



## APPENDIX 10.1 LEGISLATION, POLICY & GUIDANCE

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The following legislation, policies and guidance were used to inform the chapters included within this ES.

### **Legislative Context**

#### ***Legislation***

The applicable legislative framework is summarised as follows:

#### **Control of Pollution Act (CoPA) (1974) (Ref. 10.1)**

The aim of the Act is to deal with a variety of environmental issues, including waste on land, water pollution, abandoned mines, noise pollution and the prevention of atmospheric pollution. Much of Part 1 of the Act on waste has been superseded and revoked by Part 2 of the Environmental Protection Act 1990.

The Control of Pollution Act (CoPA) 1974, Chapter 40 gives Local Authorities powers for controlling noise and vibration from construction sites and other similar works. These powers may be exercised either before works start or after they have started.

Section 60 of the CoPA enables a Local Authority (LA), in whose area work is going to be carried out, or is being carried out, to serve a notice of its requirements for the control of site noise on the person who appears to the LA to be carrying out the works and on such other persons appearing to the LA to be responsible for, or to have control over, the carrying out of the works.

#### **Health and Safety at Work Act 1974 (Ref. 10.2)**

The Health and Safety at Work Act 1974 (HASAWA) lays down wide-ranging duties on employers. Employers must protect the 'health, safety and welfare' at work of all their employees, as well as others on their premises, including temps, casual workers, the self-employed, clients, visitors and the general public. HASAWA is the primary piece of legislation covering occupational health and safety in Great Britain.

#### **Part 2A of the Environmental Protection Act (EPA) 1990 (Ref. 10.3)**

Part 2A of the *Environmental Protection Act 1990* provides a regime for the identification and remediation of contaminated land. This is implemented by the *Contaminated Land (Wales) Regulations 2006*, as amended by the *Contaminated Land (Wales) (Amendment) Regulations 2012*. This regime is designed to provide an effective statutory framework for the remediation

of contaminated land and is based on a number of principles, including the 'suitable for use' approach and the assessment of contamination by a risk-based approach.

Section 78A of Part 2A of the *Environmental Protection Act 1990* defines contaminated land as land that is in such a condition that: a) significant harm is being caused or there is a significant possibility of such harm being caused; or b) pollution of controlled waters is being or is likely to be caused.

The assessment of contamination risks is based on the source-pathway-receptor concept (referred to as a significant pollutant linkage). These terms are defined as follows:

- **Source:** A substance that is in, on or under the land and that has the potential to cause harm or to cause pollution of Controlled Waters;
- **Pathway:** A route or means by which a receptor could be, or is exposed to or affected by a contaminant;
- **Receptor:** In general terms, something (e.g. people, an ecological system, property or a water body) that could be adversely affected by a contaminant.

The 'pollutant linkage' describes the relationship between the source, the pathway and the receptor. Each component of the pollutant linkage has to be identified as being present before land can formally be considered 'contaminated'.

Additional statutory guidance has been issued on the interpretation and application of Part 2A that introduces additional concepts to assist in the assessment of potentially contaminated land, including consideration of 'normal' background contaminant levels and a scheme for categorising sites using a 4-tier system when undertaking Part 2A assessments. It also defines relevant ecological receptors requiring consideration as part of Part 2A contaminated land assessments, which are restricted to sites with recognised ecological status.

#### **Water Resources Act 1991 (as amended) (Ref. 10.4)**

The Water Resources Act 1991 applies to England and Wales; its purpose being to consolidate previous water legislation concerning water resources. It defines the responsibilities of the Environment Agency (then the National Rivers Authority) to prevent the pollution of watercourses and groundwater. The most notable legislation to amend this Act is the Water Act 2003.

### **Environment Act 1995 (Ref. 10.5)**

The Act provides for the establishment of a body corporate to be known as the Environment Agency, and in Scotland the Scottish Environment Protection Agency. To provide for the transfer of functions, properties, rights and liabilities to those bodies and conferring of other functions to them. The Act comprises Part 1 the Environment Agency and the Scottish Environmental Protection Agency, Part II Contaminated Land and Abandoned Mines, Part III National Parks, Part IV Air Quality and Part V Miscellaneous, General and Supplemental Provisions (e.g. waste, mineral planning permissions, hedgerows, drainage, fisheries etc.).

