

Report of the Cabinet Member for Enterprise, Development & Regeneration

Council - 6 January 2015

REVIEW OF PLANNING COMMITTEE STRUCTURES & SCHEME OF DELEGATION & RESPONSE TO THE WELSH GOVERNMENT CONSULTATION DOCUMENTS PUBLISHED WITH THE WALES PLANNING BILL (6 OCTOBER 2014)

Purpose:	The report reviews and makes recommendations for changes to the Authority's Planning Committee Structures and Scheme of Delegation and seeks approval of the Authority's response to the Welsh Government consultation documents on "Planning Committees, Delegation and Joint Planning Committees", "Design", "Planning Application Fees" and "Frontloading of the Planning Application Process".
Policy Framework:	Town & Country Planning Act 1990 (as amended)
Reason for Decision:	To approve changes to the Authority's Committee Structures and Scheme of Delegation and approve the Authority's response to Welsh Government consultation.
Consultation:	Finance, Legal and Head of Democratic Services.
Recommendation(s):	It is recommended that:
1)	The current Area 1 and Area 2 Development Control Committee's and Development Management & Control Committee be merged into a single Planning Committee with 12 members;
2)	Where Electoral Divisions have more than one Councillor, only one shall sit on the Planning Committee;
3)	That the quorum should be half (6) of the Committee;
4)	Substitute members are prohibited;
5)	The Scheme of Delegation be amended to reflect the process illustrated at Appendix B and that consequential amendments to the Constitution be carried out;
6)	The content of the consultation response set out in Appendix C be approved.
7)	The Rights of Way and Commons Sub Committee become a Sub Committee of this Planning Committee with its existing terms of reference.
Report Author:	Ryan Thomas
Finance Officer:	Sarah Willis
Legal Officer:	Jonathan Wills

1.0 Background

1.1 The Minister for Housing and Regeneration introduced the Planning (Wales) Bill to the National Assembly for Wales on 6 October 2014 and concurrently issued consultation documents including the following topics:

1. Planning Committees, Delegation and Joint Planning Boards,
2. Review of Planning Application Fees,
3. Frontloading the Development Management System,
4. Design in the Planning Process.

1.2 Responses on these consultation papers are invited by 16 January 2015. This report therefore provides an appraisal and seeks approval of the Authority's response to Welsh Government (WG), as provided at **Appendix C**, and seeks approval of amendments to the Authority's Planning Committee structures and Scheme of Delegation.

2.0 Planning Committees, Delegation and Joint Planning Boards

2.1 The Bill proposes significant changes to the way planning decisions are taken, including provisions which would allow for the standardisation of Planning Committee arrangements and delegation to officers across Wales.

2.2 This consultation, therefore, defines the proposed role of a Planning Committee, makes proposals for a standardised Committee size and structure across Wales and for a National Scheme of Delegation. The consultation also includes proposals for a National Committee Protocol, Joint Planning Boards and Strategic Planning Panels.

3.0 Planning Committees

3.1 Following a comprehensive review of Committees and decision making across Wales, WG have concluded that large planning committees are resource intensive, diminish the valuable role of Councillors as representatives of their community and generate inconsistent decision making as a result of low average attendance and the tensions between respective Electoral Division and Committee roles. WG are clear that the overriding duty of a Committee Member is to the wider community and the whole Authority.

3.2 WG also consider that large committees provide slower as well as inconsistent decision making and refer to estimates that put the cost to the UK economy associated with delays in the planning system at between £700 million and £3 billion a year.

3.3 They also estimate that Authority staff and Councillor costs per Committee to be between £840 for an 11 Member Committee and £1,162 for a 21 Member Committee. The cost to this Authority of its current Committee structure per Committee cycle is, however, estimated at some £6,099 whilst that the average costs of determining an application at Committee is estimated to be twice as much as that for an application determined under delegated powers.

