

CABINET

Date of Meeting	Tuesday, 31 st May 2022
Report Subject	Examination of the Flintshire Local Development Plan – Position Update and Matters Arising Changes Consultation
Cabinet Member	Cabinet Member for Planning and Public Protection
Report Author	Chief Officer (Planning, Environment, and Economy)
Type of Report	Strategic

EXECUTIVE SUMMARY

Following submission of the Local Development Plan (LDP) for Examination in Public by the Council in October 2020, the formal hearing sessions of the Examination took place between 13th of April and 20th of May 2021.

Following the Examination sessions there remained two outstanding issues to be resolved:

- Inspector's concerns relating to the sustainability of aspects of the Warren Hall Strategic Mixed Use Development Site;
- New targets issued by Natural Resources Wales (NRW) in January 2021 controlling phosphate levels in the River Dee and Bala Lake Special Area of Conservation (SAC) designated rivers.

Following a further hearing session requested by the Inspector to consider her concerns relating to Warren Hall and where the Council and interested parties gave further evidence, the Inspector directed a change be made to the LDP, to remove the housing element of the mixed use development on sustainability grounds. Critically this change does not impact on the soundness of the LDP or result in the need to provide alternative sites elsewhere, given the level of housing flexibility built into the plan.

The issue of phosphates is more of a technical or procedural nature in the context of maintaining the soundness of the LDP, requiring the Council to demonstrate that the plan remains compliant with the Habitats Regulations and that the development within it will not adversely affect SAC protected rivers. The Council has done this by strengthening key policies that protect the water environment and

resources, as well as producing a mitigation strategy jointly with Wrexham County Borough Council who are at a similar stage in their LDP Examination. The Dee Catchment Phosphorous Reduction Strategy (DCPRS) proposes levels of mitigation to be considered and put in place following plan adoption, some of which are the responsibility of the Council but where others are for other key stakeholders such as Natural Resources Wales (NRW), Dŵr Cymru Welsh Water (DCWW), the Agricultural Sector, and developers to take forward.

The DCPRS proposes joint working to achieve reductions in phosphates levels with a Nutrient Management Board (NMB) to be set up. Wrexham Council are taking the lead on establishing the NMB and Flintshire will assist and participate. In order to demonstrate that the Strategy is being implemented, further work has already been commissioned to assess the feasibility of developing wetlands adjacent to waste water treatment works. The Strategy is attached for information as [appendix 1](#).

Following resolution of all outstanding matters the Council has prepared a schedule of changes to the Plan that have resulted from the Examination and which the Inspector considers are necessary to maintain the soundness of the LDP. These are known as the Matters Arising Changes (MACs) and as a final stage in the Examination process, need to be published for public consultation. Any responses to the MACS will help to inform the Inspector's report. Aside from the only Inspector directed change relating to Warren Hall, all other changes are of a relatively modest significance, indicating the degree to which the plan submitted by the Council for Examination, was already sound. All changes required by the Inspector have been agreed in principle under the approved Scheme of Delegation put in place for the LDP examination process and the Inspector now requires that the MACs are published for a six week period of public consultation, to allow the public and stakeholders the opportunity to comment.

This is an essential precursor to the Council receiving the Inspector's report on the Examination of the LDP as the Inspector needs to take account of any representations on the MACs when finalising her report. All Members will therefore have the opportunity to consider the Inspector's Report and its findings when the LDP is brought to Cabinet and Council for adoption.

A schedule of MACs has been prepared and was discussed at a hearing session between the Council and the Inspector held on 23rd November 2021. These are attached as [appendix 2](#) and have been agreed by the Inspector.

The position with the LDP, the schedule of MACs, and the Inspector's requirement for them to be published for consultation were considered and endorsed by the meetings of the Planning Strategy Group held on Friday 12th November 2021, Thursday 27th January 2022, and Thursday 17 March 2022 in accordance with the approved Scheme of Delegation.

