

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**

**CABINET – 21 NOVEMBER 2012**

Title of report	<b>RIVER MEASE WATER QUALITY MANAGEMENT PLAN DEVELOPER CONTRIBUTIONS SCHEME</b>
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. The primary objective of the Developer Contributions Scheme is to mitigate the negative effects of new development. In doing so, the Developer Contributions Scheme will ensure that new development can be permitted in the River Mease catchment without compromising the primary purpose of the Water Quality Management Plan 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 begin to be allowed again in the River Mease catchment without having an adverse impact on the integrity of the SAC</p>
Council Priorities	Business and Jobs
Implications:  Financial/Staff	<p>Post of Project Officer for the Developer Contribution Scheme to be created and 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 but will be managed by the District Council</p>

Link to relevant CAT	None
Risk Management	Approval of the Developer Contributions Strategy (DCS) will enable the Council to approve appropriate developments whilst ensuring that the integrity of the River Mease Special Area of Conservation is maintained. Without the DCS the Council will not be able to meet its obligations to bring forward new development to meet the ongoing 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.
Equalities Impact Assessment	Not applicable
Human Rights	No discernible impact
Transformational Government	Not applicable
Comments of Head of Paid Service	The report is satisfactory
Comments of Section 151 Officer	The report is satisfactory
Comments of Monitoring Officer	The report is satisfactory
Consultees	<p>A 6 week period of consultation has taken place between 20 July 2012 and 31 August 2012.</p> <p>Those consulted include the general public, the development industry and other statutory consultees.</p> <p>In total 18 responses were received to the consultation</p>
Background papers	<p>River Mease Water Quality Management Plan Developer Contributions Scheme - Draft version and supplementary Appendix</p> <p>Eighteen consultation responses to the Developer Contribution Scheme Draft Version</p> <p>David Tyldesley Associates Overview of Responses to consultations All of these documents are available on the Council's web site on the following link: <a href="https://www.nwleics.gov.uk/pages/executive_decisions_background_papers">https://www.nwleics.gov.uk/pages/executive_decisions_background_papers</a></p>

Recommendations	<p><b>THAT CABINET AGREE:</b></p> <p><b>(I) TO ADOPT THE RIVER MEASE WATER QUALITY MANAGEMENT PLAN DEVELOPER CONTRIBUTIONS SCHEME AS A LOCAL POLICY DOCUMENT (AS APPENDED TO THIS REPORT) AND TO IMPLEMENT THE SCHEME WITH IMMEDIATE EFFECT; AND</b></p> <p><b>(II) TO DELEGATE TO THE DIRECTOR OF SERVICES, IN CONSULTATION WITH THE APPROPRIATE PORTFOLIO HOLDER, RESPONSIBILITY TO REVIEW THE DEVELOPER CONTRIBUTION SCHEME AS AND WHEN MONITORING AND REVIEW OF PHOSPOROUS REDUCTIONS REQUIRES AND TO REFER BACK TO CABINET ONLY WHERE SIGNIFICANT MATERIAL REVISIONS TO THE SCHEME ARE REQUIRED</b></p>
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## **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<sup>st</sup> 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 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 these 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 to support its internationally important features in a sustainable way (referred to as the “integrity” of the SAC in the Regulations). It concluded that any new development in the catchment was simply serving to increase the level of phosphorous in the river and therefore, major new development could not be allowed in the River Mease catchment without first showing how that development would reduce the level of phosphorous reaching the river. This has resulted in significant delays in determining planning applications since 2009 with some applications being held in abeyance for long periods. This has also led to proposals for major development to be served by cess tanks rather than connecting new developments to the mains sewer, which is clearly not the most sustainable option.

- 1.4 The Review of Consents conducted by the Environment Agency also identified the need for stricter phosphorous limits at several waste water treatment works. These limits have now either been implemented, or are scheduled to be implemented over the next few years. In addition to these modifications, 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 Water Quality Management Plan (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 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, lead 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 Developer Contribution Scheme (DCS) was published for consultation on 20 July 2012 with the consultation period closing on 31 August 2012. As a result of the consultation, 18 responses were received which has lead to a number of relatively minor changes to the DCS Final Version, which is now recommended for approval as a local policy document. Members are advised that the full contents of the consultation responses and an overview of the responses by David Tyldesley Associates are available to view in the Background Papers to this report.
- 2.2 The full content of the DCS Final Version October 2012 and the measures to be funded through the DCS are attached as Appendix 1 and Appendix 2 to this report. This local policy document, once adopted would be a material planning consideration in the determination of planning applications.
- 2.3 The principle behind the DCS is simple, the polluter pays. The DCS 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. The DCS 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 DCS will be necessary.

2.4 The DCS provides a table (see Table 3 page 16) on which the contributions from residential development can be calculated, depending on which sustainable homes standard they are built too. For example, the likely costs to developers for a residential scheme of 100 houses with a mix of house sizes built to sustainable homes standard levels 1/2 would be £25,275. The same development built to sustainable homes standard levels 5/6 would secure a likely contribution of £22,175.

2.5 The DCS contains an action plan and sets out a list of measures that any contributions will be applied to. These include environmental improvements such as the installation of silt traps that help to reduce the phosphorous levels in the river and a river restoration plan. Another of the actions of the DCS will be to employ a Project Officer who will be responsible for ensuring that actions in the DCs are implemented and who will report to the River Mease WQMP Programme Board. The costs of the Project Officer will be paid from the DCS contributions but it is proposed that North West Leicestershire District Council will be the employing authority.

2.6 Therefore the DCS contributions will be directly applied to actions that help to improve the water quality of the river and thereby help the River Mease meet the EC Habitats Directive. The contributions will be collected by North West Leicestershire District Council, South Derbyshire District Council or Lichfield District Council, depending upon where the new development takes place but as the authority likely to receive the largest contributions, it is proposed that North West Leicestershire District Council acts as the accounting authority for the funds.

### **3.0 BENEFITS OF THE DEVELOPER CONTRIBUTION SCHEME**

3.1 By adopting the DCS, the Council will, once again, be in a position whereby it can grant planning permission for major new developments. Members will be aware that over the last few years this has not been possible and so the poor quality of the SAC has resulted in a brake on economic development in this part of the District.

3.2 The ability to once again allow major developments consistent with the Council's emerging Core Strategy 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 emerging Core Strategy are deliverable.

- 3.3 The DCS will also give developers much needed certainty that their proposals will be determined in a more timely fashion without the need for lengthy delays and additional costs in pursuing alternative methods of foul drainage disposal.
- 3.4 The mechanism for securing the developer contributions required by the DCS prior to March 2014 will be through Section 106 Agreements. After that date, if the Council decides to introduce a Community Infrastructure Levy (CIL), contributions will be chargeable to CIL. Should this be the case, a further report will be brought to Cabinet. In the meantime, standard Section 106 Agreements will be provided 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.
- 3.5 Regulation 122 the Community Infrastructure Levy (CIL) 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.
- The DCS includes an analysis (see Appendix 1 - Page 6) which demonstrates how the planning obligations to be secured comply with the tests in Regulation 122.
- 3.6 The DCS will apply to planning applications submitted following the publication of this Cabinet Report