

## CABINET

<b>Date of Meeting</b>	Tuesday, 20 <sup>th</sup> December 2022
<b>Report Subject</b>	Membership of the River Dee Nutrient Management Board
<b>Cabinet Member</b>	Cabinet Member for Climate Change and Economy, Cabinet Member for Planning, Public Health and Public Protection
<b>Report Author</b>	Chief Officer (Planning, Environment, and Economy)
<b>Type of Report</b>	Strategic

### EXECUTIVE SUMMARY

This report seeks Cabinet agreement to formally participate in a newly-formed partnership in North Wales, the 'Dee Catchment Nutrient Management Board'. Participation will be alongside Wrexham Council and other North Wales and adjoining English councils, Natural Resources Wales, Welsh Government and Dwr Cymru/Welsh Water and others including developers, landowners and the agricultural sector, to oversee the coordination and implementation of a strategy and action plan to tackle phosphorus pollution in the River Dee. It sets out the reasons for creating the coordinating board and the draft terms of reference.

The Dee Catchment Phosphorus Reduction Strategy (November 2021), attached as Appendix 1 has been prepared jointly by Flintshire and Wrexham Councils because they have had to address the issue of phosphorus in the Examinations in Public into their respective Local Development Plans (LDP).

Phosphorus is a nutrient and pollutant derived from wastewater, primarily originating from agriculture, but also from existing and new human development (housing etc.). Historically, it has been removed from wastewater at water treatment works (WWTWs) before the treated water is discharged into the main rivers (in Flintshire's case, the River Alyn which then flows into the River Dee).

In January 2021, Natural Resources Wales (NRW) introduced much more stringent limits on discharges of phosphorus into the River Dee to protect the River Dee and Bala Lake Special Area of Conservation (SAC). This new standard has been applied to all other river SACs in Wales.

This issue has had a major impact on the preparation of Local Development Plans and the determination of individual Planning applications in Flintshire, Wrexham and elsewhere; in effect, creating a de facto moratorium on new development that cannot prove 'no net impact' or nutrient neutrality, on phosphorus discharges to the drainage system and the catchment of the River Dee.

The Dee Catchment Phosphorus Reduction Strategy (DCPRS) (Appendix 1) has been developed jointly by Flintshire and Wrexham councils in consultation with Natural Resources Wales (NRW) and other stakeholders, to tackle this problem. It has been prepared in this way because the River Dee catchment covers most of both council areas and because they are at the same stage in their Local Development Plan (LDP) Examinations in Public (EiP).

The DCPRS provides a strategic approach for delivering phosphorus reductions in the Dee catchment area while also facilitating development proposed in the Flintshire and Wrexham LDPs and demonstrating that on-site and off-site mitigation for phosphorus can be delivered in practice. It meets the immediate need of providing an evidence base to demonstrate that adverse effects from development in both LDPs will be avoided, and sets out a longer-term approach (non LDP-specific) to deliver reductions across the catchment.

Development of the strategy will now continue under the leadership of a River Dee Nutrient Management Board which will have the wider remit of delivering longer term solutions to excessive phosphorus in the Dee, the vast majority of which is not related to new development at all. Of course, the Dee catchment affects Denbighshire and Gwynedd in Wales, and Cheshire and Shropshire in England, and these and neighbouring councils will be invited to join the board from the outset to shape the strategy and action plan. The board will be supported by a technical officers sub-group and informed by engagement with a stakeholder sub-group, as set out below.

The new board is non-statutory and will not have decision-making powers. Any recommendations, such as the final strategy and action plan, will need to be endorsed by the respective Councils' Executive Boards (or their equivalent).

## RECOMMENDATIONS

1	That the Cabinet supports the establishment of, and Council involvement in, the River Dee Nutrient Management Board.
2	That the Cabinet nominates the Lead Member for Planning, Public Health, and Public Protection to represent the Council on the new board.
3	That the Cabinet gives in-principle approval of the Dee Catchment Phosphorus Reduction Strategy (November 2021) attached as Appendix 1, subject to considering further versions for approval as the new board develops and refines the strategy and associated action plan.

