

# Levelling-up and Regeneration Bill: consultation on implementation of plan-making reforms

POS response to consultation

October 2023

# 1 Planning Officers Society

- 1.1 POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic, and environmental aspirations of the community.
- 1.2 We operate in three main ways:
- As a support network for planners in the public sector
  - As promoters of best practise in planning
  - As a think tank and lobbying organisation for excellence in planning practice
- 1.3 Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities, and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

## 2 Key Messages

- 2.1 Our comments must be read in the context of the three key omissions in this review – the proposed new alignment test, new National Development Management Policies, and a revised National Planning Policy Framework (NPPF).
- 2.2 Firstly, whilst recent changes in the NPPF and its associated guidance has improved the spatial planning system from the point of view of strategic planning, POS considers this a job half done. Whilst the proposed local plan making reforms contain many good intentions and suggest some pragmatic solutions to the challenges encountered by the sector, it is fundamentally flawed.

- 2.3 This is because it makes no mention of the larger than local strategic issues which provides the context in which local plans must inevitably work in most places.
- 2.4 We understand that government proposes to replace the legal ‘duty to cooperate’ with a new policy ‘alignment test’ but in the absence of any proposals it is impossible for us to comprehend how the new system will work in practice. After all, it is the difficulties that these larger than local strategic issues create which is the prime driver for delay and obfuscation in the local plan making process.
- 2.5 This is not only in relation to meeting housing needs but the lack of an effective approach to strategic planning is also having a significant impact on other key issues such as planning for and delivering strategic infrastructure (especially transport and energy infrastructure); managing strategic environmental and natural assets (especially impacts on water quality and supply); ability to level up socio-economic disparities; and, on the country’s ability to build climate resilience.
- 2.6 POS have advocated a much simpler two stage approach which deals with strategic matters first and then the detailed local plan. This would enable the strategic stage of plan making to be carried out efficiently and effectively, allowing the rest of the plan making process to be simplified.
- 2.7 This is set out in our POS Manifesto Background Paper 9 - Spatial Planning: Simplifying the Process. See: <https://www.planningofficers.org.uk/uploads/POS%20MBP9%20Spatial%20Planning.pdf>
- 2.8 Secondly, we have yet to see the proposed National Development Policies (NDMPs), and these will no doubt have a significant impact on the scope of local plan making. Clearly efforts to avoid the need for repetition and duplication in policy writing is a desirable outcome, in principle. However, it should be made explicit that they are the starting point for local consideration. A one-size-fits-all approach is unlikely to work across England given differing local challenges and opportunities and if evidence shows that a different or more refined approach in different geographies is necessary that should be acceptable.

- 2.9 Thirdly, we have yet to see the revised NPPF that will set the context for the current system that was promised much earlier in the year nor the new NPPF that will for set the scene for the new planning system. There are also some key issues that will have to be delivered through further national policy changes, such as the new ‘tests of soundness’ that local plans will be expected to meet and the aforementioned policy.
- 2.10 On the general content of the consultation document, we are delighted to see a specific reference to minerals and waste planning. This part of the plan-making system has its own set of challenges and will require a different approach to some parts of the plan-making process, which is recognised.
- 2.11 Finally, POS would welcome an early opportunity to discuss how these matters – the alignment test, NDMPS and the revised NPPF – and how they could best be drafted ahead of any future consultation on any specific proposals in due course.

### 3 Questions

**Question 1: Do you agree with the core principles for plan content? Do you think there are other principles that could be included?**

Yes, in principle. A vision led/outcome focused plan is a good thing. Some examples include health related outcomes (linked to access to green space), climate outcomes linked to net zero targets or number of new Local Cycling and Walking Infrastructure Plans put in place, or social outcomes linked to affordable housing provision or town centre regeneration.

But POS has some concerns about the concept of measurable outcomes because it may not be possible to identify suitable measurables for every part of a vision. Whilst it would be good to get away from vaguely aspirational visions, we should not find that they are weakened by the absence of things that can be measured.

**Question 2: Do you agree that plans should contain a vision, and with our proposed principles preparing the vision? Do you think there are other principles that could be included?**

Yes, a local plan should contain a vision and the plan should explain how that vision will be delivered. It should provide a golden thread throughout the local plan and contain measurable outcomes that can be monitored and reviewed to help determine whether the local plan is achieving its policy objectives. A key diagram is essential and should illustrate the spatial strategy and any strategic place interventions.

Visions need to be 'place specific' and vitally, must link to the overarching priorities and corporate vision of the council which provides the framework for the plan; the local plan should be the spatial articulation of this. This way there is a direct link to the council's priorities in other areas and to its business plan. It would therefore be helpful if the final 'digital template' referred to in paragraph 28 could also give suggestions of measurable outcomes to assist local plan makers.

Furthermore, the vision for a local area must take account of wider geographies and the larger than local strategic issues which cross local authority boundaries.

Local plans should also have regard to, and be consistent with, the visions of minerals and waste plans in two-tier areas. This would ensure sustainable waste management and the safeguarding of minerals for plan areas.

It should be acknowledged that:

- the vision for minerals and waste will inevitably have a narrower focus and be limited to the characteristics of those topics;
- the role existing development minerals and waste developments have in achieving sustainable development and therefore the importance of safeguarding those existing facilities from incompatible uses; and,
- that minerals can only be worked where they are found and are a finite resource, which can sometimes be at odds with the principles outlined for sustainable development.

**Question 3: Do you agree with the proposed framework for local development management policies?**

Whilst National Development Management Policies (NDMPs) can help avoid the need for repetition and duplication it should be made explicit that they are the starting point for local consideration. A one-size-fits-all approach is unlikely to work across England given differing local challenges and opportunities. It is also inherently contradictory to require local plans to be vision led if the only way to deliver them is through NDMPs. There must be a degree of flexibility.

If evidence shows that a different or more refined approach in different geographies is necessary, that should be acceptable. It is therefore vital that where Local Development Management Policies are supported through the Local Plan Examination process and shown to be necessary that they must have primacy in decision making over NDMP otherwise the s38(6) plan-led system is undermined.

