

OPR-AILG PLANNING TRAINING FOR ELECTED MEMBERS

Frequently Asked Questions
relating to the
Plan-Making Process

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What is the purpose of the Statutory Development Plan?

The purpose of the development plan is to set out a strategy for the proper planning and sustainable development of the functional area of the local authority in question, taking account of the wider legislative and policy framework for planning, including EU, national and regional requirements. The plan sets out the planning and development objectives of the planning authority for a six-year period in both a written statement and maps.

What is the legislative basis for preparing plans?

Part II of the Planning and Development Act 2000-2018 (as amended) (hereafter referred to as “the Act”) sets out the legislative basis for development plans, local area plans and regional spatial and economic strategies as prepared and made by local authorities and/or regional assemblies.

What are the different types of plans and strategies?

There are four types of statutory plans:

1. The National Planning Framework (NPF) was prepared by the Government in 2018 and covers the period to 2040. Its implementation is kept under review.
2. Regional Spatial and Economic Strategies (RSES) are made by the Regional Assemblies.
3. Development plans must be prepared for the functional area of each local authority.
4. Local area plans (LAPs) may be prepared for any part of the functional area of a local authority and must be prepared for all towns that had a population of 5,000 persons or more in the last census.

There are other non-statutory plans that are prepared by planning authorities and that generally relate to more detailed design guidance and advice. Examples of these include masterplans, integrated area plans, urban design frameworks, village design statements and visioning documents. Whilst their status is not set out in legislation, they generally provide supplementary non-statutory advice on achieving the objectives of the statutory plan.

What are the powers of the elected members as compared to the officials of a local authority in the plan making process?

The making or variation of a development plan is a function reserved for the elected members of the local authority and is thus referred to as a ‘reserved function’. By way of distinction, a task required to be undertaken by the chief executive of a local authority is often referred to as an ‘executive function’.

Following extensive public consultation and consideration of reports on the submissions/observations received, the elected members of a local authority adopt/make the plan, with administrative and technical input from their officials: the chief executive, the senior management team and in particular the development plan team. The latter comprises a range of planners, technical staff (e.g. engineers, Geographical Information Systems) and administrative staff. Where the elected members fail to make a plan (or part thereof) within the statutory six year period, the chief executive must make a plan.

What are the main features of city/county development plans?

The main features of city/county development plans are the written statement and the maps containing the development objectives for the area, including (but not limited to):

- the Core Strategy, which gives spatial expression to housing, population and employment elements of the plan;
- the Housing Strategy, which indicates anticipated housing requirements across various tenures and types for the plan period and informs the Core Strategy;
- the Retail Strategy, which indicates retail development requirements over the plan period and informs the Core Strategy;
- a Strategic Flood Risk Assessment in line with guidelines published by the Minister in 2009; and
- transportation and other infrastructural assessments.

A plan must include certain mandatory objectives, as set out in Section 10 of the Act and may include a range of discretionary objectives as indicated in the First Schedule of the Act.

Typically, a plan will address the following themes and topics:

- **Development and Regeneration:** including zoning of land, urban renewal, transport, water and waste services
- **Communities and People:** recreation and amenities, social, community and cultural services, traveller accommodation, Gaeltacht areas.
- **Environment and Climate Change:** environment, biodiversity, flooding, mitigation and adaption to climate change and major accidents.
- **Heritage and Landscape:** archaeology, natural heritage, architectural heritage, landscape character, views and prospects, rights of way.

What are the main features of local area plans?

A local area plan consists of a written statement and maps indicating the objectives of the plan. These objectives may include zoning and other objectives, such as for phased development, community facilities, amenities and design standards.

To keep the extent of plans and the resourcing demands in preparing them at a manageable level, many local authorities choose to indicate at development plan level, zoning objectives for locations that do not require their own distinct local area plan. In doing so, the local authority reserves the local area plans for addressing specific local issues such as indicating the manner of urban regeneration or the shape of new urban extension projects in newly developing areas.

