

Is there sufficient certainty that those financial contributions could be secured in line with current legislation (Community Infrastructure Levy Regulation 123) and policy tests (Planning Obligations Circular 13/97)? If not, might those be changed and is there a timescale for this?

1. The Council has made an allowance for SuDS (est £1,500 per dwelling) in its viability testing which can be a financial contribution under an integrated approach. **This would be achieved using a S106 obligation** as per the approach taken to provide community infrastructure more generally historically. The Council will not know at this point what financial contribution might be expected from NRW's work.
2. **WG's Clarification Note¹ also provides advice on how others have approached this in terms of justification and securing implementation** (see PDF page16): *'The collection of developer contributions to deliver integrated approaches to mitigation (and how the section 106/CIL tests can be met) can be informed by approaches in England to deliver mitigation for recreational pressure*
⁴ [footnote 4 .For example Thames Basin Heaths, Solent SPA and associated guidance on making up-front payment in lieu of entering s.106 agreements, Essex Coast recreational Disturbance, Avoidance and Mitigation Strategy. Weblinks provided]
3. **The Council would rely on best practice such as the references provided in the WG Clarification Note to ensure the correct approach is taken to securing financial contributions.** Here a decision for preference for spend will need to be taken in partnership with NRW and any other relevant planning authorities in the catchment through the development of the relevant CNRP alongside the updating of the HRA (an addendum). This updated HRA's addendum would then be taken forward alongside SPG and adopted by the Council – as required by WG's. *'Practical planning guidance to support development, particularly the delivery of affordable housing, in Special Areas of Conservation river catchments affected by phosphorus'* advises as to what the Council needs to do to update the LDP's policy position during the life of the Plan.

11.7 An integrated approach and the planning system

¹ <https://www.gov.wales/sites/default/files/publications/2026-03/clarification-note-applying-the-tests-of-soundness-to-local-development-plans-ldps.pdf>

11.7.1 ² *Whilst it will be for public bodies to decide how an integrated approach to restoration, management, and mitigation should be implemented within the catchment concerned, **an integrated approach to the delivery of mitigation should be clearly set out in supplementary planning guidance. Where appropriate an addendum can be produced to the Local Development Plan HRA to formally update earlier HRA conclusions in respect of development to be delivered within the current plan period. The supplementary planning guidance can refer to any plan HRA addendum and explain how planning authorities can adopt the findings of the plan HRA when making planning decisions within affected catchments.*** 11.7.2 ***A policy caveat approach should be followed where an integrated mitigation approach is adopted.***

4. In terms of an **integrated approach**; which is where most likely the Council will arrive with the work being done by NRW (CNRP(s)) and by the Council (with an updated HRA); the Council has the same allowance for SuDS (est £1,500 per dwelling) in its viability testing which can be used either for a nutrient neutrality approach or a financial contribution under an integrated approach. This would be achieved using a S106 obligation as per the approach taken to provide community infrastructure more generally. **The Council will not know at this point what financial contribution might be expected from NRW's work.** However, paragraph 12 of the WG's Clarification Note advises that: ***'Under the Habitats Regulations there are various pathway(s) through which plans and projects can progress. In general, moving downwards through the pathways means the impacts on development, including financial viability, increase. The Interim Planning Policy Statement adopts a sequential approach towards consideration, and a preference for an integrated approach, to ensure that impacts on development are reduced to the lowest possible level whilst at the same time ensuring deterioration is avoided and restoration achieved.'***
5. Therefore, the Council would expect no greater an amount to be required for an integrated approach than a nutrient neutrality approach and therefore an integrated approach would be deliverable.

² Extract from 'Practical planning guidance to support development, particularly the delivery of affordable housing, in Special Areas of Conservation river catchments affected by phosphorus' PRACTICAL GUIDANCE FOR PUBLIC AUTHORITIES Prepared for Welsh Government

At the Exploratory Meeting on the 16th June 2026 in discussions on the above question the Inspector advised that he wished to also have specific advice regarding Regulation 123 of the Community Infrastructure Levy (CIL) Regulation³ which prevents the imposition of planning obligations for “infrastructure”, if five or more separate planning obligations which provide for the funding or provision of that type of infrastructure have been entered into on or after 6th April 2010.