- 3.4 WG, therefore, conclude that small planning Committees are more likely to provide a cost effective, consistent, fairer and more transparent planning service and will allow Councillor training to be more focused, resulting in better trained and robust Committees.
- 3.4 On this basis WG has set a size range of between 11 and 21 Members within which Authorities can choose the Committee size appropriate for their circumstances and allow for apportionment to reflect political composition.
- 3.5 In summary the main WG proposals in respect of Committee size and make up are as follows:
1. The size of the planning committee shall be a minimum of 11 members and a maximum of 21 members,
 2. Where Electoral Divisions have more than one Councillor, only one should sit on the planning committee, in order to allow some Councillors to perform the representative role for local community interests,
 3. Introduce a quorum for decision-making of 50% of the committee,
 4. Prohibit the use of substitute members.
- 3.6 Against this background it should be recognised that the Wales Audit Office (WAO) undertook a review of this Authority's Development Control Service in 2006/07, reporting in September 2008 and in November 2010 specifically reviewed the Council's Committee arrangements following the introduction of additional Area Development Control Committees.
- 3.7 In response the Authority resolved in November 2012 that the current planning governance structure, of two Area Committees and a Development, Management and Control Committee (DM&CC) comprising 72 Members is retained, with annual reviews of performance at the end of each financial year, and that a further review be undertaken in the light of future published Welsh Government guidance.
- 3.8 Reports on performance were presented to DM&CC in August 2013 and 2014. These show a relatively high level of "overturns" at Committee by Councillors and a success rate of defending such decisions at appeal of only 33% in 2013/14.
- 3.9 On the 5th September 2014 the Minister for Natural Resources (Carl Sargeant) met with Councillors and officers of this Authority and recommended that its Committee structures and governance arrangements be reviewed to align with current WG proposals.
- 3.12 In this respect WG research indicates that Swansea is the last remaining Authority in Wales with all its 72 Members sitting on its Planning Committee whilst in terms of scale and nature, as a City, clear comparisons can be drawn between this Authority and Cardiff Council who have a total of 75 Members and for many years have operated with a Planning Committee of 12. Newport City Council operate with a Planning Committee of 11 Members.
- 3.13 In addition this Authority's Licensing Committee also operates with a total of 12 members.

- 3.14 On this basis, therefore, it is clearly apparent that this Authority's current Planning Committee structure and governance arrangements are at odd's with that of the Council's other Committee structures, all other Authority's in Wales and Welsh Government's proposals.
- 3.15 In response, therefore, it is recommended that WG proposals for the size and make up of Committee, as detailed at paragraph 3.4 above, be adopted by this Authority, and that the Authority's current Committee structure comprising of an Area 1 and Area 2 Development Control Committee and a Development Management & Control Committee be merged into to a single Planning Committee with 12 members.
- 3.16 This approach would, it is considered, be consistent with the Committee size of other City authorities in Wales and the Authority's Licensing Committee, provide proportionality, a positive response to current budgetary constraints and Welsh Government's current agenda for cultural change in the planning system and the decision making process.
- 3.17 The Rights of Way and Commons Sub Committee will become a Sub Committee of the Planning Committee.

4.0 The Role of the Planning Committee

- 4.1 WG considers that the role of Committee should be to deliver the adopted development plan by making locally strategic planning decisions and by determining those applications:
1. That are identified as major development;
 2. That raise policy issues affecting the delivery of the development plan, such as applications departing from the adopted plan ; and
 3. Where there is quantifiable, community-wide interest in a development which goes beyond protecting the private interests of one person, or group of people, against the activities of others.
- 4.2 In this latter respect WG are of the view that the Planning Committee should not deal with a plethora of minor development proposals, particularly householder development, which have minimal impact upon the wider area and that most applications should be decided by officers under delegated powers, with only exceptional cases being reported to Committee.
- 4.3 Again this development management role appears at odds with the Electoral Division based approach adopted by this Authority and clearly articulated by the Authority in November 2012 which has historically resulted in a relatively large volume of minor and householder applications being considered by Committee to address private interests rather than community wide impacts.

