

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

