the circumstances in which the pre-application services are required to be provided; the nature of the service to be provided; and the requirements for publishing or making available information and documents relating to requests for and the provision of pre-application services.
- 61ZB confers power on the Welsh Ministers to make regulations that would require LPAs and the Welsh Ministers to retain records of the provision of and requests for pre-application services, and to publish a statement giving information on the type of pre-application services provided.

Pre-application engagement

The case for change

6.72 The preparation of a good planning application can be a costly and time consuming exercise. Our research, “Public Attitudes Towards the Planning System in Wales”, found that the public are concerned that there is limited opportunity to engage in the planning system and influence development proposals. Currently, the public often see a development proposal late in the design process, most commonly after the planning application has been submitted.

6.73 We are committed to involving communities fully in the planning process. Early, meaningful and effective engagement can build understanding between developers and communities. It also allows any significant concerns to be

highlighted early in the development process, providing the opportunity for the developer to address these issues prior to the submission of a planning application. Small changes to the scheme may make a huge difference to whether the public support a scheme. We also want to ensure that statutory consultees play a full and meaningful role in this process.

Our proposals

- 6.74 We will introduce a requirement for pre-application engagement with communities where major development is proposed. This will ensure that meaningful engagement can take place at a time when there is an opportunity to influence design decisions. Engagement by developers is required with the public and statutory consultees (our detailed proposals relation to statutory consultees is set in paragraph 6.91 - 6.95). Details of the pre-application engagement process will be set out in a development order, supported by guidance.
- 6.75 When the planning application is submitted to the LPA it should be accompanied by a written account of the engagement undertaken – a statement of pre-application engagement (SPE) - and provide an explanation of how the views of the engagement and input from statutory consultees have influenced the planning application. LPAs will not be permitted to validate an application unless it is accompanied by a SPE.

Our intended legislation

- 6.76 Our primary legislative proposals in relation to pre-application consultation are contained in Section 14 of the draft Bill. Section 14 applies to Developments of National Significance and Direct Planning Applications in the same way that it does applications for planning permission made to LPAs. In summary:
- Section 14 of the draft Bill inserts section 61Z into the Town and Country Planning Act 1990
 - Section 61Z requires pre-application consultation to be carried out by those intending to apply for permission for development of a type specified in a development order made by the Welsh Ministers. The section requires the proposed application to be publicised in a way that brings the proposal to the attention of neighbours (persons who own or occupy premises in the vicinity of the development site).
 - Section 61Z enables the Welsh Ministers, by means of a development order, also to specify other persons who must be consulted by the applicant about the proposed application.
 - The duty will not apply to urgent Crown development or any other cases that may be specified in a development order.
 - Section 61Z confers power on the Welsh Ministers to make further provisions in a development order about the consultation process,

including the form and content of consultation documents; information and other materials that are to be provided to neighbours and specified consultees; and timescales.

- The section also enables the Welsh Ministers to require specified consultees to respond to the consultation in a particular manner and within a particular time, and to report to the Welsh Ministers on their compliance with any such requirements.
- Section 14 of the draft Bill inserts subsections (6A), (6B) and (6C) into section 62 of the Town and Country Planning Act 1990.
 - These new subsections provide that the Welsh Ministers must require in a development order that a “pre-application consultation report” accompanies all submitted planning applications where the applicant has been required to carry out pre-application consultation. They set out the particulars that must be contained in the report, including the details of the pre-application consultation that has been undertaken by the applicant, the responses received and how the responses have been taken into account by the applicant. A development order may also make provision about the form and content of the pre-application consultation report. The effect of this is that an applicant will have had to carry out consultation under section 61Z, where required to do so, before making an application.

When the planning application is submitted

Background

- 6.77 The submission of a planning application marks the start of the process where the LPA makes a formal decision on whether the proposal should go ahead. We have well established targets for how long this process should take which features prominently in our proposed indicators of a good local planning service. Whilst a significant number of LPAs consistently perform well, a number of authorities perform poorly. We want good performance to be the norm.
- 6.78 Our approach is to streamline processes to ensure that decisions can be made in a more timely way. We have already made significant improvements including the introduction of an on-line standard planning application form, normally referred to as ‘1APP’, delivered through the Planning Portal. We want to build upon this and make further progress at all stages. We have identified further proposals to drive change and improve performance, which is set out in the following paragraphs.

Information requirements

The case for change

- 6.79 There has been significant growth in the information necessary to support planning applications in recent years. This has been driven by European environmental legislation in particular and in some cases national and local policy requirements. In chapter 4 we have already described our intention to reduce national policy requirements where we can.
- 6.80 The standard application form, 1APP, provides consistency in the information needed to accompany a planning application. It places the responsibility on applicants to gather all information LPAs need to make robust, informed decisions. LPAs must take a proportionate approach when applying the requirements of the standard application form and any local requirements when deciding if a planning application should be accepted (often referred to by local planning authorities as being valid).
- 6.81 Whether a particular assessment document, such as a transport assessment, contains a sufficient level of information to be legally regarded as such for the purposes of the standard application form is a subjective exercise relying on professional judgement. We accept that disputes will occur over how much detail is appropriate, although for the developer the only viable option may be to provide the information requested, often at significant cost.
- 6.82 To resolve disputes quickly, we intend to set up a new appeal mechanism that deals solely with whether an application is valid.

Our proposals

Validation appeals

- 6.83 To resolve disputes quickly, we are considering setting up a new appeal mechanism that deals solely with whether an application is valid. This would require legislation to allow a right of appeal against the decision of a LPA not to register a planning application. We intend to make changes to existing legislation to make it clear that, where a LPA requests an item of information, it must give full consideration to whether the information in question is really necessary and relevant to the application.
- 6.84 We want a quick resolution to the question of whether applications contain sufficient information to be a valid application. Until recently applicants have been able to appeal against non-determination if a LPA has refused to accept their applications but only after the standard period for determination has elapsed. We want applicants to be able to challenge the LPAs view much sooner through a quick, simple appeal procedure administered by the Planning Inspectorate (PINS). The case would be dealt with using written representations by an appointed planning officer rather than an inspector. To achieve this we would need to;

- Provide Welsh Ministers with the power to introduce a right of appeal against the decision of a LPA not to register a planning application;
- Provide Welsh Ministers with power to prescribe the appeal procedure and process in secondary legislation. This includes time periods for the process, who determines the appeal, the form and manner of the appeal and fee for appeal / award of costs, and
- Amend Section 62 of the Town and Country Planning Act 1990 to make it clear that, where a LPA requests an item of information, the information must be reasonable and relevant to the application.

Q36. Do you support the proposal to allow a right of appeal against an LPA not registering a planning application?

Removal of mandatory design and access statements

The case for change

6.85 Our commitment to achieving good design and access for all remains as strong as ever. However, research into the effectiveness of design and access statements (DAS) has found little evidence that they are effective in achieving these policy objectives²². While some benefits have been identified as a communication tool, we are not convinced this is sufficient reason to retain them as a mandatory requirement for many planning applications. Resources should be focussed on alternative ways of securing good design of development that includes inclusive access arrangements.

Our proposals

6.86 Subject to the views received through the consultation exercise and the identification of suitable alternative measures to promote good design and access for all, we propose to remove the requirement in section 62 (5) of the Town and Country Planning Act 1990 to submit a design and access statement with a planning application.

6.87 These measures have not been included in the draft Bill. Subject to consultation responses, we intend to include within the Bill when introduced to the National Assembly for Wales, specific measures to achieve these aims.

Q37. Should the requirement for mandatory design and access statements be removed?

²² [Review of Design and Access statements in Wales](#)

Publicity

The case for change

6.88 Ensuring everyone has the opportunity to express their views on planning applications that potentially affect them is a challenge, especially when schemes can have widespread impacts. The costs of undertaking publicity are of concern to LPAs at a time when resources are limited. The use of websites to disseminate information has increased and offers potential opportunities. The IAG recommended further work is undertaken to review notification requirements suggesting additional requirements may be necessary.

Our proposals

6.89 We intend to give further consideration to whether current notification arrangements are proportionate to the potential impact of the development. We will be consulting on detailed proposals following work with stakeholders to identify the effectiveness of new methods of engagement such as social media.

6.90 As part of this work we are considering removing the requirement to publish a notice in a newspaper circulating in the locality but recognise that advertisement on the LPAs website is not a wholly suitable alternative because not everyone has access to the internet. Your views are sought on whether sufficient viable alternative publicity measures exist that would allow the use of notices in newspapers to be discontinued.

Q38 Should the requirement to advertise planning applications for certain developments in a local newspaper be removed?

Statutory Consultees

The case for change

6.91 Statutory consultees are organisations and bodies, defined in legislation, which must be consulted on certain planning applications. They provide specialist, technical advice on development proposals. LPAs may give significant weight to the advice of statutory consultees, particularly when it has limited expertise on a particular technical issue. This can mean authorities are reluctant to determine applications without input from these key bodies or go against their advice.

6.92 The evidence base indicates that the general level of performance of statutory consultees does not reflect their important role and influence in the planning system. In particular, concern is expressed that statutory consultees cause delay in the planning application process by providing late responses to consultation requests. Also, responses can be disproportionate to the complexity of development proposed or simply unclear.

6.93 A further issue is that statutory consultees do not engage early enough in the planning application process. Early engagement, at pre-application stage, with developers and LPAs is important in order to draw out any particular technical issues that could cause delay during the determination process.

Our proposals

6.94 We intend to clarify the areas where statutory consultees must contribute positively to the DM process, both before and after a planning application is submitted. Having clarified where statutory consultees will be required to provide specialist advice, to ensure timely and substantive responses, we intend to:

- Introduce a duty on statutory consultees to provide substantive response to consultation requests within a set period, as prescribed in subordinate legislation. The consultation request will be either from the developer at the pre-application stage (for DNS and major development), or from the LPA, for all other types of development, following its submission to them, including the discharge of planning conditions;
- Place a duty on statutory consultees to provide performance reports to the Welsh Ministers; and
- When a response is provided at pre-application stage, limitations will be placed on the type of new issues that statutory consultees will be able to raise through formal consultation.

Our intended legislation

6.95 Our primary proposals in relation to statutory consultation are contained in section 14 and section 27 of the draft Bill. In addition, the Welsh Ministers intend to commence section 54 of the Planning and Compulsory Purchase Act 2004 to complete the suite of legislation for statutory consultation. In summary:

- Section 14 of the draft Bill inserts section 61Z into the Town and Country Planning Act 1990.
 - Section 61Z requires an applicant to carry out pre-application consultation in respect of proposed developments which are of a type specified in a development order made by the Welsh Ministers. In addition to publicising the proposal, the legislation requires the applicant to consult persons specified in a development order made by the Welsh Ministers about the proposed application. In practice, these persons are likely to correspond with the 'statutory consultees' listed in Schedule 4 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.
 - This section also enables the Welsh Ministers by development order: to specify how the consultation should be carried out; to require the consultees specified by them to respond to the consultation in a particular manner and within a particular time; and, to report to them on

their compliance with statutory pre-application consultation requirements.

- Section 27 of the draft Bill inserts section 100A into the Town and Country Planning Act 1990.
 - Section 100A makes provision for consultation in respect of applications for approval of reserved matters and applications for consent, agreement or approval required by any conditions or limitation subject to which planning permission has been granted.
 - It provides that when an LPA consults a statutory consultee under this section, they cannot determine that application before the end of a specified period to be prescribed in a development order. It also specifies who a statutory consultee is for the purposes of this section.
 - It imposes a duty upon those consulted to provide a substantive response and to report to the Welsh Ministers on their compliance with this duty.
 - It enables Welsh Ministers by development order to specify: the information to be provided by the local planning authority to the consultee in respect of the consultation; the requirements of a substantive response and the time period in which it must be provided to the local planning authority; the regard the local planning authority must have to the consultation response; and the form and content of the report on compliance with the duty to provide a substantive response.
 - The duties imposed on a statutory consultee only apply if the local planning authority exercises their discretion to consult the statutory consultee.

