

**Department for Infrastructure Planning Act (Northern Ireland) 2011, Adoption of
Derry City and Strabane District Council Plan Strategy, (s12) Direction 2024 -
Explanatory Note**

1.0 Context

- 1.1 As part of the two-tier planning system, which commenced in April 2015 along with the transfer of planning powers to Councils, the Department holds a dual role in the Local Development Plan process. This dual role includes that of statutory consultee, as well as providing for oversight responsibilities.
- 1.2 At this point in the Council's Local Development Plan (LDP) process, the Department is undertaking its oversight responsibility as required by legislation.
- 1.3 The Department must consider the Planning Appeals Commission (PAC) Independent Examination (IE) report under Section 12 (s.12) of the Planning (Northern Ireland) Act 2011 (the Act) and as a result whether to direct adoption with or without modifications or to direct withdrawal of the plan document. In doing so, the Department must exercise the following powers in relation to the adoption of local development plan documents:
- Section 1 (s.1) of the Planning Act, the Department's legal duty to formulate and co-ordinate policy ensuring the orderly and consistent development of land and the planning of that development; and
 - the application of regional policy and objectives of the Regional Development Strategy 2035 (RDS 2035) and the Strategic Planning Policy Statement (SPPS).
- 1.4 This Explanatory Note accompanies the direction for Derry City and Strabane District Council to adopt the draft Plan Strategy with modifications as required by s.12 of the Planning Act (Northern Ireland) 2011 (the Act). The intention of this Note is to set out reasoning of how the Department has reached certain conclusions in respect of some of the Commissioner's recommendations. In

that respect, this reasoning is not exhaustive and does not cover all aspects of the Department's consideration under s.12.

2.0 Planning Appeal Commission Independent Examination Report

2.1 The IE for the Derry City and Strabane District Council draft Plan Strategy was held by the PAC from 5th to 28th September 2023 and 3rd and 4th October 2023. The IE report was subsequently received by the Department on 10th May 2024. A total of **200** recommended amendments (RAs) that were required to make the Plan Strategy sound were appended to the main report (Appendix 4).

2.2 Schedule 2 of the direction identifies **113** modifications (MODs) that the Department is directing the Council to take forward. These modifications include amended 'Proposed Changes' (PCs), proffered changes recommended during the IE session known as 'Further Changes' (FCs) and new changes by the commissioner following the conclusion of the IE process. In line with the PAC report, the Department has specified wording, where necessary, to address the recommendations within this Schedule.

3.0 Consideration of the PAC IE Recommendations

3.1 Following consideration of the IE report and Commission's recommendations, the Department confirms its acceptance of the concluding findings of the report, in that the Plan Strategy is sound subject to modifications.

Proposed Changes and the Commission's Approach

3.2 There are **200** RAs set out in the IE report and a significant number of these constitute proposed changes (PCs) which were taken forward by the Council prior to the submission of the dPS to the Department.

3.3 It is the Department's position that as these changes were publicly consulted on during the period 9th December 2021 to 3rd February 2022, in line with the provisions of Development Plan Practice Note (DPPN) 10 'Submitting Development Plan Documents for Independent Examination', they form an

addendum to the Plan Strategy. These are contained in Schedules 1A & 1B of the direction.

Further Changes and the Commission's Approach

- 3.4 The Department notes the Further Changes (FCs) put forward by the Council in Matters Arising 7 (MA007 - October 2023) and understands these were for consideration by the Commissioner in relation to the tests of Soundness of the Plan. The Commission has included a number of FCs within the **200** RAs but is silent on the remaining FCs. The Department has listed ALL FCs in either Schedule 2 or Schedule 3 to provide clarity to the Council.

Schedule 1A and 1B

- 3.5 Schedule 1A of the direction contains the Council's PCs (November 2021) that have not been subject of any change throughout the IE process, though have been given a RA reference by the Commissioner, as the Commissioner **does consider** these amendments are required for soundness.
- 3.6 Schedule 1B of the direction sets out PCs that have not been given a RA reference by the Commissioner as the Commissioner **does not consider** these are required for soundness.
- 3.7 However, as outlined above these changes have all been the subject of public consultation, are in line with DPPN 10 and therefore in the Department's view constitute an addendum to the draft Plan Strategy which has been through IE.
- 3.8 Therefore, the Department commends the Council to reflect Schedule 1A & 1B as part of the adoption of the Plan Strategy.

