



Ein cyf/Our ref: CAS-96011-H4D7  
Eich cyf/Your ref: CCBC LDP

Maes y Ffynnon,  
Penrhosgarnedd,  
Bangor,  
Gwynedd,  
LL57 2DW

[Cdll-ldp@conwy.gov.uk](mailto:Cdll-ldp@conwy.gov.uk)

30<sup>th</sup> September 2019

Dear James Harland,

## **CONWY REPLACEMENT LOCAL DEVELOPMENT PLAN (RLDP) 2018-2033 – PREFERRED STRATEGY CONSULTATION**

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales about the above, which was received on 29<sup>th</sup> July 2019, and allowing us additional time to provide comments.

As discussed, this is a partial response to your consultation, unfortunately due to staff availability we are still working through the landscape elements and will provide these under separate cover.

Our comments are made in relation to the following documents:

- Preferred Strategy (PS)
- Sustainability Appraisal (SA)
- Habitat Regulation Assessment (HRA)
- Background Evidence Base

This letter contains our comments on the Preferred Strategy, Sustainability Appraisal (SA) and the Habitat Regulation Assessment (HRA). Our remaining comments are provided in the Annex accompanying this letter: Annex 1 – Background Evidence Base.

We have previously commented on the following:

- The candidate site registers consultation dated 5<sup>th</sup> July 2019 (our ref: CAS-90670-L8W8)
- Scoping Report dated 27<sup>th</sup> September 2018 (our ref: CAS-67917-N6H6).
- Consultation Paper 1 outlines the priority facing Conwy and suggests a vision and set of objectives for the RLDP RDLDP

- Consultation Paper 2 – Outlines the Strategic Growth level the Settlement Hierarchy and the Spatial Distribution dated 25th January 2019 (our ref: CAS-74411-J6S9)

## Preferred Strategy

### European Protected Species

#### *Strategic Policy 24 (SP/24): Biodiversity*

The preferred strategy makes no mention to Invasive Non-native Species (INNS) and Biosecurity for Invasive non-native species.

We request the inclusion of an additional bullet under section 5.7.4 regarding control of Invasive Non-Native Species and biosecurity.

We recommend the inclusion of the word 'restore' under point 5.7.7: "*Conwy will follow a step-wise approach to, maintain, **restore** and enhance biodiversity and build resilient ecological networks*" this approach accords with Article 2:2 of Habitats Directive".

The PS does not mention or appear to consider Favourable Conservation Status and the other derogation criteria listed under the provisions of Article 16 of the Habitats Directive along with Birds Directive wider countryside actions listed under the provisions of Article 3 and 4(4) of the Birds Directive/ Regulation 10 of the Conservation of Habitats and Species Regulations 2017.

### Flood Risk

#### *Strategic Policy 26 (SP/26): Flooding*

We fully support the priority in the policy when considering the cumulative effects of incremental development.

As you are aware, TAN15 is due to be revised by Welsh Government. In advance of this, Welsh Government have now published for consultation The Draft National Strategy for Flood and Coastal Erosion Risk Management in Wales, which is available via this link. We would advise you to consider the content of this consultation and the revised TAN15 in developing your Deposit Plan.

We note that para 2.50 refers to defence improvements and a hold the line (HTL) policy. The HTL would refer to the shoreline management plan policy option of maintaining the existing coastal defences (rather than improvements). We have not been party to any discussions regarding such improvement works, although we appreciate this may be at an early stage. We would advise that TAN15: Development and Flood Risk states "... *government resources for flood and coastal defence are directed at reducing risks for existing development and are not available to provide defences in anticipation of future development...*". We would welcome a discussion with Conwy County Borough Council (CCBC) officers to discuss the maintenance/improvements for the defences.

5.3.7 states that “...*Development should not normally be proposed in coastal locations unless it needs to be on the coast...*”. We would remind you that TAN15 specifies (in para 5.3 of the TAN) exceptions to this. The developments which CCBC consider to be needed in coastal locations must be flood free for the design event as set out in Table A1.14 of TAN 15.

