

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

CABINET – 20 SEPTEMBER 2016

Title of report	RIVER MEASE SPECIAL AREA OF CONSERVATION WATER QUALITY MANAGEMENT PLAN - DEVELOPER CONTRIBUTION SCHEME 2
Key Decision	a) Financial No b) Community Yes
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Purpose of report	<p>To seek adoption of the River Mease Water Quality Management Plan Developer Contributions Scheme 2 (DCS2). The primary objective of the DCS2 is to mitigate the negative effects of new development. In doing so, DCS2 will ensure that new development can be permitted in the River Mease catchment without compromising the primary purpose of the Water Quality Management Plan (WQMP) to reduce the levels of phosphorous within the River Mease Special Area of Conservation (SAC).</p>
Reason for Decision	<p>To provide a mechanism through which major and other new residential and commercial development can continue to be allowed in the River Mease catchment without having an adverse impact on the integrity of the SAC. At present the District Council has in place the River Mease SAC Water Quality Management Plan Developer Contributions Scheme 1 (DCS1) however, this developer scheme has now reached its maximum capacity. The District Council is therefore unable to permit further development within the River Mease catchment by way of DCS1 and therefore seeks adoption of DCS2.</p>
Council Priorities	Business and Jobs

Implications:	
Financial/Staff	Post of Project Officer for the River Mease SAC Developer Contribution Scheme will continue to be employed by North West Leicestershire District Council with full costs for a five year period to be met by developer contributions. The post holder will report to the River Mease Water Quality Management Plan Programme Board and will be managed by the Council.
Link to relevant CAT	None
Risk Management	Approval of DCS2 will enable the Council to continue to approve appropriate developments whilst ensuring that the integrity of the River Mease SAC is not adversely affected by such development. Without DCS2 the Council will not be able to meet its obligations to bring forward new development to meet the ongoing housing and commercial development needs of the district. Furthermore, it could leave the Council open to challenge at appeals where developers propose one-off solutions resulting in an incremental approach to resolving the existing water quality issues if DCS2 is not adopted.
Equalities Impact Screening	Not applicable
Human Rights	No discernible impact
Transformational Government	Not applicable
Comments of Head of Paid Service	Report is satisfactory
Comments of Deputy Section 151 Officer	Report is satisfactory
Comments of Monitoring Officer	Report is satisfactory
Consultees	<p>A 6 week period of consultation has taken place between 27 June 2016 and 5 August 2016.</p> <p>Those consulted include the general public, the development industry and other statutory consultees.</p> <p>In total four responses were received to the consultation.</p>

Background papers	<p>Four consultation responses to the Developer Contribution Scheme Final Version.</p> <p>Overview of responses to consultations:</p>
Recommendations	<p>THAT CABINET AGREE:</p> <p>(I) TO ADOPT THE RIVER MEASE WATER QUALITY MANAGEMENT PLAN DEVELOPER CONTRIBUTIONS SCHEME 2 AS A SUPPLEMENTARY POLICY DOCUMENT (AS APPENDED TO THIS REPORT) AND TO IMPLEMENT THE SCHEME WITH IMMEDIATE EFFECT; AND</p> <p>(II) TO DELEGATE TO THE DIRECTOR OF SERVICES, IN CONSULTATION WITH THE REGENERATION AND PLANNING PORTFOLIO HOLDER, RESPONSIBILITY TO REVIEW AND AMEND THE DEVELOPER CONTRIBUTION SCHEME AS AND WHEN MONITORING AND REVIEW OF PHOSPHOROUS REDUCTIONS REQUIRES AND TO REFER BACK TO CABINET ONLY WHERE SIGNIFICANT MATERIAL REVISIONS TO THE SCHEME ARE REQUIRED</p>