What is the relationship between development plans and local area plans?

Under Section 18 of the Act, a planning authority may at any time, and for any particular sub-area within its functional area prepare a local area plan. Under Section 19 of the Act, a local area plan must be consistent with the objectives of the development plan, its core strategy and any relevant regional spatial and economic strategy (RSES). This is particularly relevant in respect of any lands that may be zoned for development in a local area plan, where any proposed zoning must be consistent with the core strategy of the relevant development plan and RSES.

Under Section 19 (2A) of the Act, each planning authority within the Greater Dublin Area (GDA) [Dublin City Council, Dún Laoghaire-Rathdown, Fingal, South Dublin, Kildare, Meath and Wicklow county councils]

must also ensure that its local area plans are consistent with the Transport Strategy for the GDA of the National Transport Authority.

Under Section 19 (2B) of the Act, when upon the making of a development plan, the objectives of any local area plan are no longer consistent with that development plan, the planning authority must amend the relevant local area plan so that its objectives are consistent with the development plan within one year of the adoption of the development plan.

Do any special legislative provisions apply to areas that may be covered by more than one local authority?

Yes. Section 9 of the Act provides that a planning authority may, with the agreement of one or more local authorities that are adjoining local authorities, or on the direction of the Minister, make a single development plan.

The planning authorities concerned make whatever arrangements they see fit to prepare the plan, except that the decision to make the relevant parts of the plan must be made by the relevant authorities subject to any agreement they may make for the resolution of any differences between the reserved decisions.

National Planning Objective (NPO) 70 of the National Planning Framework (NPF) further reinforces the need for joint plans where a town lies within the combined functional area of more than one local authority.

What are the main stages/timeframes for preparing plans?

Every planning authority must make a development plan every six years, as required under Section 9 of the Act. According to Section 11 of the Act, the planning authority must give notice of its intention to review its existing development plan after four years.

The publication of the National Planning Framework (NPF), however, affects some authorities' date for initiation of a review, depending on what stage the review process was at when the NPF was published in February 2018.

These timelines are set out under Section 11(1) of the Act. To put it simply, development plans generally must be reviewed within 26 weeks, at the latest, of the adoption of the relevant Regional Spatial and Economic Strategy (RSES) for the area.

The development plan review process spans five stages over 105 weeks. Details of the steps that must be taken under each stage are outlined in an infographic and accompanying briefing paper provided separately.

How does the public become involved in plan-making?

There are three main opportunities for public involvement in the plan-making process during the pre-draft, the draft and the material amendments stages.

(1) Pre-draft: In accordance with Section 11 of the Act, a planning authority must give notice of its intention to review its development plan not later than four years after the making of the existing plan. This notice is published in one or more newspapers circulating in the area to which the development plan relates and indicates that submissions or observations are invited from the **public** over a period of 8 weeks.

In tandem with the publication of the above notice, many planning authorities publish an "Issues Paper" to give the public an overview of key development issues and to seek the views of the public. Written submissions received from the public are published on the planning authority's website and collated within the chief executive's report to the elected members. The members ultimately determine the contents of the draft plan based on the chief executive's report, so the thread of public involvement continues on through to the preparation of the draft plan.

(2) Draft Plan: In accordance with Section 12 of the Act, two weeks after the draft plan is made by the members, the planning authority publishes a further notice in a newspaper circulating in the area to which the development plan relates. The notice confirms that the draft plan has been prepared and that it may be inspected at stated places for a period of not less than 10 weeks.

The notice also confirms that written submissions or observations with respect to the draft may be lodged by the **public** with the planning authority within the stated period and that they will be taken into consideration before the making of the plan. This is the second stage during which the public are actively encouraged to become involved in the plan-making process or to continue their involvement in that process.

