

**Agenda Item No:** 10  
**Report To:** Cabinet  
**Date of Meeting:** 27 October 2022  
**Report Title:** Stodmarsh Update  
**Report Authors:** Daniel Carter – Spatial Planning Manager;  
**Job Title:** Paul Mckenner – Head of Strategic Projects  
**Portfolio Holder:** Cllr. Neil Bell – Portfolio Holder for Planning & Development  
**Portfolio Holder for:** Cllr. Neil Shorter – Portfolio Holder for Finance, IT & Digital



**Summary:** Since July 2020, certain planning applications (those providing overnight accommodation, including new housing) located within the Stour catchment and/or which discharge foul water into the catchment, have been caught by the Stodmarsh nutrient neutrality requirement. In essence, these applications have been put on hold until they can demonstrate nutrient neutrality.

In response to this issue, the Council has been working with Natural England, the Environment Agency and other affected East Kent districts to deliver a solution that will allow this hold to be removed.

This report provides an update on the progress of the catchment wide strategy, the Council's own strategic wetlands solution and recent updates from Government and Natural England on this issue.

The report follows and updates on the progress of the Council's response since the last Cabinet reports in March 2022 titled 'Stodmarsh Mitigation Framework' and in July 2021 titled 'A Nutrient Mitigation Strategy for the Stour Catchment in Ashford Borough'.

**Key Decision:** NO

**Significantly Affected Wards:** None.

Although wards affected (though not significantly) include those located wholly or partially in the Stour catchment: Aylesford & East Stour, Beaver, Bircholt, Bockhanger, Bybrook, Charing, Conningbrook & Little Burton Farm, Downs North, Downs West, Furley, Goat Lees, Godinton, Highfield, Kennington, Kingsnorth Village & Bridgefield, Mersham, Sevington with Finberry, Norman, Park Farm North, Park Farm South, Repton, Roman, Saxon Shore,

Singleton East, Singleton West, Stanhope, Upper Weald, Victoria, Washford, Weald Central, Weald North, Weald South, Willesborough, Wye with Hinxhill

**Recommendations: The Cabinet is recommended to:-**

- I. Note and support the work done to date by officers progressing new strategic wetlands in the borough, subject to planning permission being sought and obtained for them in due course;**
- II. Continue to recognise the urgency and importance of this project to the Council, subject to both planning permission and permitting approval;**
- III. Delegate authority to the Chief Executive, in consultation with the Portfolio Holders for Planning & Development and Finance, IT & Digital, to negotiate and agree the details of the commercial structure (including any joint venture) associated with the provision of new strategic wetlands in the borough and their delivery, management and maintenance;**
- IV. Authorise the Chief Executive to submit an expression of interest to DEFRA/Natural England/other Government bodies as appropriate, to receive funding in order to assist with the delivery/management/maintenance of the strategic wetlands; and**
- V. Authorise the Solicitor to the Council, in consultation with the Chief Executive, the Assistant Director of Planning & Development and the Head of Strategic Projects, to negotiate, finalise and enter into any funding, commercial or other legal agreements and documentation to implement the above.**

**Policy Overview:**

The Conservation of Habitats and Species Regulations 2017 (as amended) and recent case law have provided the legal framework for granting planning permissions for development that may have a significant impact on the internationally-protected habitats at Stodmarsh.

Legal advice sought by the Council has confirmed that this issue is a significant material consideration in determining planning applications.

Many housing applications in the Stour catchment have been unable to be determined. This 'hold' on granting permissions on affected sites will continue until a solution is found.

The Local Plan 2030 does not contain a specific policy for nutrient neutrality, as Natural England did not raise this as an

issue during the Local Plan preparation. However, Policy ENV1 is relevant to the wider issue of biodiversity and conserving the environment. This reinforces the importance of protecting the environment from the impacts of development.