1.0 BACKGROUND TO THE DEVELOPER CONTRIBUTION SCHEME

- 1.1 The River Mease was designated by the Secretary of State as a Special Area of Conservation (SAC) under the EC Habitats Directive on the 1 April 2005. The SAC is protected through the provisions of the Conservation of Habitats and Species Regulations 2010 (SI No. 490), commonly referred to as the Habitats Regulations.
- 1.2 The SAC incorporates the Gilwiskaw Brook downstream of Packington village and the River Mease from its confluence with the Gilwiskaw Brook to its confluence with the River Trent. It is designated as a Special Area of Conservation for its internationally important habitats and species, which are collectively referred to as its “interest features”. Local planning authorities and the Environment Agency are “competent authorities” under the Habitats Regulations and must have regard to the requirements of the Habitats Directive in the exercise of any of their functions, including the determination of planning applications.
- 1.3 In accordance with the provisions of the Habitats Regulations, the Environment Agency completed a review of the consents for which they were responsible, which were considered to be relevant to the River Mease SAC. The Review of Consents identified poor water quality, mainly due to high levels of phosphorous, as representing a threat to the ability of the river in supporting its internationally important features in a sustainable way (referred to as the “integrity” of the SAC in the Habitats Regulations). The findings of

the review of consents led to concerns from Natural England that any new development in the River Mease catchment was simply serving to further increase the level of phosphorous in the river which in turn, raised challenges in respect of compliance with the District Council's statutory obligations as a competent authority under the Habitat Regulations. This resulted in significant delays in determining planning applications between 2009 and 2012 with some applications being held in abeyance for long periods. This also led to proposals for major development to be served by septic tanks and package treatment plants rather than connecting new developments to the mains sewer, which is clearly not the most sustainable option as these need emptying periodically by tanker leading to additional vehicular trips to and from a particular site to the receiving waste water treatment works outside catchment.

- 1.4 The Review of Consents conducted by the Environment Agency identified the need for stricter phosphorous limits at several waste water treatment works and these limits have now been implemented. In addition to these modifications, however, it was recognised that further action, over and above the imposition of tighter phosphorous limits, needed to be taken by the Environment Agency (and other competent authorities) to ensure that their consents do not pose a threat to the SAC over the long term.
- 1.5 The further action identified through the Environment Agency review is being coordinated by, and implemented through, a long term WQMP for the River Mease SAC. The WQMP is a jointly produced plan by the Environment Agency and Natural England and was finalised in June 2011 with a primary purpose to *"reduce the levels of phosphate within the River Mease SAC, to enable the Conservation Objectives for the SAC to be met, and an adverse effect upon the SAC avoided"*. The objective of the WQMP is that *"the combined actions will result in a reduction in phosphate in the River Mease"*. The River Mease WQMP Programme Board, a partnership responsible for overseeing the WQMP and consisting of the Environment Agency, Natural England, Severn Trent Water, North West Leicestershire District Council, South Derbyshire District Council and Lichfield District Council held its inaugural meeting in July 2011 and subsequently announced that the WQMP had been officially agreed and signed off by the Environment Agency and Natural England.
- 1.6 The WQMP includes a list of actions and investigations relating to all types of pollution sources which will help reduce the levels of phosphorous throughout the River Mease catchment and the River Mease SAC. One of the actions listed in the WQMP was to *"establish a developer contribution framework, in accordance with planning obligations best practice"*. Therefore, in order to establish the developer contribution framework, the Programme Board, led by North West Leicestershire District Council, commissioned consultants David Tyldesley Associates to produce the River Mease WQMP Developer Contribution Scheme (DCS) in conjunction with the Board.

2.0 THE DEVELOPER CONTRIBUTION SCHEME (DCS)

- 2.1 The first Developer Contribution Scheme (DCS) was adopted by Cabinet on 21 November 2012.
- 2.2 The original DCS allowed for a first development window equating to approximately 2,400 dwellings to be constructed whilst also ensuring the removal of the required level of phosphorous (700 g per day). As 2400 dwellings have been approved or have resolutions

for approval, there is a need for a second development window and therefore a new developer contribution scheme to be adopted.

