

26th November 2021

MANAGING ENVIRONMENTAL AND ECONOMIC CHALLENGES: TAN15, PHOSPHATES, NITRATE VULNERABLE ZONES AND THE ROADS REVIEW

Purpose

1. To outline a number of cases where environmental challenges facing councils have major economic implications and seek Members' views on how these dilemmas might best be managed.

Background

2. Over recent months there have been a number of instances where environmentally driven initiatives have raised major concerns from the perspective of councils' vitally important role in promoting the economic development of their areas.
3. Climate change, the subject of a separate report on this agenda, has a link in all of these cases to varying extents. As climate change mitigation and adaptation take on ever-increasing importance it is highly likely that more such dilemmas will surface over time. It is therefore important that councils look at the issues 'in the round' and consider the best way of trying to manage them.
4. This report gives brief details of each of the current cases. Each matter is complex and requires detailed work with a range of bodies involved. Therefore, this report does not seek to propose solutions but rather to highlight how, on a number of fronts, environmental and economic agendas are creating tensions. The intention is to generate a discussion on how *sustainable* ways forward can best be negotiated.

Technical Advice Note (TAN) 15

5. In 2019/20 Welsh Government issued a consultation on TAN 15, which covers development and flood risk. The main proposals were to:
 - replace a Development Advice Map with a new Flood Map for Wales, with 3 categories (very low risk Zone 1; low risk Zone 2 and medium / high risk Zone 3)
 - include climate change predictions in the models
 - build surface water mapping into the new map along with coastal and fluvial (river)
 - change development categories to include a new one of 'water compatible development'
 - highlight the need for comprehensive Strategic Flood Consequence Assessments to inform Development Plans
 - update existing guidance on coastal erosion and integrate it into TAN 15 (thereby cancelling the separate TAN 14)

- make it clear that planning authorities should not consider proposals for highly vulnerable development (including housing) in Zone 3 areas.

6. The new flood map was not available at the time the consultation was issued, which made commenting problematic. When the map was made available its distribution was limited, primarily to flood officers. Coming out also during the peak period for Covid, its significance was not fully recognised at the time. However, as we have been approaching 1st December, the proposed change-over date to the new map, councils have recognised the full implications of the new arrangements.

7. These implications are far-reaching and could affect any local authority with Zone 3 designated areas (including inland areas at risk of fluvial or surface water flooding). However, the greatest impact may be for coastal areas which can be at risk of combinations of coastal, fluvial and surface flooding.

8. The ban on development in Zone 3 is not absolute but a degree of flexibility suggested in the original consultation was actually reduced when the final version of the TAN was issued. Less vulnerable forms of development can be considered but can be justified only if:

- there are exceptional circumstances that require location in Zone 3, such as the interests of national security, energy security, public health or to mitigate the impacts of climate change AND
- its location meets the definition of previously developed ('brownfield' land); AND
- the potential consequences of a flooding event for the particular type of development have been considered and found to be acceptable in accordance with the criteria set out in the TAN.

9. The result of this is that a wide range of major regeneration proposals (linked to the town centre first policy), renewable energy projects, infrastructure projects (including proposed new rail stations between Newport and Cardiff) and various planned active travel routes are all affected.

10. Swansea is one of the councils that is particularly impacted by TAN 15 and the Leader circulated to other Leaders, via WLGA, a draft letter to the Minister for Climate Change, Julie James, seeking their support in asking for the proposals to be reviewed. A number of Leaders also met the Minister, and it was agreed to organise a meeting of senior Welsh Government officials and council officers to consider these matters in detail.

11. That meeting took place on 10th November. Welsh Government held an internal meeting on 11th and committed to meet with councils again in the week commencing 15th November. A verbal update on the latest position will be given at the meeting.

Phosphates

12. The phosphates issue arose after the Joint Nature Conservation Committee (JNCC)¹ recommended tighter targets in relation to phosphate levels, in light of new evidence on environmental impacts (e.g. excessive growth of algae damaging ecosystems/biodiversity). There is a link to climate change, with predicted spells of warmer and drier weather likely to result in increased concentrations in water bodies during reduced summer flows.

