

Welsh Government Position Statement

Pembrokeshire County Council Replacement LDP - Nutrients

Context

1. This statement is a clarification on how the Development Plans Manual (DPM, Edition 3, March 2020) should be applied to emerging Replacement LDPs (RLDPs) in light of nutrients, specifically relating to the adaptive mindset necessary for moving towards an integrated approach and deliverability.
2. The Welsh Government is seeking to take a pragmatic view for this plan, at this point in time, given the unique circumstances which exist. Guidance has to be taken into account (section 75 PCPA 2004) when considering the 'soundness' of plans. It is the Welsh Government's position that significant weight should be given to this position statement in examining the plan as it clarifies guidance, on this particular issue only.
3. The Planning and Compulsory Purchase Act (2004) as amended (PCPA 2004) sets out the legal framework for the preparation and examination of Local Development Plans (LDPs), including RLDPs, in Wales. Section 64(5) explains that the purpose of the examination is to determine whether a LDP is 'sound' and whether it has complied with various procedural requirements, including the Town and Country Planning (Wales) Local Development Plan Regulations 2005 (as amended) (LDP Regs). In addition, a Habitats Regulations Assessment (HRA) is a legal requirement under the 'The Conservation of Habitats and Species Regulations 2017' (Habitats Regs), which implement the Habitats Directive (Council Directive 92/43/EEC). Local Planning Authorities (LPAs) must determine whether the policies and proposals (including allocations) in the plan are likely to have significant effects on the integrity of any European designated sites, such as Marine Special Areas of Conservation (SACs).
4. Section 75 of the PCPA 2004 provides that any guidance prepared by the Welsh Government must be taken into account in the plan making process. The DPM is the current statutory guidance governing development plans in Wales. Chapter 6 of the DPM contains guidance regarding the examination process and Table 27 (page 166) contains the Tests of Soundness that form the basis of how plans are examined. Paragraph 6.27 of the DPM states that the Welsh Government will consider plans in relation to the soundness tests and any comments made will be considered as part of the examination, in conjunction with those submitted by other parties.
5. Welsh Government published an Interim "*Planning Policy Statement on Development in SAC Rivers*" (IPPS) and associated guidance in August 2025. Nutrients issues relating to plan preparation were specifically addressed as part of the clarification note "*Applying the Tests of Soundness to LDPs where additional nutrients may impact on Special Areas of Conservation (SACs)*" issued on 27 March 2026.

- 6 Having reviewed Pembrokeshire County Council (PCC) second deposit Replacement LDP (RLDP), focussed changes and accompanying submission documents the Inspector(s) have identified a number of issues which need to be addressed before the examination can proceed. These are set out in their letters of 2 December 2025 and 8 May 2026 to the Council. Paragraphs 7 & 8 below summarise their position.
- 7 The potential for an integrated approach has been considered by the Inspector(s) but the necessary measures for relying on an integrated approach are either not identified, not associated with agreed milestones or are not secure (not associated with an appropriate delivery mechanism) in the RLDP. They recognise that it would not be reasonable for information to be provided to a high level of detail and certainty, but they identify that some indication of the likely nature and timing of appropriate steps will be needed in the RLDP. But in the absence of sufficient information to this effect, and that the position of NRW on the HRA in light of the latest focussed changes is unknown, further information is requested from the LPA on nutrient neutrality.
- 8 The further information required to avoid an adverse effect on integrity rests on the only available pathway for the plan being nutrient neutrality. They also note that the feasibility and deliverability implications of securing any potential mitigation is currently unclear and note that more work may be required to consider the implications of the Supreme Court judgement in *CG Fry & Son Ltd v SSHCLG* [2025] UKSC 35 referred to in the Council's Position Statement.

