

# Development Plan

## Practice Note

PRACTICE NOTE

09

### Submission and Handling of Representations

December 2016

Version 2



Department for

**Infrastructure**

An Roinn

**Bonneagair**

[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

## Preamble

This Development Plan Practice Note is designed to guide planning officers and relevant users through the key requirements for the submission and handling of representations and deals primarily with procedures as well as good practice. It forms part of a series of practice notes stemming from the **Planning Act (Northern Ireland) 2011** [the 2011 Act] and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers involved in the local development plan making process. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the practice note<sup>1</sup> and legislation the provisions of the legislation will prevail.

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<sup>1</sup> Please ensure you are considering the most up to date version of Practice Note 9 available on the Planning Portal.

## 1.0 Introduction

- 1.1 This practice note focuses on the submission and handling of representations<sup>2</sup> related to a development plan document (DPD)<sup>3</sup> i.e. the plan strategy and local policies plan, which when adopted comprise a local development plan (LDP) for a given council area. It deals with representations submitted under the 2011 Act and relevant subordinate legislation. The purpose of this practice note is to provide a consistent approach for the submission and handling of representations in order to assist councils in promoting and encouraging constructive engagement with members of the public and also to facilitate the consideration of representations at the independent examination (IE) stages of a DPD.
- 1.2 Although an IE is caused by the Department, it is carried out by the Planning Appeals Commission (PAC) or a person appointed by the Department<sup>4</sup>, who act as an independent examiner. The PAC will produce and publish its own procedures for an independent examination of Local Development Plans.
- 1.3 The submission of representations in relation to a DPD provides an opportunity for the public to influence the policies and proposals for the future planning and development within the relevant council area. It also aims to encourage public engagement and buy-in to the plan preparation process, which in turn helps to build consensus and promote a sense of ownership of a LDP.

## 2.0 Legislative context

- 2.1 **Section 10 of the 2011 Act** states that the council must submit every DPD to the Department for IE. However, before it does it must make documents, as prescribed by **regulation 15 of The Planning (Local Development**

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<sup>2</sup> References to representations include counter representations unless otherwise stated.

<sup>3</sup> References to a DPD in this practice note are in effect references to a draft DPD unless otherwise stated.

<sup>4</sup> Department means the Department for Infrastructure (DFI) unless otherwise stated.

**Plan) Regulations (Northern Ireland) 2015 (LDP Regulations)**, available for inspection to facilitate a public consultation and the submission of representations and counter representations.

- 2.2 **Regulations 16 and 17 of the LDP Regulations** set out the legal requirements for the public consultation and availability of representations relating to DPD.
- 2.3 **Regulations 18 and 19 of the LDP Regulations** set out the legal requirements for public consultation and availability of representations submitted relating to site specific policy representations i.e. counter representations.
- 2.4 Figure 1 outlines the key requirements for the submission and handling of representations to a development plan document in accordance with the LDP Regulations.

### **3.0 Public consultation and availability of a DPD**

- 3.1 Public consultation provides an important and useful opportunity for the public to consider the council's DPD. It also gives the local community the option of submitting written comments in relation to policies and proposals contained in the DPD.
- 3.2 Regulation 15 of the LDP Regulations states that the council must make available for inspection<sup>5</sup> a copy of the DPD, the sustainability appraisal (SA)<sup>6</sup> and such supporting documents as in the opinion of the council are relevant to the preparation of the LDP. It must also issue a document containing a statement indicating the period within which representations on the DPD may be made and give notice of the address to which representations can be sent. Copies of the DPD, SA, supporting documents, statement and notice must

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<sup>5</sup> Under Regulation 2 of the LDP Regulations, "inspection" means inspection by the public.

<sup>6</sup> Refer to paragraph 4.6 (of this document).

also be sent to the consultation bodies<sup>7</sup>. The council must give notice in the Belfast Gazette and by local advertisement<sup>8</sup> of the availability of the titled DPD, together with a statement of the fact that the DPD is available for inspection and the places and times at which it can be inspected. The council may wish to make reference to the availability for inspection of the SA and the period within which representations on the DPD may be made. The council must publish the DPD, supporting documents and notice (of the address to which representations can be sent) on its website. The council may wish to make reference to the availability for inspection of the SA and the places and times at which it can be inspected (if not available on the council website) and to the period within which representations on the DPD may be made.