Without seeing the proposed NDMPs we cannot provide clear examples at this stage. Fundamentally, it also creates the risk that innovation in planning policy development is stifled or even undermined. Some examples include local planning authorities who have set more challenging targets for promoting energy efficiency, innovative ways to plan for schools or developing affordable workspace, or an issue bespoke to a geographic area e.g. policies addressing development in relation to caves in Nottingham, to name but a few.

**Question 4: Would templates make it easier for local planning authorities to prepare local plans? Which parts of the local plan would benefit from consistency?**

Yes, templates can help provide an aid to understanding and help provide a toolkit to produce more digital and interactive local plans. But any templates must not be mandatory as this could result in local plans being devoid of local context, stifle innovation and, particularly with the advent of NDMPs, of being potentially bland and standardised.

A good local plan must be locally distinctive and shape the area's places and this requires a proper understanding of the local context. We don't want "any town" local plans but plans that are distinctive and reflect local challenges and opportunities. Therefore, templates do need to be sufficiently flexible.

Templates for Minerals Plans, Waste Plans and Minerals and Waste Plans should also be available. These will necessarily be different due to the more specific and technical subject matter for these plans.

If templates are produced for site selection for local plans it would be prudent to include consideration of minerals safeguarding and sustainable waste management to ensure these factors are included in the local plan making process, particularly within two-tier areas where the district council may be less familiar with the importance of safeguarding minerals resource and minerals and waste infrastructure from other types of development.

Finally, POS would welcome an early opportunity to discuss how these could best be designed and implemented ahead of any future publication of any specific proposals.

**Question 5: Do you think templates for new style minerals and waste plans would need to differ from local plans? If so, how?**

To some extent this depends on whether minerals and waste policies are being incorporated into a single local plan, or whether a separate minerals and/or waste plan is being prepared. If incorporated into a wider local plan, then the policies may fall within the template for the whole local plan. If a separate minerals and/or waste plan is being produced this will still have to set out a strategic approach to development, provide detailed policies for determining planning applications and consider site allocations.

However, there is an obvious difference between a geographically focused local plan and the more subject focused specialised plans for minerals and waste, not least because the latter in most cases will usually reflect wider geographies often involving more than one local authority.

Minerals and waste plans include some very specific policies such as: priorities for minerals and waste development; reducing the use of minerals resource; creating networks of aggregate recycling facilities; principles for sand and gravel provision; provision for industrial minerals; safeguarding mineral resources wherever they are located; safeguarding minerals and waste infrastructure; site restoration schemes; waste management principles including capacity for appropriate management methods. With this in mind it is difficult to see how templates for new style minerals and waste plans could be exactly the same as those for other local plans.

A template for waste plans in particular would be useful to cover how the need for waste capacity for different waste types is assessed so that individual waste planning authorities do not have to reinvent the wheel every time. It is agreed there should be flexibility over whether minerals and waste plans are produced as separate or combined plans either by a single authority or jointly with other authorities; this should be reflected in the templates where appropriate.

For monitoring templates there needs to be some government guidance on how to gather the data for monitoring indicators e.g., for 'waste generated' and 'capacity at waste management facilities' there is no consistent approach on how to calculate this. It is recommended the government seeks input from minerals and waste specialists when finalising these templates.

The requirement to produce a key diagram could be less relevant for a minerals and waste plan as minerals can only be worked where they are found. Although it could be a useful way of illustrating where the key mineral reserves are within a minerals planning authority area. Location of waste management facilities could more logically be represented on a key diagram showing their relationship to key settlements etc.

**Question 6: Do you agree with the proposal to set out in policy that planning authorities should adopt their plan, at the latest, 30 months after the plan preparation process begins?**

This is a highly laudable aim but unlikely to be achieved because of the fundamental dilemma highlighted in Paras 2.2 to 2.6 above. Arguably, the reason for the slow progress made in local plan making is because of the failure to deal with larger than local strategic matters and the plan making reforms do not address this.

It also begs the still unresolved questions of the availability of resources and skills in the sector as well as in other areas where the reforms are asking for more to be done, for example, in relation to public engagement. Whilst digitisation will help with this, there is always a need for people with the right skills to manage an effective engagement programme.

Speeding up the local making process is a desirable outcome but must not be achieved at the expense of the quality of these important documents.



It should be noted that advisory meetings between local authorities and the Planning Inspectorate have been tried and tested. Although not mandatory they have generally been regarded as useful.

Given the proposed approach will be mandatory and would be required on at least three separate occasions, it raises questions about the ability of the Planning Inspectorate (or any other agency) to provide qualified, relevant, and consistent feedback at each of the proposed gateways.

If LPAs are to get anywhere near 30 months' timetable, they will need very smart working, with different aspects of the work going ahead in parallel rather than in sequence. As an example, the basis for some of the key evidence can be put in place before commencing plan preparation, and then continue alongside other work.

Moreover, to fit three gateway assessments and two statutory stages of community engagement into 23 months will, for LPAs with modest resources, eat up much of the time for plan preparation, without having much capacity for anything else.

The most effective way to reduce the amount of work and time in plan preparation and examination will be to change the way plans are examined. For example, instead of every site allocation having to be justified at examination, which creates large volumes of work, a policy in the NPPF could say sites (other than the larger strategic sites) will not be examined for deliverability provided there is a suitable buffer.

Furthermore, the Planning Policy Guidance, Housing and Economic Land Availability Assessment suggests that it may be appropriate for LPAs to consider sites of 5+ homes/ 0.25ha (500sqm) employment land and LPAs need to demonstrate that at least 10% of new homes are being delivered on sites of less than 1ha unless robust evidence suggests that this cannot be achieved. This can significantly impact on the length of the evidence base and the plan itself, if such small sites continue to be dealt with in this way.

A critical issue in relation to the proposed timetable is whether there will be some flexibility where a joint plan is being prepared. In most cases, the decision-making sits with the individual authorities and therefore additional time must be factored in to allow for the different partner authorities to take the plan through their individual governance processes. Whilst this can be done relatively quickly if the choreography of the different meetings is managed effectively, it will depend on the number of LPAs involved and on the issues being considered. In such cases a more realistic timetable needs to be set that takes account of the governance arrangements of individual local authorities.

As part of the Project Initiation Document, a clear risk assessment should be set out, factoring in all the potential risks to the 30-month timetable, with a risk management plan linked to it. This should be updated regularly, and any potential issues highlighted to the Government and to Planning Inspectorate so that there is full transparency.

