

Report to: Cabinet



Date of Meeting 5 March 2025

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## **Rive Axe Local Nutrient Mitigation Fund governance and commitment to spend**

### **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. East Devon District Council (EDDC), 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 allocation of £4.3 million by Government to EDDC to address these issues requires the creation of an agreed governance framework that can provide advice, monitoring, and support to enable the delivery of the programme scheme. This should include all key local authority partners and stakeholders involved in the delivery of the scheme.

MHCLG have specified that any recipient of funding to deliver the Nutrient Neutrality scheme requires such arrangements to be put in place by the Lead Authority as part of their terms and conditions for receiving their funding. They have also stipulated there is a requirement to commit to spend the fund by the end of the 2024/25 financial year.

This report therefore proposes that Cabinet endorses the proposed governance structure and the commitment to spend the fund on nutrient mitigation in the River Axe SAC catchment.

### **Is the proposed decision in accordance with:**

Budget Yes ☒ No ☐

Policy Framework Yes ☒ No ☐

### **Recommendation:**

That Cabinet agrees:

1. To approve the proposed governance arrangement to provide the formal reporting framework and oversight for the administration of the River Axe Local Nutrient Mitigation Fund and grants delegated authority to the Director of Place in consultation with the Section 151 Officer and Monitoring Officer to agree terms and to enter into such agreements as are necessary for the good governance of the project.
2. To commit to the spend the Local Nutrient Mitigation Fund on the delivery of nutrient mitigation with the indicative programme of spend as detailed in Appendix 2 to this Cabinet report and grants delegated authority to the Director of Place in consultation with the Section 151 Officer and Monitoring Officer to agree terms and vary the indicative programme of spend and arrangement as is needed to ensure the delivery of the project.

3. That authority be delegated to the Director for Place, in consultation with the Section 151 Officer and the Monitoring Officer, to agree terms to secure and deliver strategic mitigations including the purchase of land for the purposes of creating a nature-based solution where such purchase falls within the funding obtained from Local Nutrient Mitigation Fund. Where this involves asset acquisition, endorsement from the Assistant Director for Place, Assets and Commercialisation shall also be obtained.
4. That delegated authority is granted to the Director of Place in consultation with S151 Officer and Monitoring Officer to make any variations or alterations to the project, to make any decisions and carry out any actions to ensure that the aims of the project are delivered within the required timescales.

### **Reason for recommendation:**

To enable the setting up of the appropriate governance and oversight arrangements by EDDC to facilitate the delivery of the River Axe SAC Local Nutrient Mitigation Fund programme.

To formally commit to spend the Local Nutrient Mitigation Fund on nutrient mitigation measures in the River Axe SAC catchment.

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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** Medium Impact. The scheme has the potential to provide nature based solutions such as new wetlands and reedbeds as well as provision of new infrastructure such as septic tanks and water treatment packages that will help to reduce the levels of phosphates entering the River Axe which in turn will positively impacts the Council's Climate Change Strategy Action Plan on adaptations and mitigations.

**Risk:** Low Risk;

### **Links to background information**

Link to [Council Plan](#)

Priorities (check which apply)

- ☐ A supported and engaged community
- ☒ Carbon neutrality and ecological recovery
- ☐ Resilient economy that supports local business

## Report in full

### 1. Nutrient Neutrality

1.1 In March 2022, East Devon District Council (EDDC), 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 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

1.3 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.

1.4 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.

1.5 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. The River Axe SAC catchment also encompassed Somerset and Dorset which require some level of mitigation provision. 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.

### 2. River Axe SAC Local Nutrient Mitigation Fund

2.1 The successful bid includes £4.09 million allocated to EDDC and the River Axe SAC catchment. EDDC were also awarded an addition £192,494 in capacity support funding, and a further £100,000 through the Nutrient Support Fund.

2.2 A Memorandum of Understanding (MoU) sets out the terms, principles and practices that will apply to the working relationship between the Ministry of Housing, Communities and Local Government (MHCLG) and EDDC regarding the administration and delivery of the Local Nutrient Mitigation Fund (LNMF). Key points include:

- **Assurance and risk management:** The Local Planning Authority (LPA) is expected to have the necessary governance and assurance arrangements in place and to comply with all legal and other statutory obligations and consents, which may include, but not solely, state aid/subsidy control, equalities duties, procurement, health and safety and fraud.

- **Cooperation:** EDDC is acting as the lead for the group of LPAs (including Somerset and Dorset) affected and must make best endeavours to work collaboratively and ensure their local nutrient mitigation scheme can meet each area's needs.
  - The LPA may work in partnership, where appropriate, with Natural England and other stakeholders to deliver mitigation programmes.
- **Quality and cost recovery:** The LPA is responsible for due diligence and to ensure that schemes deliver effective and value-for-money mitigation; nutrient mitigation credits should be sold at a price which reflects the full cost recovery and not offer public subsidy to developments.
- **Policy approach:** The LPA should follow published Government advice and guidance where relevant. The LPA must support the implementation of any forthcoming Government policy approaches or legislative provisions, where relevant.
- **Monitoring and evaluation:** Grant funding is subject to full transparency open book working on all matters relating to the use of the LNMF. Monitoring and evaluation requirements, including progress reporting towards outcomes, milestones or any problems are also a requirement.

