



Title of Report:	Department for Infrastructure (Dfi) – Draft Development Plan Practice Note (DPPN) 11 : Receipt of Independent Examination Report and Adoption of a Development Plan Document
Committee Report Submitted To:	PLANNING COMMITTEE
Date of Meeting:	22nd September 2021
For Decision or For Information	For Decision

Linkage to Council Strategy (2021-25)	
Strategic Theme	Cohesive Leadership
Outcome	Our elected members work collaboratively and make decisions on an evidence led basis and in line with its policies.
Lead Officer	Principal Planning Officer

Budgetary Considerations: Not applicable in this case	
Cost of Proposal	
Included in Current Year Estimates	
Capital/Revenue	
Code	
Staffing Costs	

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals. Not applicable in this case.		
Section 75 Screening	Screening Completed:	Yes/No	Date:
	EQIA Required and Completed:	Yes/No	Date:
Rural Needs Assessment (RNA)	Screening Completed	Yes/No	Date:
	RNA Required and Completed:	Yes/No	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	Yes/No	Date:
	DPIA Required and Completed:	Yes/No	Date:

1.0 Purpose of Report

1.1 To present the Department for Infrastructure's (the 'Department's') informal consultation with the Council on Draft Development Plan Practice Note (DPPN) 11: 'Receipt of Independent Examination Report and Adoption of a Development Plan Document'.

2.0 Background

2.1 The Department wrote to the Council on 24th August 2021 for comment (by 30th September 2021) on its draft guidance document DPPN 11 (see Appendices 1& 2 attached).

3.0 Proposals

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

3.2 The Department has prepared a series of guidance documents to assist local councils in undertaking this planning function. These aim to ensure that a consistent approach is undertaken throughout Northern Ireland (NI) in relation to the procedural and information requirements which are necessary for an effective and efficient LDP process.

3.3 The Council has a statutory duty to take account of guidance issued by the Department.

DFI Guidance – Draft Development Plan Practice Note (DPPN) 11

3.4 Circulated to all 11 NI Councils for comment on 24th August 2021 this document deals primarily with procedures as well as good practice that apply to both Development Plan Documents (DPDs): namely, the Draft Plan Strategy (PS) and Draft Local Policies Plan (LPP).

3.5 Once a draft Development Plan Document (DPD) has been submitted to the Department and an Independent Examination (IE) has been caused, the Planning Appeals Commission (PAC) or person appointed by the Department, will move forward with facilitating the IE. A report on the Examiner's findings and recommendations will be provided to the Department. This practice note focuses on the key legislative requirements in relation to the consideration of the IE report and adoption of a DPD by a council.

3.6 It recognises the fact that the new LDP process is still developing and therefore provides for a degree of flexibility. When the system has had an opportunity to mature the Department will then be in a position to provide more detailed guidance on this stage of the process.

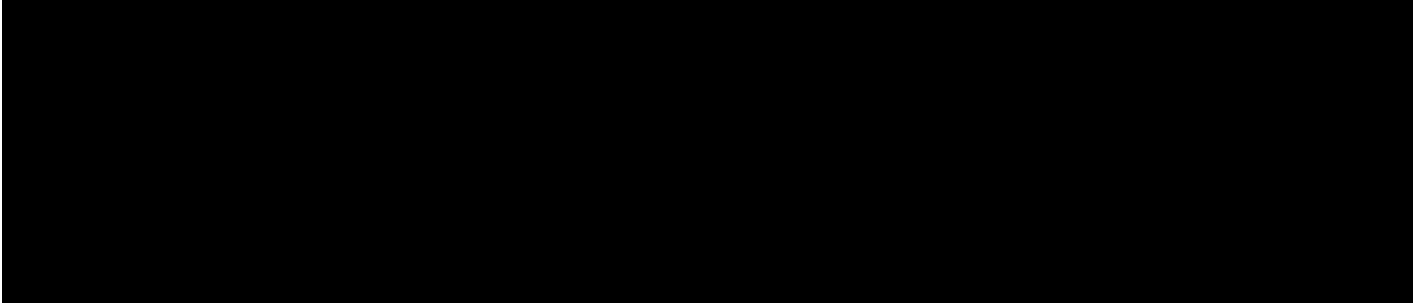
4.0 Recommendation

It is recommended that the Planning Committee agree to the Head of Planning responding to DfI on behalf of Council.