Similar to the pre-draft stage, the submissions received from the public form the basis for the chief executive's report which is submitted to the elected members. The members consider this report and ultimately determine if material amendments are required to the draft plan.

(3) Material Amendments: Where the members resolve to make material amendments to the draft plan, a further notice is published by the planning authority. The notice is again published in one or more newspapers circulating in the area to which the development plan relates and confirms the reason(s) for the proposed variation, that a copy of the variation may be inspected at a stated place for a period of not less than 4 weeks, and that written submissions or observations with respect to the proposed variation may be made by the **public** to the planning authority.

All written submissions received by the planning authority are published on the website. Upon completion of the public consultation period the chief executive prepares a report on the submissions and observations received and submits this report to the members. The members ultimately determine if the material amendments should be adopted, and finally pass a resolution to make the plan.

(Further details in relation to the preparation of the chief executive's reports, the consideration of the reports by the members and the issuing of directions by elected members are contained in the Briefing Paper: A Guide to Making a Development Plan).

What constitutes a material amendment to a plan?

A material amendment, during the plan-making process, generally constitutes an amendment to the plan which would have significant effects on the environment or adversely affect the integrity of a European site.

A material amendment can also relate to, for example, an increase in the area of land zoned for any purpose, or an addition to or deletion from the record of protected structures.

What obligations are there in relation to engaging with social and physical infrastructure providers?

Section 11(3) of the Act provides that a planning authority shall take whatever measures it considers necessary, after it has published notice of its intention to review the existing development plan and to prepare a new development plan, to consult with the providers of energy, telecommunications, transport and other relevant infrastructure. The planning authority is also obliged to consult with providers of education, health, policing and other services. All such infrastructure and service providers are required to furnish details of their long term plans for the provision of infrastructure or services in the functional area of the planning authority.

In addition, with regard to the notice to be published confirming the intention to review the development plan, the notice should indicate that children or groups of associations representing the interests of children, are entitled to make submissions or observations regarding the objectives and policies required to deliver a strategy for the proper planning and sustainable development of the area of the development plan.

What does the planning legislation require a development plan to contain?

Section 10 of the Act outlines the requirements in terms of the content of development plans. In summary, the development plan must set out an overall strategy for the proper planning and sustainable development of the area of the development plan.

The written statement of the development plan must include a core strategy that demonstrates that the development objectives in the plan are consistent, as far as practicable, with national and regional development objectives set out in:

- the National Planning Framework;
- The Regional Spatial and Economic Strategy for the area;
- Specific planning policy requirements specified in statutory guidelines published by the Minister under Section 28 of the Act.

The written statement must also include a separate statement that shows that the development objectives in the development plan are consistent, as far as practicable, with the conservation and protection of the environment. This element directly relates to the requirements of the EU Strategic Environmental Assessment (SEA) Directive 2001/42/EC and the responsibilities for the state emanating from same.

Section 10(2) of the Act sets out development objectives that **must** be included in the plan, i.e. mandatory requirements. They are listed as follows:

Topic	Mandatory Objective Reference
Zoning of Land	Section 10(2)(a)
Transport/Energy/Communication Facilities/Water/Waste Services	Section 10(2)(b)
Urban Renewal	Section 10(2)(h)
Amenities (Development)	Section 10(2)(j)
Social, Community and Cultural Requirements	Section 10(2)(d)
Community Services (including schools, creches, etc.)	Section 10(2)(l)
Traveller Accommodation	Section 10(2)(i)
Gaeltacht Areas	Section 10(2)(m)
Climate Change	Section 10(2)(n)
Environment (including landscape, ecology, wild species, etc.)	Section 10(2)(ca)
Major Accidents Directive	Section 10(2)(k)
Archaeological Heritage	Section 10(2)(c)
Amenities (Natural)	Section 10(2)(j)
Natural Heritage	Section 10(2)(ca)
Protected Areas	Section 10(2)(cb)
Architectural Heritage Policy	Section 10(2)(f)
Architectural Conservation Areas	Section 10(2)(g)
Landscape Character, Views, Prospects	Section 10(2)(e)
Landscape Protection and Management	Section 10(2)(p)
Rights of Way	Section 10(2)(o)

What must the Core Strategy and Housing Strategy address?