### **Nitrate Vulnerable Zones (England & Wales) Regulations 1998 (Ref. 10.6)**

These Regulations establish an action programmes for Nitrate Vulnerable Zones (NVZ) which were designated by the Protection of Water against Agricultural Nitrate Pollution (England & Wales) Regulations 1996. The Regulations implement the requirement to establish such a programme in Article 5 of Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources. Regulation 3 requires the occupier of a farm or livestock unit, all or part of, which is in a nitrate vulnerable zone to ensure that the action programme set out in the Schedule to the Regulations is implemented in relation to the farm or livestock unit or to that part of it which is in the NVZ.

These Regulations provide for monitoring of the action programme (regulation 6), for notices to be served requiring remedial action where there is, or has been, a contravention of the requirement in regulation 3 to ensure the action programme is implemented (regulation 4) and for a procedure to appeal against notices requiring remedial action (regulation 5). Breaches of regulations 3, 4 and 6 are criminal offences (regulation 8).

### **Pollution Prevention and Control Act 1999 (Ref. 10.7)**

The Environmental Protection Act 1990 introduced a regime of controlling industries which emit significant levels of pollution to all environmental media (air, land and water). This has now been superseded by a new regime under the Pollution Prevention and Control Act 1999.

The Health and Safety Executive, with local authorities (and other enforcing authorities) is responsible for enforcing the Act and a number of other Acts and Statutory Instruments relevant to the working environment.

### **Health and Safety at Work Regulations 1999 (Ref. 10.8)**

Management of Health and Safety at Work Regulations (MHSWR) 1999. The Regulations were introduced to reinforce the Health and Safety at Work etc Act 1974. The MHSWR places duties on employers and employees including those who are clients, designers, principal contractors or other contractors.

### **The Control of Substances Hazardous to Health (Amendment) Regulations 2002 (Ref. 10.9)**

This regulation provides a framework to help protect people in the workplace against health risks from hazardous substances. The substances may be used directly in the workplace (e.g. cleaning chemicals) or may arise from the work (e.g. dusts, fumes and waste products).

The Control of Substances Hazardous to Health (Amendment) regulations 2004 introduced changes to the COSHH Regulations (2002). The main changes to the Regulations surround the provision of a new framework for adequate control with the introduction of the eight principles of good control practice and the new Workplace Exposure Limits (WEL).

### **The Controls on Dangerous Substances and Preparations Regulations 2006 (Ref. 10.10)**

This regulation provides measures relating to persistent organic pollutants, dangerous substances, preparations and chemicals. This statutory instrument also places restrictions on the marketing and use of trichlorobenzene and certain polycyclic aromatic hydrocarbons in extender oils and tyres.

The Control of Dangerous Substances and Preparations (Amendment) Regulations 2007 come into force on the 30 June 2007.

The Regulations replace Schedule 1 of the Controls on Dangerous Substances and Preparations Regulations 2006, which sets out the table of substances, preparations and restrictions.

### **The Groundwater (England and Wales) Regulations 2009 (Ref. 10.11)**

The purpose of this regulation is to prevent the entry into groundwater of “hazardous substances” (defined as substances which are persistent, bio-accumulative or toxic) and the pollution of groundwater by “non-hazardous pollutants” (all other substances liable to cause pollution).



The offence of discharging pollutants which might lead to an indirect input of such matter to controlled waters unless carried out in accordance with an authorisation granted by the Environment Agency, originally established in the Water Resources Act 1991 and incorporated in the 1998 Groundwater Regulations, is carried over in this instrument.

Although the Regulations cover both 'direct' (directly into groundwater) and 'indirect' (after percolation through soil and strata) inputs of pollutants to groundwater, a discharge which leads to a direct input of such matter is already an offence under section 86 of the Water Resources Act 1991.

### **Control of Asbestos Regulations 2012 (Ref. 10.12)**

The Control of Asbestos Regulations (CAR) 2012 came into force on the 6th of April 2012, updating previous asbestos regulations to take account of the European Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC). From 6 April 2012, it was confirmed that some non-licensed work needs to be notified to the relevant enforcing authority. In practice the changes are fairly limited. They mean that some types of non-licensed work with asbestos now have additional requirements, i.e. notification of work, medical surveillance and record keeping. All other requirements remain unchanged.

In general, the Control of Asbestos Regulations aim to manage the risk from asbestos in workplace premises. The update of regulations further strengthen requirements to protect workers and others likely to be exposed to asbestos fibres arising from work with materials containing asbestos. They are also expected to reduce potential future deaths from asbestos related diseases. Most of the duties are placed on employers; for example, to assess work which could expose employees to asbestos fibres and have measures in place to prevent or reduce such exposure.