3.0 THE DEVELOPER CONTRIBUTION SCHEME 2 (DCS2)

- 3.1 The need for DCS2 has also been identified in response to the housing requirements identified in the Publication Version North West Leicestershire Local Plan (Publication Version Local Plan). DCS2 has been subject to assessment under the Habitat Regulations and was identified as a key mechanism in providing the Council with the necessary confidence required in evidencing that development allocated in the catchment of the river will not have a significant effect on the River Mease SAC.
- 3.2 DCS2 will also enable the Council to grant planning permission for those pending applications for development in the River Mease catchment which have resolutions for approval, and additional, albeit limited capacity, for further development.
- 3.3 The Programme Board, led by North West Leicestershire District Council, again commissioned consultants DTA Ecology (set up to continue the work of David Tyldesley and Associates after it finished trading in 2015) to produce the DCS2 in conjunction with the Board.
- 3.4 DCS2 was initially published for consultation by North West Leicestershire District Council and South Derbyshire District Council in early December 2015, with the consultation period closing on 29 January 2016. However, during the consultation process it became apparent that improvements in water quality since DCS1 had not been adequately factored into the underlying calculations. As a result DCS2 could not identify sufficient measures to be funded by developer contributions which would provide enough capacity to allow for the housing requirements identified in the Publication Version Local Plan or the outstanding resolutions to approve planning permissions for a significant number of houses.
- 3.5 As a result, the Programme Board has agreed that the long term solution to facilitate development within the SAC needs to involve the pumping out of catchment of flows to Packington and Measham Waste Water Treatment Works. Following this decision, DTA Ecology has produced a revised version of DCS2 which will provide mitigation measures to facilitate approximately 1826 houses which are anticipated to come forward before flows from Packington and Measham Waste Water Treatment Works are pumped out of the River Mease catchment (see 3.6 below).
- 3.6 The Habitat Regulations assessment of the Publication Version Local Plan recognises that, upon implementation, the recent agreement of Severn Trent Water, the Environment Agency and Natural England in respect of pumping flows from Packington and Measham out of the River Mease catchment will provide an immediate solution to the impacts on the River Mease SAC from wastewater associated with development connecting to these works. As such, of the development provided for in the Publication Version Local Plan, 1150 dwellings are phased for delivery towards the end of the plan period following implementation of the scheme to pump flows out of the River Mease catchment (anticipated for delivery by 2025).
- 3.7 Consultation on the revised version of DCS2 was carried out between 27 June and 5 August 2016. As a result, four responses were received which have been reviewed by

DTA Ecology, Natural England, the Environment Agency, Severn Trent Water and the River Mease SAC Project Officer. As a result of the consultation, there were no changes made and DCS2 Final Version is now recommended for approval as a supplementary policy document. Members are advised that the full contents of the consultation responses and an overview of the responses are available to view in the Background Papers to this report.