Schedule 2

- 3.9 Schedule 2 of the direction sets out the modifications that are required for the Council to undertake for the adoption of the Plan Strategy. Schedule 2 includes

amended PCs, a number of FCs, new commissioner changes, as well as new Dfl modifications.

Schedule 3

- 3.10 Schedule 3 of the direction is provided for information only. It lists those Further Changes (FCs) that were discussed at IE; however, the Commissioner **does not consider** these are required for soundness and therefore does not include them within the RA table. As mentioned above, the Department has also considered these FCs and has divided these remaining FCs into two lists:
1. those FCs that the Council could consider under **MOD 113**; and
 2. those FCs that are **not to be carried out**.
- 3.11 An additional modification (**MOD 113**) has been included within Schedule 2, to direct the Council to ensure that any other presentational or factual amendments, typographical or grammatical errors, or consequential changes within the draft Plan Strategy, are updated as a result of all modifications and minor editing changes (Para 3.3 of the Direction)
- 3.12 The Department has provided further explanation on the rationale for a limited number of modifications as set out below. It should also be noted that all the RAs listed in Schedule 1A and Schedule 2 refer to numbering as detailed in the draft Plan Strategy.

4.0 Strategic Issues

MOD 05: Resilient form of Settlement

FC 09 PS Ref/page: Page 63 para 6.14, Page 88 para 7.50, Page 90 para 7.53 & 7.57

- 4.1 Chapter 7 (General Development Principles and Policies) of the draft Plan Strategy (dPS) sets out the idea for a feasibility study for a “Resilient form of Settlement”. This “one off project” is proposed by DCSDC as an initiative to demonstrate best practice in terms of sustainable development and

adaptation to climate change. The Department was concerned that there was a lack of detail which created ambiguity in relation to what exactly is being proposed. The Department's modification is required to ensure that any proposed new 'resilient form of settlement' would be comprised within the housing allocation set out in the plan and therefore would only be necessary where required to meet the housing need identified by the plan, once the high level of existing commitments is taken into account. Furthermore, modifications have been made to ensure that the sequential approach of the Strategic Planning Policy Statement has been incorporated into the proposal. This ensures that previously developed land in settlements is prioritised before consideration is given to the significant expansion of an existing town, village or small settlement or, lastly, creation of a new settlement.

MOD 17 & 18: GDP 1-8 and GDPOL1 and 2

FC 12 & FC 17 PS Ref/page: Pages 88-108

- 4.2 During the IE Session an issue was raised relating to clarity between the General Development Policies and the General Development Principles. The Council proffered Further Changes (**FC12** and **FC17**) to provide this clarity, in order to distinguish these 'Principles' from 'Policies', as well as a further paragraph to explain the differences after paragraph 7.51 of the draft Plan Strategy. The Commissioner did not provide any narrative in the IE report on the consideration of these FCs nor explain why these FCs were not required for coherence and clarity of the plan. Therefore, for clarity the Department has included these FCs in schedule 2.

MOD 43 & 44: Tourism

PS Ref/page: pgs 188, 190-193 IE Report Page: pg 45, para 3.48-3.49

- 4.3 The Commissioner endorses a number of the Council's proposed changes as part of PC 96 through **RA 71** including the provision of a definition and information on short-term let accommodation in the urban and rural context in Appendix 2, however does not specify what this information should be.

- 4.4 There is no general accepted definition of what is considered to be ‘short term let accommodation’ in current planning policy or within any associated tourism legislation therefore the Department will direct the Council to provide a definition and information on short term let accommodation at the time of adoption as detailed in **MOD 43** as the Council will be aware of any associated issues within its area.
- 4.5 Following on from **RA71**, a similar issue is raised with regards to **RA72** below.
- 4.6 To eliminate the potential for confusion the Commissioner recommended it necessary to define what is meant by ‘B&B & Guest Houses’ accommodation, given the many references within policy TOU 4. The Department accepts that the formal definition of guesthouses is contained within PPS 16, and this can be brought forward in the Plan Strategy. However, as there is no general accepted definition of what constitutes ‘B&B accommodation’ within current planning policy, the Department has therefore considered the provisions of the Tourism legislation and the requirements for Tourism N.I, and will direct the following definition to be included within the Plan Strategy.
- 4.7 The definition for B&B is as follows:
“Overnight sleeping accommodation for visitors providing a cooked breakfast and the daily servicing of bedrooms”. B&Bs must meet the requirements of the Tourism (Northern Ireland) Order 1992 and the Tourism Categories of Tourist Establishment (Statutory Criteria) Regulations (Northern Ireland) 1992 and hold a current Tourism Northern Ireland certificate in order to sell overnight accommodation.”
- 4.8 These definitions will be set out in appendix 2 of the Plan Strategy as directed by **MOD 44**. The Department has included an annex to schedule 2 to detail these changes for clarity, Sch 2 Annex 2.

