



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Local development plan examinations: procedure guidance

Guidance to practitioners and participants on the practical, procedural and administrative arrangements for the examination of local development plan.

**First published:** 28 November 2022

**Last updated:** 28 November 2022

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# List of abbreviations

FC / FFC - Focussed Changes / Further Focussed Changes

'Future Wales' – The National Development Framework: Future Wales - The National Plan 2040

HRA - Habitat Regulations Assessment

ISA – Integrated Sustainability Appraisal

LDP - Local Development Plan

LVIA - Landscape and Visual Impact Assessment

LPA - Local Planning Authority

MAC - Matters Arising Change

MIQs – Matters, Issues and Questions

PHM - Pre-Hearing Meeting

PPW - Planning Policy Wales

PO - Programme Officer

PQ - Preliminary Questions

SA / SEA - Sustainability Appraisal / Strategic Environmental Assessment

SoCG – Statement of Common Ground

TAN - Technical Advice Note

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# Section 1. Introduction and overview of the examination

1.1. This guidance is concerned with the procedural aspects of Local Development Plan (LDP) examinations. It is aimed at all those involved in the process of examining a Plan, including Planning Inspectors and all interested parties.

1.2. The statutory basis for Plan examinations is provided in section 64 of the **Planning and Compulsory Purchase Act 2004** (the 2004 Act) and in the **Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 (as amended)** [‘the LDP Regulations’]. The Welsh Government’s Development Plans Manual Edition 3 (March 2020) identifies general principles for the examination of LDPs.

1.3. Detailed procedural aspects of Plan examinations are not covered by legislation or Welsh Government guidance. This affords some flexibility in administering the examination process to accommodate the needs of those involved. However, to assist participants and ensure consistency in approach, examinations will usually be undertaken within the parameters set out in this guidance. Inspectors will also ensure that everyone is dealt with fairly in matters such as the timely circulation of papers and reasonable notice in advance of hearings.

1.4. Local Planning Authorities (LPAs) should arrange for an advisory visit from PEDW on the Plan submission and examination process following consultation on the deposit proposals. Following advice provided by PEDW prior to submission will ensure that examination timescales and costs to the LPA are minimised.

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1.5. Plan examinations may focus on a completely new or replacement plan; or they may be concerned with proposed revisions to an adopted plan.

References to 'Plan' in this guidance refers to either:

- The LDP as submitted for examination (for new or replacement plans), or
- The adopted LDP as proposed to be revised (for plan revisions).

## Principles of the examination process

1.6. The role of the appointed Inspector is to carry out an independent assessment of the overall soundness of the plan and to ensure that it satisfies the statutory requirements for its preparation. The Inspector's role is not to improve the Plan but to make recommendations to ensure it is sound. This means dealing with the matters and issues which go to the heart of the Plan and not getting involved with the details of individual policies and allocations unless this is necessary to conclude on the Plan's soundness. Provided they do not fall foul of the soundness tests, Inspectors will not concern themselves with minor drafting or typographical errors.

1.7. The examination is based on the Inspector's assessment of matters and issues in the Plan and is not driven by representations received during the Plan's preparation. Hearing sessions will be inquisitorial, with the Inspector probing relevant issues. Those who have sought changes to the submitted plan or plan revisions and have indicated that they would like to speak must be invited to the hearings. Other parties may also be invited to attend if the Inspector considers that they would assist in their understanding of the issues in question. Representations made in writing and verbally at hearings are given equal weight.

1.8. The Inspector takes control of the examination process from start to finish. They will be proactive from the time of appointment and will seek to identify any problems with the plan at an early stage. This may necessitate holding an

exploratory meeting (see Chapter 7 for more details).

1.9. Inspectors' examination reports aim for brevity, avoiding direct reference to representations as far as possible. They will provide clear conclusions and recommendations on the content of the Plan, including any recommended changes, in relation to the soundness tests. Reports are subject to peer review to achieve the highest possible level of consistency.

1.10. Section 65 of the 2004 Act provides the Welsh Government's powers of intervention by direction where the recommendations of a binding report are considered to raise issues of national importance or extend beyond the area of the plan making authority. Paragraph 7.16 of the Development Plans Manual makes clear that the Welsh Government will only use such powers in a limited range of circumstances and as a last resort. PEDW will provide the Planning Directorate in the Welsh Government with a copy of the draft examination report when sent to the LPA for fact checking.

## Resources and timescales

1.11. PEDW is committed to delivering the Inspector's Report for Fact Checking within 11 months of the examination commencing. For this to be achieved it is essential that LPAs are equipped to move swiftly into the examination process on submission. This means making sure that the plan is sound, is accompanied by all required submission documents (including representations) and is supported by a complete evidence base. The clock will not start, and the examination will not commence, until PEDW has confirmed with the LPA that it has made a valid submission.

1.12. Depending on the complexity of a plan, the lead Inspector may be supported by other Inspectors, specialist advisors or planning officers. Time will be allocated according to the complexity of the Plan.

1.13. The overall length of the examination will depend on the complexity and scope of issues subject to examination. A full Plan examination will often take up the whole 11 months, but a shorter timeframe is likely where the examination relates only to revisions to an adopted plan.

1.14. Under the amended 2005 Regulations, LPAs can opt to follow a 'short form' procedure for partial revisions that would not affect the plan strategy (see the Development Plans Manual para 8.21). Irrespective of the issues raised, in such situations a Pre-Hearing Meeting (PHM) will not be necessary and in some cases the examination may be able to proceed via written representations.

1.15. Outlined below are the main stages and key tasks of a Plan examination. Three timescales are indicated depending on the type and extent of the examination:

- Replacement Plan or full Plan revision: hearing sessions lasting 4 weeks and a 10-month examination
- Revision to an existing Plan's strategy (where strategic issues are raised but not all policies are subject to revision): hearing sessions lasting 2 weeks and a 7-month examination, and
- Partial revision of an existing Plan (short form process, with a limited number of non-strategic policies subject to revision): hearing sessions lasting 1 week and a 5-month examination.

## Key Tasks in the Examination

### Stage 1: Initial tasks (section 3)

Key tasks to be undertaken during weeks 1 to 3 of a Full Plan; Weeks 1 to 3 of a Plan Revision (strategy); and Weeks 1 to 2 of a Plan Revision (partial).

- LPA submits Plan and supporting documents.
- LPA submits a response to the Preliminary Questions (PQs)
- If submission documents are validated the Inspector is appointed.
- PEDW planning officers commence Plan review and procedural checks.
- PEDW planning officers complete Plan review and procedural checks.
- Programme Officer (PO) in consultation with Inspector drafts Guidance Notes, which includes an indicative examination timetable, and initial letter to representors.
- PO arranges for translation of Guidance Notes

At this point if it appears that the Plan is fundamentally or cumulatively flawed, the normal timetable will be suspended whilst the Inspector determines what course of action to take (e.g. writing to the LPA / exploratory meeting).

Key tasks to be undertaken during weeks 4 to 8 of a Full Plan; Weeks 4 to 8 of a Plan Revision (strategy); and Weeks 3 to 5 of a Plan Revision (partial).

- Inspector reads representations and LPA's Consultation Report to identify the main issues and representors who have commented, including a) those who wish to be heard or b) those who are eligible to be heard.
- Inspector reads LPA's response to PQs.
- Inspector and PO meet to discuss procedures, timescales and draft documents (exam admin, hearings programme, rooms, translation, numbers of participants etc.)
- Inspector determines whether a Pre-Hearing Meeting (PHM) is necessary (e.g. if there are substantial numbers of representors and / or parties are unfamiliar with the process). If a PHM is necessary, a date is set and the LPA advertises it, giving at least 4 weeks' notice.
- PO arranges for translation of Inspector's examination documents.
- Inspector, in conjunction with PEDW planning officers, reviews the Development Management (DM) Policies in the submitted Plan.
- PO publishes draft hearings programme including 'outline' list of discussion matters and assigned or eligible hearing participants (tbc by reply email 2 or

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3 weeks' hence).

