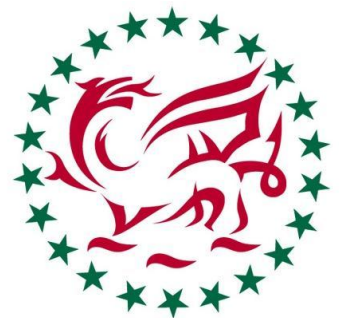




General Principles of the Planning  
(Wales) Bill

Evidence to the Environment &  
Sustainability Committee

November 2014



WLGA • CLILC

## INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities and the three fire and rescue authorities.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. We welcome the opportunity to submit evidence to the Environment & Sustainability Committee inquiry into the general principles of the Planning (Wales) Bill. We have set out our comments in line with the published terms of reference

### **The requirement to produce a national land use plan, to be known as the National Development Framework (NDF);**

4. The WLGA welcomes the production of a national land use plan to replace the Wales Spatial Plan. However, we disagree with the proposed 12 week consultation and 60 day consideration by the National Assembly proposed in Section 2 of the Bill. The NDF will have Development Plan status along with Strategic Development Plan (SDPs) and Local Development Plans (LDPs) and therefore all should be treated equally requiring the NDF to be subject to an Examination in Public (EiP). This is where there is an examination by an independent Planning Inspector to consider the 'soundness' of the plan, with hearings held in public. Without robust scrutiny, the plan will be open to challenge with a resulting loss of credibility and influence. Section 2 should be amended to reflect the requirement for the NDF to be subject to an EiP. The Welsh Government does not offer any reasons as to why they have adopted a different approach for the NDF.
5. The Bill is proposing a number of changes to LDP preparation including an end date after which the plan expires under the new Section 60C. Local Planning Authorities are also required to prepare a Local Development Plan Annual Monitoring Report. To ensure consistency with other development plans, proposals regarding the LDPs should apply to the NDF. The NDF should have an end date after which it expires and WG should be required to prepare an Annual Monitoring Report or similar and Section 60C(2) should be amended to reflect this rather than the current provision which allows the Minister to choose when to revise the NDF.
6. Further clarification should be given on the hierarchy of national plans and the relationship between the NDF and other national plans such as the National Transport Plan and Wales Infrastructure Investment Plan. Also there is little reference in the Bill and Explanatory Memorandum as to how the preparation of the NDF, SDP and LDP will be impacted by the Wellbeing of Future Generations Bill and the statutory duty to prepare a Wellbeing Plan. We would welcome a statement by the Minister or an explanation in the Explanatory Memorandum.

## **The creation of Strategic Development Plans to tackle larger-than-local cross-boundary issues;**

7. The WLGA agrees with the proposals for Strategic Development Plans but has concerns regarding the potential timescale and implications on LDP preparation. The Bill in Section 5 suggests that the SDP is to be in conformity with the NDF, implying that the NDF would be the priority in terms of plan preparation. Likewise the LDPs are to be in conformity with the SDP.
8. New Section 60I states that the SDP must be in 'general conformity' with the NDF. This need to be clarified or amended, does this mean that some parts of the SDP are not required to conform?
9. However, Welsh Government has made it clear that there cannot be any delay in the achieving complete LDP coverage for Wales. However we have concern that in some LPAs, a situation could arise where the adoption of an SDP would trigger a LDP rewrite when the LDP may have only recently been adopted. Preparation of an LDP is a significant financial undertaking for LPAs and this scenario will impact on LPAs resources and could be perceived by stakeholders as a questionable use of scarce resources. We would request that a provision is inserted in the Bill to enable WG and a LPA to suspend the LDP process in light of the preparation of an SDP for the region.
10. Section 60E(5)(b) directs Local Planning Authorities to consult "any other persons specified in, or of a description specified in, the direction" before submitting the strategic development plan proposal. The Explanatory Memorandum should give examples of who these persons could be. Section 60G has a provision that a local planning authority must provide the Welsh Ministers with any information that the Welsh Ministers request for the purpose of exercising their functions under sections 60D to 60F. This should be amended to read "available information" to avoid a direction to LPAs that would result in the commissioning of additional information. Section 60I(6) contains a list of plans/policies that the Strategic Planning Panel must have regard to when preparing a SDP, (f) however is a catch all "any other matters" and it would be helpful to have examples in the Explanatory Memorandum on what these could be.
11. With the formation of the Strategic Planning Panel and the preparation of SDPs, there is potential for duplication and confusion with other boards such as the City Region Board. The WLGA would welcome a statement by Welsh Government on the framework/hierarchy for strategic planning given DEST responsibilities for City Regions and the National Transport Plan.
12. The WLGA remains concerned about the proposed composition of Strategic Planning Panels (SPP) set out in Schedule 2A which will undermine local democracy and may result in businesses or communities raising concerns about accountability and transparency. The WLGA notes that such proposals are being introduced at a time when the Welsh Government is proposing an enhanced role for non-executive councillors in advance of the forthcoming second White Paper on Local Government

