

Natural Environment Division

Development Planning and Policy Manager
Belfast Planning Service
Cecil Ward Building
4-10 Linenhall Street
Belfast
BT2 8PB

15 November 2018

Dear Sir/ Madam,

Re: Belfast Local Development Plan 2035 – Draft Plan Strategy

DAERA welcome the opportunity to comment on the Belfast Local Development Plan 2035 – Draft Plan Strategy.

DAERA has considered the consultation document and our opinions are set out below. DAERA wish their representation to be heard by **Oral Hearing**.

1. Representation in respect of Policy NH1

The Policy is Unsound in respect of Soundness Test: C3

Why is it unsound?

Consistency tests

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

The Belfast Local Development Plan, Draft Plan Strategy 2035, 'Policy NH1 Protection of natural heritage resources' does not adequately or accurately take account of the policies in PPS2 nor SPPS (in respect of PPS2, Policies NH1 to NH6 inclusive and SPPS 6.168 to 6.198 inclusive).

The entire Local Development Plan (LDP) NH1 policy has compressed the six PPS2 Natural Heritage policies and SPPS policies without clearly addressing or distinguishing the tests and mitigation/ compensatory measures applicable to different legislative and government policy requirements of natural heritage sites and interest features. In addition, some natural heritage features are omitted from policy. DAERA is of the opinion that the policy is unsound in its current form.



The following paragraph was removed from the policy box of a previous consultation draft sent by the Council to DAERA for comment: *"The SPPS sets out the planning policies that apply to international, national and local designations, protected species and other important natural heritage assets and the council will take full account of these in assessing development proposals"*. The current policy NH1 lacks detail and is a weaker policy which does not pay due regard to the hierarchy of habitats and species protected under international, national and local legislation. This puts the plan at risk of breaching nature conservation legislation and impacting negatively on habitats and species which are afforded a very high degree of protection at an international level, as well as those protected at a national and local level. This is also contrary to the aims and objectives of the draft Plan Strategy.

In the second paragraph, line 3, the word 'unacceptable' effect is not and has no legislative or policy basis. What is unacceptable in terms of international, national, or local sites, priority species, habitats, protected species or other features of natural heritage interest is different in each case with reference to PPS2 policies and SPPS policies. Policy LDP NH1 does not refer to these policies.

Third paragraph, lines 4-5 states: *"proposals that could have, a significant effect on an international site will not be supported by the council"*. This can be interpreted to mean that any proposal that "could have" a significant effect, would not be supported even before it undergoes a test of likely significance. For example, in the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) the 'precautionary principle' demands that a test of likely significance is carried out where a proposal is likely to have a significant effect on an international site. Where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the planning authority is required by law to carry out an appropriate assessment of the implications for the site in view of the site's conservation objectives. Only after having ascertained that it will not adversely affect the integrity of the site, can the planning authority agree to the development and impose appropriate mitigation measures in the form of planning conditions.

Also in the third paragraph, a significant adverse 'effect' on a local site is referred to. Both PPS2 and SPPS refer to a significant adverse 'impact'. It is not consistent with the wording in SPPS and PPS2. These terms should be used consistently.

In the fifth paragraph, second line, it is not stated whether this paragraph refers to designated European sites, national sites or local sites. Is the same policy test being applied to each type of site?



Furthermore, also in the fifth paragraph, the reference to "*adequate mitigation or alternative measures*" does not reflect the wording in SPPS 6.1814 National Designations and 6.190 for Local designations which refers to "*appropriate mitigation and/ or compensatory measures*". There are completely different measures where "*imperative reasons of overriding public interest*" are applicable to International sites.

DAERA would advise that the reference to 'no adverse impact' in the final line of the sixth paragraph is unsustainable, as it has not been quantified/ qualified; i.e., it is impossible to demonstrate 'no' adverse impact.

'Protected species' that is, species protected by law in the Wildlife (NI) Order 1985 (as amended), are not cited in the policy (for example, Badgers *Meles meles*). PPS2 Policy NH2 (SPPS 6.179 to 6.182) give separate 'tests' for European Protected Species, The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) Schedules) and National Protected Species. These tests are not specified in the Draft Plan Strategy 2035 Policy NH1.