- Inspector writes to LPA outlining any initial questions to the LPA on specific matters / issues, including those arising from the review of DM Policies.
- LPA advertises start date of hearing sessions (at least 6 weeks in advance).
- PO fields queries from representors / LPA in consultation with the Inspector, refining the list of participants on the draft hearings programme.
- LPA provides a response to Inspector's initial questions.
- Inspector drafts detailed list of matters, issues and questions

## **Stage 2: Pre-Hearing (section 4)**

Key tasks to be undertaken during weeks 9 to 14 of a Full Plan; Weeks 9 to 14 of a Plan Revision (strategy); and Weeks 6 to 10 of a Plan Revision (partial).

- PO informs Inspector of final confirmed hearings participants.
- Inspector finalises matters, issues and questions (MIQs).
- PO arranges for translation of the MIQs.
- The PHM is held (if necessary). Following the meeting the PO circulates a note of the meeting (dual language). If no PHM is held then written guidance notes will be published for participants.
- PO publishes the MIQs and final hearings programme (dual language).
- LPA and participants start work on any written statements requested by Inspector (a period of 4 weeks is normally allowed. Ensure that time is built-in for translation of the matters, issues and questions).
- Written statements from LPA and participants due.
- PO circulates written statements 2 weeks before the hearings commence.
- Inspector and participants read statements and prepare for hearings.
- Inspector may make provision for rebuttal statements if necessary.
- PO circulates hearing agendas (i.e. MIQs, amended by the Inspector if necessary, dual language) and makes final preparations for the hearings.

### **Stage 3: Hearings (section 5)**

Key tasks to be undertaken during weeks 15 to 19 of a Full Plan; Weeks 17 to 31 of a Plan Revision (strategy); and Weeks 12 to 22 of a Plan Revision (partial).

- Aim to hold hearings 3 or 4 days per week, in 2-week blocks.
- If necessary, action points are agreed between the Inspector and LPA during / after each hearing and published on the examination website by the PO.
- LPA commences work on any Matters Arising Changes (MACs) SA Report revisions etc.
- At the scheduled closing hearing sessions, the Inspector checks that all action points are completed or in train; and confirms the estimated delivery date for the report for Fact Checking.

### **Stage 4: Consultation and reporting (section 6)**

Key tasks to be undertaken during weeks 20 to 43 of a Full Plan; Weeks 15 to 16 of a Plan Revision (strategy); and Week 11 of a Plan Revision (partial).

- After the hearings have concluded, the schedule(s) of the LPA's proposed MACs (and any Inspector Changes, if necessary) is finalised.
- The LPA approves the schedule for consultation purposes and consults on it for a period of 6 weeks.
- At the end of the consultation period the LPA forwards duly made responses to the Inspector for consideration.
- Inspector writes the report.
- If no further evidence is needed, the Inspector forwards a confidential draft report to the LPA for 'fact checking'.
- LPA has 2 weeks (or 1 week if there are partial revisions to a Plan) to carry out the fact check.
- Inspector makes any necessary adjustments.

- The report is translated and issued.

## Section 2. Submission

2.1. The examination does not start until the Plan or plan revisions are submitted to the Welsh Government and PEDW including a full and complete evidence base and supporting documentation. The Programme Officer (PO) must be established in post and be in a position to act as a liaison between the Inspector and the LPA as soon as the Plan is submitted.

2.2. Providing the LPA has met the procedural requirements on submission and an appropriately trained PO is in place, the Inspector will be appointed. PEDW will need to have reserved the Inspector for this work many months in advance. It is therefore essential that the LPA keeps in close touch with PEDW after the deposit stage to give the maximum notice of any change in the anticipated date of submission.

2.3. Alongside the submission documents LPAs will be required to produce and submit a statement which provides a detailed response to the preliminary questions (PQs) contained in Appendix 2. The PQs address procedural and policy related matters that are common to all LDPs. The LPAs statement must include a response to each of the PQs. The response must provide a detailed explanation of the policy approach taken in the Plan how the approach specifically relates to the supporting evidence; and accurately signpost where the relevant information can be found in the submitted evidence base. Where the policy approach departs from that supported by the evidence the reasons for doing so, and the approach taken, must be clearly explained. The statement should not exceed 12,000 words.

## Early review

2.4. Within the first 2 weeks PEDW's planning officers will carry out early checks of the Plan in relation to both procedure and content. If complex technical issues are raised, arrangements may be made to provide support to the Inspector, which may involve using an Assistant Inspector or an external specialist advisor. PEDW planning officers may also provide support at the hearing sessions and may help to prepare initial drafts of parts of the Inspector's report. However, the ultimate responsibility for the whole report rests with the Inspector.

2.5. The examination process is flexible. Inspectors may hold procedural meetings before the hearings commence or further hearing sessions if they are needed at any stage of the examination. In view of this the Inspector will keep in close contact with the PO to ensure any necessary variation from the agreed programme is communicated to all parties.

## Pre-submission 'focussed' changes

2.6. Should an LPA choose to make 'focused changes' (FCs) to its deposit plan prior to submission (for example, to take into account of representations made at the deposit stage), this may be done in exceptional circumstances whereby the amendment is clearly related to the soundness of the plan. Where the plan to be examined is subject to FCs the submission of the plan is not complete until the LPA has submitted the FC representations and accompanying Consultation report to PEDW.

2.7. In these instances, the Inspector will need to make clear the status of any FCs proposed by the LPA at a PHM and / or in the Guidance Notes. The LPA should incorporate the FCs into an updated, marked-up version of the Plan (or plan revisions) and submit this alongside the deposit proposals. Provided the

focussed changes have been subject to consultation, an Integrated Sustainability Appraisal (ISA) or separate Sustainability Appraisal (SA), Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) processes (if necessary), the version of the Plan (or plan revisions) incorporating the focussed changes would then be the starting point for the examination.

## **Proposed minor changes to a plan (post Deposit consultation)**

2.8. If an LPA wants to make minor editing changes, such as correcting typographical errors, these should be set out in a separate schedule submitted with the Plan documents. Should the Inspector consider that any such changes are not minor they will inform the LPA at the earliest opportunity. It is likely that any minor changes which are substantive in nature would need to be treated as post-submission changes and consulted on following the hearings.

## **Plan revision or replacement**

2.9. Where an examination relates to the revision or replacement of an adopted Plan, the LPA will have prepared a Review Report to identify which parts of the adopted plan need to be revised, and where appropriate, what revision procedure is to be followed. Paragraph 8.38 of the Development Plans Manual states that the examination of proposed revisions will be in the context of the adopted plan. Consequently, an Inspector will not usually examine 'other' parts of the adopted plan (i.e. those parts not proposed to be changed) unless:

- The evidence indicates that 'other' parts of the plan may be unsound, or
- The proposed revisions will have clear consequential impacts on 'other' parts of the plan which may put at risk the soundness of the plan as a whole.

2.10. Where an adopted Plan is to be revised in part, the examination will

usually focus on a marked-up version of the adopted plan incorporating revisions (i.e. with changes to text shown in bold/strike-through). Where revisions are relatively self-contained, the examination document may contain only those part(s) of the plan subject to change (this applies particularly to plans which have been the subject of a 'short form' revision procedure).

2.11. If an adopted Plan is to be revised in full (i.e. a new strategy is proposed, with implications for all plan policies/allocations), or a replacement plan has been deposited, the current adopted Plan should be submitted alongside the proposed replacement Plan.

## Section 3. Initial tasks

3.1. By week 4 the Inspector will have commenced an early appraisal of the Plan or plan revisions and made contact with the PO to establish working arrangements. On behalf of the Inspector the PO will write to representors to confirm the commencement of the examination, the date of any PHM and indicative dates for the hearing sessions. The Inspector will provide Guidance Notes for participants, outlining examination / hearing procedures and deadlines for the submission of any further material.

3.2. During this period the Inspector will also aim to:

- Identify any fundamental or cumulative flaws which might indicate the need for an exploratory meeting,
- Establish the structure of the examination hearings, including the matters, issues and questions,
- Assign interested parties to relevant hearing sessions, and
- Decide what additional material is needed from participants.