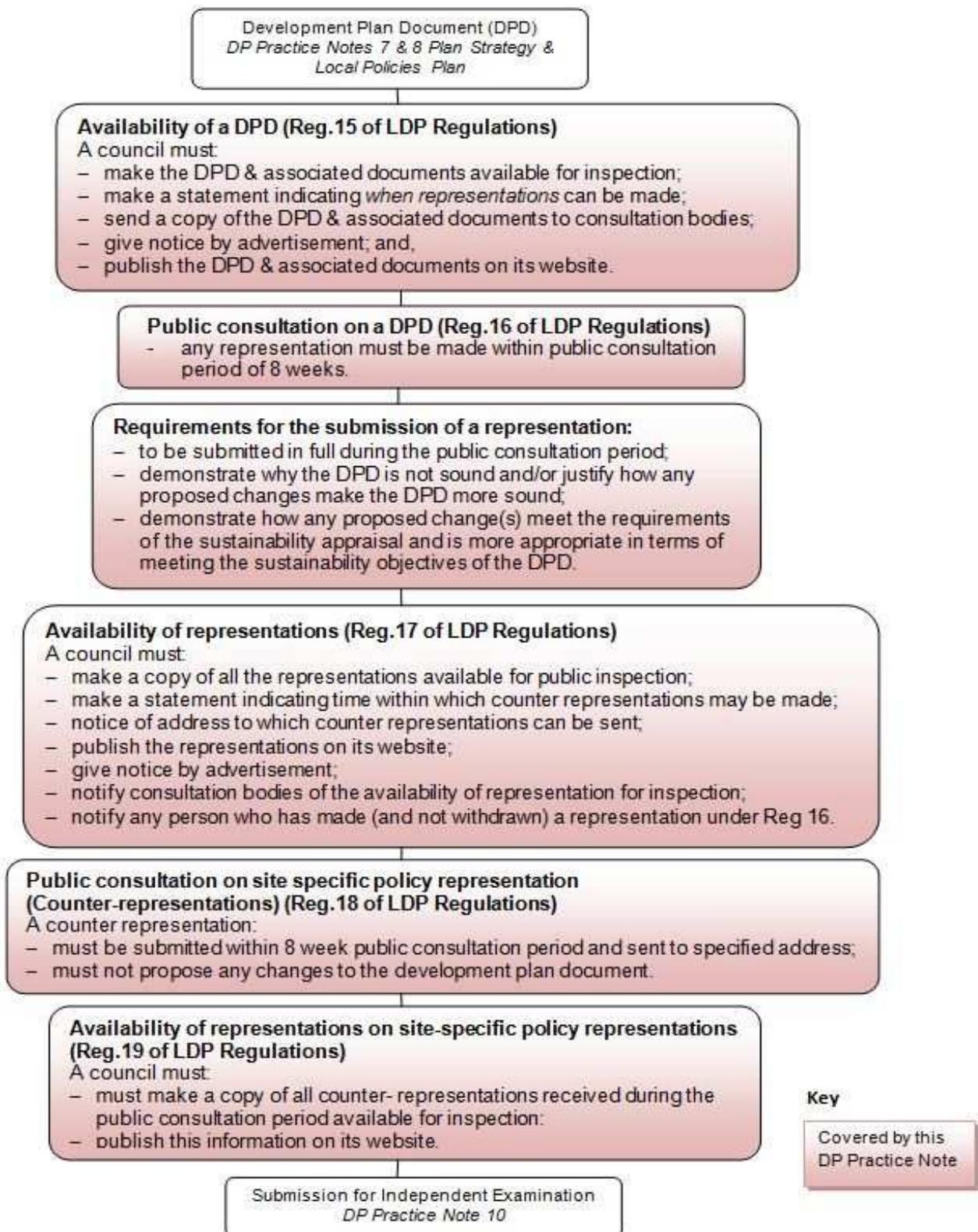
- 3.3 Regulation 16 of the LDP Regulations states that any person may make representations about a DPD. Any such representation must be submitted within the public consultation period of 8 weeks and sent to the address specified by the relevant council. Regulation 16(2) states that the 8 week period commences on the date the council complies with regulation 15(d), that is, giving notice in the Belfast Gazette and by local advertisement in relation to the availability for inspection of the DPD and the places and times it can be inspected.
- 3.4 Regarding the submission of 'late representations', regulation 17(2) of the LDP Regulations states that the council 'need not' comply with the requirement to make representations available for inspection if they have not been submitted within the specified period. It will be a matter for each council to determine if or how such representations should be considered.

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<sup>7</sup> Refer to Regulation 2 of the LDP Regulations for list of consultation bodies.

