

Title of report: Nutrient Certainty

Meeting: Cabinet

Meeting date: Thursday 26 May 2022

Report by: Cabinet member Infrastructure and transport;

Classification

Open

Decision type

Key

Wards affected

(All Wards);

Purpose

As the competent body under the Habitat and Species Regulations (2017) Cabinet is asked to note the progress being made towards creating Integrated Wetlands phosphate reduction and steps being taken to ensure Nutrient Certainty to the required standard of beyond reasonable scientific doubt.

Recommendation(s)

That:

- a) **To note the progress being made to create Integrated Wetlands and to determine Nutrient Certainty**
- b) **To receive a further report as soon as is practicable and when all reasonable due diligence has been completed to consider whether Nutrient Certainty has actually been achieved.**

Alternative options

1. The options to purchase and build Integrated Wetlands were determined in the August 2020 Executive Member decision. This is an update report following that decision and no options are presented.

Key considerations

2. Herefordshire Council has chosen to voluntarily exercise its well-being powers to build constructed integrated wetlands in the Lugg Catchment to provide development headroom and some improvement called "river betterment" to provide phosphate credits to developers in the

catchment who are unable to otherwise demonstrate nutrient certainty. Through its work to support the Wye Catchment Nutrient Management Board the Council is also actively supporting efforts to improve water quality in the Wye and Lugg catchment.

3. The River Lugg Special Area of Conservations (SAC) covers the last nine mile stretch of the river before it enters the River Wye. Under the Habitat's directive, SACs require the highest level of protection, appropriate management, enhancement and where necessary, restoration. In July 2019, Natural England advised Herefordshire Council of the need to seek legal advice pertaining to the ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of Coöperatie Mobilisation (AKA the Dutch Case12) (Joined Cases C-293/17 and C-294/17).
4. The Council took Counsel's advice and concluded that to protect the Lugg SAC, it was not possible to permit any development on the Lugg, Frome or Arrow catchments unless a Habitats Regulations assessment concluded that the proposed development was "nutrient neutral" there being no likely significant effects on the Lugg SAC. This immediately prevented most development proposals across the north of the county from proceeding.
5. In August 2020, the Cabinet Member for infrastructure took a [decision](#) to approve the design, land acquisition, construction and management of integrated wetlands, providing tertiary treatment to waste water treatment works in order to reduce phosphate levels within the River Lugg catchment area. The Wye and Usk Foundation (WUF) were commissioned by the council to undertake an assessment of the whole of the catchment to identify locations where the introduction of an Integrated Wetland could be progressed.
6. The Council has purchased a site close to the Dwr Cymru Wlesh Water (DCWW) plant at Luston and obtained planning permission to create an Integrated Wetland. WUF were commissioned to undertake the design of the site. They calculated the level of Phosphates leaving the plant and have modelled the likely Phosphate reduction against a number of scenarios. A new standard for assessing Wetlands has recently been developed by Rob McInnis on behalf of the Rivers Trust UK in conjunction with the Constructed Wetland Association which is due for publication in 2022. WUFs design for the Luston Wetland is undergoing a peer reviewed by Rob McInnis against this standard and appropriate design changes have been made to conform to the standard.
7. As a further step to assuring certainty Ricardo Consulting have undertaken an assurance review to ensure a robust validation. Ricardo's findings have confirmed the WUF approach. Counsel legal opinion has been provided on the work done to date and the advice is that further validation work is done over the coming weeks to ensure a robust process.
8. A legal agreement is being entered into with DCWW to receive waste water from their Luston Plant into the integrated Wetland. The scope of DCWW's own Environment Agency Permit will end at Herefordshire Council's intake point. This will include weekly monitoring of Phosphate load entering and leaving the Integrated Wetland.
9. An application for an Environmental Agency Permit to cover the intake from Welsh Water as it flows through the Wetland and out into the Lugg catchment has been made. The Environment Agency have indicated that a bespoke waste permit will be required, such a permit has never been issued for an integrated wetland before and should be in place before planting commences, in the event that the permitting process is not complete in time, the Environment Agency are giving active consideration to a temporary permit known as a Local Environment Protocol to allow planting to commence. The operational site will be fenced with no unfettered public access and operated to under the ISO14001 Environmental Standards.
10. Bentley, a specialist environmental construction company, have been commissioned, through the Council's procurement processes, to build the wetland chambers and plant the Wetland with

a mixture of plants which have been selected to maximise the sequestration of phosphate. They will build this in accordance with the validated WUF design.

