



## **West Sussex County Council's Position Statement**

### **Water Neutrality and Water Off-setting agreements**

**Date 14<sup>th</sup> March 2023**

This is a position statement if you are contacted by external bodies to access water usage or you are offered water off-setting agreements at your school or premises. Please read this document and reflect upon the information, follow the necessary advice or seek further guidance from the contacts provided at West Sussex County Council (WSSC) before engaging or accepting any proposals. Further background information is provided below in Appendix A.

Large areas of West Sussex fall into an area where Natural England (the Governments' Advisor on the natural environment in England) have stated that all new planning applications and some other proposals that increase water usage, must demonstrate water neutrality, as defined in Appendix A. Where the water neutrality requirements cannot be met within a new development then an opportunity may arise to make water savings off-site from the proposed development and use these offsite savings to meet the water neutrality requirements for the new developments. Therefore, planning applicants, such as housing developers, in the affected area in West Sussex may approach schools or other occupiers of premises in order to try and offset their expected water use by offering to reduce the schools or others water use.

Water off-setting is a new and emerging opportunity that is yet to be finalised with legislation or guidance and until that point the off-setting process is not yet fully understood. In response to these circumstances the County Council has issued this position statement to advise schools and other occupiers of property owned by WSSC, of the County Council's current position and requirements.

- WSSC will not permit Community Schools, Foundation Schools, Voluntary Controlled Schools, Foundation Special Schools and Community Nurseries, to independently enter into agreements with any third party to facilitate alterations or installation of water saving measures at the school by third parties for the purpose of water off-setting.
- WSSC advises Academies and Voluntary Aided Schools not to independently enter into agreements with any third party to facilitate alterations or installation of water saving measures at the school by third parties for the purpose of water off-setting. Academy Trusts are required to seek Landlords consent from WSSC to any such works pursuant to the terms of their Academy Lease. If an Academy Trust wishes to carry out offsetting works or allow a third party to carry out offsetting works then WSSC would recommend that they approach the County Council to discuss their proposals before signing any agreement with any third party.

- WSCC will not permit tenants of leased property owned by the County Council to independently enter into agreements with any third party to facilitate alterations or the installation of water saving measures at the property by third parties for the purpose of water off-setting.

Given the increasing demands across the WSCC owned estate, particularly for new school places, it is anticipated that all available water saving and off-setting capacity will be required by WSCC in due course to support critical WSCC infrastructure, e.g. schools, fire stations. To enable this, WSCC needs to ensure that the capacity for off-setting within the WSCC estate is centrally managed and controlled.

There is a lack of clarity over the through life costs and liabilities for monitoring and maintaining water reductions that are declared, together with understanding the liability and cost for any latent defects which may arise within the water offsetting infrastructure if installed by a third party. These risks need to be fully understood.

The requirement for water off-setting is a new and fast evolving situation and primary legislation from the government is awaited. This situation will be reviewed regularly, and further instructions and advice issued.

Please read the background information below.

## **Appendix A Background Information to support this statement**

### **1. What is Water Off-Setting and Water Neutrality**

Concerns have been raised that groundwater abstraction within the Sussex North Water Supply Zone may be harming biodiversity within internationally designated sites. Parts of West Sussex fall within this zone, including areas in Arun, Chichester and Horsham districts, and in Crawley borough. Water supplied by Southern Water within the zone area is sourced from abstraction points that are hydrologically linked to the Arun Valley, which includes internationally protected areas.

In October 2021, Natural England (NE) issued a Position Statement to the County Council. This statement set out that NE were unable to conclude that the existing water abstraction within the zone was not having an adverse impact on the Arun Valley sites and the statement advised that development within the zone must not add to this impact. Any new development must be water neutral which means:

**“For every new development, total water use in the region after the development must be equal to or less than the total water-use in the region before the new development.”**

NE stated that development proposals within the zone area that would lead to a net increase in water demand will need to demonstrate with robustly evidence **‘water neutrality.’** Developers or organisations wishing to submit a planning application within this area are required to supply a water neutrality statement with their planning application which:

- confirms that there would be no increase in water consumption, for example, through a combination of water efficiency, water recycling and offsetting measures

- includes a water budget showing details of the baseline and proposed water consumption, any mitigation measures proposed and mechanisms to secure them in advance of occupation/use.

The matter of water neutrality is a rapidly changing area of policy, so the NE guidance may be subject to change.

More information including the relevant legislation, maps of the water zone and a Water Cycle study can be found on the [Water Neutrality](#) page on WSCC's website.

The requirement to submit a water neutrality statement is leading developers to seek opportunities to **off-set** their additional water requirements by establishing water saving measures either within the development or when this is not sufficient, at alternative sites within the affected water zone.

Some schools have been approached by developers offering to install water saving measures. The developers propose that the water savings are then used to offset the water demand for their newly proposed development.