## Identifying matters, issues and questions

3.3. The examination will be structured around the matters and issues identified by the Inspector as critical to the soundness of the plan. An early task for the Inspector is therefore to establish a list of MIQs to be examined. 'Matters' tend to be strategically framed, whereas 'issues' focus on specific concerns raised by the Plan or its evidence. The Inspector's 'questions' are detailed and set out what is left to be resolved through further written or oral evidence during the examination process.

3.4. Of particular help to the Inspector is the LPA's statement of the main issues raised during the deposit consultation; how these issues have been addressed in the Plan and its recommendations on the representations contained within its Consultation Report (required under regulation 22(2)(c)). The main issues identified in the LPA's Consultation Report will not dictate the structure of the examination, as the absence of representations on a matter is not a guarantee of soundness (and vice versa). Instead, the examination will stem from the Inspector's proactive and inquisitorial approach to considering soundness.

3.5. The Inspector will usually prepare a draft list of MIQs for discussion at the PHM, if one is being held. The finalised list will then form the basis for any written or oral evidence provided by participants and will usually set the agendas for the proposed hearings.

3.6. For plan revisions, the Inspector will consider all representations made during the deposit consultation but will formulate MIQs only insofar as they relate to the plan revisions proposed by the LPA, plus any other parts of the plan which the Inspector considers may be affected as a consequence of the plan revisions.

## Fundamental / cumulative flaws

3.7. Inspectors will seek to identify any fundamental or cumulative flaws at the earliest opportunity. This will avoid wasted time and money if the submitted / revised Plan has critical problems or appears unsound.

3.8. If it appears that several discrete changes are needed to the Plan, the Inspector will consider whether these could cumulatively alter the substance of the Plan to the extent that the community involvement and ISA or SA, SEA and HRA processes would be undermined. The Inspector will also seek to identify any fundamental flaws in the Plan which, individually, would make the whole Plan unsound. If the Inspector forms the view that the submitted/revised Plan has serious shortcomings of this nature, this will be brought to the LPA's attention as soon as possible. Initially this will be done in writing and, if not subsequently resolved by an exchange of correspondence, an exploratory meeting will be scheduled.

3.9. Inspectors are unlikely to reach any conclusive findings at this stage but will give an indication of their concerns. It will be difficult for the Inspector to reach a conclusive finding of unsoundness prior to holding the hearing sessions, which is where the evidence is tested. Exceptionally, an Inspector may consider that the examination cannot be completed without additional work being undertaken. This may necessitate a temporary suspension of the examination, or in extreme cases, withdrawal of the Plan or plan revisions.

3.10. Further guidance on the procedures relating to exploratory meetings and suspension is provided in Chapter 7.

## Allocating participants to LDP Examination hearings

3.11. Interested parties (also known as representors) who are eligible to be



heard at hearings will be assigned by the Inspector against particular matters and issues. Representors with an interest in similar issues, policies or site locations will be invited to the same hearing session. The PO may assist the Inspector in this process.

3.12. Anyone who wishes to raise concerns about the plan, but whose concerns do not relate to a soundness issue will usually have the chance to be heard in an 'other matters' session that is normally held towards the end of the hearings. Representors should remember that written representations carry equal weight to those made at the hearings.

3.13. Where revisions to an existing plan are being examined, representations may have been made which do not relate to the proposed plan revisions. In such circumstances, the Inspector has the discretion to determine the relevance of these representations and, consequently, whether a representor has a right to be heard at a hearing session.

3.14. The PO will seek to confirm attendance at the hearing sessions with participants prior to the PHM, if one is held. The Inspector will finalise the programme for the hearing sessions as soon as possible after the PHM.

## **Additional written material from participants**

3.15. LPAs and other participants should await instructions from the Inspector as to what additional material they need to produce before the hearings start. Written material should not be put forward if not asked for by the Inspector. Unsolicited written material from any interested party, including the LPA, is likely to be returned.

3.16. In deciding what additional material may be needed, the Inspector will be guided by what they consider to be the critically important soundness issues raised by the Plan and the material already submitted. This might include

something identified by the Inspector but not raised in any representation. The Inspector may issue a more detailed note where necessary to explain any points needing further clarification.

3.17. The Inspector may invite the submission of statements of common ground (SoCGs), particularly on substantive matters raised by key representors. However, the fact that the parties may agree on certain issues will not prevent the Inspector probing those issues further if necessary.

## **Welsh Language Standards and translation facilities**

3.18. As the PO works on behalf of the Inspector, PEDW's Welsh Language Standards will apply. This means that any participant who has indicated a preference to communicate in Welsh must be contacted in Welsh, and they should not suffer any delay in communication due to their preference. Letters sent to representors therefore need to be available bilingually and must be sent to all recipients at the same time. The examination website and all documents produced by the Inspector (including Guidance Notes for Participants, Action Points, and any correspondence with the LPA) must also be published in both Welsh and English concurrently.

3.19. To facilitate an efficient examination, it will be important for the PO to have access to quick turnaround translation facilities. Where in-house facilities are not available, materials may be translated using PEDW's external translation contract, with the LPA bearing the cost. Typical turnaround times are a minimum of 5 working days, and this should be factored into examination timescales.

3.20. The Inspector will open the PHM and the first scheduled hearing in both Welsh and English. Facilities for simultaneous translation should be arranged by the LPA and PO (using the PEDW's external translation contract if necessary). As a PHM is a public meeting, simultaneous translation should always be

provided. At hearings, simultaneous translation should be provided where one or more participants have expressed a preference to communicate in Welsh. The PO should seek to confirm language preferences with participants prior to the hearings.

## **Section 4. Preparing for the Hearings**

### **Pre-Hearing Meetings**

4.1. If one is required, a suitable date for a PHM will be set soon after submission. The period is not prescribed but we recommend the LPA should give at least 4 weeks' notice.

4.2. If straightforward, uncontentious plan revisions are proposed or the number of hearing sessions / participants is likely to be limited, the Inspector may decide that a PHM is not necessary. In such circumstances, matters normally dealt with at a PHM will be addressed in the Inspector's Guidance Notes and/or by exchange of correspondence.

4.3. Although the merits of the plan will not be discussed at the PHM, it is important that all those who wish to be involved in the hearing sessions attend the PHM where one is held. Both the LPA and those that have made representations seeking changes to the Plan or proposed plan revisions should be prepared to take an active role at the PHM.

4.4. At a PHM the Inspector will:

- Open the meeting in Welsh and confirm that translation facilities will be available at hearings where one or more participants confirm that they wish to speak in Welsh;
- Explain that they have been appointed to examine the submitted / revised

Plan to ensure that it meets procedural requirements and is 'sound', and to produce a report to the LPA with binding recommendations;

- Explain that the Plan as submitted, or as revised by the proposed plan revisions, should be considered by the LPA to be sound;
- Explain the role of the PO as an impartial officer who assists the Inspector with administrative and procedural matters and acts as the channel of communication between the Inspector, the LPA and interested parties;
- Outline the procedures to be followed during the examination, including at the hearing sessions;
- Make clear that all the submitted evidence will be considered and that written representations carry as much weight as oral evidence;
- Explain the role of the Inspector's list of matters, issues and questions in focussing discussion at the hearings and testing the plan's soundness;
- Stress that further written statements must respond only to the identified matters, issues and questions, and should relate to participants' original written representations;
- Discuss the timetable for hearing sessions and the likely timing of participants' appearances; and
- Emphasise the importance of participants meeting identified deadlines.

4.5. If it is not already clear from the submitted documentation, the Inspector will also seek confirmation from the LPA that the procedural and other matters have been appropriately addressed, particularly:

- Legal requirements have been adhered to, including SA, SEA and HRA processes, and
- That submission documents are available for public inspection online and in paper form.

4.6. The Inspector will offer an opportunity for attendees to ask questions about procedural matters. They will also seek feedback on the draft list of matters, issues and questions and be receptive to varying them if reasonable changes are put forward.

