

**A DISCUSSION PAPER EXAMINING THE ROLE OF  
STATUTORY CONSULTEES IN THE PLANNING PROCESS  
IN NORTHERN IRELAND**

**JOHN IRVINE  
Department for Infrastructure**

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## EXECUTIVE SUMMARY

This paper represents the outcome of a short piece of work that I was tasked with taking forward to examine how NICS departments take forward their responsibilities as statutory consultees within the planning process in Northern Ireland, the extent to which they are meeting response targets and issues around consultation processes, capacity and capability. The formal commissioning note for this assignment is set out in Annex 4. In April and May of 2019 I engaged with a number of key stakeholders and this paper sets out an analysis of the key issues discussed, looks at the challenges faced and examines opportunities to drive continuous improvement.

Planning is a key enabler for the delivery of a range of outcomes at local government and regional level, so I have also considered how stakeholders can come together to streamline processes to build capability and improve the efficiency and responsiveness of the system, particularly for major and "economically sensitive" applications.

Statutory consultees play an essential role in the planning process as planning authorities may not have the necessary expertise in-house to assess the technical and specialist issues of an application's merits. The consultation process is an important element of an open, transparent and democratic planning system where, ultimately, elected politicians oversee final decisions on planning applications.

The planning system has recently undergone its biggest change in over 30 years. Planning reform, implemented with the transfer of the majority of planning functions to Councils in April 2015, brought forward two key proposals to address concerns about the performance of statutory consultees in the planning process - the introduction of a statutory 21 day target for substantive responses to consultations and requirement on consultees to produce an annual performance monitoring report.

The reform programme also highlighted the need for a change in culture across all stakeholders if the potential benefits of the reforms were to be fully realised. This was envisaged to involve an enhanced appreciation and acceptance of both the rights and the responsibilities of all of the stakeholders.

Whilst the Department for Infrastructure has been working with statutory consultees and planning authorities to improve the responsiveness of the system since reform, there is a perception, in some quarters, that current consultation arrangements contribute significantly to planning delays, reducing investor/developer confidence and frustrating the timely delivery of development; development that ultimately delivers outcomes for the economy, the environment and society.

In this report, I have examined the role of statutory consultees; their interaction with the consultation process, planning authorities and other stakeholders, as well as examining aspects the planning system itself, including a statutory consultee view

and experience of the quality and completeness of applications accepted into the planning system.

I have come to 4 **Key Conclusions**

- I consider that strong leadership is required to bring the key players together to drive continuous improvement. My headline conclusion, therefore, relates to the consideration of the establishment of a cross-government Planning Forum of senior leaders to take ownership of the conclusions and areas of further work identified in this paper; working together to build capacity and capability in the system to deliver and oversee continuous improvement in the development management aspects of the planning system
- I have highlighted the value of planning to the delivery of local and regional outcomes and I consider that this needs to be recognised at the highest level in NICS. I have, therefore, proposed that Outcome Owners should ensure that the importance of planning as a key enabler of economic, societal and environmental wellbeing is more clearly recognised in the Outcomes Delivery Plan (and any future Programme for Government and accompanying Investment Strategy). I also see value in the designation of a SRO (or champion) to oversee progress on the most economically sensitive applications that deliver the most significant local and regional outcomes.
- In addition, from a statutory consultee perspective, I have concluded that access to adequate resources is crucial to a more efficient and responsive system. I have, therefore, recommended that relevant departments review the resourcing requirements associated with their statutory consultee role against workloads and determine the need for any additional resource to ensure efficient and timely responses to planning consultations. Recognising that resources are constrained across the NICS, I have linked this to a consideration (with planning authorities) of the level of consultations, to ensure expertise is properly utilised.
- My final key conclusion recognises that the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved and the scope for late representations (delaying decisions) is reduced. As such, I am recommending the consideration of proportionate legislative change to address poor quality applications and enhanced responsiveness by planning authorities.

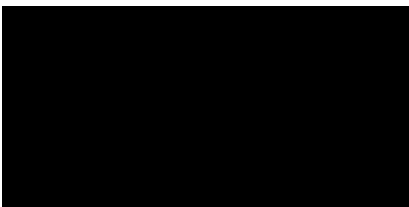
I have also identified some 13 **Areas for Further Consideration** [AFC] in the paper to, hopefully, set out a framework for conversations between key stakeholders around continuous improvement, for example

- The potential for SLAs/Charter Statements to focus minds on continuous improvement.
- Capturing the value of planning in relation to outcomes.
- Consideration of more proactive collaboration to expedite the processing of major or "economically sensitive" applications.

- Engagement with consultants to rectify common mistakes in applications, to drive up quality.
- Ensuring on-line information/data is complete and up to date to improve efficiency.
- Building capacity and capability in the system through targeted training.
- Reviewing the pre-application discussion process to ensure its benefits are maximised.
- Consideration of whether "non-planning elements" can be removed from the process to improve efficiency.
- Reviewing approaches to case management to ensure responses are targeted and proportionate.
- Reviewing case management practices to ensure consultation requests are targeted, to improve efficiency.
- Considering a wider rollout of DfI training proposals on environmental compliance to the wider stakeholder community.
- Ensuring capacity issues in Shared Environmental Services, an essential element on the critical path of planning processes, are addressed.
- I have also identified 8 very specific Areas for Further consideration for the Department for Infrastructure, the most significant statutory consultee - taking about 70% of consultation requests.

The cornerstone of planning reform was to change the culture of the planning system in Northern Ireland to improve its effectiveness. Culture change requires role clarity and the need for all stakeholders to deliver against their responsibilities if the planning system is to become more efficient and responsive and the value of planning, in terms of delivering outcomes, is to be realised.

I hope that this paper will provide a focus for debate and, therefore, help to drive continuous improvement.



JOHN IRVINE  
Department for Infrastructure

9 September 2019

## BACKGROUND

In November 2007, the Minister for the Environment, Arlene Foster, announced that she intended to take forward a programme of planning reform, with the key aim of developing proposals that would enable the planning system to play its part in delivering the Executive's Programme for Government priorities and, in particular, by contributing to *a growing dynamic, innovative and sustainable economy*.

In launching a consultation paper<sup>1</sup> on the reform proposals in July 2009, Minister Poots recognised the impact of planning on everyone's life and its ability to provide places to live and work, to support regeneration and to protect the natural and historic environment. His vision was to transform a mainly regulatory system into a more responsive system to enable appropriate development and to manage the three key elements of the system (development planning, development management and policy development) to achieve sustainable economic growth.

Planning reform was implemented on 1 April 2015 and saw the majority of planning functions returning to Councils as planning authorities, representing the most fundamental change to the planning system in Northern Ireland in over 30 years.

The 2009 reform proposals recognised that the new two-tier planning system would require new and revised processes and procedures as well as the need for a fundamental change in attitude and culture by all of those involved in the planning system, together with the need for constructive engagement between stakeholders to deliver better performance and outcomes. At this time there was a widespread concern that the consultation process contributed significantly to delays in the determination of planning permissions and consents. The reform agenda (and the transfer of planning functions under RPA) presented an opportunity to examine consultation arrangements. A statutory obligation on statutory consultees to reply within a specified timeframe was a key reform proposal.

There was overwhelming support (96% of 152 consultees) for the introduction of a statutory timeframe for consultee responses and this was legislated<sup>2</sup> for in 2015 under the powers conferred by The Planning Act (Northern Ireland) 2011 - the primary legislation that implemented planning reform.

Since reform, although the total number of planning applications has been relatively constant, the number of statutory consultations has continued to increase. The average processing time for local applications (which make up the vast majority (99%) of planning applications received) is around the 15 week target; however, currently, the average processing time for major applications is nearly twice the statutory target of 30 weeks. Indeed, whilst the average gives an overall indicator of performance it does not, perhaps, portray the full story, with some applications taking much less time to process and some taking much more time. There is no doubt that

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<sup>1</sup> 'Reform of the Planning System in Northern Ireland : your chance to influence change

<sup>2</sup> The Planning (General Development Procedure) Order (Northern Ireland) 2015

processing times in the “much more” category are causing frustration for the planning authorities, together with applicants, agents, business organisations, investors and communities and citizens, all with stakeholder interests in the planning process. Initiatives to foster continuous improvement to improve processing efficiency would be widely welcomed, therefore, in my opinion.

The Executive Office's Outcomes Delivery Plan (June 2018) sets out an outcome based framework to give effect to the previous Executive's stated objective of: *Improving wellbeing for all - by tackling disadvantage and driving economic growth.* It places an onus on departments to work collaboratively and to focus on impacts. An efficient and effective planning system can make a positive contribution to the delivery of PfG outcomes. Clearly an inefficient system will not maximise outcomes and departments with responsibilities in this area need to be mindful of this.

This paper will examine the planning process, the role of statutory consultees and how they interact with the planning system. It will look at how statutory consultees approach their responsibilities, particularly when it comes to major applications. It will explore options to improve the overall efficiency and hence the effectiveness of the planning system.

## SECTION 1: THE PLANNING PROCESS

The planning system can involve multiple stakeholders, as depicted in Figure 1. This is an important reference point for this paper.

Figure 1: Stakeholders



It is, also, helpful, at the outset, to set out what the planning process entails. Whilst it can be undoubtedly complex in many cases, I have endeavoured to set out a simplified process map in Figure 2 to frame the discussion in this paper. The planning process has three key elements:

1. The submission of a **valid planning application**<sup>3 4</sup>
2. A statutory consultation **by the planning authority**<sup>5</sup>
3. The determination of the application leading to a **decision**

The determination of a planning application for development is essentially an assessment of what it is, where it is, how much there is of it and whether it is acceptable in terms of statutory requirements, the local development plan and regional planning policy generally. Consultation with bodies who have an expertise in certain topics (statutory consultees) is an essential feature of the planning

<sup>3</sup> A P1 form, a plan with a red line depicting the extent of the application and a fee

<sup>4</sup> In addition, major planning applications require a statutory notice to be served and a statutory pre application community consultation prior to the submission of a planning application.