6. The concern was whether this would restrict the ability of the Council to secure the types of mitigation arrangements referred to in WG's Clarification Note 'Applying the Tests of Soundness to Local Development Plans (LDPs) where additional nutrients may impact on Special Areas of Conservation (SACs)'.⁴ as the examples provided are from England where Regulation 123 has been disapplied.⁵
7. Carmarthenshire County Council has usefully addressed this issue in the preparation of its evidence base for Carmarthenshire County Council's Local Development Plan 2 and that evidence is relied upon here.
8. Section 8.3. of the Carmarthenshire Local Development Plan 2 Nutrient Neutrality Action Plan⁶ in support of its Habitats Regulations Assessment for its Plan answers this question.

Planning Obligations

9. Developer contributions are normally secured through a “planning obligation”. This is a legal commitment by the developer to secure a contribution (in cash or in kind) to address community, infrastructure or environmental improvement needs associated with development. It may be a bilateral agreement between the LPA and the developer, or simply a unilateral undertaking by the developer to provide the same. These are a proper and recognised part of the planning system and are normally entered into under Section 106 of the Town and Country Planning Act 1990 (as amended).

³ The Community Infrastructure Levy Regulations 2010 UK Statutory Instruments 2010 No. 948
<https://www.legislation.gov.uk/ukSI/2010/948>

⁴ Clarification Note WG 'Applying the Tests of Soundness to Local Development Plans (LDPs) where additional nutrients may impact on Special Areas of Conservation (SACs)
<https://www.gov.wales/sites/default/files/publications/2026-03/clarification-note-applying-the-tests-of-soundness-to-local-development-plans-ldps.pdf>

⁵ Reg. 123 omitted (E.) (1.9.2019) by virtue of The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 (S.I. 2019/1103), regs. 1, 11 (with reg. 13)

⁶ Carmarthenshire County Council Nutrient Neutrality Action Plan Technical Report 2024 [nutrient-neutrality-action-plan-p2.pdf](#)

10. Planning obligations can be used to secure benefits on the development site itself or on other suitable sites close to the proposed development (as long as they are directly related to the development).
11. Developers may be requested to make a payment of money to the relevant LPA, to be spent on agreed benefits or for the maintenance of them.
12. Historically, planning obligations have tended to be used to secure infrastructure improvements only from a limited number of sites (pooling issue). However, in respect of the impacts on the Cleddau and Teifi, a Developer Contribution Scheme (DCS) can provide a strategic approach to offsetting the negative effects of development and includes a mechanism for gaining contributions from all new development which connects to mains drainage, and non-mains development where it is considered to be appropriate.
13. Regulation 123 of the Community Infrastructure Levy (CIL) Regulation prevents the imposition of planning obligations for “infrastructure”, if five or more separate planning obligations which provide for the funding or provision of that type of infrastructure have been entered into on or after 6th April 2010. However, the measures to be funded through a DCS are environmental mitigation measures and fall outside the definition of infrastructure⁷ (S 216 (1)& (2) Planning Act 2008) so are not subject to pooling restrictions.
14. Carmarthenshire’s Nutrient Neutrality Action Plan also provides detail on how such schemes could work in practice. The developer mitigation scheme is termed a ‘Developer Contribution Scheme’ in the Action Plan. Details have been amended below to relate the information to a Pembrokeshire context and to include reference to Catchment Nutrient Recovery Plans and how the two documents could be linked.
15. Below is a description of how Developer Contribution Schemes could work for Pembrokeshire underpinning the Catchment Nutrient Recovery Plan(s).

‘Developer Contribution Scheme’ - What is a DCS?

16. A potential mechanism that could help to deliver the mitigation required to facilitate LDP 2 is a Developer Contribution Scheme (DCS). The preparation of the Catchment Nutrient Recovery Plans by Natural Resources Wales will assist with the Council working its way through the Welsh Government’s Clarification

⁷ <https://www.legislation.gov.uk/ukpga/2008/29/section/216> ... “infrastructure” includes—
(a) roads and other transport facilities, (b) flood defences, (c) schools and other educational facilities, (d) medical facilities, (e) sporting and recreational facilities, (f) open spaces

Note's stepped approach to identify where the Council sits strategically in terms decision making.