But there are duties on others, such as the duty placed on those in control of non-domestic premises to manage asbestos in those premises. The Regulations also prohibit the import, supply and use of materials containing asbestos.

### **The Contaminated Land (Wales) (Amendment) Regulations 2012 (Ref. 10.13)**

These Regulations, which extend to Wales only, make provision for certain aspects of a new scheme under Part IIA of the Environmental Protection Act 1990 ("the 1990 Act") for the remediation of contaminated land. Regulation 2(2) amends the circumstances set out in regulation 3(b) (pollution of controlled waters) of the 2006 Regulations in which

contaminated land affecting controlled waters is required to be designated as a special site. The amendment takes account of protected areas under Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (OJ No L327, 22.12.00, p.1). Regulation 2(2) also amends regulation 3(c) (pollution of controlled waters) of the 2006 Regulations to take account of the updated definition of "controlled waters" in section 78A(9) of the Environmental Protection Act 1990 (c. 43).

Regulation 2(3) limits the application of regulation 11 (modification of a remediation notice) of the 2006 Regulations to appeals commenced prior to 6 April 2012. In relation to those appeals, regulation 11 provides that, prior to the Welsh Ministers modifying a remediation notice in a way which would be less favourable to the appellant or any other person on whom that notice was served, the Welsh Ministers are required to notify those persons, and to permit them to make representations and to be heard in relation to the proposed modification.

Regulation 2(4) amends Schedule 2 to the 2006 Regulations to reflect the changes brought about by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), which transferred the functions of the Lands Tribunal to the Upper Tribunal and abolished the Lands Tribunal. Regulation 2(4) also amends paragraph 6(4) of Schedule 2 to the 2006 Regulations to remove references to the repealed section 2 of the Land Compensation Act 1961 (c. 33) and to provide for the appropriate application of particular references.

### **Construction (Design & Management) Regulations 2015 (Ref. 10.14)**

The CDM Regulations 2015 are the main set of regulations for managing the health, safety and welfare of construction projects. CDM applies to all building and construction work and includes new build, demolition, refurbishment, extensions, conversions, repair and maintenance.

### **Planning (Wales) Act 2015 (Ref. 10.15)**

The Planning (Wales) Act ('The Act') is a set of provisions derived from an extensive evidence base and stakeholder engagement that will provide a modern legislative framework for the operation of the planning system. It puts in place delivery structures, processes and procedures, to make the planning system fit for the 21st Century. Taken together the provisions will allow the planning system to support the delivery of national, local and

community aspirations by creating sustainable places where citizens have improved access to quality homes, jobs and built and natural environments and supports the use of the Welsh language.

### *National Development Framework*

The Act provides a statutory requirement for the Welsh Ministers to prepare and keep up to date a national land use plan to be known as the National Development Framework (NDF). Existing legislation relating to the preparation of the Wales Spatial Plan (WSP) will be revoked. The NDF will fulfil the following principal roles:

- setting out the Welsh Government's land use priorities by identifying key locations to accommodate change and infrastructure investment;
- providing a national land use framework for Strategic Development Plans (SDPs) and LDPs;
- co-ordinating and maximising the potential benefits arising from investment, and
- providing the development plan context for the Welsh Ministers to make decisions on Developments of National Significance (DNS).

The intended effect of the legislation is to put in place a national framework that identifies and integrates national policies and strategies relating to the development and land use. This will increase the effectiveness of national policies and strategies and provide direction and certainty for the preparation of SDPs (where produced) and LDPs. This will improve the efficiency of the planning system, making it easier to prepare local planning authority plans and reduce competition between areas by identifying areas for growth.

### *Strategic Planning*

Increased personal and business mobility mean that choices about where to live and invest no longer respect local planning authority boundaries. This creates challenges when preparing LDPs, particularly where housing markets and travel to work areas cross a number of local planning authority areas.

The intended provisions provide a legal framework for the preparation of SDPs where they would improve the operation of the planning system. This will allow larger than local issues such as housing demand, search areas for strategic employment sites and supporting transport infrastructure, which cut across a number of local planning authorities, to be

considered and planned for in an integrated and comprehensive way. Where SDPs are prepared, the complexity and repetition currently contained in individual LDPs will be reduced resulting in faster preparation and lower costs.