Because the Inspector did not advise the Council that she wanted the MACs to be published for consultation until late January 2022 it was not possible to report this to Cabinet and then carry out a six week public consultation exercise before the start of the Pre-Election Period. The Inspector's requirement to consult is therefore being brought to Cabinet at the first available opportunity following the Elections. A briefing session for all Members will also be arranged to provide awareness of the position reached and next steps.

RECOMMENDATIONS

1	To acknowledge the position reached by the LDP Examination in Public and the Inspector's requirement for the Matters Arising Changes as set out in the schedule appendix 2 of this report, to be published for public consultation for a six week duration.
2	That the consultation commences as soon as practicably possible following Cabinet consideration, and that officers collate all representations received and submit these to the Inspector following the end of the consultation period.
3	To note the principles for phosphate mitigation that relate to the Council and its LDP, as set out in the Dee Catchment Phosphorous Reduction Strategy attached in appendix 1 of this report.

REPORT DETAILS

1.00	EXPLAINING THE POSITION WITH THE LDP EXAMINATION AND MATTERS ARISING CHANGES (MACS)
1.01	In order to move the plan forward to adoption, a significant amount of work has been undertaken throughout the period of Covid restrictions as part of the Public Examination of the LDP, including the resolution of two outstanding matters where the Inspector required further hearing sessions. These specifically related to the mixed use development site at Warren Hall, and the issue of phosphates. All relevant documents relating to the Examination are available on the Examination Website .
1.02	Warren Hall Following a further hearing session requested by the Inspector to consider her concerns relating to Warren Hall (8 th September 2021) and where the Council and interested parties gave further evidence, the Inspector directed a change to be made to the LDP, to remove the housing element of the mixed use development on sustainability grounds. Critically this change does not impact on the soundness of the LDP or result in the need to provide alternative sites elsewhere, given the level of housing flexibility built into the LDP. Pragmatically therefore, this change was accepted by the Planning Strategy Group and key Members under the approved Scheme of Delegation in order for the LDP to move forward towards adoption. The site owners Welsh Government have also stated that they will not challenge this change to the site allocation. Warren Hall will remain as a Strategic Site allocation in the Plan as a business park delivering high quality B1 and B2 employment development.

1.03	<p>Phosphates</p> <p>The issue of the level of phosphates emanating from new development proposed in the LDP and the relationship to new targets set by Natural Resources Wales (NRW) is a Wales-wide issue. A number of national workstreams have been established to try to identify a strategic approach to mitigation involving all relevant stakeholders including Local Planning Authorities (LPA), NRW, Dŵr Cymru Welsh Water, Welsh Government, other environmental agencies, Planning and Environment decisions Wales (PEDW) and developers. These new phosphate targets were only published by NRW in late January 2021 without prior consultation or engagement with LPAs and it took a further three months to produce any guidance to LPAs on the implications for new development and dealing with planning applications.</p>
1.04	<p>The issue of phosphates is more of a technical or procedural nature in the context of maintaining the soundness of the LDP, requiring the Council to demonstrate that the LDP remains compliant with the Habitats Regulations and that the development within it will not adversely affect SAC protected rivers. It has done this by strengthening key policies that protect the water environment and resources, as well as producing a mitigation strategy jointly with Wrexham County Borough Council who are at a similar stage in their LDP Examination, and face the same issue of demonstrating compliance and ‘no adverse impact’. The Dee Catchment Phosphorous Reduction Strategy (DCPRS) proposes levels of mitigation to be considered and put in place following LDP adoption, some of which are the responsibility of the Council but where others are for other key stakeholders such as NRW, DCWW, the Agricultural Sector, as well as developers to take forward.</p>
1.05	<p>The strategy also proposes joint working at a catchment level to achieve reductions in phosphate via a Nutrient Management Board (NMB) to be set up. Wrexham Council are taking the lead on establishing the NMB and Flintshire will assist and participate. The strategy is to be published alongside the Matters Arising Changes when consulted on. In order to demonstrate that the Strategy is being implemented, further work has already been commissioned to assess the feasibility of developing wetlands adjacent to waste water treatment works and to also produce a short term action plan of other measures that the Council and developers can potentially implement.</p>
1.06	<p>LDP policy EN15 Water Resources has been strengthened to provide a ‘backstop’ preventing development from taking place without suitable mitigation in place, and is directly linked to the DCPRS. The approach followed in terms of producing the strategy and amending appropriate policies has been consulted on closely with NRW who agreed a statement of common ground with the Council that concluded that 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. From this, the Council’s updated Habitats Regulations Assessment (HRA) has concluded that the plan will not have adverse effects on the SAC protected rivers.</p>

