

Supplement to the agenda for

Environment and Sustainability Scrutiny Committee

Wednesday 21 September 2022

10.30 am

**Herefordshire Council Offices, Plough Lane, Hereford, HR4
OLE**

	Pages
8. RESTORATION OF THE RIVER WYE – OPTIONS FOR PUBLIC INQUIRY AND POLICY REVIEW	3 - 12



Title of report: The Restoration of the River Wye – Options for Public Inquiry and Policy Review

Meeting: Environment and Sustainability Scrutiny Committee

Meeting date: 21st September 2022

Report by: Corporate Director, Economy and Environment

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose:

This report provides

Recommendation(s)

That the Committee is assured that Restoration of the River Wye public inquiry and review is being considered effectively through the Cabinet's Phosphates Commission;- Restoring the River Wye and notes the Executive Response and Cabinet decisions in response to the scrutiny recommendations on the Restoration of the River Wye – Options for Public Inquiry and Policy Review made at the Environment and Sustainability Scrutiny Committee on 26th July 2022.

Alternative options

The alternative is for the committee not to receive an update on the Restoration of the River Wye Commission the Restoration of the River Wye, which would provide less oversight and accountability.

Purpose of the Report

The purpose of the report is to provide an update on the Restoration of the River Wye Commission.

Introduction

1. In January 2022 the Council voted unanimously for a Water Protection Zone. The Leader wrote to Rebecca Pow - Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs and Defra to join the Nutrient Management Board in calling for a Water Protection Zone. The Under Secretary of State rejected this because she believed further evidence was necessary and because of the additional burdens it would place on business in the catchment.
2. Also in January, the Environmental Audit Committee published its 4th Report on Rivers making recommendations which local authorities need to consider with particular focus on the Wye. On May 31st, 2022 RePhoKus published its seminal report Re-focusing Phosphorus use in the Wye Catchment again with significant recommendations which local authorities including Herefordshire Council need to assess. In May 2022, Natural England issued revised more stringent phosphate targets both the Lugg and the Wye recommending more action be taken to restore river quality. In July 2022, the latest source apportionment data for the Upper Wye was published indicating the main causes of phosphate pollution following sampling work in the river.
3. This shows a further reduction from water companies and other sources and a 5% increase from agriculture:
 - 72% agricultural diffuse pollution including run-off
 - 23% sewage treatment works
 - 5% other (eg highways run off)
4. Herefordshire Council has undertaken a lead role in efforts to support the restoration of the Wye, developing the UK's first development Phosphate Calculator, delivering Integrated Wetlands and an Agricultural Supplementary Planning Policy which is about to be published for consultation.
5. This issue links to the Success Measures provided in the Council's County Plan 2020-2024 to Increase flood resilience and reduce levels of phosphate pollution in the county's river* and Herefordshire Council has been a driver for supporting improvement around the Nutrient Management Board and has invested in a significant national influencing role to progress river restoration.
6. At its last meeting, the Committee agreed to include an update on the River Wye – Options for Public Inquiry and Policy Review at its September meeting, to provide an update to the Committee on how this is being progressed and to consider how the matter should be kept under review by the Scrutiny Committee.

Cabinet Commission- Restoring the River Wye Catchment

7. At its meeting on 28 July 2022 the Cabinet resolved to establish a Commission; *Cabinet Phosphates Commission - Restoring the River Wye*, to consider how the Council and its partners can progress the wider systemic and strategic issues needed to address Phosphate Pollution in the Wye; and agreed that the Terms of Reference for the Phosphates Commission be agreed in writing by Cabinet with the Final Terms of Reference and Membership of the Phosphates Commission being reported to the next available meeting of Cabinet.

8. A Cabinet Commission has now been established to undertake a more strategic and systems led review of river quality and in particular to consider how Herefordshire Council can use all the powers and influence available to it to progress the restoration of the Wye and Lugg.
9. Over the summer recess work has been undertaken to finalise the Commission's terms of reference work programme and timetable regular progress reports to be provided to Cabinet. Additional capacity will be created by commission support where existing gaps exist. It is envisaged that the Commission will want to draw on expertise, leading national experts, other impacted local authorities and from our national regulatory partners.
10. The Cabinet Commission will comprise three Commissioners. The Deputy Leader of Herefordshire Council has been nominated to Chair the Cabinet Commission. Since Cabinet agreed to set up the Commission at its last meeting in July, discussions have been held with Powys and Monmouthshire who are each nominating a Cabinet Member.
11. A consultation meeting was also held with the regional Directors of Natural England, the Environment Agency and Natural Resources Wales who have provided input into the scope of the terms of reference.
12. The Cabinet Commission will undertake a review of the present Nutrient Management Board and Technical Advisory Group and review its governance and terms of reference. The Commission will also work with industry representatives to develop a new strategic plan to restore the Wye. Furthermore, the Cabinet Commission will explore what more can be done through the Council's planning, nature recovery and economic development functions to promote the restoration of the Wye Catchment.
13. The proposed Terms of Reference and Membership for the 'Cabinet Commission - Restoring the River Wye' is attached as Appendix 1.