5.0 National Scheme of Delegation

- 5.1 Welsh Government commissioned research has identified significant differences in the criteria which dictate which applications are determined by committee and which are dealt with under delegated powers.

- 5.2 The inconsistencies in schemes of delegation are considered to provide uncertainty for applicants and developers, particularly those who operate over several local planning authority areas and as a consequence a National Scheme of Delegation is proposed which would provide that all planning applications are to be determined by officers subject to the following exceptions:
1. Departure/contrary to development plan (where officers are minded to approve)
 2. Applications involving an Environmental Impact Assessment (EIA)
 3. LPA employee/Council Member has interest in application
 4. Above a specified development threshold where the size of an application affects whether an application is delegated or not,
 5. Above a specified objection threshold where the size of an application affects whether an application is delegated or not,
 6. Councillor call-in.
- 5.3 There would appear to be little issue with requiring “departure” and EIA applications and, in the interests of transparency, for employee and Member applications to be considered by Committee. WG consider, however, that all ‘major development’ as prescribed in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 would be an appropriate development threshold which reflects the Committee role as prescribed at paragraph 4.1 above. Alternatively views are sought on whether authorities should have a second option to increase delegation to officers by increasing this threshold to prescribed limits e.g. 20 or more dwellings, a site area of 2 hectare or a floor space of 2,000 sq metres.
- 5.4 This Authority’s current scheme of delegation, however, allows for all forms of development to be considered at officer level unless “called in” by a Councillor or unless a petition of 30 or more names has been submitted and the head petitioner wishes to exercise their right to speak at Committee.
- 5.5 There are concerns, therefore, that the proposed approach could require applications above a certain development threshold to be considered at Committee level which ordinarily would be determined by officers under the Authority’s current scheme of delegation. The second option suggested by WG with the alternative upper thresholds is therefore considered to be more appropriate in this respect.
- 5.6 WG proposals also include an objection threshold where applications which received 20 or more objections from individuals or a petition of 30 or more names could be reported to Committee. Whilst the proposed petition threshold broadly reflects the Authority’s current scheme of delegation a requirement for 20 letters of objection does appear high even for an urban authority such as Swansea and when considered in isolation could exclude significant developments for example, within rural communities from Committee consideration.
- 5.7 WG proposals also seek to retain Councillor call-in as part of the National Scheme of Delegation. However, to ensure that Councillor call-in operates within the parameters of the role of the planning committee as defined in paragraph 4.1 above, limits should, they consider, be exercised over when Councillors may use the function.

- 5.8 In this respect WG favour the option reproduced at **Appendix A** where a call in request is linked to the objection threshold detailed above. Under this option call in requests made within 21 days of Councillor notification would be considered against the objection threshold to ensure that only those applications with a community wide interest could be “call in”.
- 5.9 As detailed above the development threshold would potentially require applications of a certain scale to be determined by Committee which under the Council’s current scheme of delegation would be determined under delegated powers, whilst the objection threshold indicated by WG may be difficult to achieve particularly in rural small rural communities where a development may have a genuine community wide impact.
- 5.10 There is justification, therefore, for some form of flexibility to be built into the process and in this respect it is recommended that in exceptional circumstances the Chair should have the authority to allow a call in request where these thresholds were not met but where there was a quantifiable community wide interest or impact. Equally, however, it is also considered that the Chair should retain current powers to veto a call in request to prevent applications which have limited community wide interest or impact from being considered unnecessarily by Committee.
- 5.11 Similarly, current provisions in the Constitution allow the Head of Economic Regeneration and Planning to refer applications directly to Committee where they are of strategic significance. Whilst this is not recommended by WG it has proven a useful mechanism to resolve any unforeseen public interest issues and should it is considered be retained.
- 5.12 Against this background, therefore it is recommended that the Authority’s Scheme of Delegation be amended to reflect the process detailed at **Appendix B**.

