

Report to: Cabinet



Date of Meeting 27th November 2024

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River Axe SAC Local Nutrient Mitigation Fund Round 2 award

Report summary:

The water quality of the River Axe Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) has been a concern for a long time. The River Axe SAC is in unfavourable and declining status owing to nutrient enrichment and sediment pollution. A condition assessment and evidence report by Natural England in June 2024 on the River Axe SAC stated that “recent water quality measurements for the River Axe within the SAC show phosphorous concentrations to be exceeding the targets for all units.” East Devon District Council, as the Competent Authority under the Habitat Regulations 2017, is required to consider the implications of these matters on the River Axe SAC before permitting any further development which has the potential to result in additional phosphate loads entering the catchment. This applies to all development of any scale and for any purpose if it potentially increases phosphate loading.

The practical impacts of this requirement are that applications cannot be approved for any development of any scale if it creates new sources of phosphate pollution. This means that housing (including affordable or specialist and supported housing) cannot be built.

The only way development that is not nutrient neutral can be approved, is to demonstrate that the increase in phosphate from the development is mitigated on site, or by an equivalent credit from some other intervention in the catchment. The existing housing allocations have been captured in the report and there is no existing mitigation.

An Expression of Interest (EOI) outlining a proposal for £4 million was made by East Devon DC as lead authority in collaboration with both Dorset and Somerset Councils (who have parts of the River Axe SAC catchment within their boundaries) in April 2024 to Round 2 of the Government's Local Nutrient Mitigation Fund. However, due to the 2024 General Election decisions on Round 2 bids were put on hold for all those competent authorities who had made an EOI. The recent Budget on the 30th October unexpectedly announced and included £4.09 million allocated to East Devon DC and the River Axe catchment as one of the seven successful EOIs that were made in England. We were also awarded an additional £192,494 in capacity support funding along with a further £100,000 through the Nutrient Support Fund.

Not all developers have practical capacity to mitigate phosphates on site or the means to negotiate off-site mitigations directly. To unlock this position, it is therefore necessary for the Council to facilitate a scheme to fund schemes that create mitigation credits, which it can then allocate to facilitate development.

The proposed approach is focussed on three mitigation categories:

1. Nature Based Solutions such as constructed wetlands;
2. Upgrading of packaged treatment works and septic tanks;
3. Water saving measures on council house stock connected to permitted Waste water Treatment Works .

It is anticipated that the scheme programme that has been approved and the funding allocation that has been provided will need to be completed by 2030. The programme will be delivered in partnership with Dorset Council, Somerset Council and also the Westcountry Rivers Trust. Therefore there is both a time pressure and a significant amount of work to set up the programme and put in place complex arrangements to ensure that the mitigation measures that have been identified can be delivered to help bring back the River Axe SAC into favourable condition.

Is the proposed decision in accordance with:

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

Recommendation:

That Cabinet:

1. Welcome the outcome of the bid and approves the Council acting as the Accountable Body for the funds and entering in to the accompanying Memorandum of Understanding and Grant Determination letter. Authority to agree terms being delegated to Director of Place in consultation with Director of Finance (S151 Officer) and Director of Governance (Monitoring Officer).
2. Endorses the establishment of a Programme Board to provide oversight and advise on the deployment of the funds to include representatives of Somerset and Dorset Councils
3. Receives a further report setting out the Terms of Reference for the Programme Board and associated scheme of delegation necessary to operationalise the Mitigation Fund
4. Endorses the recruitment of the Programme Manager, Project Manager and administration support roles be funded through the award and for to be hosted by the Council.

Reason for recommendation:

To be able to deliver the River Axe SAC Local Nutrient Mitigation Fund scheme as detailed in the report and put in place the necessary legal, financial and reporting processes to enable the delivery of the £4.09 million that has been allocated by the Ministry of Housing, Communities & Local Government to the scheme programme.

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Portfolio(s) (check which apply):

- ☒ Climate Action and Emergency Response
- ☒ Coast, Country and Environment
- ☐ Council and Corporate Co-ordination
- ☐ Communications and Democracy
- ☒ Economy
- ☐ Finance and Assets
- ☒ Strategic Planning
- ☐ Sustainable Homes and Communities
- ☐ Culture, Leisure, Sport and Tourism

Equalities impact Low Impact

Climate change Low Impact

Risk: High Risk; To not deliver the strategic mitigation of the scheme would continue the risk of developments and affordable led schemes within the catchment continuing to be stalled.