4.7. The LPA should ensure that by the time the PHM is held, the start date for the hearings has been advertised in accordance with the regulatory requirements. At the PHM the Inspector will inform attendees that the hearings programme may change and that participants should check the website or contact the PO for updates.

4.8. If any participant (including the LPA) considers a more formal 'public inquiry' style approach is needed in relation to any issue they must raise this at the PHM, if not before.

4.9. The PO will circulate the notes of the PHM, along with the programme for the hearing sessions and the final list of matters and issues for the hearings, as soon as practicable after the PHM.

## Written statements

4.10. Statements from participants should only be submitted if requested by the Inspector and must respond to the defined matters, issues and questions. Statements should be as succinct as possible, and generally not more than 3,000 words for each matter.

4.11. The LPA and participants should start work on providing any material requested by the Inspector as soon as possible. A deadline will be provided for submission of written statements (usually 2 weeks before the start of the first hearing). It is important that everyone adheres to set deadlines so that the Inspector has sufficient time to consider the information provided. Only in exceptional circumstances will the Inspector accept late submissions.

4.12. The PO will exchange and / or circulate written statements as soon as they are received. It should not normally be necessary for the LPA to submit its statement on a different (later) date than other participants. However, in some instances the Inspector may decide that there are advantages in having the LPA

respond to statements made by representors. In such cases different submission dates will be set by the Inspector.

## Agendas for hearing sessions

4.13. Hearing agendas will normally be the same as the matters, issues and questions identified by the Inspector. However, if additional questions are raised, or some points are satisfactorily clarified by the written submissions, the Inspector may accordingly update the agendas prior to the hearings.

4.14. Each agenda will identify a clear sequence of issues and questions for discussion. The Inspector may also choose to issue a separate note, for example to summarise key areas of agreement / disagreement or to clarify any technical matters (such as the methodology used in a housing needs assessment study). In some instances a technical seminar may be held in advance of, or alongside, the hearing sessions (see Chapter 7).

4.15. If the Inspector has produced a separate note or has updated a hearing agenda, the PO will seek to circulate this to participants around one week before the hearing.

## Section 5. Hearing sessions

5.1 Hearings usually form an important part of the examination. The Inspector will have completed the desk-based examination of the Plan and will be looking to the hearing sessions to seek further clarification on any remaining issues that will assist in determining soundness. The emphasis will be on informality, with the Inspector leading a debate on the matters set out in the agenda.

5.2 The nature and location of the hearing sessions is a matter for the LPA

and Inspector to determine (via the PO). Hearing sessions may be held in person or virtually. Where sessions are to be held virtually, this may include video or telephone conferencing.

5.3 For hearings held in person, the most appropriate layout for the hearing sessions will comprise a U-shaped table with seats for up to 20 persons. All contributors to the discussion should be set a place at the table. If this is not possible, any parties represented by a team or a group sharing the same views will be asked to nominate a lead speaker. Similarly, the LPA may wish to have support staff available sitting behind the LPA representative.

5.4 Detailed guidance in relation to the organisation and management of virtual hearing sessions will be provided in the Inspectors Guidance Notes for Participants issued for each examination.

5.5 The hearings programme will be intensive and focussed. Because of the nature of the hearing sessions it is likely that the Inspector will usually sit for 3 or 4 days a week to allow adequate preparation time between sessions. This can vary depending on the nature of the Plan and on whether more than one Inspector is allocated to the plan in question. It is likely that the programme will also include a break midway through. LPAs may find the hearings very demanding and will need time to prepare material and responses to matters raised in earlier sessions.

5.6 The Inspector will normally hold hearing sessions considering strategic issues first. There may then be a break in the programme before non-strategic matters are considered. This will enable the Inspector to consider the strategy and allow the evidence gathered to inform the matters and issues to be considered later. It is possible that in this break issues could be identified that alter the way the hearings proceed, change agendas or generate a need for additional sessions.

## The right to be heard

5.7 To speak at a hearing, the interested party must have already made a representation seeking a change to the Plan or proposed plan revisions (as stipulated in section 64 (6) of the 2004 Act).

5.8 Those eligible to be heard will be invited by the Inspector to attend the hearing session(s) which relate to the representations they have made. The Inspector also has the discretion to invite others to a hearing; for example parties with specific technical expertise which may assist the examination. The Inspector will, however, ensure that any party invited to participate in this way does not use this invitation to introduce late representations that have previously been rejected by the LPA as not duly made.

5.9 Parties who have not sent in representations in accordance with the statutory legislation do not have the right to be heard, although they may observe any hearing session. Inspectors will adopt a robust approach and will not consider late representations not formally accepted by the LPA.

5.10 Representors who are supporting the submitted Plan or plan revisions do not have a right to be heard. This is because their position is represented by the LPA at the hearings. The Inspector may allow a supporter of the plan to participate if they consider that it would assist the process, but a firm line will normally be taken in relation to requests to appear by supporters.

5.11 Parties wishing to be heard will be expected to attend the hearing session(s) relevant to their representations or to send a representative if they are unable to attend on that day. Failing this, where all reasonable steps have been taken to facilitate attendance, they will have to rely on written representations.



## Formats for hearing evidence

5.12 The Inspector is responsible for determining the format for hearing the evidence. An inquisitorial approach to testing the soundness and procedural compliance of the Plan is normally adopted by the Inspector. This is the most efficient mechanism for hearing evidence and should be capable of being used to examine all Plans.

5.13 There should be no need for formal presentation of evidence and only exceptionally will formal cross-examination be used. Whilst it is acceptable for participants to have their views put by a barrister or agent, lawyers will not be permitted to adopt a formal 'advocacy' role as this can unnerve other participants and undermine the principle of equal partners in the discussion.

5.14 There may, however, be occasions when the skills of lawyers / advocates need to be used. It may be appropriate that part of the examination is conducted in 'public inquiry' style, i.e. for formal presentation of evidence followed by cross-examination and re-examination. This will only happen in exceptional cases where the Inspector is convinced that a formal approach is essential to adequately test highly technical or complex evidence.

5.15 Any participant who wishes the Inspector to permit cross-examination by an advocate in relation to a particular subject must be prepared to make a strong case at an early stage in the examination. This request should be accompanied by a robust justification. Other participants will be informed and, in the interests of fairness, invited to consider whether they would like similar representation. In coming to a decision about whether a formal approach is appropriate, the Inspector will have regard to the impact on the examination programme and timescales.

5.16 The final decision rests with the Inspector. Where it is decided that a formal approach is necessary, participants will be informed ahead of the session

that cross-examination is to be permitted on a particular matter.

## Opening the hearing sessions

5.17 All documentation at the hearings will be taken as read. The hearings will focus on the Inspector's matters, issues and questions, as set out in the agenda. It is unhelpful for participants to submit unsolicited evidence at the hearings. The Inspector will therefore exercise their discretion in turning away unsolicited material that is not relevant to the soundness of the plan.

5.18 On the first day of the hearings, the Inspector will:

- Open the hearing in Welsh, confirming the arrangements for translation facilities at the hearings;
- Briefly set out the purpose and principles of the hearing sessions as well as explaining the potential outcomes of the examination;
- Explain clearly the scope that they have for making changes to the plan to ensure adoption of a sound Plan; and
- Invite the LPA to briefly introduce the Plan or plan revisions and to comment on its soundness should it wish.

## Hearing participants

5.19 The Inspector will take charge of the hearing. They will begin by making a few brief comments on the matters to be covered, before drawing participants into the discussion in such a way as to enable themselves to gain the information necessary to come to a conclusion on the relevant issues.

5.20 Participants should not speak unless invited to do so by the Inspector. Attendees will usually be asked to signal their wish to contribute to the discussion; in a virtual event the method will be confirmed by the PO, and at an

in-person event participants should stand their nameplate on its end. The Inspector will move onto the next agenda item when they consider the issue or question has been satisfactorily covered.

5.21 Grouped appearances help to keep the focus on the Inspector's agenda, rather than on individual representations seeking a change to the Plan. In a session relating to a single matter (e.g. employment land provision), it may be possible to accommodate participants with views about the general soundness of the policy and those with concerns about particular sites.