**Financial Implications:**

It is expected that the cost of providing a wetland to allow residential planning permissions to be granted will be recovered from the developers affected, through the making of the necessary and proportionate payments for their developments' nutrient mitigation, and therefore over the longer term should be cost neutral to the council and should not be borne by the local tax payer.

The long term costs of maintaining the wetlands will either be recovered through annual charges levied against the properties built from the provision of the wetland, or through commuted sums charged to the developers to fund the cost of maintenance over a prescribed period, or a combination of both.

**Legal Implications:**  
*Text agreed by  
Principal Solicitor –  
Strategic  
Development on 19  
October 2022*

Under Retained EU Law in the U.K. following Brexit, all development proposals which could have a likely significant effect on the integrity of the Stodmarsh Lakes must demonstrate nutrient neutrality through mitigation measures which are legally secured. A strategic-level mitigation solution in the form of strategic wetlands will, together with appropriate Section 106 Obligations, enable this to be demonstrated, and paid for, by those developments which cannot achieve nutrient neutrality onsite, thus enabling the Council to adopt Appropriate Assessments and grant planning permissions for those developments. The Council has power to enter into property and commercial arrangements with landowners and to provide and maintain strategic wetlands, as set out in the recommendations.

**Equalities Impact Assessment:**

See Attached.

**Data Protection Impact Assessment:**

None

**Risk Assessment (Risk Appetite Statement):**

The risk of not promoting strategic wetlands includes that a number of allocated Local Plan sites will be unable to obtain planning permission for development, and development may then be promoted by others in areas of the borough where it has been considered unsuitable and/or unsustainable.

**Sustainability Implications:**

Natural based solutions, such as the creation of strategic wetlands, will provide the opportunity to provide multi-functional benefits – which in turn could help contribute to wider 'green' goals of the Council.

**Other Material  
Implications:**

The wider Stodmarsh 'issue' is a significant one for the Council and not something which the Council has faced before. Nor was it an issue raised by Natural England as part of the Council's Local Plan formulation, meaning no plan-led solution was or could be progressed.

As it stands, many planning permissions for new housing in large parts of the borough have been on hold for nearly two years – including several areas which are earmarked for significant new development up to 2030 in the Local Plan.

**Exempt from  
Publication:**

**NO**

**Background  
Papers:**

None

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## Report Title: Stodmarsh Update

### Introduction and Background

1. In July 2020, Natural England issued Advice to the Local Planning Authorities located in the Stour catchment setting out the deteriorating water quality at the Stodmarsh Lakes.
2. The Advice pertains to development proposals which result in a net gain of overnight accommodation, e.g. housing, which is either located within the Stour catchment and/or discharges its foul water into a Wastewater Treatment Works located within the Stour catchment. This Advice covers part of the Ashford borough as well as parts of the districts of Canterbury, Folkestone & Hythe, and Maidstone.
3. In order for affected development proposals to progress through the planning system, they are required to demonstrate that they can deliver 'nutrient neutrality', to ensure that the development will not have an adverse impact on the integrity of the Stodmarsh Lakes.
4. The impact of the Advice has meant that, since issued, the Council have been unable to grant planning permission for new housing within the Stour catchment, unless the proposal can show it can achieve 'nutrient neutrality'.
5. Experience has shown that the ability to achieve neutrality often requires significant land areas and as such many housing proposals simply cannot progress.
6. Given the gravity of the situation, the Council has committed to responding to the wider Stodmarsh nutrient issue in a strategic way. This approach is deemed necessary given the significant spatial area affected, the complexities of finding a solution, the number of different organisations involved, and the practical implications arising from the issuing of the Advice. Doing so provides the best mechanism for releasing the current 'hold' on housing growth within the catchment.
7. As part of this strategic response, the Council has been proactively working to deliver a borough mitigation strategy, which will provide strategic mitigation within the borough, through the delivery of new strategic wetlands.
8. Progress on the Council's strategic response was previously presented to Members through Cabinet reports in July 2021 and March 2022. This report seeks to further update Members on the progression of this wider project. Members may find it helpful to refer to the previous Cabinet reports for more information on the context of the project so far.
9. Officers have continued to dedicate significant resources and time towards delivering a strategic solution for nutrient neutrality. For the purposes of this report, the work has been classified into 3 key strands; (1) the Council's

intention to deliver new strategic wetlands, (2) the involvement of the Council in the catchment wide mitigation strategy and (3) the national context and recent Government updates on nutrient neutrality. Each of these strands are discussed in detail below.