MOD 57: Agriculture and Other Development in Countryside

PS Ref/page: pg 211-217 IE Report Page: pg 52-53, para 2.5-2.12

4.9 Paragraph 6.73 of the SPPS and Policy CTY 1 of PPS 21 establish the range of types of sustainable development that may be appropriate within the countryside with a presumption against other types of development. The Commissioner agreed with the Council in relation to PC118 and PC 119 *‘that this should be more explicit throughout this chapter of the dPS, including within its title, and in its policies. Setting out this default position, similar to Policy CTY 1 of PPS 21, enables a coherent approach to be adopted in order to manage future development proposals in the countryside’*.

The Commissioner therefore brought forward **RA 90** which was to:

Change the Chapter title to ‘Other Development in the Countryside’ and the initials of all these policies from AGR 1-3 to ODC 1-4. See Sch 2 Annex 3 for the proposed re-wording of the introductory paragraphs from page 211 and Policy ODC 1 and its J&A paragraphs.

4.10 The Department notes the Commissioner refers to Annex 1 which is part of Appendix 4 of the IE Report comprising the ‘Schedule of Recommended Amendments’. Annex 1 comprises the ‘Amended wording of Policy HE 2 Archaeology, HE2b Archaeological Mitigation, HE 4 Listed Buildings, HE 8 NDHAs & HE 9 Enabling Development, as well as RED1-5’ but does not provide proposed re-wording of the introductory paragraphs from page 211 and Policy ODC 1 and its J&A paragraphs. The PAC has confirmed the relevant reference should have been Annex 3 (which is part of the Council’s consolidated changes document dated 3rd October 2023) Therefore, the Department’s MOD will reflect this, and this is set out in Sch 2 Annex 3.

MOD 61: HOUSING ALLOCATION

FC 42 PS Ref/page: Page 221 & Appendix 5 Table 1

4.11 The Council’s justification for **FC 42** is set out on pages 79 and 80 of MA007 indicating that this was:

“an arithmetic correction to some figures in Table 1, especially its 4th column, so that it agrees with the correct figures that are in Table 8. The key output figures were also correct in Table 1.”

- 4.12 This change proposed to Table 1 – “Allocation of Housing over LDP Period 2017 – 2032, for DC&SDC’s Settlements, based on crude Size” of Appendix 5 – “Housing Allocation Tables” of the draft PS is described by Council in the MA007 as follows:

“See corrected and strengthened Appendix 5 Table 1, at Annex 0 of this document. The settlement household numbers had been divided by the wrong houses total, thus giving slightly incorrect percentage figures so they did not add up to the same, correct figures that are in Table 8 of dPS p. 221. However, the other figures in Table 1 were correct, particularly the important figures in the 3rd last column i.e. % house numbers. Two new ‘totals’ rows have been added at the top of the table, to make the subsequent figures transparent.”

- 4.13 **FC 42** is not addressed in the IE report or the associated Appendix 4 of Schedule of Recommended Amendments. Notwithstanding this, the Department appreciates this FC relates to the DCSDC housing allocation, an issue of strategic importance and interest and is a necessary correction and therefore intends to take it forward as a modification within its Direction. For clarity the Department has included this in an annex to schedule 2, known as Sch 2 Annex 4. RA 112 and 113.

RA 112 and 113

- 4.14 The IE report (page 66, paragraph 4.35) recommended amendments RA112 and RA113. RA112 required a new criterion (m) inserted in policy HOU 8 to state *“the proposal will result in no net loss of biodiversity and preferably contribute to biodiversity net gain (Department’s emphasis), being incorporated into the design and layout as part of the development proposal”*. RA 113 similarly required a new criterion (e) is inserted into HOU 10 to read *“the proposal will result in no net loss of biodiversity and preferably contribute*

to biodiversity net gain". The Commissioner's indicated these RAs are required "in order to ensure (*Department's emphasis*) *that biodiversity net gain is incorporated into the design and layout of development proposals*". Use of the word "preferably" in relation to biodiversity net gain however strongly indicated that net gain was encouraged but not mandatory. The Department sought clarification from the PAC on what they understood the requirement to be. They responded by identifying a tension between RA 112 and 113 and GDP2 'Climate Change' and GDP6 'Importance of Ecosystem Services' (as amended by RA 13 and 15).