## Managing large numbers of participants

5.22 If large numbers of participants (in excess of 20) wish to be heard at a particular session, an Inspector may find it difficult to direct the discussion, exercise fairness to everyone and take notes. As such there is a need to be pragmatic approach adopted. The Inspector will aim to reduce the number of participants by:

- Reminding parties that written representations carry the same weight as oral evidence and asking them to consider whether they need to attend;
- Asking those with similar views to appoint a single spokesperson; and
- Subdividing the matter for discussion.

5.23 In some cases it may be necessary to hold more than one session on the same matter. Participants in additional sessions should be encouraged to observe all the other hearings in that topic cluster. This is to ensure that the Inspector does not hear the same arguments twice, and may also lead some participants deciding against attending the later hearing session(s). The PO should be on hand to assist participants should they change their minds on participating.

5.24 Where there are large, intensive sessions, Inspectors may need the

assistance of a note-taker. They may therefore be supported by an Assistant Inspector or PEDW planning officer. Notes are merely intended as an 'aide-memoir' for the Inspector and are not examination documents.

## **Matters Arising Changes and Action Points**

5.25 Changes after submission should be at the instigation of the Inspector in response to any soundness matters which arise during the examination. These are usually referred to as 'Matters Arising Changes' (MACs).

5.26 Where an Inspector identifies the potential need for a change to be made to the Plan, this will be discussed during the hearing. Although it may not be possible to reach a precise form of wording during the hearing itself, it is essential that the lead representative for the LPA at the hearings has the necessary authority to propose changes or outline possible courses of action which may resolve any issues identified by the Inspector.

5.27 At the end of each hearing the Inspector will confirm with the LPA any actions it needs to take in response to soundness issues raised during the discussion (e.g. to formulate specific MACs to the Plan or to clarify matters in relation to the evidence base). A list of 'Action Points' for completion by the LPA and / or another parties will be published on the examination website after the relevant hearing.

5.28 Guidance in relation to the formulation of MACs will be provided by the Inspector during the examination.

## **Inspector Changes**

5.29 Exceptionally, an Inspector may find that a change needs to be made to the Plan for soundness reasons which the LPA is not willing to propose as a

MAC. In such cases the Inspector will seek to clarify the nature of any potential 'Inspector Change' (IC), and the reasons for why they consider the change to be necessary, at a hearing session. The Inspector may issue a note at the hearing identifying the specific nature of the proposed IC, and/or write to the LPA or other parties following the hearing to confirm this. Where it would assist the examination process, the Inspector may also invite written comments from certain parties on a proposed IC.

5.30 As the Plan belongs to the LPA, Inspectors will normally seek to avoid proposing or making ICs. LPAs are therefore encouraged to adopt a flexible and pragmatic approach to formulating their own MACs where a soundness issue is identified by an Inspector. Ultimately, however, the Inspector must make binding recommendations, and he or she will therefore recommend ICs where these are necessary to achieve a sound Plan.

## Concluding the scheduled hearing sessions

5.31 At the last programmed hearing session the Inspector will identify an expected date of delivery of the report to the LPA for a 'fact check'. The date will be confirmed in writing with the LPA by PEDW.

5.32 At the closing hearing session the Inspector will check to ensure that all identified 'action points' have been completed or are well underway. A draft schedule of MACs which the LPA proposes to make to the submitted or revised Plan should also be available for discussion. This should identify the page number, policy / allocation references and / or paragraph proposed to be amended; and must identify any deletions or insertions via strike-through or emboldened text.

5.33 If the Inspector considers that some or all proposed MACs are necessary to make the plan sound, the LPA will be asked to carry out the necessary SA and HRA work and undertake consultation on the schedule of MACs for a period

of 6 weeks. The LPA may also be asked to concurrently consult on ICs not proposed by the LPA. The LPA must be able to complete this work without undue delay to the examination. The Inspector may choose to suspend the examination while the LPA undertakes this work (see Chapter 7).

5.34 A practical problem can occur if the PO is released from post at the end of the hearings as there will be no direct channel of communication with the Inspector. LPAs must therefore keep the PO in post, at least on a part-time basis, until the Inspector's fact check report is delivered. If the PO is likely to be unavailable for an extended period, the LPA must ensure that an officer is available to handle correspondence and provide a point of contact. PEDW must be informed if any problems relating to the PO arise.

## Further material and additional hearing sessions

5.35 There may be occasions where an Inspector identifies a flaw late on in the examination process, or there is some substantive change which could affect the plan (e.g. national policy is altered). In such circumstances the Inspector may seek an additional written statement from certain participants. Additional information will, however, only be requested where it relates to the plan's soundness or procedural compliance. Unsolicited material submitted after the last hearing session will not be accepted.

5.36 As the examination remains open whilst the Inspector is writing the report, they may hold further sessions during the reporting period. This option will be exercised only if necessary, e.g. where a fundamental soundness issue has not been resolved.

# Section 6. The Report

## Key principles for reporting

6.1 In drafting the report, the Inspector will concentrate on:

- reaching clear conclusions, backed by reasoned judgments, on the compliance requirements of the 2004 Act and Regulations and meeting the legal requirement of soundness; and
- setting out (where appropriate) precise binding recommendations on any changes to the policies, other supporting text, and / or Proposals Map that are required to overcome any correctable aspect of unsoundness identified by the Inspector.

6.2 The Inspector will start on the premise that the report should be as short as possible, whilst ensuring it is clearly reasoned to justify the conclusions. Since the Inspector is not dealing with objections, reports will not summarise the cases of individual parties, will avoid as far as possible direct references to specific representations and will not describe discussions at the hearing sessions. The report will explain why the Inspector, based on a consideration of all the evidence and their professional expertise and judgement, has reached a view on how the plan satisfies the statutory requirements for its preparation and the tests of soundness.

## Structure of the report

6.3 The report will be subdivided into the following key sections:

- A summary, glossary and introduction, including a brief explanation of the structure of the report.
- Procedural requirements – summarising the plan preparation process and

whether it has met the requirements of the 2004 Act and Regulations.

- Topic-based chapters which identify the main matters and issues, setting out the Inspector's reasoning and conclusions.
- A conclusion of whether the plan (either as submitted or as modified by the plan revisions) is sound with or without recommended changes; or is fundamentally unsound.

6.4 If the plan is found to be unsound, the report will be subdivided to (a) cover all the matters and issues which led to a conclusion of unsoundness which cannot be overcome by the Inspector, and (b) cover other matters and issues which proved controversial at the examination but did not amount to unsoundness or could be remedied.

6.5 Where focussed changes were made to the plan in advance of submission the Inspector will clarify the status of these early in the report.

## **Changes recommended by the Inspector**

6.6 If a Plan is found sound subject to changes, the Inspector's report will identify binding recommendations. Recommendations may consist of redrafted text, the omission of a policy or section of text (or the inclusion of a new one), or changes to the Proposals Map, provided what remains comprises a sound plan when read as a whole.

6.7 The Inspector will consider the extent to which any MACs proposed by the LPA are necessary to address soundness issues raised during the examination. Where the Inspector concludes that some or all MACs are necessary for the plan to be found sound, the schedule of MACs will be appended to the report. If the Inspector concludes that additional changes are necessary for soundness, these will be identified in a separate appendix of recommended ICs. Any changes to the Plan specified by the Inspector to make it sound (whether MACs or ICs) will be identified in the report. As recommendations are binding, the



exact wording of any change must be specified in the appendices to the report.

6.8 Binding changes can only be made if the Inspector is confident that they are based on evidence and that the changed Plan would not be vulnerable to challenge on the grounds that proper procedures had not been followed. This will require careful judgement by the Inspector in the circumstances of the case as to whether any post-hearing public consultation, ISA or SA, SEA or HRA process relating to any MACs or ICs has been sufficient, and has avoided unfairly prejudicing any parties or undermining the principles of the plan-making process.