Welsh Government position on addressing nutrients

- 9 This statement addresses procedural and deliverability matters which reflect the IPPS, WG/DTA guidance and the Clarification Note but in doing so highlights their specific application to the circumstances of the PCC RLDP. It should be noted that progress on addressing nutrients is evolving and each LPA will have specific circumstances to deal with. **As such a flexible and adaptive consideration by all stakeholders, including Welsh Government, will be necessary for LDPs moving forward.**
- 10 The Welsh Government preference is for an integrated approach, which by its nature is dynamic and will always be evolving over time. The Welsh Government is concerned about the implications arising from the only available pathway currently under consideration by PEDW for PCCs RLDP to demonstrate nutrient neutrality from the outset of the plan period, dismissing the adoption of an integrated approach where steps and measures may not fully be known at the outset of a plan. This raises concerns regarding delivering the plan's strategy, to which the Welsh Government consider there is no alternative sustainable strategy, implications on the viability of sites coming forward and locks stops the opportunity for the planning process to contribute to the restoration objectives of the SACs.
- 11 Welsh Government adopted the policy position of an integrated approach, developed at a strategic level, as a way of driving proactive improvement of

riverine and marine SACs affected by nutrients. Such an approach demands the adoption of an adaptive management mindset which recognises the evolving and on-going nature of steps and measures which are needed to meet the restoration objective of SACs and the interdependency of these measures with planned development.

- 12 By contrast, reliance on nutrient neutrality as the main option for the preparation of development plans is not the preferred means of looking forward over a 15/20-year period because it does not provide an opportunity for improvement. An integrated approach both works with and demands change over time. As a pathway, nutrient neutrality will continue to have a role as a backstop measure, but it is not the preferred strategic option.

A integrated approach and HRA

- 13 From a HRA procedural point of view, nutrient neutrality has been seen to date as a default means of meeting the integrity test in a failing waterbody when article 6(3) is applied in isolation from the rest of Article 6. The Welsh Government/DTA guidance states that considering Article 6 of the Directive as a whole as part of an integrated approach is a more effective way of unlocking development and improving restoration in a failing SAC, noting that an improving baseline/trajectory for a SAC must be forthcoming and the measures required for improvement must be achievable in practice and subject to the tests outlined in the IPPS.
- 14 When an integrated approach is taken the question of the integrity test under article 6(3) of the Habitats Directive can be reframed because wider steps are being taken under article 6(1) and 6(2) of the Directive to restore the SAC. Paragraphs 19 and 22 of the Clarification Note refer.
- 15 Under an integrated approach mitigation can be evaluated against an improving baseline/trajectory, which arises as a consequence of the delivery of wider management and restoration duties. Restoration duties are sought by statutory bodies, while mitigation is delivered by project proposers. However, mitigation can include measures to avoid any delay in the rate of improvement which would have arisen in the absence of a plan or project coming forward.
- 16 In an integrated approach, development being proposed in a RLDP will be interdependent with the wider steps and measures identified and an adaptive approach will be required to reflect evolving circumstances which will often not be known at the outset of a plan period. A policy caveat would need to be applied to reflect the dynamic nature of prevailing circumstances and to provide the ultimate protection necessary to ensure the integrity of the SAC is not adversely affected as the plan is implemented.

Purpose of Soundness Tests

- 17 The purposes of the 'soundness' tests are to apply them to the LDP/RLDP at the plan making level. They are not applicable to a planning application. When being applied to the plan level they are not imposing a mathematical/scientific

approach, applied to the n^{th} degree. Plan making is not an exact science. It is important to remember that formulating and evidencing a plan that covers a 15 year period (20 years when applied to a Strategic Development Plan (SDP)) cannot be precise.