Making the decision

Background

- 6.96 To make a decision, the LPAs needs to have before it all of the information necessary to determine whether planning permission should be granted. The views of statutory consultees and the community will be known. Negotiations may have taken place between the developer, LPAs and sometimes statutory consultees to resolve problems and make improvements.
- 6.97 A report will be prepared describing the proposal, views of the public and statutory consultees and provide a recommendation on whether planning consent should be granted or refused. A planning application can be determined by either elected members at planning committee, or for simpler more straightforward applications, delegated to planning officers to make the decision on their behalf.

6.98 Members have democratic accountability for the planning service in their areas and so it is right for them to make decisions on the most difficult and controversial cases in a consistent and efficient way. However, our evidence base has demonstrated a lack of consistency at this vital stage in the DM process. The IAG identified a number of areas for potential improvement to address consistency of decision making by members, including being unduly influenced by local objections rather than sound material planning considerations. The RTPI subsequently commissioned Fortismere Associates with Arup to undertake research, considering these issues in more detail²³.

Planning Committees, Delegation and Role of Members

Background

6.99 The majority of planning applications are determined by officers under delegated powers. Each LPA in Wales produces its own scheme of delegation, resulting in delegation rates between 70 and 95 %. Delegation should result in prompt decision making with consequential time and cost savings for LPAs and developers. An effective scheme of delegation means that the planning committee can then concentrate on the more sensitive, strategically important schemes. Such schemes can be technically complex and controversial, involving a number of issues and conflicting pressures. It is therefore important that committee members understand the relevant planning and legal framework under which they must operate in order to make sound decisions in the public interest.

The case for change

6.100 The research has identified considerable inconsistency between LPAs in terms of:

- The level of and conditions under which decisions are delegated to officers;
- The size and constitution of planning committees; and
- The protocols used at planning committee meetings.

6.101 The report found that delays occur determining applications that went to committee. However, they recognise a need to support democratic inclusivity, probity and representation. The research concluded that the size of the committee could have benefits in terms of promoting consistency and efficiency. It concluded that larger committees create a larger administrative overhead, greater inconsistency and less 'democratic' voting through the resulting emphasis placed on the views of the local member. The research acknowledged the tension between the role of members upholding the wider public interest, considering development proposals in accordance with the

²³ [Research into the Review of the Planning Enforcement System in Wales](#)

adopted plan, versus the role of the local member representing the views of those in the member's ward.

Our proposals

6.102 We intend to work with stakeholders to implement the changes recommended by the Fortismere Associates research including:

- Establishment of a national planning committee protocol that should be incorporated into each authority's constitution (the protocol would set out procedures to be used at planning committee meetings);
- Legislation to define the size of planning committee; and
- Establishment of a national programme of member training linked to the proposed planning competency framework for elected members (paragraph 3.24 – 3.26).

6.103 A mixture of legislation, guidance and training will be required to achieve the recommendations listed above.

6.104 An additional key measure proposed by the research was the introduction of a mandatory national scheme of delegation of decision making powers. We agree that a national scheme of delegation is required to provide consistency across Wales. However we are concerned that the local discretion within the recommendation potentially undermines the objective of national consistency.

6.105 Through the Bill as introduced we intend to:

- Introduce a national scheme of delegation for officers to determine planning applications; and
- Prescribe the size, make-up and procedures within which Local Planning Authority Committees should operate.

6.106 The legislation would seek enabling powers for the Welsh Ministers to require LPAs to include a national scheme of delegation within their own delegation schemes aiming for around 90% of applications to be determined by officers.

6.107 The research discussed limiting the size of planning committees and we intend to amend legislation to have a minimum of 11 members and a maximum of 21 members participating.

6.108 These measures have not been included in the draft Bill. Subject to consultation responses, we intend to include within the Bill when introduced to the National Assembly for Wales, specific measures that amend provisions in local government legislation to achieve these aims.

Q39. Should there be any local variation within a national scheme of delegation for decision making on applications?

Once planning permission has been granted

Background

- 6.109 Once planning permission has been granted, in many cases the applicant can start work on the scheme. However there are often conditions attached to planning consents that require the submission of additional information. Sometimes development does not proceed as originally proposed and it is necessary to make changes to the proposal or renew planning permission. Flexibility is important, particularly when market conditions are uncertain. To provide flexibility we intend to introduce new procedures for considering minor amendments and renewal of planning permission.
- 6.110 With various amendments and updates to planning permissions it is often difficult to keep track of what permissions have been granted, especially for the public. It is important that communities have access to the relevant information to ensure that they are fully aware of what is going to happen and when. We intend to make changes to decision notices and require developers to tell LPAs when a development starts. We also want a copy of the decision notice to be displayed on or near the site.
- 6.111 Even where development has been granted planning consent there may be attempts by third parties to prevent development using various means, including seeking designation of the site as a town or village green.
- 6.112 When things go wrong the enforcement system is the tool we use to sort problems out. Enforcement is not an optional add on; it is a key tool in the DM system helping to maintain public confidence.

Decision Notices

The case for change

- 6.113 The form of a decision notice granting planning permission has remained largely unaltered over the years, although the number and complexity of planning conditions has increased. The decision notice is a fixed document that remains unchanged following its date of issue, even though aspects of the planning permission can change prior to and during implementation of the permission. This makes it difficult for developers and communities to identify the complete content of the planning permission and whether conditions have been complied with.
- 6.114 This is frequently an issue for subsequent purchasers, particularly of commercial property and their funders in seeking to establish if a development has been built in conformity with the planning permission. At present, the only way of establishing the plans and documents associated with the permission and whether the requirements of a condition have been met is to search through the application file associated with the permission.

Our proposals

6.115 We propose to introduce a new form of decision notice that identifies the plans and documents associated with the planning permission and records details agreed by future applications to discharge conditions and reserved matters associated with the permission.

6.116 The aim is to make the decision notice a “live” document that reflects the current position of the planning permission so that it is easier for developers and stakeholders to identify the scope of the planning permission and whether conditions have been complied with.

6.117 These changes will improve the DM system by providing greater clarity, transparency and certainty for all stakeholders, including local communities.

Our intended legislation

6.118 Our primary legislative proposals in relation to Decision Notices are contained in Section 25 of the draft Bill. In summary:

- Section 25 amends the Town and Country Planning Act 1990 by inserting a new section 71ZA, which enables the Welsh Ministers by development order to specify the form of decision notices, the manner in which they are to be given, and the particulars to be contained within them.
- It requires any plans and documents that form part of a planning permission (in that the development must be carried out in accordance with them) to be specified in the decision notice.
- The planning permission will be deemed to be granted subject to the condition that the development must be carried out in accordance with the plans and documents specified in the decision notice.
- It also requires a local planning authority or the Welsh Ministers to issue a revised version of the decision notice to persons specified in a development order, where they have given any consent, agreement, or approval required by a condition or limitation imposed on a planning permission or where they have imposed, removed or altered a condition or limitation on a planning permission.
- The Welsh Ministers may specify in a development order the details to be included in the revised version of the decision notice
- The provision applies to decision notices to grant planning permission given by LPAs and the Welsh Ministers (for example, decision notices issued by the Welsh Ministers in relation to planning appeals and planning applications made direct to them where a local planning authority has been designated or for Developments of National Significance).

Notification of Development

The case for change

6.119 As part of the evidence base to inform the Planning (Wales) Bill, the IAG report recommends introducing notification and publicity requirements that would require the developer to:

- Notify the LPA of the date on which development began; and
- Post and maintain on or near the site throughout the period of development a copy of the planning permission being implemented.

6.120 The introduction of these requirements will assist in monitoring development by:

- Helping to ensure that all necessary conditions have been discharged prior to development commencing, thereby preventing breaches of conditions and the need for enforcement action; and,
- Providing clarity in relation to the permission being implemented, in particular where a single development has multiple permissions.

6.121 These changes would improve the DM system by providing greater clarity, transparency and certainty for all stakeholders, including local communities.

Our intended legislation

6.122 Our primary legislative proposals in relation to Notification of initiation of development are contained in Section 26 of the draft Bill. In summary:

- Section 26 amends the Town and Country Planning Act 1990 by inserting a new section 71ZB, which places a requirement on developers to notify the local planning authority of the date on which the development is to begin and the details of the planning permission to be implemented. The provision requires a developer to display on or near the development site a notice of a decision to grant planning permission for that development.
- It also enables the Welsh Ministers by a development order to specify which categories of planning permission the provisions will apply to and the form of, and details to be included in, such notices.
- The planning permission will be deemed to be granted subject to the condition that these requirements must be complied with. It also requires, where relevant, decision notices to set out these duties to be undertaken by a developer.

Amendments to planning permission

The Case for Change

6.123 Following the grant of planning permission there may be a need to amend the scheme to take account of changes as the design and development process unfolds. These changes are often small scale in nature and do not warrant the resubmission of the whole scheme to the LPA. The amendments can be either non-material or minor material in nature.

6.124 A non- material amendment is one which does not have a material impact on the development whereas a minor material amendment is a change which does have a material impact on the development, but that impact is judged to be minor. Materiality and degree of impact will depend upon the proposed change, nature and extent of the development as well as the context of the overall scheme.

Non-material amendments

6.125 There is no formal process for approving these type of amendments which results in inconsistency across LPAs. Some LPAs are prepared to approve amendments in an informal manner by letter, whilst other LPAs are more cautious and require the submission of a new planning application to make relatively small changes to the approved development.

Minor-material amendments

6.126 There is an existing procedure under Section 73 of the Town and Country Planning Act 1990 that allows developers to apply for planning permission to make minor-material amendments to existing permissions by removing or varying conditions. However making minor-material amendments via a Section 73 application requires a relevant condition to be attached to the original planning permission. Currently there is no statutory provision to ensure that LPAs provide such a good condition, thereby preventing applications being made under section 73.

6.127 The uncertainty and confusion regarding the correct approach to deal with small amendments to an existing scheme leads to frustration, wasted time and increased costs for both developers and LPAs.

6.128 The IAG and GVA Grimley reports identify the need to simplify the process of amending existing planning permissions by:

- Introducing a procedure by which non-material amendments can be made to an existing planning permission; and,
- Providing a more effective procedure than currently exists for making minor material amendments to an existing planning permission.

Our proposals

Non-material amendments

6.129 We propose to introduce a statutory procedure that will allow developers to seek non-material amendments to planning permissions and reassure LPAs that they can entertain such changes. Our proposed approach was subject to public consultation earlier this year: “Non-material amendments to planning permissions”. Our consultation document proposed that a provision equivalent to Section 96A of the Town And Country Planning Act, which enables LPAs to approve non-material amendments to permissions is made in relation to Wales. Responses to the consultation exercise have been analysed and commencement will be taken forward separately to the Planning (Wales) Bill.

Minor material amendments

6.130 The proposals for decision notices, covered under paragraph 6.115, introduce a new form of decision notice that will identify the plans and documents associated with the permission. Listing the plans and documents that are approved by the permission will ensure that minor material amendments to existing planning permissions can be made using an application under Section 73.