17. This should provide the evidence base in due course for the Council to be able to advise applicants that, for example, an integrated approach is now applicable and what the Local Planning Authority's (LPA's) expectation is in terms of developer contributions. DCS's would potentially be applicable to all residential development in the Teifi and/or Cleddau SACs where required. For Pembrokeshire currently the issue for the Teifi is in relation to phosphorus and for the Cleddau both nitrogen and phosphorus.
18. A developer contribution is made by a landowner or developer to ensure that, where planning permission is granted for new development, any impact on the environment is in accordance with appropriate regulatory obligation and the environmental mitigation measure necessary to support the development is provided. By securing these contributions, planning authorities can help to improve the quality and sustainability of individual development schemes and their acceptability to local communities.
19. A DCS would provide a strategic approach to mitigation that facilitates the delivery of new development within the catchments. Under a DCS, phosphorus and/or nitrogen mitigation costs are matched proportionally to each development based on the additional phosphorus and/or nitrogen generated. A DCS would need to be developed alongside and in conformity with the Catchment Nutrient Recovery Plan for the appropriate river catchment.
20. A DCS would be prepared with key stakeholders (in particular the relevant planning authorities). The development of the appropriate Catchment Nutrient Recovery Plan will provide the context for deciding on a DCS and this will be delivered alongside wider measures in the Catchment Nutrient Recovery Plan.
21. Any DCS prepared will need to be a "living" document⁸, i.e., one that evolves iteratively as the evidence base changes or if the costs associated with mitigation measures changes. Paragraph 30 of the WG's Position Statement **ED20** which echoes the WG's Policy Papers advises: *'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*

⁸ Paragraph 30 of the WG's Position Statement **ED20**.
https://www.pembrokeshire.gov.uk/objview.asp?object_id=12355&language=

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.

22. Further to the above, it is important to recognise that a DCS is not the only means of securing funding for mitigation.
23. When making an application, a developer could ask the authority to assess their application separately from a DCS. The Council would therefore remain open to considering any bespoke mitigation proposals brought forward on a case-by-case basis. Consequently, a DCS would represent an agreed way forward, but not the only option available to developers in securing the nutrient mitigation required for their development.
24. Bespoke opportunities would be available under the Developer's Handbook Supplementary Planning Guidance which has been developed by Carmarthenshire County Council and will be updated by Pembrokeshire County Council to include reference to phosphorus.
25. The Council's emerging nutrient credit scheme would also be an available option for mitigation.

Roles and Responsibilities

26. The responsibility for the DCS(s) would lie with the LPA/s. NRW would be consulted in preparing the DCS(s) in their role as an appropriate nature conservation body advising on Habitats Regulations. The DCS would need to be consistent with and sit within the wider measures set out in the NRW led CNRP framework.

Policy Drivers

27. Pembrokeshire Local Development Plan 2 (**ED15f**)⁹ **Policy GN 3 'Infrastructure and New Development'** advises: *...Measures necessary to physically deliver a development and ensure that it is acceptable in planning terms will be required in the first instance. Where appropriate contributions may be sought for a range of purposes, including... 9. Biodiversity... 11. Water (including water quality),* will be a key policy driver. This policy supports the principals of planning obligations in considering the need for development

⁹ <https://www.pembrokeshire.gov.uk/local-development-plan-review/examination-2025>

proposals to demonstrate that suitable arrangements are in place to ensure development is acceptable.

28. Within this policy, water quality, as well as biodiversity and nutrient mitigation can be considered and a DCS can provide the mechanism for developers to assess their level of contribution needed towards specific mitigation measures.

29. **Strategic Policy 'SP 12 Maintaining and Enhancing the Natural Environment'** also offers a useful mechanism to ensure developments contribute positively to nutrient management within the Teifi and Cleddau SACs. Within this policy, protection of or enhancement of biodiversity is required. This would necessitate developments to consider the additional nutrient generated by their development and deliver measures to mitigate accordingly.

30. **Policy GN 47/SP12A 'Water Quality and Protection of Water Resources'** also places requirements on developments that are in line with mitigation. As discussed at the Exploratory Meeting further edits to the policy wording are recommended by the Council. A description of proposed edits referred to in the Exploratory Meeting is provided below:

- (1) Include the more recent policy caveat text from the WG Clarification Note¹⁰. Include reference to the CNRP(s) in that policy text. Include reference to the Cleddau and Teifi SACs.
- (2) Remove the requirement for surface water enhanced SuDS mitigation in line with NRW website guidance and the DIN Mitigation Handbook¹¹.
- (3) In the reasoned justification include reference to the preparation of SPG to inform the use of the caveat policy. This will be informed by an updated HRA for LDP 2 as per the DTA and WG guidance titled '*Practical planning guidance to support development, particularly the delivery of affordable housing, in SAC river catchments affected by phosphorus*' **PRACTICAL GUIDANCE FOR PUBLIC AUTHORITIES**(SD65)¹². [The Council is preparing a separate action point note from the Exploratory Meeting to provide an outline of the content of this proposed Supplementary Planning Guidance].