1.07	<p>A further Examination session was held by the Inspector on 23rd November 2021, and notwithstanding the DCPRS she raised new concerns confirmed by letter in relation to phosphates and their potential impact on the viability and deliverability of four of the housing allocations in the LDP. The Inspector set out a series of specific questions which the Council responded to on the 17th December 2021. This response provided comprehensive answers to the Inspector's questions and sought to reassure her that there is sufficient flexibility in the LDP in terms of housing delivery, coupled with the fact that the LDP has delivered housing in the first five years of the Plan period as per the intended delivery rate. Welsh Government also produced a statement in support of the Council's position which they sent to the Inspector. On the 18th of January 2022 the Inspector wrote to the Council with her assessment of the Council's response. This concluded positively by stating that the Inspectors now had sufficient information to determine that the housing requirement in the LDP will be achieved during the plan period. Following clarification of one point by officers, the Inspector confirmed by letter dated 25th January 2022 her requirement for the MACs to be published for consultation.</p>
1.08	<p>Matters Arising Changes</p> <p>Following resolution of all outstanding matters, the Council has prepared and agreed in principle with the Inspector a schedule of changes to the LDP that have resulted from the Examination, that the Inspector considers are necessary to maintain the soundness of the LDP. These are known as the Matters Arising Changes (MACs) and are a final stage in the Examination process.</p>
1.09	<p>The schedule of MACs is attached as Appendix 2. It is presented in the same order as the contents of the Plan, and includes all of the changes grouped into three sections or categories - the Matters Arising Changes (MAC) for consultation – those requested by and agreed in principle with the Inspector; secondly the Inspectors Matters Arising Changes for consultation (IMACs) (all relating to Warren Hall) – Inspector directed changes; thirdly what are termed Minor Editing Changes (MECs) which are for information only – minor typographical changes or factual updates.</p>
1.10	<p>The MACs and IMACs are changes that relate to the maintenance of the soundness of the LDP i.e. are site specific or relate to the wording of a policy or explanatory text where it may clarify the meaning or implementation of that policy. As such, they are required to be made available for public consultation. In contrast, the Minor Editing Changes (MECs) are simply minor typographical changes or general updating of the Plan e.g. updating references from PPW10 to PPW11, and will be available alongside the MACs and IMACs for information only.</p>
1.11	<p>Aside from the only Inspector directed change relating to Warren Hall, all other changes are of a relatively modest significance, indicating the degree to which the LDP submitted by the Council for Examination was already sound. All changes required by the Inspector have been agreed in principle under the approved Scheme of Delegation and the Inspector now requires that the MACs are published for a six week period of public consultation, to allow the public and stakeholders the opportunity to understand how the LDP will change following the Examination and</p>