- 3.8 The principle behind DCS2 remains the same, the polluter pays. DCS2 will apply to all development which contributes additional wastewater via the mains sewerage network to a sewage treatment works which discharges into the catchment of the River Mease SAC. DCS2 contains a formula to calculate the amount of phosphate that might be expected from certain types of development and allocates a cost per unit to those developments. Contributions will be sought on an equitable basis whereby different sized dwellings and commercial developments make different contributions relative to the scale of their potential impact. In order to satisfy the planning authorities, the Environment Agency and Natural England that new development is not likely to have an adverse effect on the River Mease, a contribution from each new development in line with the DCS2 will be necessary.
- 3.9 DCS2 provides a table (see Appendix 1 Table F5 page 17) on which the contributions from residential development can be calculated, depending on the number of bedrooms for each dwelling. For example, the likely costs to developers for a residential scheme of 100 houses with a mix of house sizes would be approximately £41,225. The equivalent cost for a scheme approved using DCS1 would have been approximately £25,300. While the amount of phosphate per dwelling remains the same from DCS1 to DCS2, as this is based on a fixed volume of wastewater based on estimated occupancy, what has changed is the cost to remove each milligram (mg) of phosphate. The cost per mg was £0.91 in DCS1 and this has risen to £2.50 in DCS2. This figure is calculated from the overall costs to deliver all the schemes identified as necessary to remove a given amount of phosphate and is why the contributions to be secured will now be higher.
- 3.10 DCS2 contains an action plan (Appendix 1) and sets out a list of measures that any contribution will be applied to. These include environmental improvements such as the installation of silt traps, river restoration schemes and the restoration of disused coal pits. DCS2 contributions will continue to fund the employment of a Project Officer for a further period of five years who will be responsible for ensuring that actions in DCS2 are implemented. The Project Officer will report to the River Mease WQMP Programme Board. The Council will continue to be the employing authority of the Project Officer.
- 3.11 DCS2 contributions will be directly applied to actions that help improve the water quality of the river and thereby help to restore the River Mease to favourable conservation status as required by the Habitats Directive. The contributions will be collected by North West Leicestershire District Council, South Derbyshire District Council or Lichfield District Council, depending on where the new development takes place, but as North West Leicestershire District Council is the authority likely to receive the largest contributions, it is proposed that the Council continues to act as the accounting authority for the total contributions received.

4.0 BENEFITS OF THE DEVELOPER CONTRIBUTION SCHEME

- 4.1 By adopting DCS2, the Council will continue to be in a position whereby it can grant planning permission for major new developments. Members will be aware that before the

adoption of the first DCS in 2012, in the few years proceeding, this was not possible and the absence of an approach to address the excessive nutrient levels within the SAC had resulted in a brake on economic development in this part of the district.

- 4.2 The ability to continue to allow major developments is consistent with the Council's Publication Version Local Plan and is entirely in line with the Government's commitment to the economic growth agenda and promotion of sustainable economic development outlined in the National Planning Policy Framework, which states that planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Furthermore, it will also enable the Council to demonstrate that the provisions of the Publication Version Local Plan are deliverable.
- 4.3 DCS2 will also give developers a degree of certainty in that their proposals will continue to be determined in a more timely fashion without the need for lengthy delays and additional costs in pursuing alternative methods of foul drainage disposal. However, Members should be aware that DCS2 will still only provide for a limited capacity for allowing new developments. The limitations on this capacity will only be lifted in the long term through the provision of a pipeline which will pump flows out of catchment by 2025. In the meantime, once DCS2 capacity is exhausted, there may be a need for a DCS3 which would be reliant on additional improvement actions being identified by the River Mease Programme Board. At this stage, it is impossible to say whether any such actions could be identified and whether it would be possible to adopt a DCS3.
- 4.4 The mechanism for securing the developer contributions required by DCS2 will be through Section 106 Agreements. The Council has provided standard Section 106 Agreements for developers so that the necessary contributions can be secured without significant delay to the process and to ensure that planning applications are determined within target wherever possible.
- 4.5 Regulation 122 of the Community Infrastructure Levy Regulations 2010 requires that any planning obligation to be taken into account in the determination of a planning application that is capable of being charged CIL must meet the following three tests:
- (i) be necessary to make the proposed development acceptable in planning terms;
 - (ii) be directly related to the proposed development; and
 - (iii) be fairly and reasonably related in scale and kind to the development.

DCS2 includes an analysis (see Appendix 1 - Page 7) which demonstrates how the planning obligations to be secured comply with the tests in Regulation 122. Whilst Regulation 123 of the Community Infrastructure Levy Regulations 2010 prevents the imposition of planning obligations for "infrastructure" if five or more separate planning obligations which provide for the funding or provision of that type of infrastructure has been entered into on or after 6 April 2010, the measures to be funded through the DCS are environmental protection measures and therefore not a "relevant infrastructure" as detailed within Regulation 123. The contributions obtained through DCS2 are therefore not subject to pooling restrictions.