- 18 Development plans are an evidenced based approach to justify the decisions, policies and allocations for the forthcoming period of time (15/20 years). However, over a plan period numerous circumstances may/will change for a variety of reasons. For example, when considering financial viability assessments to deliver development, economic markets can and will vary over time (for example, the effects of the Iran war). An agreed model can be developed, as is the case now, but the inputs will vary over the plan period, such as the cost of materials. Models cannot anticipate this, albeit they can include a degree of flexibility to accommodate such circumstances. This is often referred to as headroom. This is currently the case for LDPs.
- 19 In addition, there will be advances in technology and subsequent scientific assessment in terms of resolving existing issues and identifying solutions. For nutrients and SACs there is a need to co-ordinate measures and efforts which are in some cases already on-going or committed to. The uncertainty which exists until measures are set out has implications for identifying financial costs in delivering known and emerging solutions and those that may emerge in the future that are currently not known. It may also be the case that costings will change over time.
- 20 It should also be noted that the tests of 'soundness' apply to all aspects of plan preparation reflecting the chosen strategy and include financial viability to bring forward development, varying costings of different solutions, the timing of delivery to meet both needs and supply constraints, as well as to LDPs and SDPs. There is no requirement for a separate test for a specific topic, such as nutrients, as the principle of the soundness tests should apply equally to all issues.
- 21 NRW refer to the development or water discharge permit applications for nutrient neutral developments must demonstrate that all (7) principles have been applied. Some of these principles seem appropriate for plan making. For example, using the nutrient calculator to assist quantifying the potential additional loading on the system, identifying mitigation proposals, potential costings, on-site mitigation and technologies. This seems a pragmatic approach.
- 22 There are however areas which, reflecting on comments above regarding the precision of calculations and technologies required to demonstrate nutrient neutrality, comprise elements that cannot yet be specifically identified/costed. This refers to the science of mitigation evolving, thus the nature, type and land take of mitigation, as well as varying costing fluctuations.
- 23 Whilst current financial viability modelling incorporates data as the best evidence and known costs, as technology advances costs will vary and mitigation requirements may change. This would be a current unknown. This appears to be

a reasonable approach to take in the plan making process. Further, moving towards an integrated approach will best facilitate the understanding necessary to improve and restore SACs whilst at the same time identifying the appropriate financial contributions from development.

Proposed approach for Pembrokeshire

- 24 In addition to the general comments above there are specific and unique circumstances pertaining to the context of the PCCs RLDP which add further weight to the need for taking an integrated approach towards the addressing of nutrients issues which is **adaptive** in nature.
- 25 It is acknowledged that meeting nutrient neutrality is a more established way of reducing the level of uncertainty in relation to the effects on site integrity when compared with reliance on an integrated approach which cannot be demonstrated in full at the outset of a plan. **However, it is likely that fully demonstrating the deliverability of nutrient neutrality over the plan period will be no more certain than relying on an evolving integrated approach.**
- 26 This is especially the case for the PCC RLDP where alternative development strategy options are not available/sustainable and where nutrients issues have been raised at a relatively advanced stage of plan preparation when it would not be pragmatic to revisit benchmark viability values. Further, commitments have recently been given by NRW to move towards an integrated approach in the relevant catchments, which would provide the opportunity for the establishment of a shared monitoring mechanism between the LPA and NRW.
- 27 NRW have committed to the preparation of Catchment Nutrient Reduction Plans (CNRPs) to deliver an integrated approach. CNRPs will identify steps to be taken, and measures needed to improve the relevant SACs. These steps and measures will need to be integrated with other delivery and management plans, including Nutrient Management Plans (NMPs), River Basin Management Plans (RBMPs) and any implementation mechanisms developed by Pembrokeshire as part of their assessment of plans under the Habitats Regulations.
- 28 Where the raft of measures have not yet been co-ordinated through a CNRP but there is a commitment to do so and the evolving position, whilst not fully known, is likely to be achievable in practice, it will be reasonable to assume that an adaptive approach towards addressing nutrients, subject to appropriate safeguards, can be taken in meeting procedural requirements under the Habitats Directive and Regulations. In this respect development can become part of the solution moving forward over the plan period but subject to appropriate control through a policy caveat which will require a default to ~~a~~ nutrient neutrality if the improving baseline/trajectory is shown to be faltering.
- 29 NRW will develop CNRPs for the Cleddau (Milford Haven Inner) and Loughor (Burry Inlet Inner) catchments, for both phosphorus and nitrogen, over a 6-month period (commencing Spring/Summer 2026). Therefore, progress towards an improving baseline/trajectory and overall restoration has been committed to and will be on-going over time. The commitment to developing and implementing an

integrated approach means that all relevant stakeholders will be incentivised to work towards meeting the restoration objective of the SAC over the long term (and over the current plan period).