Our intended legislation

6.131 Our primary legislative proposals in relation to Decision Notices are contained in Section 25 of the draft Bill. In summary:

- Section 25 amends the Town and Country Planning Act 1990 by inserting a new section 71ZA, which enables the Welsh Ministers by development order to specify the form of decision notices, the manner in which they are to be given, and the particulars to be contained within them.
- It requires any plans and documents that form part of a planning permission (in that the development must be carried out in accordance with them) to be specified in the decision notice.
- The planning permission will be deemed to be granted subject to the condition that the development must be carried out in accordance with the plans and documents specified in the decision notice.
- It also requires a local planning authority or the Welsh Ministers to issue a revised version of the decision notice to persons specified in a development order, where they have given any consent, agreement, or approval required by a condition or limitation imposed on a planning permission or where they have imposed, removed or altered a condition or limitation on a planning permission.
- The Welsh Ministers may specify in a development order the details to be included in the revised version of the decision notice .

- The provision applies to decision notices to grant planning permission given by LPAs and the Welsh Ministers (for example, decision notices issued by the Welsh Ministers in relation to planning appeals and planning applications made direct to them where a local planning authority has been designated or for Developments of National Significance).

Q40. Do you agree that a minor material change should be restricted to "one whose scale and nature results in a development which is not substantially different from that which has been approved"?

Renewal of planning permission

The case for change

6.132 Sometimes a development cannot begin within the time limit set out in the original planning permission. In this situation, the developer may seek to extend the time limit by applying to “renew” the planning permission. A recent change in legislation has resulted in uncertainty over how to apply for a renewal of planning permission. Historically, it has been done by means of a letter and currently through what is known as a ‘Section 73 application’. This procedure is a useful tool which allows flexibility but it was never designed for the purpose of renewal of planning permission and therefore places unnecessary demands on applicants to provide information to support their application.

Our proposals

6.133 We recognise that there is a need for greater flexibility in the planning system and want to retain the ability to renew planning permission. However, the application procedure must be ‘fit for purpose’ with the application requirements proportionate to the development proposed and the planning considerations that need to be taken into account as part of the decision-making process.

6.134 Welsh Ministers already have the power to make provisions regarding applications for planning permission made to LPAs. We propose to introduce a new dedicated application procedure for extending the time limit for implementing a planning permission which has its own submission requirements and fee.

Town and Village Greens

The case for change

6.135 Town and village greens (‘greens’) originally developed under customary law as areas of land where local people indulged in lawful sports and pastimes and in doing so established recognised recreational rights. The Commons Registration Act 1965 made provision for the registration of these historic

greens and also enabled 'new' greens to be registered on the basis of 20 years' use 'as of right' (i.e. without permission, force or secrecy).

6.136 The Common Land Policy Statement 2002 set out the commitment of government to legislate to reform the law relating to common land and greens. The Commons Act 2006 gives effect to many of the commitments including establishing a procedure for the registration of new greens. Once land is registered as a green it receives exceptional protection from development, irrespective of any existing or subsequent planning permission.

6.137 The Penfold Review in England received evidence that the registration process could add to risk and lead to considerable additional costs, delay and, potentially, to substantial reshaping of the development proposed or to its abandonment altogether, particularly where the land concerned already had the benefit of planning permission or was subject to a live planning application²⁴. In many cases applications for registration as a green were made because they were seen as a potential means of frustrating development rather than for the purpose of protecting a particular area of land. We have received similar evidence in Wales and consider that it would be appropriate to amend Section 15 of the Commons Act 2006 to prevent it from being used to frustrate lawful development.

Our proposals

6.138 We propose to amend Section 15 of the Commons Act to:

- Prohibit applications being made to register land as a town and village green where that land has entered the planning system i.e. been identified for development in a development plan, has received planning permission or is the subject of an application for planning permission before the LPA; and
- Enable landowners to submit declarations to the commons registration authority. Declarations would include a form and map and have the effect of rendering all use of the land indicated inconsistent with the 'as of right' criterion required of town and village green registration.

6.139 We accept that this could be perceived as a restriction on the ability of people to apply to register land as a green but this would only apply where the use to which land should be put has been through, or is going through, the statutory planning processes, including public consultation, included in development plan preparation and in the consideration of applications for planning permission. These processes will provide people with the opportunity to put forward any arguments they may have about the use of the land concerned for town or village green purposes. Other than in these circumstances, if people consider that land within their locality satisfies the criteria for designation as a town or village green it would remain open to them to apply in the usual way for such registration.

²⁴ [Review of consents required for development other than planning permission \(Penfold\)](#)

6.140 We are satisfied that this would strike an acceptable balance between maintaining the need to preserve land used as greens and providing developers with a greater degree of certainty in bringing forward development.

Q41. Do you agree that the proposals strike a balance between the need to preserve land used as Town and Village Greens and providing greater certainty for developers?

Enforcement

The case for change

6.141 An effective DM system requires proportionate and timely enforcement action to maintain public confidence in the planning system but also to prevent development that would undermine the delivery of development plan objectives.

6.142 The Welsh Government's enforcement review concludes that whilst the system is fundamentally sound, it can struggle to secure prompt, meaningful action against breaches of planning control. The system can also be confusing and frustrating for complainants, particularly as informed offenders can intentionally delay enforcement action by exploiting loopholes in the existing process.

Our proposals

6.143 We intend to introduce a suite of changes to improve the performance of the enforcement process supported by appropriate training and guidance. Our proposals include:

- Introduction of temporary stop notices: a means of securing prompt, effective action, allowing LPAs to put an immediate halt to breaches of planning control for up to 28 days, with no right of appeal.
- Changing the title of S.94 'Completion Notices' to 'Termination Notices' to provide greater clarity and to reflect their role in the system;
- Providing LPAs with the power to require the submission of retrospective planning applications where unauthorised development can be regularised and controlled by planning conditions;
- Providing LPAs with the power to decline to determine retrospective planning applications for development that is subject to an enforcement notice - this will force the developer to appeal ground (a) if they want to secure planning permission for the unauthorised development;
- Removing the ability to appeal ground (a) where a refusal of planning permission has already been upheld at appeal;
- Removing the ability to appeal against the refusal of retrospective planning permission where a ground (a) has failed; and,

- Transferring responsibility for determining section 215 appeals (unsightly land notices) from the Magistrates to Welsh Ministers.

6.144 We intend to introduce Temporary Stop Notices, through the commencement of Part 4, Section 52 of the Planning and Compulsory Purchase Act 2004.

6.145 These measures have not been included in the draft Bill. Subject to consultation responses, we intend to include them within the Planning (Wales) Bill when introduced to the National Assembly for Wales.

Q42. Do you agree that the proposals will reduce delay in the planning enforcement system?

Q43. Do you agree with the introduction of temporary stop notices to the planning enforcement system in Wales?

Fees and Resources

Background

6.146 We do not underestimate the challenges faced in delivering a good local planning service. Local government finance is likely to be constrained for some time, therefore it is important that new ways of configuring services are found to deliver more with less.

6.147 Recent economic conditions have seen a reduction in planning applications with a consequential reduction in planning fees. The number of planning applications in 2006/7 was 37,000; more recently it is averaging 22,000 per annum. Retaining the same staff levels has therefore been difficult for many authorities, which has made it hard to retain specialist staff. Planning fees have not been raised since 2009 and so LPAs have advised that current fee levels do not fully recover the costs of processing the applications.

6.148 The extension of permitted development rights referred to in paragraphs 4.51 – 4.53 means that fee income for LPAs will reduce further. A review of planning fee levels is appropriate.

6.149 Our proposals for fees reflect the different stages of applying for planning permissions and the different application types involved. Our proposals for pre-application advice are set in paragraph 6.62 - 6.76 while those relating to DNS applications can be found at paragraph 4.62 - 4.64. Our proposals for all other planning applications and related consent regime fees are set out in the following sections.

Planning Application Fees

The case for change

6.150 LPAs recently provided evidence to the Welsh Government on the cost of providing their DM service relative to the fee income they receive. We will use this evidence as a basis for consulting on our detailed fee proposals, which we will be issuing separately. Issues that will be addressed by the consultation paper will include:

- Whether there should be a general increase in planning application fees;
- Widening the scope of fees to include, for example discharge of conditions;
- Changing how the fee for renewable energy applications are calculated.

6.151 In order to take forward the outcome from the consultation on planning application fees we intend to commence section 199 of the Planning Act 2008. This will replace S 303 of the 1990 Act.

Chapter 7 - Financial Impacts

7.1 Overall this comprehensive set of reforms should not give rise to additional costs to the Welsh planning service. We anticipate some limited redistribution of costs between Welsh Government, local planning authorities (LPAs) and developers, particularly in relation to DNS planning applications, pre-application advice and pre-application engagement. A Regulatory Impact Assessment (RIA) setting out benefits and costs will accompany the Planning (Wales) Bill when it is introduced to the National Assembly.

7.2 We identify below some savings and costs that may arise for:

- Welsh Government
- Local planning authorities
- Developers
- Statutory consultees

Welsh Government

7.3 The reforms that will generate the greatest savings for the Welsh Government will be:

- Potential increased savings for the Welsh Ministers in being able to recover their own costs resulting from the submission of an appeal.

7.4 The reforms that will generate the most new costs for the Welsh Government and Ministers will be:

- Preparation and monitoring of a National Development Framework (NDF) for Wales to replace the Wales Spatial Plan (WSP).
- Processing of planning applications falling under the category of Developments of National Significance (DNS), including pre-application stages; although it is considered this will result in efficiency savings to the Welsh planning system overall and reduce the planning applications burden for LPAs. The costs accruing to Welsh Ministers will be recovered through the planning application fee;
- Setting up of a planning advisory and improvement service within the Welsh Government will be cost neutral by redirecting existing resources;
- Development of a performance framework and annual reporting mechanism for LPAs (in conjunction with the LPAs);
- Additional resource for the determination of planning applications where LPAs are designated as underperforming. The costs accruing to Welsh Ministers will be recovered through the planning application fee, and;
- Increased resources required for the Planning Inspectorate (PINS) in taking a more active role in the Planning Appeals system which will be offset by charging for appeals.

Local Planning Authorities

7.5 The reforms that we consider likely to generate most efficiency gains, releasing resources for LPAs to use elsewhere within the planning service will be:

- The introduction SDPs will enable LPAs to deal with issues, that often frustrate and delay the production of LDPs, more effectively at a larger than local scale. The consequent timely adoption of lighter touch LDPs should result in resource savings for LPAs as well as avoiding duplication of technical work and enabling pooling of resources;
- The introduction of Joint Planning Boards will result in financial savings for LPAs as resources and knowledge will be pooled, resulting in the improved sustainability of local planning services;
- The preparation and implementation of joint LDPs will result in savings for LPAs. Costs should be reduced due to the avoidance of duplicating evidence gathering and should result in the adoption of LDPs that benefit from economies of scale;
- Speeding up plan preparation by having national development management (DM) policies for the determination of planning applications, will enable the production of shorter and less complex LDPs;
- The removal of responsibility for determining planning applications falling under the category of Developments of National Significance will remove the need to buy in skills or expertise to inform decisions;
- Efficiency improvements to the DM system resulting in less resources required to determine planning applications;
- The extension of permitted development rights and consequent removal of a number of applications for minor development from the planning system;
- Efficiency savings for LPAs by introducing the need to keep decision notices for development up to date, resulting in less confusion for officials when it comes to establishing the most up-to-date planning permission;
- Requiring statutory consultees to supply substantive comments on planning applications will provide detail and clarity to the determining officers on potential issues, enabling them to make swifter decisions, and;
- Refining of the enforcement system by removing loopholes that currently allow people to take advantage of the system will be reduced, enabling enforcement resources to be rationalised.

