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| <b>Title of Report:</b><br><br><b>Sustainability Appraisal and Other<br/>Technical Assessments of the LDP</b> | <b>Officer presenting:</b><br><br><b>Senior Planning Officer</b> |
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## **1 Purpose of Report/Recommendations**

1.1 The purpose of this report is to provide members with an overview to the main Assessments and Appraisals required to be produced in association with preparation of the Local Development Plan (LDP). The report primarily focuses on the important Sustainability Appraisal (SA), which incorporates the legislatively required Strategic Environmental Assessment (SEA). An outline of the other required assessments: Habitats Regulation Assessment; Equality Impact Assessment; and Rural Proofing is also provided. Other assessments are related to the SA but are not specifically covered in this Paper; they include Health Impact Assessment (HIA) and Promoting Social Inclusion (PSI, formerly TSN).

## **2 Background**

- 2.1 The above Appraisals / Assessments, taken together, are required to ensure the promotion of social, environmental and economic considerations, the protection of designated sites of European importance and all relevant S75 obligations, including urban / rural balance are taken into account when preparing the LDP.
- 2.2 The NI Executive's Sustainable Development Strategy (May 2010) 'Everyone's Involved' aims to put in place economic, social and environmental measures to ensure that we can continue to grow the economy, improve our society and communities and utilise our natural resources in an environmentally sustainable manner. Accordingly, it is important to integrate the principles of sustainable development into the LDP process. Section 25 of the NI (Miscellaneous Provisions) Act 2006 requires a Council in exercising their functions to act in the way they best calculate contributes to the achievement of sustainable development.
- 2.3 Section 5 of the Planning Act (NI) 2011 copper fastens this duty by requiring those who exercise any function in relation to LDP's to do so with the objective of furthering sustainable development.

- 2.4 Sections 8(6) and 9(7) of the 2011 Act requires an appraisal of sustainability to be carried out for both the Plan Strategy (PS) and the Local Policies Plan (LPP). As the sustainability appraisal (SA) for each of these development plan documents will incorporate an assessment of environmental effects, it must also comply with the requirements of the European Directive 2001/42/EC on the assessment of effects of certain plans and programmes on the environment (the SEA Directive).
- 2.5 The SEA Directive was transposed into NI legislation through the Environmental Assessment of Plan of Plans and Programmes Regulations (NI) 2004 (the EAPP (NI) Regulations).
- 2.6 The Habitats (Directive 92/43/EEC on the conservation of natural habitats and of wild fauna & flora) and Birds (Directive 3009/147/EC of the European Parliament on the conservation of wild birds) Directives aim to maintain or restore the favourable conservation status of habitats and species of community interest. Special Areas of Conservation (SAC's) and Special Protection Areas (SPA's) are designated to afford protection to habitats and species that are listed in the Habitats and Birds Directives. These designations form a suite of sites which are collectively known as the Natura 2000 network. Our District contains 5 SAC'S – River Foyle & Tributaries; River Faughan & Tributaries; Owenkillow River, Moneygal Bog and the Fairy Water Bogs; and 1 SPA – Lough Foyle. International sites designated under the Ramsar Convention are also included within a HRA. Lough Foyle is a designated Ramsar site.
- 2.7 The Habitats Regulation Assessment (HRA) is required by The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). It aims to assess possible adverse effects on Natura 2000 sites (Special Areas of Conservation, Special Protection Areas) and Ramsar Sites as a result of the implementation of policies and proposals contained within our LDP documents. The process of HRA may be undertaken in parallel with SA and planning officials intend to liaise with Shared Environmental Services to ensure that it meets all legislative requirements.
- 2.8 The primary function of an Equality Impact Assessment (EQIA) is to determine the extent of any impact of a policy upon the Section 75 categories and to determine if the impact is an adverse one. It is also an opportunity to demonstrate the likely positive outcomes of a policy and to seek ways to more effectively promote equality of opportunity and good relations.
- 2.9 Section 75 of the Northern Ireland Act 1998, Equality of Opportunity places a statutory requirement on the Council to carry out their functions with due regard to the need to promote equality of opportunity:
  - between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
  - between men and women generally;