Reform. The proposals to create a Panel with a third of members being representatives from nominated organisations creates a planning regime which is arguably more susceptible to legal challenge around allegations of bias or predetermination.

13. During the Positive Planning consultation in February we questioned whether it was appropriate for non-LA representatives on the SPP to have voting rights given that they do not have a democratic mandate. We would have expected to see a section explicitly setting out voting arrangements in the Bill. We would like to see the appointed members having an advisory capacity not a voting capacity. Schedule 2A should be amended accordingly. The WLGA argues that as a minimum, a backstop safeguard for local democracy should be built into the decision-making process requiring at least a majority of elected members to vote on a decision (as well as an overall majority of the Panel).
14. The selection, by the Minister, of the nominated organisations from which one-third of SPP members will be selected could confer unfair advantage and undue influence on these organisations. It is not clear who these nominated organisations will be, the criteria for their selection by the Minister nor the criteria on how these organisations would determine their nominees. We would want this selection process to be open and transparent and subject to consultation. Schedule 2A paragraph 4(2) should be amended to ensure that the process is transparent. Also we would question how WG will ensure that these appointed members will be suitably trained and operate and, critically, be seen to operate without vested interest and within the letter and the spirit of the Code of Conduct which will apply to the elected members of the Panels. Local authority councillors adhere to a Code of Conduct in discharging their duties and therefore a similar Code of Conduct should be part of the standard terms of appointment referred to in Schedule 2A paragraph 5. These appointed Panels members should receive general planning training in addition to training to enable them to fulfil their role in the preparation of the SDP.
15. The Bill gives the Minister a number of default powers. Schedule 2A paragraph 23 gives the Minister power to take such steps as appropriate if the Minister considers that a Strategic Planning Panel is failing or omitting anything that is necessary and the Strategic Planning Panel must comply. The criteria for how the Minister will decide whether a SPP is failing should be on the face of the Bill; setting out clear criteria will ensure that such a decision is open and transparent.
16. The Bill (Schedule 2A, paragraph 24) also gives power to require that a constituent LPA provides the panel with staff or other services for the “purpose of enabling the panel to exercise its functions in its first financial year and specifying terms on which the services are to be provided if the authority and the panel cannot agree the terms”. Given the dire financial pressures facing non-protected services such as planning, the WLGA has considerable reservations on the use of a power which requires a constituent LPA to provide a SPP panel with staff or other services. As a result of these exceptional financial circumstances, we would suggest that the Bill is amended to insert a provision which requires the WG and LPA to enter into negotiation and seek

an agreed outcome to enable to the LPA to engage regionally rather than the current drafting which is a direction.

### **Changes to Local Development Plan procedures;**

17. The WLGA would be interested to understand the basis on which the Welsh Ministers would direct two or more LPAs to produce a joint LDP. Would a detailed business case be required setting out the reasons why a joint LDP is preferable to sole LDPs? The Explanatory Memorandum, merely states that "this decision would be based on evidence of the issues that need to be addressed". The circumstances for a direction for a joint LDP needs to be on the face of the Bill and Section 12(2) should be amended to reflect this.