<sup>8</sup> Under Regulation 2 of the LDP Regulations, "local advertisement" means an advertisement for two successive weeks in at least one newspaper circulating in the district of the council.

**Figure 1: Key requirements for the submission and handling of representations to a development plan document**



#### **4.0 Requirements for the submission of a representation and counter representation**

- 4.1 In order to help eliminate the potential submission of unsubstantiated and speculative representations, and in terms of good practice, the council may wish to set out requirements for the submission of representations in a guidance document in order to facilitate the management and consideration of all representations submitted on a DPD.
- 4.2 Requirements for the submission of representations should encourage more comprehensive and relevant feedback from the public to help facilitate more effective engagement and appropriate consideration of issues raised by ensuring that consideration is given to the implications of any proposed changes to the DPD. Consequently, this should help to shorten the length of the IE and lead to a speedier delivery and adoption of a DPD.

Representation / counter representation<sup>9</sup> submission should be submitted in full

- 4.3 Any representation submitted to the council within the specified 8 week public consultation period should be submitted in full. This requirement will help to enhance the quality and efficiency of the decision-making process as it will enable all information to be considered by all parties involved from the outset to help ensure a fairer, more comprehensive and thorough debate<sup>10</sup> of issues at IE. It should also prevent delay as the council should not need to seek further information or clarification from those who submitted representations. It is important to note that there will be no further opportunity to submit additional information, unless requested to do so by the independent examiner.

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<sup>9</sup> A counter representation may only be made about a site specific policy representation. Refer to section 8.0 of this document.

<sup>10</sup> Under section 10(7) of the 2011 Act, "Any person who makes representations seeking to change a development plan document must (if that person so requests) be given the opportunity to appear before and be heard by the person carrying out the examination." This 'right' to appear and be heard applies to a person who has made a representation seeking to change a development plan document, but does not apply to a person who has made a counter representation. However, an independent examiner may invite anyone to appear before and be heard at the examination if the examiner thinks that person's oral evidence is likely to materially assist in determining the soundness and sustainability of the development plan document.

### Representation / counter representation should demonstrate soundness

- 4.4 Soundness involves testing the principles, content and preparation processes of the DPD against a list of key agreed criteria. Criteria will relate to how the plan has been produced, the conformity of the DPD with central government plans, policy and guidance, and the coherence, consistency and effectiveness of the content of the DPD.
- 4.5 As the main purpose of the IE is to determine whether the development plan document is 'sound', any person(s) wishing to make a representation to any part of a DPD should do so on the grounds of soundness<sup>11</sup>. Any representation proposing a change to a DPD must demonstrate why the document (stating the exact paragraph, policy etc) is not sound or how any proposed changes would make the DPD sound. The representation must include details on the proposed change as well as provide evidence to justify the change in terms of the tests of soundness.

### Representation / counter representation should demonstrate how it meets the requirements of sustainability appraisal

- 4.6 A representation seeking a change to the DPD should indicate how the proposed change(s) meet the requirements of the sustainability appraisal<sup>12</sup> and demonstrate how their proposed alternative is more appropriate in meeting the sustainability objectives of the DPD. Sustainability appraisal (SA) is a concept which involves assessing the social and economic effects of development plans in addition to environmental effects. Sustainability appraisal covers the requirements of the SEA Directive<sup>13</sup> as well as a wide range of sustainable development issues.

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<sup>11</sup> Development Plan Practice Note 6: Soundness.

<sup>12</sup> Development Plan Practice Note 4: Sustainability Appraisal incorporating Strategic Environmental Assessment.

<sup>13</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

## **5.0 Use of standard or model forms for the submission of representations and counter representations**

- 5.1 In order to ensure consistency of approach, anyone making representations to a DPD, or counter representations to site specific policy representations, should be encouraged to do so using a standard form. An example of a model form for the submission of a representation and counter representation is provided at Annex A and B, respectively.
- 5.2 The council may wish to prepare an accompanying explanatory note in relation to the requirements for the submission of representations as set out in section 4.0. In particular, it may be helpful to provide some information on the tests of soundness to assist in the completion of the form. The council may also wish to make copies of its standard or model form available at its principal council offices, such other places within the council district as the council considers appropriate and its website.
- 5.3 The council may wish to make every effort to ensure that any forms submitted are completed accordingly, particularly as there will be no further opportunity to add to, or expand on a representation once submitted, unless requested to do so by the appointed independent examiner.

