

**PLANNING REFORM & TRANSFER TO LOCAL GOVERNMENT**

**PROPOSALS FOR SUBORDINATE LEGISLATION**

**PHASE 1 PUBLIC CONSULTATION PAPER**

**DRAFT RESPONSE**

for the

**CAUSEWAY COAST AND GLENS COUNCIL**

prepared by

**FLEMING MOUNSTEPHEN PLANNING**

**MEETING OF 24<sup>TH</sup> JULY 2014**



# **CONTENTS**

## **1.0 OVERVIEW OF THE PROPOSALS**

## **2.0 COMPLETED DRAFT CONSULTATION RESPONSE FORM**

## **3.0 STRATEGIC COMMENTS**

## **1.0 OVERVIEW OF THE PROPOSALS**

### **The Consultation Proposals**

- 1.1 This Note has been prepared in response to the Phase 1 Consultation, launched by the Minister for the Environment in May 2014, titled *'Planning Reform and Transfer to Local Government: Proposals for Subordinate Legislation'*.
- 1.2 The Proposals, which are the subject of public consultation, aim to:
- further implement the provisions of the Planning Act (Northern Ireland) 2011; and
  - address the issues necessary for the planning system to function under the new two-tier arrangements with Councils operating as the local planning authorities from 1<sup>st</sup> April 2015.
- 1.3 The Department has advised that a Phase 2 Public Consultation will take place on additional provisions in Autumn 2014.

### **The Phase 1 Consultation Papers**

- 1.4 The Phase 1 Consultation Papers include the following:
- the Phase 1 Public Consultation Document (127 pages in total) which sets out the proposals for subordinate legislation;
  - the Public Consultation Response Form (with 38 questions set by the Department);
  - six draft Statutory Rules relating to Development Plans, Statement of Community Involvement, Development Management, General Development Procedure, General Regulations and Listed Buildings (with related assessments e.g. equality impact and regulatory).

### **Importance of the Proposals**

- 1.5 The Phase 1 Proposals essentially deal with those matters which are necessary to ensure that the new Councils inherit a functioning planning system immediately following the transfer of planning functions from central to local government. The Consultation Document describes the matters as *'day one essentials'* so that there is a fit for purpose planning system effective from the outset of the new Councils operating as the local planning authorities.

### **Draft Response Note**

- 1.6 This Draft Response includes a completed draft Consultation Response Form (section 2.0) and makes a number of strategic comments on the matters which are the subject of the Phase 1 Consultation.

## **2.0 COMPLETED DRAFT CONSULTATION RESPONSE FORM**

2.1 This section contains a completed draft Consultation Response Form.

2.2 There are other strategic matters which arise from the Public Consultation Document, which are not the subject of Departmental questions, and these are noted in Section 3.0 of this Note.



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

## **Planning Reform & Transfer to Local**

### **Government:**

## **Proposals for Subordinate Legislation**

### **Phase 1 Public Consultation Paper**

### **Response Form**

Once you have completed this form please return to:

Planning Reform & Transfer to Local Government Consultation – Phase 1  
Planning Policy Division  
Department of the Environment  
Level 6 Causeway Exchange  
1-7 Bedford Street  
Town Parks  
Belfast  
BT2 7EG

By e-mail to: [PPDConsultations@doeni.gov.uk](mailto:PPDConsultations@doeni.gov.uk)

or by text phone to 02890540642

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

Questions are numbered as they appear in the consultation paper

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

Yes  No

The Council agrees with the Department that the minimum requirement should be retained and should apply to Councils after the transfer of planning powers. The Council notes that it can go beyond this minimum requirement and that this would be reflected in the Council's Statement of Community Involvement.

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

Yes  No

The Council considers that the list of statutory consultees for Local Development Plan preparation is comprehensive but would suggest, to avoid any misunderstanding, that the status of the following should be clarified: Northern Ireland Tourist Board, Invest Northern Ireland, Translink, Northern Ireland Water, Rivers Agency, Health & Social Services Boards & Trusts and Education & Library Boards.

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

Yes  No

The Council notes the statutory requirement on a Council to prepare and keep under review a timetable for the preparation and adoption of its Local Development Plan. The Council considers, in light of the Department experience with the preparation of Area Plans and the range of factors which affect a proposed timetable, that the timetable should be based on key stages, key documents and indicative dates.

The Council considers that the agreement of the timetable by the Department should recognise the indicative nature of any Local Development Plan timetable.

The Council notes (para 3.20) that the Department will provide guidance on how the Council should prepare the timetable and estimate the indicative dates for each stage and considers that this guidance should be provided as a matter of urgency.

The Council considers that the guidance could usefully be set out in the form of a flowchart which would be user friendly and which could also inform the Statement of Community Involvement and the Community Plan.