7.6 There will also be some new costs generated for LPAs:

- Increased resources required to facilitate engagement with development proposals during the pre-application stages, although it is recognised this will be offset by less resources required in the determination of planning applications. The determining body will also be able to charge for the pre-application discussions;
- Compliance with a national performance framework and annual reporting mechanism for LPAs in respect of how their functions are operating (in conjunction with the Welsh Government). It is considered that resource expended in setting up these tools will result in LPAs performing more effectively; and,

- If an LPA is designated as underperforming and Welsh Ministers take direct action by determining planning applications on an LPAs behalf, there is a potential loss of planning fee revenue for the LPA.

7.7 This assessment does not take into account any potential savings should the number of LPAs be reduced and IT systems rationalised.

Developers

7.8 It is recognised that developers will experience limited additional costs when submitting planning applications for development. There will be increased costs associated with frontloading whereby the LPA, community and statutory consultees are engaged prior to the planning application being submitted. This will result in a timelier system for the determination of these applications, resulting in increased cost savings and certainty for developers offsetting any additional costs introduced as a result of our proposals.

7.9 Other potential efficiency savings for developers are as follows:

- The proposals to continually update decision notices should result in increased clarity for developers by establishing exactly what they have planning permission for;
- There will be benefits for developers in receiving substantive comments on planning application proposals from statutory consultees as they will be able to take these into account in the shaping of their proposals, which is likely to result in planning applications being decided faster;
- Clarity for developers in the process of renewing a planning application;
- Improving the decision making process through changes in the operation of planning committees should result in the efficient determination of planning applications, providing greater certainty and potentially cost savings to developers;
- Allowing developers to appeal a LPAs decision not to validate a planning application should reduce the likelihood of LPAs adding costs to developers in order to validate a planning application (e.g. preparation of studies which are unnecessary);
- The introduction of a new, more effective, procedure for making minor material amendments to an existing planning application should reduce uncertainty and costs for developers in making such amendments;
- More timely decision making on development proposals where a LPA is not performing in respect of its planning function as developers will have the option of submitting planning applications directly to Welsh Ministers; and
- Increased certainty for developers with the introduction of a timelier and transparent appeals system.

7.10 Potential costs for developers are as follows:

- Increased requirements for developers to provide notification details when implementing a planning permission will result in additional resource use for developers; however it is considered that this measure will provide

increased clarity on the permission being implemented for all parties with an interest in the development.

Statutory Consultees

- 7.10 As outlined in Chapter 6, our proposals to reform the Welsh planning system will require statutory consultees to provide substantive responses to consultations on planning applications and reports on their performance to the Welsh Ministers. Our proposals reflect current best practice and can be achieved by the introduction of efficient working practices where they do not already exist.



Welsh Government

Consultation Document

Positive Planning

Proposals to reform the planning system in Wales

Annexes

Annex A – Annual Performance Report

Annex B – Planning Application Classifications - Thresholds
and Criteria

Annex C – Population of Welsh Local Planning Authorities
in 2011

Annex D – Bibliography

Annex E – Abbreviations

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Local Planning Authority Monitoring Framework and Annual Performance Reports

Introduction

In Chapter 6 we set out our proposal for an Annual Performance Report (APR). This annex sets out our proposed approach to developing, in conjunction with LPAs, a performance framework and annual reporting mechanism including the indicators that need to be measured. The performance framework would sit alongside the existing national development management and sustainable development indicators and Annual Monitoring Report (AMR) produced by an authority to monitor the implementation of their LDP. All three data sets would collectively describe the performance and policy outcomes being achieved within each local planning authority area. The purpose of collating this information is to create a culture of self-improvement, so that LPAs can identify actions which they can take to enhance the services they provide.

The IAG recommended that a formal, annual performance reporting process should be produced by each local planning authority (LPA), to a consistent standard established by the Welsh Government. The Group further recommended consultation on the format and referred to the work of the Planning Officers Society Wales and similar work by the Scottish Government. The IAG Report also recommended incentives for good delivery but recognised the need for penalties for cases of last resort.

We believe that sharing good practice across authorities can generate improvement, encourage innovation and opportunities for sharing good practice, supporting cultural change and leading to better services overall. In turn, this can result in greater trust and confidence in the system from the wide range of interests who use and are affected by the planning system, from applicants and developers to public bodies, interest groups and communities.

The Annual Performance Report (APR) Framework

In relation to what should be expected from a good local planning authority in terms of service performance, we consider that there is broad agreement on the following headline measures for inclusion in an Annual Performance Framework:

- An adopted LDP being in place which is regularly monitored;
- An adequate supply of housing land;
- Delivery of a timely and quality development management service
- Customer confidence in the planning service
- An efficient and effective service that delivers value for money

It is important to understand the context around these headline measures to explain an authority's service delivery performance. Therefore a range of supporting indicators are proposed to inform understanding of the planning service, under the following themes:

Annex A

- Plan making;
- Decision taking;
 - Efficiency,
 - Quality;
 - Engagement; and
 - Enforcement.

Our proposed indicators set out below are ambitious but we believe achievable, so that over time we can see improvements in performance across Wales. They have been drafted so that a positive response to each question would indicate good practice in that theme. The aim of each LPA should be to answer 'yes' to every indicator listed.

A three tier approach is envisaged. Where authorities are meeting the description of a good planning authority set out in the framework, whether in whole or part, they should be sharing their experiences with and encouraging authorities who are not performing so well. Where authorities fall below the description of a good planning authority in some or all areas they should be actively looking to change their working arrangements to improve their performance. Authorities whose performance consistently falls way below that of a good planning authority will need to put formal arrangements in place to improve its performance and may be subject to special measures, such as those described in Chapter 6 (eg direct applications to Welsh Ministers).

Improving performance

The Planning Advisory and Improvement Service outlined in Chapter 3 will have an important role in supporting LPAs improve their performance as they strive to be a good planning authority. However the APR will provide crucial benchmarking for authorities to undertake regular self-evaluation, which is fundamental to promoting culture change and self-improvement. Over time, the aim for the new APR framework is to demonstrate widespread and consistent improvement in performance across local planning authorities.

Collection of Performance Information

We already collect and publish key performance measures. Expanding this to include the APR indicators should allow authorities and users to compare progress over time and to identify variances in performance within, and between, planning authorities.

We are keen to use new technology to best effect, to modernise and simplify the way in which performance information is gathered from local planning authorities, looking towards automatic collection and publication by building on the recent changes being made to collect development management and planning sustainable development statistics. The aim is for a more transparent system which places fewer burdens on individual authorities.

Statutory Consultee Monitoring Framework and Annual Performance Reports

It is intended to require that statutory consultees issue annual performance reports on their compliance with duties placed upon them i.e. time limit for substantive response through the Bill.

Annex A

The detail on the form and content of the reports will be set out in the DMPO but is likely to include at a minimum:

- number of consultation requests received,
- number responded to in the statutory timeframe.

This information will have to be provided for different types of consultations:

- those associated with planning applications,
- those associated with applications to discharge conditions, and,
- reserved matters.

**TABLE 1: PROPOSED PERFORMANCE THEMES AND INDICATORS:
What Makes a Good Planning Authority**

Plan Making

Proposed indicators:

- Is there a current Development Plan in place that is within the plan period?
- Has the LDP been prepared within 18 months of the date specified in the original Delivery Agreement?
- Have Annual Monitoring Reports been produced following LDP adoption?
- Does the local planning authority have an up-to-date Single Integrated Plan (Community Strategy)/National Park Management Plan?
- Does the local planning authority have a housing land supply of at least 5 years?

Decision Taking

Efficiency

Proposed indicators:

Is the percentage of

- applications determined under delegated powers above 90%?
- EIA applications determined within 16 weeks above 80%?
- applications for major development (non EIA applications) determined within 8 weeks above 80%?
- applications for local development (non EIA applications) determined within 8 weeks above 80%?
- applications for other consents (non EIA applications) determined within 8 weeks above 80%?
- planning applications submitted via the Planning Portal above 40%?

Quality

Proposed indicators:

- Is the percentage of Member decisions against officer advice below 2% of all decisions made by the LPA?
- Are more than two thirds of appeals against refusal successfully defended?
- Have cost awards been avoided at appeal?
- Does the local planning authority have, and is it following, a current service improvement plan?

Engagement

Proposed indicators:

- Does the local planning authority offer a pre-application service beyond the statutory minimum?
- Does the local planning authority have a planning officer on duty to provide advice to members of the public?
- Does the local planning authority's web site have a data base of planning applications, which members of the public can access, track their progress and view their content?
- Does the local planning authority hold a formal customer focus group to invite feedback from applicants and stakeholders?
- Does the LPA undertake notification above the statutory requirements?

Enforcement

Proposed indicators:

- Is the percentage of enforcement cases investigated (determined whether a breach of planning control has occurred and, if so, resolved whether or not enforcement action is expedient) within 84 days above 80%?
- Is enforcement action taken or a retrospective application received in 80% of cases within 180 days from the start of the case (in those cases where it was expedient to enforce)?
- Has the authority met its performance targets set out in its enforcement policy?

Planning Application Classifications – Thresholds and Criteria

Developments of National Significance (DNS)

Proposed categories and thresholds are listed below.

Application Type	Threshold
Underground Gas Storage Facilities not constructed by a gas transporter, for the storage of gas underground in cavities or non porous strata	Working capacity at least 43 million standard cubic metres or maximum flow rate at least 4.5 million standard cubic metres per day.
Alteration of any type of underground gas storage facility	Working capacity at least 43 million standard cubic metres or maximum flow rate at least 4.5 million standard cubic metres per day.
LNG Facilities	Storage capacity at least 43 million standard cubic metres, or maximum flow rate at least 4.5 million standard cubic metres per day.
Gas Reception Facilities	Where the maximum flow rate is expected to exceed 4.5 million standard cubic metres per day.
Pipe-lines constructed by a Gas Transporter	<p>Pipelines constructed by a Gas Transporter that:</p> <ul style="list-style-type: none"> • are more than 800 millimetres in diameter and more than 40 kilometres in length or would be likely to have a significant effect on the environment; and • have a design operating pressure of more than 7 bar gauge; and • convey gas for supply (directly or indirectly) to at least 50,000 customers, or potential customers, of one or more gas suppliers.
Airport related development and construction	Increase capacity by 10 million passengers per annum, or over 10,000 air transport movement of freight per annum.
Harbour facilities	<p>In the case of facilities for container ships: anything below 500,000 TEU;</p> <p>In the case of ro-ro ships: anything below 250,000 units;</p> <p>In the case of facilities for cargo ships of any other description, anything below 5 million tonnes.</p> <p>In the case of mixed thresholds, the cumulative effects falling within the above but not greater (anything</p>

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	<p>greater is determined under the NSIP regime in Wales).</p> <p>The above apply unless 'permitted development' under Classes B & D of Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.</p>
Railways	<p>Works to the national rail network not covered by permitted development rights (as contained within Article 3 of the Town and Country Planning (General Permitted Development) Order 1995); work that is a continuous length of more than 2 kilometres, is not on land that was either operational land of a railway undertaker immediately before the works began or is on land that was acquired at an earlier date for the purpose of the works. This does not include works that take place on the operational land of a railway undertaker unless that land was acquired for the purpose of those works.</p>
Rail freight interchanges	<p>Interchanges covering at least 60 hectares and handling at least 4 goods trains per day.</p>
Dams and reservoirs	<p>Capable of holding back or storing in excess of 10 million cubic metres of water.</p>
Transfer of water resources	<p>Capable of transferring in excess of 100 million cubic metres of water per annum.</p>
Waste water treatment plant	<p>Has a capacity exceeding that which is capable of dealing with a population equivalent of 500,000.</p>
Hazardous waste facilities	<p>Land-fills or deep stores able to handle more than 100,000 tonnes per annum; In any other case, facilities able to handle more than 30,000 tonnes per annum.</p>
Pipe-lines <u>not</u> constructed by a gas transporter	<p>A pipe-line below 16.093 km in length wholly or partly in Wales.</p>
Generating stations (onshore)	<p>Anything 25 megawatts to 49 megawatts inclusive.</p>

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Major Developments

Current thresholds and criteria for major development are listed under Article 2 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012/801 for Wales. These thresholds and criteria are listed below.