First paragraph, line 1, the precautionary principle is not referenced nor explained (as written in a previous draft version of the policy sent to DAERA)

Changes considered necessary to make sound: full & succinct information, evidence and supporting information

The policy requires sufficient information and detail to meet the requirements of legislation and Regional Strategic Policy. In reference to SPPS policies from 6.174 to 6.198 inclusive, the SPPS 6.173, states that the: "following strategic policy must be taken into account in the preparation of Local Development Plans (LDPs) ...". In terms of legislation, it should pay sufficient regard to the specific legislative obligations and case law associated with the hierarchy of nature conservation designations to facilitate informed operational planning decisions to be made and to discharge the council's biodiversity duty under the Wildlife and Natural Environment Act (Northern Ireland) 2011.



2. Representation in respect of Section 9.3 Minerals

The Policy is Unsound in respect of Soundness Test: C3

Why is it unsound?

Consistency tests

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

Section 9.3 Minerals in the Belfast Local Development Plan, Draft Plan Strategy 2035 does not take account of policy and guidance issued by the Department.

Regional Strategic Policy, SPPS 6.153 states: "The following strategic policy must be taken into account in the preparation of Local Development Plans (LDPs) and in the determination of planning applications.

Regional Strategic Policy, SPPS 6.155 states: "In preparing LDPs councils should bring forward appropriate policies and proposals that must reflect the policy approach of the SPPS, tailored to the specific circumstances of the plan area. In particular LDPs should:

"identify areas which should be protected from minerals development because of their intrinsic landscape, amenity, scientific or heritage value (including natural, built and archaeological heritage)".

Section 9.3 Section 9.3 Minerals in the Belfast Local Development Plan, Draft Plan Strategy 2035 does not propose a policy for an AOCMD. This issue has not been addressed.

Changes considered necessary to make sound: full & succinct information, evidence and supporting information

Use the Council 'evidence base' to identify Areas of Constraint on Mineral Development to identify and protect areas of landscape, amenity, scientific or heritage value and provide a policy for same.



3. Representation in respect of Departmental Guidance on Landscape Character Assessment

The Policy is Unsound in respect of Soundness Test: C3, C4, CE2 & CE3

Why is it unsound?

The Council has taken a decision not to carry out an up-to-date Landscape Character Assessment which would act as an evidence base and assist in decisions about designations, policies etc. (Technical Supplement 7 Natural Heritage). This does not meet the soundness test as laid out in the Development Plan Practice Note 6 for the following reasons;

Consistency tests

Soundness Test C3 requires "the Council to take account of...guidance issued by the Department". DAERA guidance on Landscape Character Assessment which is posted on the web-site and agreed with DFI, has not been followed. Nor has the DAERA advice to carry out up-to-date LCA given at the workshop for Councils in December 2017 been followed;

Soundness Test C4 requires the plan to have regard to other relevant plans...in "adjoining council's districts". Adjacent Councils have undertaken to carry out an up-to-date local LCA for their areas to act as an evidence base – therefore there will not be consistency across the boundaries.

Coherence and effectiveness tests

Soundness Test CE2 requires "strategy, policies and allocations..." to be "founded on a robust evidence base". An up-to-date Landscape Character Assessment has not been carried out, therefore there is no robust evidence base.

Soundness Test CE3 requires "clear mechanisms for ...monitoring". There are no mechanisms within the strategic plan for monitoring landscape capacity and change. Further, monitoring needs to be based on a robust evidence base of a local LCA which has not been undertaken.

Changes considered necessary to make sound: full & succinct information, evidence and supporting information

Carry out an up to date Landscape Character Assessment



4. Representation in respect of Policy DC11

The Policy is Unsound in respect of Soundness Test: C3

Why is it unsound?

Consistency tests

Soundness Test C3 requires the Council to take account of policy and guidance issued by the Department.

The wording below is from the Draft Countryside Policy Green and Active Working Group consultation, 'Policy GA17 Agriculture':

c) It will not have an adverse impact on the natural or built heritage (see explanatory note below)

This wording was removed from Policy DC11 – Agriculture

Explanatory note: Livestock Installations and Ammonia

Ammonia (NH₃) is a gas emitted into the air as a result of many farming activities such as the housing of livestock, the storage and spreading of animal manures and slurries and the use of chemical fertiliser. Air pollution related to ammonia, and the associated nitrogen deposition, is known to have a damaging impact on sensitive habitats, wider biodiversity and ecosystem resilience, as well as human health.