## REPORT DETAILS

<b>1.00</b>	<b>EXPLAINING THE PHOSPHATES ISSUE AND THE NEED FOR A NUTRIENT MANAGEMENT BOARD</b>
1.01	Phosphorus is a nutrient and, in excess quantities, a pollutant derived from wastewater. It arises from a number of sources: principally, agriculture (fertilisers and animal waste), but also existing housing in towns and villages. A small percentage is generated by new development.
1.02	Where it enters a river, it acts as a pollutant that harms water quality with consequent impacts on ecology. Too much phosphorus promotes the growth of nuisance species, such as algae, results in the loss of or damage to protected species and de-oxygenates gravel beds, to the general harm of the health of the river.
1.03	Phosphorous pollution in riverine Special Areas of Conservation (SAC) protected for their international habitat conservation value, such as the River Dee and Bala Lake SAC, became an issue for all organisations in Wales in January 2021 when Natural Resources Wales (NRW) set out new stringent water quality targets and issued compliance tests. These standards are much more challenging than before and the tests found a failure to meet them in parts of the River Dee. NRW subsequently issued guidance to Local Planning Authorities (LPAs) seeking to ensure, through the Habitat Regulations Assessments (HRA) of their LDPs, that there are no adverse effects on the integrity of any SACs arising from development promoted in the Plan.
1.04	The new standards have profound impacts on all plans and projects that fall within the scope of the Habitat Regulations (which sets legal duties with regard to SACs) and not just land use development plans and individual Planning applications (e.g. waste water discharge licencing and all agricultural activities).
1.05	A number of national work-streams have been established by NRW and Welsh Government (WG) to develop a strategic approach to mitigation, involving relevant stakeholders, such as LPAs, NRW, Dŵr Cymru/Welsh Water, WG, other environmental agencies, Planning and Environment Decisions Wales (PEDW) and developers.
1.06	In the spring of 2021, the Local Development Plan (LDP) Inspectors wrote to Flintshire and Wrexham councils asking that the implications of NRW's new targets and guidance for the SAC in relation to phosphorus loading from new development be addressed within their LDPs. This work was done with the support of NRW and submitted to the Inspectors in November 2021. It demonstrated that development proposed in the LDPs will not have adverse effects on the SAC.
1.07	The Inspectors wrote to both councils in December 2021 with their preliminary view that both Councils needed to undertake lengthy detailed assessments of mitigation on allocated sites. Both Councils responded, challenging this approach, and in further correspondence from the Inspector to Flintshire dated February 2022, the Inspector confirmed that

	she now had sufficient information in order to consider her report and conclude the Examination.
1.08	<p><b>The Dee Catchment Phosphorus Reduction Strategy (November 2021)</b></p> <p>The Dee Catchment Phosphorus Reduction Strategy (DCPRS) sets out broad milestones for action on mitigation measures that are both LDP-specific but also, importantly, wider non LDP-specific. This includes necessary developer proposals on-site, such as reed beds and tree planting, and off-site (i.e. via Section 106 Planning Obligations) such as better phosphorus filters in wastewater treatments works (WWTWs).</p>
1.09	The November 2021 draft of the strategy has been consulted upon on as part of the LDP Matters Arising Changes (MACs) statutory consultation process as supporting evidence and no issues arose from that to question the strategy's content or outcomes. It will be further developed by a proposed multi-agency coordinating board (see below) before being brought back to the Cabinet for consideration.
1.10	The first element of the strategy is to facilitate the delivery of development and avoid adverse effects on the SAC from planned growth as a result of the treatment of wastewater. In principle, new development will be 'phosphorus neutral' (i.e. will not add any additional phosphorus into the SAC). The responsibility for ensuring that development provides this mitigation (so-called 'Category 1' measures) lies with the Council as Local Planning Authority; hence a revised Flintshire LDP Policy EN15 Water Resources linked to this strategy. However, the strategy is very clear that new development is not responsible for addressing the vast majority of phosphorus pollution which comes from other sources.
1.11	The second element of the strategy is to deliver phosphorus reductions across the River Dee catchment, primarily caused by agriculture and discharges from WWTWs (so-called 'Category 2' measures). Responsibility for these actions lies with key stakeholders from all sectors, such as landowners, farmers, Welsh Water, NRW, WG and local councils in both North Wales and Northwest England. The strategy sets out a framework for these wider reductions and, importantly, the legislative and regulatory framework that already determines roles and responsibilities for delivering this work.
1.12	The strategy identifies a range of measures which are technically feasible and which can reasonably be delivered. These include agricultural source control, enhancement of WWTWs, Sustainable Drainage Systems (SuDS), Integrated Buffer Zones (IBZs) such as planting beds to keep livestock away from rivers, agricultural improvements and nature-based solutions (wetlands and tree planting).
1.13	The final section of the strategy covers implementation, the need for a (Section 106) developer contribution scheme where phosphorus derives from new development and potential sources of funding to address the wider issues (e.g. Welsh Government Grant in Aid, Strategic Allocated Funding and Water Quality Capital Fund, WG farming funding to deliver positive environmental benefits and AMP8, amongst several quoted