The core strategy must provide relevant information to show that the development plan and the housing strategy are consistent with the National Planning Framework (NPF), the Regional Spatial and Economic Strategy (RSES) and with specific planning policy requirements (SPPRs) of Section 28 Ministerial Guidelines.

The core strategy must take into account any policies of the Minister in relation to national and regional population targets, such as the publication 'Project Ireland 2040 Implementation Roadmap for the NPF' (July 2018). The core strategy must provide details of zoning and proposed housing delivery, and set out a settlement hierarchy.

The Housing Strategy must ensure that the housing needs of the existing and future population of the area are provided for, and must include details on population, household formation and likely housing demand for the plan period for the area. It must also provide a breakdown of social/affordable sectors and urban/rural distinctions.

In addition to housing and residential needs, the core strategy must also provide information on retail developments and on relevant roads structure and the rail transport network (where applicable).

What is a settlement strategy and settlement hierarchy? What should it comprise?

A key element of the core strategy is to devise a settlement strategy, including a hierarchy, covering the range of urban centres in the functional area of the relevant planning authority. This should provide a clear picture of how the county (or city) is likely to develop over the lifetime of the plan and thus provide the basis for future policy, development and investment priorities.

A settlement strategy should be based on a holistic evidence-based analysis, examining key factors such as: past housing output/population growth trends, land capacity of settlements, and population targets as set out in RSES/national policy. It should also include an assessment of housing demand, informed by the housing strategy. Other aspects that need to be examined in the settlement strategy include the rural housing profile, employment, transport and environmental constraints.

A diagrammatic map must be contained in the core strategy to provide a clear representation of the settlement hierarchy of the area, and of key transport corridors.

What must plans include on Climate Change?

Section 10(2)(n) of the Act requires the development plan to include:

The promotion of sustainable settlement and transportation strategies in urban and rural areas including the promotion of measures to:

- i. reduce energy demand in response to the likelihood of increases in energy and other costs due to long-term decline in non-renewable resources,
- ii. reduce anthropogenic greenhouse gas emissions, and
- iii. address the necessity of adaptation to climate change;

in particular, having regard to location, layout and design of new development;

The OPR will take into account the outputs of such local authority development plan reviews and climate assessments in carrying out its evaluations of the development plan with regard to the provisions of Section 10(2)(n) of the Act.

Addressing climate change is a key responsibility of local government. Planning authorities must include policies and objectives within their development plans that support and implement wider Government commitments to addressing climate change, such as the Climate Action Plan 2019.

Where must Local Area Plans be prepared for?

Under Section 19(1) of the Act, a planning authority may prepare a local area plan for any particular part of its functional area.

Section 19 of the Act provides that a local area plan may be prepared in respect of any area, including a Gaeltacht area, or an existing suburb of an urban area, as well as areas in need of renewal or areas likely to be subject to large-scale development.

It is mandatory for a planning authority to make a local area plan in respect of an area that:

- (1) is designated as a town in the most recent census of population;
- (2) has a population in excess of 5,000; and
- (3) is situated in the functional area of a planning authority which is a county council.

A planning authority must also indicate land use zoning objectives for any town or village within its functional area where the population of that town or village is between 1,500 and 5,000 persons. In doing so, the planning authority has the option of either preparing a local area plan, or alternatively, indicating such objectives in the development plan. With the requirements for a Core Strategy, increasingly planning authorities are incorporating smaller settlements into their overarching county plan.

What roles do EU Directives have in making a plan?