<sup>5</sup> Councils and DfI (for regionally significant applications and call-ins), but not necessarily in all cases



process, as planning authorities may not have the necessary in-house expertise to decide on the technical and specialist aspects of an application's merit.

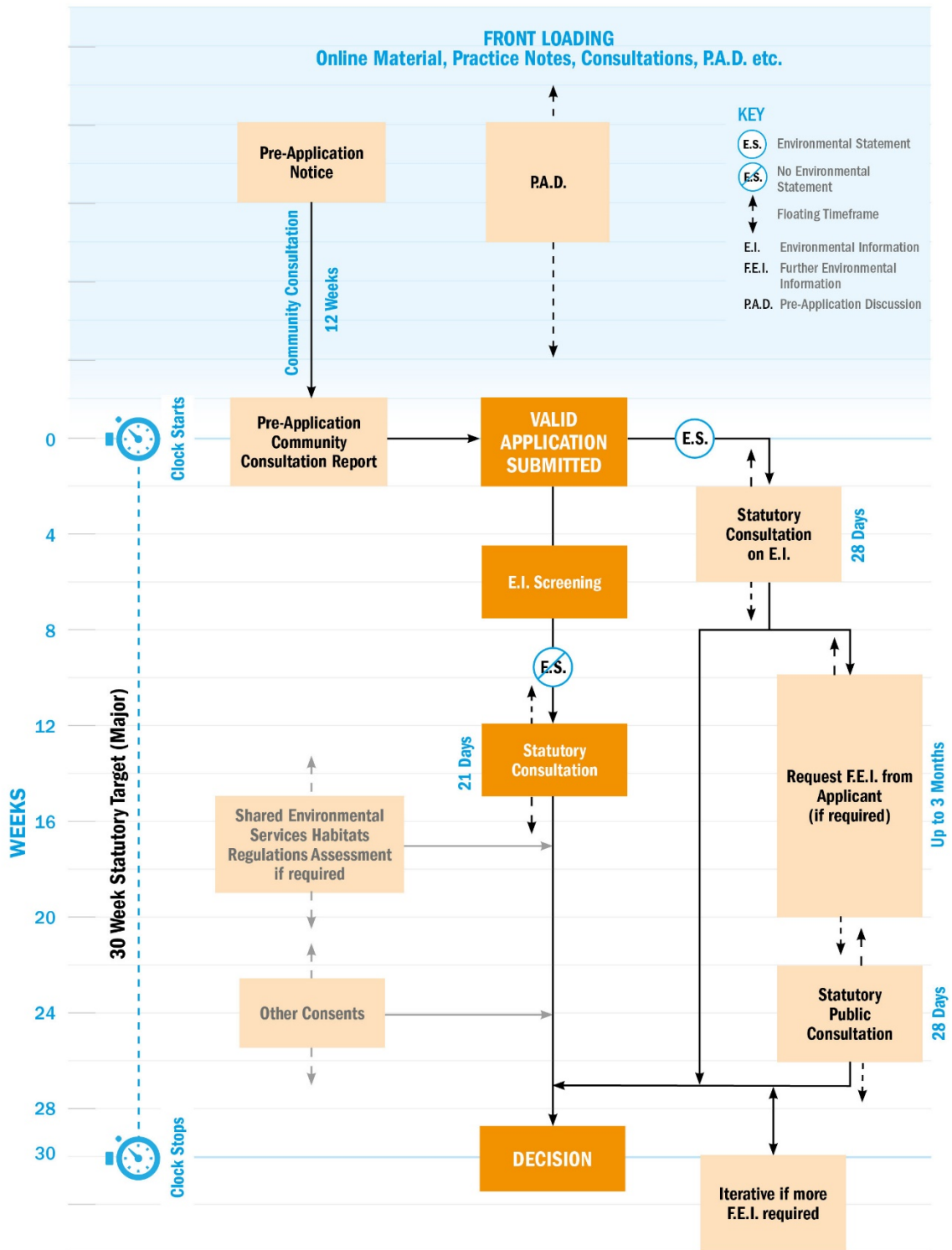
Whilst many of the c13,000 planning applications submitted per annum may follow a relatively straightforward process, many other different layers of complexity can arise, depending on the type of application and its location (for both local and major applications).

Matters relating to the protection of the built and natural environment, infrastructure and its capacity together with public safety matters add complexity, for example. In particular, applications requiring a Habitats Regulations Assessment or Environmental Impact Assessment (EIA)<sup>6</sup> and those requiring other statutory and non-statutory consents can be complex and time consuming. Applications requiring assessment under the EIA Regulations have separate additional statutory processes and timeframes.

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<sup>6</sup> The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015

Figure 2: The Planning Process



## SECTION 2: STATUTORY CONSULTEES AND PERFORMANCE OF THE PLANNING SYSTEM

Statutory consultees play an essential role in the planning process, as planning authorities may not have the necessary expertise in-house to determine the technical and specialist aspects of an application's merits. The consultation process, in itself, is an important element of an open, transparent and democratic planning system.

*Statutory consultees to the planning process in Northern Ireland are set out in the Planning (General Development Procedure) Order (NI) 2015 ( "the GDPO") and are DfI Roads, DfI Rivers, DAERA, DfC, DfE, NI Water, Health and Safety Executive for Northern Ireland (HSENI) and Airports and Councils (in relation to regionally significant applications).*

*Councils and DfI as planning authorities must consult with the statutory consultees in the circumstances outlined in the GDPO and statutory consultees must provide a substantive response to the consultation within 21 days (or an agreed extended time frame), which states that the statutory consultee is either :*

- content with the application; or*
- has no comment to make on the application; or*
- refers to standing advice; or*
- provides advice to enable the determination of the application*

*In addition there are separate and parallel arrangements in terms of environmental impact assessment where different statutory timeframes and procedures apply*

As can be seen in Figure 2, statutory consultation is a critical element of the overall planning system, however, this is only one element of a complex system that requires all of the moving parts to come together to allow planning authorities to manage, assess and determine planning applications in a timely manner. Whilst the vast majority of statutory consultations will be relatively straightforward many can be complex.

The number of planning applications has remained relatively constant since the planning reform in 2015 at around 13000 per annum. However, the number of statutory consultations has been increasing, from nearly 20000 in 15/16 to around 25000 in 17/18 (*a single planning application can require multiple responses*). In addition to statutory consultations, consultees may also be asked to participate in and respond to non-statutory consultations, such as pre-application discussions (PADs), listed building consents etc. In addition, NIEA has a separate statutory consultee role for Habitats Regulations Assessments and Environmental Impact Assessment Regulations consultations. All of this creates significant additional

pressures over and above statutory consultation pressures, with departments having to be cognisant of their other statutory responsibilities in addition to their planning responsibilities.

Table 1: Planning applications received

	Local	Major
2015/16	12069	145
2016/17	12893	142
2017/18	12770	161
2018/19	12404	137

### *Performance Indicators*

There are 2 indicators relating to the processing of planning applications:

- **Local applications** processed from date valid to a decision within an average of **15 weeks**.
- **Major** applications processed from data valid to decision within an average of **30 weeks**<sup>7</sup>

There is also a statutory requirement for statutory consultees to respond within 21 days - the most recent results are set out in Table 2 below.

Table 2: Responses by the main statutory consultees to statutory consultation requests from planning authorities 2017/18

	Numbers of final substantive responses made to planning authorities	Numbers of on time final substantive responses	% performance
DfI Roads	11537	8212	71%
DAERA	4239	3740	88%
NI Water	3445	3014	87%
DfI Rivers	2350	1559	66%
DfC HED	2881	2262	79%
HSENI	103	72	70%
DfE (plus GSNI)	88	67	76%

<sup>7</sup> The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015

In relation to processing performance, in the 2018 calendar year, 140 major planning applications were decided or withdrawn. Figure 3 sets out these applications by development type and Table 3 sets out the average time taken to process these applications to a decision or withdrawal from the date they were validated.

Figure 3: Major applications: Proportion processed to decision or withdrawal 2018

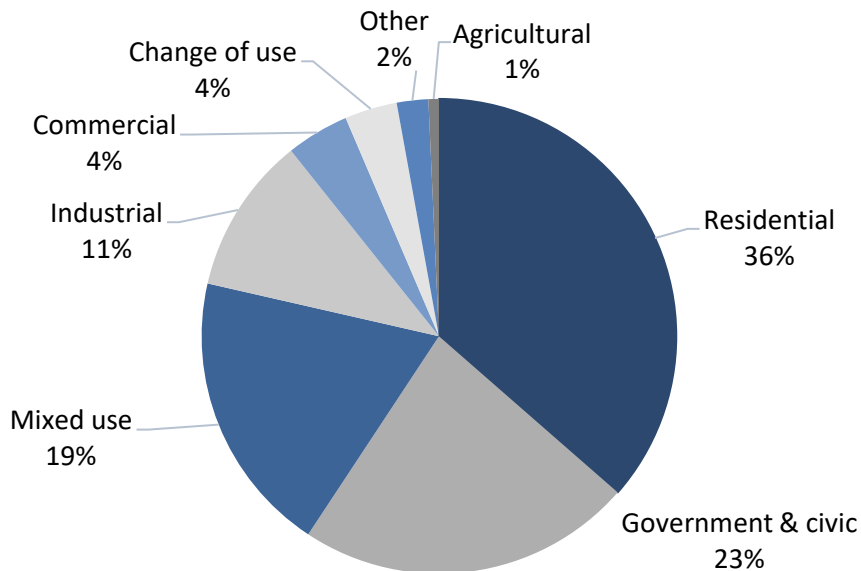


Table 3: Major applications: Average time taken to process to decision or withdrawal from date valid

	AVE PROCESSING TIME (weeks)	NO. OF APPLICATIONS
All applications	55.3	140
<i>EIA Required</i> <sup>1</sup>	125.0	20
<i>EIA Not Required</i>	45.8	120

<sup>1</sup> EIA required is determined by an EIA being receipted on the NI planning portal

Of these 140 applications, 20 required consideration under the Environmental Impact Assessment Regulations (EIA) and it is clear that EIA considerations significantly drive up processing times (125.0 weeks, compared to 45.8 weeks where an EIA was not required). Given the complex nature of environmental considerations this is perhaps unsurprising and it could be argued that the statutory processes to be followed for such applications mean that the statutory 30 week target is, in fact, not achievable in many circumstances. DAERA told me, for example, that agricultural

applications (both major and local) take a massively disproportionate amount of time to assess, due to their complexity.

