

Development Plans Manual Consultation,  
Planning Directorate,  
Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

30<sup>th</sup> August 2019

Dear Sir/Madam,

**Welsh Government Consultation (WG 37938): Draft Development Plans Manual (Edition 3)**

We welcome the opportunity to respond to the above consultation.

The statutory purpose of Natural Resources Wales (NRW) is set out under the Environment (Wales) Act 2016. In the exercise of its functions under the Environment (Wales) Act 2016, NRW must pursue sustainable management of natural resources in relation to all its work in Wales and apply the principles of sustainable management of natural resources in so far as that is consistent with the proper exercise of its functions. NRW's duty (in common with the other public bodies covered by the Well-Being of Future Generation (Wales) Act 2015) is to carry out sustainable development.

Within the planning system, NRW undertakes a variety of roles including as a statutory consultee in the local development plan process.

Many of our comments provided during the informal consultation at the end of 2018 have been taken on board by Welsh Government and this is welcomed. We focus our response on where further clarification will be useful, and on sections which were not available for comment during the informal consultation notably Chapter 4 on environmental assessments.

Our key comments are:

- The Habitats Regulations Assessment (HRA) process, and its stages could be further clarified within the Manual;
- We recommend more emphasis is given in the Manual about protection of key green infrastructure, and greater reference/ sign-posting to emerging Welsh Government guidance on undertaking Green Infrastructure Assessments.

Our detailed response is included in the attached Annex 1.

We trust that our advice will be useful to you and would welcome further opportunities to discuss our comments.

If you have any queries in relation to our detailed response, please contact Keith Davies, Sustainable Places - Land and Sea Manager in the first instance at:  
[keith.davies@cyfoethnaturiolcymru.gov.uk](mailto:keith.davies@cyfoethnaturiolcymru.gov.uk)

Yours faithfully,

A handwritten signature in blue ink that reads "Adrian J". The signature is written in a cursive style with a large, looped initial "J".

Adrian James,  
Planning, Landscape, Energy, Decarbonisation Team Leader

## Annex 1

**Q1: The content of an LDP is now set out in the Manual (see Table 1). Is this sufficiently clear and comprehensive enough? Are there elements which would benefit from further clarity, or have been omitted? Please state what should be changed and why.**

### Constraints Map

Table 1 indicates that a constraints map is not formally part of a LDP. Whilst, this can be understandable in most cases as most of the spatial information on the map may be sourced from other bodies or publications, there may be instances where LPAs may use the LDP process to identify or designate areas for protection or particular management e.g. Sites of Importance for Nature Conservation (SINCs). In such instances we recommend that the Manual expects the Constraints Map should form part of LDP, or the Manual should advise that such designations are identified on the Proposals Map.

### Development Management Policies and Strategy

#### Definitions

The Draft Manual refers to 'natural resources' and 'green infrastructure' which may not be widely understood by readers. We advise that the manual includes a Glossary which defines these concepts.

#### Green Infrastructure

We consider that the level of detail on how to manage non-designated, but important areas of green infrastructure could be improved. We suggest it would be useful to amend the following bullet point, by adding the following text in bold:

'Be clear about designated areas for protection, conservation and constraint. (National Parks, AONB, biodiversity, heritage) and **key areas of green infrastructure as identified in the Green Infrastructure Assessments.**'

**Q2 Is the guidance on how to undertake a comprehensive call for candidate sites early in the LDP process clear and sufficiently detailed? If you disagree, please specify what is unclear or requires amendment and why.**

We reiterate comments made in our previous response to the informal consultation during end of 2018, regarding paragraph 3.56 and table 4 of the previous version of the Manual.

We agree with para 3.109 of the consultation draft Manual Edition 3, although we would recommend more emphasis early in the document of where statutory processes have not been undertaken for sites submitted late in the preparation process, the Inspector's Report would not be able to recommend their inclusion in the LDP, in the call for Candidate Sites.