6.9 It is important to remember that the Plan is the LPA's plan. Although the Inspector will recommend changes that would make a plan effective, they cannot 'improve' a plan if it is already sound. In relation to each proposed change, Inspectors will ask themselves whether the plan would be unsound if it was not made. If the answer is 'No', no change will be recommended.

6.10 Consequently, any minor changes proposed by the LPA which do not affect the soundness of the plan will not be referred to in the Inspector's report, even if the LPA has referred to these as MACs. LPAs may, however, choose to make consequential changes to a Plan to remove any inconsistencies following Inspectors' recommended changes.

## Unsound Plans

6.11 A conclusion at the end of the examination process that a plan is not sound has important resource implications, both in terms of time spent by the Inspector and the investment in time and commitment by the LPA and other stakeholders. PEDW is doing all it can to ensure that fundamental problems are identified early. Early review work, the use of exploratory meetings and targeted suspensions are aimed at mitigating such an occurrence.

## The 'fact check' report

6.12 The fact check report will be sent to the LPA by email, accompanied by a covering letter. This will summarise the pre-hearing and hearing sessions held on specified dates and confirm that the requirements of an examination under S64(5) of the 2004 Act have been fulfilled. The overall conclusions on soundness will be given.

6.13 The report will be copied to the Welsh Government. Section 65 and 67(4) of the 2004 Act provides that the Welsh Government may consider intervention by 'direction' prior to adoption where the recommendations of the binding report are considered to be in conflict with national policy.

6.14 When responding to the fact check report, LPAs may not question the Inspector's conclusions although they may seek clarification on any conclusions considered to be unclear. LPAs should complete the fact check within 2 weeks of receiving the fact check report (or 1 week for shorter reports relating to partial plan revisions).

6.15 Whilst the fact check report is the tentative final report, LPAs should not publish it until the fact check process is complete and the final report is issued by PEDW.

6.16 Previous attempts to provide the fact check report bilingually have proved confusing and time consuming for all parties. Instead, PEDW will arrange for the translation of the report after the fact check exercise has been completed by the LPA.

## The final report

6.17 Once the fact check has been completed and the Inspector has

responded to any points raised, the final report will be translated. English and Welsh language versions of the final report will then be submitted to the LPA electronically.

6.18 PEDW will not publish the report. It is produced for the LPA, who are required to publish it as soon as is reasonably practicable after they receive it (Regulation 24). Similarly, PEDW will not make known the outcome of a completed plan examination until the report has been published by the LPA.

6.19 LPAs will be invoiced for the examination in accordance with the Service Level Agreement (SLA) agreed between PEDW and the LPA. LPAs will normally be invoiced monthly unless otherwise requested when finalising the SLA. The current charging regime is set out in **The Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations**.

## Section 7. Exceptional procedures

### Exploratory meetings

7.1 The need for an exploratory meeting will usually arise because of significant concerns about the key matters and issues identified in the Inspector's initial reading of the Plan or proposed plan revisions. Inspectors will only call exploratory meetings where they have serious concerns. LPAs should therefore treat exploratory meetings in quite a different way to the PHM.

7.2 An exploratory meeting will only be called after the Inspector has not been able to resolve likely problems of soundness and / or procedural compliance through written correspondence with the LPA. While generally the purpose of an exploratory meeting is to assist the conduct of the examination (rather than for the Inspector to draw final conclusions about the soundness of the plan), there is scope for looking at the content of the submitted or revised Plan such as

considering whether further evidence is required and can be provided in a reasonable time on a specific issue raised in the representations.

7.3 Since the exploratory meeting is an early mechanism to explore concerns, an Inspector would not normally hold one after the hearing sessions have commenced. If serious concerns were emerging during hearing sessions, the approach of the Inspector would be to schedule an additional hearing session to review progress and discuss any concerns. An additional hearing session might also occur where the Inspector, in reviewing their conclusions after the hearing sessions, identifies a matter(s) affecting soundness which needs to be investigated further.

## Approach

7.4 The Inspector will explain why the exploratory meeting has been called and how they will regard the information given during the meeting. The premise of the meeting will be that the Inspector has some concerns on particular issues but will not have determined the plan to be unsound at this point. The Inspector will be looking for clarification on certain issues to inform the way forward in the examination.

## Participants, notice and timing

7.5 An exploratory meeting should involve the LPA and the Welsh Government. The Inspector may also invite any representors who have made significant points about the issues that are causing concern. Exploratory meetings must be public meetings and thus any person may attend and observe. In the interests of fairness, the Inspector will ensure that the exploratory meeting does not become an examination of the Plan, as only some parties have will have had the opportunity to make representations.

7.6 The meeting will be arranged by the PO and publicised by the LPA in a manner consistent with any commitment in the LPA's Community Involvement Scheme. If possible, at least 4 weeks' notice should be provided. It is also recommended that the LPA advertises the meeting on their website at the earliest opportunity.

7.7 The invitation letter will emphasise that formal evidence will not be heard and that the Inspector will determine how to progress the examination following that meeting.

## **Role of the Inspector**

7.8 The Inspector will produce an agenda / list of questions identifying the main points for discussion. This will be publicised in advance.

7.9 Although evidence will not be tested, the Inspector may voice concerns about an incomplete or inadequate evidence base and may explore with the parties what additional material is needed to properly inform the examination.

7.10 The exploratory meeting provides an opportunity to deal with matters such as clarifying:

- the representations received from stakeholders including specific consultation bodies; and
- the extent/nature of the evidence the LPA has submitted to the examination.

7.11 This can be a difficult experience for all involved, particularly the LPA, which will have invested a lot of time in the plan preparation. The Inspector will lead the meeting and will ensure that any concerns are clearly communicated in a sensitive and appropriate manner.

7.12 A note of the meeting will be prepared by the Inspector, highlighting any

further work required from the LPA to enable the examination to proceed. All papers relating to the exploratory meeting will be made available on the examination website.

## Possible outcomes of the exploratory meeting

7.13 Possible outcomes of the meeting are:

- (i) The Inspector recommends that the Plan is withdrawn by the LPA, and that recommendation is not overruled by the Welsh Government.
- (ii) The issues are resolved to the satisfaction of the Inspector and the examination proceeds. The meeting will be reported to the PHM (if one is necessary) or the first scheduled hearing session.
- (iii) Temporary suspension: the Inspector may agree to a short-term suspension of the examination for the LPA to do more work (suspension is covered in detail in paragraphs 7.15-20). This may mean rescheduling the hearing sessions.
- (iv) The issues remain unaddressed by the LPA: If the Inspector has continuing concerns they will indicate so at the PHM and may then schedule a hearing session to deal with the key issue(s) of concern first. The hearing session will allow an opportunity to make representations on whether the LPA and participants agree with the Inspector and how the examination should be progressed. Based on those representations, the Inspector will decide whether to continue with the examination or, if the submitted or revised Plan is unsound on a fundamentally important point, to recommend that the LPA withdraws the Plan.

7.14 An exploratory meeting is an unscheduled element of the indicative examination timetable and will delay the examination programme. The extent of the delay will depend on the outcome of the meeting. Where the issues can be easily resolved, the delay should only be a matter of weeks. However, where more complex or fundamental issues arise, a longer suspension may ensue.

## Suspension of the examination

7.15 Frontloading is a fundamental principle of the plan-making process. Suspending an examination to allow an LPA to undertake additional work late on in the process is contrary to this objective. Suspensions may also lead to delays and further expense for participants. If a large amount of additional work / consultation is required, it is unlikely that a finding of soundness can safely be made, and the Inspector may instead recommend that the Plan or plan revisions are withdrawn.

7.16 An Inspector may, however, consider suspending an examination where it may allow a particular issue to be satisfactorily addressed within a reasonable timeframe. A suspension may arise from:

- early written questions / correspondence between the Inspector and the LPA;
- an exploratory meeting;
- concerns identified by the Inspector at a PHM; or
- evidence presented at hearing sessions.

