

Title of report: Cabinet Commission Conclusions

Meeting: Cabinet

Meeting Date: Thursday 2 March 2023

Report by: Head of environment, climate emergency and waste services

Classification

Open

Decision type

Non-key

Wards affected

(All Wards);

Purpose

This report seeks to update Cabinet on the significant progress made by the Cabinet Commission presenting a Strategic Business Case (SBCO) for progressing river restoration and to seek authorisation to further develop an Outline Business Case (OBC) for submission to DEFRA and Welsh Government for a Phosphate Trading Scheme, encompassed by a binding legal agreement, which has the potential to lead to further steps including a Water Protection Zone in the event that nutrient reduction targets are not met by means of the voluntary scheme.

Recommendation(s)

That:

- a) **Cabinet notes the progress made to date by the Cabinet Commission;**
- b) **Authority is delegated to the Corporate Director for Economy and Environment to allocate up to £250,000 of the total allocation of £480,000 to the continued work of the Commission, following consultation with the Chief Executive and the Director of Resources and Assurance;**
- c) **Herefordshire Council be the accountable body where submissions for external funding are successfully secured from partners;**
- d) **The Chief Executive is authorised to continue the council's work with stakeholders and to prepare a draft submission considering all potential options to DEFRA and Welsh Government;**
- e) **The Chief Executive is authorised to work with statutory partners to take forward the Commission's recommendations for a newly reconstituted Nutrient Management Plan**

Delivery Board to undertake a critical assessment of the draft submission to DEFRA and Welsh Government, and a revised Nutrient Management Plan; and

f) Cabinet review further progress made in July 2023.

Alternative options

1. None - At its meeting on 28 July 2022 Cabinet resolved to establish a Cabinet Commission - Restoring the River Wye (the Cabinet Commission), to consider how the Council and its partners can progress the wider systemic and strategic issues needed to address water quality including Phosphate Pollution in the Wye.

Key considerations

2. The Council has actively lobbied government for a Water Protection Zone (WPZ) and, following a Full Council resolution on 22 Jan 2022, the Leader of the Council formally wrote to Rebecca Pow MP, Parliamentary Under Secretary of State for DEFRA seeking a WPZ for the River Wye and Lugg Catchment. This request was rejected.
 - a. <https://www.herefordshire.gov.uk/downloads/file/23397/water-protection-zone-river-wye-and-lugg-catchment-letter-to-r-pow-feb-2022>
3. As a result, a Cabinet Commission has been established to consider how the council can use its powers to progress the restoration of the Wye and Lugg and to identify an acceptable way forward.
4. On 29 September 2022 Cabinet agreed the Terms of Reference (Appendix 1) and Membership for the 'Cabinet Commission – Restoring the River Wye'.
5. The terms of reference were developed in consultation with Powys County Council (PCC), Monmouthshire County Council (MCC), Forest of Dean District Council (FoDDC). Natural England (NE), Environment Agency (EA) and Natural Resource Wales (NRW) also provided comments.

The Environmental Position

6. The rivers Wye ("the Wye") and Lugg ("the Lugg") are considered important in terms of nature conservation due to their aquatic habitats and species. Both contain Special Areas of Conservation ("SACs") and both are Sites of Special Scientific Interest ("SSSIs").
7. The River Wye Special Area of Conservation Nutrient Management Plan Delivery Board (NMB) was established in 2014. Its terms of reference were to deliver actions that achieve the phosphate conservation target of the Wye.
8. Phosphate ("P") limits are, according to the 2021 Action Plan (pg. 3, see below), being exceeded at 31 points in the river catchment. This has arisen from both point-source P releases from Waste Water Treatment Works ("WWtW") and diffuse pollution from agricultural practices.
9. As a result of the decision of the European Court of Justice ("the ECJ") in Cooperatie Mobilisatie for the Environment UA v College van gedeputeerde staten van Limburg (C-293/17), NE has stated that the current Nutrient Management Plan (NMP) could no longer be relied upon to provide the certainty to bring the river back into compliance with relevant targets and that all future development within the Lugg catchment must demonstrate nutrient neutrality.