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

Yes  No

The Council agrees with the Department that the participation of statutory consultees at the start of the process of preparing a new Local Development Plan is crucial. The Council considers that statutory consultees will need to be briefed on the purpose and content of the Preferred Options Paper to ensure that their input is strategic, relevant and assists with the generation of alternative options for growth and development.

The Council considers that Departmental guidance to statutory consultees on engaging with Councils on the preparation of the Preferred Options Paper would be beneficial and would help to facilitate effective participation.

**Question 5:** Do you think that the proposed publicity and consultation arrangements for the POP are appropriate / adequate?

Yes  No

The Council considers that the proposed arrangements are appropriate and adequate and notes that the Council can set out in its Statement of Community Involvement that it will go beyond the minimum requirements.

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

Yes  No

The Council considers that the Department should provide a regular update to Councils of policy and advice contained in guidance issued by the Department and also general guidance on proposals maps and illustrative material for Local Development Plans. The Council would request clarification as to whether policy and advice contained in guidance issued by the Department includes not only planning policy but operational manuals being prepared by the Department.

The Council notes the requirement on Councils to take account of a Council's current Community Plan and would request clarification on whether the preparation of a Community Plan and Local Development Plan, including public consultation, can run in parallel.

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

Yes  No

The Council notes the procedure for and importance of representations and counter-representations and agrees with the proposed arrangements.

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

Yes  No

The Council agrees with the publicity requirements and other arrangements for independent examination. The Council notes that the Department can appoint other examiners rather than the Planning Appeals Commission (PAC) to carry out the independent examination. The Council considers that the appointment of other examiners should only be made in exceptional circumstances as the PAC has recognised experience in undertaking its decision-making role in an independent manner free from influence by the Department or any other body. The Council



considers that the principle of an independent examination is of critical importance in the development plan process and to protect the integrity of planning.

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

Yes  No

The Council notes that the Department is seeking public opinion on the principles of the independent examination and what the soundness tests should be. The Council notes the proposed soundness tests in Annex B and that these will be elaborated upon in the Department's guidance.

The Council considers that the soundness tests are a critical element in the two –stage Local Development Plan process and that further information is urgently required from the Department on the meaning and application of the tests. The Council is aware of the failure of draft plans in England to pass the soundness test and the serious implications which flow from this failure.

The Council considers that the soundness tests, as currently set out in Annex B, appear to incorporate considerable flexibility and uncertainty. The Council is concerned that this flexibility and uncertainty could lead to the failure of a Plan Strategy or Local Policies Plan to fail the soundness tests with the serious consequences that would flow from failure to pass.

The Council notes that whilst the draft procedural tests are essentially matters of fact, the draft consistency and coherence and effectiveness tests have significant scope for different interpretations e.g. it is unclear if the cross boundary test is actually a separate test and if it actually comprises two sub-tests i.e. are cross-boundary issues relevant or not and, if relevant, is there an absence of conflict with the DPDs of neighbouring Councils.

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

Yes  No

The Council notes the arrangements and considers that regular liaison between the Department and Councils is an essential element to ensure that the withdrawal of a Development Plan Document is, as far as possible, avoided.

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

Yes  No

The Council notes the three options available to the Department and would note that the Department's direction to the Council should be made, as with the Council's adoption of the Development Plan Document, as soon as reasonably practicable.

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

Yes  No

The Council recognises the importance of monitoring, review and revision, if required, of the Local Development Plan and agrees with the proposed arrangements including the Annual Monitoring Report and the 5-year major review.

The Council notes the emphasis of the Department on two subjects, namely housing and land for economic development, and notes the importance of '*other issues*' which appear to the Council to be relevant to the implementation of the LDP. In relation to '*other issues*', the Council considers that this should include the availability or otherwise of Departmental policy guidance and the application of the call-in procedure and notification directions.

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

Yes  No

The Council notes the existence of the intervention/default powers and the fact that intervention is on the basis of 'exceptional circumstances' (para 3.100) and default on the basis of 'very extenuating circumstances' (para 3.109).

The Council considers that the use of intervention and default powers by the Department should be a last resort to ensure that the important role of the Council as a local planning authority is not undermined.

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

Yes  No

The Council notes the arrangements which apply where a Council withdraws from an agreement to prepare a joint Planning Strategy or a joint Planning Strategy and a joint Local Policies Plan and the arrangement to ensure that preparatory work is not wasted.

**Question 15:** Do you agree with the provisions relating to the Department's power in relation to joint LDPs?

Yes  No

The Council considers that the provisions relating to the Department's power in relation to joint Local Development Plans are essential and recognises the benefits of joint LDPs.