	sources). There are also targets and milestones to measure the success of the strategy. Beyond delivery of the milestones themselves, monitoring of water quality within the SAC will be necessary to provide confidence that the strategy is meeting its objectives.
1.14	The strategy recognises this is not just a problem for the Planning system or councils to resolve. Indeed, the biggest issues are in the wider catchment and outside the direct responsibility or control of the Council. Given the way that the Planning system is regulated by legislation, it has been relatively easy to direct the need to mitigate the impact of phosphorus to Planning, and it will continue to work to meet this obligation, but these will be of a relatively minor scale compared to the main contributors which are water treatment works and agricultural practices. It is considered that relatively minor improvements in these areas will have a much larger impact in reducing phosphorus levels than any work the Council could undertake. However, the Council is fully committed to playing its part in this issue and working successfully with other committed stakeholders.
1.15	<p><b>Dee Catchment Nutrient Management Board</b></p> <p>Because the management of phosphorus across a river catchment area requires work by both private and public bodies and regulators, the DCPRS proposed that a multi-agency partnership called a 'Nutrient Management Board' (NMB) be created. This would be based on a similar board for the Rive Wye already in operation, and along the lines of many such partnerships already operating in North Wales, such as the AONB Joint Committee.</p>
1.16	The creation of a board recognises that phosphorus pollution needs to be addressed by stakeholders under existing legislative and regulatory powers which already define their roles and responsibilities. Membership of the board will not impose any new statutory obligations, but provide a structure for coordinated, strategic multi-agency work.
1.17	The overarching purpose of the board will be to coordinate the reduction in phosphorus at a strategic catchment wide level, which will involve further developing the strategy and preparing and agreeing a more detailed action plan (DCPRAP) setting out specific targets (actions, numbers and sizes of interventions proposed and dates for implementation) roles and responsibilities.
1.18	The board will contain those bodies with regulatory responsibility for the condition of the SAC (Wrexham and Flintshire Councils in particular, but also other North Wales and Northwest England councils, NRW and Dwr Cymru/Welsh Water). In due course, membership could be expanded to include other local authorities within the Dee catchment and other regulatory and statutory bodies from the English side of the Dee (Natural England and Environment Agency).
1.19	Similar to the board created for the River Wye, it is proposed that the board be supported at an operational level by two sub-groups (a key stakeholder group, to ensure engagement with representatives from sectors directly impacted by phosphorus, such as agriculture and the