- between persons with a disability and persons without; and
  - between persons with dependents and persons without.
- 2.10 In addition and without prejudice to its obligation above at 2.9, the Council shall, in carrying out its functions, have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- 2.11 The Council is therefore required to ensure that the LDP is prepared in accordance with Section 75 statutory obligations. Consequently, the Council will have to undertake an Equality Impact Assessment (EQIA) to determine if there will be any potential impacts upon Section 75 groups as a result of the policies and proposals contained in their local development.
- 2.12 The concept of Rural Proofing was introduced in the NI Executive's second Programme for Government in 2002 to ensure that the rural dimension was routinely considered as part of the making and implementation of policy. A Rural Needs Bill (DARD) introduced in November 2015 is the first legislative mechanism to deal with what could be broadly defined as rural proofing activity within NI.
- 2.13 Rural proofing is the process by which all major policies within the LDP will be assessed to determine whether they have a differential impact on rural areas and, where appropriate, policy adjustments are made to take account of particular rural circumstances. In essence, the Rural Proofing process will
- identify the potential direct or indirect impact a new or revised policy might have on a rural area (This may require data analysis on a rural-urban basis);
  - make a proper assessment of those impacts, if they are likely to be significant; and finally
  - make the consequent adjustment to that policy (where appropriate) to ensure that the policy meets the needs of rural areas.

### **3 Key Issues**

Sustainability Appraisal (SA) & Strategic Environmental Assessment (SEA)

- 3.1 The purpose of SA is to promote sustainable development through the integration of social, environmental and economic consideration into the preparation of our LDP. The main difference between SA and Strategic Environmental Assessment (SEA) is that SA is wider in scope as it covers the social and economic effects of plans, as well as the more environmentally focused considerations of SEA as required by the SEA Directive.
- 3.2 The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with the view to promoting sustainable development.
- 3.3 Similar to SEA, SA must be carried out from the outset and in parallel with the local development plan preparation process. In doing so it will help ensure that decisions that are made will help contribute to the achievement of sustainable development. Whilst the requirement to carry out a SA and SEA are distinct, it is possible to satisfy both these requirements through a combined appraisal process.
- 3.4 SA should help to improve the quality of the plan making process by:
  - raising awareness of the social, economic and environmental impacts of the plan;
  - facilitating the identification and assessment of reasonable alternatives for the plan;
  - demonstrating that the plan is the most appropriate given the reasonable alternatives;
  - providing transparency in the decision making process and facilitating public participation;
  - facilitating the effective monitoring of implementation of the plan.
- 3.5 The SA process, incorporating SEA must be an integral part of our LDP preparation process. It will perform a key role in providing a sound evidence base for the plan which will play an important part in demonstrating if our LDP documents are 'sound'. This will be thoroughly examined and tested at the Independent Examination and will ultimately determine whether each LDP document can proceed to be adopted.
- 3.6 The SEA Directive requires authorities with environmental responsibilities to be consulted at specific stages in the SEA process. The EAPP (NI) Regulations refer to these authorities as the 'consultation body'. The consultation body must be consulted by responsible authorities who in terms of the Regulations are the bodies which prepare plans and programmes subject to the Directive. In this case, our Council, in preparing a LDP is a 'responsible authority' under the legislation.

3.7 Regulation 4 of the EAPP (NI) Regulations designates the Department for the Environment as the 'consultation body' and delivery of this function is led by The Northern Ireland Environment Agency (NIEA). Our Council will be expected to contact the consultation body at four stages during SEA:

- Screening: When determining if a plan or programme requires a SEA (Article 3(6) of the SEA Directive);
- Scoping: When deciding on the scope and level of detail of the information which must be included in the Environmental Report (Article 5(4));
- Public consultation: When consulting the public on the draft plan or programme and the accompanying Environmental Report (Article 6(2));
- Decision to adopt: When making information available on the Plan adopted, consultations, decisions made, and monitoring measures (Article 9(1)).

3.8 As our Council must undertake a SA which incorporates the legislative requirements of SEA, it must also consult the consultation body as part of the combined SA and SEA process. Similarly, whilst our Council must consult the consultation body in relation to environmental issues, it may also consult other bodies, adjoining Member States / other Councils and/or the public depending upon the nature of the information required e.g. social and economic objectives/issues relating to SA. Accordingly, we should therefore exercise judgement in relation to the level of consultation required to ensure that the SA framework used to appraise our LDP is sufficiently robust and justified.