Thresholds and Criteria for Major Development
(a) the winning and working of minerals or the use of land for mineral-working deposits (for the definition of “ <i>mineral-working deposit</i> ” see section 336 of the Town and Country Planning Act (c.8))
(b) waste development
(c) the provision of dwellinghouses where— (i) the number of dwellinghouses to be provided is 10 or more; or (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c) (i).
(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more
(e) development carried out on a site having an area of 1 hectare or more

Local Developments

A local development is any development proposal that falls below the categories for developments of national significance and major development, unless it is defined as permitted development. The types of development that comprise of permitted development are defined in the Town and Country Planning (General Permitted Development) Order 1995/418 for Wales (as amended) (link to legislation is as follows:

<http://www.legislation.gov.uk/uksi/1995/418/contents/made>).

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Population of Welsh Local Planning Authorities in 2011

Local Planning Authority	Population in 2011
Blaenau Gwent	69,814
Brecon Beacons National Park	33,344
Bridgend	139,178
Caerphilly	178,806
Cardiff	346,090
Carmarthenshire	183,777
Ceredigion	75,922
Conwy	115,228
Denbighshire	93,734
Flintshire	152,506
Gwynedd	121,874
Isle of Anglesey	69,751
Merthyr Tydfil	58,802
Monmouthshire	91,323
Neath Port Talbot	139,812
Newport	145,736
Pembrokeshire	122,439
Pembrokeshire Coast National Park	22,644
Powys	132,976
Rhondda Cynon Taff	234,410
Snowdonia National Park	25,702
Swansea	239,023
The Vale of Glamorgan	126,336
Torfaen	91,075
Wrexham	134,844

(Data source: 2011 Census, ONS)

Annex C

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<http://www.legislation.gov.uk/ukpga/1990/8/contents>

Planning (Hazardous Substances) Act 1990

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Government of Wales Act 2006

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Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003

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Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003

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The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPO)

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<http://www.legislation.gov.uk/wsi/2012/801/contents/made>

Consultation Papers

The future of our past: A consultation on proposals for the historic environment of Wales

(Heritage - Start of consultation: 18/07/2013; End of consultation: 11/10/2013).

Environment Bill White Paper – due to be published for consultation towards the end of 2013.

Planning Guidance

WO Circular 23/93; DCLG Circular 03/2009

<http://wales.gov.uk/topics/planning/policy/circulars/welshofficecirculars/circular2393/?lang=en>

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Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Evidence based reports

Delivery of Planning Services in Statutory Designated Landscapes in Wales

<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/statutorylandscapes/;jsessionid=53A3E64D32211BF673973D18448A5E1C?lang=en>

Evaluation of Consenting Performance of Renewable Energy Schemes in Wales

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Research into the Review of the Planning Enforcement System in Wales

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List of Abbreviations

Abbreviation	Term
AMR	Annual Monitoring Report
AMS	Annual Monitoring Schedule
AONB	Areas of Outstanding Natural Beauty
APR	Annual Performance Report
CAS	Commercial Appeals System
CIL	Community Infrastructure Levy
CIS	Community Involvement Scheme
DAS	Design and Access Statement
DM	Development Management
DNS	Developments of National Significance
EIA	Environmental Impact Assessment
EU	European Union
HAS	Householder Appeals System
HRA	Habitat Regulations Assessment
IAG	Independent Advisory Group
LDP	Local Development Plan
LIR	Local Impact Report
LPA	Local Planning Authority
MoU	Memorandum of Understanding
MPPW	Minerals Planning Policy Wales
NDF	National Development Framework
NPA	National Park Authority
NRW	Natural Resources Wales
NSIP	Nationally Significant Infrastructure Projects
PAIS	Planning Advisory and Improvement Service
PIF	Planning Improvement Fund
PINS	Planning Inspectorate (Wales)
POSW	Planning Officers Society Wales
PPW	Planning Policy Wales
RIA	Regulatory Impact Assessment
SEA	Strategic Environmental Assessment

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SDP	Strategic Development Plan
SPC	Statement of Pre-Application Consultation
SPE	Statement of Pre-Application Engagement
SPG	Supplementary Planning Guidance
SA	Sustainability Appraisal
SD	Sustainable Development
TAN	Technical Advice Note
TA	Transport Assessment
WIIP	Wales Infrastructure Investment Plan
WSP	Wales Spatial Plan

Written Statement - Positive Planning: Planning for a better Wales



Last updated 04 December 2013

Carl Sargeant, Minister for Housing and Regeneration

Today I have published a draft Planning (Wales) Bill and supporting paper Positive Planning detailing proposals to reform the planning system in Wales. This landmark Bill sets out our ambitions for Wales. It is a key part of our Legislative Programme and looks to deliver a modern planning system that is fit for the 21st century. To achieve this, I want to see a change in planning culture, repositioning planning from regulating development to enabling appropriate development, actively helping to deliver the homes, jobs and infrastructure that current and future generations require.

The draft Bill and consultation paper have been informed by a comprehensive evidence base and detailed conversations with users of the planning system. The extensive programme of change that I intend to take forward requires new primary legislation, amendments to secondary legislation and a review of policy and guidance. Collectively, the programme takes forward and builds on many of the recommendations from the report Towards a Welsh Planning Act: Ensuring the Planning System Delivers prepared for us by the Independent Advisory Group, chaired by John Davies MBE.

The draft Planning (Wales) Bill and consultation paper capitalise on the devolution dividend. They propose updating structures to provide a legal framework that confirms our distinctive approach and which is fully responsive to the needs of our country. Taken together, they redefine the respective roles and responsibilities of all organisations involved in delivering planning services and complement the work being undertaken by the Commission on Public Service Delivery and Governance.

An enhanced role for the Welsh Ministers is proposed through the preparation of a national development plan and taking direct decision making responsibility for developments of national significance, including energy projects of between 25 and 50 megawatts. For the first time in Wales, a statutory framework for strategic planning is proposed to ensure that issues of larger than local importance, such as housing supply, are properly addressed. We will also fine tune the Local Development Plan process based on lessons learned from those successfully adopted to date.

To improve collaboration at the local level, existing powers will be overhauled to allow local planning authorities to be merged to create larger and more resilient bodies with access to a wider range of specialist skills.

The effectiveness and consistency of local planning services will be enhanced by making improvements to development management procedures, including frontloading the planning application process, increasing community engagement and reforming planning committee procedures.

An important element of our proposals is the introduction of performance monitoring, designed to ensure that all users of the planning system have access to a good quality local planning service wherever they may be in Wales. This will be backed up by sanctions for persistent poor performance, including the ability to submit planning applications direct to Welsh Ministers.

The draft Bill, the proposed amendments to secondary legislation and the review of policy and guidance, will provide a comprehensive and robust framework for decision making in Wales. They will not however deliver the reform that I am seeking in isolation. They must be accompanied by culture change and the confidence to deliver a new way of working.

To help drive culture change, I propose to establish a Planning Advisory and Improvement Service hosted by the Welsh Government. I will also work with stakeholders to develop a competency framework for planning practitioners and councillors to set out the skills, knowledge and behaviours necessary to deliver this ambitious agenda.

The consultation on the draft Planning (Wales) Bill and consultation paper will run until 26 February 2014. The Bill will be introduced to the National Assembly for Wales later in 2014.

www.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?lang=en

WLGA

Planning Bulletin

December 2013



Jane Lee – jane.lee@wlga.gov.uk

On 4th December 2013, the Minister Carl Sargeant published the Planning (Wales) Bill together with the consultation paper Positive Planning.

In his address to the Wales Planning Forum on 4th December, the Minister stated “I want to unlock the potential of planning to bring about change by enabling the delivery of the homes, jobs and infrastructure that Wales requires. For too long planning has focussed on regulating development, being perceived by many as negative and reactionary. I want to change this by empowering planning to once again become a visionary activity which is proactive and enables rather than holds back development. Planning must become a tool to drive growth across Wales”

This bulletin summarises the proposals to reform the planning system in Wales.

Introduction

- Business as usual is not an option.
- WG will continue to press the UK govt for further devolution in areas such as consenting energy projects over 50mw and CIL
- The consultation period is until 26 February and the Bill introduced to the National Assembly in summer 2014.
- The consultation document proposes 43 questions
- The proposals in the consultation documents are grouped into 4 themes:
 - Supporting Culture Change

- Active Stewardship
- Improving Collaboration
- Improving Local Delivery

Evidence Base

- WG has commissioned a body of evidence which is available on their website
<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/?language=en>
- Some of this research was not completed in time for lawyers to incorporate proposals into the draft Planning Bill but the proposals are set out in the consultation document

Supporting Culture Change (Pages 11-15)

- It is not possible to legislate for culture change
- LPAs must ensure seamless integration between development plan and development management functions. This requires co-location of teams and breaking down any professional barriers that have emerged
- WG reassert the need for LPAs to have up to date adopted LDPs in place
- Culture change includes all those who have a stake in the planning system -
 - LPAs, WG, developers, consultees, educational institutions and professional bodies
- Planning reform agenda is seeking to reduce the complexity of the planning process
- WG propose the formation of a national planning advisory and improvement service (PAIS) hosted by WG, steered by an external advisory board. The establishment of the PAIS including its steering group will be the subject of further consultation. One of the reasons given for hosting by WG is that it will be cost neutral as existing resources will be redirected.
- The PAIS would:

- Identify and disseminate good practice and standards, assist sharing of expertise and resources between LPAs
- Identify, promote and target training requirements for planning practitioners and members (working with stakeholders)
- Provide targeted, specialist advice and mentoring
- Publicise, disseminate and educate about WG planning initiatives
- The service would have a procurement arm to address specific technical issues and training needs
- WG also propose to consider existing arrangements for the built environment sector with a view towards reducing duplication and increasing efficiency
- A national competency framework is proposed for practitioners and elected representatives setting out skills, knowledge and behaviours necessary to ensure planning becomes a positive enabling activity.
- PAIS will have a leading role in developing this competency framework
- Positive Planning is not specific on whether the competency framework is directed at LPAs only or across all planning practitioners, nor is it specific on its status as a mandatory or discretionary framework

Active Stewardship (Pages 17-42)

- Proposes that WG should play a more active role in the delivery of planning services to reduce duplication, increase consistency and improve performance
- WG will:
 - Prepare a national land use plan- National Development Framework (NDF) that identifies proposals of national significance including infrastructure over a minimum of 20 years. The NDF will have development plan status and complement the WIIP and provide a framework for Strategic Development Plans and LDPs
 - Review and restate national planning policy
 - Establish a development hierarchy to ensure applications are dealt with in a proportionate way at the appropriate level of government

- Improve planning appeal procedures

National Development Framework

- Only those aspects of national significance should be addressed through the NDF. The NDF will not set a national housing target, this will be for SDP and LDPs.
- As the NDF is an expression of WG policy, WG does not consider it appropriate to scrutinise the plan through a traditional examination process and will therefore be subject to a 12 week consultation.