6.0 Planning Committee Protocol

- 6.1 Welsh Government (WG) have identified significant variations in the procedures under which planning committees operate throughout Wales and seek to address these variances by establishing a National Planning Committee Protocol.
- 6.2 The protocol seeks to standardise arrangements for the publication of agendas, audio-visual presentations, identification and room layout together with speaking rights, a standing running order and site visit procedure for the Committee decision making process.
- 6.3 In addition the requirement for a cooling off period for Councillor “over turns” and greater involvement of Councillors in defending any subsequent appeal is also recommended. In this respect the Authority’s “Two Stage Voting Process” and referral process for prescribed applications determined contrary to officer recommendation to be referred is regarded as sufficiently robust, however, with a single Planning Committee any referrals under current procedures would need to be made to Council.

6.4 Mandatory Councillor training and CPD requirements are also recommended together with the development of a clear distinction between a Councillor's role when acting as a decision maker or as a local representative i.e. when acting as a local representative a Committee Member should, it is recommended, step down from the Committee table and join the public gallery.

6.5 A protocol for Councillor involvement in pre-application enquiries and a Councillor Code of Conduct is also recommended, however, Welsh Government have stopped short of introducing legislation to deliver a National Protocol but instead recommend that this be developed by Local Planning Authorities with assistance from WG.

7.0 Joint Planning Boards & Strategic Planning Panels

7.1 This section sets out proposals for joint planning boards to perform a full range of local planning authority functions and for strategic planning panels to prepare strategic development plans for greater than one local authority area.

7.2 It considers how the size and composition of such arrangements can be structured in accordance with the Bill provisions for prescribing the size of planning committees.

7.3 In this respect the proposal that Welsh Ministers determine the size of the joint planning board membership on a population basis and appears acceptable subject to consultation with the constituent Local Planning Authorities.

8.0 Review of Planning Application Fees

8.1 The WG considers that if their vision for the development management system is to be realised they need to ensure local planning authorities (LPA's) have the necessary resources and use these in the most efficient and effective ways.

8.2 In this respect it is considered that the quality and timeliness of the service provided by LPA's is being affected by stretched resources available to the planning services within authorities.

8.3 Three main changes to the system of planning fees are therefore proposed as follows:

1. an increase in fee levels;
2. to provide a refund of the application fee where an application remains undetermined after a period of time,
3. to extend the scope of planning fees.

The evidence base suggests that the current planning application fee covers on average 60% of the cost of processing and determining an application.

- 8.4 The Welsh Ministers consider that a LPA should be prepared to pay for activities that are purely or largely for the wider public good (e.g. development plans and enforcement). Application fees reflect the overall cost of handling, administering and deciding the various types of application. The level set is designed to include recovery of direct costs and an apportionment of related overheads.
- 8.5 It is considered that a key element of the LPAs role is to issue accurate and timely decisions. Where this is not achieved applicants can experience delay, frustration and additional cost. The needs of the customer (speed and quality of service) are, therefore, a priority for the LPA.
- 8.6 LPAs have indicated that the current level of planning fees in combination with general budget cuts has affected the service they provide. However, the relationship between resources and service delivery is not a straightforward one. There are complex issues relating to the availability of skills, the exercise of people and time management, and addressing the needs of diverse communities, including the differences in number and type of applications generated by these areas.
- 8.7 The WG propose an increase of 15% across all applications (on the understanding that there is a commitment by LPAs to review their service delivery).

Development	Current Fee	Proposed Fee
Householder (1 dwelling)	£166	£190
Householder (2+ dwellings)	£330	£380
5 Dwellings	£1,650	£1,900

- 8.8 The Independent Advisory Group identified a need for a system of measures to ensure LPAs adopt the improved way of working, including introducing a system of penalties to help address poor performance.
- 8.9 Two measures are proposed that would reflect the fact that service delivery has failed; these are:
- optional direct applications; and,
 - refund of the application fee after a certain time period.