10. The 2023, source apportionment monitoring released by Welsh Water (DCWW) (Appendix 2) shows effluent from sewage treatment works accounts for 23% of the average daily P loading (kg/d) with rural land use contributing 72%, storm overflows contributing 2% and a further 3% from other sources including septic tanks and urban run-off. Water company reduction targets are determined by agreement between DCWW, the Environment Agency and Ofwat. They are reported to the Nutrient Management Board (NMB) but the Board has no formal role in this technical process.
11. DCWW has committed to cleaning up rivers and it is hoped that water treatment plants on the Wye which are causing the greatest ecological damage will be prioritised for investment. However, DCWW say that they are approaching the technical limits of what can be achieved on the Wye, that further upgrades would be costly compared to benefit and would carry high carbon costs. They further advise that they are already meeting their “fair share” obligations and that it would be unfair to ask their customers to pay to go beyond their fair share. For this reason, the Commission has focussed on what can be done to help address the 72% of the P loading caused by rural land use and agricultural practices as this source accounts for the majority of P deposition in the Wye. However, it may be necessary, in order to avoid deterioration of the Wye for further measures to be taken by the relevant water companies. It is not necessarily the case that with diffuse water dealt with, deterioration will be avoided.

The Cabinet Commission - Restoring the Wye - Findings

12. The Cabinet Commission makes recommendations on certain aspects of its work, against three elements of its terms of reference. As a consequence of these findings, the Commission proposes that a submission be drafted to the Secretary of State and Welsh Minister, and that Cabinet consider a decision to proceed with developing a phosphate trading scheme to reduce P loading in the river catchment, encompassed by a binding legal agreement, with this scheme leading to the government being asked to consider further steps and measures, including a potential for a WPZ, in the event that the scheme's P reduction targets are not met. This will need an impact assessment against the other available options, such as additional regulation or a full WPZ.
13. In setting out these recommendations, recognition and thanks is offered to the Members of the NMB, its chair and partner agencies for the progress achieved through voluntary measures since 2014. Members and Officers remain committed to working constructively with all partners in taking these recommendations forward.

Terms of Reference - The Governance arrangements needed to drive the new high level strategy forward, its accountability structure, remit, membership and terms of reference.

Conclusion

The Commission has concluded that, on fact specific assessment of the Wye catchment, the present voluntary NMP and voluntary NMB do not contain sufficiently certain steps and measures and therefore the NMP is no longer capable of being compliant with article 6(2) of the Habitats Directive. The Commission recommends that further steps and measures are identified and taken, as a matter of urgency, to deliver the required certainty of P reduction in the river catchment.

Terms of Reference- Farming Agriculture (1)

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.”

Conclusion

The Commission recommends that to deliver the necessary certainty, further work be urgently undertaken to develop proposals to deliver a legally binding, properly resourced, well executed and targeted plan, with milestones, for the management of P within the river catchment. In the event that agreed milestones are not achieved, further more formal measures will follow. Such measures would include a recommendation, through the Environment Agency, to the Secretary of State DEFRA and through Natural Resources Wales to the Welsh Minister for Rural Affairs, that other necessary steps and measures including a full Water Protection Zone be formally and openly assessed to prevent further deterioration of the protected site.

Terms of Reference Farming and Agriculture (2)

“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).

Conclusion

The Commission recommends that further work be urgently undertaken to put in place the tools, processes, infrastructure, training and support necessary to manage legacy P and the future application of nutrients, to prevent the further deterioration of the protected sites. At present the science is not fully researched to enable all of this to happen in a precise and managed way.

The Commission recognises that the impact of the deposition of legacy P is now so great that there is no swift route to achieve river recovery. Whilst run-off is relatively well understood, little is known about the processes by which below surface phosphate leaches through soil into the river. Therefore it will take time to better understand the science, to develop appropriate support tools and to train and support farmers in their use. Once such tools are developed a plan to monitor their use will need to be in place for many years. Realistic assessments suggest it will take many years, and potentially longer, to fully manage out legacy phosphate from the soils of the catchment. The need to commence such a managed approach is urgent and therefore it is recommended that work is commenced to understand the science, and to develop a trading scheme and the tools to support it. The tools used for any option considered will need to be scientifically robust (PHCOTA p104).