Suitable flood mitigation will be required for the proposed Gofer site as a strategic location for a solar array.

## Minerals

### *Strategic Policy 33 (SP/33): Minerals*

The relevant sections of the preferred strategy cover all the essential aspects for preventing pollution and protecting groundwater resources and quality and land contamination.

## Marine

### *Strategic Policy 20 (SP/20): Coastal Areas and Marine Plans*

We note and welcome the reference to the Welsh National Marine Plan (WNMP) but would recommend that CCBC refer to the final version of the plan, when published, in order to satisfy that the final policies have been referred to rather than those that were consulted on in 2018 (please note that the WNMP has been signed off by Welsh Ministers but is currently with the Secretary of State for final sign off).

An example of where the PS and WNMP are not in agreement currently is in relation to tidal lagoon development. The PS favours tidal lagoon development (Strategic Policy 32: Energy (SP/32) (section 6.7.31). Whilst a tidal lagoon has the potential to offer significant amounts of low carbon energy, there is currently insufficient evidence to be confident that a very large scale tidal lagoon can be developed without a significant impact to the environment. Whilst legal protections for the environment provide mechanisms for projects that have large scale impacts to proceed on a public interest basis, it will be very difficult to meet the tests of such derogations in the absence of a clearer sectoral policy framework for tidal lagoon developments. In NRW's view it is premature to provide unqualified support for lagoons in the absence of a better developed evidence base and the absence of more detailed sectoral planning policy.

We refer CCBC to the policies and guidance in the WNMP that focus on the need to improve the evidence for lagoons before proceeding with large scale development. The RLDP will need to reflect and align with the policy approach in the final (but not yet adopted) WNMP, in order to support tidal lagoons.

In addition to highlighting the community benefits and ownership needs of any onshore works associated with offshore development (section 6.7.32), the RLDP should also consider the implications of the onward transmission of electricity from offshore renewable energy development. This will be especially important if the proposals for new large scale offshore wind development by The Crown Estate, which are at a very early stage, are taken forward.

## Sustainable Management of Natural Resources

### *Strategic Policy 8 (SP/8): Sustainable Management of Natural Resources*

We welcome the fact that the Sustainable Management of Natural Resources (SMNR) has been explicitly addressed in the RLDP in several places. It also appears that the PS as a whole addresses many of the principles of SMNR without explicitly highlighting them.

Please note that the North West Area Statement is due to be completed by 31 March 2020.

#### *3.9.3. SMNR principles*

The PS states that *'the Council will put in place a framework to ensure that the Sustainable Management of Natural Resources (SMNR) Principles, Natural Resource Policy, 'State of Natural Resources Report' and 'Area Statements' are positively contributed to.'* This would benefit from some further clarification on how this will be achieved and utilised /used.

Many of the principles of SMNR have already been addressed in the Preferred Strategy. Rather than creating a new framework it may therefore be appropriate to add the SMNR principles to Appendix 2.

### *Strategic Policy 23 (SP/23): Green Infrastructure;*

Welsh Government are currently producing guidance on Green Infrastructure Assessments. We would recommend your assessment informs the production of a Green Infrastructure Supplementary Planning Guidance (SPG). Within this the strategic network should be considered, as well as individual site proposals and guidance on what should be included with planning applications and in Green Infrastructure Plans.

A good example is the Monmouthshire Green Infrastructure SPG. This includes work on ecological connectivity, catchment management, recreational corridors and routes, greenspaces and open access areas. The approach should ensure that Green Infrastructure and place making is included in a strategic way rather than in individual ad-hoc proposals.

We have a wide range of information available that could be used to help inform this assessment and note that there is no mention of the Area Statements, which are intended to be one of the main evidence sources for Green Infrastructure Assessments (GIAs). We appreciate the issue with timescales as the Area Statements are not yet published but recommend it would be helpful to meet with CCBC to discuss if a draft version of the Area Statement or emerging themes could be used. Also, we are drawing up a guide to NRW datasets that are relevant within the context of GIAs. While this is work in progress, we should be in a position within the next few weeks to share a list of datasets that could be used to inform this work.