The effect of the provisions will be to ensure that cross boundary planning matters are properly addressed, with a formal SDP replacing any voluntary approach. It will be a more efficient approach, avoiding repetition and ensuring consistency of delivery at the local level. Where an SDP covers an LDP area, the LDP should be rationalised so that it only focuses on local matters, particularly site specific allocations, in accordance with the scale and location of growth set out in the SDP. Issues such as the overall level of housing, employment and retail provision will have already been addressed and do not need to be repeated. This should result in a much slimmer LDP in scope and content. Where significant cross boundary strategic issues are absent, there is no need for an SDP the LDP and NDF will provide the statutory planning framework for the area.

#### *Local Development Plan*

Local planning authorities have a statutory duty to prepare and keep under review an LDP. The legislative requirements are contained in sections 62 – 78 of the Planning and Compulsory Purchase Act 2004. LDPs provide the mechanism for communities, their elected representatives, developers and other interested organisations and individuals to decide, based on available evidence, how places should change in the future. Plans provide the basis for rational and consistent decisions on planning applications and appeals.

The combined effect of the provisions is to ensure that development plans are prepared as quickly as possible for appropriate areas. This could include the need to prepare an LDP covering a whole housing market area, allowing the most suitable sites to be identified. The provisions will also help to ensure that plans are kept up to date; setting out a clear vision on how areas will change in the future and provide a firm basis for rational and consistent decisions on planning applications and appeals. Up to date development plans will provided certainty for communities and businesses allowing investment to take place.

#### **The Well-being of Future Generations (Wales) Act 2015 (Ref 10.16)**

The Well-being of Future Generations (Wales) Act 2015 ('the Act') gives a legally-binding common purpose – the seven well-being goals – for national government, local government,

local health boards and other specified public bodies. It details the ways in which specified public bodies must work, and work together to improve the well-being of Wales.

The Act provides for better decision-making by ensuring that those public bodies take account of the long-term, help to prevent problems occurring or getting worse, take an integrated and collaborative approach, and considers and involves people of all ages. This supports existing commitments such as the Welsh language, equalities and the UN Convention on the Rights of the Child.

Together, the seven well-being goals and five ways of working provided by the Act are designed to support and deliver a public service that meets the needs of the present without compromising the ability of future generations to meet their own needs.

### **The Environment Wales Act 2016 (Ref 10.17)**

The Environment Wales Act received Royal Assent on 21 March 2016. It delivers against Welsh Government's Programme for Government commitment to introduce new legislation for the environment. This positions Wales as a low carbon, green economy, ready to adapt to the impacts of climate change.

The act will mean significant economic, social and environmental benefits for Wales. It has been carefully designed to support and complement work to help secure Wales' long-term well-being, so that current and future generations benefit from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

### **Water Environment (Water Framework Directive) (England & Wales) Regulations 2017 (Ref. 10.18)**

The 2017 Regulations consolidated the 2003 Regulations, which had been amended a number of times, and making the aspects of the Regulations more detailed and transparent. The WFD introduced a comprehensive river basin management planning system to protect and improve the ecological and chemical health of our rivers, lakes, estuaries, coastal waters and groundwater.

### **Water Supply (Water Quality) (Amendment) Regulations 2018 (Ref. 10.19)**

These Regulations amend the Water Supply (Water Quality) Regulations 2016 (S.I. 2016/614) ("the 2016 Regulations"). The amendments principally implement the requirements of Commission Directive (EU) 2015/1787 which amended Council Directive 98/83/EC on the

quality of water intended for human consumption. The purpose of those amendments is to align the principles applying in the EU in respect of risk-based sampling and analysis of drinking water with those of the World Health Organisation.

The Regulations in particular update the requirements for monitoring programmes put in place by suppliers of drinking water, which set minimum sampling frequencies in respect of particular parameters in water intended for human consumption. The Regulations also introduce a new risk assessment approach. Where the criteria of that approach are met, suppliers of drinking water are permitted to reduce the frequencies for the sampling and analysis of water. Further, the Regulations provide the specifications for the methods of analysis of certain parameters and performance characteristics of all parameters.

### **The Environmental Permitting (England and Wales) (Amendment) (EU EXIT) Regulations 2018 (Ref. 10.20)**

The EPR 2016 establish a cross-cutting environmental permitting and compliance system in England and Wales. The EPR 2016 are a framework, through which the permitting requirements of more than twenty EU Directives (in whole or part), and some domestic legislation, are implemented in England and Wales. The EPR 2016 ensure that relevant permitting requirements are delivered via conditions in environmental permits and give regulators the power to ensure compliance with those conditions.