13. Following the introduction of the new targets, over 60% of water bodies in Wales already fail. For the River Usk, 88% of its water bodies fail. Together, the combination of tougher targets and increased summer concentrations increase the likelihood of other rivers failing to meet standards – even if the actual levels of phosphate discharge do not change.

14. In January 2021, NRW published details of phosphate levels for all river Special Areas of Conservation (SACs) across Wales (see: [Natural Resources Wales / Compliance Assessment of Welsh River SACs Against Phosphorus Targets](#)). There are nine river SACs in Wales:

- Cleddau in South West Wales
- Teifi and Tywi in Mid / South West Wales
- Dee, Eden, Gwyrfai and Glaslyn in North Wales
- Wye from Mid to South East Wales and
- Usk in South East Wales. The SACs are extensive, stretching considerable distances beyond the main rivers.

15. Phosphate is naturally occurring and can be released at low levels from natural processes, such as bankside erosion. However, land management practices, sewerage and foul water containing detergents and food waste can also introduce phosphates.

16. In light of the situation, NRW has reviewed its freshwater SAC Core Management Plans to incorporate the new targets. Each and every project, plan or permit affecting the SAC has to demonstrate it will have a neutral, or better impact on reducing phosphate levels. This requirement relates to each specific site/project and so wider action on phosphate reduction within the SAC that could potentially compensate for the development over time cannot be taken into consideration.

17. Water can be treated to reduce phosphates. However, the capital costs of treatment are high and often not cost effective in sparsely populated areas. They also involve extensive use of other chemicals which could have further environmental impacts.

18. This situation has raised concerns amongst the farming community (although NRW did not identify evidence to show a direct link between poultry farms and increased phosphate). It has also led to serious concerns in relation to planning, housing, regeneration and economic development, as a range of current proposals are being adversely affected or halted altogether.

19. In August, the Chair of NRW called a meeting of council Leaders and Chief Executives of impacted areas to listen to their views and has agreed to meet them again following

¹ The JNCC is a public body that advises the UK Government and devolved governments on UK-wide and international nature conservation. It was originally established under the Environmental Protection Act 1990 but was reconstituted by the Natural Environment and Rural Communities Act 2006.

a meeting with the Climate Change Minister.

20. Welsh Government have convened an Oversight Board for work on phosphates (which has met twice). Underneath this there is a Planning sub-group, currently chaired by Powys County Council and supported by NRW. This sub-group has been the vehicle for the planning officers to raise issues and to work collaboratively to find solutions. WLGA has recently been invited to send an officer to sub-group meetings.
21. The spatial response has been to set up Catchment/Nutrient Management Boards for all impacted rivers so that solutions at a local level can be found that increase the potential headroom for development, whilst still meeting shared responsibilities to bring the SAC rivers into favourable ecological condition. NRW has been working with local authorities to ensure they chair these Boards. The aim is that they should hold their first meetings before Christmas/ early in the New Year. Wrexham will chair the Dee, Brecon Beacons National Park the Usk, Carmarthenshire the Towy, Pembrokeshire the Cleddau and Ceredigion the Teifi.
22. Carmarthenshire has employed consultants (Ricardo) to develop a Phosphate Calculator. NRW have been in discussion with them and are keen to see if there is an approach that can be adopted across Wales. Those discussions are currently ongoing.
23. NRW have also been working closely with and advising Wrexham and Flintshire and their consultants on their LDPs, which are going out to consultation and Public Inquiry soon.
24. NRW itself has a number of workstreams dedicated to the SAC Project, focused on planning advice and guidance, water quality targets and compliance assessments and water quality improvements. They have been working with Natural England and the Environment Agency to share information and intelligence, especially where there are cross border issues.
25. Several councils have written to Welsh Government setting out their concerns regarding the impact this is having on development plans in their areas. A balance is needed between upholding standards to prevent environmental damage on the one hand and enabling developments that are needed to help sustain communities on the other.