“To prepare a new Strategic high level plan to restore the River Wye Catchment for the Nutrient Management Board to progress.”

Terms of Reference - The Present Nutrient Management Board

The Commission recommends that, while work is undertaken to develop a more rigorous plan for the management of P in the Wye catchment and the tools and processes to deliver it, the voluntary measures in the present Nutrient Management Plan - such as catchment sensitive farming, enforcement activity and riparian buffer schemes - should also, where possible, be accelerated and extended to provide an improved interim management framework. The NMB should be streamlined in its operation and constituency in order to achieve this.

The Strategic Case for Action

14. **Strategic Aims-** To ensure that the appropriate steps are taken to identify and put in place sufficient measures to:
 - a. prevent the further deterioration of the protected sites;
 - b. comply with 6(2) of the Habitats Directive; and
 - c. accelerate achievement of the conditions necessary to lift the present moratorium on development in the Lugg catchment.
15. **Strategic Objectives-** To identify the lowest risk and most swiftly achievable path forward by:
 - **Strategic Objective 1- Identifying the best option to deliver nutrient certainty-** Prepare an outline business case comprising the further steps and measures necessary to secure nutrient certainty in preventing further deterioration of the protected sites, with the aim of obtaining authority to prepare the full business case (submission) to the Secretary of State DEFRA and Welsh Government Minister.
 - **Strategic Objective 2- Strengthening the mechanism by which such a scheme is delivered** through revising the membership and improving the operation and governance of the NMB to ensure the Board has the membership, resources and authority to deliver on its responsibilities.
 - **Strategic Objective 3- Improving and implementing interim measures while further steps are under development-** through reviewing and updating the NMP to ensure it comprises a coherent and focussed programme of properly resourced actions, measures and milestones for the NMB to deliver.
16. **Strategic Objective 1- Strategic Options Appraisal to Deliver Nutrient Certainty-** In 2015, Fish Legal, WWF and the Angling Trust commenced judicial review proceedings against the Secretary of State Defra concerning the failure to introduce Water Protection Zones on 44 protected Rivers and Wetlands, including the River Wye.
17. There was no specific outcome identified for the Wye under this judicial review. However, an order was made to introduce a trading scheme at Poole Harbour. In the proceedings Natural England presented a Technical Assessment (PHOCTA) (Appendix 3). Section 8 of the PHCOTA (p90-107) outlines the options appraisal assessment, providing a continuum of steps and measures from voluntary arrangements through to a full WPZ.
18. Although these options were developed for Poole, it is considered that they are sufficiently robust for a strategic business case assessment which would be kept under review and re-evaluation during outline and full business case phases. See appendix 1 PHCOTA p107 for details of the Poole assessment. Any outline business case would want to review other potential available options to secure 6(2) compliance.
19. While there is more research to be undertaken, the options identified to date are set out below in order of increasing regulatory intervention.
 - **Option 1- Present voluntary Measures** – Very low confidence that they can deliver the necessary certainty- therefore would not be 6(2) compliant and measures beyond this are needed.
 - **Option 2- Fully implementing existing legislation with appropriate resource for enforcement-** from Poole experience may not be sufficient to achieve targets of itself therefore would not be 6(2) compliant and measures beyond this are needed.

- **Option 3- Existing Legislation and Partner Led Voluntary Scheme (with potential for WPZ if targets not met)** – uses existing legislation likely to command the support of those farming communities most impacted by the scheme, drives changes to farming practice so creating opportunities for livestock reduction and facilitating community led sustainable agricultural practices (enables better targeting of limited regulatory resources) and direct work invested to address the other material pollutants. This option is capable of compliance with 6(2) habs directive.
- **Option 4 – this would be Option 3 above but with further regulations** – it would be appropriate to explore option 3 first as the next step first and at the same time identify the catchment specific measures for this option at early stage. This option is implicitly capable of compliance with 6(2) habs directive.
- **Option 5 – A full water protection zone** – whilst practically feasible it was ultimately rejected as a next step, although feasible, it presented issues on practicality and high socio-economic costs, scored lower than other options in terms of cost benefit analysis and would require further regulation. This option is capable of compliance with 6(2) habs directive.
- Options 3, 4 and 5 are all considered likely to be capable of achieving compliance with 6.2 of the Habitats Directive and options 1 and 2 rejected because they do not. In addition, depending upon scientific assessment of diffuse pollution sources, there may be a need for steps to be taken in relation to WWTWs.

