

Cabinet

12 March 2024

Local Nutrient Mitigation Fund Arrangements

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): All

Executive Director: Jan Britton, Executive Lead for Place

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Report Status: Public (the exemption paragraph is N/A)

Brief Summary: To update Cabinet on the Local Nutrient Mitigation Fund and make arrangements for the oversight and spend of the funds awarded to Dorset Council.

Dorset Council made a bid to receive funds from the DLUHC Local Nutrient Mitigation Fund to deliver nutrient mitigation within the Poole Harbour catchment. This mitigation will enable development to take place by offsetting the increase in nutrient loading on the Poole Harbour protected site. This will help to meet the Council's priorities of Protecting our natural environment, climate and ecology, Driving economic prosperity, and Creating sustainable development and housing. It will also help in creating stronger healthier communities through the provision of housing to meet needs.

Recommendation: That Cabinet agree:

1. That spending from the Local Nutrient Mitigation Fund be delegated to the:
 - a. Environment / Policy / Partnership Manager – individual expenditure decisions not exceeding £50,000
 - b. Head of Planning – individual expenditure decisions over £50,000 but not exceeding £100,000

- c. Portfolio Holder for Planning in consultation with the Corporate Director for Economic Growth and Infrastructure – individual expenditure over £100,000 but not exceeding £1.5m
2. To regular (at least 6 monthly) reports being prepared for the portfolio holder to outline the spend to date and the number of homes enabled through the delivery of nutrient mitigation.
3. To commit to the spend the Local Nutrient Mitigation Fund on the delivery of nutrient mitigation with the indicative programme of spend as detailed in Appendix 2 to this Cabinet report.
4. To acknowledge the emerging outline strategy for the management of nutrient mitigation credits including transitional arrangements, in Appendix 3 to this report.

Reason for Recommendation:

Grant funding has been provided through the Local Nutrient Mitigation Fund by the Department for Levelling Up, Housing and Communities for the delivery of nutrient mitigation within the Poole Harbour catchment. Mitigation will need to be provided for qualifying development (primarily residential) in the parts of the catchment that fall within both the Dorset Council area and the BCP Council area, but Dorset Council are accountable for any financial transactions.

Cabinet is required to approve all key decisions with financial consequences of £500,000. This report provides a framework that enables the Cabinet to:

1. make a key decision approving the expenditure of the £4.63M of grant funded capital made available to the Council from the Local Nutrient Mitigation Fund and
2. approve arrangements for authorising individual spending decisions drawing upon the £4.63M

It is important that in approving the £4.63M of expenditure the Cabinet should put in place arrangements that enable both an agile response to opportunities and at the same time ensure political oversight and reserve the most significant decisions to the Portfolio Holder for Planning, in consultation with the Corporate Director for Economic Growth and Infrastructure.

There is potential for a significant number of operational transactions, and by agreeing to the recommendations, the grant funds can be used as required for smaller transactions, without delay. Reserving the largest transactions to the Portfolio Holder in consultation with the Corporate Director will ensure strategic oversight and that the funds are released only in accordance with the Local Nutrient Mitigation Fund and DLUHC grant conditions, thereby minimising risk to DC as accountable body. The proposed governance arrangements and delegation thresholds are set out in Appendix 1

To commit to spending the whole grant award on the delivery of nutrient credits within the catchment to serve developments in both the Dorset Council and BCP Council areas. The outline spending streams are set out in Appendix 2.

To acknowledge the emerging strategic approach and transitional arrangements for the sale of nutrient credits to development within the Poole Harbour catchment whilst recognising that this approach will need to be refined in consultation with BCP Council prior to implementation. The emerging approach is set out in Appendix 3.