Whilst the EIA statistics drive the overall average processing time upwards (to 55.3 weeks), more notably the 120 major applications not requiring an EIA assessment have an average processing time of 45.8 weeks – also significantly higher than the statutory 30 week target.

In comparison, for the calendar year 2018 the average processing time for local applications (which make up the vast majority of all planning applications received) decided or withdrawn was 15.2 weeks – against a statutory target of 15 weeks. On the face of this this looks like a good performance, however, many of these applications will be very straightforward.

Whilst DfI has been working with statutory consultees to improve performance and statutory consultees (in the main) perform to a relatively high level against the 21-day target for nearly three quarters of consultations requested, there is clearly scope for continuous improvement to drive better behaviours to make the system more responsive for the other 25% of applications where targets are not being met, in particular, for improving performance for major applications.

The performance of statutory consultees is only one factor in the overall performance of the planning system. There are many other elements that impact on performance. In the following sections of the paper I will discuss areas with the potential to deliver improvements to the efficiency and effectiveness of the planning system. Issues around building capacity and capability, the need for strategic leadership and the need for all the key players to fully embrace the culture change envisaged by planning reform.

One issue that was raised with me during the course of my discussions was the fact that no Service Level Agreements (SLA) exist between statutory consultees and planning authorities. **As a method of formalising two-way commitments, there may be merit in exploring whether a standard charter/protocol for statutory consultees may be beneficial to focus minds and resources on the nature of involvement/support required for an effective and efficient planning system as an enabler for continuous improvement.** [AFC 1]

## SECTION 3: THE VALUE OF PLANNING

Planning cannot just be seen as a narrow regulatory role. It is a much broader activity that is about the creation of sustainable development and successful places where people want to live, work, relax and invest in; development and places that can deliver considerable economic, social and environmental benefits for society in the longer term.

The planning system itself exists primarily to ensure the wider public good is protected. However, its requirements provide an important context for individual decisions taken by market actors (investors, developers and landowners, for example) and it creates value at various stages of the process. It releases land for development and construction. It safeguards the inherent value in the built and natural environment and the principles of sustainable development. Planning fees, developer contributions and increases in rates income all add economic value and the provision of key infrastructure is an enabler for spin-off business growth and investment.

Community Planning became the responsibility of District Councils following planning reform in 2015. This is important because it means that councils can set out long term ambitions and shape their regions to deliver real improvements for local people. It is the planning process, local development plans and development management, which deliver outcomes and value.

### *Belfast Agenda 2045*

*This is Belfast City Council's Community Plan and sets out a long term vision for the city, for example:*

- *15,000 new jobs by 2021*
- *£5m investment in next 10 years*
- *Securing a City Deal, Transport Hub and BRT 2*

While it is difficult to calculate with total accuracy, it is likely that potential investment of well over £1 billion is involved in those economically significant planning applications currently under consideration in the planning system.

*Within DfI alone, in terms of the economic impact of current casework, if all applications were approved, applicants estimate that they would provide:*

- *£1bn of investment*

- *Additional spin offs in terms of salaries, business rates and supply chain benefits*
- *The creation of over 1200 long term jobs*
- *The creation of 1000 job years during construction*
- *Capacity for the generation of 480 MW of electricity and contributing to renewables obligations, the Single Energy Market and security of supply.*

*When taken with the economic value of all of the casework sitting with Councils, the benefits tied up in the planning system are likely to be an order of magnitude higher.*

An efficient and responsive planning system can have a positive impact on driving economic growth. It can shape markets, open up opportunities and provide confidence to investors and developers that Northern Ireland is open for business. It also has the potential to reduce developer/investor risk and transform attitudes and behaviours making it "worth it" to invest in sustainable development and deliver outcomes. It is a key enabler for the delivery of a range of Programme for Government outcomes and local government community planning objectives and ambitions and needs to be recognised as such.

A Royal Town Planning Institute (RTPI) 2016<sup>8</sup> Report endeavoured to set out the potential benefits of better planning at both project and spatial levels. This is a helpful reference and some of the key findings are summarised in Annex 3.

Figure 4, for example, sets out indicatively and graphically how the value of planning can be captured for a major development. Scaled up it is clear how this approach may be beneficial to capture value on a regional basis. In Wales, the RTPI developed a tool kit for measuring the value of planning to the economy, equating to £2.3 billion in 2016/17.

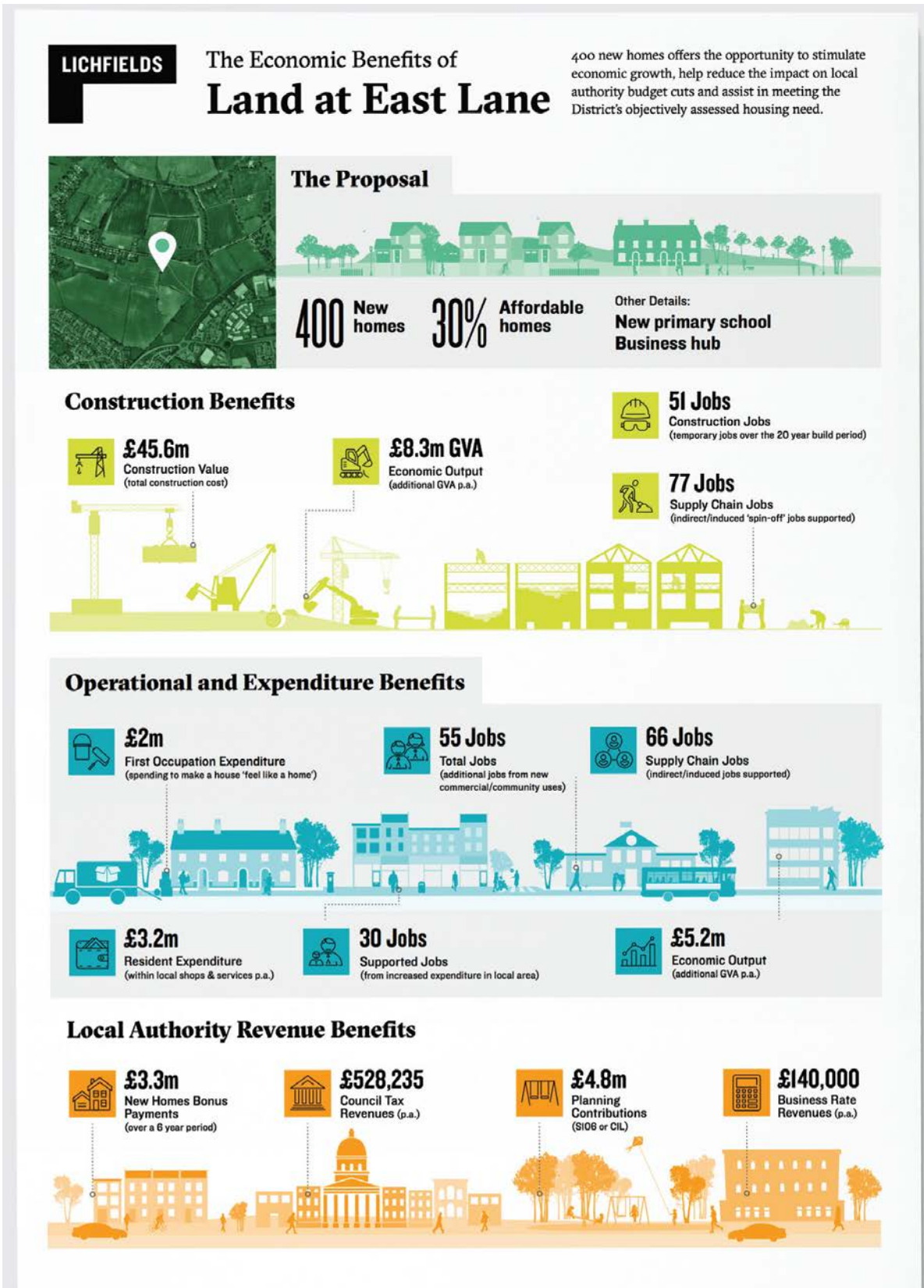
**There may be merit, therefore, in engaging with the Strategic Investment Board to capture, more definitively than is currently possible, the value of planning (in economic, societal and environmental terms) in Northern Ireland in order to provide a high level benchmark for a longer term analysis of how planning delivers outcomes.**[AFC 2]

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<sup>8</sup> Delivering the Value of Planning: Royal Town Planning Institute (RTPI) August 2016



Figure 4 : Capturing the value of planning



Despite the clear value of planning, it is not directly referenced in the Outcomes Delivery Plan. This would seem to be slightly anomalous. There needs to be a stronger more strategic focus on the value of planning and on the efficiency and effectiveness of the planning system, in particular, for major and other economically sensitive<sup>9</sup> applications.

There may be merit, therefore, in drawing the enabling role of planning into sharper focus in the Outcomes Delivery Plan particularly, although not exclusively, under *Outcome 10: We have created a place where people want to live and work, to visit and invest*, or potentially *Outcome 1: We prosper through a strong, competitive, regionally balanced economy*.