20. **A Voluntary Trading Scheme (with potential for a WPZ if targets not met):** As with Poole Harbour, the Commission recommends this more rigorous but still voluntary approach. This would be a Partner Led Voluntary Scheme with a legally binding “Memorandum of Understanding” (an agreement giving similar commitments to the Poole Harbour Consent order) to evaluate what further measures (including a WPZ (PHCOTA p1)) are necessary in the event that agreed targets are not met. The Commission is advised by Counsel that this approach is capable of achieving compliance with regulation 6(2) of the Habitats Directive.
21. **Introducing a full WPZ if targets are not met:** The Consent Order, commits the Secretary of State to evaluate what further measure are necessary in the event that targets are not met - including a WPZ (PHCOTA p1). In progressing Option 3, assurance is therefore needed that further steps - including a full WPZ - could be brought in relatively quickly, if targets are not met. Under the Poole Harbour Scheme a WPZ would bring into law both Option 3 and Option 4 in the options appraisal outlined above (PHCOTA p104). This means that in going through the step of designing option 3, the groundwork will also need to be undertaken for a WPZ in the event it ever became necessary.
22. Option 4 above but with further regulations – effectively this would mandate by regulations farm targets and further regulated farm compliance including nutrient balancing, nutrient planning to achieve optimum yield and mandate reporting at farm and catchment level.
23. **Making a direct request for a WPZ Option 5:** WPZs are made by the Secretary of State DEFRA upon advice of the Environment Agency in England and in Wales by the Welsh Minister upon advice from Natural Resources Wales. At present, there are other measures which are identified at paragraph 18 which are capable (subject to scientific assessment) of achieving compliance with article 6(2) of the Habitats Directive. Natural England and the Environment Agency may therefore be able to demonstrate, through a similar technical assessment, that further steps and measures lying between voluntary measures and a full WPZ could be considered and potentially taken. Potentially, therefore, securing a WPZ on the Wye would be less likely without first considering and trying such other measures. It is worth noting that for Poole, the period from commencing action in 2015 to conclusion of a consent order in 2021 took six years.

