

## EXECUTIVE SUMMARY

1. In October 2011 the Minister for Environment and Sustainable Development established an Independent Advisory Group (IAG) to review the delivery of the planning system in Wales as part of the evidence base for a White Paper, leading ultimately to a Welsh Planning Bill. This report sets out the Group's findings.
2. In **Chapter 1** we outline the work of the Group, aspects of planning that are common across England and Wales, and those unique to Wales. We refer to the Localism Act 2011 and note the introduction in England of a local tier of planning, with its implications for the evolution of a distinct Welsh planning system. In November 2011 we published a Call for Evidence. We received 110 responses from a wide cross-section of individuals, businesses, local authorities and public bodies, voluntary groups, academics and professional bodies. We arranged round table discussions with selected respondents and individuals chosen for their knowledge and expertise. We met a number of organisations and individual respondents to explore their evidence in more depth. The IAG Chair met with officials of the Scottish and English Governments, and talked to officials from Northern Ireland.
3. At an early stage we set out a number of criteria that describe for the Group what 'effective delivery' means. These are drawn from our terms of reference, from our early discussions as a Group and from the first round table discussion. They are: Timely, Transparent, Democratic, Consistent, Certain, Inclusive, Accessible, Simple, Flexible, Responsive, Deliverable, Better Outcomes, and Value for Money. We have used these criteria to evaluate our recommendations in Table A. Our perspective is that the planning system has great potential to create opportunities and protect valuable natural resources, intrinsically and for the future well-being of the nation; it should be a devolution dividend, not deficit.
4. As **Chapter 2** explains, we began by exploring if there was common ground in the planning profession and with stakeholders about the role and purpose of planning. In our Call for Evidence we asked whether this is "*the delivery of land for sustainable development*". The responses to the Call for Evidence were almost equally divided and there was a similar divergence of views at the round table session where this was discussed. In summary the majority view was that the purpose of planning is to:
  - safeguard and enhance important land and buildings
  - deliver suitable land in sustainable locations for new development
  - control the development and use of land in the public interest
5. We support the agreement reached in the roundtable discussion that planning is and should be more than simply a regulatory activity; a system that is seen as purely regulatory will deliver negative rather than positive outcomes.
6. In our discussions with respondents on sustainable development, the definition in Planning Policy Wales was generally supported. We consider that any

change to the definition of sustainable development should come from the separate work on the Sustainability Bill, but that there should be no legal definition in the Planning Bill. In our view sustainable development should be defined in planning guidance or related policy.

7. The three elements of sustainable development (the environment, the economy and society) cannot be considered in isolation. The challenge to all planners is to seek out imaginative solutions for overcoming barriers to sustainable development, rather than setting the environment and economic development against each other in a 'winner takes all' scenario.
8. We recommend that a statutory purpose for planning along these lines is included in the Planning Bill:  
*"The purpose of the town and country planning system is the regulation and management of the development and use of land in a way that contributes to the achievement of sustainable development."*
9. In **Chapter 3** we set out some of the issues that emerged from the Call for Evidence, our meetings and the round table discussions. Many respondents felt that a revised Wales Spatial Plan or a new national spatial planning framework is needed to set the strategic context for *development* planning at the regional and local level. There was a call for more intervention by the Welsh Government in Local Development Plan (LDP) preparation, particularly to overcome delay. We express our concern that, currently, substantively flawed LDPs can reach the independent examination; the only intervention option open to the Welsh Government is to take over preparation.
10. There was a call for more Welsh Government monitoring and incentives for LDP delivery and *development* management performance. There was a strong desire from many quarters for a mechanism to address cross-boundary issues as part of the development planning process. We consider that current approaches to cross-boundary issues can best be described as fragmented, with no overall strategy, cohesion or obligation to resolve them. We point out that the regional dimension provided for LDPs in the policy areas of transport, waste and minerals appears to be missing for housing and economic development.
11. As well as criticism of LPAs for failure to adhere to Delivery Agreement timetables, there is criticism of the examination process, but this has more to do with the statutory framework for the LDP examination than the role of the Inspector. There is also complaint that the process is so complex that stakeholders and the public feel unable to engage with LDP preparation.
12. In terms of the application process, there was demand for the Welsh Government to make greater use of the call-in procedure to protect communities from the potential effects of decisions by local planning authorities (LPA) that are perceived to be perverse. There was concern that there are no regional arrangements across Wales for dealing with applications that have cross-boundary or regional implications. A core theme is a lack of consistency

in the manner in which the development management function is delivered across LPAs.