**Question 7: Do you agree that a Project Initiation Document will help define the scope of the plan and be a useful tool throughout the plan making process?**

The advantages of improved project management of the local plan making process are self-evident. Too often local authorities do not have the resources to undertake the process effectively and this is often why there are delays. Therefore, this document should include an agreed resourcing plan and a timetable for local plan making.

Presumably this document would be published and therefore this obviates the need to produce a separate Local Development Scheme as well as the Statement of Community Involvement? It is accepted that LDSs often lack ambition and can be presented in an uninspiring fashion. This is often because no LPA wants to tie its colours to the mast and then not be able to deliver - which then opens the door to legal challenge. Whatever approach is adopted needs to ensure that there continues to be a 'failsafe' from such an eventuality.

We don't think the use of the phrase PID is helpful having its origins in a particular branch of project management more akin to designing complex infrastructure projects. Whilst local plans can be complex, detailed, and technical documents it would aid wider accessibility if this was simply called a "Local Plan Project Brief".

See also comments regarding risk management in answer to Q6 above.

The PID should also be flexible to reflect the different content of Minerals Plans, Waste Plans and Minerals and Waste Plans compared to the broader policy range and subject matter of a Local Plan. The technical nature of data required, and the timing that this is becomes available, also needs to be reflected as part of any project management for preparing minerals and/or waste plans.

For example, key data for the evidence base for waste planning policies – a Waste Needs Assessment- is published by the Environment Agency (Waste Data Interrogator) in September for the previous calendar year so typically any evidence produced is reporting on data from nearly two years' previously by the time it is published.

Similarly, the time taken to collate data from minerals operators means that Local Aggregates Assessments are typically published near the end of the following year to which the data relates. Data for minerals and waste plans cannot be captured and reported instantly.

**Question 8: What information produced during plan-making do you think would most benefit from data standardisation, and/or being openly published?**

We would suggest that data standardisation should go beyond the remit of Local Planning Authorities. Both Government held data and that of their agents should also be made readily available to all participants in the plan-making and decision-making process. This would support further efficiencies for LPAs in evidence gathering.

One such example is the opportunity for the Environment Agency to develop and publish more detailed information on a water catchment basis which includes assumptions on flood risk from all sources. This would help to reduce the burden on individual LPAs in undertaking strategic flood risk assessments and ensure that a more integrated strategic approach is adopted.

In addition, as LPAs also need to consider not just the number of new homes needed for their area but also the size and type of new homes that should be provided there are real opportunities for the Office of National Statistics to publish population and household projections in a way that enables LPAs and other key stakeholders to be able to readily access the data. The 'How Many Homes' initiative of 10 years ago demonstrated that this could be done easily and at very little cost.

BGS geological data (for use in minerals safeguarding) should be openly available without copyright issues. There is a need to have consistent and comprehensive waste data, particularly for Commercial and Industrial waste and Construction, Demolition & Excavation waste. This will avoid waste planning authorities having to develop their own approach to modelling which will save time as well as being more consistent when considering cross-boundary movements of those waste streams.

**Question 9: Do you recognise and agree that these are some of the challenges faced as part of plan preparation which could benefit from digitalisation? Are there any others you would like to add and tell us about?**

Yes. However, in moving to digital plans this raises the key challenges facing the sector of a lack of defined resources and a shortage of skilled and experienced staff.

**Question 10: Do you agree with the opportunities identified? Can you tell us about other examples of digital innovation or best practice that should also be considered?**

Yes, but whilst many of these tools promise huge change and innovation, they are not oven ready, and more work needs to be done to ensure they can effectively meet the sector's needs. Nonetheless, good work is being undertaken by POS, POS Enterprises and PAS in sharing examples of good and best practice through their various networks. Feedback demonstrates a strong interest in these new technologies and approaches.

Another area where there has been huge innovation is in public and stakeholder consultation with a variety of new digital engagement platforms becoming available. Through integration with social media channels, they have often allowed a wider range of audiences and geographies to be reached in local plan making. Those local authorities that have pioneered these approaches are often victims of their own success in that this can generate huge additional quantities of feedback that needs to be distilled and responded to as part of the local plan making process.

A measure of standardisation and agreed specification of data to be supplied would be helpful.

**Question 11: What innovations or changes would you like to see prioritised to deliver efficiencies in how plans are prepared and used, both now and in the future?**

The processing of public and stakeholder feedback during local plan making consultations often generates huge amounts of data and better mechanisms to process this would be helpful. As mentioned above, there are several new digital engagement platforms on the market which are excellent at more narrowly defined and specific consultations but sometimes struggle with the scope, range, and complexity of the wider local plan although some are working to provide better and more bespoke tools. Improvements in this technology would be of enormous benefit to local authorities particularly where resource constraints are acute.

We currently use standardised approaches to try to make the current process more efficient, but many people still send in responses outside of these systems in the form of long letters or emails. The representations made in these documents must be extracted and matched to the relevant part of the draft plan and to which 'tests of soundness' they relate. This is extremely time consuming and carries potentially high risks of error and subsequent challenge. New digital database approaches must be accompanied by legislative provision that requires people to respond using the digital system provided and makes it clear that representations in the form of long letters or emails are not allowed. People without access to digital hardware can be assisted to use it in council offices and libraries.

Any new approaches should consider removing the need at the second mandatory consultation stage for the resposdee to state which 'tests of soundness' their representation relates too. The development of any new approaches should be developed with input from both PINS and Local Planning Authorities to ensure that representations can be made and then compiled simply and quickly but are 'fit for purpose' to inform any changes to the plan prior to submission as proposed through this consultation and support the examination process.

For example, tools to help identify sites for development, feed in parameters for development (e.g., site constraints and design code parameters) and track progress on sites through to completion would be particularly useful.

Other priorities are: provision of templates for minerals and waste plans; standardisation of data and evidence requirements for minerals and waste.

**Question 12: Do you agree with our proposals on the milestones to be reported on in the local plan timetable and minerals and waste timetable, and our proposals surrounding when timetables must be updated?**

Yes, these milestones seem to be the most relevant. A prescribed digital format for the timetable makes sense provided that is simple and clear. A lighter touch more devolved decision-making approach to its agreement is welcomed. The decision to replace the Local Development Scheme is also welcomed. The proposed use of delegated powers will help ensure this document is as agile as possible.