The designation of a SRO (or champion) would allow the NICS to take a “balcony view” of, not only the performance of the planning system, in terms of delivering outcomes, but potentially also the progress of some of the economically sensitive applications progressing through the system - championing the process rather than being an advocate for specific applications. This would recognise the importance of planning in delivering outcomes and give NICS, as a whole, better visibility. It would be welcomed as a positive development and would counter some of the criticism around the progress of some high profile applications currently in the system. This is a key conclusion of this paper.

#### **KEY CONCLUSION 1**

NICS Outcome Owners should ensure that the importance of planning as a key enabler of economic, societal and environmental wellbeing is more clearly recognised in the Outcomes Delivery Plan (and any future Programme for Government and accompanying Investment Strategy).

**\* Linked to this, there may also be merit in considering the appointment of a SRO to provide a strategic oversight role to monitor the passage of major or economically sensitive applications, with the potential to deliver significant local or regional outcomes, through the system. [AFC 3]**

Taking this a stage further (and to address recent criticism around some high profile applications) there may also be merit in considering how best to develop more proactive collaboration between planning authorities and statutory consultees to assess the most significant and complex planning applications, shortening lines of communication and working collectively to improve efficiency.

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<sup>9</sup> Council officials told me that the designation "major" (although defined in legislation) might not necessarily cover all the most important applications from an outcome delivery perspective and that “economically sensitive” might be a better designation.

Planning authorities, for example, could identify which major (or "economically sensitive") applications merit priority in processing. Potentially, dedicated staff in statutory consultee bodies could ensure resources would be directed accordingly, working with planning authorities to expedite progress. This approach could work throughout the planning process, including the PAD stage.

*In the Planning Service, pre-reform, a central major applications team drew in expertise from all of the statutory consultees to provide advice and recommendations in a more efficient manner for major applications. The processing of the Titanic Quarter application around 2010 was cited as an excellent example of this working effectively.*

*The NICS and planning authorities may wish to consider the merits of more proactive collaboration to expedite the assessment of the most significant and complex planning applications.*

## **SECTION 4: A PRIVATE SECTOR PERSPECTIVE**

Construction Industry representatives made a number of key points to me regarding the efficiency of the planning process. At the delivery end of the planning system, their views must hold some weight. On the house building front, for example, the Construction Employers Federation CEF indicated that the market is ever changing and developers need to be agile. A slow, unreliable and uncertain planning system thwarts agility, whereas certainty (or reduced uncertainty) breeds confidence.

CEF highlighted that there are currently only around 5 big players in the housing market, with the capability to build greater than 100 houses per year. Not so long ago it said that there were up to 14 players in this market, but many have exited as the expense and investment required at the front end of the planning process (for consultants' fees, surveys etc.) is not an attractive proposition, given the uncertainties and hence risks associated with the planning process. This is important because a healthy house building sector is vital to the delivery of social and affordable housing in support of Community Planning outcomes and to the delivery of increased housing supply, generally, to meet projected changes in population.

Making a similar point, the consulting side of the industry reinforced this view, explaining that, from an investor/business perspective, "planning" represents a narrow window that is very susceptible to sudden market changes. The system, therefore, needs to be responsive to deliver business objectives for developers and investors in a timely manner. However, as a balance it has to be recognised, from a planning authority perspective, the system also needs to be robust and consistent to deliver safe and sustainable development to meet the needs of citizens.

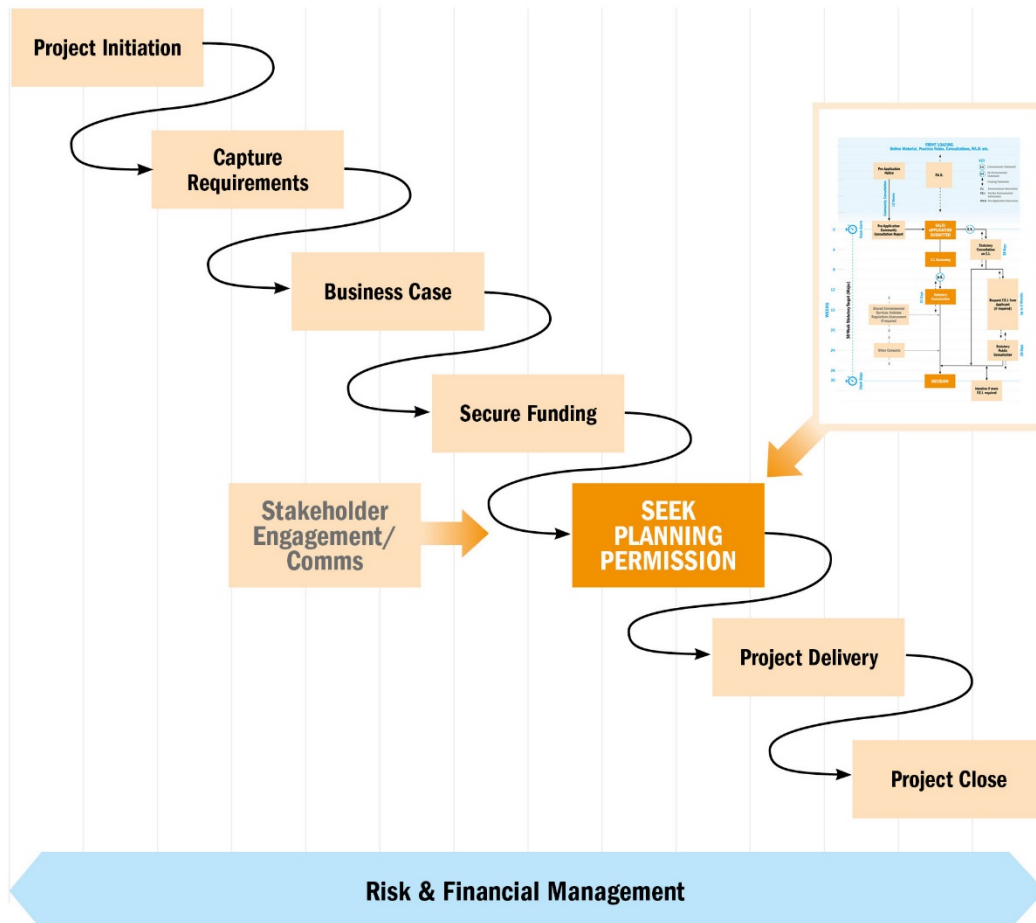
Developers, Investors and Business Organisations, therefore, see planning in a "project management" context, with the planning process and role of statutory consultees being, very much, on the critical path. This is an important point that the industry feels that needs to be more widely understood by statutory consultees and planning authorities. I have tried to depict this in Figure 5.

As set out in Section 2, in 2018 (for example) the average processing time for major applications was 55 weeks. Whilst the determination of major applications, particularly those accompanied by environmental statements, can be complex (and this point is accepted by the industry), the industry believes there is room for improvement by building capacity, capability and understanding. Potential initiatives to address this key point are discussed later in this paper.

One of the key asks from private sector players would be for planning authorities and statutory consultees to understand the delivery of projects from a developer/ investor perspective and the need of industry players from the first point of contact with the planning system for good lines of communication, certainty, reliability and responsiveness. From a planning authority perspective, experience has shown that

good quality applications and positive engagement between developers/ agents and planning authorities can deliver better outcomes.

Figure 5 : Planning in a project management context



As I have outlined previously, government and planning authorities cannot be advocates for specific development proposals, but they can be advocates for the process, particularly for major and economically sensitive planning applications that can deliver win/ win outcomes. Indeed private sector players too can play their part by being advocates for high quality applications.

A process of engagement, debate and continuous improvement has the potential to deliver improvements and this is reflected in a number of the recommended outputs from this paper. This paper sets out a framework for a conversation between the key players.

## SECTION 5: STAKEHOLDER VIEWS

Over the last number of weeks I have had conversations with many of the key stakeholders involved in the planning process. As might be expected there are many different stakeholder views - of each other, of how the system operates and on how it can be improved. In the context of this paper, aiming to bring forward proposals to improve the efficiency and effectiveness of the system, I think it is helpful to set out a flavour of some of the (sometimes candid) views expressed, on the basis that openness and transparency is a pre-requisite for dealing with issues, fostering a continuous improvement culture and starting a wider conversation to deliver win/win improvements.

### A Private Sector Perspective

- *DfI Roads is a key player but is slow and over-stretched and shows limited flexibility in relation to standards. The time to discharge roads planning conditions causes serious problems for contracts.*
- *DfC Historic Environment Division is under-resourced, contributing to delays.*
- *Statutory consultees struggle with the Pre Application Discussion (PAD) process as they do not have the resources to participate fully.*
- *Planners over consult due to fear of challenge - need to be more targeted.*
- *Need to build capability in planning authorities around EIA Regulations and screening.*
- *NIEA requests for more and more information leads to delays.*
- *Response times from DfI Rivers is an issue and there needs to be joined up thinking with NI Water around reservoirs*

### Planning Authorities' Perspective

- *Need to address the quality of applications*
- *Statutory consultees need to prioritise major (or economically sensitive) applications*
- *PADs are beneficial but require commitment and adequate resources on all sides*
- *Increasing complexity and controversy leads to more consultation to avoid challenge*

- *Consultees do not fully understand EIA Regulations, especially at screening stage*
- *DfI Roads and Rivers over-stretched. DfI Roads has to "MOT" too many applications.*

#### *DfI Roads*

- *c9000 statutory consultations per annum, resource is a key concern*
- *Low quality applications is the biggest issue*
- *Transport Assessments cause the biggest bottleneck in terms of quality and the resources available to scrutinise.*

#### *DfI Rivers*

- *Volume of statutory consultations has gone from 1000 to 3000 in 7 years*
- *Easier sites developed, flood risk assessment now more time consuming*
- *Under-performing at present, only 30% return against 21 day target, serious concern, raising questions about resourcing.*

#### *NIW*

- *Pre-Development Enquiry (PDE) process has improved efficiency, making it mandatory may improve efficiency*
- *Need to streamline with DfI Rivers, particularly around reservoirs*
- *SLA/MOU with councils may be helpful.*