13. All sectors stressed the importance of the comprehensive training of Members. A number of energy companies raised the delay and complexity in obtaining consent for large renewable energy schemes due to the division of responsibility for decisions on national infrastructure projects. With regard to Town and Community Councils, there was support for them to have a wider role, but recognition of the issues around their coverage, capacity and willingness to take on an enhanced role.
14. It was suggested that the National Park Authorities (NP) should lose their planning powers. We note the separate Welsh Government study of the delivery of planning services in statutory landscapes and express the view that we have insufficient evidence to come to a conclusion. For that reason we make no recommendation on whether NPAs should retain planning powers.
15. There was support for the introduction of mediation in the planning process, both in development management and the LDP process.
16. At the end of **Chapter 3** we consider the question of third party rights of appeal, which was debated with a number of organisations in May. In our view the issues raised can be overcome by other measures (set out in chapter 4) to encourage and protect the right of the public to be involved in planning decisions and plan preparation. We therefore recommend that third party rights of appeal are not introduced in Wales.
17. We close **Chapter 3** by reflecting on the evidence and its implications. We believe that the system is conceptually sound and not in need of root and branch reform; too much change would create further uncertainty and deter investment. We identify the two opposing views of planning: as a barrier to economic growth, as opposed to the view that current difficulties should not prioritise economic issues over all others. We find, similar to previous studies, a system under strain. We conclude that reform is needed and set out a set of **principles** that our reforms are intended to meet.
18. **Chapter 4** sets out the main recommendations of the report dealing with roles and responsibilities. Our recommendations are divided into two sections – **development plans** followed by **development management**; within these two sections we follow the sequence of **national, regional and local roles**.
19. The main role of the Welsh Government in **development planning** is to set the national framework within which local planning authorities deliver development plans. It should have a variety of reserve powers to intervene in the preparation of development plans to prevent unreasonable delay or progression of seriously flawed plans. The Welsh Government must be ready to use these powers if circumstances require it. We recommend that the Welsh Government prepares a national development framework (NDF), building on the *Living Wales Programme* to provide a spatial framework for land-use planning in Wales. We recognise the resource implications and so recommend

as an interim measure that the status of national documents in relation to land use planning is clarified.

20. We conclude that while two main tiers of planning are sufficient for a country of our size, not all planning matters can be effectively considered at either a national or a local level. We therefore recommend that the Planning Bill includes a statutory framework to enable the introduction of strategic planning at a regional level. We recognise that this will not be necessary or appropriate for the whole of Wales and so recommend consultation on the areas and the details of the statutory framework. The areas may be influenced by the work being done in parallel with ours on the economic arguments for City Regions. A support structure will be needed to implement regional strategic planning. In the interim, the Welsh Government should encourage voluntary strategic planning to ensure it is conducted in a manner that is democratic, consistent, accountable, transparent and inclusive.
21. We stress that the planning system is a delivery mechanism with application across several Ministerial portfolios and coordinated action at all levels is vital if the Welsh Government is to realise its ambition to create the conditions for growth. A joined-up approach across all levels of Welsh Government is essential to delivery of the planning system.
22. We consider that the LDP process needs to be improved, not replaced. We recommend:
  - replacement of the soundness tests
  - publicity for the Welsh Government's comments on emerging LDPs
  - revised regulations to ensure better feedback at the pre-deposit stage
  - increased levels of meaningful engagement with all stakeholders at every stage.
23. The Planning Bill should include powers for Ministers to direct an independent review at any stage of plan preparation; for the appointed Inspector to find a plan sound in part, with recommendations for further work; and for an LPA to apply to the Welsh Ministers to carry out a partial review of an LDP.
24. We consider that Supplementary Planning Guidance (SPG) has an important part to play in the planning process. As well as an important vehicle for adding the detail to LDP policies, it has potential for involving communities and other stakeholders in the detail of how allocated sites should be developed. We heard much criticism of the manner and timeliness of SPG preparation and so we recommend the Welsh Government issues revised policy guidance emphasising its importance. There should be scrutiny through the LDP process of SPG and its timetable; regulations for its preparation; the power for Welsh Ministers to direct the preparation of nationally important SPG; and a call-in process. We also envisage an expanded role for Town and Community Councils in the preparation of some SPG.
25. Turning to development management, we consider that the role of the Welsh Government is to create the conditions that enable LPAs to deliver planning

services locally. However, it also needs appropriate powers to intervene in an effective and timely manner.