**Question 13: Are there any key milestones that you think should automatically trigger a review of the local plan timetable and/or minerals and waste plan timetable?**

Yes, some examples for local plan making include:

- Major review of national policy or introduction of new legislation.
- Implications arising from a neighbouring authority which directly impacts on other local plans e.g., phasing of strategic infrastructure, changes to housing targets, planning of new community.
- Impact of national infrastructure projects (new or as a result of changed proposals or timetable) particularly where a spatial strategy has been based around delivery and funding of a key piece of strategic infrastructure in government plans. If these plans are reviewed and funding withdrawn and/or reduced, it may be necessary to review the plan. A recent example is the decision to cancel delivery of HS2 from Birmingham to Manchester. Proposals around construction of the HS2 route and the anticipated benefits arising from it have been a focus for several local plans in the North West of England in terms of transportation and economic development, and also when assessing the need for aggregates supply and inert landfill capacity.
- Changes to local government structures or political leadership e.g., as a result of reorganisation or devolution.

- Changes to funding availability or programming that has significant potential implications for the emerging strategy or on deliverability of the strategy/strategic sites (could be as a result of changes to programming of external bodies e.g., county council in two tier area, combined authority or government agency).
- Unknown issues arising which impact on the strategy or deliverability of the plan e.g., concerns about impact on national highways, nationally protected areas, natural resources (water) or energy supply which need to be addressed before the plan can be progressed.
- Resource issues (this has happened in the past in LPAs with very small local plan making teams and all the staff leave at the same time).
- The lack of availability of a Planning Inspector (or any alternative agency) to deliver the gateway assessments on time and/or inconsistencies in any advice given at different stages in the process.

For minerals and waste plans there are two key milestones. Firstly, aggregate landbanks. When dropping below minimum landbank requirements for aggregate provision as set out in the NPPF (7 years for sand and gravel and 10 years for crushed rock), this may result in the need to review and re-assess Site Allocations. Whilst there may be site allocations currently in an adopted local plan that could potentially meet any identified shortfall, the mineral resource on these sites may not yet have been fully evaluated or deemed commercially viable and it is by no means certain that planning applications would be submitted on these sites. In the absence of proposals, coming forward on these sites there may be an urgent need to further assess the site allocations to fully understand their ability to deliver, and to consider a call for sites to bring new areas into the plan.

Similarly, for waste policies, if a Waste Needs Assessment identified a critical shortfall of capacity that had not been previously identified and planned for, there may be a need to consider introducing new site allocations in order to bring the required waste management infrastructure forward sooner. However, if policies were worded flexibly enough it may not be necessary to have site allocations in order to grant planning permission for the required facilities.

Other circumstances may arise that mean a milestone is not met, for example a delay in receiving third party information, local or national elections, a change in political administration, or the unexpected absence of key personnel. Such circumstances may require some flexibility for a timetable to be updated by the local authority when appropriate, and not purely in relation to a trigger of a delayed milestone.

**Question 14: Do you think this direction of travel for national policy and guidance set out in this chapter would provide more clarity on what evidence is expected? Are there other changes you would like to see?**

The devil will be in the detail, so it is impossible to say at this stage. The challenge will be defining what is 'proportionate' and 'up to date' as these can often be the subject of legal challenge. Guidance will hopefully clarify these and other matters but can also be the subject of dispute and challenge if not clear and unambiguous. POS would welcome an early opportunity to discuss how this and other amendments to the NPPF could best be drafted ahead of any future consultation on any specific proposals.

POS would urge government to be cognisant of the danger of allowing the "best being the enemy of the good". Much of the evidence (e.g., housing numbers) that is collected for plan making can best be described as providing a starting point upon which to plan. The evidence can never be 100% accurate: we are not predicting the future but are systematically using methodologies and assumptions (that can be argued over) to understand what the future might be like. Therefore, there is a need both for standardisation (to avoid pointless arguments over methodologies) and a rule that evidence provided at the start of the plan making process remains good for the whole of that process, even if newer data becomes available. Forever refreshing the evidence is both expensive and time hungry and generally adds little to the quality of the plan making process.

A better alternative starting point would be consideration of the two-stage approach to plan making we have suggested in our POS Manifesto Background Paper 9 - Spatial Planning: Simplifying the Process. See: <https://www.planningofficers.org.uk/uploads/POS%20MBP9%20Spatial%20Planning.pdf>



This envisages that the cost of the evidence base for stage one would be shared amongst several Local Planning Authorities making the process more cost effective. There would be greater flexibility and light touch examination at stage two but a clear requirement for Local Planning Authorities to meet housing need.

Furthermore, this chapter makes no reference to or consideration of the National Planning Policy for Waste (NPPW). It would be beneficial to bring the NPPW into the NPPF, particularly with national development management policies being introduced. Specific reference to waste in terms of clarifying evidence requirements is needed.

Finally, it is important that all bodies involved with the plan-making process are aware of what is considered proportionate evidence.

**Question 15: Do you support the standardisation of evidence requirements for certain topics? What evidence topics do you think would be particularly important or beneficial to standardise and/or have more readily available baseline data?**

Whilst POS agrees that standardisation of evidence would help provide greater clarity on what is expected and reduce discussions around specific methodologies at examination it is vital that when that evidence is retrieved at the start of a plan making process it is up to date.

It must be acknowledged that evidence base assembly is both time-consuming and expensive. The procurement and legal procedures required to commission information are cumbersome. There is also a sequential element to gathering your evidence base e.g., plan wide viability cannot start until policies have been written and policies cannot be written until evidence gathered on housing need.

Some studies such as transport modelling, housing and economic needs assessments, retail/town centre studies, Strategic Housing and Employment Land Availability Assessments and site assessment information to support site allocations can easily take 10 months.

It is considered that Waste Needs Assessments could be standardised as Local Aggregates Assessments have been. This would ensure consistent assumptions in estimating baselines, forecasting and assessing existing capacity. This would speed up the process considerably as waste planning authorities would not have to create their own methodologies. It would also allow for regional and national comparisons to ensure sustainable waste management on a wider scale. A standard approach would also increase familiarity of this subject amongst Planning Inspectors.