#### *DfC Historic Environment Division*

- *Resource is an issue, struggle to cope with demand.*
- *Triage process introduced to more efficiently manage consultations*
- *Too many PADs drains resources and can be inefficient – need to refine approach*
- *Guidance produced for applicants and planners to improve engagement.*

#### *Health and Safety Executive for Northern Ireland*

- *Ensure planners are appropriately trained to deal with hazardous substances applications and conversant with the relevant regulations*



- *Greater awareness by planners of the important role Hazardous Substance Consent has to play in planning applications. Ineffective application of these regulations has the potential to lead to delays during the consultation process*
- *HSENI substantive response invariably has to await finalised proposals which can then have a knock-on effect on achieving response deadlines*
- *HSENI having to meet the cost of external consultancy requirements and receiving no associated funding to do this.*

#### DfE Minerals and Hydrocarbons

- *Small number of complex statutory consultations where substantive response is critical*
- *Would welcome joint teams for major applications*
- *Environmental issues not DfE responsibility. Councils need to be clear on consultation requests.*

#### DAERA

- Resource pressures are the key concern with consultation demands almost doubling in some areas e.g. since 2015 the number of statutory consultations directed to natural environment section has increased by over 80%
- Fit for purpose IT systems that recognise the needs of all users supporting the planning process needed to manage volume and multiple interfaces
- Quality of information – essential to address front loading of required information with applicants and planners before consultation issued
- Need for right skills and capacity building across all stakeholders
- More focused triage processes, communication and governance structures would help target and prioritise effort

#### DfI Strategic Planning

- *Resource pressures dealing with the increasing number of complex and controversial applications means that the casework team has little or no resilience*
- *As Operational Governance develops this may increase call-ins and hence add to pressures.*



There are 2 common themes emerging from these discussions.

1. The need to improve the quality of applications coming in to the system.
2. The need to build capacity and capability across the planning system by examining resources and processes, particularly in the area of environmental compliance (building on work currently being taken forward by DfI).

## SECTION 6: BUILDING CAPACITY AND CAPABILITY

### 1. Resources and Approach to Consultations

#### Resources

The availability of resource in DfI (Roads and Rivers), DfC Historic Environment Division (HED) and DAERA to deal with an ever increasing number of statutory consultations, which are subject to a higher level of scrutiny (particularly in relation to environmental matters), was highlighted as a significant concern.

Given that planning permission is a gateway through which most proposed development projects must pass, that the consultation process is recognised as the most challenging barrier to the timely delivery of permission and the preceding discussion about the value of planning to the economy and the delivery of outcomes, I consider that there should be a commitment at the highest level within departments, HSENI and NI Water, to ensure that the key consultee bodies are resourced ( staff and external consultancy support) to deal with consultations quickly and effectively. Indeed, there would be a strong argument that these resources be ring fenced for the planning process to prevent them being diverted to other short term departmental priorities and pressures.

It is accepted that there are already very significant resource pressures right across the NICS, however, viewed from an outcomes perspective, additional resource in key consultee bodies has the potential to improve the responsiveness of the planning system, unlocking its inherent value to a range of PfG socio-economic and environmental outcomes, in a more timely manner. I was told that the additional resource requirements in each statutory consultee body might be relatively small to make quite significant difference

#### Approach to Consultation

There may also be opportunities to improve capacity by considering the overall approach to consultations by statutory consultees.

DAERA and HED told me that they had made positive changes to improve the handling of consultation requests by establishing central arrangements to "triage" consultation requests, "risk assessing" them and guiding staff towards targeted and proportionate responses. Of crucial importance to the "triage" approach is the need to have the right senior staff in key positions to identify priorities, manage the system and guide responses that are proportionate. The need for proportionate responses was a key point highlighted by the private sector.

In addition, HED reported that it had introduced desktop assessments to review sites using Google Earth/Arc View/Arc GIS, for example, to negate the need for site visits. HED, DAERA and HSENI all reported that they either had been or are currently working directly with planning staff to build capacity to ensure that their specific roles and information requirements were fully understood

(complementing published guidance). These approaches to consultation are a positive development and from a DAERA and HED perspective, seem to have had a positive impact on performance.

*There is considerable merit in requiring all consultee bodies to review their approach to case management and identify any potential shortfalls in efficient service delivery.*

This is important because statutory consultees are under ever increasing pressures to meet statutory timeframes in a climate where resources are tight across NICS, with many competing priorities.

As I have set out earlier in this paper, the numbers of consultations has been increasing disproportionately to the numbers of applications coming in to the system. To ensure their expertise is being utilised effectively, it is important that statutory consultees only have to deal with appropriate and legitimate levels of consultation from planning authorities. Whilst planning authorities would argue that they do not "over consult", I feel that this is a subject for further debate and exploration.

**I consider that there would be merit in planning authorities (in conjunction with statutory consultees) reviewing current practices to ensure all consultation requests are correctly and absolutely necessary, particularly to ensure that consultation requests are not forwarded to statutory consultees until sufficient evidence and information has been provided by the applicant. [AFC 4]**

HSENI, for example, told me there is a significant issue around Hazardous Substances Consents that requires attention in planning authorities to avoid consultations in error. Separately, GSNI indicated that it deals with around 1800 non statutory consultations per annum. Sometimes these are marked statutory when they are, in fact, non-statutory, which creates an issue with timeframes. In addition, it said poor information provided with the consultation request and the rationale for the consultation being unclear causes delays.

## **KEY CONCLUSION 2**

***Relevant departments should carry out an immediate review of the resourcing requirements relating to their statutory consultee responsibilities taking account of workloads and the statutory requirement for timely responses to planning consultations.***

***In advance, there may also be merit in exploring (with planning authorities) whether levels of consultation are entirely appropriate, to ensure NICS resources and expertise are appropriately utilised.***

## 2. Improving Processes

Whilst there are clearly resource pressures that will require consideration within departments, there may be opportunities to mitigate some of these pressures and building capacity and capability (across the whole planning system) by taking a step back and reviewing the overall approach to processes. In particular, I feel that there is merit in considering how the upstream end of the planning process (refer to Figure 2) can be improved by examining “front loading” (published guidance and the approach to pre-application discussions, for example), the quality of applications entering the system, the overall approach to consultations and how non-planning elements are dealt with within the process.

### a. Quality of Applications

Once a planning application is deemed 'valid' by the planning authority it enters the planning system. The quality of the information provided at the application stage, particularly (but not exclusively) for major applications, is a key determinant of the speed at which the application passes through the system.

Council officials and statutory consultees were unanimous in stating that currently the "bar" set for validation<sup>10</sup> was too low, with too many low quality applications clogging up the system impacting on performance. There was a strong sense that some applicants merely use the system to allow statutory consultees to "MOT" their application. In particular, DfI Roads told me that the quality of many Transport Assessments is poor and this causes significant bottlenecks in an already under resourced area. DAERA indicated that it sent back around 30% of consultations. In addition, HSENI<sup>11</sup> and GSNI<sup>12</sup> told me

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<sup>10</sup> A P1 form, location plan with red line and a fee

<sup>11</sup> HSENI - Health and Safety Executive for Northern Ireland

<sup>12</sup> GSNI - Geological Survey for NI

that planning authorities also need to be clear on their rationale for consultations to reduce nugatory work seeking clarifications.

Poor quality applications and the consequential need for multiple submissions of further information places a significant burden on the consultation process and hence the planning system generally. In addition, poor quality applications, coupled with pressures to move things on in a timely manner, can lead to large numbers of conditions being applied, with the principle of development having been accepted. This then leads to difficulties with removing conditions, which can take time and energy all round. This is inefficient.

Planning officials reported that their ability to deal with this bad practice is hindered by their inability to refuse to accept (or to return) a poor quality, although legally valid, planning application. This is further hindered by and their inability to refuse to accept the late submission of necessary information even when the council has resolved to take a decision on an application, based on the information previously submitted.

It is also imperative that agents and consultants employed by applicants are competent and professional in providing full and comprehensive advice and analysis to support applications. Statutory consultees said that, in many circumstances, this can be lacking, with agents/consultants being seemingly unaware of legal and policy requirements, which slows down the process. DfC Historic Environment Division, for example, indicated that sometimes clients appoint architects with no experience in heritage issues.

**There may be merit, therefore, in planning authorities/statutory consultees developing a mechanism to formally engage with consultants to rectify the common mistakes arising from information/evidence submitted. [AFC 5]**

*Belfast City Council is carrying out a pilot exercise with a bespoke validation check list on an administrative rather than a legal basis and proposes to share its report on the success of the project with DfI, in due course.*

Clearly, there are difficulties at present in taking forward legislative change in the absence of Ministers, however, there is a strong and unanimous view across the planning staff and statutory consultees that I spoke to, that proportionate legislative change would be a powerful incentive for driving up the quality of submissions, hence reducing the burden on the process. In particular, a cut-off date for representations would enable decisions to be expedited, once a firm view is reached by the planning authority. This is a key recommendation.

### **KEY CONCLUSION 3**

***To improve the quality of planning applications and the efficiency of the process, DfI, taking account of the views of the Planning Appeals Commission and the other planning authorities, should consider and advise returning ministers on, the case for proportionate change to legislation (or other means to improve quality) to make the validation test more stringent and to potentially introduce a cut-off date for submission of information.***

#### b. “Front Loading”

Planning reform recognised the benefits of front loading the planning system, setting out to prospective applicants the requirements of statutory consultees and planners at an early stage to enable applications to be targeted and focussed on the key areas, to support the efficient and effective determination of applications.

There are two elements to this, the provision of up to date and easy to access guidance and data for prospective applicants and engagement with the Pre-application Discussions (PAD) process. The incentive for applicants properly engaging with front loading, has to be more efficient processing times.

