

Flintshire Local Development Plan (2015-2030) Examination in Public

Statement of Common Ground between Flintshire County Council, and Natural Resources Wales: SOCG012

1.0 Introduction

- 1.1 This is a joint statement produced by Flintshire County Council ('the Council'), and Natural Resources Wales (NRW) to assist and inform the Examination in Public of the Flintshire Local Development Plan (LDP, 'the Plan'). The statement identifies which matters are now agreed between the parties and which are not, it is additional to the Statement of Common Ground SOCG006 that was submitted for examination in January 2021.
- 1.2 NRW is a statutory consultee for the purposes of the Plan under the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, and 'Appropriate Nature Conservation Body' (ANCB) for the purposes of the Conservation of Habitats and Species Regulations 2017, under which it must be consulted for the purposes of any appropriate assessment for the HRA. NRW has been a key stakeholder advising the Council throughout the different stages of Plan preparation. NRW has previously entered a SOCG with the Council in respect of the deposit plan (reference SOCG 006). This SOCG is supplemental and the focus is limited to the issues identified at paras 2-2.6 below.
- 1.3 Both parties recognise the importance of the Council and key stakeholders working together as far as possible for the Examination in Public.

2.0 Background

- 2.1 In light of NRW's Planning Position Statement 'SAC Designated Rivers and Phosphates'¹, and the supporting 'Advice to planning authorities for planning applications affecting phosphorus sensitive river Special Areas of Conservation'², and as ANCB, NRW advised the Council on 23rd June 2021 that an internal review of the most recent appropriate assessments carried out for the extant environmental permits for the wastewater treatment works relevant to the Plan had been undertaken. NRW advised that it would not be appropriate for the Council to rely upon them when updating the HRA for the Plan. The assessments for the extant environmental permits were undertaken by Environment Agency Wales in 2009, as part of the Review of Consents work. As such, the conclusions do not take account of the new, tighter

¹ <https://naturalresources.wales/about-us/news-and-events/news/tighter-phosphate-targets-change-our-view-of-the-state-of-welsh-rivers/?lang=en>

² <https://naturalresources.wales/guidance-and-advice/business-sectors/planning-and-development/our-role-in-planning-and-development/advice-to-planning-authorities-for-planning-applications-affecting-phosphorus-sensitive-river-special-areas-of-conservation/?lang=en>

phosphorus targets for the waterbodies within the River Dee and Bala Lake SAC, as detailed in the Compliance Assessment report that NRW published in January 2021. The assessments also pre-date the recent case law (the “Dutch” and the “Compton” cases), which need to be considered in the context of the Council’s HRA work. The Council as Competent Authority under the Conservation of Habitats and Species Regulations 2017, agrees with this advice.

- 2.2 The additional growth provided for within the Plan must not result in adverse effect on the integrity of the SAC and it is necessary to consider mitigation measures which might be relied upon to rule out adverse effects.
- 2.3 There are many causes for riverine phosphorus pollution in the River Dee and Bala Lake SAC e.g. existing waste water discharges, agriculture and diffuse pollution. The condition of the River Dee and Bala Lake SAC is a matter that will require wider consideration and is outside the scope of the Plan.
- 2.4 The delivery of improvements to riverine phosphorus levels to satisfy Habitats Regulations will need coordinated strategic action across a wide range of responsible stakeholders and legal and regulatory regimes.
- 2.5 The Council fully acknowledges its role in managing phosphorus arising from Plan development. For the purposes of the Plan, the Council, with advice from NRW and other stakeholders, must secure improvements in riverine water quality of a scale, timing and certainty needed to deliver the proposed allocations whilst avoiding an adverse effect on the integrity of the River Dee and Bala Lake SAC. Mitigation measures for the Plan would then sit under the umbrella of a wider strategy to meet the phosphorus targets, restore the SAC to favourable condition and create environmental capacity for future Plan development.
- 2.6 This document with NRW sets out the Common Ground on the strategic approach to reducing phosphorus levels within the River Dee and Bala Lake SAC catchment with a view to supporting the Plan examination.