1. **Background**

- 1.1 High levels of nutrients in Poole Harbour are resulting in increased algal growth within the harbour leading to a loss of biodiversity and to the harbour's unfavourable condition. Nutrient loading is primarily from agriculture but there is also a significant proportion from urban wastewater. The increase in population within the catchment is making the situation worse and an overall reduction in nutrient loading is needed to bring the harbour back into a favourable condition.
- 1.2 As a competent authority under the Habitats Regulations, Dorset Council must assess the impact of projects and plans (such as planning applications or local plans) on habitats sites such as Poole Harbour. Having made this assessment, Dorset Council can only approve a project if it is certain that there will be no negative effect on the site's condition.
- 1.3 New development, which results in an increase in overnight population, will increase wastewater flow into the harbour and therefore increase nutrient loading. Natural England's suggested approach is for developments to demonstrate that this nutrient loading has been offset through the approach of Nutrient Neutrality.
- 1.4 The councils within the Poole Harbour catchment have been achieving nitrogen neutrality for many years based on Natural England's earlier advice. In March 2022, Natural England updated their advice for 26 habitats site catchments nationally. This update included a new approach to calculating nutrient load arising from new development. For Poole Harbour, it also included the need for phosphorus neutrality on top of existing requirement for nitrogen neutrality. Since March 2022, Dorset Council have not been granting planning consents for development within the catchment unless it includes measures to address the need for both nitrogen and phosphorus neutrality.
- 1.5 The Government have seen this as a significant issue nationally, harming the delivery of housing across all of the 26 catchments and have taken

various actions to address the issue. Those relevant to this report relate to the Levelling Up and Regeneration Act 2023 and the Local Nutrient Mitigation Fund.

- 1.6 The Levelling Up and Regeneration Act requires water companies to upgrade wastewater treatment works that serve 2,000+ population equivalents, by 2030. The Secretary of State is also considering whether there is a need for this requirement to vary across catchments due to local circumstances and will be making an announcement on this on or before 1 April 2024. Due to the unique characteristics of the Poole Harbour catchment, if additional wastewater treatment works (serving a population of 1,000+) are upgraded to reduce phosphorus loading, the need for phosphorus neutrality will be removed. The need for nitrogen neutrality will however remain.
- 1.7 Government have also made funds available to local authorities in affected catchments through the Local Nutrient Mitigation Fund. This fund is intended to help set up local approaches to deliver nutrient mitigation. Dorset Council made a bid for funds and has been awarded £4.63m of capital funding from the Local Nutrient Mitigation Fund. In addition, Dorset Council has been awarded £100,000 revenue funding for the 2023/24 financial year to support work on addressing the need for nutrient neutrality. A further £203,821 again for the 2023/24 year has been awarded to support Dorset Council in managing and administering the Local Nutrient Mitigation Fund award.
- 1.8 Notification of the award was made via letter, received on 19 December. This letter had a short period to turn around, with a response to accept the award required by 8 January. Payment of the award will be made as a Section 31 grant to Dorset Council with the S151 officer agreeing to receive the grant. This decision was taken under delegated powers due to the short period to turn around the decision.
- 1.9 The terms of the award include the requirement for Dorset Council to commit to spend the funds on a programme of interventions within the catchment to deliver nutrient mitigation by the end of the 2024/25 financial year.
- 1.10 This report seeks to put in place arrangements for spending the award to deliver nutrient mitigation within the Poole Harbour catchment at a pace that meets the requirements of development. The award of funds has been made to Dorset Council but with the requirement that it is spent to

offset the nutrient loading across the whole catchment from development in both Dorset Council and BCP Council areas.

2. **Governance**

- 2.1 It is important that appropriate governance arrangements are put in place to manage and oversee the spend of the Local Nutrient Mitigation Fund. Although Dorset Council is accountable for the fund, the intended purpose is to deliver nutrient mitigation across the whole catchment which includes part of BCP Council. As such, it is important that BCP Council representatives are involved in decisions around the spend of the funds.
- 2.2 The funds have been awarded to Dorset Council and have the potential for multiple and some potential high value transactions to deliver mitigation projects. Dorset Council is responsible for financial transactions associated with the fund and there is therefore a need for both political oversight and professional advice to ensure that spending decisions are in accordance with grant conditions.
- 2.3 Governance arrangements are proposed in Appendix 1 to this report. The proposed arrangements include an Oversight Group who would have responsibility for managing the fund and ensuring the aims of the fund are being met. This includes the reinvestment of returns from the sale of nutrient credits to deliver further nutrient mitigation. The group would be responsible for reporting to DLUHC as required by the Memorandum of Understanding associated with the award. The membership of the group would include planning portfolio holders from both Dorset Council and BCP Council, supported by senior officers and finance officers. Engagement with other portfolio holders could be enabled when needed.
- 2.4 Reporting to this Oversight Group would be a Steering Group who bring technical and legal expertise to identify, evaluate and steer the delivery of nutrient mitigation. This group would involve officers from both Dorset Council and BCP Council along with representatives from external organisations such as Natural England.
- 2.5 The delivery of nutrient mitigation projects would be the responsibility of the Delivery Team. This team would be made up of mitigation delivery officers and managers who would identify and evaluate mitigation projects. These officers would also be responsible for monitoring the delivery of mitigation, ensuring that delivery kept pace with the rate of development in the catchment.