Appendices:

Appendix 1: DfI E-mail to Council re DPPN 11.

Appendix 2: Draft DPPN 11.



From: Maroadi, Julie <[redacted]> **On Behalf Of** Wilkin, Susan

Sent: 24 August 2021 16:28

To: Ann McCullough ([redacted]);
[redacted] Chris Boomer ([redacted]);
[redacted]; Conor Mallon ([redacted]) <[redacted]>;
[redacted] Damian Mulligan (Planning Manager)
[redacted] <[redacted]>;
Denise Dickson <[redacted]>; Ed Baker ([redacted])
<[redacted]>; Keith Sutherland ([redacted]);
[redacted]
[redacted] Sinead McEvoy ([redacted])
[redacted]; Susie McCullough ([redacted])
<[redacted]>; [redacted]
Sharon Mulhern <[redacted]>
[redacted]
[redacted]

Subject: Draft Development Practice Note 11- Receipt of Independent Examination Report and Adoption of a Development Plan Document

Dear all

Draft Development Practice Note 11- Receipt of Independent Examination Report and Adoption of a Development Plan Document (DPPN11)

I refer to recent discussion at the Development Plan Working Group and attach draft DPPN11 which has been shared and discussed with the Planning Appeals Commission. It is intended to assist Councils and others engaged in the planning system through the key requirements for the receipt of the Independent Examination report and the adoption of a Development Plan Document.

It is important to note as stated in the introduction to the practice note, that it focuses on the key legislative requirements and recognises the fact that the new LDP process is still developing and

therefore provides for a degree of flexibility in the process. When the system has had an opportunity to mature the Department will then be in a position to provide more detailed guidance on this stage of the process.

If you wish to make comments on the draft guidance I would be grateful if you could do so by the **30th September** and if you have any queries in relation to the above please contact myself, Suzanne Bagnall or Claire Patton from the team to discuss.

Regards

Julie



Julie Maroadi – On behalf of the Personal Secretary for Susan Wilkin, Deputy Director, Strategic Planning Directorate
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Please consider the environment - do you really need to print this e-mail?

Development Plan

Practice Note 11

PRACTICE NOTE

11

Receipt of Independent Examination Report and Adoption of a Development Plan Document

August 2021

1. Preamble

- 1.1 This Development Plan Practice Note is designed to guide planning officers and relevant users through the key requirements for the adoption of Development Plan Documents and deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from the **Planning Act (Northern Ireland) 2011** (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.
- 1.2 Where appropriate this practice note will therefore highlight:
- Relevant legislation;
 - Procedural guidance;
 - Definitions;
 - Best practice examples / relevant case law.
- 1.3 This guidance is not intended to replace the need for judgement by planning officers in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note¹ and legislation the provisions of the legislation will prevail.

¹ Please ensure you are considering the most up to date version of this practice note available on the Planning Portal at www.planningni.gov.uk and the most up to date legislation on the legislation website at www.legislation.gov.uk, which is also accessible via the Planning Portal.

2. Introduction

2.1 Once a draft Development Plan Document (DPD) has been submitted to the Department and an Independent Examination (IE) has been caused, the Planning Appeals Commission (PAC) or person appointed by the Department, will move forward with facilitating the IE. A report on the Examiner's findings and recommendations will be provided to the Department. This practice note focuses on the key legislative requirements in relation to the consideration of the IE report and adoption of a DPD by a council. It recognises the fact that the new LDP process is still developing and therefore provides for a degree of flexibility. When the system has had an opportunity to mature the Department will then be in a position to provide more detailed guidance on this stage of the process.

3. Legislative context

3.1 **Part 2 of the 2011 Act** sets out the legislative provisions for local development plans^[1]. In relation to the IE recommendations and the Department's consideration of the recommendations and subsequent direction to a council, the provisions are set out in **Section 10(8)** and **Section 12 of the 2011 Act**.

3.2 **Regulation 24 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 Regulations** sets out the requirements for the adoption of a development plan document by the council. Further details of each legislative requirement will be highlighted and set out below.