## Engagement

We welcome engagement with NRW about candidate site proposals. However, the advice we provide will be based on the information and evidence provided to us in demonstrating site suitability, our expertise, and any relevant information we may hold. For example, where a key site is proposed in a high flood risk area, we will only be able to advise on whether a proposal is in a high flood risk area but will not be able to advise on the fundamental barriers and capacity unless a detailed flood consequences assessment is submitted by a site promoter. To enable us to advise on how the risk of flooding meets the thresholds in TAN15 the assessment will need to demonstrate that there is acceptable management of risks and consequences, in accordance with the requirements set out in TAN15 and PPW (Edition10). Evidence in support of a key or strategic site should be provided with the Preferred Strategy consultation because it will help inform whether the Plan is based on robust evidence.

### Table 4: Green Infrastructure Requirements

We welcome the inclusion of 'green infrastructure requirements' in the Table as it would encourage site proponents to consider Green Infrastructure as part of place-making. We recommend the following wording is added to it to help wider understanding of what this requirement might entail: **'key natural resources or areas of habitat connectivity (both current and potential).'**

***Q3 Do you agree with the criteria for what constitutes a 'deliverable' and 'financially viable' candidate site? (paragraph 3.40). If you disagree, please state what should be changed and why.***

We do not have comments on this matter.

***Q4 Is the Manual sufficiently clear on how to undertake an SA, HRA or a holistic ISA? If you disagree, please detail how you think the guidance could be improved and why.***

### Diagram 6

We welcome the clarity provided in this diagram. However, we recommend that the diagram should reference the HRA process alongside the already denoted ISA and LDP process and stages. This will help ensure that the potential implications of an emerging LDP for European sites are considered in a timely manner throughout the LDP preparation process.

We consider it potentially confusing that diagram 6 refers to Integrated Sustainability Appraisal (ISA), and diagram 11 only refers to Sustainability Appraisal (SA). We suggest that a single term is used throughout the document to avoid potential confusion.

### Paragraph 4.3

We recommend adding some text in this paragraph to make clear that whilst there is benefit in incorporating SEA in to the ISA the legal requirements of SEA must be undertaken and remain easy to distinguish for those reading, commenting on and using these assessments.

### Diagram 11

We recommend that the diagram is to confirm when the consultation on the SA report should be undertaken as this is included both under stage C in column 3 and stage D in column 2.

### Page 63: Stages of SA Preparation

We consider that the text should explicitly set out that screening is the first stage of the SA/SEA process and explain whether or not screening is required for Development Plans.

### Page 73 (Para 4.33)

We suggest that this paragraph should also refer to the legal requirement to consult with NRW and Cadw at screening stage.

### Page 76 (Stage 1)

We recommend that the key consideration as to whether a European site should be screened in or not is whether there is a pathway that could result in an impact, rather than a set distance. For certain impacts, for example sediment loaded run-off entering watercourses, it is possible for European sites many miles from the proposed activity to be impacted.

### Page 77 (Para. 4.44)

We suggest amending the sentence "...'in combination' with the effects of other plans and projects proposed and completed on the same European site..." to read **"... 'in combination' with the effects of other plans and projects affecting the same European site..."**

### Page 77 (Para. 4.45)

We suggest amending the first sentence "...whether the plan, in combination with other plans or projects..." to read "...whether the plan, **alone or** in combination with other plans or projects..."

We also suggest amending the third sentence (in bold) from 'If it is unlikely to have a significant effect...' to **'If a likely significant effect cannot be ruled out...'**. We also suggest clarifying the final sentence in bold from 'If it could have a significant effect, the HRA must continue to the appropriate assessment stage' to **'If it could have a significant effect, or it is uncertain, the HRA must continue to the appropriate assessment stage'**.

### Page 78

We welcome the reference to the People over Wind ruling in European Court, and consider the information is useful.