- 2.6 Some mitigation projects may require spend over the £500,000 key decision threshold in response to opportunities that arise on the property market. These opportunities are often short lived. If a decision was needed by Cabinet for each of these transactions, some opportunities would be missed. It is therefore suggested that expenditure over £100,000 but not exceeding £1.5m, be delegated to the Portfolio Holder for Planning in consultation with the Corporate Director for Economic Growth and Infrastructure.
- 2.7 The delivery of mitigation projects is likely to involve multiple transactions of over £50,000 but not exceeding £500,000. To streamline the process for enabling these transactions, it is proposed that the Head of Planning in consultation with the Steering Group is able to agree to transactions within this range. Transactions below the value of £50,000 are of a more day-to-day nature and are proposed to be delegated to the Environment / Policy / Partnership Manager.
- 2.8 At some point in the future, the Government's intention is that the condition of Poole Harbour will be improved to the extent that nutrient neutrality will no longer be necessary. This will be achieved through the implementation of a Protected Site Strategy with Natural England will be responsible for evaluating when nutrient neutrality is no longer needed. Once this has been achieved, the Local Nutrient Mitigation Fund is to be reallocated to help improve the condition of the Harbour.

3. **Indicative spend**

- 3.1 Dorset Council has been awarded £4.63m to deliver nutrient mitigation within the Poole Harbour catchment. Nutrient mitigation will offset the nutrient impact of new development within both the Dorset Council and BCP Council parts of the catchment by offsetting the additional nutrient loading.
- 3.2 One of the conditions of the award of funds was a requirement to commit to spend the funds within the catchment by end of 2024/25 financial year. There was an expectation that there would be spending commitment against the 2023/24 financial year. It is therefore recommended that Cabinet agree to commit to spend the Local Nutrient Mitigation Fund award on a programme of mitigation measures similar to that set out in Appendix 2.
- 3.3 When the Expression of Interest was made to the Local Nutrient Mitigation Fund in March 2023, a number of projects were included as the basis of

the funding bid. Some of these projects have now advanced and no longer require funding and new projects have subsequently been identified. This evolution of projects over time is to be expected.

- 3.4 A programme of projects and associated indicative costs has been put together and is included at Appendix 2 to this report. Mitigation projects can be grouped into two main types, those that relate to greywater systems and those that are more nature-based.
- Greywater solutions include upgrades to septic tanks and poorly performing package treatment plants to deliver reductions in nutrient flows. There are also opportunities for improvements to water usage in dwellings which further reduces nutrient levels in the outflow from wastewater treatment works.
 - Nature-based solutions include change in use of intensively farmed agricultural land to reduce nutrient input. There are also opportunities for wetland creation to reduce nutrient loading which can further improve biodiversity and natural flood management.
- 3.5 The information in Appendix 2 is intended to identify some project types that will result in nutrient reductions. It should however be noted that this is a snapshot of the projects that are thought to be deliverable over the coming years but that some of these projects may well fall by the wayside. Other projects will appear to replace these, meaning that there will be opportunities to refocus spend on the most cost effective and deliverable projects at that point in time. A call for mitigation sites has already been undertaken and this will be repeated regularly so that there is a continuous pipeline of projects.
- 3.6 The proposed Governance Structure, outlined above and in Appendix 1, will help to ensure the funds are spent appropriately to deliver nutrient mitigation.
- 3.7 In addition to the £4.63m award of capital funds, £100,000 of mitigation support funding and a further £203,821 of revenue funding has been awarded to support the delivery of nutrient mitigation through the spend of the capital funding.
- 3.8 The Local Nutrient Mitigation Fund award has been made on a full cost recovery basis and therefore the ongoing costs associated with mitigation projects, such as administration costs and project evaluation costs, will be recouped through the sale of credits.