There are several key EU Directives that have influenced the strategic and statutory planning system in Ireland. Their requirements are reflected in the mandatory objectives of the development plan and Section 28 Ministerial Guidelines. Some of the most relevant Directives include:

- Major Accidents Directive 2012/18/EC
- Floods Directive 2007/60/EC
- Water Framework Directive 2000/60/EC
- Strategic Environmental Assessment Directive 2001/42/EC
- Habitats Directive 92/43/EEC
- Birds Directive 2009/147/EC
- Urban Waste Water Treatment Directive 91/271/EEC

What must elected members do in order to observe EU law requirements in making plans?

Planning authorities must ensure that the appropriate land-use and related aspects of the EU Directives are properly reflected in their consideration and plan-making process.

For example, Article 8 of the SEA Directive requires that (i) the Environmental Report (which is prepared as part of the SEA process), (ii) the opinions expressed by the environmental authorities and the public, and (iii) the outcome of any transboundary consultation, must all be taken into account during the preparation of the plan and before its adoption.

As part of the Strategic Environmental Assessment (SEA) process, a separate statement must be included in a development plan that demonstrates that the development objectives in the plan are consistent with the conservation and protection of the environment. Therefore, in deliberations at the various stages of the development plan process, the elected members must be informed and guided by the environmental

considerations, and must take into account the opinions expressed by the relevant environmental authorities in order to fulfil Article 8 of the Directive in making the plan as a Competent Authority.

What about the plans for former Borough Council/Town Council areas?

Reforms under the Local Government Act 2014 included the consolidation of planning authorities. Prior to the enactment of the 2014 Act there were 88 planning authorities. With the dissolution of town councils and borough councils, the number of planning authorities was reduced to 31. These reforms had the effect of streamlining development plans so that each of the 31 planning authorities now prepare a single development plan for their functional area (inclusive of the administrative areas of the dissolved former town and borough councils).

During the transitional period, the Planning Act provides that the development plans for dissolved town councils continue to have effect until their replacement by the making of the relevant new development plan for the whole local authority area.

It should be noted that the Act requires that a local area plan must be prepared for settlements with a population of 5,000 or more persons (in the last census). The core strategies of the new development plans set the strategic policy context for these local area plans. The local area plan itself will deal with detailed local matters such as local transport, provision of amenities, neighbourhood design, infrastructural phasing, etc.

What is the process for varying a development plan or local area plan?

Section 13 of the Act provides that a planning authority may, at any time, decide to make a variation of the development plan that is in force at that time.

The elected members may, at any time and for stated reasons, submit a resolution to the Chief Executive requesting that the Chief Executive prepares a report on a proposal by the members to initiate a process to consider a variation of the development plan that is in force at that time.

It is a requirement that **three quarters** (75%) of the elected members of the planning authority must approve such a resolution.

Within **four weeks** of the adoption of the resolution by the elected members, the Chief Executive must submit a report to the members.

It is important to note that in making resolutions in relation to variations, members are restricted to considering:

- the proper planning and sustainable development of the area,
- the statutory obligations of any local authority in the area, and
- any relevant policies or objectives of the government or any minister of the government.

Where a planning authority decides to proceed with a variation of a development plan, it must follow the statutory process set out under Section 13 of the Act. This process is outlined in the accompanying OPR Briefing Paper on the Development Plan Process.

Can the plan ever be contravened in granting planning permission?

A planning authority is obliged to secure the objectives in its development plan in accordance with Section 15 of the Act. While an individual planning application may not comply with the objectives of the development plan, it may be that the proposal may be deemed to be consistent with the proper planning and sustainable development of the area. This generally arises (albeit infrequently) when for example new technology, business models or community requirements present that are unique and were unforeseen at the plan-making stage.

If such circumstances arise, the planning authority may decide to permit the development proposal as a material contravention of the development plan, following a specific procedure set out in the Act that entails public consultation and the elected members' approval.