#### c. Published Guidance

There is a strong view that greater efficiency can be achieved by enhancing the awareness of prospective applicants of statutory consultee requirements, through the effective use of published and on-line guidance setting out, for example, the necessary content and quality requirements for a good quality planning application. Sometimes too much information submitted with an application can be as detrimental to the efficiency of the system as too little, but getting this right at the upstream end of the system has the potential to reduce nugatory requests for further information/clarification down the line and, hence, improve efficiency.

*Some very helpful guidance has been prepared and has been published (or is in the course of publication) by statutory consultees for example:*

*DfC: Historic Environment Division*

- *Guidance on Archaeological Works in the Planning Process*

- *Guidance on making changes to Listed Buildings*

DfE: Geological Survey of NI

- *Consulting with GSNI: A guide for planners*

Health and Safety Executive GB

- *Planning Advice for Developments near Hazardous Installations (PADHI)*

DAERA

- *Digital datasets*
- *Biodiversity checklist*
- *Redeveloping land affected by contamination*

DfI: Rivers

- *Flood Risk Maps*

DAERA has been recognised as leading improvements to the process by establishing a single central point of contact for customers to coordinate responses and drive customer service and support and has developed a dedicated environmental advice for planning hub on the DAERA website which provides a wide range of information, guidance, and map resources to support planners, applicants and consultees in consultation process.

DAERA also reported that it would like more of their information/ data to be made available and accessible on-line for prospective applicants so that it could be used by applicants and as a screening tool by planners. NIEA has a wide range of information already available - enhancing this will require resources to deliver, however.

DAERA, DfC and DfE also indicated that they had invested time and resources into the training of Council teams at the point of transfer of planning functions to councils.

**I consider that there is merit in statutory consultees reviewing the online and published information currently available to applicants and consider potential gaps and the resources required to plug these gaps. It would also be worthwhile revisiting the training of planning officials to build capacity and capability and improve efficiency. [AFC 6]**

d. Pre Application Discussions (PAD)

PADs are non-statutory requirements, however, a good quality PAD leads to the better co-ordination and targeting of public and private sector resources leading to better process outcomes. Encouraging applicants to take maximum advantage of the PAD process and by having the right people at the right level at the right time to steer the information/data requirements associated with prospective applications, can deliver efficiency benefits for applicants, statutory consultees and the process generally. The process requires buy-in and careful management so that it is carefully targeted. From a statutory consultee perspective PADs need to be properly resourced (this will be an important consideration under Key Conclusion 2)

I understand that Belfast City Council is now charging developers for access to PADs. PADs, from a statutory consultee perspective, can have longer term efficiency benefits, however, if they are not resourced properly the process fails. This raises an issue for the system and, in particular, with prospective applicants who pay for a service and don't get the anticipated level of service in the delivery of the PAD. It also brings into focus that fact that planning authorities get the benefits of fee income whereas, in resourcing terms, statutory consultees do not.



*Gas to the West, the Strule Education Campus and the development of Windsor Park were cited and exemplars of a good PAD process delivering timely planning decisions.*

**The benefits of a properly resourced and engaging PAD process would appear to be self-evident. There would, therefore, appear to be some merit in reviewing the current approach, guidance and the effectiveness of PADs is reviewed with particular emphasis on the nature of statutory consultee engagement and the resources necessary to provide timely and effective inputs to the process. [AFC 7]**

e. Non-planning elements

Planning officials highlighted that the removal of "non-planning" elements from the planning process has the potential to improve efficiency. There is a perception that consultees sometimes use the planning process to achieve objectives that are not necessarily purely planning matters and that this over complicates the system. Issues related to Private Streets Determinations and Rivers and NIW consents were cited, together with the propensity for stringent non-planning conditions to be applied which, from a developer perspective can be difficult to discharge and cause delays.

Whilst planning will overlap with other regulatory areas, planners would argue that the planning process should not be used to deal with matters that are for other regulatory regimes. Statutory consultees would argue that as planning permission legitimises action and in some cases there may be ambiguity or no other regulatory regimes, they have to adopt precautionary principles.

*Clearly this is an area for debate and there would be merit in conversations to explore these issues further, particularly if the potential exists to make efficiency gains.*

3. Environmental Compliance

(i) Compliance with EU Directives

As discussed previously in this paper, the need for compliance with Environmental Directives adds significant layers of complexity to the development management process on two levels.

a. Habitats Regulations Assessments ( HRA); and

b. Environmental Impact Assessment (EIA) Regulations assessments ( including screening of applications)

Planning authorities are deemed to be "competent authorities" under the EIA Regulations and, therefore, need to have the capacity, capability and sufficient expertise to screen and manage the complex environmental issues within the planning process.

As I have highlighted in Section 2, in the case of planning applications accompanied by an Environmental Statement, statutory timelines for advertising and consultation mean that the 30 week processing target for major applications is very challenging, if not impossible to achieve. It is also worth noting that NIEA has separate statutory responsibilities in relation to HRA and EIA Regulations assessments.

Despite the complexity, building capacity and capability in the area of environmental compliance, by ensuring it is properly resourced and that key players understand the process and are equipped with the skills to make sound decisions, has the potential to streamline the process, reduce delays, improve efficiency and mitigate the potential risks (and significant delays) associated with legal challenges. Setting high standards can also breed confidence with environmental stakeholders and local communities, sending out a strong signal that environmental issues are being properly addressed within the planning process, hence reducing the propensity for objections. Building capability is also a key mitigation factor against ongoing complaints to the European Commission alleging that there are systemic failures in the Northern Ireland planning system with regard to compliance with Environmental Directives.

Work being taken forward by DfI to build capacity and capability around environmental governance is, therefore, of significant importance. If all of the key players understand what an effective and proportionate Environmental Impact Assessment looks like, why it is required and how the information is assessed, then there is the potential to raise standards and improve the efficiency of the system and reduce processing times.

*From early 2019, DfI has commenced programme of capacity and capability building with council and DfI planning staff in the area of environmental impact assessment. The two year programme, supported by an external EIA expert, is intended to deliver:*

- *A baseline skills, needs and capacity survey*
- *A two-tier training programme*
  - *Awareness of EIA Regulations*
  - *Advanced practitioner training*
- *User friendly guidance*
- *An ongoing self-sustaining community, within the 2-tier planning system, including an Environmental Officers' Forum.*

**Whilst the programme is in its infancy, I consider that there may be merit in considering the strategic benefits of rolling this out to the wider stakeholder community, beyond officials in DfI and Councils - to industry bodies, statutory consultees and perhaps political representatives on Council planning committees. [AFC 8]**

(ii) Shared Environmental Services (SES)

SES plays a crucial and important role in the planning system in relation to environmental compliance (refer to Figure 2). It is important that this service has the capacity and capability to provide timely recommendations to planning authorities.

*Shared Environmental Services (SES) was established in April 2015 to support councils in meeting their environmental responsibilities as planning authorities. In relation to development management, SES core responsibility is to carry out Habitats Regulations Assessments (HRA) associated with planning applications. This is a key role within the planning system and critical to the efficiency of the process.*

*Comprising staff formerly from the Northern Ireland Environment Agency (NIEA), SES staff are hosted and employed by Mid and East Antrim Council and core funded by the Department for Communities.*

This is an area that is increasingly under pressure. At the point of transfer in 2015, SES handled an estimated 750 consultations per year for development management. The current figure is estimated to be around 2000.

This increase mirrors the increase in planning consultations generally and can also, perhaps, be attributed to factors such as new case law (for example, the *People over Wind* judgement ), the increased complexity of certain applications (eg intensive farming) and an increase in third party objections and challenges. This is clearly an increasing and significant pressure which, if not addressed, has the potential to negatively impact on the planning process for "environmentally sensitive" applications where a HRA is required. Mid and East Antrim Council has recently raised the matter of capacity with DfI.

*It is important to ensure that potential capacity issues in SES are satisfactorily resolved to maintain the efficiency of this element of the planning system to ensure there is no impact on overall performance<sup>13</sup>.*

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<sup>13</sup> I understand that the Department has recently responded to Mid and East Antrim Council suggesting that a monetary contribution should be sought from the other 10 councils to cover identified pressures

## **SECTION 7: DEPARTMENT FOR INFRASTRUCTURE**

The Department for Infrastructure as a single body with responsibility for roads, drainage, water and sewerage infrastructure is a significant player in the planning system in Northern Ireland, accounting for nearly 70% of statutory consultations.

The Roads part of DfI, in particular, is seen by planning authorities and developers as, perhaps, the most significant statutory consultee body. In this section I will explore in more detail some further specific actions to build capacity and capability to complement the areas for improvement identified in Section 6.

### Roads

The Roads part of DfI, with around 46% statutory consultations per annum is seen by planning authorities and the development industry the most significant player in the development management process. Its role is to provide substantive responses and advice on matters relating to traffic progression and road safety. Consequently, statutory consultations equate to a significant portion of the time taken to determine a planning application.

Development Control sections also have other significant responsibilities within the overall planning system – in relation to the oversight of Private Streets legislation (requiring development roads to be bonded and built to an agreed layout/standard prior to adoption) together with the provision of inputs to the local development plan process and attendance, with council planning officials, at planning appeals and council planning committees. Staff in this area indicated that the function is under significant pressure from a resourcing point of view, particularly with increasing numbers of applications and following reductions in staff numbers after the Voluntary Exit Scheme in NICS. As well as examining resourcing pressures, there would also appear to be a clear rationale for investigating the benefits to the planning system of lightening the load posed by statutory consultation inputs on staff.

The biggest bottleneck in the system relates to its ability to process transport assessments - a developer's assessment of the impact of a development in traffic and transport terms together with proposed mitigation measures. These can be particularly complex for significant travel generating developments. Four areas where changes have the potential to build capacity were identified.

- Improving the quality of inputs from developers' consultants.
- The provision of additional resources (including consultancy support).
- A potential review of the guidelines on Transport Assessment to reduce burdens.
- Ensuring government departments as "developers" fully understand the process.