The European Union (Withdrawal) Act 2018 (“EUWA 2018”) converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU.

This instrument is being made in order to ensure the legal functioning of the EPR 2016 after EU exit. The EPR 2016 transpose a large number of EU Directives. The EPR 2016 contain many references to EU Directives and also to the UK’s obligations as a Member State. These will no longer function after we cease to be a Member State and need correction to make the reference legally correct for future purposes.

The main change is the insertion of a new Schedule (Schedule 1A) into the EPR 2016. This new Schedule contains modifications of the various EU Directives transposed by the EPR 2016. It modifies the effect of the EU Directives, cross-referred to in the EPR 2016, so that the cross-references continue to work after EU exit.

## **The Environmental Damage (Prevention and Remediation) (Wales) (Amendment) (EU Exit) Regulations 2019 (Ref. 10.21)**

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018 (c. 16), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

These Regulations make amendments to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009.

### ***Planning Policy***

#### *National Policy*

#### ***Planning Policy Wales Edition 10 (2018) (Ref 10.22)***

Planning Policy Wales (PPW) sets out the land use planning policy of the Welsh Government. It is supplemented by a series of Technical Advice Notes (TANs), Welsh Government Circulars, and policy clarification letters, which together with PPW provide the national planning policy framework for Wales.

The primary objective of the PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales as required by the Planning (Wales) Act 2015, The Well Being of Future Generations (Wales) Act 2015 and other key legislation.

PPW promotes action at all levels of the planning process which is conducive to maximising its contribution to the well-being of Wales and its communities. It encourages a wider, sustainable and problem-solving outlook which focuses on integrating and addressing multiple issues rather than on an approach which is fragmented, un-coordinated and deals with issues in isolation. It provides an opportunity to remove any actual or perceived problems in current approaches and stimulate and support innovative and creative ideas as well as high standards of evidence and assessment to underpin the preparation of development plans and strategies and individual proposals. Monitoring and learning from development outcomes so as to drive sustainable improvements in planning practice is also important.

- *Previously Developed Land*

Previously developed (also referred to as brownfield) land (PDL) should, wherever possible, be used in preference to greenfield sites where it is suitable for development. In settlements, such land should generally be considered suitable for appropriate development where its re-use will promote sustainability principles and any constraints can be overcome.

Planning authorities should work with landowners to ensure that suitably located previously developed sites are brought forward for development and to secure a coherent approach to their development. To incentivise the appropriate re-use of previously developed land, planning authorities should take a lead by considering and identifying the specific interventions from the public and/or private sector necessary to assist in its delivery. This will normally support regeneration initiatives and land allocations in development plans and will include the need to raise awareness of risks as part of an effective de-risking strategy. This approach will inform the development of appropriate risk assessments and remediation strategies at the application level intended to safeguard new developments from the health and environmental risks arising from past land uses, such as contamination, old mine workings or former landfill sites.

- *Land Contamination*

Opportunities offered by the planning system to address land contamination should be maximised as part of its preference for the use of PDL. Whenever development or re-development potential exists the planning system will be the preferred means of addressing potential land contamination.

There are two areas of interface between the planning system and the contaminated land regime. The first is where land is already designated as contaminated land under Part IIA and the owner wishes subsequently to develop the land. The second will be where a development proposal may introduce changes to a site which may result in land potentially meeting the definition of contaminated under Part IIA, where such land would not be considered contaminated in its existing state under the provision of the regime. In both circumstances, the onus will remain with the developer to ensure that the development of the site will remove any unacceptable risks and the planning authority in making development management decisions will need to ensure that the land is suitable for its proposed use and would not meet the legal definition of contaminated land under Part IIA.

Where land contamination issues arise, the planning authority will require evidence of a detailed investigation and risk assessment prior to the determination of the application to

enable beneficial use of land, unless it can already be established that remedial measures can be employed. Where it is known that acceptable remedial measures can overcome contamination, planning permission may be granted subject to conditions specifying the necessary measures and the need for their implementation, including provision for remediating any unexpected contamination which may arise during construction. If contamination cannot be overcome satisfactorily, the authority may refuse planning permission.

- *Renewable and Low Carbon Energy*

Planning authorities should facilitate all forms of renewable and low carbon energy development. In doing so, planning authorities should seek to ensure their area's full potential for renewable and low carbon energy generation is maximised and renewable energy targets are achieved.