	development industry; and a technical officers group, with officers from the regulatory bodies providing technical support to the board).
1.20	The member organisations of the board and sub-groups will each have a role to play in delivering a range of existing schemes, policies and guidance to support the objectives of the strategy. Some of these opportunities include funding within their direct control.
1.21	The board would be chaired on a rolling basis, but Wrexham Council has taken the lead for the first meetings, to help build momentum. An exploratory inception took place on 21 <sup>st</sup> November 2022 although this was simply to establish the principle of the Board and discuss how to go forward. The Council was represented at senior officer level.
1.22	<p>Figure 1, below, shows a high-level breakdown of the proposed board and subgroups which would input into and coordinate the delivery of the Strategy and Action Plan.</p> <p>Figure 1</p> <pre> graph TD     NMB["Nutrient Management Board Members: Wrexham Council, other N Wales councils and adjoining English councils, Natural Resources Wales, Welsh Government, Dwr Cymru"]     SG["Stakeholder Group Members: Relevant Local Authorities, Natural Resources Wales, Dwr Cymru, Welsh Government, National Farmers' Union, Farmers Union of Wales, Local Fisheries Groups, Afonydd Cymru, Welsh Dee Trust, LIFE Dee River, other interested groups"]     TOG["Technical Officers Group Members: Officers from Flintshire County Council, Wrexham County Borough Council, Natural Resources Wales, Welsh Government, Dwr Cymru"]     NMB --- SG     NMB --- TOG </pre>
1.23	The terms of reference of the board and sub-groups are set out in Appendix 2. They are based on the approach used in the River Wye board. It will be for the proposed board to agree their final form.
1.24	<p><b>Conclusion</b></p> <p>The strategy is a ‘live document’ and in any future version the milestones will reflect the level of detail available at the time, in particular the Category 1 and 2 measures which will be implemented through the strategy. The milestones will be updated with increasing specificity once further detail is available.</p>
1.25	The nature of the mitigation measures to be delivered is such that it is anticipated that ‘development windows’ will be agreed. These mean that a Developer Contribution Scheme will make provision for a quantum of mitigation to meet the needs of ‘x’ dwellings within period ‘y’ years. These will be defined on the basis of the timetable for delivery of specified mitigation measures and the phosphorus reductions which will be secured.

	This will ensure that occupation of development occurs in accordance with the delivery of necessary mitigation measures.
1.26	One of the first milestones in the strategy is the establishment of a Nutrient Management Board and an agreement on its terms of reference as soon as possible. Subsequent milestones will be dependent upon the operation of that board.

<b>2.00</b>	<b>RESOURCE IMPLICATIONS</b>
2.01	<p><b>Revenue:</b> There are no direct financial consequences of the recommendations to create a coordinating board or the approval the strategy, although Welsh Government have identified the potential for a grant of £70,000 that can be applied for to support the establishment of the Board and/or fund the need for supporting studies etc. Wrexham Council will make the application to Welsh Government to secure this funding for the board.</p> <p><b>Capital:</b> There are no implications for the approved capital programme for the current financial year and any impact on future years will be informed by the outcome of further work being carried out for the Council by consultants into the viability of developing wetlands downstream of the three affected WWTW in Flintshire</p> <p><b>Human Resources:</b> The Lead Member and Chief Officer (or his deputy) will need to represent the Council on the Nutrient Management Board. There may also be a need for a specialist adviser/project officer, but this could be a joint post funded by developer contributions or from Welsh Government grant.</p>

<b>3.00</b>	<b>IMPACT ASSESSMENT AND RISK MANAGEMENT</b>		
3.01	<p>In order for the outcomes of the DCPRS to be acceptable both to NRW and to the LDP Examination Inspectors, a revised Habitats Regulations Assessment was carried out and submitted as part of the LDP Examination evidence submission.</p> <p>If the strategy's is not approved in principle, it will not be able to facilitate LDP Policy EN15 'Water Resources' which includes the delivery of measure specified in the Strategy and there will not be any of the necessary multi-agency coordination to reduce phosphates. In turn the sites that are affected in the LDP by the phosphates issue, will prove difficult to implement if deliverable mitigation cannot be identified.</p> <p><b>Ways of Working (Sustainable Development) Principles Impact</b></p> <table border="1" data-bbox="319 1937 1385 2105"> <tr> <td>Long-term</td> <td>The aim of the DCPRS and the work of the NMB is to take a catchment wide multi-agency approach to finding solutions to the phosphates issue. The production of the strategy and inception of the Board are both</td> </tr> </table>	Long-term	The aim of the DCPRS and the work of the NMB is to take a catchment wide multi-agency approach to finding solutions to the phosphates issue. The production of the strategy and inception of the Board are both
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	positive steps in ensuring that the Council both fulfils its statutory responsibilities as a responsible body under the Habitat Regulations, as well as ensuring that the sites in its LDP can be developed.
Prevention	Identification of successful mitigation will not only allow affected development in the present LDP to be developed but also future proof this issue for the next version of the LDP
Integration	It is important to ensure that the LDP can make a full contribution to the National Policy driver for the Flintshire and Wrexham area, which is seen as a National Growth Area in the national development plan, Future Wales.
Collaboration	The issue of phosphate mitigation is not the sole responsibility of one Council or organisation and will only be successfully dealt with by taking a collaborative multi-agency approach.
Involvement	Having jointly produced the DCPRS which advocates the establishment of the NMB with Flintshire and Wrexham taking the lead, it is important for the Council to both formalise its support and attendance at the NMB,