Executive Response to Scrutiny Recommendations

14. At its last meeting, the Environment and Sustainability Scrutiny Committee recommended to Cabinet:
 - i). That the proposed Cabinet Phosphates Commission on the Restoration of the River Wye include in its membership councillors from across the Council who have a particular knowledge of the subject matter; and
 - ii). That the Cabinet ensure that every effort is made to promote active participation from neighbouring local authorities in the work of the proposed Commission.
15. At its meeting on 28 July 2022 the Cabinet agreed an Executive Response to the recommendations of the Environment and Sustainability Scrutiny Committee. This is attached at Appendix 2.

Community Impact

16. The development of integrated wetlands and the trading of credits will positively contribute to the following ambitions within the County Plan 2020-2024.
 - a. Seek strong stewardship of the county's natural resources.
 - b. Protect and enhance the county's biodiversity, value nature and uphold environmental standards through "River Betterment."

17. The removal of the current development moratorium in the River Lugg catchment area will enable future economic development in a significant proportion of North Herefordshire.

Environmental Impact

18. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal environmental impacts, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.

Equality Duty

19. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
20. A public authority must, in the exercise of its functions, have due regard to the need to –
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
21. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal equalities impacts, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.
22. The Cabinet Commission will consult broadly with stakeholders and will undertake a comprehensive equalities impact assessment when making its final recommendations.

Resource Implications

23. Grant funding of £100k has been provided for Phosphates work by DLUHC enabling a commissioning budget of £60k to be created to underpin the work of the Cabinet Commission.

Legal Implications

24. The Council is required to deliver a scrutiny function. The development of a work programme which is focused and reflects those priorities facing Herefordshire will assist the committee and the council to deliver a scrutiny function.
25. The Scrutiny Rules in Part 4 Section 5 of the Council's constitution provide for the setting of a work programme, the reporting of recommendations to the executive and the establishment of task and finish groups within the committee's agreed work programme.
26. Whilst this is an update on the work of the scrutiny committees and will in itself have minimal legal implications, consideration has been made in the consideration of Executive decisions and the Executive Responses provided by the Cabinet.

Risk management

Risk / opportunity	Mitigation
There is a reputational risk to the council if the scrutiny function does not operate effectively.	The arrangements for the development of the work programme should help mitigate this risk.

Consultees

As detailed in the report

Appendices

Appendix 1: Proposed Terms of Reference and Membership for the 'Cabinet Commission - Restoring the River Wye'.

Appendix 2: Executive Response: Restoration of the River Wye - Options for Public Inquiry and Policy Review.

Background papers

- County Plan 2020-2024



Joint Cabinet Commission- Restoration of the River Wye

Terms of Reference

Aim

To develop a strategic plan to restore the River Wye Catchment to favourable conservation status.

Background

Following the ministerial decision not to proceed with a request for a Water Protection zone, the three Councils agree that there is an urgent need to consider what more can be done – and by whom. The Councils have concluded a Joint Cabinet Commission should undertake a more strategic and systems review of river quality. This would consider, in particular, how Herefordshire, Monmouthshire and Powys Councils can accelerate progress in the restoration of the Wye.

Herefordshire Council has been undertaking a lead role in efforts to support the restoration of the Wye, developing the UK's first development Phosphate Calculator and delivering Integrated Wetlands. The Council has been a driver of improvement with regard to the operation of the Nutrient Management Board (NMB).

Powys Council, which covers the river Wye catchment from its source to the border, is a significant contributor to the NMB, also providing a national coordinating role in respect of the "Phosphate problem" in Wales. Both share a common desire to use science and sense to find practical lasting solutions which will reverse the decline in the river environment.

Monmouthshire Council – *to be provided by Monmouthshire Colleagues*

Natural England, the Environment Agency and Natural Resources Wales have also met and considered the remit and role of the Cabinet Commission. The agencies said that, in particular they would welcome the Commission's thoughts 1) a new Strategic high level plan to restore the River Wye Catchment. 2) Governance arrangements for the Nutrient Management Board in order to drive a high level strategy forward, its accountability structure, remit, membership and terms of reference. 3) What might need to happen more widely beyond the catchment in terms of recommendations and proposals on how national level policy could enable restoration? 4) An analysis of what restoration of the Wye might look like in terms of likely climate change effects which may impact for example river temperature and food security.