9.0 Optional Direct Applications:

- 9.1 Where there are clear and consistent failures in LPA customer service, it has failed in its role as a planning authority, WG have put forward in the Planning (Wales) Bill, currently before the National Assembly for Wales, powers that will provide the Welsh Ministers with the ability to take direct action where an LPA is deemed poorly performing. Proposals on optional direct applications will be the subject of a separate consultation.

10.0 Fee Refund:

- 10.1 WG considers that it is unreasonable for a LPA to go beyond certain time periods before providing a decision on a planning application. To encourage swifter decisions it is proposed to introduce changes, that, where a planning application remains undecided after a set period of time, the application fee is refunded. As well as encouraging swifter decisions, WG consider that this measure will ensure that; the financial burden on the applicant is reduced.
- 10.2 It is recognised that the determination of an application can be delayed for genuine reasons; requiring further consultations etc, however, WG consider that the LPA should have made a decision on a **'householder'** application within **16 weeks** and within **24 weeks for all others**.
- 10.3 WG place equal weight on both parties being timely, responsible and reasonable in the development management process. Extensions of time would still be available whereby a refund would only be payable 16 or 24 weeks after the agreed extension date.

11.0 Other changes to Planning Application Fees

1. fees for the discharge of planning conditions;
2. the introduction of a fee for confirmation that a condition has been discharged;
3. a standard charge for drafting Section 106 agreements on a sliding scale basis based on complexity;
4. deemed planning application fees;
5. facilitating broadband rollout;
6. amendments to the 'free go';
7. a separate fee category for renewable energy/low carbon applications; and,
8. the division of planning fees for cross authority applications.

12.0 Conditions Discharge

- 12.1 This post decision approval of further information has been identified as a significant barrier to the timely delivery of schemes and a drain on LPA resources. It is estimated that **15% of officer time** is spent dealing with this post decision workload.
- 12.2 The Welsh Government consider that the introduction of a fee will assist in paying for the processing, consultation and determination costs incurred by the LPA. A charge is also seen as providing confidence that the work will be undertaken in a timely manner by the LPA. A fee would be required for each request to discharge a condition or group of conditions.
- £25 for householder; and,
 - £83 for all other applications.

13.0 Confirmation Fee

- 13.1 When selling or raising finance on property, buyers and mortgagees will normally want proof that any conditions attached to planning permissions have been complied with. Non-compliance with or lack of proof of compliance with planning conditions can be a frequent cause of delays in the conveyancing process and can even result in property sales falling through. To cover costs LPAs may charge a fee for this. This would merely be confirmation that no more information needs to be submitted in connection with that condition for approval by the LPA. Fees would be the same as for the discharge of conditions.

14.0 Section 106

- 14.1 The current mechanism for agreeing Section 106 obligations is seen as protracted. There is often a substantial time lag between a resolution to grant planning permission and the issue of the decision notice after the completion of the Section 106 process.
- 14.2 The Advisory Group identify that this stage of the process should be accompanied by a fee and a set timescale. This fee would cover the administrative cost of the LPA legal team responsible for reviewing the agreement.

15.0 S174 Appeal

- 15.1 When a person appeals an enforcement notice served by the LPA, they may appeal on the basis that planning permission ought to be granted for the activities cited in the notice (a ground (a) appeal under s.174(2) of the Town and Country Planning Act 1990). Appealing on this ground is known as a 'deemed planning application'. As the appellant wants the planning merits to be considered through this appeal mechanism, a fee is payable. The size of the fee is double that charged for the equivalent ordinary application for planning permission. Half of the fee is paid to the Planning Inspectorate and is effectively held as a deposit which is refundable if the appeal succeeds on the 'legal' grounds. It is proposed that the fee to accompany a ground (a) appeal will only be paid to the LPA. Where the appeal fails the LPA would retain the entire double fee.

16.0 Broadband

- 16.1 The Welsh Government is committed to the roll-out of broadband across Wales through commercial rollout schemes and the Superfast Cymru programme. To further support the rollout of broadband, WG are now considering ways to help let the public and businesses know where the network has been upgraded. This would involve alterations so that an application covering multiple sites is only charged a single fee, instead of a fee based on the aggregate for each site.