Planning authorities should support and guide renewable and low carbon energy development to ensure their area's potential is maximised. Planning authorities should assess the opportunities for renewable and low carbon energy in the area, and use this evidence to establish spatial policies in their development plan which identify the most appropriate locations for development. There should be a presumption in favour of development in identified areas, including an acceptance of landscape change, with clear criteria-based policies setting out detailed locational issues to be considered at the planning application stage.

Outside identified areas, planning applications for renewable and low carbon energy developments should be determined based on the merits of the individual proposal. The local need for a particular scheme is not a material consideration, as energy generation is of national significance and there is a recognised need to optimise renewable and low carbon energy generation. Planning authorities should seek to ensure their area's renewable and low carbon energy potential is achieved and have policies with the criteria against which planning applications outside of identified areas will be determined.

- *Physical Ground Conditions and Land Instability*

The development of greenfield sites or the intensification of development in areas already developed can result in instability which may affect both the development itself and the land surrounding it.

When considering development proposals planning authorities should take into account the nature, scale and extent of ground instability which may pose direct risks to life and health, buildings and structures, or present indirect hazards associated with ground movement, including mine entry collapse, which provide potential pathways for the migration to the surface of landfill or mine gases. Slopes, embankments, cuttings and underground cavities can themselves be put at risk from inappropriate neighbouring development and, where relevant, land stability should be addressed, and appropriate mitigation measures secured to protect both existing assets and proposed development itself.

Made ground, the presence of tips and shallow coal workings are extensive in some parts of Wales and their proximity to the surface could present potential instability risk to future development. Information on shallow working has been published by the Coal Authority, alongside data on mine entries, adits and surface hazards.

Planning decisions will need to take into account:

- the potential hazard that instability could create to the development itself, to its occupants and to the local environment; and
- the results of a specialist investigation and assessment by the developer to determine the stability of the ground and to identify any remedial measures required to deal with any instability.

#### *Local Policy*

#### ***Powys Local Development Plan (LDP) 2011-2026 (Ref 10.23)***

The Local Plan sets out the Council's vision, objectives, policies and proposals for the sustainable development and use of land in Powys for the 15-year period 2011-2026. It covers all of Powys except those parts of Powys covered by the Brecon Beacons National Park.

The Powys LDP sets out the guiding principles for development and land use over the plan period. It replaces the adopted Powys Unitary Development Plan (DP), 2010 and becomes the basis for making decisions on planning applications.

- *Policy RE1: Renewable Energy*

Proposals for renewable and low carbon energy development will be permitted subject to the following criteria:



- Within or close to the Strategic Search Areas (SSAs), proposals for wind energy greater than 25MW will be permitted subject to criteria 3 to 5; all other proposals for renewable and low carbon energy will only be permitted where they can demonstrate they would not prejudice the purpose of the SSA.
- Within the Local Search Areas (LSAs), proposals for solar PV between 5 – 50MW will be permitted subject to criteria 3 to 5; all other proposals for renewable and low carbon energy will only be permitted where they can demonstrate they would not prejudice the purpose of the LSA.
- Proposals for all types of renewable and low carbon energy development and associated infrastructure either on their own, cumulatively or in combination with existing, approved or proposed development, shall comply with all other relevant policies in the LDP.
- Satisfactory mitigation shall be in place to reduce the impact of the proposal and its associated infrastructure. Proposals shall make provision for the restoration and after-care of the land for its beneficial re-use.
- Where necessary, additional compensatory benefits will be sought by agreement with applicants in accordance with Policy DM1 - Planning Obligations.

The County Council is responsible for determining planning applications for energy generating proposals of less than 10MW; Welsh Government for proposals between 10-350MW; and UK Government for larger proposals. Further guidance is set by PPW, TAN 8 and National Policy Statements.

The County Council has not refined Strategic Search Areas in the LDP, but the Mid Wales Conjoined Public Inquiry has left a large body of evidence in relation to SSAs. Wind energy proposals greater than 25MW will only be acceptable within or close to the boundaries of SSAs; acceptable sites close to SSAs will be those that provide robust evidence that the land is suitably unconstrained in line with TAN 8.