3.9 In the initial period, before these credits become available for sale, there will be some costs associated with mitigation delivery such as mitigation officer resources and project evaluation costs. A further set-up cost will be the preparation of template legal agreements to enable mitigation projects to be secured in perpetuity. These set-up costs will be funded through the revenue funding received.

4. **Nutrient Neutrality Strategy**

4.1 Since 2017, the Nitrogen Reduction in Poole Harbour Supplementary Planning Document (SPD) has been in place, providing a strategy for delivering nitrogen neutrality within the Poole Harbour catchment.

4.2 Nitrogen loads are calculated on an average rate per house/flat with corresponding nitrogen reductions being calculated by applying an average rate per hectare for change of high nutrient input land use to a low nutrient input land use (e.g. changing from a dairy use to woodland use). The mitigation delivery is funded through the Community Infrastructure Levy (CIL).

4.3 Whilst this approach provides nitrogen mitigation to support development, the approach to calculating nutrient load and mitigation requirements is not reflective of the latest understanding of nutrient loading as established through the updated advice from Natural England. The SPD is therefore in need of an update.

4.4 Appendix 3 outlines the current approach to delivering nitrogen neutrality and the proposed transition to a new approach that reflects the latest nutrient calculators and methodology.

4.5 As set out in Paragraph 1.6 of this report, an announcement by the Secretary of State is expected before 1 April 2024 that will clarify whether phosphorus mitigation remains a requirement within the catchment or whether this will fall away. At the time of writing this report, this announcement has not been made. On a chosen date after this announcement is made, the transitional arrangements will commence to enable the move towards a longer-term approach to the delivery of nitrogen mitigation. If however the need for phosphorus mitigation remains, the approach will need to be refocused towards delivering both phosphorus and nitrogen mitigation.

4.6 The transitional arrangements will involve the nitrogen loading arising from a development being calculated using the latest nutrient calculator for the

catchment. The nitrogen mitigation will then be calculated using the average values for land use change as established in the current SPD. The mitigation will continue funded through CIL during the transitional period, with the onus being placed on the councils to provide mitigation.

- 4.7 Appendix 3 outlines the longer-term approach to delivering nitrogen mitigation. The onus will shift to the developer to secure their own mitigation either through their own actions, through a third party or by purchasing credits from the Dorset Council Local Nutrient Mitigation Strategy.
- 4.8 The Dorset Council Local Nutrient Mitigation Strategy, using the funds secured from the Local Nutrient Mitigation Fund, will aim to ensure that a supply of mitigation is available to meet the needs of development. Funds from the sale of nutrient credits will be reinvested to deliver more nutrient credits on an on-going basis.
- 4.9 With the onus being placed on a developer to secure their own mitigation, the Dorset Council Strategy could prioritise the sale of its credits to those sites where delivering nutrient mitigation can be more difficult or where it is not possible. Such sites include those delivering 100% affordable housing, brownfield sites, small urban sites or sites being delivered by smaller, more local builders.