**Question 16: Do you support the freezing of data or evidence at certain points of the process? If so which approach(es) do you favour?**

Yes, POS would strongly prefer the freezing of the evidence at the start of the process. Failure to do so means that the 30-month target for local plan making will be unachievable as there will be limited scope and opportunity for updating evidence during the process without resulting in potentially lengthy delays. Often changes to one piece of evidence has a knock-on effect on another, so freezing data or evidence at the start of the process would avoid such impacts.

If government is not minded to accept POS's recommendation, then at the very least the freezing of data or evidence should be at the point of publication, not submission. There is often a time lag between the two stages which are two distinct plan-making steps and the same impacts as set out above would also arise if it were to be at point of submission.

**Question 17: Do you support this proposal to require local planning authorities to submit only supporting documents that are related to the soundness of the plan?**

Yes, subject to the clarification provided in Para 100 that it would not prevent LPAs choosing to publish wider materials to help to explain decisions taken.

**Question 18: Do you agree that these should be the overarching purposes of gateway assessments? Are there other purposes we should consider alongside those set out above?**

Yes, in principle, although it begs the question about how the Planning Inspectorate would determine whether: “the planning authority has the right tools and resources to deliver” (Para 103) the local plan and how this might be assessed? Are any specific resources likely to be available, if an identified shortfall is identified by the Inspectorate?

If the advice given at the gateway assessments and the examination differs, this will cause significant problems and will undermine the credibility of the Planning Inspectorate and the plan-making process. The involvement of other agencies also further risks diluting the process and creating potential inconsistency in approach.

On the other hand, a more collaborative and front-loaded approach to the involvement of the Planning Inspectorate with a much shorter examination process has potential benefits.

Again, these proposals do not address the larger than local strategic matters.

A key purpose of second gateway assessment should be to address any potential strategic matters that have implications for adjoining LPAs or have been highlighted by the proposed prescribed public bodies. However, it is difficult to consider this any further as the details of how the proposed new Alignment Policy Test have not yet been published.

Furthermore, the consultation document makes it clear that external bodies will have no role in the Gateway Checks or in the reports arising out of these.

This feels like a major lost opportunity to address some of the critical issues that impact on local plan progress, especially around many of the larger towns and cities.

**Question 19: Do you agree with these proposals around the frequency and timing of gateways and who is responsible?**

It all depends. POS is concerned that the scope of the gateway assessments is set too wide, which is likely to make them too superficial to be reliable. They should focus on what really matters, which is about the likely soundness of the plan.

If the first two gateways are designed to advise, observe, and support LPAs this can be useful and beneficial as highlighted in response to Q6.

However, the third gateway assessment as currently proposed will serve no useful purpose. It might be useful if its purpose was to ask whether the spatial strategy is robust, to prevent plans getting into examination which have to be largely rebuilt by the Inspector(s) at great time cost. This would assume that the strategy has adequately dealt with the larger than local strategic matters which presumably the new Alignment Policy Test will be dealt with under legal compliance issues? See answer in response to Q.18 above.

If the third gateway assessment is to determine whether the plan should progress into the examination process or not, three things should be considered:

- At this point, the Alignment Policy Test should be applied to determine whether there are any key strategic matters that still need to be resolved through the examination process and linked to this.
- At this point all statements of common ground with prescribed public bodies and neighbouring authorities must be signed, even if there are some matters that need to be resolved through the examination process.
- The Inspector signing of the plan at this point should be the same Inspector examining the plan. There have been examples of where Inspectors doing advisory visits have informed the LPA that the plan is likely to be found sound only for another inspector at the examination to take an entirely different view. Either there needs to be consistency in the Inspector(s) carrying out the third gateway assessment and the examination or there needs to be much more consistency in the way Inspectors undertake examinations. The proposal to have a 'panel' of at least two inspectors will help but this must be linked to the third gateway assessment.

If the third gateway assessment does not determine whether the plan progresses into examination, it should be noted that no local plan has ever failed on compliance with the law and local plan making regulations other than in relation to the duty to cooperate. Indeed, many LPAs use the PAS soundness toolkit (which POS Enterprises first developed) to check they have covered everything before submission.

Guidance is always most useful earlier in the process and unless the third gateway assessment shortens the examination process it adds no real value to the process. Clarity on this point would be helpful.

**Question 20: Do you agree with our proposals for the gateway assessment process, and the scope of the key topics? Are there any other topics we should consider?**

The devil is always in the detail. The proposals don't address the larger than local strategic matters which presumably is dealt with under legal compliance issues?

We await with interest the further work envisaged on the working model for gateways. POS would welcome an early opportunity to discuss how this can be made to work effectively.

See comments under Q18 and 19 re the need to address strategic cross-boundary issues specifically at the second and third gateway assessment stages.

The assessments should also ensure regard is had to existing minerals and waste plans when preparing separate local plans to ensure that safeguarding is properly addressed. It is noted that the 4 weeks does not include the local planning authority's time in preparing for the gateway and responding to the outcomes report, therefore this may impact on the 30-month timescales.

**Question 21: Do you agree with our proposal to charge planning authorities for gateway assessments?**

No. As already stated resourcing is already a problem for local planning authorities and the prospect of paying for three gateway assessment together with an examination is likely to place a heavy financial burden on them.

Nowhere in the consultation document does it say how defined resources will be made available for local plan making. There could also be unintended consequences - if authorities are cash-strapped - they may make the decision not to embark on the Local Plan process and take a 'damn the consequences' view.

**Question 22: Do you agree with our proposals to speed up plan examinations? Are there additional changes that we should be considering to enable faster examinations?**

Yes, in principle although the approach set out in our POS Manifesto Background Paper 9 Spatial Planning: Simplifying the Process would be faster and more streamlined and ensure that larger than local strategic issues are properly considered. See: <https://www.planningofficers.org.uk/uploads/POS%20MBP9%20Spatial%20Planning.pdf>

Notwithstanding this, revising the Matters Issues and Questions (MIQs) stage, shortening the minimum notification for hearings to three weeks and proposals to streamline the main modifications stage all seem sensible and pragmatic.

See also the proposals contained in response to Question 6.