To inform policy development, the Council prepared a renewable energy assessment (REA), updated in 2017, utilising the method set out in Welsh Government's 'Planning for Renewable and Low Carbon Energy – A Toolkit for Planners' (September 2015). The REA undertook a high-level strategic assessment of the potential for different scales of renewable and low carbon energy generation across the plan area based on a defined set of assumptions for each type of renewable energy resource. At the Local Authority-wide scale of renewable electricity energy generation, the REA concluded that solar PV energy was the only renewable energy resource for which it was possible to identify Local Search Areas (LSAs). The solar LSAs were identified by

applying a series of constraints and the resulting areas were further reduced in number by a Landscape Sensitivity Study. They are shown on the LDP proposals and inset maps, and listed in the table below. By following the Toolkit and applying a series of assumptions, LSAs are considered to be the least constrained areas of the County within which it may be possible for solar PV farms of the Local Authority-wide scale to be accommodated.

In order to determine whether a particular site within an LSA is acceptable for a solar PV farm, further site specific assessments and information will be required at the planning application stage. This reflects the strategic nature of LSAs and recognises that, whilst the LSAs are generally the 'least-constrained' parts of Powys in terms of the assumptions applied, they are not without site specific constraints. Also, it will be necessary for all proposals to comply with other legislation and regulations such as those in respect of common land or the Habitats Directive.

- *Policy DM10 – Contaminated and Unstable Land*

*Development proposals on contaminated or unstable land will be permitted where they do not:*

- 1. Result in any additional problems of ground instability or contamination either on or off site and shall remediate the contamination / instability.*
- 2. Unacceptably adversely affect public health and safety, nature conservation, historic or archaeological interests.*

*Contamination and land instability can present risks to human health, property and the environment, and long term limitations on the use of soils. For further information and advice refer to PPW Chapter 13. Development proposals will be assessed to ensure that any risks from hazards such as subsidence, mine and landfill gas and leachate emissions, landslips or rockfalls are acceptable and addressed.*

*Ground instability is often associated with sites that have been the subject of waste disposal operations or areas where past mineral workings have taken place. Consultation will be undertaken with the Mineral Valuer / Coal Authority on appropriate applications to assess the extent of risk to the development from former mineral workings. In accordance with MTAN 2, Para. 228, development proposals within areas of coal mining legacy will be required to give full consideration to coal mining information and, where necessary, implement mitigation measures to the satisfaction of the Local Planning Authority to ensure the safety and stability of new development. Any intrusive activities which intersect, disturb or enter any coal seams, coal mine workings or coal mine entries require the prior written permission of the Coal Authority.*



*Responsibility for determining the extent and effects of instability, contamination and other risks lies with the developer, who must ensure that land is suitable for the development proposed. Once contaminated land has been remediated the developer must submit a validation report to the Council confirming that the land is no longer contaminated; this will allow the Council's records to be updated.*

#### Supplementary Planning Guidance (SPG)

The Local Development Plan is being supported by a set of guidance documents called Supplementary Planning Guidance to assist in the understanding, interpretation and application of certain LDP policies in making planning decisions.

SPG must be clearly linked to the policies outlined within the LDP and must be consistent with the LDP and with national planning policy.

## **Guidance**

The applicable guidance is summarised as follows:

### **CIRIA C552 “Contaminated Land Risk Assessment: A Guide to Good Practice” (CIRIA, 2001) (Ref. 10.24)**

The Contaminated Land Risk Assessment: A Guide to Good Practice book sets the context of the risk assessment process within an overall risk management approach. The overall risk management process involves identifying and making decisions concerning risks and subsequent implementation of these decisions. The report describes the stages involved in identifying risks and assessing their significance but stops short of describing remedial actions that might be taken to manage the risk.

### **Guidelines for Environmental Risk Assessment and Management (DEFRA, 2011) (Ref. 10.25)**

Green Leaves III is the latest edition of the Government’s Guidelines for Environmental Risk Assessment and Management. The framework provides generic guidelines to policy and regulatory staff in Government and its agencies, in the principles of managing environmental risks. The document focusses on generic principles rather than domain-specific risks, such as river flooding, animal disease or hazardous waste.

### **Model Procedures for the Management of Land Contamination (DEFRA, 2004) (Ref. 10.26)**

The Model Procedures for the Management of Land Contamination sets out a technical framework intended for the structured decision making about land contamination. The procedures are intended to assist all those involved with managing the land, in particular landowners, developers, industry, professional advisors, finance service providers, planners and regulators. It describes a technical framework for applying a risk management process to land affected by contamination and has three main components. These consist of risk assessment, options appraisal and implementation.

### **Groundwater Protection: Policy and Practice (Environment Agency, 2013) – Withdrawn (Ref. 10.27)**

The Environment Agency publication ‘Groundwater Protection: Policy & Practice’ (2013) (GP3) sets out a framework for the regulation and management of groundwater and summarises policy for the protection of groundwater resources. It also describes the requirements of the Water Framework Directive (2000/60/EC), which provides an overarching system for the protection of all inland and coastal waters.

