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Dear Sirs,

### **Colchester Local Plan**

1. We are writing from the Environmental Law Foundation, a legal charity that assists communities with environmental problems. We are writing on behalf of Mr Graham Farley, a resident of West Mersea on Mersea Island. He has been working with ELF for over 10 years and is part of the Mersea Island Environmental Alliance (MIEA) and the West Mersea Town Council (WMTC) Local Plan working group. He has been fighting to protect the environment and unique ecology of the island.
2. We write to express Mr Farley's concern regarding the proposed residential development on Mersea Island (Policy PP23) identified in the forthcoming Colchester Local Plan Review. As recognised by the Council in its Local Plan evidence base, this development (as with all development on Mersea Island) will be served by the West Mersea Water Recycling Centre (WRC), which discharges into the Blackwater, Crouch, Roach, and Colne Estuaries Marine Conservation Zone (MCZ) and the Essex Estuaries Special Area of Conservation (SAC).
3. We wish to draw the Council's attention to the advice provided by Natural England in February 2025 in respect of the local plan, which we set out below:

*We are keen to ensure that the Local Plan is able to evidence adequate sewage treatment infrastructure / Water Recycling Centre (WRC) capacity to serve new development without increasing the nutrient and pollutant load of WRC final effluent discharges and adverse impact to sensitive designated sites including Essex Estuaries Special Area of Conservation (SAC) and Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone (MCZ).*

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4. For reasons set out in further detail below, we do not consider that PP23 in its current form reflects this advice. We urge the Council to reconsider Policy PP23, and in particular, to ensure that any allocations policy on Mersea Island is accompanied by evidence that there will be adequate sewage treatment infrastructure to serve the new development without increasing nutrient and pollutant load of the WRC final effluent discharges and without resulting in an adverse impact to sensitive designated sites including Essex Estuaries Special Area of Conservation (SAC) and Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone (MCZ).

### **AECOM Colchester Water Cycle Study ('WCS') (July 2025)**

5. The AECOM WCS contains the following information:
  - a. West Mersea WRC is hydrologically connected to the Essex Estuaries SAC (**p.52**)
  - b. Discharge from West Mersea WRC is also indirectly linked to the West Mersea designated Bathing Water and the designated Shellfish Waters of the Colne, Pyefleet, Strood, Salcott Channel, Blackwater and Dengie (**p.52**)
  - c. West Mersea WRC has been identified as having a very significant risk related to the planning objective of managing storm overflows, indicating there is a sewer spill risk in the catchment, which is linked to Bathing Waters compliance (**p.53**)
  - d. The allocated sites [on Mersea Island] are located in an area of Colchester City Council which eventually drains to the Blackwater Outer WFD Coastal Water Body. Surface water runoff from these sites has the potential to influence water quality within this WFD water body. The West Mersea WRC, which would treat wastewater from these sites, also discharges to this water body (**p.78**)
  - e. The [Blackwater Outer WFD Coastal Water Body] is failing to meet Good Status, in part due to Nitrogen levels being less than Good Status. The Essex Gravels groundwater body (which underlies some parts of West Mersea) also has a Poor overall status, due to Poor chemical status. This [the status of these water bodies] highlights the need for developments in this growth area to manage surface water through the provision of SuDS with a focus on managing water quality. (**p.78**)
2. The WCS also contains the following recommendations:
  - a. Managing the pollutant load through a new discharge permit and implementation of improvements to the discharge quality from West Mersea WRC such that there is no change in overall pollutant load would ensure that there is no impact on the Essex Estuaries SAC, the West Mersea designated Bathing Water and the designated Shellfish Waters of the Colne, Pyefleet, Strood, Salcott Channel, Blackwater and Dengie (**p.52**)