**Question 23: Do you agree that six months is an adequate time for the pause period, and with the government's expectations around how this would operate?**

No. The proposed statutory maximum of 6 months for examination pauses is ill considered, because for significant changes, member engagement on the changes, re-consultation and consideration of responses will take that order of time, let alone time to do the necessary technical work.

It may be more appropriate to give Inspectors some discretion and for 6 months to be the normal default position and allow a measure of pragmatism and judgement by Planning Inspectors.

**Question 24: Do you agree with our proposal that planning authorities should set out their overall approach to engagement as part of their Project Initiation Document? What should this contain?**

Yes, in principle.

POS recognises and supports the important of effective engagement and consultation in local plan making, in particular, the seldom heard. Early public and stakeholder engagement is a good thing, but it is often over-played because many people and interests are not interested in shaping the plan, but finding out whether and how it will affect them.

Moreover, the proposals do not make clear and understand the functions of the current Reg 18, 19 and 20. Reg 18 covers all engagement, including the draft plan, whereas Regs 19 and 20 are about publication and the opportunity to make formal representations and book a place at the examination. The proposals mix up consultation on the draft plan with the publication stage, whereas there needs to be a step retained where people book their place, as a separate process from commenting on the draft plan. Otherwise, how will the LPA or Inspectorate know who wants to be heard at the examination?

Notwithstanding this engagement should be through a combination of traditional in person and digital methods. The importance of producing materials in a variety of community languages should also be encouraged, particularly if the seldom heard are to get a voice. The production of a digital toolkit including mechanisms for effective engagement and suggested templates is welcomed. However, undertaking effective engagement usually comes at a cost and no details are provided as to how these activities should be properly funded.

Whilst digital consultation platforms and analysis software for local plan making do aid officers undertaking engagement and consultation, they are often unaffordable and inaccessible for many local plan-making teams to contemplate. It should be noted that the final consultation (prior to the third gateway assessment) will perhaps be the first time that many stakeholders and the public will see the full extent and range of site allocations (particularly taking into consideration the 'call for sites') and this will potentially generate the greatest volume of consultation responses. These responses will need considerable resource and time to process.

The proposal to remove the Statement of Community Involvement (SCI) is welcomed, as this would only duplicate the project plan outlined in the PID. However, it should be noted that SCIs are not used solely for plan making and sets out how a local planning authority will engage on planning applications. This seems to have been overlooked.

**Question 25: Do you support our proposal to require planning authorities to notify relevant persons and/or bodies and invite participation, prior to commencement of the 30-month process?**

Yes, in principle because this is effectively unchanged from existing Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

**Question 26: Should early participation inform the Project Initiation Document? What sorts of approaches might help to facilitate positive early participation in plan-preparation?**

Yes, in principle but local planning authorities should be afforded some discretion on the scope and nature of the early participation sought and this will depend on local circumstances. Many statutory bodies are not able to effectively resource responding to local plans in the early stages of plan preparation and where they do, they often provide standard and non-specific responses.

**Question 27: Do you agree with our proposal to define more clearly what the role and purpose of the two mandatory consultation windows should be?**

Yes, in principle.

**Question 28: Do you agree with our proposal to use templates to guide the form in which representations are submitted?**

Yes, in principle but they should not be mandatory giving local planning authorities the discretion to amend and adapt them to local circumstances.

Mechanisms to help analyse responses more effectively, including ensuring submissions are 'machine readable' wherever possible, is helpful but experience dictates that the public don't always respond in the way they are asked, and this can still require painstaking and careful analysis to be undertaken to ensure feedback is not lost in transmission. The seldom heard often find such defined channels to be inaccessible to them. See earlier response to Question 11.

Furthermore, a consistent problem is the submission of large PDF documents, which developers and prescribed bodies often attach to standard forms. Therefore, the regulations should be strict in terms of preventing this to both improve accessibility and data capture.



POS would welcome an early opportunity to discuss how templates can be devised to ensure any future tool kit is more effective.

**Question 29: Do you have any comments on the proposed list of prescribed public bodies?**

It is perhaps surprising that neighbouring local planning authorities or those with strategic cross-boundary issues related to minerals and waste are not included in the list.

There is also a strong case for including Active Travel England.

The list needs to be amended to include Homes England (not Homes and Communities Agency which is heir trading name) and Historic England (not Heritage England). It also needs to be noted that Local Enterprise Partnerships (LEPs) will cease to exist from 1st April 2024.

County Councils are included but for minerals and waste authorities in two tier areas, district councils should also be included.

**Question 30: Do you agree with the proposed approach? If not, please comment on whether the alternative approach or another approach is preferable and why.**

Yes, in principle, as it does not differ widely from current practice. However, it should be noted that in two tier areas, which cover over 80% of England, a large number of the prescribed bodies are the responsibility of the relevant county councils and there may be significant financial costs to these authorities that will need to be addressed.

**Question 31: Do you agree with the proposed requirements for monitoring?**

Yes, as it is refreshing to see much more emphasis given to effective monitoring processes as good local plan making requires evidence of the success or otherwise of the planning policy adopted. However, local discretion is needed to determine the scope and nature of any targets/metrics particularly where a more innovative approach is taken and justified by the evidence.

The consultation document implies minerals and waste plans will only monitor aggregates landbank, safeguarding and waste generation, methods and capacity. However, minerals and waste plans should also have a role in monitoring some of the Environment and Open Space metrics and the Environmental Outcomes Report metrics.

**Question 32: Do you agree with the proposed metrics? Do you think there are any other metrics which planning authorities should be required to report on?**

Yes, in principle subject to local discretion highlighted in our answer to Question 31. The light touch and more detailed return required after 4 years is sensible and pragmatic and recognises that not all policies will benefit from annual reporting particularly where a new and different approach is being implemented and where any benefits may not be immediately felt.

However, it would also be useful to include metrics on the size and types of homes built and not just the number of new homes. Similarly, it would be helpful to record the loss of employment and other commercial floorspace arising from permitted development and prior approval. Monitoring “net change in employment floorspace” has been made more difficult because of the introduction of Use Class E, which combines some ‘employment’ uses (former Class B1) with a wide range of other uses.

In judging whether the right balance has been struck it would be useful to know how government proposes to monitor the performance of NDMPs in future?