In line with PPW, the text in section 5.6 would benefit from emphasising the multi-functional nature of Green Infrastructure. The PS is correct to state that Green

Infrastructure can make an important contribution to maintaining and enhancing biodiversity, but there are a wide range of other benefits that are equally relevant in this context.

## Waste

*Strategic Policy 34 (SP/34): Waste*

CCBC are the responsible body for ensuring there is sufficient allocation within the plan for delivering a sustainable and appropriate waste infrastructure network. We will consider applications for new waste infrastructure as and when they are made.

## Habitats Regulations Assessment

We agree with the Habitats Regulations Assessment (HRA) methodology and conclusion, given that further HRA screening will be required once more detail becomes available for the sites identified as having potential for Likely Significant Effects (LSE).

## Sustainability Appraisal

*Conwy LDP Review: Sustainability Appraisal of LDP Vision, Objectives and Options Non-Technical Summary*

It may be beneficial for B2.2 and B2.3 to be combined.

## European Protected Species

### Table 3.1 Key Sustainability Issues relating to the Conwy LDP Review

We advise the addition of the word 'restore' into the first sentence: "*The need to conserve, **restore**, protect and enhance biodiversity including important species and sites designated for reasons of biodiversity conservation or ecological importance*". ....

### 3.3 Review of Plans, programmes and strategies

3.3.1 In terms of EU legislation, identify EU Invasive Alien Species Regulations 2014 and Invasive Alien Species (Enforcement and Permitting) Order 2019

3.3.2 Recommend adding the word restore to the following sentence: "*Conserve, preserve, **restore**, protect and enhance sites designated at international, national and local levels for reasons of biodiversity conservation, ecological importance, geological importance or heritage significance, in ways appropriate to their status*".

### Table A3.1 Review of Relevant Environmental Aspects, Issues and Problems

#### 1. Biodiversity, Fauna and Flora

Under Existing objectives, Issues and problems, please add the following highlighted text:

Any proposals for development within the CCBC area could adversely impact designated sites and biodiversity through a range of direct and indirect effects, potentially including loss of roosting, foraging and other habitats, physical or noise disturbance, abstraction of river water, discharge of effluent, **invasive non-native species/biosecurity**, contamination and air pollution. As such, all proposals and policies within the emerging RLDP arising from the LDP Review must take account of relevant ecological sensitivities. This includes the need to support the management of all designated sites in relation to their status and in pursuit of their defined conservation objectives. The RLDP must also provide an appropriate level of protection for protected species and non-designated ecological interests **and the management of such sites**.

Implications for SA again add the following highlighted text:

The Framework should include appropriate objectives to assess potential effects on habitats and species from proposals (including cumulative development) and policies within the emerging RLDP. This should include consideration of impacts such as habitat loss, recreational impacts, water abstraction, pollution, **biosecurity and invasive non-native species** and disturbance effects

#### Table B2.1 Review of other Relevant Plans, Programmes and Strategies

##### Bonn Convention

We welcome the statement “*The SA Framework must include objectives relating to the appropriate conservation, protection and enhancement of designated sites.*” The text provides a clear reference to the Bonn Convention. The Bonn Convention includes the concept of Favourable Conservation Status. It is advocated that CCBC adopt this concept as per the Bonn Convention. This requires consideration of historic, current and favourable conservation status.

The application of this concept by CCBC will inform and underpin biodiversity actions.