## **6.0 Availability of representations on a DPD**

- 6.1 Regulation 17 of the LDP Regulations sets out the requirements for the availability for inspection of representations received during the specified public consultation period on a DPD.
- 6.2 As soon as reasonably practicable after the expiry of the 8 week public consultation period, the council must make a copy of all the representations received during the public consultation period, as referred to in regulation 16(2), available for inspection at its principal council office and any other place within the district that the council considers appropriate, as well as a document containing a statement indicating the time within which counter-

representations may be made and a notice of the address to which counter representations can be sent. Furthermore, the council must publish the representations on its website and give notice in the Belfast Gazette and by local advertisement of the fact that representations are available for inspection and the places and times at which they can be inspected. The council may wish to make reference in the Belfast Gazette and by local advertisement and on its website to the statement and notice.

- 6.3 The council must also notify the consultation bodies and also any person who has made (and not withdrawn) a representation in accordance with regulation 16 of the LDP Regulations of the fact that representations are available for inspection and the places and times at which they can be inspected.
- 6.4 Although all representations which have been received during the public consultation period must be made available for inspection, the council may wish, at this stage, to identify those representations in support and those which seek a change to the DPD. This exercise may help to satisfy the requirements of regulation 18 of the LDP Regulations in relation to the receipt of counter representations on site specific policy representations<sup>14</sup> i.e. those representations seeking a change to the DPD.

## **7.0 Representations (counter representations) on a site specific policy representation**

- 7.1 Regulation 2 of the LDP Regulations states:

“site specific policy” means a policy in a development plan document which identifies a site for a particular use or development.

“site specific policy representation” means any representation which seeks to change a development plan document by-

- (a) adding a site specific policy to the development plan document; or

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<sup>14</sup> Refer to paragraph 7.1 (of this document).

(b) altering or deleting any site specific policy in the development plan document.

7.2 Regulations 18 and 19 set out the requirements for the submission and availability of counter representations. A counter representation provides an opportunity for the public to consider potential changes proposed by representations to the DPD and allow them to respond to these representations if they so wish.

## **8.0 Public consultation on site specific policy representations (counter representations)**

8.1 Regulation 18 of the LDP Regulations states:

- (1) any person may make representations about a site specific policy representation (counter representations).
- (2) counter representations must be:
  - (i) made within a period of 8 weeks starting on the day the council complies with regulation 17(1)(a);,and
  - (ii) sent to the address and person (if any) specified in regulation 17(1)(a)(iii).
- (3) counter representations must not propose any further changes to the development plan document.

8.2 The period for the receipt of counter representations on site specific representations only does not provide a further opportunity to make representations on site specific policies within the DPD.

8.3 As any representations seeking changes to a DPD should have already been submitted at this stage, a counter representation should be specifically related to a site specific policy representation and indicate the reasons for doing so in terms of soundness and sustainability of the development plan document. Counter representations supporting a site specific policy representation

should not be considered, nor should counter representations proposing alternative sites or proposing any other changes to DPD.

## **9.0 Availability of representation (counter representation) on a site specific policy representation**

9.1 Under regulation 19 of the LDP Regulations, any counter representation received must be made available for inspection by the council as soon as reasonably practicable after the end of the 8 week public consultation period (as referred to in regulation 18(2)(a)). The council is required to make a copy of counter representations available for inspection during normal office hours at its principal office, and such other places within the district as the council considers appropriate; and publish this information on its website.

9.2 Regarding the submission of 'late counter representations', regulation 19(2) of the LDP Regulations states that the council 'need not' comply with the requirement to make counter representations available for inspection if they have not been submitted within the specified period. It will be a matter for each council to determine if, or how, such counter representations should be considered.

## **10.0 Handling of representations and counter representations**

10.1 As it is likely that the council may receive a large number of representations, it is important that appropriate arrangements are set up to facilitate the management and consideration of such information. If the council has provided a standard or model form for the submission of representations and counter representations respectively, then this should help it to not only focus on the type and nature of information required, but also provide a consistent format to facilitate the subsequent organisation and management of information received. If a representation has been made without using a standard or model form, or without completing it in full, then the council would

be advised to classify the representation by paragraph, policy, proposals map, site location and soundness test number and to identify any changes being sought to the DPD before submitting it to the Department for IE. Likewise, if a counter representation has been made without using a standard or model form, or without completing it in full, the council would be advised to supply the reference number of the representation to which the counter representation relates before submitting it to the Department for IE.