The monitoring metrics omit any monitoring of industrial minerals, or the performance of development in reducing waste (e.g., reusing buildings or to go further ensuring all waste is reused on site). This is where local monitoring will be important. Clarification is required on the availability of monitoring waste data. There is limited data available for Commercial and Industrial waste and Construction, Demolition & Excavation waste to ensure meaningful monitoring.

**Question 33: Do you agree with the suggested factors which could be taken into consideration when assessing whether two or more sites are ‘nearby’ to each other? Are there any other factors that would indicate whether two or more sites are ‘nearby’ to each other?**

**Question 34: What preparation procedures would be helpful, or unhelpful, to prescribe for supplementary plans? e.g. Design: design review and engagement event; large sites: masterplan engagement, etc.**

**Question 35: Do you agree that a single formal stage of consultation is considered sufficient for a supplementary plan? If not, in what circumstances would more formal consultation stages be required?**

**Question 36: Should government set thresholds to guide the decision that authorities make about the choice of supplementary plan examination routes? If so, what thresholds would be most helpful? For example, minimum size of development planned for, which could be quantitative both in terms of land use and spatial coverage; level of interaction of proposal with sensitive designations, such as environmental or heritage.**

**Question 37: Do you agree that the approach set out above provides a proportionate basis for the independent examination of supplementary plans? If not, what policy or regulatory measures would ensure this?**

In answer to Q33-Q37, the whole approach to supplementary plans is fundamentally flawed. POS argued in our Manifesto Background Paper 9 Spatial Planning: Simplifying The Process See: <https://www.planningofficers.org.uk/uploads/POS%20MBP9%20Spatial%20Planning.pdf> for a two-stage approach to be local plan making that would help streamline the system and ensure that larger than local strategic issues are properly considered. Within that context, we suggested that the distinction between Development Plan Documents and Supplementary Planning Documents could be dropped. We also acknowledged that the interpretation of the Town and Country Planning (Local Planning) (England) Regulations 2012 (especially Regulation 5 and 6) by the courts means that the scope of content that a Supplementary Planning Document can include is very narrow and their benefits therefore are very limited. Our intended approach resolved this conundrum.

However, the proposal in these plan making reforms does not provide the benefits we had outlined in our approach. Moreover, by treating supplementary plans like DPDs this will act as a powerful disincentive to their preparation and production because of the costs and resources that will be involved. It is a sledgehammer to crack a nut!

Moreover, by suggesting that master plans or design codes should also be treated in the same way is an over engineered and frankly disproportionate response to simple drafting error in the local plan making regulations.

Of course, SPDs must be in conformity with its parent local plan. Their purpose has traditionally been to provide more detail to explain how specific policies will be implemented either thematically for a given geography or site allocation. They are often used to provide detailed design guidance and because they do not have the same costs and lengthy processes associated with a DPD they can be produced relatively quickly and inexpensively. Masterplans or planning briefs serve a similar purpose.

By removing the ability of LPAs to produce SPDs, there is a risk that plans will need to be more detailed to ensure they have full policy coverage, and this will undermine efforts to speed up local plan making. This will particularly have an impact on design guidance and design codes.

If government is minded to press on with its proposals on supplementary plans, we would suggest that a much more streamlined approach is adopted. POS agrees that only one single stage of formal consultation would be required, that undergoing three gateways would also be excessive, any examination process should be relatively light touch (ideally only to deal with outstanding objections).

In addition, the scope of this provision is too narrow, and LPAs should be able to use the supplementary plans if they want or need to update one or two policies. There are occasions where this would be helpful but instead, the current proposals would require a complete local plan update. Again, this is disproportionate and does not help local plan making to be flexible and able to respond to changing circumstances or to react to new opportunities. For example, policies and practice in how we tackle climate change or meet net zero commitments is changing all the time and could benefit from being able to be reviewed through a more discreet plan change in between five yearly reviews of the whole plan.

Finally, any existing SPDs should remain in force until local planning authorities have adopted a new style local plan or minerals and waste plan.

**Question 38: Are there any unique challenges facing the preparation of minerals and waste plans which we should consider in developing the approach to implement the new plan-making system?**

Although site allocations for local plans would go through a similar methodology in terms of identifying constraints etc. as minerals and waste sites, there are additional and more technical considerations to mineral local plan allocations such as confirming geological factors (i.e., the size of the reserve, overburden ratios etc). Minerals allocations are also temporary in nature therefore, unlike site allocations for permanent use; there is also a need to consider the potential for restoration and delivery of this as part of an allocation.

There needs to be greater consideration for the need for prior extraction of minerals as part of all local plan site allocations. There is a significant challenge in competing pressures for development and getting a site allocated for housing, for example, would result in a far greater uplift in land value compared to a minerals and waste site.

The availability and difficulty in obtaining reliable minerals and waste data is also a big challenge, which is faced when preparing plans.

The scale of a minerals and waste plan area is far greater. This requires greater political engagement at parish, district and county level. This becomes more complex where a joint minerals and waste plan is being prepared, which is a common approach for plans of this strategic nature. There will be two (or more) sets of Members who need to sign off the plan, meaning additional scrutiny panels and call-ins. The political cycle is unlikely to marry in multiple authorities and substantive changes may need to be re-considered by one of the parties. Guidance on the prompt need for internal approval processes is recommended to prevent delay.

A minerals and waste plan has the potential for a greater number of representations given the larger than district scale. Whilst there may be a relatively low number of allocations across this wider area compared to a local plan with housing and employment sites, the nature of minerals sites (new or extended quarrying operations) and certain types of waste management infrastructure (e.g., Energy from Waste plants) can be particularly controversial generating high numbers of objectors with many equipped to pursue a legal challenge.

Duty to Cooperate (DtC) partners are more numerous for minerals and waste plan making, including regional partners (Aggregate Working Party, Waste Technical Advisory Board); adjoining districts outside of the administrative area, districts within the administrative area as well as any minerals and waste authorities where there are significant imports and exports of minerals and/or waste occurring. Plus, all the prescribed bodies who may be across different offices at a county scale.

DtC engagement with districts within the minerals and waste local plan area can be complicated by competing strategic goals, potential site allocations in emerging plans being in close proximity or overlapping and the consequent need to consider cumulative impacts across different administrative tiers. This process, in two-tier areas, is impacted where each district is at a point in time with their local plan preparation. For example, Essex has 12 local plans to take account of in this way, plus any area action plans, neighbourhood plans etc. that may be in place or being developed.