24. **The WPZ option** – it is expected that consensus can be achieved amongst all the participants necessary to the delivery of Option 3: A Voluntary Trading Scheme. The July 2023 Cabinet Meeting will receive a report on progress made in producing an OBC. This will include progress in achieving commitment from all participants to work collaboratively under such a scheme. In the event that commitment is established, then a submission would be made to the UK and Welsh Governments seeking support to the development of the FBC for the trading scheme proposed for The Wye catchment. In addition to the necessary consensus and commitments or the scientific assessment shows the necessary certainty could not be achieved, and are unlikely to be achieved, alternative options will need to be considered by the Council and the Commission's partner Council's– including revisiting Option 5 above: seeking to secure a WPZ.
25. **Developing the Submission to Defra and Welsh Government – “The Management Case”** Informal discussions have already commenced with DEFRA, NE, NRW and the EA and are scheduled with Welsh Government. DEFRA has allocated staff who will act as “senior users” on the project and it is hoped Welsh Government will offer the similar assistance. NE, EA and NRW are considering proposals on how the NMB could provide governance oversight of the submission to DEFRA and Welsh Government. The Commission has progressed its work so swiftly that statutory agencies and government will need further time to consider the proposals here in more detail.
26. Further work will be undertaken with partners and the farming communities on both sides of the national border to progress these next steps. Officers will also commission such further evidence studies as are necessary to enable a submission to be made to DEFRA and Welsh Government on a proposed legal agreement, to include the necessary steps and measures to achieve compliance with article 6(2) of the Habitats Directive. The content of these work packages will need to be agreed with technical input from NE, EA and NRW. Technical governance oversight of the project would be through the revised NMB.
27. Submissions to DEFRA and Welsh Government will use their preferred methodology for developing business cases “the Five Case Model” (FCM) (Appendix 4). This Cabinet report represents the Strategic Business Case (SBC) which is stage 1 of the Five Case Model. This report recommends preparation of ‘the submission’ proposed in this report represents Stage 2 - an Outline Business Case (OBC). The OBC would request DEFRA and Welsh Government authorise preparing a stage 3 Full Business Case (FBC) before seeking authorisation to move to implementation.
28. The work necessary to progress development of a Trading Scheme will potentially form a significant part of the core work underpinning each of the three options judged most like to achieve compliance with 6.2 of the Habitats Directive. The following provides more context for the work proposed to achieve Strategic Objective 1.
29. **Would a trading scheme be viable in reducing diffuse agricultural pollution? “The Commercial Case”**: At this stage, there is good reason to explore the commercial case in more detail. A trading scheme is in place at Poole Harbour. DCWW are considering trading schemes on the Usk and the Pembrokeshire Coastal Forum are looking at a trading for their marine SAC. Trading schemes are an internationally well-established nutrient management tool (Appendix 5) and there is evidence to suggest such schemes do have the potential to tackle diffuse phosphate pollution (Appendix 6).
30. **Poole as an example**: Introducing a trading scheme creates a need for farming practices to change to support the efficient use of nutrients. In Poole, these changes have yet to be assessed and the impact costed. However, there are also be benefits for the farming community.
 - a. An opportunity to take charge of a scheme leading to environmental improvements rather than top down imposition of rules which may not be relevant to their farm

- b. The ability to maximise production of their land whilst making more efficient use of nutrients. Trading schemes promote nutrient efficiency.
31. In the Poole scheme, farmers who meet their nutrient reduction targets would not benefit financially and would pay a membership fee to defray scheme administration costs.
 32. Farmers who are unable to meet their nutrient reduction targets are given the opportunity to pay for credits from farmers in the scheme who have exceeded their reduction targets.
 33. Farmers that take part and abide by the rules of an EA approved scheme in Poole, are likely to present a lower pollution risk. Farmers outside the voluntary scheme are likely to be the subject of increased monitoring and enforcement visits by the EA.
 34. Progress in delivering the Poole catchment targets will be monitored each year, to ensure each sector meets their obligations. A formal review of the progress of the agricultural sector to deliver their target is to be undertaken every three years. If sufficient progress has not been made, the EA and NE may recommend a WPZ is implemented to deliver the targets instead. However the EA and NE say they will work constructively with partners to try and avoid this.
 35. **Why should Herefordshire Council invest in this project proposal? “The Financial Case”**
The present NMP is a voluntary plan with voluntary measures from each of the statutory bodies. It is evident that there is no spare project capacity or change management capacity of sufficient scale to implement the proposals of the Cabinet Commission. Developing a submission to DEFRA is a complex process and requires complex technical work with stakeholders. There is also a need for effective consultation with the farming community, who will be most impacted by this proposal through changes to working practices. Halting the project at this stage to secure partnership contributions would result in a significant loss of momentum.
 36. The Herefordshire economy has lost over £360m since the start of the moratorium and the ongoing impact to the local construction industry is estimated at around £12m per month. This economic impact is particularly concentrated in the north of the county and its effects are wide-ranging in the local community. Taken together with the Council’s responsibility and powers to act in the public interest, this is considered to justify a level of public investment in bringing forward a scheme to reduce nutrient pollution.
 37. It is proposed that the project would use specialist bid drafting expertise to identify additional funding sources to further support the development of a full business case with implementation plan. Government departments and agencies are also expected to contribute funding.
 38. **What would a community led trading scheme look like?** The Commission is very mindful that these recommendations must be delivered with cooperation and support from our farming communities, many of whom already do much work to protect the environment. Farming communities will need to be closely involved in designing and delivery of these enhanced measures. Therefore, over the coming months, farmer to farmer engagement and consultation will be built into every phase of the project and the Country Landowners Association (CLA), Farm Herefordshire, Herefordshire Farm Hub, National Farmers Union (NFU) and NFU Wales will have access to regular stakeholder updates through a fortnightly meeting. (Appendix, 7, 8, 9 and 10) set out how the scheme works in Poole.
 39. The project will also create the evidence to enable relevant organisations to submit their own funding bids for farm support such as ELMS.
 40. **Strategic Objective 2- Strengthening the mechanism by which such a scheme is delivered**
- The NMB is a voluntary body (Appendix 11) with a voluntary action plan, hosted by Herefordshire Council (who at the time were most impacted by risk as a Local Planning Authority and bear the continued cost of regulatory breakdown). The conservation bodies NE and NRW