26. The Welsh Ministers should take decisions of national significance. We recommend that the Planning Bill provides a statutory framework for decisions by Welsh Ministers on nationally significant infrastructure schemes that are devolved, and for the definition of such schemes also to be determined by Ministers. Ancillary development related to non-devolved schemes such as energy generation of +50Mw should be handled by the same process, administered through the Welsh Directorate of the Planning Inspectorate. National policies for such infrastructure should be approved by the National Assembly to provide a framework for decisions; there are options for doing this, including integration with the National Development Framework that we recommend at the start of Chapter 4.
27. Applications should be decided by the Welsh Ministers where it is in the public interest to do so; we recommend changes to the call-in process to improve transparency. We also recommend a review procedure by a Planning Inspector where an authority is minded to approve an application contrary to officer recommendation. Local planning authorities should notify all decisions contrary to recommendations to the Welsh Government, enabling targeted directions where appropriate.
28. The Welsh Government should review the current multiplicity of ancillary approvals resting with them which, on examination, raise only local considerations with a view to transferring such decisions to LPAs, subject to a right of appeal.
29. We see a compelling argument for creating a national body to collect and disseminate best practice from Wales and elsewhere; collect relevant national information; promote consistent and targeted training; advise, mentor and assist LPAs and regional groups; and develop the use of mediation. This body, the Planning Advisory and Improvement Body (PAIB), would be responsible for taking forward several recommendations of both this and other studies of the planning system. It would drive delivery improvements and the required positive culture.
30. We found no convincing argument to support the creation of a separate Planning Inspectorate in Wales; the current arrangements have worked well for many years and have considerable merit. We do not consider a separate Welsh Inspectorate is a priority for reform of the planning system. However, we consider that a protocol should be agreed with the Inspectorate for the provision of a dedicated service for all its functions in Wales and that it should undertake a communications project to explain its role in the system, particularly the fact that it serves Wales equally with England. We also recommend a review of the appeal system to consider adopting several features of the Scottish system; provide Inspectors with greater case powers of case management; and the introduction of a fast track process for appeals against non-determination.

31. To improve and enhance the way that statutory consultees interact with the planning system we recommend that those with the greatest influence should be considered part of its institutional framework and that the Welsh Government should enter into a compact with them. The Planning Bill should give effect to this by placing a duty on them to contribute positively to the efficient and effective functioning of the system, including water and sewerage undertakers.
32. We see a need to improve public and stakeholder roles in the planning system. We envisage an enhanced role for Town and Community Councils generally, particularly in the LDP process; for them to disseminate information about applications affecting their area; and, along with other broad based community groups, to prepare community plans that can be adopted as SPG. This latter role stems in part from our wish to introduce a process that would be simpler and more flexible than the Neighbourhood Development Plan process in England.
33. We consider that local planning authorities need assistance with the processing of certain complex and/or strategic cross boundary applications, where they can share expertise and resources, as recommended in the Simpson Report. These could be processed and assessed by specialist regional teams, or as part of the PAIB.
34. A consistent theme in the responses we received was the need for improvements in the transparency and consistency of Planning Committees. We consider Planning Committees and their members have a crucial role and see this as an opportunity to create a group of trained councillors equipped to make decisions on sometimes controversial applications. We conclude that training for Planning Committee members should be compulsory. We make recommendations for a study to establish the optimum size of Planning Committees; regulations covering delegation schemes and Committee procedures to secure consistency across the country; and a specific Planning Code of Conduct. We also recommend that joint responsibility for LDP preparation rests with the Executive and the Planning Committee, to ensure that the Planning Committee members have an appreciation of the plan making process and, ultimately, ownership of the adopted LDP.
35. Any potential applicant should have ready access to advice from the local planning authority, because that is the role of the LPA and it benefits the quality of applications. We are aware of the recent Welsh Government guidance on pre-application discussions but we consider that more is needed. We recommend that the Minister has the power to make regulations governing pre-application discussions, including a Code of Practice drawn up between the Welsh Government, the WLGA and LPAs. In addition, following the debate on third party appeal rights we conclude that communities must be more involved in planning developments and decisions that affect them. The Welsh Ministers should have the power to make regulations requiring pre-application consultations for certain defined types of applications, and to specify the form

that consultation should take. We support the involvement of councillors in pre-application discussions and recommend a pilot study.