## **Strand 1: Update on Strategic wetlands**

10. The Council has actively been pursuing options to either acquire land or enter in to long-term arrangements with land owners for new strategic wetland areas within the Stour catchment. As part of this, discussions have focused on those areas of land which would deliver the greatest phosphorus and nitrogen gains.
11. To date, the Council's commitment to the delivery of new strategic wetlands has included securing a very significant capital budget allocation, the appointment of dedicated consultants, and creating a core officer team to progress the solution.
12. The Council have engaged with the Local Planning Authority (LPA) and have held pre-application discussions. As part of these emerging design discussions, the Council's project team for the planning application includes specialist engineers and also includes officers from Natural England and the Environment Agency.
13. Further detailed discussions have also been held with Southern Water. The Council will continue to work with its partners to shape the scheme, as part of the pre-application discussions, to develop a wetland solution which meets the criteria for both the planning and national permitting application process and delivers a solution that makes the best use of the land for nutrient mitigation purposes.
14. The Council has undertaken detailed technical due diligence, and has identified a site which meets the criteria and has been working collaboratively with the landowner to bring forward both a commercial agreement and the technical design for the wetland solution. There is now an agreement in principle with the landowner to bring forward a strategic wetland on this land.
15. The Council has made a commercial offer for the land in line with independent valuation advice and is discussing the finer details of the business model with the landowner. Solicitors have been instructed to finalise the negotiations with the landowner for a long term arrangement for the use of the land as wetlands (which may involve joint venture arrangements with the Council). This is the best opportunity to secure a site of the scale needed to deliver a solution for the Local Plan development. It is therefore proposed that a delegation is granted to the Chief Executive in conjunction with Portfolio Holders for Planning & Development and Finance, IT & Digital to agree and finalise the commercial structure (including any joint venture) with the landowner, and to the Solicitor to the Council to enter into the necessary legal agreements at the earliest opportunity.
16. Officers have continued to meet with the nominated Cabinet Members who are overseeing the strategic wetland solution so that all aware of the detailed proposal and are supportive of moving forward on this basis.

17. It is pleasing to report that the proposed site will provide sufficient nutrient mitigation to allow sustainable development planned through the Local Plan 2030 to come forward. Whilst details on the site are commercially sensitive at this stage, it should be noted that the proposed wetlands will seek to provide mitigation for up to 10,000 homes.

### **Releasing the current hold on affected housing developments**

18. The primary purpose of the strategic wetland is to provide off-site strategic nutrient mitigation which can then be tied to development proposals, currently unable to achieve nutrient neutrality on their own. The developers relying on the strategic mitigation would then be required to fund proportionately the delivery of the infrastructure, to pay back the money invested.
19. The strategic wetland is likely to come forward in phases, with phase 1 and phase 2 being the subject of a detailed planning application in the first instance. Current work suggests that this might provide enough strategic mitigation to release around 5,000 dwellings. Planning applications for phases 3 and 4 of the strategic wetland are expected to follow in 2024.
20. To accompany the strategic wetlands and provide clarity for developers on the process for their developments to rely upon it, the Council is also preparing a Stodmarsh Mitigation Supplementary Planning Document (SPD).
21. The draft SPD covers the following points:
  - What information developers should submit as part of planning applications, which are required to demonstrate nutrient neutrality;
  - Details of the Council's nutrient mitigation hierarchy, which encourages developers to deliver mitigation on site, wherever feasible;
  - Information and relevant planning considerations for different types of nutrient mitigation; and
  - Details of the strategic nutrient mitigation, including how to "apply", the cost of nutrient mitigation, the payment mechanism, and some 'rules' around using the mitigation, in so far as it is tied to that specific development proposal.
22. The timescale for finalising the SPD depends, to some degree, on the conclusion of an agreement with the landowner, but officers are continuing to draft sections of the SPD, and will follow the requisite process, including public consultation. The SPD will also pass through Cabinet and Council for adoption.
23. As part of the planning permission for schemes relying on the borough mitigation strategy, there will be a need to impose a 'Grampian'-style condition/obligation, restricting occupancy of the dwellings until such time as the wetlands are fully established and operational (likely two summers to allow the reeds to grow sufficiently). Once the wetlands are operational, the need to impose such a condition on future proposals will fall away.