### **Front-loading the development management process by making provision for pre-application services;**

18. Many LPAs already offer a pre-application service and it is essential that this is on a full cost recovery basis as LPAs cannot subsidise this service as is currently the case with the planning application fee. The requirement for the applicant of a major application to undertake pre-application consultation is supported.

### **Introducing a new category of development to be known as Developments of National Significance that are to be determined by Welsh Ministers;**

19. We note that it is predicted that there will only be about 10 applications per year but there is uncertainty regarding the exact scope given that the number of DNS will be dependent on the NDF. We do not consider it appropriate to set up another tier of application for so few applications and would recommend that Section 17 is removed. We would support putting in place changes and support that can assist LPAs to determine the applications in a more timely manner. Local authorities are well placed to determine these applications ensuring public involvement in the process. If the DNS category is introduced, the WLGA is concerned that over time the Welsh Government may seek to increase the numbers in this category by removing more types of applications from LPA determination to justify introducing DNS. The Bill at a minimum should be amended to require that the Welsh Government consults on proposals to widen the scope of the category.
20. If the Development of National Significance remains in the Bill, the WLGA would welcome clarity through the scrutiny process on the definitions of Development of National Significance as the Explanatory Memorandum is not specific on this issue. We would want the types of development or at the very least the criteria on the face of the Bill and the new Section 62(D)(3) should be amended to reflect this.
21. LPAs still have a significant workload associated with DNS proposals including the preparation of a Local Impact Report and discharge of conditions. The proposal is for developers to pay the LPAs direct, however further clarity is required on this. The fee payable should be based on full cost recovery. Potentially, the preparation of a Local Impact Report could involve commissioning additional evidence. Local authorities

should not bear the cost of this. This should be borne by the developers or should be the responsibility of WG to commission additional evidence if the LPA flagged up a potential impact in the Local Impact Report. The Bill should be amended to this effect.

22. New Section 62H introduced by Section 18 gives the WG power to prescribe the description of what constitutes a secondary consent. The criteria for what is a secondary consent should be on the face of the Bill and therefore the Bill should be amended.
23. An explanation is required regarding the meaning of Section 62H (2) in relation to developments which are of a private nature.

### **Streamlining the development management system;**

24. The rationale to seek greater consistency in the decision making process is broadly accepted. However, we do not understand the desire to legislate on the size of planning committees or for a national scheme of delegation. Only 3 LPAs (Neath Port Talbot are reducing their committee size imminently) do not have planning committees within the proposed banding (Planning Committees, delegation and joint planning boards consultation) so it should not be an onerous task to work with these LPAs to bring the size of the committee in line with the proposals. Section 3191ZB introduced by Section 37 should therefore be removed.
25. The WLGA is preparing (at the request of Welsh Government) a voluntary planning committee protocol to achieve consistency on matters such as right to speak, committee running order, member voting etc so we would question why WG isn't advocating a voluntary national scheme of delegation with some local variation. The RTPi research on planning committees and the responses to the consultation Positive Planning supported an element of local variation to the national scheme of delegation. WG has disagreed with this and is not advocating any local variation although it acknowledges that it is difficult to draft a national scheme of delegation due to difference in the scale of development across Wales. We would seek amendments to section 319ZA to reflect a national scheme of delegation (i.e a minimum threshold) which enables LPAs to amend to suit local circumstances.
26. We see no reason why it is acceptable to leave many of the 'consistency issues' to a voluntary protocol but it is not acceptable to achieve size of committee and a national scheme of delegation voluntarily.

### **Any potential barriers to the implementation of these provisions and whether the Bill takes account of them;**

27. There are a number of proposals in this Bill which potentially require additional local resources. However as much of the detail is subject to secondary legislation it is difficult to quantify future changes and future costs. As a principle, it is not appropriate or realistic to expect LPAs to find additional resources. Many LPAs have suffered budget cuts resulting in loss of staff and have limited capacity to implement

new initiatives and ways of working. Their focus is on delivering an acceptable service within current parameters.