- 4.15 The response from the PAC indicated that, in view of the Commissioner's identified need to ensure a more robust approach, the word 'preferably' should be removed from RA 112 and RA 113. The Department subsequently engaged with the Council through the fact check exercise and they confirmed that the general development principles GDP1, 2, 6, 7 only require no net loss of biodiversity. Furthermore, the Council highlighted the fact that Policy GDPOL1 (as amended by RA 21) requires only that 'development does not cause a net loss of biodiversity' and states only that "preferably biodiversity net gain will be incorporated into development". Therefore, removal of the word 'preferably' from RA112 and RA113 was a significant change which introduced conflicts within GDP1, 2, 6, 7, and GDPOL1 and went further than the Council intended in the LDP. The Department has decided to retain the word 'preferably' which is now incorporated RA 112 and 113 of Sch 1A.

MOD 89: NATURAL ENVIRONMENT

PS page 330, Policy NE 3, RA 145

- 4.16 **MOD 89** inserts an amended final paragraph to Policy NE 3 re 'active peatland which cannot be mitigated or fully compensated for'. This wording was not part of PC 181 but was considered in PAC para 5.4 and was included in RA 145.

- 4.17 DfI consider the reference to active peatland is not required to be included in this part of the policy as it is referenced at an earlier point in policy NE 3 as well as within the renewable energy policies of the Plan Strategy. The policy provision for wholly exceptional circumstances where planning permission may be granted for proposals likely to result in damage or direct loss of habitats, cites ancient or long-established woodland as an example but this may also include other natural heritage and landscape features.

MOD 91: Natural Environment

PS Ref/page: pg 333, para 21.28 IE Report Page: RA 147

- 4.18 The SPPS states that AONBs “are designated by the Department”. At the time the SPPS was published “the Department” was in relation to DoE. NIEA, part of DoE at the time, did designate AONBs. However, after the reform of government, The Departments (Transfer of Functions) Order (Northern Ireland) 2016, article 8(1)(c), transferred the responsibility for designating AONBs to DAERA (through NIEA). The Department acknowledges the Council’s PC was reflective of this but the RA changed the reference to the incorrect Department. Therefore, within **RA147**, the reference to “Department of Infrastructure” has been amended to the Department of Agriculture, Environment and Rural Affairs”. The PAC has been advised accordingly.

MOD 96: Historic Environment

PS Ref/page: Para 23.40-page 356 IE Report Page: 90

- 4.19 In **RA 157** the Commissioner amended the text at paragraph 23.40 to include reference to DfI as an authority to designate conservation areas. However, the Department wish to highlight the provisions of The Departments (Transfer of Functions) Order (Northern Ireland) 2016 Schedule 5 Part 1 transferred Section 104 of the 2011 Planning Act to the Department for Communities (DfC). The reserve power under Section 104(2), intended to be used by exception, now resides with DfC. Therefore, the Department has corrected this error and this is detailed under this MOD.

- 4.20 Historic Environment policies HE 2, 4, 8 and 9 have been subject to significant change throughout the process, resulting in the commissioner complying into a single annex containing the information for RA 154, 156, 159, 160. The Department has carried these forward detailed in this MOD as presented in Sch 2 Annex 5.

MOD 99: Renewable Energy and Low carbon Energy Development

PS Ref/page: Page 365-375, IE Report Page: 92-98

- 4.21 The renewable energy policy RED 1 within the dPS has gone through a number of changes since the draft Plan strategy was published, the first set of changes were put together by council under Annex 6 of their proposed changes document (PC 206) which is also included in the Matters Arising document (Annex 6 -MA007). This change involved breaking up the policy, amending the ordering of text and adding new headings which meant there was 5 policies in total (RED1-5). These changes were subjected to a number of further changes and as a result of the changes a total of 18 RAs (RA 162-179) are listed in schedule 2. The Commission included the Council's annex to their schedule of recommended amendments table as Annex 1 of Appendix 4, to incorporate all the policy changes that were considered to make the plan sound, and this is referenced under RA162 (PC206 amended). The report reflects why these changes are required and Dfl are content with these conclusions.
- 4.22 For consistency and clarity, Dfl felt it would be prudent to include the J&A text to this Annex and therefore all the RAs have been grouped together under ONE modification, MOD 99, within Schedule 2 and now also includes the changes made to the J&A. This is set out in Schedule 2 Annex 6.