National Planning Policy

- Proposed to combine Minerals Planning Policy Wales and Planning Policy Wales into one document
- WG propose to assess the number of TANs
- WG propose to produce a suite of national DM policies that could be used by all LPAs

Development Hierarchy – Development of National Significance

- The proposed development hierarchy will introduce Development of National Significance which will be determined by Welsh Ministers. A list of these are described in Annex B.
- WG will receive the fee for these applications. There will be a duty on WG and /or appointed persons and LPAs to provide pre application advice upon request regarding DNS. LPAs will also be expected to complete a Local Impact Report (LIR) including draft conditions and legal requirements. WG will be responsible for determining any subsequent renewal application which requires the principle of development to be revisited, whilst LPAs retain responsibility for other post determination decisions including variation or removal of a condition, the discharge of conditions and enforcing against breaches of planning control.
- Developers will be required to submit a report on the outcome of consultation – Statement of Pre-application Consultation (SPC) regarding applications for DNS
- To minimise the number of separate applications, a developer will have the option of submitting certain connected applications to be considered by

Welsh Ministers at the same time. The call in policy and procedure will be amended to permit Welsh Ministers to call-in identified application types if they are considered to be connected with an application for DNS (page 32)

- Welsh Ministers will have discretion to determine the most appropriate method for examining the DNS application

Development Hierarchy – Major & Local

- LPAs retain the responsibility for determining major and local developments.
- It is considered that there should be no need for most local developments to be considered by planning committee and LPAs should be able to achieve delegation rates of over 90%
- Proposals to consider permitted changes between use classes through a review of the use class order including the use of agricultural buildings

Planning Appeals

- Proposal to require appellant to submit their full statement of case when an appeal is made and also a submission of a draft Statement of Common Ground when an appeal is made, where a hearing or inquiry is requested
- LPA and interested parties are to submit their response to the appeal and formal comments on the draft Statement of Common Ground within 4 weeks of the start of the appeal
- And appellant to submit comments on the LPAs response within 6 weeks of the start of the appeal
- PINS will in future take a more pro-active role in determining how an appeal is handled
- The right to appear before an Inspector to be removed
- Welsh Ministers will deal with an application in the form it was considered by the LPA
- The 6 month maximum time limit for appeals for non determination by the LPA will be removed. The LPA will continue to have the power to determine an application which is subject to non-determination appeal within a prescribed timescale set out in secondary legislation following the submission of an appeal

- Currently costs awards can only be made in appeals where an inquiry or hearing is held, proposed that the costs regime be extended to appeals conducted by written representations
- Mechanisms are to be introduced to enable Welsh Ministers to recover their own costs resulting from the submission of an appeal
- Also propose to establish a Commercial Appeal System (CAS) to follow a similar procedure as the HAS for small scale commercial applications
- No third party right of appeal to be introduced

Improving Collaboration (Pages 43- 53)

- Disappointment expressed that collaborative arrangements have not gone as far as WG hoped
- Evidence supports need for change and do not have to wait until the outcome of the Williams Commission
- Advocating the merger of local planning services and proposes to update existing powers to enable WG to reduce the number of LPAs to increase the efficiency and sustainability of local planning services. No indication of which LPAs to merge.
- Merger is seen as a means of responding to fresh demands and diminishing resources
- Current legislation excludes power over National Parks, the updated proposal will include National Parks.
- Update legislation will enable a joint planning board to perform all modern LPA functions such as preparation of a LDP and collection of CIL
- Membership of the joint planning board would be drawn from contributing local authorities on a proportionate basis linked to population
- A final view on whether NPA should retain a planning function has not been reached

Strategic Development Plans

- Strategic Development Plans proposed for 3 areas – Cardiff, Swansea and A55 corridor. The precise physical extent is not specified

- SDPs are to be prepared in areas where matters such as housing, employment, transport are greater than local significance
- The National Development Framework will specify key issues that SDPs will have to cover
- Proposed preferred governance arrangement for SDPs is a 'Panel' comprising locally elected members with representation reflecting the population of the LPAs
- The 'Panel' will have relevant statutory development plan making powers.
- Funding and resource arrangements to support operational activities will be for the 'Panel' to determine. The 'Panel' will be a corporate body
- It is envisaged that experts from constituent LPAs will be seconded/employed to undertake the preparation of the SDP
- WG considering reserve provisions so that, if necessary, the leadership of technical experts could be a person appointed by WG
- An alternative (but not preferred by WG) governance arrangement is a completely separate body with plan making and decision making powers
- The SDP will be subject to a public examination led by an independently appointed Planning Inspector from PINS
- SDP will be subject to an Annual Monitoring Schedule (AMS) to be determined by the 'Panel'
- LDPs should conform to relevant SDP which should result in a much slimmer LDP in scope and content. Where there is no SDP, the LDP should be prepared in conformity with the NDF and PPW

Improving Local Delivery (Pages 55- 90)

- Acknowledge that improving performance is challenging at a time when resources are diminishing.
- Each LPA will be obliged to produce an Annual Performance Report (APR)
- APR will allow individual planning authorities to consider identified issues and undertake self-improvement

- Penalties may be imposed in cases of persistent poor performance – these could include direct intervention and taking control of certain aspects of the local planning service, including the submission of planning applications direct to Welsh Ministers
- Designation of a LPA as poorly performing will be based on evidence obtained from indicators of a good local planning service. The designation will be revoked when Welsh Ministers are satisfied that the 'poorly performing' LPA has taken significant measures to improved its performance
- Support for LDPs reasserted with some proposals to implement the results of the LDP Refinement Exercise, introduce an end date, opportunities for community engagement working to prepare Place Plans, prior notification to Welsh Ministers before a LDP be withdrawn
- Welsh Ministers may direct two or more LPAs to produce a Joint LDP
- WG consider that Town & Community Councils are well placed to work with LPAs to produce locally relevant SPG or Place Plans. These could identify priorities for investment in community infrastructure
- Propose to establish a small number of Place Plans pilots drawing on technical assistance from the Design Commission for Wales and Planning Aid Wales. Joint expressions of interest from LPAs and Town & Community Councils will be invited
- Where a development plan has established the principle that a certain form of development is acceptable, this should not be debated again at planning application stage. Proposal for either a new type of planning consent to be introduced for applications which are in accordance with an adopted development plan or no change to consents but all planning applications in accordance with an adopted development plan would be delegated to officers to determine
- WG favour first option where a reserved matters type application would be submitted in respect of development in accordance with the adopted development plan. A further consultation paper will be issued
- Proposing that LPAs have a legal duty to provide a pre-application advice service to prospective clients when requested and that it is reasonable for

an LPA to recover the cost of providing the new statutory pre-application service. Two charging options being considered – fee payable when planning application submitted or fee payable regardless of whether application submitted

- A requirement for pre-application engagement is proposed. When the planning application is submitted to the LPA it should be accompanied by a written account of engagement – a statement of pre-application engagement (SPE)
- To resolve disputes quickly, WG intend to set up a new appeals mechanism that deals solely with whether an application is valid, This will be administered by PINS using written representations by an appointed planning officer rather than an inspector
- Proposal to remove the requirement to submit a design and access statement with a planning application as little evidence that they have been effective
- WG intend to consider further whether current notification arrangements are proportionate, including consideration of removing the requirement to publish a notice in the newspaper
- A duty of statutory consultees is proposed which will require a substantive response to consultation requests and statutory consultees to provide performance reports to Welsh Ministers
- When a statutory consultee provided a response at pre-application stage, limitations will be placed on the type of new issues that statutory consultees will be able to raise through formal consultation
- WG intend to work with stakeholders to implement the establishment of a national planning committee protocol, legislation to define the size of planning committee and establishment of a national programme of member training linked to the proposed competency framework
- It is also proposed that there is a national scheme of delegation
- WG propose to make changes to decision notices and require developers to tell LPAs when development starts.

- WG proposes to introduce a statutory procedure that will allow developers to seek non-material amendments to planning permission and reassure LPAs that they can entertain such changes
- A new dedication application procedure for extending the time limit for implementing a planning permission is proposed. This will have its own submission requirement and fee.
- WG propose to prohibit applications being made to register land as a town and village green where that land has entered the planning system and to enable landowners to submit declarations to the commons registration authority which would have the effect of rendering all use of the land inconsistent with the 'as of right' criterion required of town and village green registration
- The consultation document reinforces the importance of enforcement as part of an effective DM system. WG intend to introduce changes to improve the performance of the enforcement process. These are the introduction of temporary stop notices, changing the title of 'Completion Notices' to 'Termination Notices', transferring responsibility for determining section 215 appeals from the Magistrates to Welsh Ministers
- Additional changes to the enforcement process are providing LPAs with the powers to require the submission of retrospective planning applications and to decline retrospective planning applications where the development is subject to an enforcement notice.
- WG propose to remove the ability to appeal ground (a) where a refusal of planning permission has already been upheld at appeal and against the refusal of retrospective planning permission where a ground (a) has failed
- WG acknowledge the challenges faced in delivering a good local planning service with current resources. It is stated that planning fees have not been raised since 2009 and that the changes to permitted development rights proposed will reduce fee income. Therefore WG considers it appropriate to undertake a review of planning fee levels
- This review will cover whether there should be a general increase in planning application fees, widening the scope of fees to include for example

discharge of conditions and changing how the fee for renewable energy applications are calculated

Financial Impacts (pages 91 – 94)

- A full Regulatory Impact Assessment setting out benefits and costs will accompany the Planning (Wales) Bill when it is introduced to the National Assembly.
- The consultation document does however identify some savings and costs
- The savings for LPAs are very much focussed on collaboration, removal of DNS will require less specialist advice to be bought in and an extension to PDR removing a number of applications from the system
- The costs for LPAs are very much focussed on costs associated with the pre-application service, performance reporting and potential reduction in fees if an LPA is designated has the determination of planning application removed.

Alongside the draft Bill and Positive Planning WG has published on their website initial performance data for each of the 25 local planning authorities.

Consultation reference: WG20088

Consultation Response Form

Positive Planning - A consultation on proposals to reform the planning system in Wales

We would like your views on our proposals to change the planning system in Wales. This requires changes to primary legislation, secondary legislation, and policy and guidance.

Please submit your comments by 26/02/2014.

If you have any queries on this consultation, please email: planconsultations-d@wales.gsi.gov.uk or telephone Switchboard on 0300 0603300 or 08450103300.

Data Protection

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response or tick the box at the end of this form. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Consultation reference: WG20088

Positive Planning - A consultation on proposals to reform the planning system in Wales		
Date of consultation period: 04/12/2013 – 26/02/2014		
Name		
Organisation		
Address		
E-mail address		
Type <i>(please select one from the following)</i>	Businesses/ Consultants	<input type="checkbox"/>
	Local Planning Authority	<input type="checkbox"/>
	Government Agency/Other Public Sector	<input type="checkbox"/>
	Professional Bodies/Interest Groups	<input type="checkbox"/>
	Voluntary sector (community groups, volunteers, self help groups, co-operatives, social enterprises, religious, and not for profit organisations)	<input type="checkbox"/>
	Other (other groups not listed above) or individual	<input type="checkbox"/>

Consultation reference: WG20088

Supporting Culture Change

Q1	Do you agree that the proposed remit for a Planning Advisory and Improvement Service will help local planning authorities and stakeholders to improve performance?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q2	Do you agree that existing Welsh Government support arrangements for the built environment sector in Wales should be reviewed?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q3	Do you agree that competency frameworks should be prepared for planning practitioners and elected representatives to describe the skills, knowledge and behaviours necessary to deliver planning reform?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Active Stewardship