4. IE Recommendations to the Department under Section 10(8) of the Act

4.1 Once an IE has concluded, **Section 10(8) of the 2011 Act** states that the person appointed to carry out the examination must-

- a) Make recommendations;

^[1] Table 1 of Development Plan Practice Note 01 outlines the 'Key Legislative Requirements for a Local Development Plan' and Figure 3 outlines the 'Key Stages in the Local Development Plan Process', where the IE of the PS comprises part of Stage 2 and the IE of the LPP comprises part of Stage 3 of the four stage Local Development Plan process, respectively.

- b) Give reasons for the recommendations.

4.2 This will usually form part of a report and will be sent to the Department after the conclusion of an IE in line with regulation 24(1) of the LDP Regulations. The report will be expected to:

- Reach clear, reasoned conclusions on the DPD's compliance with the statutory requirements and its soundness;
- Present recommendations on any necessary modifications to the DPD's which are required to overcome any correctable shortcomings in regard to statutory requirements or soundness; or
- Conclude that the DPD is unsound without modifications.

4.3 It should be noted that a degree of flexibility may be required around the timescale for this part of the process given the potential scope and nature of recommendations on any necessary modifications set out in the IE report.

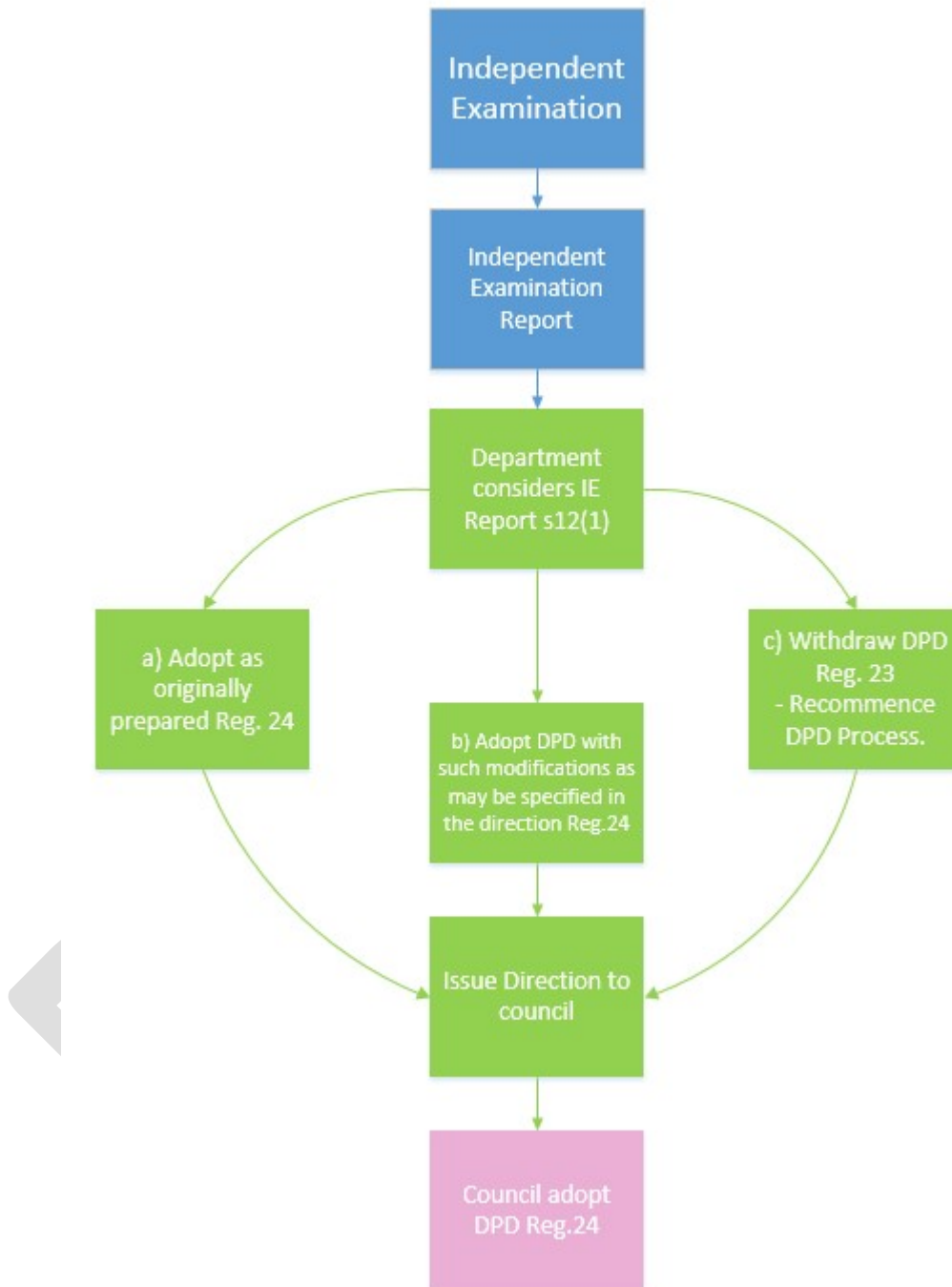
4.4 When assessing the soundness of a draft DPD, the Examiner will exercise their professional judgement based on the evidence presented. As set out in s 10(6) of the Act, the purpose of the independent examination is to determine in respect of the DPD, whether it satisfies the requirements of s.7 & 8 or as the case may be, s. 7 & 9, and any regulations under section 22 relating to the preparation of DPD, and whether it is sound.