## **Timescales**

24. Based on the above, and subject to land being secured for the strategic wetland, it is anticipated that the Council will be in a position to submit a planning application for the first two phases in early 2023. Should planning approval be secured, phase 1 and phase 2 of the wetland would have planning permission in the summer of 2023.
25. Also in early 2023, the Council will issue a draft Supplementary Planning Document for consultation.
26. The Council and Natural England are in discussion around when the earliest opportunity might be to start issuing planning permissions for those schemes currently caught by the Stodmarsh issue (i.e. before the summer of 2023).
27. Officers are of the view that NE are likely to change their Advice on this matter. Natural England support the principle of securing a Council led strategic wetland, and are actively working in partnership to facilitate its delivery, and this could provide the certainty needed to start issuing planning permissions earlier.

## **Strand 2: Catchment wide strategy progress**

28. In tandem with the delivery of new strategic wetlands within the borough, officers have also been working with the other affected East Kent LPAs to deliver a catchment wide strategy, to respond to the issue in a strategic way.
29. As part of this strategic approach, the East Kent Authorities (including Ashford) have been working together on the strategic catchment-wide response to ensure that all the relevant elements associated with dealing with the wider Stodmarsh nutrient issue are addressed. The Council continues to be an active partner in delivering this co-ordinated response.
30. A number of principles underlying the borough mitigation strategy also underlie the principles of the emerging catchment wide strategy, such as prioritising on-site mitigation and encouraging larger sites to fully meet their nutrient budget through on-site measures. Therefore, work on the borough mitigation strategy, in particular lessons learnt, helps to contribute towards the preparation of the catchment wide strategy.
31. Kent County Council have adopted a strategic catchment co-ordinator role. They facilitate the discussions between the affected LPAs through regular meetings which includes representatives of Natural England, the Environment Agency and Southern Water.

## **Natural England funding**

32. Since the last Cabinet report on Stodmarsh in March 2022, Natural England have become significantly more involved in the development of the strategic mitigation across both the catchment and the country, recognising the scale and difficulties associated with the wider issue, and the need to remove impediments to otherwise sustainable housing proposals.



33. In July 2022, Natural England announced, following a Government Directive, that it would be seeking to deliver its own nutrient mitigation scheme. The scheme would run nationally, and would deliver strategic mitigation in areas affected by the nutrient neutrality requirement.
34. In areas which already have established nutrient mitigation platforms and/or were significantly progressed (such as ourselves), Natural England will work closely and in partnership with the catchment LPAs to help support the delivery of that strategic mitigation.
35. In October 2022, it was also announced that funding would be available to mitigation schemes within areas caught by nutrient neutrality. This includes borough specific proposals. The broad model currently being suggested is a contribution to the forward funding of any mitigation infrastructure with it then being paid back via developer contributions.
36. Details of the funding indicate that the money would be issued to the successful bidder through the means of a successful 'expression of interest' and this is reflected in the Recommendations set out in this report.
37. Any money secured would need to be spent by March 2023 which clearly fits with the progression of the Councils strategic wetland solution, as set out above. However the award, or not, of this funding does not determine whether the Council can continue to progress the strategic wetland solution, but if awarded, it will support the Council's ability to fund the wider project and help to de-risk it, as well as potentially lowering overall costs.