Links to background information [Local Nutrient Mitigation Fund – Round 2 Expression of Interest](#)

Link to [Council Plan](#)

Priorities (check which apply)

- ☒ A supported and engaged community
 - ☒ Carbon neutrality and ecological recovery
 - ☒ Resilient economy that supports local business
 - ☐ Financially secure and improving quality of services
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Report in full

1. [Nutrient Neutrality](#)

1.1 In March 2022, East Devon District Council, Dorset Council, Somerset West & Taunton and South Somerset District Councils (now Somerset Council – a Unitary Authority) received an advice note from Natural England regarding development proposals and the unacceptable levels of nutrients (phosphorus) affecting the qualifying features of the River Axe Special Area of Conservation (SAC).

1.2 The advice note was an extension to the application of 'Nutrient Neutrality' already covering other catchments from 2022 affected by excessive nutrient pollution.

1.3 As a result of a European court judgment known as 'Dutch N', Natural England advised that, in light of the unfavourable condition of the River Axe SAC, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities are required to undertake a Habitats Regulations Assessment (HRA) proceeding to an Appropriate Assessment. The Appropriate Assessment must rule out any reasonable doubt as to the likelihood of an adverse impact of the proposed development, either alone or in combination with other plans and projects, on the site.

1.4 In summary, this applies to the following work development types in the catchment:

- New residential units including holiday and tourist accommodation, gypsy sites/pitches, agricultural workers dwelling;
- Commercial development – where overnight accommodation is provided;
- Agricultural development – additional barns, slurry stores etc, where it is likely to lead to an increase in herd size;
- Anaerobic Digesters;
- Reserved matters applications for residential development

1.5 An updated condition assessment of the River Axe in 2024 has confirmed the site is still within an 'Unfavourable Declining' status and Nutrient Neutrality still applies.

1.6 In response to the application of Nutrient Neutrality to the River Axe catchment East Devon DC commissioned a Phosphates Mitigation Solution report by Royal HaskoningDHV supported by a bespoke nutrient budget calculator to support the delivery of the new East Devon Local Plan 2020-2042.

- 1.7 The Phosphates Mitigation Solution report considers a range of mitigation measures including nature-based solutions, wastewater, and demand management systems. It considers short, medium, and, long term solutions, as well as temporary and permanent solutions.
- 1.8 The residential housing budget projections within the Phosphates Mitigation Solution include 1,324 dwellings affected by Nutrient Neutrality to be delivered within the next local plan period until 2039. This figure was calculated based on what was known at the time the bid was made. Strategic Planning Committee has subsequently agreed allocations amounting to just over 1,000 homes in Axminster itself but mitigation will also be needed for homes coming forward in the wider catchment area as well as windfall sites not allocated in the Local Plan itself. It should also be noted that the Local Plan will now run to 2042. There is therefore a risk that the projected number at the time of the bid may be exceeded and further mitigation required in future.
- 1.9 The Phosphates Mitigation Solution estimates the total phosphorus loading mitigation required in East Devon up to 2039 is 127.30 kg/yr. In the period 2023-2029, the total phosphates mitigation required is 12.70 kg/yr for each year. Between 2030-2039, following the upgrade of wastewater treatment works required under Levelling Up and Regeneration Act 2023, the mitigation requirement is 3.84 kg/yr.
- 1.10 The above figures do not include Somerset, Dorset, or include other use types such as overnight accommodation, campsites etc.