5. Direction issued by the Department under section 12 of the 2011 Act

5.1 **Section 12(1)** states that the Department must consider the recommendations made under section 10(8) and direct the council to-

- a) Adopt the development plan document as originally prepared;
- b) Adopt the development plan document with such modifications as may be specified in the direction; or
- c) Withdraw the development plan document.

Fig 1 – DPD Adoption Flow chart



5.2 **Section 12(2)** states that the Department must give reasons for any direction given. The Department will consider the recommendations made within the report and direct the council accordingly.

- 5.3 In carrying out this consideration, the Department will be guided by its key powers and functions in the important role of the adoption of the local development plans, to ensure orderly and consistent development of land and the planning of that development.
- 5.4 The Department will also be guided by its legal requirements, and the reasons and recommendations of the IE report which has fully examined the evidence at IE, guided by the objective of furthering sustainable development and promotion or improvement of well-being.
- 5.5 The timeframe for the Department's consideration is not prescribed and will depend on the nature of the recommendations made, however, the Department will liaise with the Council to provide an indication of when its consideration will be concluded.
- 5.6 The Department will not release the IE report / recommendations prior to the issuing of the Direction to the Council.

6. Requirements to be met by the council after the receipt of the Department's direction

- 6.1 Section 12(3) states that the council must comply with a direction given by the Department. Where this direction issued is to adopt the DPD, either as originally prepared or with modifications, under Section 12(4) this must be by resolution of the Council (which is full Council) and must be done as soon as reasonably practicable after the receipt of the Department's direction under section 12(1)(a) or (b) in accordance with regulation 24(2).
- 6.2 There is currently no prescribed timeframe for the adoption of a DPD.
- 6.3 As prescribed in Section 8(7) and 9(8), a plan strategy, or a local policies plan, is only a plan strategy or a local policies plan, when adopted by resolution of the council (full council) or approved by the Department under Section 16 (6) under the Department's default powers. It will be a matter for the planning authority to determine the weight to be given to the draft DPD or individual policies once the Department issues a direction to a Council.

6.4 Regulation 24(3) sets out the requirements that must be met by the council on the date on which they adopt the DPD, including requirements for publicity and advertising of the DPD and other reports as prescribed. It states that the following documents must be made available for inspection at the council's principal offices and in such other places within the district of the council as the council considers appropriate;

- The DPD,
- A statement prepared by the council specifying the date on which the DPD was adopted,
- the report under section 8(6)(b) or 9(7)(b),
- the recommendations made and the reasons for those recommendations under section 10(8), and
- the Department's direction under section 12(1)(a) or (b).

6.5 In accordance with regulation 24(3)(c) the council must publish the above information on its website. It must also give notice in the Belfast Gazette and by local advertisement of the statement prepared by the council specifying the date on which the DPD was adopted and details of where and when it can be inspected in line with regulation 24(3)(d).

6.6 In accordance with regulation 24(3)(e), the council must send to the Department a copy of each of the documents referred to above and in regulation 24(3)(a). They must also, in accordance with regulation 24(f), notify any person who has asked to be notified of the adoption of the DPD.

7. Transitional Arrangements

7.1 When both a Plan Strategy (PS) and Local Policies Plan (LPP) are adopted together they comprise the local development plan (LDP) for a given council area.