### **Strand 3: The national context of 'nutrient neutrality'**

38. The final strand of this report focuses on the national context of nutrient neutrality and recent Government announcements on the issue.
39. In March 2022, Natural England rolled out the nutrient neutrality advice to another 32 Local Planning Authorities, bringing the total up to 74 affected LPAs.
40. Given the extent and scale of the issue, Government are now becoming more involved. The following sections set out some of the key recent announcements made by the Government.
  - a) Updates to planning guidance
41. One of the most recent updates pertains to the publication of a Written Ministerial Statement (WMS) published in July, which sets out a number of key updates on nutrient neutrality. The WMS sets out:
  - Natural England have commenced work on a national nutrient mitigation scheme (see more details above);
  - Clarity regarding whether or not application for the approval of reserved matters and discharge of conditions are caught by the nutrient neutrality requirement;

- Updates to Planning Practice Guidance (PPG) regarding the approach for Housing Land Supply, in light of Natural England's nutrient mitigation scheme; and
  - Updates to the PPG on the process of Appropriate Assessments and the Habitats Regulations.
42. The details of the proposed updates to the PPG have not yet been confirmed. However it is expected that the PPG updates will provide further clarity on the process of Appropriate Assessments and housing land supply calculations, with a view to providing more certainty on the deliverability of strategic mitigation, such as the borough mitigation strategy and wetlands, in light of Natural England's announcement of a nutrient mitigation scheme. It is anticipated that these updates will be released in autumn 2022.
43. This is clearly a significant issue for the Council as only part of our borough is caught by the Advice. Large swathes of land, mainly in the southern and south western part of the borough, are not caught by the Advice and the Council are already seeing developers suggesting these areas should somehow 'shoulder the burden' of new housing to counter the lack of housing delivery that will occur because of the Stodmarsh constraint.
44. This is despite:
- the Advice being issued only one year after the Council's Local Plan 2030 was adopted and the Council having no prior knowledge of any Stodmarsh issue as part of the Local Plan preparation (this meant no plan led solution to the problem has been able to progress),
  - that such an approach fails to acknowledge that the Advice covers the spatial parts of the borough which are the most sustainable, including capturing around 85% of the sites allocated in the Local Plan,
  - that the Council have progressed swiftly with an innovative solution, at great risk and expense to remove the impediment to housing delivery, (in this context the Stodmarsh constraint is a temporary one), and
  - that it cannot be sound planning to suggest that clearly more unsustainable locations of the borough (and evidenced as such) should be required to 'over-compensate' in this way, as that would not deliver 'sustainable' housing development as required by the National Planning Policy Framework (NPPF) itself.

b) Planning and Infrastructure Bill

45. During the announcement of the Growth Plan 2022 in September 2022, a new Planning & Infrastructure Bill was announced. The focus of the Bill is on reducing and removing the barriers to growth through the planning system, including the regulations and requirements for environmental issues, such as nutrient neutrality.
46. At this stage, no details of the Bill have been released, however it is possible that the new Bill could have an impact on the nutrient neutrality process. Further announcements and speeches given have focused on the importance of housebuilding to help sustain the economy and how the planning system can be expedited to boost housing supply.

47. Comments from the Prime Minister have also set out an intention to remove nutrient neutrality as a constraint on new development. However, details on whether this requirement will be removed are only light and no formal details have been released. Therefore, until such time as the details have been released, it is recommended that the Council continue to progress with its work on the promotion of strategic wetlands.