Agriculture is the dominant source of ammonia emissions, currently making up 94% of Northern Ireland's current emission levels. The majority of Northern Ireland's designated sites are exceeding their critical levels, the concentration at which environmental damage occurs. Increased (or more intensive) agricultural activities may further exacerbate this widespread issue.

A note on Permitted Development – Permitted Development (PD) rights for an agricultural building under 500m² can only be conferred if there is no significant effect on the environment. The relevant articles from the legislation pertaining to Natura 2000 sites is detailed below.

The Planning (General Permitted Development) Order (Northern Ireland) 2015 Permitted Development 3.—(1) Subject to the provisions of this Order and regulations 55 and 56 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995, planning permission is hereby granted for the classes of development described as permitted development in the Schedule.



Changes considered necessary to make sound: full & succinct information, evidence and supporting information

Wording should be included which states that impacts to natural heritage would have to be considered in relation to agricultural development: "It will not have an adverse impact on the natural or built heritage (see explanatory note below)"

Representation 5 in respect of Marine Policy and Legislation

The Policy is Unsound in respect of Soundness Test: C4

Why is it unsound?

Consistency Tests

DAERA, the Marine Planning Authority, finds Belfast City Local Development Plan 2035 – Draft Plan Strategy unsound. The following comments are provided in relation to the Soundness Consistency Test C4 'Has the plan had regard to other relevant plans, policies and strategies relating to the council's district or to any adjoining council's district?' contained in the Development Plan Practice Note 6.

The Draft Plan Strategy refers to a number of common environmental, social and economic considerations contained within the UK Marine Policy Statement (MPS) and this is welcomed. However, the focus upon the interaction and integration between the marine and terrestrial planning systems needs to be strengthened, given Belfast City Council area is one of many coastal councils in Northern Ireland whose policies and proposals will affect the marine area.

To improve integration between the planning systems it is strongly suggested that the Regional Policy Context of the Draft Plan Strategy includes narrative on the UK Marine Policy Statement and the Council's legal obligations under Section 8 and Section 58 of the Marine Act (Northern Ireland) 2013 (MANI) and the Marine and Coastal Access Act (MCAA) 2009 respectively. In particular, attention should be drawn to the physical overlap of the terrestrial and marine planning boundaries and the need to harmonise the Draft Plan Strategy with the UK MPS and any appropriate marine plan(s). This will facilitate more effective interaction and integration with the marine planning system, particularly on the land / sea interface.

We welcome the reference to the UK MPS within the policy provisions related to coastal development, in particular Policy LC 4, which states "Development proposals will also be assessed against the Marine Policy Statement and any marine plan".



Changes considered necessary to make sound: full & succinct information, evidence and supporting information

To ensure this statement aligns with the legal requirements under Section 8 and Section 58 of MANI and the MCAA, it is strongly suggested that this statement is amended to "Development proposals must also be in accordance with the UK Marine Policy Statement and any appropriate marine plan(s), unless relevant considerations indicate otherwise." You should also note that where decisions on proposals are not made in accordance with the UK MPS or any appropriate marine plan(s), you are required to state your reasons.

In addition, we would strongly encourage you to consider using this statement in other relevant policies contained in the Draft Plan Strategy, as this will ensure legal requirements are met and will further strengthen the interaction and integration with the marine planning system.

As mentioned above the Draft Plan Strategy refers to a number of common considerations contained within the UK Marine Policy Statement (MPS); such as climate change, water quality, flooding, telecommunications, ports; and this is generally welcomed. However, the marine aspect of many of these common issues needs consideration.

For example, the impacts from various development proposals on water quality is recognised throughout the Draft Plan Strategy, yet the marine aspect is missing. Policy ENV 1 Environmental Quality specifically appears to limit the consideration of water quality to inland water (paragraph 9.5.17). It is necessary that this text and other development proposals, recognise the impact on "transitional and coastal waters" as well as inland waters, particularly in relation to the Water Framework Directive, and the achievement of "good environmental status" and "good ecological status", rather than "good conservation status".