- 10.2 Representations and counter representations made to the council must be considered before a council submits a DPD to the Department for IE (regulation 20(1) of the LDP Regulations). It is important that representations and counter representations should be carefully analysed in order to avoid the potential for misunderstandings, mistakes and abortive work manifesting during the IE. To meet the demands of analysis and consideration the council would be advised to set up a database to manage the information received and keep a record of its correspondence between persons who have submitted representations and counter representations, relevant consultation bodies, and any other person(s) involved in the process.
- 10.3 Where a database is set up it is recommended that it includes the information listed in Annex C. It would be advantageous for a database to be structured so that the reporting output of representations is capable of being listed in a variety of ways, including by person who made a representation, soundness test order, policy order and paragraph order, and so that counter representations can be linked to representations and vice versa. It would also be advantageous for the database information to be presented in the form of a spreadsheet (electronic), with no in-built macros or formulae, and be capable of being copied, filtered and modified. It is recommended that the spreadsheet (electronic) be submitted to the Department along with the relevant DPD and the other documents.
- 10.4 An accurate and comprehensive database would also help to facilitate the council's consideration of issues raised and help to meet the requirements of regulation 20 of the LDP Regulations in relation to the submission of the DPD

for independent examination. In particular, regulation 20(2)(g) of the LDP Regulations requires the council to prepare a statement setting out the number and a summary of the main issues raised in representations and counter representations submitted in accordance with regulation 16(2) and regulation 18(2) of the LDP Regulations, respectively.

- 10.5 It is important to make clear ahead of the IE stage, that as well as the submission of representations and counter representations to the Department for IE in accordance with regulation 20(2)(h), the council must also submit such supporting documents as in the opinion of the council are relevant to the preparation of the DPD in accordance with under regulation 20(2)(i). This would include topic papers and rebuttal evidence that the council wants to have considered at the IE. When the Department causes an IE to be carried out in relation to a DPD, the independent examiner must be in possession of all the documents required under regulation 20(2), which includes representations, counter representations and the council's supporting documents. No further information / evidence will be looked at by the examiner during the IE unless he/she specifically asks for it to be submitted<sup>15</sup>.
- 10.6 Following the council's consideration of representations and counter representations, there may be instances where it may wish to amend the DPD to take account of issues raised prior to its submission for independent examination. However, this should only happen under exceptional circumstances, particularly as the DPD should already have been prepared whilst taking account of the tests of soundness. The council must demonstrate that an amended DPD is sound and meets all other statutory requirements. This should help to reduce the potential for any unforeseen issues which need to be addressed at such a late stage of the DPD process.
- 10.7 However, in instances where the council considers the DPD to be fundamentally unsound and cannot be amended, it should withdraw it in accordance with section 11 of the 2011 Act and regulation 23 of the LDP Regulations prior to its submission for independent examination. Following

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<sup>15</sup> Refer to paragraphs 4.3 and 5.3, part 6 of Model Form for the Submission of a Representation at Annex A and part 5 of Model Form for Submission of a Counter Representation at Annex B (of this document).

this and depending upon the nature of the issues, the council must amend the DPD and repeat the relevant statutory requirements as set out in the 2011 Act and LDP Regulations.

## **11.0 Statement of Community Involvement (SCI)**

11.1 As well as complying with the legislative requirements for representations for a DPD, the council must comply with any provisions contained within the agreed SCI in relation to the involvement of the community in the preparation of a LDP.

## **12.0 Timetable**

12.1 Under **section 7(1) of the 2011 Act** the council must keep under review the timetable for the preparation and adoption of its LDP. The council should consider progress made in relation to the timetable and revision is provided for under regulation 7(5) of the LDP Regulations.

**Annex A**

**Model Form for the Submission of a Representation to a Development Plan Document**

Council Logo

**Local Development Plan  
Representation Form  
(Plan Strategy or Local Polices Plan)**  
*(delete where appropriate)*

Ref:  
Date Received:  
(for official use only)

**Name of the Development Plan Document (DPD) to which this representation relates**

**Please return completed form to XXXX by Time/Date/Year**

**Please complete separate form for each representation**

**SECTION A**

**1. Personal Details**

**2. Agent Details (if applicable)**

Title

First Name

Last Name

Job Title   
(where relevant)

Organisation   
(where relevant)

Address Line 1

Line 2

Line 3

Line 4

Post Code

Telephone Number

E-mail Address \_\_\_\_\_

**SECTION B**

**Your comments should be set out in full. This will help the independent examiner understand the issues you raise. You will only be able to submit further additional information to the Independent Examination if the Independent Examiner invites you to do so.**

3. To which part of the DPD does your representation relate?

- (i) Paragraph \_\_\_\_\_
- (ii) Policy \_\_\_\_\_
- (iii) Proposals Map \_\_\_\_\_
- (iv) Site Location \_\_\_\_\_

4(a). Do you consider the development plan document (DPD) is:

Sound  Unsound

4(b). If you consider the DPD to be unsound, please identify which test(s) of soundness your representation relates, having regard to Development Plan Practice Note 6:

Soundness Test No.