Table B2.1 European table to update Habitats Directive, the SA Framework is advised to consider:

- (i) the management of European Sites;
- (ii) Planned provision and management of stepping stone and linear habitats (Article 10);
- (iii) Protection of European Species (Article 12);
- (iv) Prevention of incidental capture killing (Article 15);
- (v) Derogation in respect of European protected species

Table B2.1 National (Wales) Table to be updated to reflect EU Invasive Alien Species Regulations 2014 and Invasive Alien Species (Enforcement and Permitting) Order 2019

Table B2.1 Add reference to the Conservation of Habitats and Species Regulations 2017; Wildlife and Countryside Act 1981

## Table B2.1 Local (CCBC & Neighbouring Local Authorities)

We advise that the Biodiversity, Flora and Fauna Conwy Local Biodiversity Action Plan should be updated to reflect the provisions of the Environment (Wales) Act 2016:

### Section B.3. Review of National Planning Policy Requirements

#### Table B2.2. Review of PPW – 10<sup>th</sup> Edition (2018)

We advise additions including Conservation of Habitats and Species Regulations 2017 in respect of Regulation 10 duties in respect of wild birds and EU Invasive Alien Species Regulations and the Invasive Alien Species (Enforcement & Permitting) Order 2019

#### Table B2.3 Implications of other Welsh National Planning Policies, Advice and Guidance

We advise that updated RLDP policies:

- (i) Include clear references to conservation status;
- (ii) Include clear references to the consideration of long term issues including but not limited to tenure, resource provision, management and wardening;
- (iii) Consider incidental capture killing issues;
- (iv) Consider long term surveillance.

We advise that the proposed objectives are based on the favourable conservation status concept.

#### Appendix C Table C1.1 – Proposed SA Framework for the LDP review

*Under the “proposed SA guide Questions – will the replacement LDP...”*

We advise the addition of the word *maintain or restore* the current conservation status of protected or threatened habitats and species to defined favourable levels at local and county borough spatial scale

And recommend the inclusion of the following point:

- Prevention, Eradication or control of invasive non-native species, these actions contribute to measures that help achieve the favourable conservation status for identified habitats and species

*Under the “Proposed Sustainability indicators for candidate site assessments”*

We recommend the inclusion of the following points:

- Evidence based maintenance or restoration of protected or threatened habitats and species to their favourable conservation status

- Evidence based reduction or prevention of incidental injury or killing of protected and threatened species during construction and operational phases of development schemes

#### Table D2.2 Compatibility Matrix to Assess Replacement LDP vision and objectives

9 Biodiversity – Regarding SO 10 Support for renewables we would highlight issues concerning the prevention of incidental injury or killing of bats by wind turbines. Article 15 of the Habitats Directive concerns the monitoring and prevention of incidental capture or killing of European species.

#### **Flood Risk**

These comments are in addition to the comments we provided in October 2018 on the LDP SA Scoping Report (attached for convenience).

Our comments will need to be addressed and used to refine the SA framework and assessment, focussing on the local flood risk evidence base and identifying appropriate policy drivers and indicators.

Flood risk is a significant issue for CCBC and the RLDP and there is no strategic objective (SO) below the vision itself to tackle this issue at the strategic planning scale. Ideally the SO objectives should form a smaller set of objectives. The revision or addition of an SO within the RLDP will require the refinement of the wording in the SA objective. There is an absence of local flood risk evidence within the baseline. Once the evidence base and SA/SO revisions have been completed, this SA should help to reassess impacts of flood risk within Appendix D and E and update overall indicators and conclusions of the PS and proposed growth options.

Flood risk issues will interrelate across SA objectives for the different growth options and these will need to be carefully considered and assessed, to deliver the vision of sustainable places and align with the Wellbeing and Generations Act 2015 and Environment Act 2016.

It should be clearly noted within the SA framework that Welsh Government are in the process of reviewing and issuing a new TAN 15: Development and Flood Risk and whilst there are no specific timescales. The publication is likely to impact on the development of the RLDP prior to submission to Welsh Government. The iterative SA process should be used to take account of evidence updates and be closely monitored, to update the RLDP.

There is no strategic objective on flood risk within Table 5.1.

#### Table B2.1 Review of other Relevant Plans, Programmes and Strategies

Review of relevant plans and programmes Table B2.1 on EU, UK legislation and national are correct. However, local legislation has some gaps - please refer to our scoping report comments, together with any changes to the evidence base as this will need updating.