In such a case the planning authority must publish notice of its intention to materially contravene the development plan in a newspaper circulating in the functional area of the planning authority. Direct notice must be given to the applicant and to any person who has made written objections to the application. Any person may make submissions and observations to the planning authority within **4 weeks** of the public notice.

Such submissions and observations must be considered by the planning authority and a report prepared for the elected members. In order to pass a resolution to materially contravene the plan and enable the grant of permission, **three quarters (75%)** of all councillors must vote in favour. Ultimately, the decision to materially contravene the plan is a 'reserved function'.

It should be noted that the local authority cannot undertake development of its own that would contravene the plan (Section 178 refers). Therefore, if there is a specific need for a local authority to undertake a development that was not envisaged when the plan was being made and that would materially contravene an objective/policy, the planning authority must address this by way of a variation of the plan.

What is the role of the Minister in relation to development plans?

Government sets the broad legislative and policy framework within which planning authorities work in drawing up their development plans.

Key statutory obligations in this regard include consistency with the national and regional development objectives of the National Planning Framework (NPF), Regional Spatial and Economic Strategies (RSES), and guidelines published by the Minister under Section 28 of the Act, including specific planning policy requirements specified in such guidelines under Section 28(1C) and policy directives issued under Section 29 of the Act.

Taking account of the details below, where the Minister is of the opinion that a planning authority in making (i) a development plan, (ii) a variation to a development plan, (iii) a local area plan or (iv) an amendment to a local area plan, has failed to implement a recommendation of the OPR or take account of a submission or observation made to it by the OPR, then the Minister may issue a Draft Direction to the relevant authority to take such specified measures as may be required.

What is the role of the Planning Regulator?

Under Section 31AM, the OPR must evaluate and assess development plans at a strategic level, and may make observations and recommendations to the relevant planning authority in relation to legislative and policy matters, including climate change, consistency with the NPF and RSEs, relevant guidelines published by the Minister under Section 28 of the Act and policy directives under Section 29, and such other legislative and policy matters as the Minister may communicate to the OPR in writing.

In making observations or submissions to the relevant planning authority, the OPR must make such recommendations in relation to its evaluation and assessments as it considers necessary to ensure effective co-ordination of national, regional and local planning requirements by the relevant planning authority in the discharge of its development planning functions, and send to the Minister a copy of any such observations or submissions, together with any recommendations made.

What happens after the OPR makes its recommendation?

The report of the chief executive of the planning authority that is prepared for the elected members on submissions received during the plan-making process must (i) summarise the issues raised in the submissions or observations, including recommendations, made by the OPR in relation to the OPR's evaluation and assessments, and must (ii) outline the recommendations of the chief executive in relation to the manner in which those issues and recommendations should be addressed, taking account of the proper planning and sustainable development of the area. The members of the planning authority must take those recommendations into consideration in conjunction with their statutory obligations in making the plan.

Planning authorities must notify the OPR within **five working days** of the making of a plan where the planning authority decides not to comply with any recommendations of the OPR.

Where such a notice above is received from a planning authority, the OPR must consider whether or not to make a recommendation to the Minister that the powers of direction be exercised, within **four weeks** of the making of the plan.

Where the OPR decides to recommend to the Minister that the powers of direction be exercised, then under Section 31AN of the Act, the Minister may either agree or disagree with the notice from the OPR.

Where the Minister disagrees with the notice from the OPR, the Minister must state reasons and lay the reasons before the Houses of the Oireachtas and make the stated reasons available on the Department's website. In addition, a copy of the Minister's stated reasons must be copied to the OPR and the relevant planning authority and made available on the website of the OPR and of the relevant planning authority.

Where the Minister agrees with the notice of the OPR, the Minister must proceed to issue the draft direction under Section 31 of the Act, taking account of the recommendation submitted by the OPR. The Act sets out the detailed procedures for the issuing of such a direction, including public consultation and mechanisms for amending or not issuing the draft direction taking account of consultation.



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