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- b. Solutions such as (i) a SuDS strategy within the WRC drainage network in the medium term, coupled with (ii) a 25% water removal by 2050 are required to ensure sufficient sewer network connectivity capacity as well as manage water quality of discharges connected to Bathing Water and Shellfish Water (**p.53**)
  - c. There should be a policy for allocated development in these settlements that prevents surface water generated from the sites being discharged to the foul sewer network (**p.53; p.78**)
  - d. SuDS should be built to the updated national SuDS standards to attenuate surface water runoff for flood risk purposes and be expected to manage, and where possible improve water quality, particularly nutrient discharge (**p.78**)
3. In other words, the Council's own evidence base identifies a "very significant risk" in relation to storm overflows and sewer spill risk and recognises a hydrological connection to the Essex Estuaries SAC, in addition to indirect links to bathing and shellfish waters. The WCS also recommends that the pollutant load is managed through solutions such as a new discharge permit, improvements to discharge quality, a policy preventing surface water being discharged into the foul sewer drainage network and where possible, improvement of water quality particularly nutrient discharge.
4. Not one of these recommendations is taken forward in PP23.

#### **LUC Habitats Regulations Assessment ('HRA') (February 2025)**

5. It is clear from the HRA that it is only if the recommendations outlined in the WCS Technical Note are incorporated within the Local Plan policy and implemented successfully, that the impacts of proposed growth and potential for water quality impacts as a result of water treatment and discharge on Habitats Sites can be concluded as not having adverse effects on integrity ('AEoI') (**Conclusion, p.142**).
6. However, the recommendations from the WCS Technical Note are not incorporated within PP23. For example, PP23 does not contain a policy prevents surface water generated from the site being discharged into the foul sewer network. Policy EN8, to which PP23 refers, does not require this. Nor does PP23 include a requirement for a new discharge permit and implementation of improvements to the discharge quality from West Mersea WRC such that there is no change in overall pollutant load. Whilst PP23(k) refers to the need to demonstrate "adequate capacity for managing wastewater", it would appear that this criterion could be satisfied in circumstances where there is capacity for new dwellings in terms of wastewater treatment, notwithstanding the risk of sewer outfall discharges increasing (cf. 8.14.1 and 8.14.2 of the WCS, p.78). As such, this provides no protection from the real and identified very significant risks currently associated with further development on Mersea Island.

7. The reason for the apparent failure within PP23 to address the particular risks associated with increased development on Mersea Island appears to stem from inadequacies in the Council's HRA: the HRA only appears to assess the potential impacts from WRCs identified to be at risk of water quality non-compliance due to future capacity exceedance. It does not consider WRCs, such as West Mersea WRCs, which are hydrologically linked to several designated waters, and which the WCS advises as requiring the management of pollutant load the pollutant load through a new discharge permit and implementation of improvements to the discharge quality. Rather it appears that where a WRC has capacity within its existing permit to manage wastewater from new dwellings, no further assessment is undertaken in respect of those WRCs.
8. The HRA refers to direct pollution / run off that could impact the Colne Estuary SPA and Ramsar site and Essex Estuaries SAC, as a result of hydrological connectivity between upstream allocation sites and downstream Habitats Sites (5.112). Upon identifying this potential pollution risk, the HRA then states that Policy EN1 and EN9 “will provide safeguarding and mitigation”. However:
  - a. Policy EN1: Nature Conservation Designated Sites provides that “*Development proposals that have adverse effects on the integrity of habitats sites or Sites of Special Scientific Interest, either alone or in-combination, will not be supported.*” However, where, as here, development in accordance with an allocations policy PP23 would result in such effects, this creates a conflict between two Local Plan Policies, which then appear to pull in different ways.
  - b. Policy EN9: Pollution and Contaminated Land provides that proposals will not be supported where they result in an “*unacceptable risks to public health or safety, the environment, general amenity, or existing uses due to the potential of air pollution, light pollution, noise nuisance, surface / ground water sources or land pollution*”. This does not protect against risks to designated sites from increased discharges from storm overflows. Nor is it clear what “unacceptable” would mean in this context.
9. As such, there is considerable uncertainty whether the potential for pollution / run-off to designated sites will be mitigated by EN1 and EN9 if PP23 remains in its current form.