36. Mediation was mentioned by a number of respondents. Use of alternative dispute resolution techniques in planning has been the subject of studies in the past, but the opportunity has yet to be created in the planning process. We recommend that authorities should be able to issue 'minded to' resolutions to allow for mediation to address the issues in dispute. The service could be administered and promoted by the PAIB using established dispute resolution services.
37. We make a number of recommendations to reduce the load on the system, which we call removing 'The 10%'. These include: a study to produce a unified application process; moving detailed matters such as BREEAM and the Code for Sustainable Homes to Building Regulation control; further investigation of the scope for revising the General Permitted Development Order; and establishment of an advice team by the Welsh Government to assist LPAs to make the maximum use of CPOs, SPZ and LDOs.
38. At the end of **Chapter 4** we turn to how we measure success, both in terms of the delivery of the planning system and the impact of our recommendations. We consider that a formal, annual reporting process is required so that a statutory **Annual Performance Report** is produced to a consistent standard, established by the Welsh Government and operated through the PAIB. We recommend consultation on the format and refer to the work of the Planning Officers Society Wales and the recent consultation by the Scottish Government. The object of the report should be to create a culture of self-improvement, so that LPAs identify what action they can take to enhance the services they provide. We also recommend incentives for good delivery but recognise the need for penalties for cases of last resort. Both could be implemented by one or more Welsh Ministers, having regard to the cross departmental nature of the planning system.
39. **Chapter 5** makes a further series of recommendations to streamline and improve delivery. The frustration at the different processes in each authority reflects the findings of the earlier GVA Grimley study. A drive for greater consistency is identified in a number of areas including: validation of applications; minor amendments to planning permissions; notification and publicity; standardising planning conditions and Section 106 clauses.
40. We welcome the Welsh Government's recent actions to introduce the 1APP system and accompanying advice on validation. However, to provide for flexibility we recommend enhanced regulation making powers for the Welsh Ministers governing validation. We also consider that the operation of the 1APP system should be carefully monitored and that the period for challenging the validity of an application is 6 weeks, with a requirement to show prejudice.
41. There are a number of issues around the operation of Section 106 of the Town and Country Planning Act 1990 where improvements could be made to remove

uncertainty and introduce flexibility. We favour a return to the more flexible provisions that existed prior to 1993 and we note the more flexible terms in Scottish legislation. We recommend a review of the powers under S.106; detailed changes to create flexibility; and more flexible arrangements for discharge or modification of obligations. Related to this we make recommendations regarding model conditions; the need for a power to attach a condition making commencement conditional on the execution of an obligation; and the imposition of conditions relating to the imposition of bonds or guarantees for restoration.

42. To simplify the process of amending a planning permission we recommend the early application of Section 96A of the Town and Country Planning Act, which enables LPAs to approve non-material amendments to permissions. We also recommend that the Planning Bill makes provision for minor material amendments to permissions, specifying the characteristics of such a procedure. To simplify and aid clarity, there should be a new statutory form of planning permission that identifies approved plans and documents, which can be updated as conditions are discharged.
43. We consider that notification and publicity requirements should be reviewed to encourage public engagement. Some of the procedures used in the Scottish Planning system would aid transparency and enforcement, specifically notification of the date of commencement and completion of development, and display of a site notice during development.
44. Finally, we deal with the interaction between the application process for planning permission and other consent regimes. First, we recommend that the Planning Bill makes provision for parallel applications to be made for planning permission and any other consents or permits required. Second, we recommend measures to make the handling of highways issues, such as closures or diversion, more efficient through a greater measure of parallel consenting.
45. **Chapter 6** includes recommendations on outstanding matters where the opportunity presented by a Welsh Planning Bill should not be missed. We recommend consultation on a number of issues related to enforcement including:
  - the power to attach conditions to a planning permission granted in response to an appeal against an enforcement notice
  - fixed penalty notices
  - a 'letter of assurance' procedure
  - provision for statements of compliance to be entered on the public register and 'spent' notices to be cancelled
  - provision for the LPA to confirm to a prospective purchaser the outstanding steps needed to comply with an enforcement notice.
46. We do not recommend the introduction of retrospective powers in respect of concealed development.