Whilst all Local Plans require strategic thinking taking into account cross-boundary issues, this is particularly true for minerals and waste. Firstly, minerals can only be worked where they are found. Therefore, when planning for aggregate requirements, minerals planning authorities (MPAs) often need to rely on reserves from other MPAs. Similarly, with waste management planning it is often more appropriate to consider use of facilities in a nearby/neighbouring authority, particularly those more specialist facilities such as Energy from Waste. The proposal to stage the time over which the new plans are produced could potentially cause problems where neighbouring authorities need to work closely together but have not been approved by government to work on their Local Plans at the same time.

The importance of regional groups in providing advice to government on supply and capacity, including the role of the Aggregate Working Parties (AWPs), is acknowledged in the NPPF and planning guidance. Currently the AWP secretariat is funded by central government and consideration should be given to doing the same for the Waste Technical Advisory Boards (WTABs) as these are currently organised voluntarily by waste planning authorities on a regional basis.

A strategic approach to minerals and waste planning is required and this is only possible with the continued effective operation of the AWPs and WTABs. In particular, they help deliver the Managed Aggregates Supply System (MASS), to ensure there is a steady and adequate supply of minerals, taking into account geographical differences as mineral resources can only be worked where they are found and do not follow administrative boundaries.

With this new focus on faster, more efficient plan-making the government must now resource the updating of national and sub-national guidelines for aggregates provision which are currently based on outdated forecasts and therefore unrealistic and open to challenge. If minerals plans are to meet these new requirements for plan-making, then provision of up-to-date and relevant data on which to plan for aggregates supply across the country is essential.

Para 22 states that plans “including minerals and waste plans” should “foster beautiful places and recognise the importance of design, linking to design codes where appropriate”. It is difficult to see how much emphasis can be placed on beauty and design codes when considering just minerals and waste development proposals. Most built development in this context will necessarily be functional in form. In this context, beauty could more logically be assessed in terms of visual/landscape impact, considering screening of development and high-quality final restoration schemes. If minerals and waste plans (or minerals and waste policies within a local plan) were to be assessed on the strength of its delivery of beauty and adherence to a Design Codes, this will need some further thinking through.

With regard to proposal for national standardised DM policies to be incorporated within the new local plans, many could apply equally to minerals and waste development proposals (e.g., noise, dust, water and air quality etc.) but there are some very specific geology/extraction-based issues such as quarry blasting (all about the impact of blast related ground vibration), and restoration and aftercare of minerals and waste sites.

So, either minerals and waste authorities need flexibility to include their own DM policies specific to minerals and waste development, or DLUHC needs to include these types of policies within the standardised set. Arguably having them included within a standardised set would allow for greater consistency and therefore more efficiency in plan-making.

The approach to energy minerals (exploration/appraisal and commercial exploitation of hydrocarbons; coal; peat) could also be standardised as all should be consistent with national planning policy approach at the time.

Standardising the minerals safeguarding policy would also be helpful in achieving consistency (and speeding up the local plan process) particularly when setting out the types of non-minerals development that can be considered exempt from the need to consider prior extraction. Although the aim of minerals safeguarding policies across different minerals planning authorities is the same, there is currently a great deal of difference in the type of developments that are considered exempt. For example, developments within farmyards, which currently creates a significant number of consultations resulting in no objection being raised, in some areas are exempt. Currently significant time and resources is being spent on minerals safeguarding, by both developers and planning authorities, with very little outcome.

It would also be helpful to have a standardised policy on the approach to waste management (including minimising waste, driving materials further up the waste hierarchy and diverting away from landfill, encouraging the use of recycled inert waste for alternative aggregates). This should include a standardised approach to maximising the efficiency of waste processes (e.g., the utilisation of heat and steam from EfW facilities) as well as climate change mitigation and resilience.

The proposals appear to make a distinction between minerals and waste plans and other areas of planning yet planning for future minerals supply and meeting waste needs should ideally be undertaken at the same time as establishing the level and location of future growth. It is noted that regional and sub-regional approaches could benefit many areas of planning policy. Minerals and waste planning needs to be integrated into planning, rather than considered as an afterthought. Without this integrated approach there is a risk that alternative forms of development will be allowed within or adjacent to mineral safeguarding areas and will potentially sterilise large areas of much important mineral reserves.



The bulk of plan-making guidance, seminars etc. are developed for local plans generally. Minerals and waste local plans are typically either not mentioned at all or are barely mentioned, to the extent that what is said does not really amount to guidance suitable or bespoke for minerals and waste plan preparation.

Government taxation policies and other central government decisions can have a major impact on waste generation, waste streams and the cost of waste management options. This then has a major impact on the demand for different types of waste management facilities and makes it very difficult to predict future requirements and plan to meet this expected demand. The changing nature of waste and the technical advances in waste processing and recycling also make it difficult to predict and plan for waste.

**Question 39: Do you have any views on how we envisage the Community Land Auctions process would operate?**

**Question 40: To what extent should financial considerations be taken into account by local planning authorities in Community Land Auction pilots, when deciding to allocate sites in the local plan, and how should this be balanced against other factors?**

**Question 41: Which of these options should be implemented, and why? Are there any alternative options that we should be considering?**

In answer to Q39-Q41, it is unclear why LPAs would volunteer as a pilot based on the current proposals. Since there will be an obligation that they consider the bids as part of their assessment of sites, LPAs will be very highly vulnerable to political opponents or other interests claiming they are selling land allocations, and this threatens to undermine the whole legitimacy of the local plan making process.

**Question 42: Do you agree with our proposals for saving existing plans and planning documents? If not, why?**

No. The proposal that LPAs which submit under the present system will have to get their plans adopted by 31 December 2026 or not be allowed to take them further is flawed. The timetable towards adoption is not wholly in the LPA's control but depends in large part on the Planning Inspector. If this proposal goes ahead, LPAs will have to take a view before 30 June 2025 on whether they can get to adoption by the cut-off date, taking account of known and unknown risks, or whether they will be safer waiting to go with the new regime. The safer course for many will be the latter – but it will delay putting local plans being put in place, and therefore would be counter-productive.

**Question 43: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?**

POS is not aware of any potential adverse impacts.