## **2. Water Off-Setting Opportunities**

Water use can be reduced by a number of technical measures including:

- developing an efficient water supply strategy
- leak detection and rectification
- use of new technology such as rainwater harvesting, greywater harvesting
- Retro-fitting water reduction fittings in Council owned buildings
- Replacing water using machines and appliances

To comply with the water off-setting requirements the School or property owner will need to demonstrate that the water reduction is measurable, robust and delivers savings in perpetuity. This could place an immense burden on a school to continue to deliver these savings.

## **3. Risks and Complications**

Some of the technology is tried and tested, other newer innovations are less so. If a school signed a water reduction agreement with a developer, this might bring a short term opportunity to reduce water bills but would be a commitment by the school or property owner to a long term requirement to maintain the water savings machinery and equipment which could be expensive.

If a school signs an agreement with a developer then the school has passed the benefit of any capacity to deliver water savings to the developer and will have passed the benefit in perpetuity. If the benefit is passed then WSCC loses the opportunity to use water neutrality measures at that school site to meet WSCC development needs to deliver school places, critical infrastructure or cost avoidance and savings.

There is a lack of clarity over through life liabilities and costs for monitoring and maintaining reductions and reporting on the off-sets declared together with a need to fully understand the ongoing liability for latent defects on the water offsetting infrastructure if installed by a third party.

#### 4. Agreements

The County Council needs to understand the capacity within County Council owned property to reduce water usage and the opportunity to create credits within the WSCC estate that could be used to off-set developments elsewhere to support the essential infrastructure of the County Councils property estate, for example schools, fire stations.

The County Council has a capital programme to deliver new school places and other strategic developments in the affected water zone. Much of this to provide places in schools and other infrastructure in response to planned development across the County. So the capacity for off-setting owned by the County Council as a minimum needs to be retained and used to facilitate County Council projects first. The County Council has a statutory duty to deliver school places and must retain the ability to use the Council estate for any water neutrality offsetting requirements that may be required to deliver school places. These duties and some of the expected school expansions and new schools are set out in the [Planning School Places](#) document.

#### 5. Type of School – How the statement affects each school.

- **Academies** – academies are independent from the local authority, but they hold the land and buildings under a 125-year lease granted by WSCC to the academy trust under the Academies Act 2010. The standard DfE model academy lease prevents the academy trust from building on the property or carrying out any structural alterations or external alterations or additions or variations to any structures on the property without the local authority's consent. WSCC has the right to refuse consent to the works, if the works will adversely affect the local authority's statutory obligations, the works will have an adverse effect on the structural integrity of any structures on the property or the works will adversely affect the value of the local authority's reversionary interest in the property. Subject to receiving full details of any proposed water neutrality works the County Council will consider the request under the terms of the lease. **WSCC advises Academy Trusts – not to enter into agreements with third parties to facilitate capital alterations being carried out to the school by third parties for the purpose of water off-setting without first discussing the proposal with the County Council and obtaining County Council consent to the works recorded by a licence for alterations.**
- **Community Schools and Nurseries** – these schools are run and controlled by the local authority. The local authority owns the land and buildings and the local authority's duty to maintain these schools includes a duty of defraying all the expenses of maintaining it (Section 22(3) School Standards and Framework Act 1998). **WSCC will not permit Community Schools to independently enter into agreements with third parties to facilitate alterations or installation of water saving measures at the school by third parties for the purpose of water off-setting.**
- **Foundation, Voluntary Controlled and Foundation Special Schools** – the local authority's responsibility to maintain a foundation, voluntary controlled and foundation special school includes the duty of defraying all the expenses of maintaining it (Section 22(4) School Standards and

Framework Act 1998). The governing body of a foundation, voluntary controlled or foundation special school are not responsible for any of the expenses of maintaining the school (Section 22(4) and Schedule 3 paragraph 1(1) School Standards and Framework Act 1998). **WSCC will not permit Foundation Schools, Voluntary Controlled Schools, Foundation Special Schools to independently enter into agreements with third parties to facilitate alterations or installation of water saving measures at the school by third parties for the purpose of water off-setting.**

- **Voluntary Aided Schools** – the land and buildings for these schools are usually owned by a religious organisation. Responsibility for work to the school premises is shared between the school's governing body and the local authority. The local authority has responsibility for the playing fields (and any buildings or other structure erected on them in connection with the use of the playing fields) and the governing body are liable for all other capital expenditure in relation to the school premises (Section 22(5)(a) and Schedule 3 para 3(1) School Standards and Framework Act 1998). On the basis that water neutrality works would most likely improve the performance or value of the asset they would likely be classified as capital expenditure. **WSCC advises Voluntary Aided Schools not to independently enter into agreements with third parties to facilitate alterations or installation of water saving measures at the school by third parties for the purpose of water off-setting.**
- If the water neutrality works require maintenance or repair then this would be a revenue cost funded by the County Council, so, WSCC will not permit Voluntary Aided Schools to enter into agreements with third parties to facilitate capital alterations being carried out to the school by third parties for the purpose of water off-setting.