Q4	Do you agree that the National Development Framework will provide a robust framework for setting national priorities and aid delivery?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q5	Do you agree that Planning Policy Wales and Minerals Planning Policy Wales should be integrated to form a single document?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q6	Do you agree that a core set of development management policies should be prepared for consistent application by all local planning authorities?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q7	Do you agree that the proposed development hierarchy will help to ensure that planning applications are dealt with in a proportionate way dependent on their likely benefits and impacts?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q8	Do you agree with the proposed categories and thresholds for Developments of National Significance set out in Annex B?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q9	Do you agree with the proposed categories and thresholds for Major Developments set out in Annex B?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q10	Do you agree Developments of National Significance applications should be subject to mandatory pre-application notification, and consultation?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q11	Do you agree that a fee should be charged for pre-application advice for prospective Developments of National Significance applications?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q12	Do you agree that the Planning Inspectorate Wales is the most appropriate body to undertake the processing of a Development of National Significance application?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q13	Do you agree that only one round of amendments to an application for Developments of National Significance should be permitted after it has been formally registered?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q14	Do you agree with the proposals for handling connected consents?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q15	Do you agree that examination should follow a similar procedure to the proposed call-ins and appeals?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q16	Do you agree with the proposed division of responsibilities between the Welsh Ministers and the local planning authority at the post-determination stage?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q17	Do you agree that the statement of case and draft statement of common ground should be produced when submitting an appeal?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q18	Do you agree that the Planning Inspectorate should decide how to handle the examination of an appeal?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q19	Do you agree no changes should be made to the content of an application post appeal submission?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q20	Do you agree with the proposal for the Welsh Ministers to be able to initiate awards of costs?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q21	Should fees be introduced to cover the costs of the Welsh Ministers resulting from an appeal?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q22	Do you agree that a Commercial Appeals Service (CAS) should be introduced?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Improving Collaboration

Q23	Do you agree that local planning authorities should be merged to create larger units?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q24	Do you think that a national park authority should continue to have responsibility for planning in their area?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q25	Do you agree that strategic development plans should only be prepared in the identified areas?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q26	Do you agree that the scope of Strategic Development Plans should be limited to the key issues identified in paragraph 5.29?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q27	Do you agree that a partnership between local planning authorities and social, economic and environmental stakeholders should oversee preparation of Strategic Development Plans?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q28	Do you agree that a light touch Local Development Plan should be prepared in areas where there is a Strategic Development Plan?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Improving Local Delivery

Q29	Do you agree with the essential elements of a good planning service identified in Annex A?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q30	Do you agree that each local planning authority should produce and publish an annual performance report to agreed standards?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q31	Do you agree that where a local planning authority is designated as poorly performing there should be an option to submit planning applications for major development only to Welsh Ministers?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q32	Do you agree that Welsh Ministers should be able to direct preparation of a joint Local Development Plan?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q33	Do you agree that Local Development Plans should plan for at least 15 years ahead and have a set end date beyond which they cease to be the development plan?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q34	Do you agree that local planning authorities should work with town and community councils to produce place plans which can be adopted as supplementary planning guidance?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q35	Do you agree that where a development proposal accords with an allocation in an adopted development plan a new planning application process should be introduced, to ensure that only matters of detail such as design and layout are considered?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q36	Do you support the proposal to allow a right of appeal against a local planning authority not registering a planning application?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q37	Should the requirement for mandatory design and access statements be removed?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q38	Should the requirement to advertise planning applications for certain developments in a local newspaper be removed?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q39	Should there be any local variation within a national scheme of delegation for decision making on applications?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q40	Do you agree that a minor material change should be restricted to "one whose scale and nature results in a development which is not substantially different from that which has been approved"?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Consultation reference: WG20088

Q41	Do you agree that the proposals strike a balance between the need to preserve land used as Town and Village Greens and providing greater certainty for developers?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q42	Do you agree that the proposals will reduce delay in the planning enforcement system?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

Q43	Do you agree with the introduction of temporary stop notices to the planning enforcement system in Wales?	Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Comments:			

I do not want my name/or address published with my response (please tick) <input type="checkbox"/>
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Consultation reference: WG20088

How to Respond

Please submit your comments in any of the following ways:

Email
Please complete the consultation response form and send it to: planconsultations-d@wales.gsi.gov.uk (Please include 'Positive Planning – WG20088' in the subject line).
Post
Please complete the consultation form and send it to: Planning Bill Team Planning Division Welsh Assembly Government Cathays Park Cardiff CF10 3NQ
Additional information
If you have any queries on this consultation, please email: planconsultations-d@wales.gsi.gov.uk or telephone: 0300 0603300 or 08450103300

SCRUTINY COMMITTEE	COMMUNITIES SCRUTINY COMMITTEE
DYDDIAD Y CYFARFOD	7 FEBRUARY 2014
TITLE	NORTH WALES RESIDUAL WASTE TREATMENT PROJECT - SECOND INTER AUTHORITY AGREEMENT
CABINET MEMBER	Councillor Gareth Roberts
PURPOSE	To scrutinise the intention to ask the Cabinet to agree a second inter authority agreement in order to allow us to continue with the collaboration project.

BACKGROUND

1. The European rules relating to sending waste to landfill note that authorities cannot send more than 10% to landfill by 2020 and that this figure will reduce to 5% by 2025.
2. These are statutory targets which local authorities must achieve or face substantial penalties.
3. With the landfill tax increasing substantially and the cost of running landfill sites increasing as environmental rules relating to such sites become more onerous, it is also making economic sense to recycle more.
4. In such a context, in January 2010 the Council adopted a Waste Strategy which aimed to divert more waste to recycling and ensure that there was a way of dealing with any residual waste which would mean that we would not have to take it to landfill.
5. Two cornerstones of this strategy were to establish the GwyrAD Food Waste facility and work together with 4 other authorities in North Wales to establish a facility to deal with residual waste - that is any waste which cannot be recycled or composted.
6. GwyrAD is now operational (the first of its kind to become operational in Wales) and there has been considerable activity by the 5 authorities in the North Wales Residual Waste Project to tender for a contractor to develop a solution to deal with residual waste.
7. The Partnership has been operating since 2008 on the basis of a Partnership Agreement agreed by the Council back in February 2010 and the process is managed by a Joint Committee on which the Council is represented by myself.
8. By now we have come to a position whereby the Partner Authorities need to formally appoint the contractor who will build and run the facility and as the first Inter Authority Agreement was only designed to bring us to

this point we will need to agree a new agreement for the period during which the contract with the successful contractor will run.

The Inter Authority Agreement

9. As we are now entering into a 25 year contract we will have to ensure that we have an appropriate Inter Authority Agreement for that period, and the Legal Advisors have been assisting the authorities to formulate such an agreement.
10. The work of formulating the detailed agreement is currently ongoing but the main provisions are highlighted in a report prepared and submitted recently to the Joint Committee – a report which is reproduced in Appendix 1 to this report.
11. In simple terms, Flintshire County Council will, as the lead authority, contract with the company (to be appointed – see the next report) to deal with the councils' residual waste and as a result of that contract certain liabilities and obligations will fall upon them and it is important that every other council in the partnership shares these liabilities and obligations in an equitable manner.
12. The appendix notes those principles and elements which will be included in the new agreement and the key provisions are highlighted below -
 - The governance provisions of the new agreement will broadly follow the first agreement which is that the key decisions in relation to the operation of the project will be taken by the Joint Committee on behalf of the 5 authorities, and that joint committee will be supported by a project board of officers from the 5 authorities. A representative from each of the 5 authorities will have to be present for the Joint Committee to be quorate.
 - Once we are part of the Partnership the rights of each authority to take individual decisions thereafter will be very limited with the general management of the facility being managed by the Joint Committee. In general the rights of the authority will be limited to determining the annual budget for the Joint Committee (above a specific threshold to which there will be a mandatory requirement to agree) and to withdraw from the project (with financial implications falling upon it if it chooses to do so). Otherwise it is the Joint Committee which will run the project on behalf of the authorities.
 - In general the cost associated with the agreement will be shared on the basis of tonnage sent to the facility, although until the facility is operational they will be shared equally amongst the five authorities.
 - Each Council will be responsible for running its own transfer station and meeting the associated costs (but discussions are ongoing with Welsh Government regarding this issue) but the cost of transporting

waste from those stations will form part of the common gate fee per ton which will be charged.

- As Conwy does not have a transfer station, the project will meet the cost of establishing such a facility (with Conwy responsible for meeting the running costs thereafter).

13. The agreement will also refer to a Community Benefit Fund which will provide an annual sum of money to the local community to compensate them for the inconvenience of having such an incinerator close to their community. The Joint Committee's proposal is to provide an annual sum of £180,000 for this purpose with 25% being met by Welsh Government leaving the partners to meet £135,000 of the cost shared on the basis of tonnage sent to the facility. It is estimated that this will add between £1.17 to £1.50 per ton to the cost.

14. The Scrutiny Committee is invited to scrutinize the matter before the Cabinet gives it consideration.

REPORT ON THE

DRAFT SECOND INTER-AUTHORITY AGREEMENT

Note: *This report is intended to provide a high level summary of the current draft form Inter Authority Agreement. The report includes details of issues that have been discussed and agreed in principle by the Project Board at a meeting on the 16 January 2014.*

The Inter Authority Agreement is currently only in draft form. In the event that the Partnership wish to change any of the principles set out below, or wish to include any additional project specific partnering elements, then this can be accommodated.

The Partnership should also note that this report is only intended to be a high level summary of the content of the draft Inter Authority Agreement and should not be relied upon in lieu of the Inter Authority Agreement itself.

1. INTRODUCTION

- 1.1 At the beginning of the procurement, Conwy County Borough Council, Denbighshire County Council, Flintshire County Council, Gwynedd Council and the Isle of Anglesey County Council (together the "**Partnership**") agreed to work together in a partnering relationship to jointly procure a residual waste treatment facility and deliver residual waste treatment services in the project known as the North Wales Residual Waste Treatment Project (the "**Project**"). The Partnership signed the first Inter Authority Agreement on 24 June 2010, to regulate working arrangements and decision making among each of the Councils during the procurement of the Project up to financial close.
- 1.2 The Partnership has agreed that Flintshire County Council will take on the role as 'Lead Council' and will sign and enter into all the legal documents to the Project on behalf of the Partnership; the main document being the agreement with the Contractor, involving the design, construction, installation, commissioning, operation and maintenance of the facility for the treatment of residual waste (the "**Project Agreement**"). Following the commencement of the Project Agreement, the rights, liabilities and obligations of each Council set out in the first Inter Authority Agreement will be superseded by the rights, liabilities and obligations set out in the second Inter Authority Agreement (the "**IAA**").
- 1.3 As the Lead Council will take on the full contract responsibility on behalf of the Partnership, it requires assurances that each Council will meet its obligations in a timely manner to ensure that the Lead Council is never exposed to unreasonable contractual liabilities. Also, each Council needs assurance that they will receive all the contractual benefits that they are entitled to – even though they have not directly signed a contract with the Contractor. This is one of the primary objectives of the IAA.

2. PURPOSE OF THE SECOND INTER-AUTHORITY AGREEMENT

- 2.1 The overarching purpose of the IAA is to ensure that the five Councils are able to work effectively together in true partnership and with the Contractor to get maximum benefit from the Project. The IAA tries to balance the potential conflicts: that the Lead Council, as the Project Agreement counter-party, is not over-exposed in terms of risk and liability; and that the other Councils get their fair share of the contractual rights and benefits. The IAA is based on the principles of fairness and partnership working and is intended to manage the interests of all the Councils equitably.
- 2.2 The IAA attempts to reflect, where appropriate, the Project Agreement between the Partnership and the Contractor.
- 2.3 The IAA accommodates a structure to ensure that the Lead Council isn't exposed to disproportionate liability and that the contractual rights and obligations appropriately flow down to all the Councils.