2. Local Nutrient mitigation Fund

- 2.1 In March 2024 the Local Nutrient Mitigation Fund (LNMF) Round 2 was launched to provide grant funding to local authorities on behalf of affected nutrient neutrality catchments. It is intended to support high quality proposals to boost the supply of mitigation available to enable housing delivery and sustainable development.
- 2.2 The LNMF required the submission of an expression of interest (EOI) from local planning authorities affected by nutrient neutrality advice to submit a completed template for costed expressions of interest for programmes or strategies to deliver nutrient mitigation. The aim is to unlock housing delivery in catchments of Habitats Sites affected by nutrient pollution.
- 2.3 It requested capital bids of up to £10 million (from a single catchment or area where 2 catchments overlap). Funding as part of this scheme is in the form of a grant, paid directly from the Ministry of Housing, Communities & Local Government (MHCLG) (formally Department for Levelling Up, Housing and Communities (DLUHC)) to a lead local planning authority for catchment-level working.
- 2.4 East Devon DC are designated as the lead for the group of Local Planning Authorities (LPAs) affected by Nutrient Neutrality in the River Axe catchment, which includes Somerset and Dorset. An EOI was submitted in April 2024 following collaboration with the adjacent LPAs, the Planning Advice Service and Westcountry Rivers Trust who have helped informed the proposed mitigation measures and method for proceeding in the submitted EOI.
- 2.5 The assessment of the EOI was delayed in part to the general election. However, following the announcement in the autumn budget on 30th October 2024 of £45 million to bring forward nutrient mitigation schemes and to progress stalled housing development East Devon District Council has been informed it was successful in their bid.
- 2.6 The successful bid includes £4.09 million allocated to East Devon DC and the River Axe catchment. East Devon DC are also awarded an additional £192,494 in capacity support funding, and a further £100,000 through the Nutrient Support Fund.

3. River Axe SAC Local Nutrient Mitigation Fund bid

- 3.1 The bid includes both bridging and permanent solutions to deliver phosphate mitigation. Bridging or temporary measures are short term measures, such as seasonal land use change. There is a requirement for water companies, to upgrade a number of wastewater treatment works by 2030 which will reduce the amount of total phosphate mitigation required through a reduction in nutrient permit levels.
- 3.2 The submitted bid included the following mitigation measures:
- Upgrading of package treatment plants and septic tanks
 - Nature Based solutions:
 - that includes Riparian buffers, cover crops, and restoration of wetlands as bridging measures until the upgrade of wastewater treatment works and until permanent mitigation measures are available
 - and Constructed wetlands linked to unpermitted wastewater treatment works.
 - Water Saving Measures on council house stock connected to permitted waste water treatment works.
- 3.3 The bid included a program of measures as outlined above. The capital budget may move between the proposed mitigation measures as this would provide maximum flexibility of delivery. For example, if unforeseen barriers were causing some measures to stall, and there were other opportunities to deliver more efficient measures, such as a suitable wetland site with high levels of nutrient removal, and willing landowners, then this would make the most sense to pursue. Any changes in allocation would be documented with clear audit trail to demonstrate the best value/use of funds for the proposed measures.
- 3.4 To be able to progress the oversight and delivery of the programme a dedicated resource in the form of a full-time Nutrient Mitigation Programme Manager, Nutrient Mitigation Project Officer, and administration support is envisioned to action meaningful change, in combination with delivery partners.
- 3.5 The bid includes £557,975.04 revenue funding to cover the salary of a FT East Devon DC Programme Officer, Project Officer, and administrator for a 6-year period. The cost for these posts is reduced when considering match funding from proposed delivery partners Westcountry Rivers Trust has committed £200,000 and the East Devon National Landscape Partnership has committed £51,000 from East Devon National Landscape as part of the EOI in April 2024. These will now need confirming. Also, there is an existing allocation of £100,000 from the Nutrient Support Fund. However, due to the time period between producing the bid and the award of the bid, the match funding element from other partners will need to be confirmed.
- 3.6 Costs were included for the Westcountry Rivers Trust as a key delivery partner, a budget allocation of £390,000 for a 3-year term are also included in the bridging measures costs. Westcountry Rivers Trust are specialists in the field, currently progressing nutrient mitigation schemes in the River Camel SAC catchment for Cornwall Council. They also have trusted relationships with landowners in the River Axe SAC catchment to enable the delivery of the proposed land use change measures. Costs will also need confirming due to elapsed time scales.
- 3.7 To enable the delivery and success of the project and to comply with procurement legislation and cross boundary mitigation delivery, corporate governance arrangement and spending agreements would be prioritised. This would be followed by an assessment of programmes to proceed with an engagement with delivery partners.

Financial implications:

The report outlines the funding to be received and areas of spend planned which will be met from the external funding without an additional budget requirement from the Council.

Legal implications:

There are no substantive legal issues to be added to this report (Legal/002545/ALW)