### Table B2.3 Implications of other Welsh National Planning Policies, Advice and Guidance

Table B2.3: the summary of TAN 15 is not correct. Please note that TAN 15 directs development away from Zone C and is based on Development Advice Maps (DAM). There is no reference to strategic approach required by RLDP, justification and acceptability tests, these need to be re-written and summarised succinctly to support the SA objective/framework.

### Appendix C Table C1.1 – Proposed SA Framework for the LDP review

Appendix C, C1.1: SA10 is required to be re-worded and more reflective of the revised objective and consequently the SA questions and indicators are not currently sufficient.

## **Minerals and Soils**

### Table A3.1 Review of Relevant Environmental Aspects, Issues and Problems

Table A3.1 Mineral extraction: in addition to referencing the potential to affect hydraulic pathways and landscape, consideration should also be given to the risk of potential land contamination and associated water quality.

The North Wales Coalfield comprises the Flintshire Coalfield in the north and the Denbighshire Coalfield in the south. It extends from the Pont of Ayr through Wrexham to Oswestry, and there is also a small area on Anglesey. However, it does not fall into Conwy. Reference to this should be removed.

Additionally, the statement that a dominant feature of the CCBC administrative area is the small valleys and associated uplands that form part of the former Wales Coalfields should be removed.

Table A3.1 Soil and Land: PPW 10 Section 3.5 refers to previously developed (brownfield) land and de-risking it in development, which should be referenced in addition to chapters 5 and 6.

### Table B2.1 Review of other Relevant Plans, Programmes and Strategies

Table B2.1: Under National UK please note that these documents will soon be superseded. There are several additional documents which we refer to: The Environment Agency's 'Guiding Principles for Land Contamination' 2010 and The Risk management framework provided in CLR11, Model Procedures for the Management of Land Contamination, when dealing with land affected by contamination.

Water: refers to Groundwater Protection Policy and Practice (GP3), HM Government (2003) – the latest edition is 2018 and is now known as The Environment Agency's approach to groundwater protection.

Under National (Wales) Soil and Land: Consider also referring to Development of Land Affected by Contamination, A Guide for Developers, 2017 published jointly between the WLGA and NRW.

## Background Paper 04: SA/SEA of Preferred Strategy Non-Technical Summary

### European Protected Species

#### 2.1 Key Sustainability Issues SEA topics

##### Biodiversity, Flora & Fauna

NRW advise the addition of the word 'restore' into the first sentence: "*The need to conserve, **restore**, protect and enhance biodiversity including important species and sites designated for reasons of biodiversity conservation or ecological importance*". ....

##### SA Objective 5 – Housing

Land use change needs to consider biodiversity and mechanisms should be considered that facilitate the long-term management of biodiversity with an emphasis on protecting and enhancement. Management may be required to facilitate the maintenance; creation, restoration or enhancement of habitat and their associated or component species.

It is advocated that the approach based on conservation status in the Bonn Convention is used to inform identified aims and objectives. In effect this is based on Historic Conservation Status (HCS); Current Conservation Status (CCS); Favourable Conservation Status (FCS).

##### SA Objective 9 - Biodiversity

#### 4.4.27

*Bullet point 3 should read "Conserve, protect, '**restore**' and enhance site designated as national and local levels for reasons of ecological importance or biodiversity conservation.*

*Bullet point 5 should read "Protect and enhance the green infrastructure network, '**including stepping stone and linear habitats in the long term**'."*

### Flood Risk

Appendix D - Strategic objectives within the RLDP have not been reviewed as there is no strategic objective for the RLDP identified on flood risk. This needs to be revised and included.

Appendix E- Growth Options suggests there is lots of uncertainty and this assessment needs to be revisited once the above points have been addressed.

Policies SP23, SP24, SP25, SP26 have been identified for flood risk, but it is unclear what details are included and they do not reflect the RLDP vision and the final SA objective.

