

PERTH AND KINROSS COUNCIL

Enterprise and Infrastructure Committee

28 August 2013

MEMORANDUM OF UNDERSTANDING FOR PLANNING PROCEDURE FOR APPLICATIONS IN THE LOCH LEVEN CATCHMENT**Report by Executive Director (Environment Services)****PURPOSE OF REPORT**

One of the two key aims of the adopted Kinross Area Local Plan 2004 is to seek to assist the ecological recovery of Loch Leven. In addition Perth and Kinross Council, as a competent authority, have an obligation to meet terms of the Habitats Directive (Conservation (Natural Habitats &c) Regulations 1994). As such Perth and Kinross Council can only agree to development proposals in the catchment of Loch Leven Special Protection Area (SPA) after having ascertained that the proposal will not adversely affect the integrity of the SPA through appropriate mitigation measures. Securing the mitigation measures is currently through the use of a S.75 Legal agreement and has added delays in the determination and release of planning consents. In order to streamline the planning process Scottish Environmental Protection Agency (SEPA) and Scottish Natural Heritage (SNH) has agreed to the use of Planning Conditions to secure the necessary mitigation. This report seeks to agree the memorandum of understanding allowing the use of conditions when determining future planning applications within the Loch Leven SPA.

1. BACKGROUND

- 1.1 One of the two key aims of the Kinross Local Plan is to seek to assist the ecological recovery of Loch Leven. To this end, policies 10 to 13 of the Plan set out the requirements in terms of drainage infrastructure necessary in order to promote this recovery. These aims are continued through TAYplan Policy 3, and Policy EP7 of the emerging Local Development Plan. In addition Perth and Kinross Council, as a competent authority, has an obligation under the Habitats Directive (Conservation (Natural Habitats &c.) Regulations 1994) to take appropriate steps to avoid *“the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant.”* As such Perth and Kinross Council can only agree to development proposals in the catchment of Loch Leven SPA after having ascertained that the proposals will not adversely affect the integrity of the SPA. The application of the policies set out in the Kinross Area Local Plan assists the Council in their consideration of a development proposal.
- 1.2 In order to ensure that there is no adverse effect on the integrity of Loch Leven SPA, any phosphorus discharge from a new development must either

be diverted outwith the Loch Leven catchment, be connected to the Drum, Milnathort or Kinross Wastewater Treatment Works; or include phosphorus mitigation proposals which will be capable of removing from the catchment 125% of the phosphorus likely to be generated by the development. Any foul drainage infrastructure delivering this phosphorus mitigation must be suitably maintained and this is currently secured through the use of Section 75 Legal Agreement. The use of Section 75 agreements has added delays in the determination and release of planning consents. These agreements have also been difficult to enforce and increasingly been considered irrelevant as the monitoring of discharge from private sewage systems is monitored by SEPA through the Water Environment (Controlled Activities) Regulations 2011.

2. PROPOSALS

- 2.1 In order to streamline the planning process, and avoid the use of Section 75 Legal Agreements, the Council has developed a Memorandum of Understanding through the Loch Leven Agreement Management Group. This has been agreed with SEPA and SNH. The Memorandum outlines the process for ensuring that phosphorus mitigation is in place and its maintenance is secured through the application of planning conditions which will be attached, where appropriate, to future planning permissions within the Loch Leven SPA catchment.
- 2.2 The Memorandum of Understanding sets out the three agreed planning conditions and identifies the various scenarios in which these would be applied. This Memorandum of Understanding is attached at Appendix 1. These planning conditions will be used for proposals within the Loch Leven catchment which include a phosphorus discharge not removed from the catchment or connected to Drum, Milnathort or Kinross Wastewater Treatment Works.
- 2.3 The Memorandum applies to all 'full planning applications' or 'approved matters applications'. 'In principle applications' will have a suitable condition attached ensuring that future applications will be considered in line with the appropriate policy framework.
- 2.4 By the application of these conditions to a planning proposal which includes a phosphorus discharge in the Loch Leven catchment, Perth and Kinross Council can conclude that, with respect to phosphorus discharge, the development is not likely to affect Loch Leven Site of Special Scientific Interest (SSSI) and there is no likelihood of a significant effect on Loch Leven SPA.
- 2.5 This means that that Perth & Kinross Council does not need to consult SNH under the Town and Country Planning (General Development Procedure) Order 1992 (s.15), the Town and Country Planning (Notification of applications) (Scotland) Direction 2009 (para 2(iii) of the Schedule), nor carry out an appropriate assessment (of the effect of phosphorus on the protected features of Loch Leven SPA) and hence does not need to consult SNH under Reg 48 of the Conservation (Natural Habitats, &c.) Regulations 1994.