3.9 As previously mentioned, the SA process will need to be fully integrated into the LDP process. The SA should be started at the same time as our LDP and should inform each stage where decisions are taken. It should also be used for developing arrangements for monitoring the implementation of the plan, in order to identify problems and inform the review of the LDP. The SA process involves the following key stages;

- Stage A(1): SA Scoping Report - preparation of the evidence base to inform the appraisal, establishing the SA framework / objectives for undertaking the appraisal and seeking agreement with Consultation Body;
- Stage A(2): SA Interim Report: consists of SA Scoping Report, assessment of reasonable alternatives against agreed SA framework and undertaking public consultation along with the Preferred Options Paper;
- Stage B: Assessment of alternatives and any likely significant effects of the draft plan against SA framework, taking into account the evidence base and where necessary, proposing mitigation measures for alleviating any adverse effects;
- Stage C: SA Report to document the appraisal process and findings;

- Stage D: Consultation with the public, environmental authorities and any EU member state affected on the sustainability appraisal report and draft plan;
  - Stage E: SA Statement to show how the SA and opinions / consultations have been taken into account, the reasons for choosing the plan as adopted and the proposed measures to monitor the plan;
  - Stage F: Monitoring: establishing arrangements to monitor the significant effects of the implementation of the plan, to identify unforeseen adverse effects and undertake appropriate remedial action.
- 3.10 It is important to stress that the preparation of the LDP and SA should be an iterative process whereby findings at each stage should be taken into account to inform subsequent stages of the plan preparation or appraisal process. This may also involve reviewing the previous stage and where necessary, revising alternatives to enhance positive effects of the draft plan. This will be particularly relevant to the new style of LDP preparation which consists of two separate but related development plan documents i.e. the Plan Strategy and Local Policies Plan.

### **Habitats Regulation Assessment (HRA)**

- 3.11 Habitats Regulations Assessment (HRA) will be required to determine whether our LDP, either alone or in combination with other plans or projects, is likely to have a significant effect on designated International and European sites – Ramsars, SPA's and SAC's. It will be required for both the Plan Strategy and the Local Policies Plan stages. At the Local Policies Plan stage, the HRA format required is more akin to a 'review and update' process. This will demonstrate that this stage has similarly been appropriately developed within the parameters of the Plan Strategy and its associated HRA process with the intended result that the Local Policies Plan will also be found not likely to cause any adverse effects on European site integrity.
- 3.12 The requirement to undertake a Habitats Regulations Assessment stems from Article 6, paragraphs (3) and (4) of the Habitats Directive (92/43/EEC), transposed into Northern Ireland legislation by Articles 43 and 44 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.
- 3.13 The Habitats Regulations Assessment is a staged procedure, entailing up to four possible sequential stages and will be undertaken by the Shared Environmental Service (SES) which was set up to assist Councils to fulfil their obligations under the Conservation (Natural Habitats) Regulations.

Stage 1 - Screening

3.14 Stage 1 (also known as a Test of Likely Significance) is a Screening process, which will identify the likely impacts upon the Natura 2000 / International site from the LDP, either alone or in combination with other projects or plans. It will then consider whether these impacts are likely to be significant. In relation to LDP production, this will be an academic process, as all LDP's, following the precautionary principle, will be subject to a Stage 2 Appropriate Assessment.

#### Stage 2 - Appropriate Assessment

3.15 Stage 2 entails undertaking what is termed an 'Appropriate Assessment' (AA), which is the consideration of the impact on the integrity of the Natura 2000 / International site of the LDP, either alone or in combination with other projects or plans, with respect to the site's structure and function and its conservation objectives.

3.16 SES will undertake the Stage 2 (AA) taking account of in combination impacts. They will advise whether there will be (a) no adverse effects on any European site integrity or (b) the LDP in its current form may have adverse effect on European site integrity and will require the necessary amendment to avoid such effects. However, if the HRA consideration has been iteratively integrated with the LDP preparation, it is expected (although by no means guaranteed) that at this Stage 2, SES will be reporting no adverse effects on any European site integrity.