- 2.4 At its most basic level, having signed the Project Agreement, the Lead Council is committed to the delivery of all the Partnership's waste and the full payment for its treatment. The Contractor, for its part, is obliged to accept and treat the waste.
- 2.5 Given this commitment, the IAA needs to ensure that each Council is committed to deliver its waste to the Contractor and pay to the Lead Council the correct amount in advance of the Lead Council having to pay the Contractor.
- 2.6 The IAA sets out the duties of the Lead Council. These duties include (but are not limited to);
- 2.6.1 acting on behalf of the Councils for the management and supervision of the Project Agreement,
 - 2.6.2 acting under the direction of the Joint Committee;
 - 2.6.3 being responsible for liaising with the Contractor, and
 - 2.6.4 entering into any contracts that may be required (for example, the appointment of consultants) and liaising with Welsh Government.
- 2.7 The IAA also regulates such things as:-
- 2.7.1 Decision making;
 - 2.7.2 Termination and Withdrawal from the IAA;
 - 2.7.3 Flexibility to Contract Changes; and
 - 2.7.4 Liabilities of the Councils.

3. **DECISION MAKING**

3.1 **Contract Manager**

- 3.1.1 The Partnership will appoint a suitably qualified Contract Manager for the day-to-day management of the Project. The Contract Manager will be responsible to all the Councils but will be employed by or seconded to the Lead Council and shall report to the Project Board. The Contract Manager shall act as the Authority's Representative (as such term is defined in the Project Agreement.)
- 3.1.2 The Contract Manager will have sufficient authority to make day-to-day decisions and will liaise on a regular basis with key personnel at each Council and with the Project Board and the Joint Committee.
- 3.1.3 For those decisions with a budgetary impact, the Contract Manager will have authority up to an annual financial threshold of [£], over which the decision would have to be escalated to the Project Board. It is noted however, that regardless of financial threshold, the Contractor Manager has the ability to refer any matter to the Project Board.

3.2 **Project Board**

- 3.2.1 The Councils shall form the Project Board for the purpose of the day-to-day management and the implementation and monitoring process and to carry out those specific Project Tasks as indicated in Schedule 1 (Project Tasks) of the IAA and any matters referred to the Project Board by the Contract Manager.
- 3.2.2 The Project Board will have authority to decide on a matter at a quorate meeting of the Project Board by those present and entitled to vote in respect of a matter that will have (or is reasonably expected to have) an annual financial threshold of up to [£], over which the matter would

need to escalate to the Joint Committee, provided always that the Project Board has the ability to refer any matter of any financial value to the Joint Committee to decide.

3.2.3 Any such decision of the Project Board will be binding on all the Councils.

3.3 **Joint Committee**

3.3.1 The Councils shall form the Joint Committee, (which shall supersede and replace the Joint Committee formed pursuant to the first Inter Authority Agreement), to carry out the functions set out in Schedule 2 (Joint Committee Terms of Reference) of the IAA and to carry out the Project Tasks as indicated in Schedule 1 (Project Tasks).

3.3.2 The proposed annual threshold for Joint Committee matters is up to [£]. Any decisions to be made on a matter in excess of these parameters shall be referred as a 'Matter Reserved To The Councils' and decisions would have to be taken by each individual Council.

3.3.3 The Joint Committee may determine that any Joint Committee Matter or Project Board Matter may be referred back to each Council for a decision as a Matter Reserved to the Councils and/or make a decision to delegate any matter to the Project Board for decision.

3.4 A general principle of decision making under the Project Board and the Joint Committee structure is that decisions should be by majority voting. For Matters Reserved To The Councils, such decisions shall not be implemented unless approved by all of the Councils on a unanimous basis.

3.5 It is agreed that there is no requirement for Council Lead Officers to be included within the IAA and the necessity and appointment of Project Officers for the purposes of the Project will be for the Joint Committee to determine from time to time as required.

4. **TERMINATION, WITHDRAWAL AND EXTENSION**

The IAA shall continue in full force and effect from the date upon which the IAA is entered into by the Partnership, until the earlier of the following dates:

- (a) all the Councils agree in writing to its termination; or
- (b) there is only one remaining Council who has not withdrawn from the IAA; or
- (c) the date falling six (6) months after the expiry or earlier termination of the Project Agreement (subject to any agreed period of time in respect of the decommissioning of the Site as noted below).

4.2 **Termination**

4.2.1 The IAA makes provision for terminating one of the Councils in the event of an unresolved breach of a Council's obligations under the IAA. The decision to terminate the participation of a Council shall be treated as a Matter Reserved To The Councils.

4.2.2 The defaulting Council would be liable to the other Councils for any increased cost and losses suffered as a result of the default and agreed pursuant to a Liability Report (as defined in the IAA), prepared by the Lead Council and agreed by the Joint Committee.

4.3 **Withdrawal**

- 4.3.1 It is possible for a Council to withdraw from the Project if it chooses. Any Council wishing to withdraw from the Project shall provide written notice to the other Councils.
- 4.3.2 The withdrawing Council would be liable to the other Councils in accordance with the Liability Report as prepared by the Lead Council and agreed by the Joint Committee.
- 4.3.3 If the Lead Council is the withdrawing Council then the Lead Council shall be required to novate each of the Contract Documents (including the Project Agreement, Independent Certifier's Appointment, Parent Company Guarantee and the Lease of the Site) to the new lead council selected by the remaining Councils.

4.4 **Extension**

- 4.4.1 The Project Agreement contains an option for the Councils to extend the Contract Period by a period of up to five years. It is agreed in principle that this will be a Matter Reserved To The Councils and decided by way of a unanimous decision.

5. **FLEXIBILITY TO CHANGE**

- 5.1 The IAA reflects the flexibility embedded in the main Project Agreement to accommodate any variations under the Project Agreement (whether the proposed variation is required due to a change in law or a contract change required by one or more of the Councils or the Contractor or any other matter affecting the Project which may have an equivalent effect).
- 5.2 The Councils agree to be bound by the obligations on the Lead Council set out in Clause 43 (Authority and Contractor Changes) and Schedule 21 (Change Protocol) of the Project Agreement.
- 5.3 The Councils will work with the Contractor to achieve the best value solution for the Project.
- 5.4 If the Councils decide to support a proposed variation under the Project Agreement, the Lead Council will seek an Authority Change (as defined in the Project Agreement) with the Contractor in the Project Agreement, and where the proposed Authority Change is agreed to have a mutual benefit to the Project, the costs of such proposed Authority Change shall be shared between the Councils. Where the Authority Change does not have a mutual benefit, the Council seeking the change in the Project Agreement shall bear responsibility for the payment of the costs of the Authority Change.
- 5.5 It is noted that with the recent publication of the Williams Commission Report and on the understanding that Flintshire County Council and Wrexham County Council, Denbighshire County Council and Conwy County Council, and Gwynedd Council and the Isle of Anglesey County Council are to amalgamate over the next couple of years, the Councils acknowledge that any new "successor Council" following such an amalgamation shall automatically succeed the original Councils for the purposes of the IAA. However, it is further acknowledged by the Councils that any amalgamation shall not have the ability to automatically alter the Administrative Area (as defined in the Project Agreement), and the only way for the Councils to amend this (so as to capture the geographical area of any new "successor Council" for the purposes of the Project) shall be to implement a variation under the Project Agreement by way of an Authority Change as noted above.

6. **LIABILITIES OF THE COUNCILS**

6.1 **General Indemnities**

- 6.1.1 The Lead Council shall indemnify each of the Councils against any losses, claims, expenses, actions, demands, costs and liability suffered, to the extent arising from any wilful default, wilful breach or negligent act or

omission by the Lead Council of its obligations under the Contract Documents (as defined under the IAA (including the Project Agreement and the IAA).

- 6.1.2 Each of the other Councils (acting severally), shall indemnify the Lead Council against any losses, claims, expenses, actions, demands, costs and liability suffered, to the extent arising from any wilful default, wilful breach or negligent act or omission by a Council of its obligations under the IAA.
- 6.1.3 The Councils agree that the amount to be paid to the Lead Council shall be borne by each of the Councils to the extent that they were responsible, however, in the event that responsibility is shared between two or more defaulting Councils, then the amount to be paid will be divided between those Council's responsible in such proportions as the Joint Committee may determine.
- 6.1.4 The Councils shall ensure that adequate insurance cover is effected and maintained in respect of any liabilities they may have in the event of any neglect or default on their part.

6.2 **Early Termination**

- 6.2.1 The Councils' liability on early termination of the Project Agreement shall be defined by reference to the Lead Council's obligation to pay compensation on early termination to the Contractor under the Project Agreement.
- 6.2.2 The Councils shall be liable (and shall indemnify each other) for equal proportions of the termination sum payable to the Contractor following an early termination of the Project Agreement where the early termination occurs during the works period of the Project prior to completion of the Facility. If termination occurs when the Facility is operational then liability shall be determined on a pro rata basis in respect of the actual tonnage delivered by each of the Councils.
- 6.2.3 If the Councils are not equally at fault for such early termination, the Councils agree that the Council or Councils whose acts or omissions gave rise to the termination shall be liable for a greater proportion of the termination sum or all of the termination sum.
- 6.2.4 It is noted that the Lead Council shall not be entitled to issue a notice of voluntary termination of the Project Agreement unless such action has been approved by all of the Councils as a Matter Reserved To The Councils.

7. **SITE AND DECOMMISSIONING**

- 7.1 Upon expiry of the Project, the Site shall be retained by Flintshire County Council. However, as noted above, in the event of a Lead Council termination or withdrawal from the IAA, then the Site will transfer to the new Lead Council (as selected by the remaining Councils) for the duration of the Project and upon expiry of the Project the Site shall then return to Flintshire County Council.
- 7.2 It is agreed in principle that on early termination of the Project if the Facility is operational then the Partnership should agree appropriate arrangements to continue the use of the Facility for the remainder of the 25 years. If however the Facility has not been built (due to eg. a planning/permitting failure) then the Site shall be retained by Flintshire County Council and there shall be no further obligation for the Site to be utilised for the purposes of the Project. If the Facility has been partly built but is not yet operational then the Councils shall agree to discuss and decide upon appropriate arrangements and the Councils shall equally share liability in respect of any costs.

7.3 Upon expiry of the Project, the cost of decommissioning will be split equally between the five Councils, unless Flintshire County Council (in its absolute discretion) elects not to undertake decommissioning of the Site, in which case, Flintshire County Council shall be solely liable for any future decommissioning costs.

7.4 It is noted that the cost of decommissioning the Site should be included in the Liability Report as a payment to be made by any withdrawing or terminated Council.

8. COMMUNITY BENEFIT FUND

8.1 The Councils have agreed in principle to payments in respect of a Community Benefit Fund. Each of the Councils shall contribute towards the fund and the payments shall be determined on a pro rata basis in proportion to the tonnage provided by each of the Councils.

9. WELSH GOVERNMENT FUNDING

9.1 It is agreed in principle that in the event that Welsh Government funding is withdrawn from the Project then the Councils shall be required to cover the lost Welsh Government funding on a pro rata basis in proportion to the actual tonnage provided by each of the respective Councils.

10. CONTRACT MANAGEMENT COSTS

10.1 During the works period of the Project up until the Facility being completed and operational, the Contract Management Costs associated with the Project shall be split equally between the Councils. During the operational period of the Project the Contract Management Costs shall be on a pro rata basis and payments will be proportional to the actual tonnages delivered by each of the Councils.

11. NEW WASTE TRANSFER STATION

11.1 It is agreed in principle that the costs of building a new Waste Transfer Station will be a capital expenditure to be split equally between each of the five Councils.

11.2 If it is determined that the new Waste Transfer Station shall be built on a site that is to be provided by Conwy County Council then upon expiry or termination of the Project the site will be retained by Conwy County Council. If however, the Partnership jointly fund and provide a site on which to build the new Waste Transfer Station, then upon expiry or early termination of the Project the IAA will contain provisions which shall allow the Councils to agree at the time how they would like to deal with the site and the new Waste Transfer Station.