**Well-being Goals Impact**

Prosperous Wales	Positive: The ability of the growth within the LDP to be able to contribute to local as well as national growth is important and the need to address the phosphates issue is a significant factor in ensuring that development does not stagnate.
Resilient Wales	Positive: Taking a shared responsibility for the health of Wales's rivers is important, and must be achieved by taking a collaborative and shared responsibility proportionate to the scale of the contribution made to the issue.
Healthier Wales	Neutral
More equal Wales	Neutral
Cohesive Wales	Neutral
Vibrant Wales	Positive: Flintshire is part of a National Growth Area and will be important to deliver growth and economic development to ensure that it continues to make a positive contribution to the economy of Wales
Globally responsible Wales	Positive: The DCPRS and formation of the NMB are not just to enable new development to take place, but to work on a broader catchment basis to ensure that the use of land can be done in a sustainable way that does not pollute the health of Wales's rivers

**Council's well being goals?**



<b>4.00</b>	<b>CONSULTATIONS REQUIRED/CARRIED OUT</b>
4.01	The DCPRS was consulted on as part of the LDP Matters Arising Changes (MAC) consultation where no adverse comments were received in relation to the purpose or content of the strategy. As part of the work of the NMB, further enhancement of the strategy wilol be required in order ot support the development of an action plan and this will be the subject of reference to the NMB Stakeholder Group.

<b>5.00</b>	<b>APPENDICES</b>
5.01	<a href="#">Appendix 1 DCPRS</a>
5.02	Appendix 2 NMB Terms of reference

<b>6.00</b>	<b>LIST OF ACCESSIBLE BACKGROUND DOCUMENTS</b>
6.01	<a href="#">Updated HRA of LDP</a>

<b>7.00</b>	<b>CONTACT OFFICER DETAILS</b>
7.01	<b>Contact Officer:</b> Andy Roberts Service Manager Strategy <b>Telephone:</b> 01352703211/07920701241 <b>E-mail:</b> <a href="mailto:andy.roberts@flintshire.gov.uk">andy.roberts@flintshire.gov.uk</a>

<b>8.00</b>	<b>GLOSSARY OF TERMS</b>
	<p><b>Nutrient Neutrality</b> – Where the nutrients that arise from new development must be mitigated so that there is no net increase in nutrients entering SAC protected rivers from the new development</p> <p><b>Planning Environment Decisions Wales (PEDW)</b> – Formerly the Planning Inspectorate</p> <p><b>Sustainable Urban drainage Systems (SuDS)</b> – A new approach to surface water drainage from new development where the proposed approach should seek to take a more natural basis for drainage (soakaway, draining to watercourses) rather than revert to a piped system.</p> <p><b>Integrated Buffer Zones (IBZ)</b> – These are nature-based approaches such as planting a belt of trees adjacent to SAC protected rivers in order to prevent livestock from entering the river and introducing direct pollutants.</p> <p><b>AMP8</b> – Welsh Water’s capital investment programme is organised on a five-year rolling basis and these are known as Asset Management Plans, with AMP8 covering the period 2025-2030.</p>

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