## **Proposal**

48. Members are asked to note the contents of the report and the progress made on strategic wetlands, the borough mitigation strategy and the catchment wide strategy.
49. Members are also asked, as explained above, to delegate powers to officers to agree, finalise and enter into the specific legal and commercial arrangements for the creation of the wetlands. Where possible the Council will also seek to bid for funding to support the delivery of its strategic wetlands, reducing the financial risk/cost to the Council.

## **Equalities Impact Assessment**

50. Members are referred to the attached Assessment.

## **Other Options Considered**

51. It is clear, following professional advice and the evidence presented to date, that a land based solution is needed in the borough in the form of new strategic wetlands to create sufficient phosphorus and nitrogen mitigation.
52. Accordingly, there are limited other options available to resolve the nutrient neutrality issue. In reality, the only likely alternative option is simply to wait for the Wastewater Treatment Works to be sufficiently upgraded. However, as previously discussed in the July 2021 and March 2022 Cabinet reports, this would further delay the current hold on granting planning permissions for affected developments, until the early 2030s at least.

## **Next Steps in Process**

53. The next steps include:
- Continue to engage with the landowner,
  - Continue to engage with the catchment-wide mitigation strategy, working with KCC, in its role as catchment co-ordinator, other affected Local Planning Authorities, the Environment Agency and Natural England,
  - Progress an expression of interest to DEFRA, and
  - Progress the Stodmarsh Supplementary Planning Document (SPD) in order to clearly set out to developers the process of nutrient neutrality and how to “apply” for nutrient mitigation from the strategic wetlands.

## Conclusion

54. As clearly illustrated above, the Council are committed to continue taking a proactive and innovative approach to deal with the impediment to housing delivery from nutrient neutrality, which was imposed on us without warning and outside of the Local Plan process. This will allow schemes which are otherwise sustainable in planning terms to progress.

## Portfolio Holder's Views

### Cllr N Bell

*I continue to support the progress that the Council has made in response to the nutrient neutrality issue. The challenge of nutrient neutrality should not be underestimated, however the Council have continued to make significant headway on this project by working proactively and pragmatically to deliver new strategic wetlands within the borough.*

*Alongside working with others on the catchment-wide strategy, the Council is doing all it can to remove this hold and to move forward as swiftly as possible. I therefore continue to strongly support the approach advocated in this report, to deliver our own strategic mitigation and work towards releasing otherwise sustainable development.*

### Cllr N Shorter

*The work that has been undertaken to date has been complex and interfacing with and involving many parties external to the council has been painfully time consuming. From a standing start I believe that the solution now being developed will provide a credible solution for the Stodmarsh issue and enable "business as normal" to return to the delivery of housing for the borough of Ashford in line with the Local Plan. This will be to the relief of developers large and small and those residents who are aware of the matter and its significance to Ashford and to the credit of all officers involved in the project."*

## Contact and Email

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# Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
  - (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 (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

## Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

## Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

### Armed Forces Community

9. As part of the council's commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council's Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.

10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:

- Current serving members of the Armed Forces (both Regular and Reserve)
- Former serving members of the Armed Forces (both Regular and Reserve)
- The families of current and former Armed Forces personnel.

### Case law principles

11. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or

service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Dan Carter Paul Mckenner
<b>Decision maker:</b>	Cabinet
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	<p>Note progress on the work done to date and continue to recognise the important of the project.</p> <p>Delegate authority to the Chief Executive, in consultation with relevant Portfolio Holders, to negotiate and agree the details of the commercial structure associated with the delivery of strategic wetlands.</p> <p>Authorise the Chief Executive to submit an Expression of Interest to DEFRA for funding to assist with the delivery/management/maintenance of strategic wetlands.</p>
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	27/10/2022
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	<p>The aim of the borough and catchment nutrient mitigation strategies are to create a mechanism to enable affected development proposals which are required to demonstrate nutrient neutrality to come forward, if they cannot provide mitigation on-site.</p> <p>The borough nutrient mitigation strategy, and the strategic wetlands areas, created as a result of the strategy, will enable development, particularly housing, to lawfully be granted planning permission within the Stour catchment.</p> <p>It is proposed that authority is also delegated to the Chief Executive to negotiate and agree the details of the commercial structure associated with the provision of new strategic wetlands.</p> <p>This report seeks to authorise the Chief Executive to submit an expression of interest to DEFRA/Natural England for funding to assist with the delivery and management of the strategic wetlands.</p>
<b>Information and research:</b> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	<p>Discussions have been held with the Environment Agency, Natural England, Kent County Council and other nutrient neutrality affected East Kent districts to prepare the catchment wide strategy.</p> <p>Discussions have been held with Natural England regarding the DEFRA/NE funding available for strategic mitigation and how the Council can submit an Expression of Interest for such funding.</p>