**Whether there are any unintended consequences arising from the Bill;**

28. The Bill will give the Minister power to publish conditions by which major applications can be made to Welsh Ministers instead of a LPA. One of the proposals is when the LPA is designated as a poorly performing LPA. The criteria to be used by Welsh Ministers to define poor performance are not yet established, although it is anticipated that they will include timeliness and quality of decision making. A provision should be inserted in new Section 62L(8) which requires the Minister to consult with LPAs before criteria is published.
29. The penalising of poor performing local planning authorities may not drive up performance if it is not accompanied by an agreed plan of action to positively address the issues which contribute to the poor performance. Without this positive intervention, the power for the Minister to designate LPAs as poorly performing will be viewed negatively and is unwelcome. The removal of the fee income if major development applications are determined by WG will only exacerbate the issues possibly leading to further job losses and greater resourcing challenges for the LPA. It is vital that there is a process for addressing poor performance inserted in the Bill otherwise it is hard to see how the LPA can then find itself 'improved' and in a position to be receiving major applications again.
30. The drive for consistency in approach and delivery across the 25 LPAs in Wales could be counterproductive to performance. For example some LPAs are already achieving a high delegation rate. The proposed national scheme of delegation will result in changes to the current delegation scheme in these LPAs resulting in more applications being considered by committee and as a result the delegation rate in these LPAs will fall.

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum, the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill);**

31. The consultation document Positive Planning contained numerous proposals to reform the planning system. Many of these proposals do not require primary legislation so are not on the face of the Bill. As a result their potential financial impact is not incorporated into the Regulatory Impact Assessment and therefore not subject to scrutiny.
32. The WLGA appreciates the difficulty for WG in costing many of the proposals as the financial evidence is not available and WG has therefore made assumptions based on a sample of costs from LPAs. In response to local circumstances, the 25 LPAs have in place different delivery models and associated costs and therefore it is difficult to draw conclusions based on a small varied sample. In addition to the lack of robust evidence we also have concerns on the assumptions made. For example, the cost of introducing SDPs is estimated at £3.5m. WG has assumed savings from the LDP preparation but in

some areas where LDP preparation is ongoing and SDP preparation is to commence, these LPAs will incur the cost of both LDP and SDP preparation. For example, SDP work could start in earnest in 2017 for the A55 corridor whereas the LDP for Flintshire is timetabled for adoption in 2018.

33. The preparation of the initial SDP will require evidence gathering as it is not appropriate to use the LDP evidence base if the area is to be planned as a strategic whole. In the past the WG has made funding available to LPAs via the Planning Improvement Fund but from 2014/15 this funding was no longer available. The WLGA would welcome clarity on what the £120,000 (which WG have stated may be available to SDP areas, Explanatory Memorandum Page 92 paragraph 7.38) can be spent on.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation); and**

34. Generally this is a well drafted Bill but we do not consider that the balance is right regarding the face of the Bill and secondary legislation and our response suggests amendments accordingly. In terms of drafting we prefer the drafting style Section 360D(5) rather than 60G(2).
35. In Section 9 there are a lot of minor amendments which might be better in a Schedule.
36. The power contained in new Section 62D(3) introduced by Section 17 should be subject to super affirmative resolution procedure due to its importance and to give an opportunity for it to be amended.
37. In new Section 62H(1) introduced by Section 18 – the criteria for secondary consents need should be on the face of the Bill and not left to subordinate legislation.
38. The regulations introduced in the New Section 62M(3)(b) should be subject to consultation before they are made.
39. Section 53(2) provides for a blanket Henry the 8<sup>th</sup> power. Generally, powers to amend primary legislation should be limited and remain exceptional. The Constitutional and Legislative Affairs Committee might like to comment on this in particular.
40. New paragraph 14(2) of Schedule 2A should be amended so that the list of qualifying expenditure should be on the face of the bill. A power to amend the list by SI in the future could be envisaged.
41. In Schedule 4 paragraph 18 inserting new 303(1B), the setting of fees is a substantial power which should be on the face of the Bill. At a minimum it should be subject to super-affirmative resolution procedure.



42. This Bill provides an opportunity to ensure that the planning system reflects the needs of Wales. Currently there is no means for councillors, under the present statutory framework, to permit or refuse developments on the basis of their impact on the Welsh language alone and the WLGA would have welcomed powers in the Bill to strengthen the Welsh language in our communities.

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