Nitrate Vulnerable Zones (NVZs)

26. NVZs are areas of land draining into receiving waters that are currently high in nitrates and subject to regulation, initially introduced under the Nitrates Directive. Excess nitrates cause eutrophication which damages aquatic life. The same point applies as with phosphates above, in that concentrations will increase during hot summer weather. Nitrates can also affect drinking water sources if they enter groundwater.
27. In March 2021 Welsh Government published guidance for farmers and land managers on NVZs. From April, the Water Resources (Control of Agricultural Pollution) regulations were introduced by Welsh Government covering slurry and fertiliser applications across the whole of Wales (whereas initially the NVZs covered a land area of only 2.4% and NRW had previously recommended extension to 8%). The regulations were to be phased on over three years to allow time to adapt.

28. Requirements for storage have increased, requiring investment in new facilities, to avoid nitrate getting into water bodies. The initial estimate of cost of the new infrastructure was £360m, although that is thought likely to have risen due to higher material costs and labour shortages. Livestock/dairy farmers have been forced to consider either reducing the size of their stock or buying more land to be able to comply with the required nitrogen loading limit.

29. After the Senedd elections in June, the Senedd voted to review the regulations and submissions were sought by the Economy, Trade and Rural Affairs Committee by 10th September. The report of the committee report is awaited.

30. Councils have an interest not only where they manage their own county farms but also because of the potential wider impact on their local economies, in rural areas in particular.

Roads review

31. In September Welsh Government announced that it was undertaking a review of highways projects across Wales. The reason given was: “we want to reduce Wales’s carbon footprint to protect people and wildlife from the climate emergency”.

32. An independent panel has been appointed to carry out the review. It is chaired by Dr. Lynn Sloman MBE who previously was on Lord Burns’ South East Wales Transport Commission. The Panel was asked to set out its appraisal method within three months and to produce its final report within nine months.

33. However, consideration of some schemes has been fast-tracked where special circumstances, such as grant timescales, apply. One such scheme is the £15m+ Llanbedr access road and by-pass in Gwynedd, which was at an advanced stage and also currently has an EU grant approval of £7.5m. The review looked at whether sufficient consideration had been given to:

- “non-transport solutions and solutions other than those increasing private car capacity on the road network
- Whether the road proposal will lead to increased CO2 emissions on the road network or cause significant impediment to achievement of our decarbonisation target”.

34. The panel determined that the scheme does not align well with new Welsh Government transport and climate policy and it advised against it being taken forward. However, Welsh Government has pledged to help look at alternative solutions.

35. The scheme was designed not only to tackle congestion in Llanbedr, especially in peak holiday season, but also to enable development of the former Llanbedr airfield in Snowdonia’s Enterprise Zone.

36. All of the above cases reflect the age-old ‘environment versus economy’ tension, as well as potential urban-rural tensions over investment priorities. It seems clear that these tensions will increase as action to tackle climate change accelerates. Leaders and Ministers met recently to share views on climate change, which was identified as

one of two top priorities for the agenda. Whilst there is a complete consensus that we do face an emergency situation and appropriate steps need to be taken, this becomes very challenging when specific issues arise.

37. Councils and the communities they serve are at the forefront of the response to climate change. They are delivering real change against the challenging backdrop of the pandemic. The widespread adoption of the principles of the Well-being of Future Generations (WFG) means that all decisions have to be balanced and maximise potential now whilst being mindful of the implications for the future. This remains a tough challenge with councils at the heart of decision making. There are some significant economic issues and a wide range of legacy development/infrastructure that need to be tackled. This requires a transition process that is coherent and planned. To not do so runs the risk of creating significant long-term harm through poverty and ill health, including mental health issues, that could arise in communities that are suddenly blighted. There needs to be a discussion on the long-term funding necessary to tackle these structural issues.
38. It is important to consider how to address these matters in a reasoned way, so that a consensus can be achieved that balances social, economic, environmental and cultural considerations, in line with the WFG Act. Rather than respond to each 'crisis' as it emerges, there may be a case to think about partnership arrangements or some form of protocol that could come into play. This would be over and above standard 'consultation' and could, for example, cross-portfolio discussions and drawing in of expert advice to advise on the best way to manage conflicting pressures, to arrive at jointly determined, sustainable solutions.

Recommendations

39. **Members are asked to:**

- 39.1 **Comment on the issues raised in this report and indicate if they feel the idea of having more formalised arrangements for working jointly on these sorts of 'wicked issues' is worthy of further investigation.**

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