have delegated the following responsibility to the NMB “the Board will be the responsible body for ensuring the delivery of the conservation objectives for the River Wye SAC. It will provide oversight and direction to all involved in delivering the Nutrient Management Plan.”

41. Statutory responsibility cannot be devolved to a voluntary board which also comprises Non-Government Organisations (NGOs) and lobby groups potentially impacted by Board decisions. A factor that guides the Commission’s proposals on revised Board membership. Whether or not responsibility can actually be delegated, accountability can never be delegated and therefore the NMB needs to be equipped with the authority, tools and resources to deliver its mission and remit to those to whom it is accountable.
42. Board development activity is a key ingredient for success. A proposal made by the EA to commission a Board development programme is a welcome and much needed step towards creating a high performing and effective board. The Commission makes the following recommendations regarding the future constituency and operation of the NMB:
 - Membership of the Board shall comprise a representative of each of those agencies with statutory responsibilities for delivering the plan. That is, the two conservation bodies - Natural England and Natural Resources Wales, the Environment Agency and the five competent authorities - Herefordshire, Forest of Dean, Powys and Monmouthshire Councils together with the Brecon Beacons National Park. Other organizations attend by exception for specific items.
 - A multi-agency joint working agreement is put in place with protocols covering working arrangements and information sharing between partners. This should be in the form of a Memorandum of Understanding.
 - Meetings of the Board continue to take place in public with a right for the public to submit written questions in advance of the meeting. Meetings can go into closed session to discuss matters for which it is not in the public interest to discuss in public. It is suggested that the operation of the NMB follows the legislative safeguards on transparency councils follow in their decision making process.
 - The Wye Catchment Partnership becomes the forum used by the NMB to consult and engage with stakeholders and lobby groups.
 - A Commissioning Manager should be appointed to drive the plan forward. During the transition and transformation phase of the process a higher level of skill set is needed in this role for a temporary period until a “business as usual” phase is established.
 - Meetings take place on MS Teams and the public to be able to view via YouTube where it enjoys a wide community following.
43. **Strategic Objective 3- Improving and continue to implement existing measures through reviewing the present NMP** (Appendix 12)- it will be important to revise, strengthen and improve the NMP to ensure that it comprises a coherent and focussed programme of properly resourced steps and measures for the NMB to continue to drive forward during the interim phase. Potential external funding routes shall also be identified to progress the plan. This work will provide essential evidence for the proposed submission to DEFRA and Welsh Government.
44. The Wye NMP has been in place since 2014, there are supposed to be annual updates to the plan. The last of these was in November 2021. The NMP needs to be overhauled to model and assess the programme of measures for consideration in setting targets for any new trading schemes.

45. Herefordshire Council has offered to provide an experienced director, possessing experience spanning public administration in both England and Wales to act as the Commissioning Manager on an interim basis. It is proposed that the revised NMP would identify those activities which are already running - which would simply need to report on outputs and provide critical evidence of impact in nutrient reduction. The remaining elements of the plan would be rapidly reviewed as to their utility in supporting the recommended way forward.
46. Advice and support will be available on turning retained elements into deliverable work packages and to ensure work on delivering the future target operating model for the management of nutrients in the catchment is prioritized. This activity will provide a clear programme plan and performance dashboard through which the NMB would monitor progress.
47. The project would be in accord with and take forward out County Plan objectives. Improving the sustainability, connectivity and wellbeing of our county by strengthening our communities. Creating a thriving local economy. Protecting and enhancing our environment.