## Place Services Emerging Allocations Biodiversity Assessment (November 2024)

10. As for the Emerging Allocations Biodiversity Assessment, this appears to contain several errors and is therefore unreliable or at the very least, inconsistent with the other evidence presented by the Council.
11. The 'Harm Scoring' (**para. 1.7, p.3**) defines 'harm' as a site which is "*Ecologically connected to a statutory designated site; development has impact pathways that could have a negative impact on its features of interest*". Yet, despite the WCS confirming that the West Mersea WRC being "*hydrologically linked to the Essex Estuaries SAC*", and the need for management of the overall pollutant load "*to ensure that there is no impact on the Essex Estuaries SAC, the West Mersea designated Bathing Water and the designated Shellfish Waters of the Colne, Pyefleet, Strood, Salcott Channel, Blackwater and Dengie*", the Harm scoring for 10627 Land east of Dawes Lane, West Mersea records "*Little/no harm – the site has limited natural habitat value*". Moreover, the likely mitigation/compensation requirements for the Dawes Lane site refer to a "*low possibility of the site being functionally linked to the nearby estuary SSSIs*"; the strategic relevance is recorded as 'low' on the grounds that there is "*no connection to designated sites*" and the assessment does not record any factors that could suggest that more than a 10% net gain is necessary, on the basis that "*the potential for impacts is minimal*" (**p.40**).
12. Not only are the above statements inconsistent with the findings of the WCS, no regard appears to have been had to the connection between the proposed allocated site PP23 and the Essex Estuaries SAC and other designated sites, including the designated shellfish waters and the Blackwater, Crouch, Roach and Colne Estuaries MCZ.

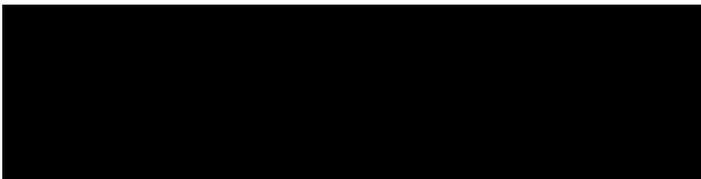
## LUC Sustainability Appraisal Report (February 2025)

13. The sustainability appraisal ('SA') correctly records that the site is within 1km of Blackwater Estuary SPA, Ramsar and SSSI (**para. 5.321, p.406**). However, no reference is made to the proximity to the designated shellfish waters of the Colne, Pyefleet, Strood, Salcott Channel, Blackwater and Dengie or the hydrological connection the West Mersea WRC has to the Essex Estuaries SAC. As such, the proposed ecological mitigation measures – namely, enhancement of retained grassland, delivering of standing freshwater habitat to support the Essex LRNS and requirements for development to avoid impacts on overwintering birds – fail to provide any mitigation to the risks identified in the WCS Technical Note in terms of the potential impacts on the Essex Estuaries SAC, the MCZ and the designated shellfish waters.

## Conclusion

14. It follows from the above that whilst the AECOM WCS correctly identifies the real risks associated with development at PP23, such risks do not appear to have been properly assessed in the HRA, the Emerging Allocations Biodiversity Assessment or the Sustainability Appraisal.
15. Even more concerning is the absence of any reference in PP23 to the WCS recommendations for that site, notwithstanding the fact that the HRA concludes that there would only be no AEoI on Habitats Sites should these recommendations be incorporated within the Local Plan policy.
16. It follows, therefore, should PP23 continue in its current form, this will likely result in AEoI on Habitats Sites, such as the Essex Estuaries SAC, notwithstanding the current apparent headroom at West Mersea WRC. There is also likely to be a worsening of the pollutant load of WRC final effluent discharges and resulting impacts on the Blackwater, Crouch, Roach and Colne Estuaries Marine Conservation Zone (MCZ) – contrary to Natural England's advice to the council in February 2025.
17. We urge the Council to therefore reconsider allocations policy PP23 and take into account the findings of the AECOM WCS when developing the Reg 19 version of the draft Local Plan. Should it fail to do so, we consider that the inconsistencies in the Council's evidence base, and the inadequacy of the HRA results in a real risk that the Local Plan would not be sound.

Yours sincerely,



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