7.2 Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements set out in the SPPS shall cease to have effect in the district of that

council and shall not be material from that date, whether the planning application has been received before or after that date.

8. Adoption of Plan Strategy

8.1 As set out in the Schedule to the LDP Regulations (Regulation 32 Transitional Arrangements), when the plan strategy is adopted by a council or approved by the Department a reference to the LDP is a reference to the departmental development plan and the newly adopted plan strategy read together (3.a)).

8.2 Furthermore any conflict between a policy contained in a departmental development plan, and those of the plan strategy must be resolved in favour of the plan strategy, unless any other material considerations indicate otherwise (3.(b)).

9. Adoption of Local Policies Plan

9.1 When a Council adopts the local policies plan for its district the according departmental development plan/s shall cease to have effect in its entirety.

10. Monitoring

10.1 The final stage in the local development plan preparation process is monitoring and review which are essential in establishing how the objectives in the local development plan are being achieved and whether any changes are required.

10.2 Monitoring is a continuous process and does not end once a DPD is adopted. Monitoring and review should be an ongoing function of the plan led system and is a vital aspect of evidence based policy making.

10.3 It represents an essential feedback loop within the cyclical process of achieving sustainable development and achievement of the plan objectives.

10.4 The key legislative requirements in respect of monitoring and review are as follows:

10.5 Section 21 of the 2011 Act states every council must make an annual monitoring report (AMR) to the Department, in accordance with Section 21(2) & (3), on the extent to which the objectives of the LDP are being achieved.

10.6 Regulation 25 sets out the minimum standards and more detailed requirements for the AMR, which must be:

- (a) for the period of twelve months commencing on 1st April in each year and ending on 31st March in the following year, and
- (b) the time prescribed for the purposes of section 21(3)(a) is six months after the end of the period in respect of which the report is made or at any other time that may be agreed with the Department.

10.7 Regulation 25(2) states the Annual Monitoring Report must specify:

- (a) the housing land supply at the beginning and end of the period specified in paragraph 25(1) ,
- (b) the number of net additional housing units built in the council's district for—
 - (i) the period specified in paragraph 25(1) and
 - (ii) the period since the local policies plan was first adopted or approved;
- (c) the supply of land for economic development purposes in the council's district, and
- (d) such other issues as appear to the council to be relevant to the implementation of the local development plan.

10.8 Further to above Regulation 25(3) sets out that where a policy specified in a local development plan is not being implemented, the annual monitoring report must identify that policy and include a statement of—

- (a) the reasons why that policy is not being implemented,
- (b) the steps (if any) that the council intend to take to secure the implementation of it, and

- (c) whether the council intend to prepare a revision of the local development plan to replace or amend the policy.

10.9 The AMR will assist councils to undertake comprehensive and reliable monitoring in order to establish how the objectives of the LDP are being achieved and determine whether any changes are required to ensure the continued delivery of the LDP. As a minimum, the AMR should report on the amount of housing land and number of units built together with the amount of economic land in a council's area. A council may also include other information as it considers relevant.

10.10 While the AMR will not be required until the LDP is fully adopted it is considered good practice to monitor all policies within the Plan Strategy, as this is the key mechanism to assess the delivery and implementation of a plan's strategy and will inform the evidence base for the Local Policies Plan. It also provides transparency in the planning process by keeping stakeholders and the community informed regarding the performance of the plan against the issues it has identified.

11. Monitoring and SA

11.1 As set out in DPPN 04 (Sustainability Appraisal incorporating SEA) councils must also undertake monitoring requirements as part of the SA and EQIA of its DPD. The SA should help to improve the quality of the plan making process by facilitating the effective monitoring of implementation of the plan. Monitoring of the plan should take place in accordance with the monitoring framework and should meet the requirements of Regulation 16 EAPP (NI).

11.2 The SA Report must provide a description of the measures envisaged to meet the monitoring requirements as set out under **Regulation 16 of EAPP (NI) Regulations**².

11.3 Regulation 16 of EAPP (NI) Regulations sets out the requirements for monitoring the implementation of the plan. Monitoring should help a council to identify any unforeseen adverse effects at an early stage and implement the necessary remedial action.

² Regulation 16 of Environmental Assessment of Plans and Programmes (NI) Regulations

Monitoring should focus upon the likely significant effect identified by the SA and the mitigation measures proposed to offset or reduce significant adverse effects.

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