11. An application has been made to the Environment Agency for the necessary Waste Permit. The Permit will need to be in place before planting takes place at the Luston site. As this is the first time such a permit has been issued it has proved challenging for the Environment Agency and representations have been made to accelerate the process for this. Upon project completion the site will be handed over to the Herefordshire Estates team within Hoople, who will manage the maintenance of the site in accordance with the maintenance schedule.
12. Herefordshire Council indicated to WUF that they should reserve 20% of the potential Phosphate reduction to act as reserve should the modelling results differ to a fully grown Integrated Wetland. The reserve will if unused provide a benefit to the condition of the Lugg catchment known as River Betterment. River Betterment is a technical improvement to river quality under the polluters pay principle, it is to others to address the underlying issues of River Quality. Herefordshire Council have held regular discussions with Natural England. Natural England advise that mitigation must be provided upstream of the SAC. The Luston Credits will therefore enable developments to be approved anywhere in the Lugg Catchment.
13. Herefordshire Council is actively pursuing further sites to bring forward further credits for development and river betterment. A site has been purchased located close by Titley DCWW plant. Heads of terms have been agreed at a third site which will yield further Phosphate Credits.
14. A separate report at this cabinet meeting will consider the policy and process of Phosphate credit allocation.

Community impact

15. 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."
16. 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

17. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
18. The Integrated Wetlands project has been designed to enable Nutrient Neutral Development in the River Lugg SAC by enabling nutrient neutral development and to provide a net river betterment. The net improvement to the river quality will be delivered through the reservation of 20% of the phosphate credits for the river betterment.
19. In addition to improving water quality in the River Lugg, the wetlands will also support the Council's commitment to address the climate and ecological emergency as the wetlands will also become excellent wildlife habitats and will help to sequester local carbon emissions.

20. The site surrounding some wetlands in partnership with other council biodiversity projects will be planted with local native species to increase biodiversity and the local habitat.

Equality duty

21. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:
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.
22. 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. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.
23. The certification of the phosphate credits from the Integrated Wetland sites will enable the Council to support sustainable housing growth in the north of the county which will benefit all sections of the community. This will include affordable housing in line with the Herefordshire's Planning Policy.

Resource implications

24. The Integrated Wetlands project and a £2m capital budget was approved by Full Council on 14 February 2020. This capital budget is funded through use of the Council's New Homes Bonus to enable future housing development within the Lugg catchment area.
25. This is supplemented by a £1m capital grant allocation from Marches Local Enterprise Partnership through the Getting Building Fund, increasing the total capital budget available to £3m.
26. Revenue income from the sale of credits will be set aside in a specific reserve to finance the ongoing maintenance costs of the sites and to seed corn further Wetlands sites, as set out in the accompanying cabinet report – Phosphate Credit Pricing and Allocation Policy.

Legal implications

27. This is an Executive function under the Council's Constitution Part 3 Section 3 as it is a key decision and which in the opinion of the monitoring officer is likely to be significant having regard to the strategic nature of the decision and/or whether the outcome will have an impact for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards in Herefordshire) affected. It is also likely to result in the council incurring expenditure which is, or the making or savings which are significant having regard to the Council's budget for the service or function concerned.

28. This report is for Cabinet to note the works undertaken to date on the project and identifies the further works at paragraph 7, following Counsel's advice, required to ascertain whether Nutrient Certainty has been achieved. A subsequent update report on those further works will be provided at a later date.
29. This accords with the Cabinet decision on 10 August 2020 and there are no other legal considerations or problems with Cabinet or the portfolio holder doing what is proposed.

Risk management

Risk / opportunity	Mitigation
Achieving the required phosphate reduction	<p>The wetland design undertaken by WUF is being peer reviewed by Rob McInnis who recently developed the new national standard for assessing wetlands on behalf of Natural England.</p> <p>A further assurance review is also been undertaken by Ricardo Consulting to ensure a robust validation</p>
Maintaining the wetland sites in perpetuity	An 80yr management plan has been developed which will be resourced through the proposed ring fenced credit sale income as set out in the accompanying report.

30. In addition a live project risk register is maintained and regularly reviewed by the Integrated Wetland project team and is regularly reported to the Integrated Wetland Project Board.

Consultees

31. Political groups have been consulted and comments were received from Cllr Milln, Central Ward, and Cllr Hewitt, Golden Valley North. Both expressed support for the development of integrated wetlands to reduce phosphate pollution, however are not supportive of the creation of phosphate credits to offset local development. These comments have been considered and the recommendation is to allocate 20% of the phosphate reduction for river betterment.
32. The final decision to determine Nutrient Certainty lies with Herefordshire Council who are the competent authority. Whilst not a statutory consultee for this scheme Herefordshire Council have engaged in discussions with Natural England and is taking account of their most recent published guidance in reviewing whether the Council holds certainty. Natural England are supportive of the project. They are encouraged by the approach taken to validation including the work done by Rob McInnes and are pleased to see that a buffer has been included in scope which will provide "river betterment."

Background papers

- None

Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	Sarah Buffrey, Democratic Services Officer	Date 11/05/2022
Finance	Louise Devlin, Karen Morris	Date 11/05/2022
Legal	Dawn Evans	Date 17/05/2022
Communications	Luenne Featherstone	Date 18/05/22
Equality Duty	Carol Trachonitis	Date 25/03/2022
Procurement	Mark Cage	Date 25/03/2022
Risk	Kevin Lloyd	Date 29/03/2022
Approved by	Ross Cook	Date 18/05/2022

[Note: Please remember to overwrite or delete the guidance highlighted in grey]

Please include a glossary of terms, abbreviations and acronyms used in this report.