Commission Membership

The Cabinet Commission will comprise three Commissioners, one Cabinet Member each from Herefordshire, Monmouthshire and Powys and would be chaired by the Deputy Leader of Herefordshire Council. The Commissioners will commission additional research and call for evidence necessary to support the delivery of the Commission's objectives.

Commissioners will liaise closely with the scrutiny function of their respective Councils and the Nutrient Management Board. The Cabinet Commission should provide a report to the March 2023 meeting of Cabinet and such interim reports as are necessary. Given parallel work is taking place nationally on point source pollution from water companies this aspect is explicitly excluded from the remit of the commission.

The Cabinet Commission's Objectives

1. The Nutrient Management Plan and Board-

- To prepare a new Strategic high level plan to restore the River Wye Catchment for the Nutrient Management Board to progress.
- The Governance arrangements needed to drive the new high level strategy forward, its accountability structure, remit, membership and terms of reference.

2. Farming and Agriculture-

- To identify the evidence, tools, processes, infrastructure, training and support necessary to achieve restoration of the River Wye catchment. (Currently defined as achieving Natural England and Natural Resources Wales river phosphate targets and also achieving favourable conservation condition status).
- To work with sector leads from the Farming and Agricultural sector, in particular NFU, CLA and Farm Herefordshire to develop a catchment specific roadmap with agreed milestones and dates on which progress will be monitored. In the event that it becomes evident that agreed milestones are not achieved, further measures including a Water Protection Zone will formally be considered.

3. The Farming and Agriculture Supply Chain

- Engage with leading industry experts across the supply chain including agriculturalists, agronomists, feed suppliers, food processors and retailers. To undertake a systemic and strategic review of the movement of phosphates through poultry, livestock and arable supply chains, and to identify the optimum infrastructure and technology needed to reduce the build-up of phosphates in soils and water courses, exploring appropriate available technological and nature based solutions.
- To explore the potential for a certification scheme to track and assure the movement of phosphates throughout producer supply chains.

4. The National Policy Framework

- To make recommendations on what, if any, changes should be made to permitting processes or regulatory powers and enforcement for statutory bodies operating in England and in Wales to improve the effectiveness of individual and joint working. Specifically this will include an analysis of the effectiveness of key diffuse mitigation tools such as Farming Rules for Water and Farmscoper.
- An analysis of what restoration of the Wye might look like in terms of likely climate change effects which may impact for example river temperature and food security.

5. The Local Planning Frameworks

- Within the limits, constraints and wider objectives of the current planning policy framework, to identify what further opportunities exist for the Council's to deliver improved water quality on the Wye catchment. Consideration should include the potential to achieve full nutrient neutrality through the development of the planning policy framework together with any necessary additional Supplementary Planning Documents. In particular, how the forthcoming Local Plan update can strengthen water and environmental protection.
- Review the opportunities available for Planning Education and Enforcement of planning across all relevant development sectors. Consideration of whether there is the potential for planning and enforcement regimes to achieve higher levels of nutrient certainty in controlling down-stream impacts.
- To identify the tools and mechanisms necessary for Cumulative Development Impact to be assessed in the development management process.

Executive Response: Restoration of the River Wye - Options for Public Inquiry and Policy Review

On Tuesday 26th July 2022, the Environment and Sustainability Scrutiny Committee considered an item on **Restoration of the River Wye - Options for Public Inquiry and Policy Review**. With regard to the proposed Cabinet Commission The committee resolved 'That the following be recommended to the executive:'

Recommendation 1.	That the proposed Cabinet Phosphates Commission on the Restoration of the River Wye include in its membership councillors from across the Council who have a particular knowledge of the subject matter.
Executive Response	The Executive Welcomes the recommendation and partly agrees with the suggestion. The Commission will undertake an independent review of the present mechanisms and arrangements which support the Nutrient Management Plan and will suggest improvements. The Executive recognises and values the expertise that exists both inside and outside the Council. We will therefore find ways to include such expertise appropriately within the Commission processes ensuring that an independent review is undertaken and their expertise is fully considered. The process and means of delivering the commission will be worked up over the summer recess through a detailed delivery plan. As details have not been fixed yet the Executive will actively explore appropriate inclusion for those with important expertise to bring and regards this as essential to the success of the commission. Further details, will be available for the September meeting of the ESSC.

Action	Owner	By When	Target/Success Criteria	Progress

Recommendation 2.	That the Cabinet ensure that every effort is made to promote active participation from the neighbouring local authorities in the work of the proposed Commission.
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Executive Response	The Executive Welcomes and agrees with the recommendation and agrees cross border and cross council cooperation is essential to any lasting solution. Active steps to include participation from neighbouring authorities together with our statutory partners at Natural England, Natural Resources Wales and the Environment Agency too, are well underway.
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Action	Owner	By When	Target/Success Criteria	Progress