Table 1: Table of Issues: Matters of Agreement

Ref.	Matter
1	The Council shall work with NRW and other stakeholders in the development of a strategic approach to reducing phosphorus levels within the River Dee and Bala Lake SAC catchment.
2	A strategic approach to reducing phosphorus within the River Dee should be delivered through a Nutrient Management Board (NMB) for the River Dee and Bala Lake SAC catchment. The approach undertaken for the River Wye SAC provides a template.
3	The membership and terms of reference for the NMB are not yet agreed, however it is agreed that NRW and the Council intend to participate as members of the Board. It is agreed that NRW and the Council will seek to work with other stakeholders to formally establish the NMB prior to Plan adoption.
4	<p>It is agreed that in addition to phosphorus arising from residential development allocated in the Plan, there are other significant contributory factors to riverine phosphorus levels.</p> <p>The need for the NMB arises from stakeholders' wider duties to tackle these contributory factors. It is agreed that the NMB should have a broader aim to deliver long term solutions to address the issue of excessive phosphorus in rivers in a manner which meets the principles of sustainable management of natural resources.</p>
5	<p>It is agreed that Article 6(2) of the Habitats Directive imposes a statutory duty upon the UK to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species within SACs.</p> <p>The wider duties across statutory bodies could be reflected in any aims/objectives of the NMB to secure the best outcomes for the river while making the most effective use of public sector resources.</p>
6	<p>A first version of the Dee Catchment Phosphorus Reduction Strategy (DCPRS) has been prepared by the Council. The DCPRS contains two types of mitigation measures. Category 1 measures are intended to comply with the Habitats Regulations and avoid adverse effects from the residential development provided for within the Plan. The Council is responsible for delivering these. Category 2 measures are intended to deliver wider reductions across the catchment, the delivery of which should form part of the long term solutions to be considered by the NMB (see matters 4 and 5).</p> <p>The document will be a living document and a first version will accompany the Matters Arising Changes (MAC) consultation. The Council intends to continue to develop the DCPRS prior to Plan Adoption. It is intended that the document will further evolve over the lifetime of the Plan with regular reviews to reflect learning and to take account of any new evidence or information that may be available.</p>
7	NRW support the approach being taken in developing the DCPRS and are satisfied that, in principle, the proposed strategic approach to the delivery of mitigation is acceptable. NRW have provided comments on a working draft to inform the submission of the first version of the DCPRS that will form part of the MAC consultation. The Council are committed to undertake further work, in consultation with NRW, to develop the detail concerning the measures to be delivered through the DCPRS. The Council recognise that this further detail is necessary to demonstrate that the mitigation measures are achievable in practice and sufficient to underpin

	Policy EN15 and satisfy the requirements of the Habitats Regulations such that the Plan can be adopted.
8	The DCPRS (section 3) contains a range of measures that could deliver phosphorus reductions which are technically feasible and could potentially be delivered. The section also contains information on mechanisms for delivery and examples of relevant legislative powers/tools.
9	Residential development in the Plan is conditional on the implementation of mitigation measures as identified in Policy EN15. In the event that the necessary mitigation cannot be implemented, Policy EN15 contains a policy backstop to ensure that development will not be permitted. The Council and NRW agree that Policy EN15 ensures that adverse effects on site integrity of the River Dee and Bala Lake SAC will be avoided, provided that Matter 7 above is appropriately addressed.
10	It is agreed that both parties will endeavour to share any relevant information which they currently hold concerning sources of phosphorus, any source apportionment data, possible measures to deliver phosphorus reductions and anticipated phosphorus reductions which may be associated with such measures within the River Dee and Bala Lake SAC as it becomes available.

This Statement of Common Ground has been agreed by:

Andrew Roberts, Service Manager Strategy, Environment Directorate, on behalf of FCC 17/11/21

Bryn Jones, Team Leader, Development Planning Advice Service (North), On behalf of NRW 17/11/21