The Council considers that the Department should provide such directions at the earliest opportunity in the Local Development Plan process to ensure the preparation of relevant Local Development Plans which will pass the soundness tests. The Council considers that consideration to the merit or otherwise of joint Local development Plans needs to take place at the earliest stage so as to inform the Local Development Plan timetable and the related plan stages.

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

Yes  No

The Council recognises the need for transitional arrangements for a Local Development Plan. The Council notes that where a Planning Strategy has been adopted or approved then the reference to the Local Development Plan is the Planning Strategy together with any policies forming part of the Department's Development Plan which have not been expressly replaced by a policy in the Planning Strategy.

The Council would request clarification on the status of site designations and zonings in the Department's Development Plan where they may run counter to a policy in the Planning Strategy.

The Council considers that the transitional arrangements could offer significant scope for uncertainty.

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

Yes  No

The Council agrees with the proposed content of the Statement of Community Involvement (SCI) and the *'light regulatory touch'* of the Department (para 4.8) in relation to the subject. The Council recognises the value of an SCI in increasing awareness of the scope for community participation and involvement.

The Council notes that the Department will also prepare and publish an SCI in respect of its planning functions. The Council considers that it would be helpful to have the Department's SCI published at the time of the transfer of planning powers to Councils.

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

Yes  No

The Council notes that the Department aim to provide guidance to assist Councils in the preparation of a Statement of Community Involvement and the agreement requirements of the Department. The Council considers that it would be advantageous to have an agreed SCI in place on the transfer of planning powers and would, therefore, request that the Department issue guidance to facilitate this.

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

Yes  No

The Council notes the 3-tier classification of developments namely regionally significant, major and local and recognises the need for a proportionate and responsive approach to processing applications.

The Council notes that the classes do not include tourism, education or wind energy and that it could usefully be extended to include these classes. The Council would also request clarification in relation to the meaning and application by the Council of the 'N/A' heading in relation to the housing, retailing, business, industry, storage & distribution and all other development categories.

**Question 20:** Do you agree with the definition for determining local developments?

Yes  No

The Council agrees with the definition of local developments and notes that, with any threshold approach, a local development schemes can fall close to but not over a threshold.

**Question 21:** Do you agree with the proposed classes and thresholds for regionally significant developments indicated in the Schedule at Annex C?

Yes  No

The Council notes that there is no threshold for the proposed housing, retailing, business/industry storage & distribution and all other development and would query how the threshold approach would apply in these classes apart from the notification and call-in procedure.

The Council would also request clarification of the process that applies when a major application is not of regional significance but is a substantial departure from the Local Development Plan.

The Council would also request clarification as to whether a major application, and not solely a regionally significant development proposal, can have the status of a *'large scale investment'*

*planning proposal*'. The Council would also request clarification as to whether the 6 month decision period, currently outlined in the Programme for Government, is applicable to Councils as well as the Department.

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

Yes

No

The Council fully recognises the importance of pre-application community consultation so that local communities can be better informed about development proposals and have the opportunity to contribute views before a formal planning application is submitted.

The Council notes that the proposal of application notice must include confirmation of the Council's or the Department's determination on the need for an environmental statement. The Council would request clarification regarding the status of the determination for an environmental statement where a proposal has not been submitted for planning approval and where it may be amended prior to formal submission as part of the pre-application consultation process. In addition, the Council would request clarification on the status of the pre-application determination when a determination takes place after submission of the application.

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

Yes

No

The Council welcomes the proposal in the interests of openness and transparency.

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

Yes

No

The Council agrees with the proposed approach but considers that a scheme of delegation should be prepared at intervals of no greater than every two years to ensure that the objective of enabling speedier decisions and improved efficiency is achieved.

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

Yes

No

The Council would request clarification as to what would comprise a '*significant*' objection to a major development application and how this would differ from '*an objection*'. The Council considers that this has the potential for misunderstanding or even misuse and could undermine the role of the Local Planning Authority.

The Council would also request confirmation that the notification direction only applies to major development applications and that call-in applies to any planning application.

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

Yes

No

Whilst the Council agrees with the Department that it is preferable to have clarity and consistency, it is considered that the continuance of the non-statutory arrangement is appropriate. The Council considers that making neighbour notification a statutory requirement would present operational difficulties and added costs for applicants and Councils.

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

Yes

No

The Council accepts the definition of ‘neighbouring land’ (para 13.8) and its established use under the current planning system.

The Council considers that the definition of an ‘affected occupier’ (para 13.8) raises a number of problems. It does not state the point from which the radius should be drawn (is it the centre of the ‘red line’ application site or 90m from the edge of the ‘red line’)? The definition implicitly gives the impression that an occupier outside the 90m radius is not affected and that all within the radius are affected. A small planning application in an urban area could have an extensive neighbour notification list that places an undue burden and cost on the applicant and the planning authority. The checking of a 90m radius neighbour notification list would be time-consuming for the planning authority and, if a statutory requirement, could readily lead to legal challenges.