7.17 A suspension may be considered acceptable by an Inspector where the additional work has a reasonable prospect of being completed within a period of less than 6 months, and in circumstances where:

- Supplementary evidence is required (to reinforce, rather than revisit, evidence already submitted and the policies in a plan)
- Additional consultation is required (for example in relation to any Matters Arising Changes proposed by the LPA), or
- It appears that further engagement between the LPA and key stakeholders could resolve certain areas of dispute which are preventing the examination from progressing.

7.18 The Inspector will engage with the LPA to determine the scope of work to be undertaken during the suspension. The LPA will need to set out a schedule covering the scale, nature and timetable of work identified. LPAs should be realistic in making their timing estimates.

7.19 Normally a suspension indicates that the Inspector cannot meaningfully work on the LDP examination. Suspension periods therefore do not count towards the 11-month target for completing the examination and the LPA will be informed of the revised target date. The Inspector will request regular updates on progress during the suspension period to ensure that there is no slippage.

7.20 When the examination resumes, the Inspector will need to consider:

- Whether any interested persons should have the opportunity to make representations about any changes proposed by the LPA or new evidence
- If the extent of cumulative change to the plan is significant, whether the examination can continue, and
- The effect of any new evidence or changes to the plan on procedural matters and evidence (in particular on the SA and HRA processes, and conformity with higher-level plans).

## Withdrawal

7.21 Under section 66 of the Planning and Compulsory Purchase Act 2004, after submission, a Plan can only be withdrawn if

- a) an Inspector recommends that it be withdrawn and that recommendation is not overruled by the Welsh Government, or
- b) the Welsh Government directs that a Plan is withdrawn.



## Technical seminars

7.22 The Inspector may seek to hold a seminar at which the methodology and basis of complex or technical evidence submitted to the examination can be explained. The seminar will not test the evidence but will be held to allow all parties to gain a better understanding of the technical evidence. The intention is to save time during the hearing sessions and to give all parties a clear understanding of any methodologies used. Matters such as the appropriateness of a methodology can be explored at the hearing sessions.

7.23 If a seminar is required the parties who have presented the technical evidence will be asked to prepare explanatory material. This will be circulated to all parties who have been invited to attend the hearing sessions where that material will be considered. Any party may attend a technical seminar but the session must not be used to test the methodology, assumptions used or conclusions drawn, as these matters should be considered in the hearing sessions. Notification procedures for technical sessions should be the same as for exploratory meetings.

## Appendix 1: Procedural requirements and the tests of soundness: key questions/evidence

Section 64 (5) of the Planning and Compulsory Purchase Act identifies two purposes of an independent examination. The first is to ensure that the Plan or plan revisions have been prepared in accordance with procedural requirements; and the second is to determine whether the plan is sound.

## Procedural requirements

PEDW will carry out an early screening of every submitted Plan (or proposed plan revisions) to ensure that:

- It has been prepared in accordance with the Delivery Agreement including the Community Involvement Scheme (CIS);
- The plan and its policies have been subjected to sustainability appraisal, including strategic environmental assessment;
- Habitats Regulations Assessment has been carried out; and
- The plan is in general conformity with the National Development Framework and / or Strategic Development Plan (if applicable).

## Soundness tests

The three 'tests of soundness' that will be examined by the Inspector are: whether the plan fits, if the plan is appropriate and whether the plan will deliver. The section below outlines the key questions and evidence required for each of these tests.

### Test 1: Does the plan fit?

A range of documents may be relevant, particularly the policy documents with land use implications produced by other organisations. The Plan should not list all the strategies and documents taken into account in its preparation; instead these can be referred to in background papers used by the LPA to demonstrate compliance with the soundness tests.

The LPA should:

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- Explain how strategic policies and allocations are consistent with national policy, the Future Wales – The National Plan 2040, well-being goals and the Welsh National Marine Plan (if applicable);
- Avoid wasteful/unnecessary repetition of national development management policies;
- Explain how the plan takes account of other plans/strategies, for example of transport bodies, utility companies and agencies providing services in the area, including their future plans and any requirements for land and premises;
- Explain how the plan relates to the Well-being Plan or the National Park Management Plan (if applicable), identifying policies and proposals which deliver key components of that strategy which relate to the use and development of land; and
- Demonstrate how the plan is consistent with those of neighbouring LPAs.

## Test 2: Is the plan appropriate?

To assess this test a range of locally-specific evidence will need to be provided. The evidence should clearly support the plan's strategy and policies. Local evidence must be proportionate, robust and credible and prepared in accordance with national planning policy and practice guidance.

The Sustainability Appraisal Report is a fundamental part of the evidence base. The report should set out the options and the process by which they have been objectively assessed. The report should explain how the LPA considered reasonable and credible alternatives when preparing the plan. LPAs will not be expected to deal with every possible alternative or option but they will be expected to consider those put to them during the process of preparation and engagement. Where a balance has been struck in taking decisions between competing alternatives, it should be clear how those decisions were taken.

A typical evidence base for a Plan may include the following (suggested

examples only):

- Procedural evidence:
  - Sustainability Appraisal Report (incorporating SEA, Candidate / Alternative Sites assessment, consistency with the well-being duty, and Welsh language assessment)
  - Habitats Regulations Assessment: the report should set out the results of the appraisal process of the Plan as required by the Habitats Regulations and as explained in TAN 5, Nature Conservation and Planning (particularly Annex 6)
  - The Consultation Report(s)
  - The Review Report (for plan revision or replacement)
  - Equalities Impact Assessment.
- Spatial strategy evidence:
  - Settlement hierarchy and boundary assessment
  - Green Belt / green wedge study
  - Housing (or urban) capacity study
- Land use needs evidence:
  - Housing Needs Assessment
  - Local Housing Market Assessment (including Gypsy and Traveller sites)
  - Housing trajectory
  - Employment Land Assessment
  - Retail needs/capacity assessment
  - Infrastructure Assessment/Plan
  - Transport Assessment(s)
  - Open Space and Recreation Assessment.
- Environmental capacity evidence:
  - Strategic Flood Consequence Assessments
  - Agricultural land quality evidence
  - Biodiversity / nature conservation assessment
  - Landscape assessment
  - Heritage/archaeological surveys

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- Renewable energy assessment
- Minerals / geological studies
- Waste studies.
- Deliverability evidence:
  - Viability study (affordable housing, strategic sites, etc)
  - Statements of site promoters or infrastructure providers
  - Risk assessments and sensitivity testing analyses.

### **Test 3: Will the plan deliver?**

In relation to site allocations or alternative sites, deliverability evidence may include site-specific reports or information provided by public and private sector delivery bodies, relevant infrastructure providers or site promoters, on practical deliverability issues/matters. Statements of Common Ground with landowners, developers and infrastructure providers can be particularly useful in demonstrating joint commitments to the delivery of specific sites.

The plan should be underpinned by viability evidence which demonstrates that proposals, and particularly allocated sites, are capable of being delivered in accordance with the plan's policies, plus other requirements (e.g. Community Infrastructure Levy charges, building regulations and sustainable drainage requirements).

Evidence which assesses risks to delivery can be useful in justifying appropriate contingency provisions (e.g. the 'flexibility allowance' built into the housing target). Sensitivity testing of the Plan's policies or proposals can also identify other risks to non-delivery. For example, if the strategy is dependent on the construction of a particular road, the LPA should carry out an assessment of the risk of that piece of infrastructure not being delivered and the consequences of this failure for the plan as a whole.

Background papers may need to elaborate on the delivery mechanisms and

timescales for implementation which relate to the targets and milestones contained in the plan's monitoring framework. It should be clear how indicators and targets are to be measured. Triggers for plan review should be clearly identified.

Finally, for a plan to be effective, development management policies must provide a robust, clear, consistent and logical framework for considering planning applications.

## Appendix 2: Preliminary Questions

All elements of the LDP must be based on robust, credible and proportionate evidence. It will be helpful if the answers to the following questions include signposts to the relevant parts of the evidence base and any other assessments relied upon.