Community impact

48. The Commission and the work to progress the restoration of the River Wye and River Lugg 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."
49. Farming, agriculture, home building and tourist industries as well as resident access to countryside leisure amenity are all essential to the vibrancy and life of rural communities. The restoration of both the River Wye Catchment will enable help assure the vibrancy and future prosperity of all our communities.

Environmental Impact

50. The River Wye and River Lugg are considered important in terms of nature conservation, as a consequence both rivers are designated as Sites of Special Scientific Interest (SSSI). In addition the lower stretch of the River Lugg; from Hope under Dinmore, along with the River Wye are also designated as a Special Area of Conservation ("SAC") under the European Community Habitats Directive (Council Directive 92/43/EEC).
51. The special features for which the River Wye is designated include a range of aquatic habitats and species. Improving the water quality will support the council's commitment to address the climate and ecological emergency through the protection and enhancement of these, and other important wildlife habitats.

Equality duty

52. 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.
53. 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. Our providers will be made aware of their contractual requirements in regards to equality legislation.
54. A full Equalities Impact Assessment will be undertaken on the proposal, with assistance from the Equality and Diversity Team, prior to submission to DEFRA

Resource implications

55. As is usual at the OBC stage, more detailed work will need to take place to identify the costs involved in setting up and maintaining a scheme. These would include the costs of delivering the scheme and identifying who should pay those costs. The cost that our partner organisations might incur such as the likely additional enforcement costs the agencies might face themselves will also need to be identified by that stage. In this instance, setting out how the polluter pays and how fair share principles will be met will also need to be expressed more explicitly.
56. On Friday 10 Feb 2023 Council allocated £480,000 of funding for the development of the business case in order to accelerate progress enabling investment in a properly resourced project team able to commission necessary advice.
57. The Preliminary assessment for preparing a submission will mean undertaking the following, and a budget of £250,000 would be indicative of this work, subject to refinement, down or up, when fully scoped out.
- a. Agreeing with NE, EA, NRW, DEFRA and WG the assets needed for the submission
 - b. A high level nutrient catchment budget of all present measures
 - c. A model trading scheme
 - d. Revisit of options appraisal
 - e. Ongoing monitoring of the adaptive management of the Poole scheme during ramp up and NE/EA monitoring reviews
 - f. Scoping of a phased roll out to secure locations with the best potential to reduce ecological damage are identified
 - g. Consultation and capacity building with farmers in England and Wales
 - h. A resource plan including bid support to secure funding for moving from OBC to FBC and beyond
 - i. A costed delivery plan
 - j. An assessment of the other available options, including a WPZ
 - k. A external validation review to satisfy NE, EA and NRW
 - l. Programme support to develop specifications, commission external reports and schedule workshops

58. Where technical support will be required this will be procured in line with the Council's contract procedure rules with support from the Commercial Services team.

Legal implications

59. The steps being taken by the Council aim to prevent continued deterioration of the River Wye as a protected habitat under the Habitats Directive. If achieved, this will mean that the legal duties under article 6(2) of the Habitats Directive are complied with, being:

“Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.”

60. These duties are specifically placed upon the Secretary of State and Welsh Government, Natural England and Natural Resources Wales. It will be necessary for the steps which are settled upon to provide certainty that deterioration is avoided.
61. Under s.40 of the Natural Environment and Rural Communities Act 2006, public authorities which have any functions exercisable in England must from time to time consider what action it can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective, which is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.