2.3 It is important that appropriate governance arrangements are put in place to manage and oversee the spend of the LNMF. Although EDDC is accountable for the fund, the intended purpose is to deliver nutrient mitigation across the whole catchment which includes parts of Somerset and Dorset. As such, it is important that representatives from these Councils are involved in decisions around the spend of the funds.

2.4 The funds have been awarded to EDDC and have the potential for multiple and some potential high value transactions to deliver mitigation projects. EDDC is responsible for the financial transactions associated with the fund and there is therefore a need for both political oversight and professional advice to ensure that spending decisions are in accordance with grant conditions.

### 3. Governance arrangements

3.1 To provide governance, it was agreed by Cabinet that Officers should explore options that already exist in Somerset and Dorset and that our decision to be guided by their experiences.

3.2 The governance arrangements will require our partners Somerset and Dorset Councils to be able to be invited to meetings even though development in their areas being impacted by the River Axe is minimal. However, these areas may provide important locations for mitigation measures for development in East Devon should be part of the programme's decision-making framework.

3.3 Based on existing governance arrangements the following is proposed to provide the right framework for overseeing, monitoring, and steering the delivery of the River Axe LNMF programme. It includes two groups and a delivery team. The detailed remit of these groups will need to be refined but a suggested role for each group in meeting the requirements of the various MoU associated with the fund is provided.

- **Oversight Group:** responsible for the management of the fund ensuring that the aims of the fund are met, that the requirements within the corresponding MoU are met, and that the mitigation provided offers good value for money. The portfolio holder and relevant town councillors would provide political oversight for the group. The Oversight Group will not be decision making and that decisions will be made by Cabinet.
- **Steering Group:** includes delivery partners and officers from EDDC, Somerset, and Dorset Council. The purpose of this group would be to offer guidance to the Delivery Group bringing in their expertise and to examine the detail of the proposed mitigation projects.

- **Delivery Team:** officers responsible for identifying, evaluating, and delivering mitigation projects. This team would work with contractors and partner organisations (e.g. Westcountry Rivers Trust) to identify and deliver projects. The team would report to and feed into the Steering Group.

3.4 Details regarding the membership, purpose, structure, and how the governance arrangement would comply with the MoU terms are provided in Appendix 1.

3.5 To be able to progress the oversight and delivery of the programme dedicated resource in the form of a full-time Nutrient Mitigation Officer and a Nutrient Support Officer is envisioned to action meaningful change, in combination with delivery partners. These officers will form the core of the Delivery Team.

#### 4. Indicative spend

4.1 EDDC has been awarded £4.3m to deliver nutrient mitigation within the River Axe catchment. Nutrient mitigation will offset the nutrient impact of new development within EDDC, and within Somerset and Dorset Council parts of the catchment by offsetting the additional nutrient loading.

4.2 The terms of the LNMF award include the requirement to commit to spend the funds on a programme of interventions within the catchment to deliver nutrient mitigation by the end of the 2024/25 financial year. It is for Section 151 officers to determine how spend is committed. It is therefore recommended that Cabinet agree to commit to spend the Local Nutrient Mitigation Fund award on a programme of mitigation measures similar to that set out in Appendix 2.

4.3 When the Expression of Interest was made to the Local Nutrient Mitigation Fund in April 2024, a number of programmes were included as the basis of the funding bid. Some of these may no longer be suitable as different proposals have subsequently been identified. This evolution of projects over time is to be expected.

4.4 A programme of projects and associated indicative costs has been put together and is included at Appendix 2 to this report. Mitigation projects can be grouped into two main types, those that relate to greywater systems and those that are more nature-based.

- **Greywater:** Upgrading of package treatment plants and septic tanks to deliver reductions in nutrient. Water saving measures on council house stock connected to mains sewage, to further reduce nutrient outflows from wastewater treatment works.
- **Nature-based solutions:** Riparian buffers, cover crops, and restoration/construction of wetlands.

4.5 The information in Appendix 2 is intended to identify programme types that will result in nutrient reductions. It should however be noted that this is a snapshot of the projects that are thought to be deliverable over the coming years but that some of these projects may well fall by the wayside. Other projects will appear to replace these, meaning that there will be opportunities to refocus spend on the most cost effective and deliverable projects at that point in time.

4.6 The proposed Governance Structure, outlined above and in Appendix 1, will help to ensure the funds are spent appropriately to deliver nutrient mitigation.

4.7 The Local Nutrient Mitigation Fund award has been made on a full cost recovery basis and therefore the ongoing costs associated with mitigation projects, such as administration costs

and project evaluation costs, will be recouped through the sale of credits therefore will not have an impact on existing budgets.

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**Financial implications:**

No further direct financial implication resulting from the report, commitment of the awarded sum is requested

**Legal implications:**

There are no substantive legal issues to be added to this report. Legal Services will assist with any relevant delivery and with ensuring the good governance of the programme.