It is considered that the existing neighbour notification arrangement allied with advertisements should be retained.

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

Yes

No

The Council considers that the existing requirement should be maintained.



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

Yes

No

The Council notes the lists of new statutory consultees and, in particular, welcomes the new duty to respond to consultation.

**Question 30:** Are the types of development or circumstances listed in the Schedule at Annex D sufficient? Can you suggest any additions or omissions along with the reasons for your suggestions?

Yes

No

The Council notes that additional consultation beyond the statutory minimum can be undertaken. The Council would request clarification that the duty to respond applies to the NIEA even though it has no legal identity separate from the Department.

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

Yes

No

The Council considers that the 21 calendar days are appropriate where an applicant has supplied the relevant information with the application and that prompt responses from consultees is an essential element in an effective and efficient development management system. One result of the failure of consultees to provide substantive responses within a reasonable timescale is that an applicant, who has provided a robust application package, is disadvantaged by having to revert to the non-determination appeal route.

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

Yes  No

The Council considers that the reference to '*current standing advice*' (para 14.16, third bullet point) should be subsumed in the fourth bullet point.

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

Yes  No

The Council considers that whilst annual reporting arrangements are appropriate it is essential that annual reporting (after the event) must be supplemented with an early warning system that alerts the Department to urgent or emerging difficulties that require prompt attention. The weakness of an annual reporting system is that considerable time can elapse before a difficulty can be the subject of a report and the subsequent corrective action to address the problem.

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

Yes  No

The Council considers that there is scope for overlap and confusion in relation to design and access statements (DAS) and policy and guidance on design set out in Planning Policy Statements including PPS 3 Access, Movement and Parking and the additional policy and guidance on good design published by the Department.

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

Yes

No

The Council considers that the requirement to take environmental sustainability into account should reflect the amendments proposed under the response to question 34.

**Question 36:** Do you agree with the proposals for handling applications for non-material changes to a previous planning permission?

Yes

No

The Council recognises the values of the proposals and would note the importance of the proposed 'guidance tests' to be issued by the Department in relation to whether a change would qualify as a non-material amendment.

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

Yes

No

The Council considers that the notification arrangement is a necessary safeguard but considers that the application of this power needs to be appropriately used by the Department to avoid undermining the role of the Council as a local planning authority.

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

Yes

No

The Council notes the proposal that the Department should be consulted on all applications for listed building consent and that Councils should notify the Department of all applications where the Council is minded to grant consent. The Council considers that this all-encompassing and detailed regulatory approach is likely to cause difficulties for NIEA in relation to resources and an unnecessary administrative burden on the Department and Councils.

**All responses should be submitted to the Department no later than 20<sup>th</sup> August 2014.**

### 3.0 STRATEGIC COMMENTS

3.1 In launching the Phase 1 Public Consultation, the Environment Minister stated *“The proposals I am putting forward for public consultation will deliver a planning system that is faster, fairer and fit for purpose....”* and *“When set alongside the development of a single Strategic Planning Policy Statement I am redefining the planning landscape so that the system delivers for all”*.

3.2 The Department has posed a range of questions, as part of the Phase 1 Consultation proposals, including questions relating to:

- statements of community involvement;
- the new three-tier hierarchy of planning applications;
- the Local Development Plan and the independent examination;
- the new procedures for dealing with planning applications and listed building consent applications; and
- the management of applications relating to Council-owned land

3.3 The following strategic comments can be made in addition to the draft responses provided to the specific questions posed by the Department:

- the Consultation Paper refers regularly to further guidance to be prepared by the Department e.g. the explanation of the ‘soundness tests’ against which the Council’s Development Plan Documents will be judged. It is considered essential that there is ongoing, **meaningful engagement between the Department and the Council** in the preparation of Departmental guidance before it is formally issued by the Department;
- the Local Development Plan (LDP) has a critical role in setting out the vision of the Council, providing detailed operational policies and providing the context for planning decisions. The **preparation of the LDP timetable is a critical task** as the timetable will contain the main plan requirements and the indicative dates and requires close liaison with the Department;
- the transfer of planning functions to the new 11 Councils will take place in April 2015 but the planning reform process will continue for some years. It is considered, during this time of significant change in planning policy, practice and administration, that **the potential for legal challenges relating to planning matters may well increase**;
- the essence of the two-tier planning system is that the majority of planning functions lie with the new Councils. It will be important for Councils to ensure that this principle is reflected in the guidance issued by and the practice of the Department, **to ensure that the role of the Council as Local Planning Authority is not undermined**.