5. **Financial Implications**

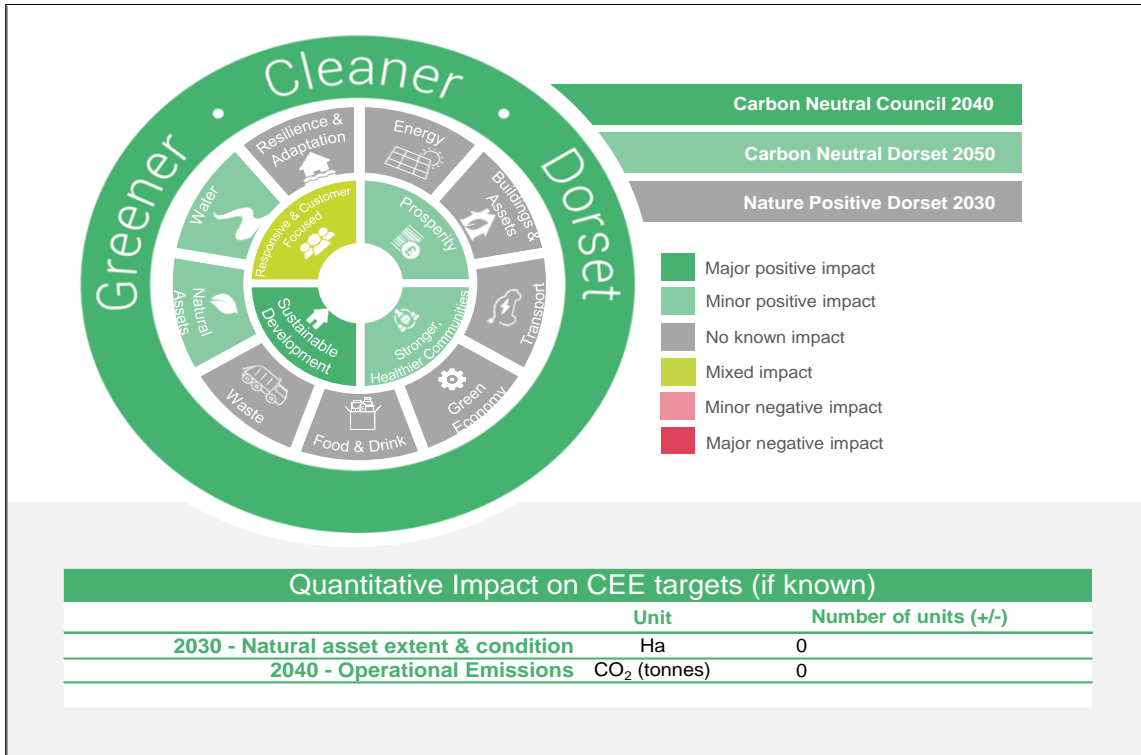
- 5.1 The Local Nutrient Mitigation Fund has been awarded to Dorset Council to enable the delivery of nutrient mitigation within the Poole Harbour catchment. It is intended to be used on a cost recovery basis and therefore will not have an impact on existing budgets.
- 5.2 Whilst in the short term, the cost of delivering nutrient mitigation will continue to be drawn from CIL receipts, the longer-term aim is to move towards the use of contributions secured through Section 106 legal agreements with developers. This will enable the full cost of nutrient mitigation to be recovered and recycled into the delivery of additional nutrient credits.

6. **Natural Environment, Climate & Ecology Implications**

- 6.1 As a result of delivering nutrient mitigation, development will continue to take place within the Poole Harbour catchment with the nutrient loading on

Poole Harbour being offset. The long-term aim will be to bring the Harbour back into a favourable condition.

- 6.2 The nutrient mitigation projects will enable the realisation of multiple benefits including biodiversity improvements and natural flood management.



7. Well-being and Health Implications

- 7.1 The delivery of nutrient mitigation will enable homes to be built for those in need. This will have a benefit for the new residents' health and well-being. In addition, nutrient mitigation projects will offer the opportunity for increased public access to mitigation sites which will in turn improve health and well-being.

8. Other Implications

- 8.1 Delivering nutrient mitigation within the Poole Harbour catchment will enable development to take place which will help to support local builders and deliver homes for local people whilst also minimising the impact on Poole Harbour.

9. Risk Assessment

9.1 An award has been made to Dorset Council from the Local Nutrient Mitigation Fund. Commitment to spend the fund on nutrient mitigation is required from Dorset Council as a condition of the fund. If commitment is not agreed, there is the risk that the fund would need to be repaid to DLUHC.

9.2 **HAVING CONSIDERED:** the risks associated with this decision; the level of risk has been identified as:

Current Risk: Medium

Residual Risk: Low

10. **Equalities Impact Assessment**

10.1 There are no equalities implications arising from this report. The nutrient mitigation provided through the spend of the Local Nutrient Mitigation Fund will enable development to take place which will be consented through the normal planning process.

11. **Appendices**

Appendix 1: LNMF Governance Arrangements

Appendix 2: LNMF Programme of projects

Appendix 3: Emerging nutrient neutrality strategy

12. **Background Papers**

None

13. **Report Sign Off**

11.1 This report has been through the internal report clearance process and has been signed off by the Director for Legal and Democratic (Monitoring Officer), the Executive Director for Corporate Development (Section 151 Officer) and the appropriate Portfolio Holder(s)