17.0 “Free go”

- 17.1 The current fee regulations provide that following withdrawal, refusal, non-determination or approval of a reserved matters application, the applicant is entitled to submit a revised application without paying a fee. This is known as a ‘free go’ and provides flexibility for applicants. The ‘free go’ still provides many benefits to the planning system as it provides flexibility. For example, applicants may withdraw a reserved matters applications to prepare additional information or importantly, following refusal.
- 17.2 However, where the original reserved matters application has been approved, WG are considering if it is appropriate to allow the applicant the opportunity of a ‘free go’. In this situation, the LPA has determined that the details submitted were acceptable.

18.0 Energy Generation Fees

- 18.1 Energy generation projects are often large scale applications and the 2013 Hyder report states:

‘The cost of the planning service is clearly significant for renewable and low carbon renewable applications and raises questions on the level of fee income for these applications and whether this adequately reflects the resource and time commitments of LPAs.’

- 18.2 At present energy generation projects often fall within the Plant and Machinery category of the fee regulations. This schedule does not generate sufficient income to the LPA to allow them to efficiently determine the energy generation applications, however simply increasing fee levels for Section 5, plant and machinery would unfairly impact on those other applications. It is therefore appropriate to review the inclusion of energy generation projects in this category.
- 18.3 Research shows that the current regime is inconsistent in the amount of income received by a LPA compared with applications with a similar scale of impact. WG believe that wind turbines warrant a separate section within the fee regulations. Other energy generation projects are still suited to the current method of charging, based on the area of the development. The larger the development, the larger the fee. However, with wind turbines, the small geographical area of the application site does not lend itself to this model; planning application fees remain low compared with the work required to determine the application. Fees for turbines could be based on output, the number of turbines, turbine height and/ or area. If any of these measures were combined with site area, the original shortfalls with the latter may be overcome.

19.0 Cross Boundary Applications

- 19.1 A planning application may straddle the boundaries of two or more LPAs. As a LPA cannot grant planning permission for a development within the administrative area of another authority, it is necessary for each LPA to receive an application, identifying on the plans which part of the site is relevant to each.

19.2 The WG consider that cross boundary applications should provide a fee to both authorities calculated at the standard rate for the application that is submitted within their area. This would mean that the applicant would pay the fee to each LPA for the development that is within their administrative boundary calculated at the normal rate.

20.0 Frontloading the Development Management System

20.1 These new procedures seek to make the planning application process more effective and efficient by “frontloading” and ensuring applicants are aware of any significant issues before submitting a planning application.

20.2 In this respect the Planning (Wales) Bill introduces new pre-application provisions that place a duty on applicants to carry out pre-application consultation with the community and statutory consultees for major developments, and requires local planning authorities (LPAs) to provide pre-application services to applicants.

20.3 Other provisions in both the Planning (Wales) Bill and the Planning and Compulsory Purchase Act 2004 place duties on statutory consultees to provide “substantive” consultation responses within specified timescales.

21.0 Pre-application Consultation

21.1 Whilst the requirement for pre-application consultation is welcomed, in principle, there are concerns that a prescriptive process which may be onerous for the development industry will deter investment and undermine Welsh Government objectives to create a planning system which acts as a tool to deliver positive change. Not all major developments raise significant issues or controversy requiring extensive pre-application consultation.

21.2 In addition there are also concerns that a focus purely on major development may have an impact, given available resources, upon the ability of statutory consultees and LPA’s to provide a consistent service and facilitate other forms of development which, although classified as minor, cumulatively may have a significant impact upon the economy and environment.

21.3 A more flexible approach perhaps where a range of “front loading” models are available as a toolkit appropriate for all forms of development may be a more appropriate mechanism.

21.4 There would appear to be little opposition to allow a flexible approach at the pre-application stage for consultees to respond, however, a duty to respond within these agreed timescales is seen as integral to the success of this approach as is the requirement for the applicant to provide a pre-application consultation report as part of a subsequent valid planning application and to address the issues identified including any comments made by the Local Planning Authority.