### Page 78 (Para. 4.47)

The text in the third sentence of this paragraph would benefit from amending from ‘This will involve testing whether the plan ‘in combination’ will affect the environmental factors needed to maintain site integrity...’ to ‘This will involve testing whether the plan **alone or** ‘in combination’ will affect the environmental factors needed to maintain site integrity.

### Pages 78-79 (Paras. 4.47 & 4.50)

We recommend paragraphs should be amended to emphasise that consulting NRW (and, where relevant, Natural England) is a **statutory requirement** when carrying out an appropriate assessment. The current text suggests that this is simply ‘desirable’ or ‘best practice’.

### Page 78 (Para 4.48)

We recommend amending the paragraph from ‘Taking account of the conclusions of the appropriate assessment of the plan’s effects on the conservation objectives, the decision maker must determine whether the plan will adversely affect the integrity of the European site’ to ‘Taking account of the conclusions of the appropriate assessment of the plan’s effects on the conservation objectives, **and having sought and had regard to the advice of the statutory consultees (NRW, Natural England, JNCC as appropriate), the competent authority** must determine whether the plan will adversely affect the integrity of the European site. This is to ensure that the Manual is clear that advice from NRW and other statutory consultees should be taken into account when making determinations whether a plan will adversely affect the integrity of a European site.

### Pages 78-79 (Para 4.49)

The final sentence, in bold, in this paragraph, which states that “It is not appropriate to delay the Appropriate Assessment until the project level as this may make the plan non-deliverable” is not entirely correct. We recommend replacing this sentence with, ‘There are certain circumstances where it can be more appropriate to delay’ some aspects of HRA to a lower tier plan or project level assessment, although the plan level assessment must have entered the appropriate assessment stage before this can happen.’

Despite delaying a HRA to lower tier plan or project level, this way of ascertaining no adverse effect on site integrity is not a way of delaying the assessment process, but a way of securing mitigation measures at lower tier plan or project level, where they cannot be secured in detail in the higher level plan (because information on the nature, timing, duration, scale or location of development, and thus its potential effects, is not available). In other words, to take this approach negative impacts need to be avoidable at project level in some shape or form (or else it *would* make the plan non-deliverable).

In order to take this approach, we recommend that at the end of para 4.49, the following wording is added ‘**To ascertain that there would be no adverse effect on the integrity of a European site, a plan-making body may only rely on mitigation measures in a lower tier plan or project if the following three criteria are all met:**

- a. **The higher-level plan assessment cannot reasonably predict the effect on a European site in a meaningful way; whereas**

- b. **the lower tier plan or project level, which will identify more precisely the nature, timing, duration, scale or location of development, and thus its potential effects, will have the necessary flexibility over the exact nature, timing, duration, scale and location of the proposal to enable an adverse effect on site integrity to be avoided; and**
- c. **the HRA of the lower tier plan or project is required as a matter of law or Government policy.'**

#### Page 79 (Para 4.51)

We recommend that this paragraph is reworded to, 'Stage 3 is only reached where an appropriate assessment cannot rule out an adverse effect on the integrity of a European site and the LPA has decided not to amend and re-assess the proposal. In this situation it is not legal to enact or adopt the proposal unless three conditions are all met, namely that there are no alternative solutions, that there are imperative reasons of over-riding public interest (IROPI), and compensatory measures are secured.

The first test is a consideration of alternative solutions (that still deliver the objective of the proposal) and whether any of these have a lesser impact on European sites. Only where it can be demonstrated that these alternative solutions do not have a lesser impact can the proposal progress to the second test of IROPI.'

#### Page 79 (Para 4.52)

This paragraph appears to be in the wrong place as it represents the end of Article 6(3) of the Habitats Directive and should therefore be inserted before paragraph 4.51.

#### Page 79 (Para 4.51)

We suggest replacing: "Where the assessment has identified likely significant effects..." with: "Where the assessment has **been unable to rule out adverse effects...**". This wording change is recommended to reflect the correct terminology for describing affects at stage 3 of the HRA process.