	A project group has also been established to work on delivering the strategic wetlands, including the commercial structure and arrangements that may be required.	
<b>Consultation:</b> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>No consultation undertaken. However discussions have been held with the Environment Agency, Natural England, Kent County Council and other East Kent districts affected by nutrient neutrality.</p> <p>The future stages of the strategy will include the publication of the final version of the strategy as well as the production of a Supplementary Planning Document. Consultation on the Supplementary Planning Document will be held in the future, and conclusions drawn in a separate Cabinet Report on the SPD and final borough Mitigation Strategy.</p>	
<p><b>Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.</b></p> <p>When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.</p>		
	<b>Relevance to Decision</b> High/Medium/Low/None	<b>Impact of Decision</b> <b>Positive</b> (Major/Minor) <b>Negative</b> (Major/Minor) <b>Neutral</b>
<u>AGE</u> Elderly	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Middle age	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Young adult	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Children	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>DISABILITY</u> Physical	Low	Positive – Minor

		(Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Mental	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Sensory	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>GENDER RE-ASSIGNMENT</u>	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>PREGNANCY/MATERNITY</u>	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>RACE</u>	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>RELIGION OR BELIEF</u>	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>SEX</u> Men	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Women	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>SEXUAL ORIENTATION</u>	Low	Positive – Minor

		(Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Former service personnel	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)
Service families	Low	Positive – Minor (Releasing the current hold on granting planning permissions will enable housing to come forward which will benefit all sections of the community)

<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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<b>Is the decision relevant to the aims of the equality duty?</b>	
Guidance on the aims can be found in the EHRC’s <a href="#">Essential Guide</a> , alongside fuller <a href="#">PSED Technical Guidance</a> .	
<b>Aim</b>	<b>Yes / No / N/A</b>
1) Eliminate discrimination, harassment and victimisation	N/A
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N/A
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N/A

<b>Conclusion:</b>	Officers have been working with Natural England, the Environment Agency, Kent County Council and other East Kent districts to prepare a catchment nutrient mitigation strategy.  Officers have also been working with Natural England and the Environment Agency to deliver a borough mitigation strategy and strategic wetlands. The strategic wetlands are important to
<ul style="list-style-type: none"> <li>Consider how due regard has been had to the equality duty, from start to finish.</li> <li>There should be no unlawful discrimination</li> </ul>	

<p>arising from the decision (see guidance above ).</p> <ul style="list-style-type: none"> <li>• Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.</li> <li>• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li> </ul>	<p>help remove the current hold on granting planning permissions for housing development located within the Stour catchment, which is caught by the nutrient neutrality issue.</p> <p>The Council has considered the equalities act, however the recommendations and actions in the Cabinet Report are not specifically relevant to any of the protected characteristics.</p> <p>The recommendations in the Cabinet Report will help to progress part of the strategic response to remove the current hold on development, which will benefit the Stour catchment (and borough) as a whole. It is concluded that the steps proposed in this report do not constitute discrimination or other prohibited conduct, and do not prejudice equality of opportunity and good relations between persons who share a relevant protected characteristic and persons who do not share it.</p>
<p><b>EIA completion date:</b></p>	<p>18/10/2022</p>