22.0 Pre-application Services

- 22.1 The value of pre-application advice can not be underestimated and the proposal that all development proposals that require planning permission are provided with such a service is welcomed as is the requirement for a statutory pre-application enquiry form which it is recommended should be accessed preferably via the Planning Portal.
- 22.2 Whilst this Authority already maintain spatial records of pre-application enquiries with public access to its service on the Authority's web site a statutory requirement that this should be or remain the case does seem unnecessarily onerous and inflexible as is the requirement that a written response from the LPA must contain certain information. It should be for individual Authorities to determine how they best deliver this service set against best practice guidance from Welsh Government and/or National performance indicators.
- 22.3 Similarly, the prescribed process involving 21 day and 28 day timescales for the provision of a written response and a meeting respectively does not mean that a service will be provided that meets the needs of the applicant. In this respect most Authority's already provide pre-application advice to prescribed service levels and timescales. Again a more flexible rather than a prescriptive approach, linked to a scale of fees and agreed timescales and levels of service, would be a more appropriate mechanism to deliver a quality service.
- 22.4 It should be recognised that, in the current economic climate, where the Authority seeks to maximise income opportunities, fee charging for pre-application enquiries will not necessarily increase the resources available to provide an improved service. The level of fee should, therefore, be proportionate to the service provided not just in terms of officer time but also speed and extent of the response required by the applicant.
- 22.5 This Authority currently provides a free pre-application advice service and weekly householder surgery coupled with up-to-date supplementary planning guidance, however, use of the service for householder development is relatively low and fee charging would, it is considered, further reduce applicant contact and the quality of submissions. An increase in the planning application fee for householder development beyond 15% would have the dual benefit of encouraging contact at the pre-application stage and increasing fee income accordingly.

23.0 Statutory Consultees

- 23.1 Efforts to define the nature of a statutory response and the necessary timescales are welcomed but again a prescriptive approach without the opportunity for flexibility as circumstances arise could be counterproductive. Similarly a monitoring framework for the quality of service is also seen as a positive step, however, it is not clear what mechanisms, if any, are built into the process to deal with poor performance.

24.0 Design in the Planning Process

- 24.1 The Bill proposes significant changes to the way planning decisions are taken, including provisions to remove the mandatory requirement for Design and Access Statements (DAS) from primary legislation. However the requirement for DAS will remain in secondary legislation in order to continue the requirement for DAS in the short term whilst more effective ways to raise design standards in the planning process are considered.
- 24.2 This consultation therefore, seeks the views of stakeholders on how to support national planning policy on design and facilitate the delivery of good design, and communicate it, through the planning system without the future requirement for DAS.

25.0 Design and Access Statements (DAS)

- 25.1 The requirement to submit a DAS is set out in legislation; they are a mandatory requirement for many planning applications. The DAS is a communication tool that must explain how both good and inclusive design principles have been considered and applied from the outset of the development process. Part of the requirements relate to access which is covered under Building Regulations Part M – Access to and use of buildings which provides guidance on external and internal access to the buildings and the use of their facilities.
- 25.2 It was anticipated by the Welsh Government that the mandatory requirement to submit DAS's in 2009 would add value to the planning and design process and would enable various stakeholders (such as local authorities, applicants, local communities and access groups) to engage more effectively in the process, and improve awareness of the various issues that should be considered. It was envisaged that DAS would therefore result in an improvement in the quality, sustainability and inclusiveness of development.
- 25.3 A report published by the Welsh Government in 2010 highlighted key criticisms of DAS, such as perceptions regarding the process and additional costs, and recommended that the scope and content of DAS should be clarified in order to speed up and improve the validation of planning applications.
- 25.4 More recently, the Welsh Government's Framework for Action on Independent Living (launched September 2013) also cited DAS as being ineffective in promoting the consideration of inclusive access issues through the design process. The Framework included a commitment to undertake a review of the effectiveness of DAS including how they relate to the access requirements under Building Regulations.
- 25.5 Further research into the effectiveness of DAS in influencing the final design of development proposals as part of the planning application process was then commissioned. This also included consideration of the role of future Building Regulation requirements (Part M Access). The research 'Review of Design and Access Statements in Wales' was published in November 2013 and the report makes recommendations for refining and improving the DAS process.