#### Page 79 (para 4.54)

We recommend amending the final sentence of this paragraph to provide clarity of terminology by replacing "Where the importance of development is judged to be of IROPI, compensatory measures must be taken to protect the overall coherence of the European sites..." with: "Where the importance of development is judged to be of IROPI, compensatory measures must be **secured** to protect the overall coherence of the European sites **network**".

#### Page 80 (para 4.56)

Replace "European site" with "Development plan" (because it is the LDP that will be subject to HRA).

***Q5 Is the 'de-risking plan checklist' (page 83) a useful summary of the core issues of plan making as summarised in Chapter 5? If you disagree, please state what changes should be made and why.***

### De-risking plan checklist

We agree that the 'de-risking plan checklist' is a useful summary of the Core Issues of Plan Making. However, we recommend it is amended to "have regard to Area Statements" and "prepare a Green Infrastructure Assessment", as these matters form an important part of a LDP evidence base.

Additionally, we recommend that an additional category is inserted within the 'de-risking plan checklist' which ensures constraints/ opportunities identified as part of the candidate site sifting process are highlighted. Constraints may trigger the need for more detailed assessment, which is required before a site is allocated e.g. assessment of the risks and consequences of flooding. We consider this factor to be a core element of de-risking the LDP process.

***Q6 Do you agree the guidance on formulating a spatial strategy adequately covers all the key elements necessary when assessing the role and function of places? If you disagree, please state what should be changed and why.***

### Page 88 Checklist

We suggest "green infrastructure" and "ecosystem resilience" could usefully be added to examples of factors when assessing spatial strategic options. Both are key components of placemaking by informing decisions on the location of development as recognised in section 6.2 of PPW edition 10.

### Page 89: Vision Checklist

A reference to Area Statements would be welcome here. We suggest the following additional wording: 'Be consistent with the Well-being Plan and other local strategies **and have regard to Area Statements, National Park and AONB Management Plans.**' Alternatively, this could be included under 5.12.

### Page 90: Para 5.13

Instead of "areas for protection" we recommend use of the term "**key green infrastructure assets including protected sites**" as many important green infrastructure assets are key spatial assets that are not designated but whose careful management may be an important consideration of placemaking and support the resilience of settlements whilst delivering multiple benefits.

### Page 91: Diagram 14

We note that there is a Settlement Assessment referenced (Diagram 14) which has no explicit mention of decarbonisation or resilience. In identifying suitable areas for development, decisions should be informed by the potential for aligning with WG's decarbonisation aspirations in line with WG's climate emergency by focussing development in areas which minimise the need to travel and are well served by active and sustainable travel routes and can be supported by District Heating measures and/ or, local renewable energy generation. This would be welcomed and recommended here.

***Q7 Is the guidance on housing and economic growth scenarios sufficiently clear to enable a plan maker to consider a range of growth options and identify a***

***requirement/plan provision, for both homes and jobs that is appropriate and deliverable? If you disagree, please state why and how you consider the guidance should be improved.***

We have no comments on this matter.

***Q8 Is there sufficient practical guidance on how to prepare a housing trajectory to support the delivery of housing? Are the definitions of the components sufficiently clear? If you disagree, please state what should be changed and why.***

We have no comments on this matter.

***Q9 Do you agree with the definition of viability (paragraph 5.81) and the key components of viability (tables 24 and 25)? If you disagree, please state what requires amending and why.***

#### **Table 24**

‘S106/CIL Cumulative impact of direct mitigation and policy requirements’: We recommend that the cost of implementing and maintaining Green Infrastructure should be added as part of the viability model under this requirement to ensure that appropriate and proportionate green infrastructure is delivered.

***Q10 Does the Manual clearly differentiate the viability requirements for high level testing and site-specific testing? If you do not consider this is sufficiently clear, what do you consider requires amending and why.***

We have no comments on this matter.