1. Has the LDP been prepared in accordance with the requirements of:
  - a) The approved Delivery Agreement, including the Community Involvement Scheme?
  - b) The Well-being of Future Generations Act (Wales) (2015)? and
  - c) The Equality Act (2010)?
2. Has the LDP been subject to a robust Sustainability Appraisal / Strategic Environmental Assessment? Have all of the 'likely significant environmental effects' of the Plan and all 'reasonable alternatives' been identified, described and evaluated?
3. Has the LDP been subject to a robust Habitats Regulations Assessment? Where 'likely significant environmental effects' have been identified, has an adequate Appropriate Assessment (AA) been undertaken?
4. Have there been any significant changes in national policy or local circumstances since the LDP was placed on deposit? If there have, what are the implications of these changes for the Plan? Do they need to be

addressed through the preparation of new evidence and/or revisions to the Plan? What is the intended timescale for this work?

5. Is the LDP strategy consistent/compatible/in conformity with:
  - a) National policy, guidance and Future Wales: the National Plan 2040?
  - b) The Well-being Goals?
  - c) The Welsh National Marine Plan?
  - d) The relevant Area Statement?
  - e) If an LDP, the relevant strategic development plan (when adopted)?
  - f) Regional plans/strategies and the programmes of utility providers?
  - g) The plans/strategies of neighbouring local planning authorities? and
  - h) The relevant Well-being Plan or National Park Management Plan?
6. Has the LPA exhausted all opportunities for joint working and collaboration on both the preparation of the LDP and its evidence base?
7. What is the LDP's spatial strategy? How do the key components of the strategy interact? Does it represent an appropriate approach for delivering, managing and distributing growth over the Plan period?
8. How was the LDP's settlement hierarchy defined? Is the methodology used to define the hierarchy clear and rational?
9. What is the rationale for the distribution of new development? Is the approach consistent with the National Sustainable Placemaking Outcomes?
10. What was the methodology underlying the site selection process? Are the resultant allocated sites:
  - a) In sustainable locations and generally free from physical constraints, such as land ownership, infrastructure, access, ground conditions, flood risk issues, pollution, landscape, biodiversity and heritage designations? and
  - b) Attractive to the market (both private and/or public sector) for development, able to accommodate the policy and infrastructure requirements set out in the Plan, viable, and deliverable during the Plan period?
11. Will the LDP be supported by supplementary planning guidance? If so, what subjects will be addressed? What are the timescales for the adoption of the guidance? How will it assist in the delivery of the Plan?

12. What is the LDP's strategy for the provision of housing? Is it appropriate to meet the needs of the area over the Plan period?
13. What is the LDP's housing requirement figure (HRF)? How has it been calculated?
14. In defining the HRF, was adequate regard paid to the latest household and population projections? Was consideration given to the main local influences on housing demand in the area (including household formation rates, migration levels, and household conversion ratios etc)?
15. Were alternative housing growth scenarios considered? If so, what alternative scenarios were they, why were they discounted, and why was the preferred option selected?
16. What is the LDP's housing land supply figure and how has it been calculated?
17. Is the housing trajectory set out in the LDP realistic?
18. What is the LDP's strategy for the provision of affordable housing? Has it been informed by a reliable and up-to-date market assessment (LHMA)? What scale, tenure and type of housing need was identified and how will this need be met over the Plan period?
19. What is the LDP's affordable housing target? How was it calculated? Does it maximise the opportunities for delivery?
20. Will the LDP's affordable housing target meet the need for social rented and intermediate accommodation identified in the LHMA? If not, how will this need be met over the Plan period?
21. How have the LDP's site-specific affordable housing target(s) been defined? In which geographical locations will the target(s) apply?
22. How were the affordable housing site thresholds defined? Have they been informed by robust, proportionate and credible evidence?
23. How will off-site contributions be used to deliver affordable housing?
24. What is the LDP's strategy for the provision of Gypsy and Traveller accommodation? Has it been informed by a Gypsy and Travellers Accommodation Assessment (GTAA)? Does the GTAA identify a need for new pitches (permanent and transit) over the Plan period? How will the need



be met?

25. What is the LDP's strategy for employment? Has it been informed by an employment land review? Is it consistent with the requirements of national policy? And has it had regard to the key drivers for change in the employment market?
26. Does the LDP allocate land for new employment development? If so, how has the requirement been defined? Have the allocated sites been subject to a sequential search?
27. Will the LDP provide protection for existing employment sites? If so, what protection will be afforded, and how have the sites been selected?
28. What is the LDP's strategy for retail development? Does it take into account the envisaged growth in other sectors, particularly housing and employment, over the Plan period?
29. What is the LDP's strategy/policy framework for the following areas:
  - a) Welsh language
  - b) Air quality
  - c) Biodiversity and ecological networks
  - d) The historic environment
  - e) Minerals
  - f) Waste management
  - g) Renewable and low carbon energy
  - h) Transport, and
  - i) Planning obligations.
30. Does the LDP provide a monitoring framework that will enable the LPA to track the implementation of the strategy and policies on an annual basis and, if necessary, trigger a review?

## Appendix 3: Glossary of Terms

**Adoption** - marks the completion of the plan making process. The formal adoption of the LDP by the relevant local planning authority take place no later

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than 8 weeks after the Inspectors Report is published. The development becomes operative at the point of adoption

**Deposit / Deposit Period** - refers to the statutory 6-week consultation period undertaken in respect of a draft LDP.

**Examination** - seeks to rigorously test the submitted LDP to ensure it is sound, that is fit for purpose, appropriate and will deliver. It runs for an 11-month period from the point at which a LDP is submitted until the Inspectors Report is sent to the local planning authority.

**Evidence Base** - is the information and data gathered by local planning authorities to support the policy approach set out in the LDP. Typically, this includes evidence in relation to the physical, social, economic and environmental characteristics of an area.

**Focussed Changes / Further Focussed Changes** - are textural or illustrative changes made to the LDP after the completion of the deposit consultation period and before the submission of the plan for examination. Focussed Changes, or Further Focussed Changes if they are necessary, are subject to a 6-week consultation period.

**Habitat Regulations Assessment** - is a formal process for identifying and evaluating impacts of policies and proposal contained in a development on designated sites and species protected by the Habitats Directives.

**Hearing Sessions** - are a forum in which people with duly made representations in respect of the policies and proposals contained in a LDP can explain their views before an appointed inspector.

**Integrated Sustainability Appraisal** – combines the requirements of statutory and key elements of legislation such as WBFGA 2015 requirements, Equalities Act, Welsh language, Health Impact Assessment, and the Environment Act

(section 6) (where relevant) into a single appraisal. The ISA is intended to provide a more transparent, holistic, and rounded assessment of the sustainability implications of growth options, objectives, policies and proposals.

**Matters Arising Changes** - are textural or illustrative changes made to the development plans which arise from discussions which took place at the hearing sessions. The Matters Arising Changes are subject to a 6-week consultation period.

**Pre-Hearing Meeting** – is, generally, held to explain the procedural and administrative requirements of the hearing sessions to the LPA, representors and interested parties.

**Programme Officer** - is an officer who, under the instruction of the appointed Inspector, manages the administrative elements of the examination, including liaising with the LPA and representors, organising hearing sessions and managing the examination website.

**Representation (Duly Made)** - are comment, either supporting or objecting, made to the policies or proposals contained within a LDP which is subject to public consultation. To be duly made the representations must be received during the specified consultation period.

**Representor** – are individuals or organisations that has submitted a duly made representation.

**Hearing Statement** – is a document submitted by the LPA or representors in response to the Issues, Matters and Questions issues by the appointed Inspector.

**Strategic Environmental Assessment** – is a procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes,

including LDPs, which are likely to have significant effects on the environment. This process is generally carried out in conjunction with a Sustainability Appraisal.

**Submission Documents** - are documents submitted to the Welsh Government for independent examination by an appointed planning inspector.

**Supplementary Planning Guidance** – are additional guidance notes which provide more detailed advice in respect of thematic and site-specific issues addressed in the policies and proposals of an LDP.

**Sustainability Appraisal** – is an appraisal of the social, economic, cultural and environmental effects of a plan undertaken through-out the plan preparation process to ensure that all decisions in respect of the policies and proposals of the plan accord with the principles of sustainable development.

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