# Appendix 1

## Background Papers

### Background Paper 34: Strategic Flood Risk Assessment

This document is referenced in the PS evidence document but is unavailable on the RLDP website. However, NRW have previously made comment on this background paper and our response can be found under ref: CAS-74411-S6S9.

### Background Paper 35 Flood Risk and Development Opportunities (July 2019)

The paper has not been updated since we were consulted previously on the RLDP Candidate and Strategic sites. For completeness we shall re-iterate comments made in relation to Background paper 35, specifically the report/hydraulic flood modelling work carried out by Wallingford HydroSolutions Ltd.

The paper has considered overtopping and breaches along the coastal frontage (from Pensarn to Kinmel Bay) and also the River Clwyd embankment (as shown on Figure 4 of the report). The report concludes with 10 bullet points which would seem reasonable and in line with the content of the report and the minimum requirements as indicated in TAN15. We would however advise that although ground raising may be a form of flood mitigation, impacts elsewhere will need to be considered and where site allocations are in close proximity/same flood cells, then the cumulative impacts may provide further detriment than raising of individual sites; this would need further modelling/assessment. The final bullet point would seem to be missing the word “improvements” (defence improvements along the coastal frontage and tidal Clwyd will result in significant betterment, making several thousand properties safe from flooding that are currently within the flood extent.)

The Background Paper only refers to one site (Gwellyn Avenue). Raising sites above the design flood event may be an acceptable form of mitigation (if no increases in flood risk (depths and extent) are shown elsewhere), however as part of this RLDP process the cumulative effects must be shown for site raising for other site allocations along this frontage/flood cell.

Therefore, further modelling work will be required with manipulations of ground levels showing any mitigation measures. Increased risk elsewhere would be contrary to TAN15..

### Background Paper 37 Minerals

The paper covers all the essential elements preventing pollution and protecting groundwater resources and quality and land contamination.

### Topic Paper 6 Natural Environment

Section 6 – Updated Evidence base

Green Wedge Assessment should cross reference with Article 10 of Habitats Directive/Regulation 41 of Conservation of Habitats and Species Regulations 2017.

NRW recommend adding a further point, in terms of assisting evidencing CCBC implementation of Regulation 10 of the Conservation of Habitats and Species Regulations 2017 in respect of the creation, management and upkeep of bird's habitat under the Birds Directive Annex 1.

Policy NTE/3 – Biodiversity

Again, *“New development should aim to maintain, ‘restore’ conserve and where possible, enhance biodiversity through”*

Policy NTE/3 – Biodiversity

Whenever European Protected Species are present statements to include Current Conservation Status (CCS) and Favourable Conservation Status (FCS) of the species will should be required.

CCBC will refuse proposals which would have a negative impact on a European Site, protected or priority species or habitat unless the impact is adequately mitigated, and appropriate remediation and enhancement measures are proposed and secured by planning conditions or obligations in respect of European protected species. This should additionally add reference to Imperative reasons for overriding public interest (IROPI) and compliance with all derogation criteria.

Again, no reference is made to invasive non-native species or biosecurity.

### Topic Paper 9: Renewable Energy

Reference is made to climate change impacts on flood risk in this paper. Welsh Government advise that CL-03-16 - Climate change allowances for Planning purposes should be used. The guidance also contains details of when to use High++ allowances for peak river flow and mean sea level e.g. where developments that significantly change existing settlement patterns/developments that are very sensitive to flood risk are proposed.

We note that within this paper reference is made to the Joint Flood Risk Protocol. The protocol was produced to address development proposals in the Coastal East area of the county which is subject to flood risk and has been in existence for a number of years. We note that CCBC propose to revise this document as part of the RLDP. The RLDP should consider the possible changes to TAN15 following consultation later this year, which is likely to change the current protocol.

I hope these comments are useful in developing your RLDP further, if you would like to discuss any comments in more detail please do not hesitate to contact me.

Yn gywir / Yours Sincerely,



**Ruth Prichard**  
**Development Planning Advisor**  
**Planning Advisory Service**