26.0 Review of Design and Access Statements in Wales (2013)

- 26.1 The nine recommendations of the report set out how legislation, guidance and procedures can be amended to improve the credibility and efficiency of the process. The primary recommendations, which would require changes to subordinate legislation, are summarised as follows:
- Retain DAS as a communication tool, but only as a mandatory requirement for applications within certain categories (e.g. listed buildings/designations) and above certain dwelling/size thresholds (e.g. over 10 dwellings)
 - Expand Building Regulations (Part M) to include all external areas within the boundary of the development.
- 26.2 The remaining recommendations advise an array of best practice measures such as promoting effective pre-application meetings with developers and the use of stronger planning conditions. In applications below set thresholds, it is recommended that local planning authorities engage with building control colleagues or improved inspectors earlier in the process. This is to ensure that access issues that would affect the design of a proposal are considered from the outset.
- 26.3 The recommendations outline a possible way forward, based on retaining the mandatory requirement for DAS for large applications, to deliver the Welsh Government's commitment to good and inclusive design. However, the research has highlighted that there is no significant evidence that DAS are important in attaining good design and that they have done very little to broaden applicants' perception of inclusive access. While DAS have benefits as a communication tool, the Welsh Government is not convinced that this is sufficient reason to retain them as a mandatory requirement for many planning applications and considers that resources should be focussed on alternative ways of securing good design and inclusive access.

27.0 Purpose of the Consultation Paper

- 27.1 The preparation of a Planning (Wales) Bill provided an opportunity to review both the requirement and the process, including how DAS sit alongside Building Regulation access requirements. The Framework for Action on Independent Living research paper forms part of the evidence base underpinning the Positive Planning consultation paper and asked the question 'Should the mandatory requirement for DAS be removed?'
- 27.2 Following careful analysis of the consultation responses and taking into account the key findings highlighted in the research, the Planning (Wales) Bill proposes the removal of the mandatory requirement for DAS from primary legislation. The rest of the Design in the Planning Process consultation paper examines, in light of this proposal, the work currently being undertaken in relation to design on a national level and seeks views on how to support existing policies on design and inclusive access, and mainstream the delivery of good design through the planning system, without the need for DAS.
- 27.3 The recommended responses to the various set questions that make up the consultation are set out in **Appendix C**.

28.0 Financial Implications

- 28.1 The proposals will have resource implications in terms of fee income and where this is the case, these are referenced in the response to the consultation paper (**Appendix C**).
- 28.2 Amendments to Committee structures and governance arrangements will result in cost and efficiency savings in the decision making process as referenced in paragraph 3.2 and 3.3 above.

29.0 Legal Implications

- 29.1 The draft Planning (Wales) Bill and consultation papers contain the WG proposals to modernise the planning system in Wales through changes to primary legislation, secondary legislation and guidance. The Bill contains numerous references to elements of that process including planning appeals, development planning and the rights of individuals.

Background Papers:

Report to Council 22 November 2012 – Response to the WAO Report: Review of Planning Committee Arrangements;

Planning (Wales) Bill;

Welsh Government Consultation: Planning Committees, delegation and joint planning boards – 6 October 2014.

Welsh Government Consultation: Review of Planning Application Fees – 6 October 2014.

Welsh Government Consultation: Frontloading the Development Management System – 6 October 2014.

Welsh Government Consultation: Design in the Planning Process – 6 October 2014.

Appendices:

Appendix A – National Scheme of Delegation Structure and Flow Charts,
Appendix B – Proposed Scheme of Delegation Structure and Flow Charts,
Appendix C – Consultation Response Form.