	enabling them to comment. The consultation only provides the opportunity to comment on the changes in the MACs schedule and is not an opportunity to submit further representations or evidence on other matters that have already been dealt with by the Examination.										
1.12	This is an essential precursor to the Council receiving the Inspector's Report on the Examination of the LDP. The Inspector needs to take account of any material representations on the MACs in finalising her report. The schedule of MACs was discussed at an EIP hearing session between the Council and the Inspector held on 23 rd November 2021. These have been available on the Examination website since that hearing session. The position with the LDP, the schedule of MACs, and the Inspector's requirement for them to be published for consultation were considered and endorsed by the meetings of the Planning Strategy Group held on Friday 12 th November 2021, Thursday 27 th January 2022, and Thursday 17 th March 2022, and in accordance with the approved Scheme of Delegation.										
1.13	<p>Next steps and timeline to adoption</p> <p>The timetable below sets out the remaining key stages to complete the Examination and adopt the LDP. Indicative dates are provided but it is difficult to be more precise as the timetable for how the Plan proceeds is mainly in the control of the Inspector.</p> <table border="1"> <thead> <tr> <th>Remaining Key Stage</th> <th>Indicative Date</th> </tr> </thead> <tbody> <tr> <td>1. 6 week public consultation on MACs</td> <td>Friday 17th June-Friday 29th July 2022</td> </tr> <tr> <td>2. Collate consultation responses and submit to Inspector</td> <td>August 2022</td> </tr> <tr> <td>3. Receive final Inspector's Report</td> <td>September 2022</td> </tr> <tr> <td>4. Cabinet/Full Council consider adoption of the Plan</td> <td>October 2022</td> </tr> </tbody> </table>	Remaining Key Stage	Indicative Date	1. 6 week public consultation on MACs	Friday 17 th June-Friday 29 th July 2022	2. Collate consultation responses and submit to Inspector	August 2022	3. Receive final Inspector's Report	September 2022	4. Cabinet/Full Council consider adoption of the Plan	October 2022
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1.14	Whilst the latest LDP Delivery Agreement indicates the receipt of the Inspector's report in November 2021, this was based on an October 2020 submission date (which the Council achieved), and a 12 month turn around by the Planning Inspectorate based on the Council's Service Level Agreement with them. The Inspector delayed the start of the examination on several occasions and there has also been a one month formal suspension of the Examination and the phosphates issue didn't arise until January 2021. It was therefore not possible to report the MACs to Cabinet and carry out the required consultation at an earlier date.										
1.15	This was because the Inspector did not finally confirm to the Council her satisfaction with the position on phosphates and the content of the MACs until late January 2022. This did not allow sufficient time to report to Cabinet and then carry out the six week consultation required, before the Pre-Election Period (PEP) commenced on 18 th March 2022. Welsh Government clearly advise not to carry out prominent public consultations during the PEP and whilst the MACs themselves are of a relatively modest or uncontentious nature, clearly the LDP has been the focus of public attention. Officers therefore had no option but to inform the Inspector that the consultation would have to await the outcome of the Elections, and the Inspector understood and accepted this position.										

1.16	Given that the new Council is now in place the MACs have been brought to the first available Cabinet meeting to update Members on the position reached with the LDP and to allow the final part of the Examination process to be completed as requested by the Inspector, in order to then receive the Inspector's Report. Officers have prepared all relevant documentation to support the consultation and this will be available on the Council's website and at usual consultation venues that are accessible to the public. These include libraries and connects centres which were used when the deposit LDP was consulted on. The process for making comments on the MACs has been made as easy to follow as possible.
1.17	A briefing on the position reached with the LDP Examination and its final stages to adoption will also be provided to all Members of the new Council as part of the induction programme and prior to consultation commencing. This will also assist with the consideration of the Inspector's report when received, where all Members will have the opportunity to consider the outcome of the Examination of the LDP which will be reported to both Cabinet and Full Council as part of adopting the LDP.