- 2.6 The use of conditions will reduce the number of S.75 Legal Agreements which will in turn significantly reduce delays in determining and releasing planning consents within the Loch Leven SPA. It will reduce costs to applicants and reduce the burden on the Council to monitor and enforce the mitigation measures agreed as part of new developments.
- 2.7 Subject to Committee agreement, this Memorandum of Understanding will be implemented immediately and applied to all future and currently undetermined planning proposals.

3. CONCLUSION

- 3.1 This report highlights that the current use of Section 75 Legal Agreements to secure phosphorus mitigation from new developments within the Loch Leven SPA has led to delays in determining and releasing planning consents. SEPA and SNH have agreed the Memorandum of Understanding to use planning conditions which will streamline the planning process.
- 3.2 The Committee is asked to:-
- (i) Approve the contents of this report and the Memorandum of Understanding contained in Appendix 1.

Author

Name	Designation	Contact Details
Euan McLaughlin	Planning Officer	01738 475381 emclaughlin@pkc.gov.uk

Approved

Name	Designation	Date
Jim Valentine	Executive Director	24.7.13

If you or someone you know would like a copy of this document in another language or format, (On occasion only, a summary of the document will be provided in translation), this can be arranged by contacting the Customer Service Centre
on
01738 475000

ANNEX

1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	Yes
Corporate Plan	Yes
Resource Implications	
Financial	None
Workforce	None
Asset Management (land, property, IST)	None
Assessments	
Equality Impact Assessment	None
Strategic Environmental Assessment	None
Sustainability (community, economic, environmental)	None
Legal and Governance	
Risk	None
Consultation	
Internal	Yes
External	Yes
Communication	
Communications Plan	None

1. Strategic Implications

Community Plan / Single Outcome Agreement

- 1.1 The project supports the Community Plan Vision to ***create and sustain vibrant, safe, healthy and inclusive communities in which people are respected, nurtured and supported and where learning and enterprise are promoted.*** Specifically this projects encourages sustainable economic growth and improves water quality creating and safer natural environment.
- 1.2 The project supports the following Outcome:
- Our area will have a sustainable natural and built environment

Corporate Plan

- 1.3 The Council's Corporate Plan 2013 – 2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:
- Giving every child the best start in life;
 - Developing educated, responsible and informed citizens;
 - Promoting a prosperous, inclusive and sustainable economy;
 - Supporting people to lead independent, healthy and active lives; and
 - Creating a safe and sustainable place for future generations.

- 1.4 This report contributes to objective v.

2. Resource Implications

Financial

- 2.1 None.

Workforce

- 2.2 None.

Asset Management (land, property, IT)

- 2.3 None.

3. Assessments

Equality Impact Assessment

- 3.1 The proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) using The Integrated Appraisal Toolkit and have been assessed as **not relevant** for the purposes of EqIA.

Strategic Environmental Assessment

- 3.2 The proposals have been considered under the Environmental Assessment (Scotland) Act 2005 using The Integrated Appraisal Toolkit and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

- 3.3 The proposals have been considered under the provisions of the Local Government in Scotland Act 2003 and Climate Change Act using The Integrated Appraisal Toolkit. The proposals will not have a direct impact on sustainable development or climate change.

Legal and Governance

- 3.4 The Head of Legal Services has been involved in the drafting of the Memorandum of Understanding and consulted on the report.

Risk

- 3.5 There are no specific risks associated with the proposals outlined within the report.

4. Consultation

Internal

- 4.1 The Head of Legal Services has been consulted in the preparation of this report.

External

- 4.2 SEPA and SNH have been consulted in the preparation of this report.

5. Communication

- 5.1 The proposal will be applied when determining appropriate planning applications. The process will be set out for applicants and Councillors where appropriate.

2. BACKGROUND PAPERS

- Kinross Area Local Plan 2004
- Proposed Local Development Plan January 2012

3. APPENDICES

Memorandum of Understanding for Planning Procedure for Applications in the Loch Leven Catchment as shown in Appendix 1.