¹⁰ <https://www.gov.wales/sites/default/files/publications/2026-03/clarification-note-applying-the-tests-of-soundness-to-local-development-plans-ldps.pdf>

¹¹ <https://www.carmarthenshire.gov.wales/media/1byngjmp/marine-and-estuarine-din-mitigation-handbook-10-03-26.pdf> under 4: Final Nutrient Budget Calculation pages 19 and 20.

¹² <https://www.gov.wales/development-special-areas-conservation-sac-rivers-planning-guidance>

- (4) Include reference to an ongoing monitoring requirement for the integrated approach set out in the CNRP(s) in the LDP's Appendix 4 Monitoring Framework. The LDP2's Annual Monitoring Report will, with reference to the CNRP(s) monitoring, provide the Council's position regarding the policy caveat approach and the CNRP(s) monitoring outcomes, i.e. whether from the date of the AMR the position for the Council is one of nutrient neutrality or integrated or threshold. This may also be sub-catchment specific or a combination of these approaches. The LPA would also have to respond to any announcements by NRW to change course during the annual monitoring period.
31. The policy mechanisms to ensure delivery of the appropriate mitigation required already exists and with the potential for edits as discussed in the Exploratory Meeting would be clearer in their remit. Planning obligations will then be actionable. A DCS would act as a mechanism by which developers would bring forward their sites whilst contributing towards the necessary mitigation¹³.
32. The impact of development on a SAC is not part of the planning judgement whereby material considerations are weighed up by the planning authority in reaching a decision on a planning application. So, it is not a matter of what weight will be placed on the mitigation issue. Rather it is a 'yes/no' question of whether the proposed development is legally compliant with the Habitats Regulations.
33. By law, the LPA cannot grant planning permission for a development which would, either alone or in-combination with other developments, have a likely significant effect on an SAC site unless full mitigation is provided where it is deemed to be required.¹⁴

DCS Monitoring

34. It will be necessary to manage and monitor nutrient budgets during the course of the adopted LDP 2 to confirm that there is sufficient mitigation. For many reasons additional nutrient budgeting could be required e.g., where permissions are allocated a budget, but permissions are not commenced/completed, or housing delivery exceeds the LDP delivery schedule.

¹³ What are mitigation measures?: Where it cannot be concluded that there will be no adverse effects on a site's integrity, there is a need to consider potential mitigation. Mitigation measures are protective measures forming part of a project and are intended to avoid or reduce any direct adverse effects that may be caused by a plan or project, to ensure that it does not have an adverse effect on the integrity of a habitats site(s). Any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice.

¹⁴ the Habitats Directive, the Conservation of Habitats and Species Regulations 2017 (as amended), and the Conservation of Offshore Marine Habitats and Species Regulations 2017.

35. This monitoring work could usefully be linked to housing delivery information consulted upon with key stakeholders as set out in the Development Plans Manual as part of the Local Development Plan Annual Monitoring Report which is included as key core/indicator in the Local Development Plan Manual (SD66) advising that the AMR must include a housing trajectory update and related commentary and analysis. The Council has prepared a nutrient budget on the basis of the submitted Local Development Plan Trajectory as updated for Examination (ED15f). Reprofiting of the housing land supply and the nutrient budget annually would be required. At the time the Housing Stakeholder Group is engaged with on the Trajectory NRW would also be engaged with to ensure synchronicity with the relevant CNRP. The Council would then be able to set out in its Annual Monitoring Reporting on the Local Development Plan as to what would be appropriate in terms of developer contributions to manage the next delivery cycle vis a vis Policy GN 47/SP12 A Water Quality and Protection of Water Resources caveat policy for the next year (April to March delivery cycle).
36. Policy GN 47/ SP12 A **Water Quality and Protection of Water Resources** will ensure that no new developments will be granted permission unless the required mitigation measures have been demonstrated via a project level HRA undertaken to the appropriate level.
37. Planning obligation funding would be pooled to deliver the mitigations within the DCS range of measures. The LPA would allocate funding to the measures as required by the relevant CNRP, to ensure sites can be delivered in phase with the occupation of the proposals.