2.00	RESOURCE IMPLICATIONS
2.01	<p>Budget: The Council has committed funding via in-year budget provision as well as a specific balances to undertake the preparation of the LDP including provision for the EiP stage in the process. This provision is considered adequate to cover the remaining stages of the plan process to adoption.</p> <p>Human Resources: Consultation on the Matters Arising Changes and subsequent adoption of the LDP is based on the existing staffing levels within the planning policy team (1FTE team Leader, 2 FTE Senior Planners) supported by the Service Manager Strategy, and also utilising wider portfolio administrative and technical support as required. A FTE Planner post has just been filled subject to references, where a successful appointment will help to support adoption of the Plan and further stages such as development of supplementary Planning Guidance (SPG).</p> <p>Technology: The Examination has been successfully conducted entirely virtually using Zoom.</p>

3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	The LDP has already been the subject of a comprehensive Integrated Impact Assessment as a requirement of Planning Policy Wales and the Development Plans Manual (Edn 3). This is part of the documentation that the Council was required to provide alongside the deposit LDP when it went out for public consultation in September 2019 and relates to the

	sustainability of the Plan and how this links to the Welsh Government Well Being Goals. The Plan's IIA can be accessed from the Council's website. The IIA has also been updated to assess any impacts relating to the Matters Arising Changes and an update of the assessment will be available alongside the MACs when consulted on. The MACs do not affect the result of the IIA as there are no new sites or additional development proposed in the changes that may increase the impact. The work to mitigate the impact of phosphates will also have a positive impact on the IIA.
3.02	A Health Impact Assessment of the LDP has now been published by Public Health Wales and is on the Council's website.
3.03	The key risk mitigation is to ensure that delays in the progress of the Plan are minimised. The need to have an adopted plan in place is a primary requirement of the Welsh Government and for the Council, and an adopted LDP ensures that decisions on planning applications are fully in the control of the Council as Local Planning Authority and made with referenced to the policies of the adopted Plan. Officers have maintained the efficiency of the main Examination in dealing with the outstanding matters and have produced the documentation to support the MACs session in very limited time. That's said the Examination and timings are entirely driven by the Inspector.

4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	Following approval of the Matters arising changes, these need to be published for public consultation. Although not a statutory part of the process, officers will follow the lead from earlier consultations in terms of allowing 6 week period for comments and, with the limitations set by Covid for public access to Council buildings, make documents available in as similar a way as previously. Officers will also man a helpline each day of the consultation to provide advice and guidance.

5.00	APPENDICES
5.01	Appendix 1 – Dee Catchment Phosphorous Reduction Strategy Appendix 2 – LDP Matters Arising Changes

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Flintshire LDP Examination Website

7.00	CONTACT OFFICER DETAILS
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7.01	<p>Contact Officer: Andy Roberts, Service Manager Strategy Telephone: 01352 703211 E-mail: andy.roberts@flintshire.gov.uk</p>
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8.00	GLOSSARY OF TERMS
	<p>Examination: This is the formal examination in public of the LDP to test the soundness of the plan which will be presided over by an independently appointed Planning Inspector.</p> <p>Planning Strategy Group: A sub group of the Council’s Planning Committee that acts as a steering group guiding the progress of the production of the LDP. This is not a public committee and has no power to make direct decisions over the content of the LDP, but it makes recommendations to the Cabinet on the plan.</p> <p>Submission: Once the Council has agreed the responses to the representations made to the deposit LDP consultation, it also needs to agree to submit the Plan to the Planning Inspectorate for formal examination.</p> <p>Soundness: A series of tests that the LDP is required to satisfy to demonstrate that it is based on sound evidence, is in line with other plans and strategies, is national policy compliant, and is capable of being delivered.</p> <p>Examination in Public: A formal process carried out by a Planning Inspector to assess the soundness of the LDP</p> <p>Phosphate Levels: the concentration of phosphorous as a nutrient in river water</p> <p>Habitats Regulations: Environmental regulations which require the LDP to demonstrate that it will not cause harm to protected species or habitats</p> <p>Statement of Common Ground: An agreed position between two parties that helps the Inspector understand on what basis the parties agree</p>