### **Guiding Principles for Land Contamination (Environment Agency 2010) (Ref. 10.28)**

The Environment Agency publication 'Guiding Principles of Land Contamination' (2010) provides general guidance for the problem holder, expert advisors and consultants and aims to offer guidance to help them fulfil their responsibilities on contaminated land. The key aims of the guidance are to:

- Help clarify roles and responsibilities;
- Encourage good practice to promote compliance with regulatory requirements, or avoid the need for regulation;
- Provide authoritative guidance and advice in other documents.

### **British Standard 5930 (2015) The Code of Practice for Site Investigation (Ref. 10.29)**

The British Standard 5930 (2015) provides recommendations for the investigation of sites on assessing their suitability for construction of civil engineering works and building works. The standard gives recommendations on acquiring knowledge of the characteristics of a site that could affect the design and construction of such work. The British standard provides guidance on the application of BS EN 1997-1 and BS EN 1997-2 and the related test standard mentioned within.

### **British Standard 10175 (2017) Investigation of Potentially Contaminated Sites – Code of Practice (Ref. 10.30)**

Contaminated land contains harmful chemicals in quantities that present a risk or a potential risk to human health or the environment. When land is legally defined as 'contaminated' there's a legal obligation to ensure it doesn't present a risk to health or the environment.

The UK Government's long-term aim is to work towards a future where all the potentially contaminated land in England and Wales has been identified, assessed, and made safe. Therefore, this standard was created to provide recommendations and guidance on how to investigate potentially contaminated land, or land with naturally elevated concentrations of potentially harmful substances, to determine or manage any risks.

This Standard is used by those with an understanding of the risk based approach to the assessment of sites as described in the Model Procedures for the Management of Land Contamination (CLR 11).

Its recommendations and guidance are intended to ensure that the objectives of an investigation are achieved and that appropriate data for risk assessment are obtained. Note though that it's not feasible to provide detailed guidance for every possible investigation scenario.

The results of the investigation also ought to delineate all known aspects of the site that could impinge upon or affect source-pathway-receptor scenarios defined within the conceptual model.

### **The National Planning Practice Guidance (NPPG) (2014) (Ref. 10.31)**

The NPPG) is a web-based resource which brings together planning guidance on various topics into one place. I

t was launched in March 2014 and coincided with the cancelling of the majority of Government Circulars which had previously given guidance on many aspects of planning. It is important to note that the guidance is exactly that, guidance, and should not be seen as representing Government policy.

### **Normal Background Concentrations of Contaminants in Soil (BGS, 2012) (Ref. 10.32)**

The BGS was commissioned by DEFRA to give guidance on what are normal levels of contaminants in English soils in support of the revision of the Part 2A Contaminated Land Statutory Guidance. The first phase of the project gathered soil data sets that were: nationally extensive; systematically collected so a broad range of land uses were represented; and collected and analysed to demonstrably and acceptable levels of quality.

The second phase of the project explored the data, focusing on contaminant spatial variability and population distributions with the aim of investigating whether normal levels of contaminants could be quantified as normal background concentrations (NBCs). A robust statistical methodology was developed in the third phase of the project to deliver values for contaminant domain NBCs. This is based on a study of a contaminant's population distribution.

### **National Quality Mark Scheme (NQMS) for Land Contamination Management (2017) (Ref. 10.33)**

The National Quality Mark Scheme for Land affected by Contamination (NQMS) is a scheme that has been developed by the National Brownfield Forum (formerly Land Forum) to provide

visible identification of documents that have been checked for quality by a Suitably Qualified and experienced Person (SQP). It will provide increased confidence and improved quality of submissions made under regulatory regimes, particularly planning applications, related to previously used land.

The NQMS is a system designed by the Land Forum to ensure that land contamination management work meets the necessary technical and regulatory standards. It applies in particular to the presentation of environmental information to the regulator in the form of reports setting out both factual and interpretative information.

**Groundwater Protection Technical Guidance (Environment Agency, 2017) (Ref. 10.34)**

Up to date guidance for groundwater specialists explaining direct inputs, discernibility and permanently unsuitable.

<https://www.gov.uk/government/publications/groundwater-protection-technical-guidance>

**Contaminated Land Pages on GOV.UK (Ref. 10.35)**

<https://www.gov.uk/contaminated-land>