Renewable Energy Proposed changes (PCs) not considered by the Commissioner

- 4.23 There were also a number of PCs which the commissioner has not given a recommended amendment (which normally we would list under Schedule 1B) but for clarity and consistency, Dfl has also grouped them into Schedule 2 as

follows, to indicate to the Council which PCs are included and which PCs have been superseded:

- PC 207 and PC 221 are now included within Sch 2 Annex 6
- PCs 208,209,210 and 215 have all been superseded by Sch Annex 6

Renewable Energy Further changes (FCs) not considered by the Commissioner

4.24 There were also a number of FCs which were proffered by Council during the IE but Commissioner has not accepted them. Therefore, for clarity and consistency, DfI have also grouped these into Schedule 2 to show that these FCs have now been superseded by Sch 2 Annex 6: FC 67,68, 69, 69A,70 and 70A.

5.0 Regional Strategic Planning Policy Review

5.1 The Council will be aware of the review of the Renewable Energy and Low Carbon and emerging updated Regional Strategic Planning Policy. The Council will be expected to consider the renewable energy policy within the Plan Strategy against any revision to Regional Strategic Planning Policy.

6.0 Other Matters

Presentational, typographical, grammatical errors.

6.1 It should also be noted, and as set out in the direction, that the Council should ensure that any other presentational or factual amendments, typographical and grammatical errors, within the Plan Strategy, are updated as a result of all modifications and minor editing changes. These updates should not amend the nature and intent of the modifications as directed.

Publicity

6.2 The Department considers that the publicity of the IE report is for the Council to undertake, in conjunction with the publication of the direction as set out in regulation 24 of The Planning (Local Development Plan) Regulations (Northern

Ireland) 2015. The Council should however provide notification of the adoption of the draft Plan Strategy by resolution of the council, to the Department.

Supplementary Planning Guidance (SPG)

- 6.3 The Department acknowledges the Council's Chapter 38 on SPG (page 464 of the DPS) and Appendix 6 (page 507 of the dPS) to supplement the Plan Strategy, and acknowledge a range of subject policy SPG will be taken forward in due course as indicated in the relevant PCs/MODS, as well as the fact that Council will identify, prepare and publish any additional SPG (para 38.3 of the dPS). The Department would highlight that SPG is intrinsically complementary to policy and should assist in its interpretation and implementation but should not expand the scope of that policy or introduce more onerous obligations or undertakings.

Monitoring and Review

- 6.4 The IE report acknowledges the essential role that monitoring plays as part of the wider plan, monitor and manage approach. It is acknowledged that the main device for reporting on the performance of the plan will be the Annual Monitoring Report (AMR). The Commission considered representations regarding the Monitoring Framework and made recommended amendments where appropriate. Subsequently the Department has directed updates to the Monitoring Framework where necessary.
- 6.5 The report accepts that not all policies require associated indicators within the Monitoring Framework. The Council will be aware that the plan should be reviewed, or partially reviewed, to take account of changing conditions as this is a statutory duty in accordance with Section 13 of the Planning Act (NI) 2011. As a matter of good practice, it is the Department's view that monitoring of the policies of the Plan Strategy should commence once the development plan document is adopted as this will assist in informing the preparation of the Local Policies Plan.

Transitional Arrangements

6.6 In accordance with the transitional arrangements set out at paragraph 1.11 of the Strategic Planning Policy Statement (SPPS), policy retained by the Department, and detailed on the DfI website (www.infrastructure-ni.gov.uk/publications/retained-planning-policy) will cease to have effect upon adoption, in the Derry City and Strabane District Council area. The retained policy shall therefore no longer be material in the consideration of applications or appeals from the date of adoption, regardless of whether a planning application has been received before or after the date of adoption. The SPPS shall continue to be a material consideration in the determination of planning applications following adoption of the Plan Strategy.

This Explanatory Note should be read in conjunction with DfI Direction Department for Infrastructure Planning Act (Northern Ireland) 2011 Adoption of Derry City and Strabane District Council Plan Strategy (s12) Direction 2024.