Grampian Condition

38. Grampian Conditions provide a means by which mitigation can be secured. A Grampian Condition prohibits development authorised by the planning permission or other aspects linked to the planning permission (in the case of residential use, occupation of the development) until a specified action has been taken (in this case the provision of an avoidance and mitigation package). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission, which is not envisaged in this case.

Development Affected

39. In theory any development adding nutrient load to the Cleddau and Afon Teifi SACs could require mitigation e.g., tourism, agricultural development and overnight accommodation, however it would not be appropriate for a DCS to provide for every circumstance. Furthermore, the application of a threshold approach, where relevant, should be referred to, as in these instances application of a DCS would not be necessary.

40. The first DCS (which will be for the Cleddau) would initially focus on the strategic issue enabling residential development (where required). In time it may be appropriate to expand the DCS to cover other types of non-strategic development responding to local circumstances and pressures. A further DCS for the Teifi in Pembrokeshire is anticipated later.
41. Consequently, the first DCS will provide mitigation for development that would lead to an increase in nutrient entering the SAC river environment. This is likely to consist mainly of residential development connecting to public sewers discharging into the catchments of the Cleddau and Teifi SACs.

How could planning obligations be calculated?

Step 1: Local Development Plan Nutrient Budget

42. Nutrient budget allocations for the Pembrokeshire's Local Development Plan 2 can be provided for individual developments along the Teifi and the Cleddau as part of the Catchment Nutrient Recovery Plan (CNRP(s)) preparation / HRA update. Budgets can be provided on an annual basis using the LDP Trajectory.

Step 2: Identify Mitigation

43. Using the budget from Step 1, the CNRP(s) will set out the potential mitigation measures available catchment wide that can be delivered in the plan period. The Council can draw from these mitigation measures to set out appropriate developer mitigation contribution to be delivered via a DCS in discussion with NRW.
44. The mitigation measures will provide the level of phosphorus and/or nitrogen reduction required to facilitate the development brought forward. The measures in the CNRP will be fully costed to include all reasonable costs associated with the works as per NRW advice in the Exploratory Meeting.
45. A DCS is likely to provide for the total cost of delivery of the mitigation in terms of £/kg phosphorus/nitrogen mitigation. It is important to note the difference between nutrient neutrality and an integrated approach. An integrated approach increases the scale or speeds up existing restoration measures but doesn't cover total cost of all restoration measures.

Step 3: Apportion Mitigation Costs to Developer

46. The CNRP and linked DCS will need to determine a suitable mechanism of apportioning the total cost of the mitigation works to the developer. Several

examples in England¹⁵ are available, and an appropriate review of the potential options should be undertaken in development of a DCS to find a suitable arrangement for Pembrokeshire.

47. Carmarthenshire County Council also operates a Marsh Fritillary Developer Contribution Scheme on this basis.¹⁶ and ¹⁷ The DCS which is adopted Supplementary Planning Guidance advises on:

- a. the legislative and policy context
- b. The relevant SAC Condition and Conservation Objectives
- c. Justification and supporting evidence
- d. Developer contribution
- e. Monitoring and management
- f. A map of the SPG application area where developer contributions are required
- g. A map of the relevant SAC

48. The DCS for nutrients in the relevant catchment would be a subset of the CNRP(s) in terms of information on condition and conservation objectives; the justification and supporting evidence and the developer contribution requirements.

Action Point 3: NRW comments 26th June 2026: Financial Contributions - The CNRP are focused only on Article 6(2) measures required, which won't need HRA consideration, and will produce components which will better enable a consideration of Mitigation (strategic, project, expansion of 6(2) measures etc.) which will need considering in an HRA. While contributions may regard NRW's costing of CNRP measures, expansion or quicker delivery of these may not be possible, and would need working through on a measure by measure basis. There is no barrier to separate strategic or other mitigation being proposed to accept contributions (led by the LPA or others), subject to the avoidance of hinderance or delay of the CNRP. Similarly, others could deliver CNRP measures, under agreement, and then delivery mitigation alongside by expansion / speeding up. We will have some other minor comments or considerations to raise, but these can be discussed at a later date.

¹⁵ Footnote 4 Clarification Note Examples <https://www.gov.wales/sites/default/files/publications/2026-03/clarification-note-applying-the-tests-of-soundness-to-local-development-plans-ldps.pdf>

¹⁶ https://www.carmarthenshire.gov.wales/media/3445/marsh_fritillarysap.pdf

¹⁷ <https://www.carmarthenshire.gov.wales/media/3699/caeau-mynydd-mawr-spg-adopted.pdf>