Memorandum of Understanding for Planning Procedure for Applications in the Loch Leven Catchment

1. Introduction

- 1.1 One of the two key aims of the Kinross Local Plan is to seek to assist the ecological recovery of Loch Leven. To this end, policies 10 to 13 of the Plan set out the requirements in terms of drainage infrastructure necessary in order to promote this recovery. In addition Perth and Kinross Council, as a competent authority, have an obligation under the Habitats Directive (Conservation (Natural Habitats &c) Regulations 1994) to take appropriate steps to avoid *“the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant.”* As such Perth and Kinross Council can only agree to development proposals in the catchment of Loch Leven Special Protection Area (SPA) after having ascertained that the proposals will not adversely affect the integrity of the SPA. The application of the policies set out in the Kinross Area Local Plan to assists the Council in their consideration of a development proposal.
- 1.2 In order to ensure that there is no adverse affect on the integrity of Loch Leven SPA any phosphorus discharge from a new development must either be diverted out with the Loch Leven catchment, be connected to the Drum, Milnathort or Kinross Wastewater Treatment Works or include phosphorus mitigation proposals which will be capable of removing from the catchment 125% of the phosphorus likely to be generated by the development. Any foul drainage infrastructure delivering this phosphorus mitigation must be suitably maintained.

2. Agreed planning protocol/procedure

- 2.1 Perth and Kinross Council, Scottish Environmental Protection Agency and Scottish Natural Heritage agree that:

in order to

- streamline the planning process,
- avoid the need for the use of Section 75 agreement and
- ensure that the phosphorus mitigation is in place and its maintenance is secured,

the following planning conditions will be used for proposals within the Loch Leven catchment which include a phosphorus discharge which is not removed from the catchment or connected to Drum, Milnathort or Kinross Wastewater Treatment Works.

- 2.2 **Condition 1** - Prior to the occupation of the development hereby approved, foul drainage infrastructure capable of achieving not less than 125% phosphorus mitigation shall be installed and thereafter retained to the reasonable satisfaction of the planning authority.

Reason: To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with policies 10, 12 and 13 of the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013.

- 2.3 **Condition 2** - The foul drainage infrastructure capable of achieving not less than 125% phosphorus mitigation associated with this development shall be undertaken in a phased manner:-

a) No development shall commence on the approved development site until the mitigating foul drainage infrastructure at the remote property/properties [variable address and owner] has been installed.

b) Following the installation of the foul drainage infrastructure at the remote property/properties the development site shall only be occupied once the foul drainage infrastructure for the development site has been installed to the reasonable satisfaction of the Planning Authority. For the avoidance of doubt the installed drainage infrastructure at the development site as approved shall be retained all to the reasonable satisfaction of the Planning Authority.

Reason: To ensure appropriate drainage arrangements are installed and retained to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with policies 10, 12 and 13 of the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013.

- 2.4 **Condition 3** - No development shall commence until the applicant has submitted approved CAR licence(s) under the Water Environment (Controlled Activities)(Scotland) Regulations 2011 for the drainage infrastructure associated with this project to the Planning Authority and the Planning Authority has confirmed receipt of the documentation in writing.

Reason: To ensure appropriate drainage arrangements are in place to remove phosphorus from the Loch Leven Catchment Area thereby ensuring compliance with policies 10, 12 and 13 of the Kinross Area Local Plan 2004 and Enterprise and Infrastructure Committee Resolution of 28 August 2013.

- 2.5 Phosphorus mitigation can therefore be achieved by either

Scenario 1 - When the phosphorus mitigation is delivered within the boundary of the planning application site – in this situation, conditions 1 and 3 would apply.

Scenario 2 – When the phosphorus mitigation is delivered by a combination of infrastructure both on the development site and separate/remote to the development site – in this situation, conditions 2 and 3 would apply.

- 2.6 By the application of these conditions to a planning proposal which includes a phosphorus discharge in the Loch Leven catchment, Perth and Kinross Council can conclude that, with respect to phosphorus, the development is not likely to affect Loch Leven Site of Special Scientific Interest (SSSI) and there is no likelihood of a significant effect on Loch Leven Special Protection Area (SPA).
- 2.7 This means that that PKC does not need to consult SNH under the Town and Country Planning (General Development Procedure) Order 1992 (s.15), the Town and Country Planning (Notification of applications)(Scotland) Direction 2009 (para 2(iii) of the Schedule), nor carry out an appropriate assessment (of the effect of phosphorus on the protected features of Loch Leven SPA) and hence does not need to consult SNH under Reg 48 of the Conservation (Natural Habitats, &c.) Regulations 1994.

3. Procedure Flow Chart