5. Please give details of why you consider the DPD to be unsound having regard to the test(s) you have identified above. Please be as precise as possible.

If you consider the DPD to be sound and wish to support the DPD, please set out your comments below:

*(Continue on a separate sheet if necessary)*

6. If you consider the DPD to be unsound, please provide details of what change(s) you consider necessary to make the DPD sound.

Please note your representation should be submitted in full and cover succinctly all the information, evidence, and any supporting information necessary to support/justify your submission. **There will not be a subsequent opportunity to make a further submission based on your original representation.** After this stage, further submissions will only be at the request of the independent examiner, based on the matters and issues he/she identifies at independent examination.

*(Continue on a separate sheet if necessary)*

- 7 If you are seeking a change to the DPD, please indicate if you would like your representation to be dealt with by:

Written Representation  Oral Hearing

Please note that the Department will expect the independent examiner to give the same careful consideration to written representations as to those representations dealt with by oral hearing.

Signature:

Date:

**Annex B**

**Model Form for the Submission of a Counter Representation**

Council Logo   
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**Local Development Plan (LDP)**  
  
**Counter Representation Form**  
  
**Plan Strategy / Local Polices Plan**  
*(delete where appropriate)*

Ref:  Date Received:  (for official use only)
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**Name of the Development Plan Document (DPD) to which this counter representation relates**

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**Please return completed form to XXXX by Time/Date/Year**

**Please complete separate form for each counter representation**

**SECTION A**

**1. Personal Details**

**2. Agent Details (if applicable)**

Title

First Name

Last Name

Job Title   
 (where relevant)

Organisation   
 (where relevant)

Address Line 1

Line 2

Line 3

Line 4

Post Code

Telephone Number

E-mail Address \_\_\_\_\_

3(a) Have you submitted a representation to the council regarding this development plan document?

Yes

No

3(b) If yes, please provide Reference No. and summary of issue raised in your representation.

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### Counter Representation

**Any person may make a counter representation in relation to a representation seeking a change to a DPD. The purpose of a counter representation is to provide an opportunity to respond to proposed changes to the DPD a result of representations submitted under Reg 15 and 16 of The Planning (Local Development Plan) Regulations (Northern Ireland) 2015.**

**A counter representation must not propose any further changes to a DPD.**

4. Please provide the reference number of the representation to which your counter representation relates to.
5. Please give reasons for your counter representation having particular regard to the soundness test identified in the above representation.

Please note your counter representation should be submitted in full and cover succinctly all the information, evidence, and any supporting information necessary to support/justify your submission. **There will not be a subsequent opportunity to make any further submissions based on your original counter representation.** After this stage, further submissions will only be at the request of the independent examiner, based on the matters and issues he/she identifies at independent examination.

*(Continue on a separate sheet if necessary)*

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Signature:

Date:

## **ANNEX C**

### **List of representation information for database**

Where a council sets up a database to manage representations, it is recommended that it includes the following information:

- (a) Name of Local Development Plan
- (b) Name of Development Plan Document (Plan Strategy or Local Policies Plan)
- (c) Representation reference number
- (d) Date representation received
- (e) Name of person making representation
- (f) Address of person making representation
- (g) Contact details for person making representation
- (h) Name of agent (*if any*)
- (i) Address of agent
- (j) Contact details for agent
- (k) Plan paragraph
- (l) Plan policy
- (m) Plan proposals map
- (n) Site Location
- (o) Soundness test number
- (p) Consider DPD to be sound or unsound
- (q) Soundness issue raised
- (r) Cross reference to relevant counter representations

All of the above listed information items can be drawn from the Model Form for the Submission of a Representation to Development Plan at Annex A.

It would be advisable for the database to be capable of including counter representation information in a similar way to representations and be cross referenced to them, and such information can be drawn from the Model Form for the Submission of a Counter Representation to Development Plan at Annex B.



Department for  
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