47. The Welsh Government should consult on the definition of commencement under the Planning Acts, and simplifying the Completion Notice procedure.
48. We considered the difference between the duration of planning permission in England and Wales but did not reach an agreed position; the majority view was that there should be no change in the duration of permission in Wales. It will be for the Welsh Government to decide whether to consult on this matter.
49. To retain maximum flexibility we consider that the Planning Bill should contain a separate procedure enabling an application to be made to extend the life of a planning permission, taking into account the reasons for not implementing the permission, which could include market conditions.
50. Following representations from the Compulsory Purchase Association, we recommend that the Welsh Government revises its circular on compulsory purchase to take account of the amendments to S.226 of the Town and Country Planning Act 1990. In addition, S.237 of the Planning Act 1990 should be brought into line with England as soon as practicable. The Welsh Government may wish to consider bringing together all regeneration compulsory purchase powers into a single set of powers in a separate Act.
51. **Chapter 7** deals with the financial implications of our recommendations. We recognise the current financial climate and pressure on public spending and have been conscious of the need to avoid unnecessary additional costs. However, the land use planning system has a central role as a delivery mechanism cutting across many policy areas. If the Welsh Government wishes to see a step change in the efficiency of the planning system and its ability to deliver, this will require modest investment. Nonetheless, we believe it is possible to be inventive to achieve change, particularly through sharing resources.
52. We believe that some of the Planning Improvement Fund (PIF) would be better used to directly create structures to support LPAs, particularly the PAIB, rather than allocated in response to individual applications from authorities. Setting up the PAIB is the most significant of our proposals in terms of cost. Nonetheless, there are options to reduce the costs by using Welsh Government surplus accommodation; sharing costs with other bodies such as the Design Commission for Wales and the WLGA; by secondments; and by charging for some services. We consider the benefits from this body justify the cost.
53. Collaboration between authorities, including secondments, shared accommodation and support services would considerably reduce the cost of introducing strategic planning at regional level. The additional work for the Planning Inspectorate in dealing with infrastructure would be partly funded by the application fees; the review of approvals contrary to officer recommendation would be offset by efficiencies from appeal process improvements.

54. Member training will require investment by LPAs, but a considerable amount already takes place; the PAIB would raise the quality and consistency of training. This training, like many of our recommendations, we regard as part of the role and responsibility of the organisations involved and part of their normal business. We regard the production of the Annual Performance Report in the same way and see this as a means to help LPAs identify opportunities for improvement, in performance and efficiency.
55. Chapter 8 sets out a series of 'Quick Wins' that can be implemented without waiting for a Planning Bill. The speed of delivery of our recommendations relies on the political will, resources and leadership to drive through change at all levels.
56. The status of the Wales Spatial Plan and other national plans could be clarified by a Ministerial statement. The PAIB could be established now to drive improvements, in advance of legislation to underpin its operation. Voluntary working at strategic level by LPAs could be encouraged and led by the Welsh Government. Refinement of LDPs could be taken forward, as could our non-statutory recommendations on SPG; the review of Planning Committee size; and pilots of member involvement in pre-application discussions. The format of the APR could be consulted on and agreed, and information on decisions contrary to officer recommendations collected. The recommendations of this report and other studies could be brought together into a comprehensive set of changes to the development management process.
57. In **Chapter 9** we give our overall conclusions, setting out what we envisage the planning system in Wales should look like in the future to guide any further consideration of the system during the preparation of the Planning Bill. The principles that we have followed address the issue of subsidiarity: planning functions are carried out at the level closest to their impacts, to create the most effective conditions for delivery. We emphasise the role of the planning system in delivery and the need for coordinated action across the Welsh Government to secure the changes we envisage.
58. We consider it right that local planning authorities continue to have the main responsibility for delivering planning services. We have tried to avoid adding to bureaucracy whilst making local delivery more effective and more rigorously measured. We propose significant reform, but through an evolution of the planning system put in place in 1947, adapted to meet the needs of Wales. We believe the changes we propose are deliverable and will lead to the necessary improvement of the planning system.