Risk management

| Risk / opportunity | Mitigation |
|---|---|
| Risk - There is a significant risk that the condition of the River Wye deteriorates and is classified as failing. This would restrict the future economic development in the south of the county. | Improved partnership working and additional strategic leadership across the River Wye and River Lugg catchment areas. |
| Opportunity - To improve the water quality of both the River Wye and River Lugg which will protect and enhance biodiversity. | |
| Not securing cross border buy in from both Governments | The Commission has developed an evidence led proposal and locally developed solutions which is hoped will command the respect of both governments. However, it is accepted that national policy decisions by both governments could override ambitions developed through a localism remit. |
| Economic impact to the County | The current requirement for nutrient neutrality in the River Lugg catchment area / north of the county has caused significant economic damage to Herefordshire's economy with an estimated impact of £360m. In addition to improving the health of the rivers Wye and Lugg this proposal both seeks to enable future economic development in the North of the county and to prevent similar restrictions being introduced into the River Wye catchment area in the South of Herefordshire. |

Consultees

62. An all member briefing was undertaken on Tuesday 21st February 2023

Appendices

- Appendix 1 Cabinet Commission Restoring the Wye: Terms of Reference
[Cabinet Commission - Restoring the Wye – Herefordshire Council](#)
- Appendix 2 DCWW Source Apportionment Modelling issued February 2023
[SAC Rivers: Source Apportionment Reports | Dŵr Cymru Welsh Water \(dwrwymru.com\)](#)
- Appendix 3 Poole Harbour Consent Order Technical Recommendations
[Poole Harbour Consent Order Technical Document \(pooleharbournitrates.org.uk\)](#)
- Appendix 4 “5 Case Model” for submission to Defra
[Guide to developing the Project Business Case \(publishing.service.gov.uk\)](#)
- Appendix 5 Water Quality Trading Case Study
[Water-Quality-Trading-Case-Study-Review.pdf \(neiwpsc.org\)](#)
- Appendix 6 Economic Policy Instruments for Sustainable Phosphorous Management
[Economic policy instruments for sustainable phosphorus management: taking into account climate and biodiversity targets | Environmental Sciences Europe | Full Text \(springeropen.com\)](#)
- Appendix 7 Poole Harbour Case Study- Scheme Manager Perspective
[Resources - Poole Harbour Nutrient Management Scheme \(pooleharbournitrates.org.uk\)](#)
- Appendix 8 Poole Harbour Case Study – Green Investor Perspective
[Poole Harbour Nutrient Management Scheme \(greenfinanceinstitute.co.uk\)](#)
- Appendix 9 National Union of Farmer Perspective
[Poole Harbour Updates – NFUonline](#)
- Appendix 10 Cambridge Institute for Sustainability Leadership Report
[Resources - Poole Harbour Nutrient Management Scheme \(pooleharbournitrates.org.uk\)](#)
- Appendix 11 Present NMB Terms of Reference
[Wye Catchment Nutrient Management Board - Herefordshire Council](#)
- Appendix 12 Present Nutrient Management Plan
[River Wye Nutrient Management Plan Phosphate Action Plan \(herefordshire.gov.uk\)](#)

Background papers

- None identified

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 23/02/2023 |
| Finance | Louise Devlin | Date 20/02/2023 |
| Legal | Kerrie Munro | Date 23/02/2023 |
| Communications | Luenne Featherstone | Date 15/02/2023 |
| Equality Duty | Harriet Yellin | Date 22/02/2023 |
| Procurement | Carrie Deeley | Date 22/02/2023 |
| Risk | Kevin Lloyd | Date 22/02/2023 |
| Approved by | Mark Averill | Date 23/02/2023 |

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

- SBCO - Strategic Business Case
- OBC - Outline Business Case
- DEFRA - Department for Environment Food and Rural Affairs
- NMP - Nutrient Management Plan
- NMB - Nutrient Management Board
- WPZ - Water Protection Zone
- PCC - Powys County Council
- MCC - Monmouthshire County Council
- FoDDC - Forest of Dean District Council
- NE - Natural England

- EA - Environment Agency
- NRW - Natural Resource Wales
- SAC - Special Areas of Conservation
- SSSI - Sites of Special Scientific Interest
- P - Phosphate
- WWtW - Waste Water Treatment Works
- ECJ - European Court of Justice
- DCWW - Welsh Water
- NFU - National Farmers' Union
- CLA - Country Land and Business Association
- PHCOTA - Poole Harbour Consent Order Technical Assessment
- FCM - The Five Case Model
- ELMS - Environmental land management schemes
- NGOs - Non-Government Organisations