***Q11 Does the Manual provide sufficient guidance to enable the preparation of an infrastructure plan and how to embed the core elements of the infrastructure plan into the development plan? If you disagree, please specify what you think requires amending and why.***

#### **Infrastructure Plan**

We welcome reference to green infrastructure being embedded to the core elements of an infrastructure plan to help normalise its consideration among plan-makers as part of the place-making approach promoted as part of Planning Policy Wales (Edition 10). However, we reiterate our previous comments that the Manual should clearly indicate the relationship between the Infrastructure Plan and the Green Infrastructure Assessment as set out in PPW. We would welcome further discussion on how the Manual can normalise the consideration of Green Infrastructure as part of LDP preparation.

***Q12 Do you agree with the list of indicators to be included in the monitoring framework (table 29)? If you disagree, please specify what changes should be made and why you consider them necessary.***

## Table 29

We agree with the list of indicators and have no further comments to make.

***Q13 Is the guidance on the short form revision procedure sufficiently clear and helpful? If you disagree, please specify what could be amended and why.***

### Short Form Revision Procedure

We recommend that further clarification is provided in the Manual to the form of consultation LPAs would undertake with key stakeholders as part of the SFRP and the regard that is required to be made by LPAs to comments from key stakeholders.

***Q14 Do you agree with the scale and content of issues to be covered in an SDP? If not, what do you disagree with and why.***

### Strategic Development Plans

We generally agree with the scale and content of issues to be covered in an SDP. However, we stress the importance to strategic planning of green infrastructure provision alongside many of the matters set out in para. 2.9. The Manual should encourage Local Planning Authorities to work together to produce their Green Infrastructure Assessments, particularly in areas that will be covered by a SDP so that green infrastructure can be planned alongside development from the start.

***Q15 Is there sufficient and clear guidance to enable the preparation of an SDP? If you disagree, what do you think should be amended and why.***

We have no comments on this matter.

### Q16 Any other comments

*We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this opportunity to report them.*

### Page 12: Delivering Sustainable Development – An Integrated and Inclusive LDP Preparation Process'

We suggest that section 'Delivering Sustainable Development – An Integrated and Inclusive LDP Preparation Process' would benefit from a specific reference to the Environment (Wales) Act 2016 and the duties this places on Local Planning Authorities, particularly the section 6 duty.

## Table 11

We welcome mention of Area Statements and Green Infrastructure Assessments in the context of master-planning, but the way in which the two concepts are used interchangeably here is potentially confusing. It would be helpful if the Manual could clarify if LPAs should use both or use one if the other is not yet available. If Green Infrastructure Assessments build on the evidence provided by Area Statements then there is potentially no need to use both, but it's not clear from the text here if that's the case.

### Table 26

We recommend that under the Key Site Issues & Constraints criterion, “Are there protected environmental/ecological species/designations” should also include key green infrastructure assets, natural resources and networks of connectivity as identified in the Green Infrastructure Assessment. The Environment (Wales) Act 2016 provides a context for the delivery of multi-functional infrastructure (para 6.2.2, PPW 10 edition 10). Their inclusion into Table 26 will encourage LPAs to set what the key green infrastructure requirements are for each site from which monitoring indicators and triggers can be derived.

### Page 75 (Para.4.38)

The second bullet should refer to the revised version of the Wild Birds Directive, i.e. 2009/147/EC.

### Page 75 (Para 4.39)

Recommend adding, “(see NRW’s website for details on SACs and SPAs **and Ramsar sites...**”

### Page 14 (Para 3.10)

There is a single reference in para 3.10, where it is stated ‘Ensure plans are resilient to climate change (using the latest data) and support the transition to a low carbon society based around the principles of Placemaking and the Sustainable Transport Hierarchy’. We would recommend that the Manual should be more explicit e.g. ‘(using the latest UK Climate Projections, flood risk and vulnerability assessment data)’ and add at the end ‘**in line with latest carbon reduction targets and budgets as set out in the Environment (Wales) Act (Part 2)**’.