**A review of Dfl's approach to Transport Assessments should be carried out, drawing in appropriate stakeholders and including an analysis of resource requirements. [AFC 9]**

In relation to road safety, a significant number of statutory consultations relate to the consideration of access standards for developments, the vast majority likely to be for very small scale development.

Dfl and Mid Ulster Council had been investigating (on a pilot basis) how lines of communication could be reduced by embedding a roads engineer with the council planning team to improve the efficiency of processing such applications. The work got to an advanced stage but stalled prior to its practical implementation, due to potential legal issues raised about responsibilities. *There is merit in pursuing this model further to improve processing efficiency.*

Indeed, taking this a stage further, the question arises as to whether the whole road safety assessment of access standards could be "delegated" to councils or be moved to a "self-certification" basis. Clearly this would require further consideration with council officials in terms of resourcing and the legislative basis on which this could be done, however, such a measure would have the potential to more efficiently deal with a large number of small scale applications freeing up resources to deal with the more significant and complex applications. **I consider that there is also merit in exploring these two areas further with council officials. [AFC 10]**

Finally, Section 6 sets out the potential efficiencies to be delivered by "front loading" the system. In light of the excellent work being taken forward by other statutory consultees, through the development and publication of on-line advice (to improve the quality of applications and the efficiency of the consultation process). *There would appear to be merit in Dfl Roads urgently considering whether its published on-line material to assist applicants to engage more effectively with the roads-related requirements of the planning process, is sufficiently visible.*

## Rivers

Over the past 5 years consultations have increased by 75%, to around 3000 per annum currently. The increase in consultation requests and increasing numbers of difficult sites from a flood risk perspective is causing pressure on resources. At present (i.e. for 18/19), the response time against the 21-day statutory target is around 30%. This is clearly a source of significant concern, one which was specifically highlighted by industry representatives.

It is imperative, therefore, that urgent attention is targeted at ways of building capacity to improve performance in the Planning Advisory Unit (PAU) in Rivers. Key Conclusion 2 in this report deals with resourcing of statutory consultees. *I consider that an urgent review of staff structures and staff numbers in Dfl Rivers against current workloads would be beneficial.*

In addition, staff also indicated that many developers' consultants have more advanced IT capability in flood risk modelling compared to that available in the PAU team. *This is a concern and I, therefore, consider that IT capability is reviewed as soon as possible to keep ahead of the curve.*

Capacity can also be built by enhancing the knowledge of planning officials and the development community about flood risk management requirements. **There may be merit in improving understanding through capacity building workshops and, perhaps, considering additional on-line published material to improve the quality of applications around flood risk management.** [AFC 11]

### NI Water

NIW currently processes around 3500 planning applications per annum. NIW has recognised the benefits of a front loaded planning process, reporting that its Pre-Development Enquiry (PDE) service improves efficiency and responsiveness. For a fee of £160, NIW will assess and determine water and sewerage infrastructure requirements for developments in advance of an application for planning permission.

This gives NIW more time to carry out detailed assessments and negates the need for a statutory consultation. 95% of PDEs are responded to within 28 days and currently around 20% of applications follow this process.

**NIW states that there would be merit in considering making the PDE process mandatory, through an amendment to the Water and Sewerage (NI) Order and this is something that should be considered by the department going forward to contribute to the efficiency and responsiveness of the planning system.**

[AFC 12]

Indeed the concept of PDEs is an area worthy of further consideration by all statutory consultees.

### Transport Planning

Within DfI, the potential use of the Transport Model for Belfast for the Transport Assessment of major planning applications (those generating a substantial demand for transport) could deliver efficiencies. The use of the model, licenced for the use of developers' consultants, for example, would provide "one version of the truth" so to speak, and segregate the need for "double work" in checking Transport Assessments. This has the potential to deliver process efficiencies and reduce burdens on Roads' staff.

**Whilst the current transport model is not yet sufficiently detailed and would require a degree of enhancement, there is merit in exploring this approach further.** [AFC 13]

This approach has been successfully adopted by the Dublin Transportation Authority and has been in place and working effectively for many years.



## SECTION 8: NEXT STEPS AND LEADERSHIP

The planning system is open, transparent and democratic in nature and allows citizens and other stakeholders to have their say by making representations to planning authorities. Ultimately planning decisions are taken by locally elected politicians. Statutory consultees are an integral part of this process.

Whilst government cannot be an advocate for individual planning decisions, as this would be at odds with the democratic nature of the process, it can be an advocate for the efficiency of the process to ensure the timely delivery of outcomes. This will require strong leadership.

The Department for Infrastructure provides an oversight role to support the effective operation of the new two-tier planning system, following the transfer of planning powers in 2015. The oversight role will be enhanced by the publication of a suite of performance indicators in the autumn of 2019. In addition, two oversight bodies oversee the effectiveness of the planning system. The role of these groups is “to provide a mechanism for constructive engagement and to allow decision makers to come together to discuss joined up solutions to improve the delivery of planning functions”.

- (i) A **Ministerial Planning Group**<sup>14</sup> chaired by the Minister for Infrastructure and comprising Council Chief Executives and Planning Committee chairs and Heads of Planning; and
- (ii) A **Strategic Planning Group (SPG)** comprising the department's Chief Planner and Council Heads of Planning.

A Statutory Consultee Forum has been established to open up dialogue between planning authorities and statutory consultees. This is a welcome development.

If we want to maximise the value of planning, in terms of its ability to deliver economic, social and environmental outcomes, then we need to consider much stronger leadership to bring together the key stakeholders in the public and private sectors to deliver common goals and win-win outcomes. There are some good examples of public/private sector partnerships where senior leaders come together to deal with issues of common concern and to promote positive and collective action to oversee and implement change. The models adopted in government for the oversight of procurement and construction are good examples of cross-sectoral working.

Having canvassed the views of stakeholders, I consider that there would be strong support for the establishment of a forum of senior leaders (a "Planning Forum") to

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<sup>14</sup> The Ministerial Planning Group first met on 14 December 2015 and again on 2 November 2016, but has not been able to meet since the fall of the Executive.

bring together the key cross government players, to work together to deliver measures to improve the responsiveness of the planning system.

I would envisage that the Planning Forum<sup>15</sup> would be led at SCS level chaired by DfI, with its planning oversight role taking ownership and taking forward the key conclusions and areas for other work identified in this paper, to deliver joined up solutions and continuous improvement.

#### **KEY CONCLUSION 4**

***I recommend that the Department for Infrastructure and Planning Authorities consider the establishment of a cross-government Planning Forum of senior leaders to take ownership of the conclusions and areas of further work identified in this paper; working together to build capacity and capability in the system to deliver and oversee continuous improvement to improve the efficiency and effectiveness of the development management aspects of the planning system in Northern Ireland.***

*This model is not dissimilar to the Key Agencies Group that has been established in Scotland to keep the Scottish Government apprised on the performance of the planning system*

- *Working together to share information and support decision making across the planning system.*
- *Working together to engage early in the planning system.*
- *Working together to build capacity.*
- *Working together to identify shared improvement priorities.*

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<sup>15</sup> Consideration will need to be given as to whether such a group would be in addition to or in place of SPG, which has a much wider role than continuous improvement.

## DEVELOPMENT MANAGEMENT: HIERARCHY OF DEVELOPMENTS

Section 25(1) of the Planning Act (NI) 2011 sets out two categories of development.

(a) Major developments

(b) Local developments

Major development classes are set out by regulation in The Planning (Development Management) Regulations (Northern Ireland) 2015 and above defined thresholds or criteria in the regulations the following classes of development are defined as **major development**.

1. EIA<sup>16</sup> development
2. Energy Infrastructure
  - Electricity generating stations
  - Electrical power lines
  - Storage
  - Extraction
  - Pipelines
3. Transport infrastructure (> 1km, 1ha)
4. Waste infrastructure
  - Waste Management Facilities
  - Waste Water
5. Minerals
  - Extraction of minerals (> 2ha)
6. Housing (> 50 units or > 2ha)
7. Retailing, Community Recreation and Culture (> 1000 sq m (outside town centres or > 1ha)
8. Business, Industry Storage and Distribution > 5000 sq m or 1ha
9. Other development > 5000sq m or 1ha

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<sup>16</sup> Development mentioned in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015.

Furthermore, under Section 26 of the Planning Act (NI) 2011 an applicant who proposes to apply for planning permission for a **major development** must consult with DfI.

Following consultation, if DfI is of the opinion that the proposed development would -

- (a) be of significance to be a whole or substantial part of NI or have significant effects outside NI; or
- (b) involve a substantial departure from the local development plan.

The department must serve a notice stating that the development is **regionally significant** and that an application for planning permission must be made to the department.

The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015 sets out 2 statutory performance indicators in relation to development management.

10. **Local** applications processed from date valid to a decision or withdrawal within an average of **15 weeks**.

11. **Major** applications processed from data valid to decision or withdrawal within an average of **30 weeks**.

There is no statutory performance indicator for the processing of regionally significant planning applications by DfI however, the new reporting arrangements which came into effect from 1 April 2018 (and which will report for the first time in autumn 2019) contain a non-statutory performance indicator for the processing of **regionally significant planning applications** - average processing time from date valid to decision within an average of **30 weeks**.

## DUTY REGARDING STATUTORY CONSULTATION

The Planning (General Development Procedure) (Amendment) Order (Northern Ireland) 2016 sets out the statutory consultation arrangements where an application for planning permission is to be determined by Councils or DfI.