The general principle of the comments above also apply to the accompanying Sustainability Appraisal. It is noted that the effects on the marine area are primarily considered under the Natural Resources topic, and it is unclear how the other topics in the appraisal have considered the potential effects on the marine area in terms of the environmental, social and economic aspects.

Whilst, we have found the Draft Plan Strategy to be unsound, we hope these comments will assist you in strengthening the interaction and integration of your Plan with the marine planning system and in particular the UK Marine Policy Statement at this time.

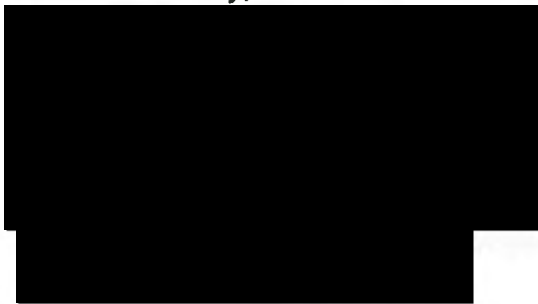
Standard Advice from Marine and Fisheries Division for District Councils is contained in Appendix 1.



**Other Comments for Information
Contaminated Land**

Part III of the Waste and Contaminated Land (Northern Ireland) Order 1997 (WCLO) sets out the legal provisions for the introduction of a Contaminated Land regime in Northern Ireland. The Order was introduced in 1997 but Part III has not yet been commenced. Should Part III of the WCLO be commenced then this may result in increased responsibilities for Belfast City Council, increased responsibilities which do not appear to have been fully reflected in this draft Belfast Plan Strategy. The absence of Part III of the WCLO and, specifically, an inspection strategy for land contamination places a limitation on the application of contaminated land directly into the LDP process; however Belfast City Council should be made aware of their potential future responsibilities when preparing their LDP.

Yours sincerely,



Department of Agriculture, Environment and Rural Affairs



Appendix 1

Advice for District Councils (terrestrial planning authorities):

For authorisation or enforcement decisions (development management):

When taking any 'authorisation or enforcement' decision relating to any act which affects or might affect the whole or any part of the marine area, Section 58 of the Marine and Coastal Access Act 2009 (MCAA) and Section 8 of the Marine Act (Northern Ireland) 2013, require that a public authority must make such decisions in accordance with both the UK Marine Policy Statement (UK MPS) and the Marine Plan for Northern Ireland (when adopted); unless relevant considerations indicate otherwise.

For District Councils, this means that, in taking a planning permission decision or making a decision in relation to a condition or enforcement, you, as the Public Authority, are legislatively required to ensure that that you do so, in accordance with, both the UK Marine Policy Statement (UK MPS) and the Marine Plan for Northern Ireland (when adopted). Both the UK MPS and the Marine Plan for Northern Ireland, are material considerations that must be considered alongside terrestrial planning policy contained within documents, such as, the Regional

Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).

If you do not make a planning decision in accordance with the UK MPS or the Marine Plan (when adopted) the legislation further requires you, as the Public Authority, to state your reasons.

It is important to note, that this applies to any decision relating to any act, which affects or might affect the whole or any part of the marine area, so will include for example, applications for planning permission that are not located near the coast, but which might impact on the marine area.

For other decisions (Local Development Plan preparation):

When taking any decision which relates to any function capable of affecting (or which might affect) the marine area, which is not an authorisation or enforcement decision, Section 58 of the Marine and Coastal Access Act 2009 (MCAA) and Section 8 of the Marine Act (Northern Ireland) 2013, require a public authority to have regard to the UK Marine Policy Statement (UK MPS) and the Marine Plan for Northern Ireland (when adopted).

This means that in the preparation of your Local Development Plan and all of its associated documents, you, as the Public Authority, are legislatively required to have regard to both the UK Marine Policy Statement (UK MPS) and the Marine Plan for Northern Ireland (when adopted). Careful attention must be paid to both



the UK MPS and the Marine Plan for Northern Ireland alongside terrestrial planning documents, such as, the Regional Development Strategy (RDS) and the Strategic Planning Policy Statement (SPPS).