#### Stage 3 - Assessment of Alternative Solutions

3.17 Stage 3 is the Assessment of Alternative Solutions which examines alternative ways of achieving the objectives of the LDP that avoid adverse impacts on the integrity of a Natura 2000 site.

#### **Stage 4 – Imperative Reasons of Overriding Public Interest**

3.18 In exceptional circumstances where Council proceeds to adopt the LDP despite a negative Stage 2 (AA) assessment, it must be demonstrated that this is for 'Imperative Reasons of Overriding Public Interest'. In such rare cases, compensatory measures would be required to ensure the overall coherence of the network of European sites is protected.

#### **Equality Impact Assessment (EQIA)**

- 3.19 The primary function of an EQIA is to determine the extent of any impact of a policy upon the Section 75 categories and to determine if the impact is an adverse one. It is also an opportunity to demonstrate the likely positive outcomes of a policy and to seek ways to more effectively promote equality of opportunity and good relations.
- 3.20 If a policy shows a possible 'adverse impact' on any group, Council must consider how this might be reduced. This would include how an alternative policy might lessen this effect and serve to promote equality of opportunity and good relations.
- 3.21 An EQIA will be required to be undertaken for both the PS and the LPP. Like the HRA process, the EQIA process for the LPP will also take the form of a 'review and update' undertaking. A period of consultation (8 – 12 weeks maximum) will be allowed at each stage for the public to comment on the EQIA. This will help to raise awareness of issues and problems that policies may pose for various groups within the District which otherwise may not have been discovered.
- 3.22 Council must take into account the EQIA and its consultation response prior to moving to adopt the LDP. Council is required by law to publish a report on the results of the EQIA, detailing how consideration was given to the mitigation of any impacts raised during consultations.
- 3.23 A system will be established to monitor the impact of a particular policy in order to find out its effect on relevant groups. The results of ongoing monitoring must be reviewed on an annual basis. The Council is required to publish the results of this monitoring and these results must be included in the Council's annual review on progress to the Equality Commission.

### **Rural Proofing (RP)**

- 3.24 Our significant rural areas differ from our urban areas due to their greater geographical isolation, population dispersal, longer distances from key services like health, education or leisure facilities and limited local employment opportunities. Accordingly, when developing policy, we will need to think about the potential differential impacts our policy may have on rural areas, particularly those specific new policies that Council brings forward in relation to service provision; economics; infrastructure; social well-being / cohesion and environmental concerns.
- 3.25 Like the other assessments / appraisals referenced in this paper, RP will be an iterative process intertwined with the development of the LDP. If at the outset of the policy development or review Council does not believe there will be direct or indirect impact on rural areas then it must state that it has screened out rural proofing on its Rural Issues Statement. You must also provide the reasons why you have screened out rural proofing and issue this statement with your public consultation pack.

3.26 Similar to the other appraisals / assessments, ongoing monitoring will be a key part of the rural proofing process. Within the Rural Issues Statement, we will be required to detail any rural specific indicators that have been set to monitor our policy implementation. This will include monitoring of relevant data on a rural-urban basis.

#### **4 Financial, Equality, Legal, HR and Other Implications**

4.1 It is considered that there will be significant financial implications associated with the undertaking of the legislatively required SA (incorporating SEA) processes. Shared Environmental Service have offered a costed package to assist local Councils with the preparation of parts or all of their SA process.

4.2 Given the complex nature of the SA process, its iterative role on judging the 'soundness' of the LDP and the potential judicial implications of any alleged deviation from the legislative process, it is considered prudent in the first instance to avail of this limited package of SES support. It is estimated that £20k will be required in the financial year 2016/17 to progress the LDP towards the POP stage and the publication of the first major SA / SEA related reports. It is likely that there may be associated costs in subsequent years.

4.3 It is stressed that the undertaking of all of these assessments / appraisals is intertwined with the preparation of the LDP itself. Assessments and reviews / updates are required at both stages of the LDP production. Their undertaking will have significant resource implications on the LDP team.

#### **5 Recommendations**

5.1 It is recommended that the LDP Planning Committee notes the content of this paper, and the importance of the referenced assessments / appraisals in ensuring a fit for purpose and sound LDP, for information purposes.

#### **Background Papers**

**None**