In summary, statutory consultations are required as follows:

### 1. DfC

- demolition and alteration of listed buildings
- affects the site and setting of any historic monument
- affects an area that contains archaeological remains or the setting of a listed building etc

### 2. DAERA

- habitats or species
- ASSI, Natural 2000 or World Heritage sites
- fish farming
- refining or storing of minerals or derivatives
- collection, storage, treatment etc. of controlled waste
- cemeteries
- minerals, hydrocarbon or peat extraction
- contaminated land or development of land that has the potential to cause water pollution
- energy generation
- development of land which may have an effect on the water environment
- where mains sewerage may not be available or not have capacity
- impact on private water supplies (water quality)
- use of land for industrial processes, including hazardous substances and intensive livestock activities
- impact on marine environment

### 3. HSENI

- Planning applications within the consultation distance of major accident hazard sites (establishments)
- Planning applications within the consultation distance of major accident hazard pipelines
- Planning applications for new major accident hazard sites (establishments) and major accident hazard pipelines
- Planning applications for the modification of existing major accident hazard sites (establishments) and major accident hazard pipelines
- Planning applications for hazardous substances consent

- Planning applications within 100 metres of the boundary of a quarry

#### 4. (a) Dfl (Roads)

- access issues
- increase in volume of traffic
- car parking
- new streets
- prejudicial to roads (existing or proposed new)
- relating to power lines and structures

#### (b) Dfl (Rivers)

- is **likely** to impact upon drainage and/or flood defence [check PPS 15]
- on a riverine coastal flood plan or beyond flood plans on land with a known history of flooding
- may affect a flood bank, flood control structure or is likely to involve the alteration or diversion of a watercourse
- significantly increase surface run off

#### 5. Dfl or NIW

- where development proposal is likely to significantly impact upon the availability of suitable water and sewerage infrastructure to service development proposals.

#### 6. Licenced Aerodromes

- development within hazard map
- wind turbines within 30km

#### 7. DfE

- all energy infrastructure applications classified as major
- all mineral applications
- all applications for hydrocarbon exploration or extraction

#### 8. NIHE

- where development proposal is likely to require a statement of affordable housing need.

In addition, for regionally significant applications there is a statutory duty in Dfl to consult the appropriate council.

***RTPI Report on the Value of Planning***

*As Royal Town Planning Institute (RTPI)<sup>17</sup> Report endeavoured to set out the potential benefits of better planning at both project and spatial levels. If planning is considered as a broad activity that shapes, regulates and stimulates markets, the Report argues that the potential benefits can be captured in four quadrants - set out in Figure 5.*

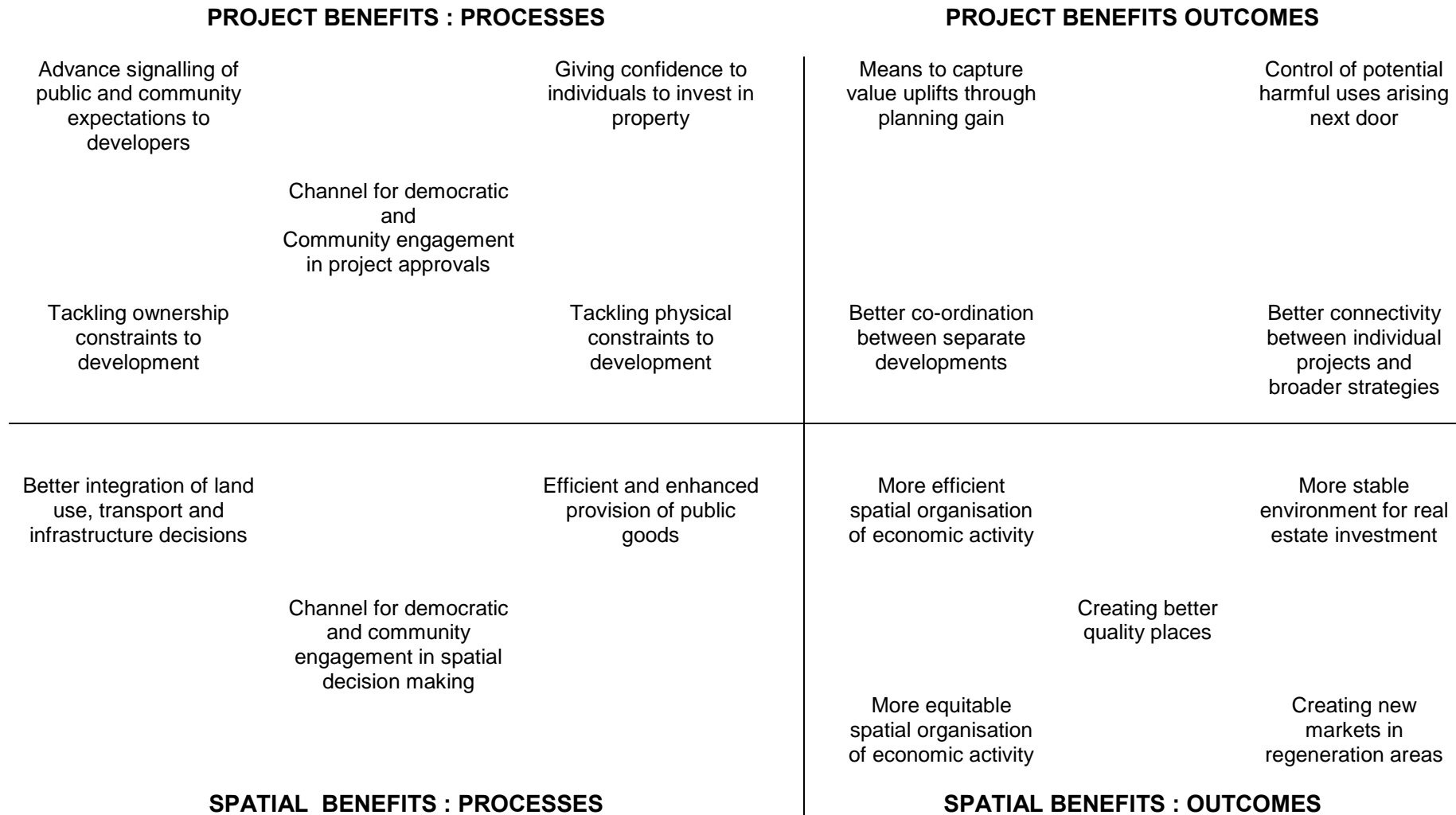
- *The upper quadrants showing "project" benefits at specific developments or sites.*
- *The lower quadrants showing "spatial" benefits, locally or regionally.*
- *The left hand quadrants showing "process" benefits while projects are in preparation.*
- *The right hand quadrants focus on the "outcome" benefits of planning i.e. the long term legacy of planning actions.*

*This analysis is helpful and a useful reference point when considering the efficiency of the planning process in Northern Ireland and its ability to deliver local and regional outcomes.*

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<sup>17</sup> Delivering the Value of Planning: RTPI August 2016

Figure 6: The Benefits of Better Planning







Department for

**Infrastructure**

www.infrastructure-ni.gov.uk

## ANNEX 4

**From:** Katrina Godfrey  
Permanent Secretary

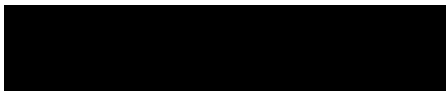
**Our Ref:** PSDFI 108/19

**Date:** 3 April 2019

**Tel:** (028) 9054 1175

**cc** HoCS  
Hugh Widdis  
Brenda King  
Peter May  
Sue Gray  
Richard Pengelly  
Julie Thompson  
John Irvine

**Email:**



**To:** Noel Lavery  
Denis McMahon  
Tracy Meharg

### THE ROLE OF STATUTORY CONSULTEES IN NICS DEPARTMENTS IN THE PLANNING PROCESS

1. The purpose of this note is to seek your support for a short, focused piece of work which I am proposing to put in train following a review of the extent to which statutory consultees are meeting agreed targets for responding to major planning applications.
2. You will already be aware that the planning function represents a key enabler for most of our PfG Outcomes. How regionally significant or major planning applications are determined (by either DfI or by Councils), including the pace at which they are determined, is very important in achieving our stated aim of *Improving wellbeing for all – by tackling disadvantage and driving economic growth*. There are well established processes for assessing major planning applications which I do not propose to rehearse (or indeed review) but the role of statutory consultees is a critical part of those processes and it is this aspect that I believe merits some further consideration. For those less familiar with the details of planning legislation, the NICS departments named as statutory consultees are DfI, DAERA, DfC (HED) and DfE.
3. The reality is that, although the number of planning applications remains constant, the number of statutory consultations continues to increase (from 19,700 in 2015-16 to c25,000 in 2017-18) and the average processing time for major applications has increased to 58 weeks (the agreed target is 30 weeks). This is causing some frustration for applicants, business organisations and of

course colleagues in all departments who are involved in the process. It raises issues for all of us who have responsibilities in this area and presents areas for exploration including whether, in fact, there may be a tendency towards over-consultation or whether statutory consultees have adequate capacity and capability.

4. John Irvine, who has been covering the Grade 3 Planning, Water and DVA post in DfI until Julie Thompson's arrival earlier this week, has begun some work to explore the picture behind these figures which I would like to take further. I propose to ask John to move this work into a new phase by convening a group which would include SCS level (at least Grade 5) representatives from DfI, DAERA, DfC and DfE to explore the issues from a range of different perspectives. I would also envisage that this piece of work may involve a degree of engagement with Councils, Industry and Professional Bodies to draw out (generally) key issues and concerns, without getting into the specifics of particular applications. Indeed, it may also be helpful to assess whether best practice exists in other planning authorities in the UK and Ireland.
5. I should say that I do not see this being a long drawn out exercise; my intention would be to provide John with the time and space to focus on this at Grade 3 level for just a few weeks and to ask him to complete the task by no later than the end of June, providing a report on the position, challenges, opportunities and any recommendations from NICS statutory consultees on how the process might be improved.
6. I should be grateful for your support, and that of copy recipient colleagues, for this work. I would also welcome a SCS nominee from your department who would contribute as proposed to informing John's report and recommendations. Names and contact details should be sent directly to John [REDACTED] by **Friday 12 April**.

*[signed]*

**KATRINA GODFREY**