- 30 As part of such an adaptive approach appropriate milestones and monitoring mechanisms will be established in the CNRPs to deliver the wider measures under article 6(1) and (2) of the Directive. An appropriate policy caveat mechanism in the PCCs RLDP would establish the framework under which the LPA can identify the interdependency between the measures in the evolving CNRPs and the policies and proposals in the plan. As appropriate, further detail, which may be unknown at the time of the examination, can be set out in Supplementary Planning Guidance (SPG) which also makes the direct and on-going link between the CNRPs, its monitoring framework and the Annual Monitoring Report (AMR)/framework for the RLDP. This will be particularly relevant for setting out the scale of developer contributions which may be required and can be kept under review as implementation of the plan progresses.
- 31 In this evolving scenario other pathways can also be used, as appropriate, to ensure the deliverability of the plan. Paragraph 32 of the WG Clarification Note refers to a de minimis approach. Such an approach may be taken to existing commitments where these can be screened out based on an assessment in advance and where this is combined with additional pathways to deliver on the wider plan strategy and proposed allocations, by moving, in an adaptive way, towards an integrated approach.
- 32 Where the measures in the CNRPs cannot be delivered this could impact on the delivery of the LDP, therefore limiting on-going implementation until the requirements can be met will be necessary. Nutrient neutrality will therefore remain as a backstop position (in the absence of any alternative pathway) using a policy caveat as a brake on implementation until such time as progress on improvement can be shown to be back on track. This may occur where milestones have not yet been identified and secured, where the meeting of agreed milestones has stalled and/or where further or additional measures are necessary.
- 33 The use of alternative reserve sites to ensure the overall objectives of the plan can still be delivered is not available for PCC, therefore the need to maintain momentum on improvement through an integrated approach is imperative.
There are no alternatives to ensure a plan-led system can be delivered.
- 34 Welsh Government recognises the difficulties with uncertainty as CNRPs emerge but considers the identification of steps and measures to avoid deterioration of water quality and to restore SACs in line with conservation objectives as the best means by which improvement can be forthcoming by all stakeholders in a fair and equitable manner. This is possible for PCC, and an integrated approach is achievable in practice.
- 35 Development plans should be part of the solution and **Welsh Government does not want to see the progress of plans which have a 15/20-year horizon**

prevented from progressing based on what is not fully known at the outset of a plan period where there is a known commitment to develop an improving trajectory for riverine and marine SACs through the provision of CNRPs. Effective contributions from development which reflect integrated mitigation and restoration can be set out in the initial phase of the plan period in line with the emerging CNRPs.

Conclusion

- 36 In summary, the Welsh Government is not advocating that Test 3, specifically viability and deliverability is ignored for this plan regarding addressing nutrients issues. The Welsh Government is of the opinion that the fine grain detail for the future cannot be achieved now, nor is not necessary for this plan, at such an advanced stage of preparation.
- 37 Paragraphs 13-16 above set out an integrated approach which is pertinent to be followed in PCC RLDP. Paragraphs 17-23 add further detail on the mechanisms for this approach, while paragraphs 24-35 identify a specific route for PCCs RLDP to follow in order to address the issues highlighted by the Inspector(s). The Welsh Government is of the opinion that this offers an appropriate way forward to ensure the examination can continue, make progress, enable stakeholders to present any representations and facilitate the Inspector(s) to consider the merits of the plan.

To Note: Exploratory Meeting Letter, Paragraph 29

- 38 Paragraph 29 refers to proposed outcomes of the exploratory meeting. The first bullet point is recommending that the plan is withdrawn and Welsh Ministers not over-rule this recommendation. The reference to steering Welsh Ministers potential actions is considered beyond the scope of the legislative remit of any proposed outcomes.

Mark Newey
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