

**BIODIVERSITY OFFSETTING SCHEME
ON THE RIVER LYNCH, HODDESDON**

Presented by the Corporate Director

EXECUTIVE SUMMARY

The Authority has been approached by Hertfordshire County Council to deliver a biodiversity offsetting scheme in order to discharge a planning condition on a local road enhancement scheme. The planning condition agreed up to £100,000 to deliver a river restoration scheme on the River Lynch, Hoddesdon. In order to secure the funding the Authority must enter into an agreement with Hertfordshire County Council signed under Seal.

RECOMMENDATION

Members Approve: (1) signing under Seal the Deed between Hertfordshire County Council and the Authority for the funding and delivery of the biodiversity offsetting scheme on the River Lynch, Hoddesdon.

BACKGROUND

- 1 In April 2019 planning permission for application reference PL\0962\18 was granted by Hertfordshire County Council for the construction of a new access road to replace the existing bridge over the New River at Essex Road between the A1170 Dinant roundabout and Geddings Road. The scheme will improve access into the Hoddesdon Business Park and make it safer for vehicles, cyclists and pedestrians.
- 2 The planning consent required that within six months of the decision notice a biodiversity enhancement scheme should be submitted to the County Planning Authority for approval. This scheme would ensure a net biodiversity gain as a result of the scheme.
- 3 The River Lynch was once a functioning chalk stream, rising in Hoddesdon near Admirals Walk Lake and joined by Woollens Brook, flows alongside Lee Valley Caravan Park, Dobbs Weir before joining the River Lea. The original course of the River Lynch across Spitalbrook was altered during gravel extraction and although reinstatement was planned during restoration this was not carried out

by the gravel company and the altered course remains.

BIODIVERSITY ENHANCEMENT SCHEME

- 4 The bridge redevelopment fell outside the Regional Park and therefore the Authority was not a statutory consultee and no formal representation was made regarding the scheme to the Local Planning Authority. The Authority was however approached by officers from Hertfordshire County Council to see if a suitable biodiversity offsetting scheme could be delivered within the Park.
- 5 Working alongside the Environment Agency a scheme has been identified to restore the River Lynch to a naturally functioning chalk stream. The groundwater fed river would naturally be in a narrow, shallow channel with good connections to its floodplain. The modified channel is currently too wide and deep to sustain a functioning chalk stream habitat. The location of the scheme is shown in Appendix A to this report.
- 6 The planned works will take place along a one kilometre length of river and will commence with baseline surveys to understand the river geomorphology and to provide details on how best to enhance the stretch. Enhancement works will include the installation of gravels to provide better channel gradient and depth, combined with channel narrowing to increase flow keeping the gravel clean and oxygenated. This will provide valuable habitat for fish and invertebrates. Selective tree management will reduce over shading of the channel allowing the river plants to thrive and hopefully encourage use by Otter and Water Vole.
- 7 A sum of £100,000 has been secured through planning consent for the delivery of the scheme by the Authority in partnership with the Environment Agency. It is anticipated that the project can be successfully delivered within this budget.
- 8 The scheme will contribute towards a number of key targets identified in the Lee Valley Regional Park Biodiversity Action Plan 2019-29. These targets include:
 - Rivers and Streams action plan
 - Through appropriate management seek to enhance the river and stream habitat.
 - Otter action plan
 - Maintain and expand the current distribution and abundance of Otter in the Lee Valley.
 - Water Vole action plan
 - To maintain and expand the current distribution and abundance of Water Voles in the Lee Valley.
 - Invasive Non-Native Species (INNS) action plan
 - Take action to control INNS in the Lee Valley to prevent further spread and reduce the risk of their introduction.
- 9 Preparatory survey work is planned to commence in spring 2021 with completion in mid-2022.

FUNDING AGREEMENT

- 10 A funding agreement has been drafted by Hertfordshire County Council in the form of a Deed which will require signing under Seal.

- 11 The Deed (see Appendix B to this report) outlines conditions of the funding with particular reference to the payment schedule. Payments are broken down into three stages:
 1. 15% of the Biodiversity Offsetting Contribution (£15,000) within 30 days of receipt of written notification from the Authority that the Site Investigation Quotes have been received;
 2. 15% of the Biodiversity Offsetting Contribution (£15,000) within 30 days of receipt of written notification from the Authority that the quotes for the work to prepare the Finalised Designs have been received; and
 3. 70% of the Biodiversity Offsetting Contribution (£70,000) within 30 days of receipt of written notification from the Authority of:
 - a. receipt of the Environmental Permit; Finalised Designs; and
 - b. confirmation that a contract has been entered into to deliver the Biodiversity Offsetting Works in accordance with the Finalised Designs.
- 12 The current Covid-19 situation has delayed the anticipated delivery timescale. Paragraph 3.6 of the Deed states that the work should be completed by 31 March 2021 or such other date agreed in writing between the parties. The extension to the timeframe noted has been agreed by both parties.
- 13 The Authority is required to hold any funds received in an identifiable and interest bearing account and maintain a record of all payments received and expenditure made. If requested the Authority must provide full and audited accounts of all expenditure.
- 14 Unspent funds and accrued interest must be repaid to the County Council if not spent on this or another agreed scheme within a five year period on written request from the County Council.

ENVIRONMENTAL IMPLICATIONS

- 15 There are no negative environmental implications arising directly from the recommendations in this report.

FINANCIAL IMPLICATIONS

- 16 There are no financial implications arising directly from the recommendations in this report.

HUMAN RESOURCE IMPLICATIONS

- 17 The scheme will be delivered by the Conservation Team within their current capacity.

LEGAL IMPLICATIONS

- 18 There are no legal implications arising directly from the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

- 19 There are no risk management implications arising directly from the

recommendations in this report.

EQUALITY IMPLICATIONS

- 20 There are no equality implications arising directly from the recommendations in this report.

Author: Cath Patrick, 01992 709 882, cpatrick@leevalleypark.org.uk

BACKGROUND REPORTS

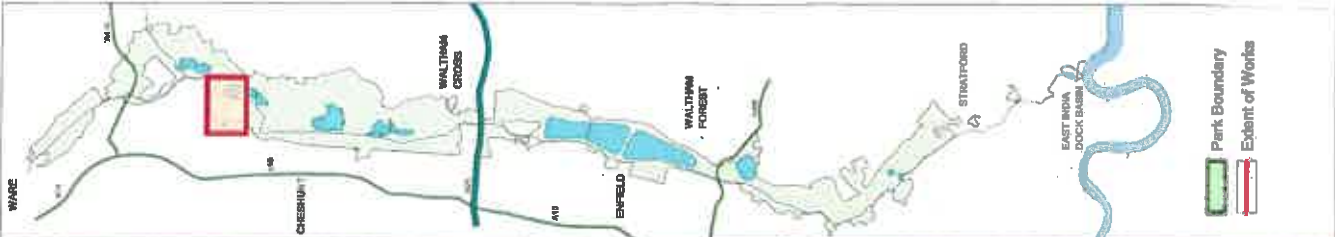
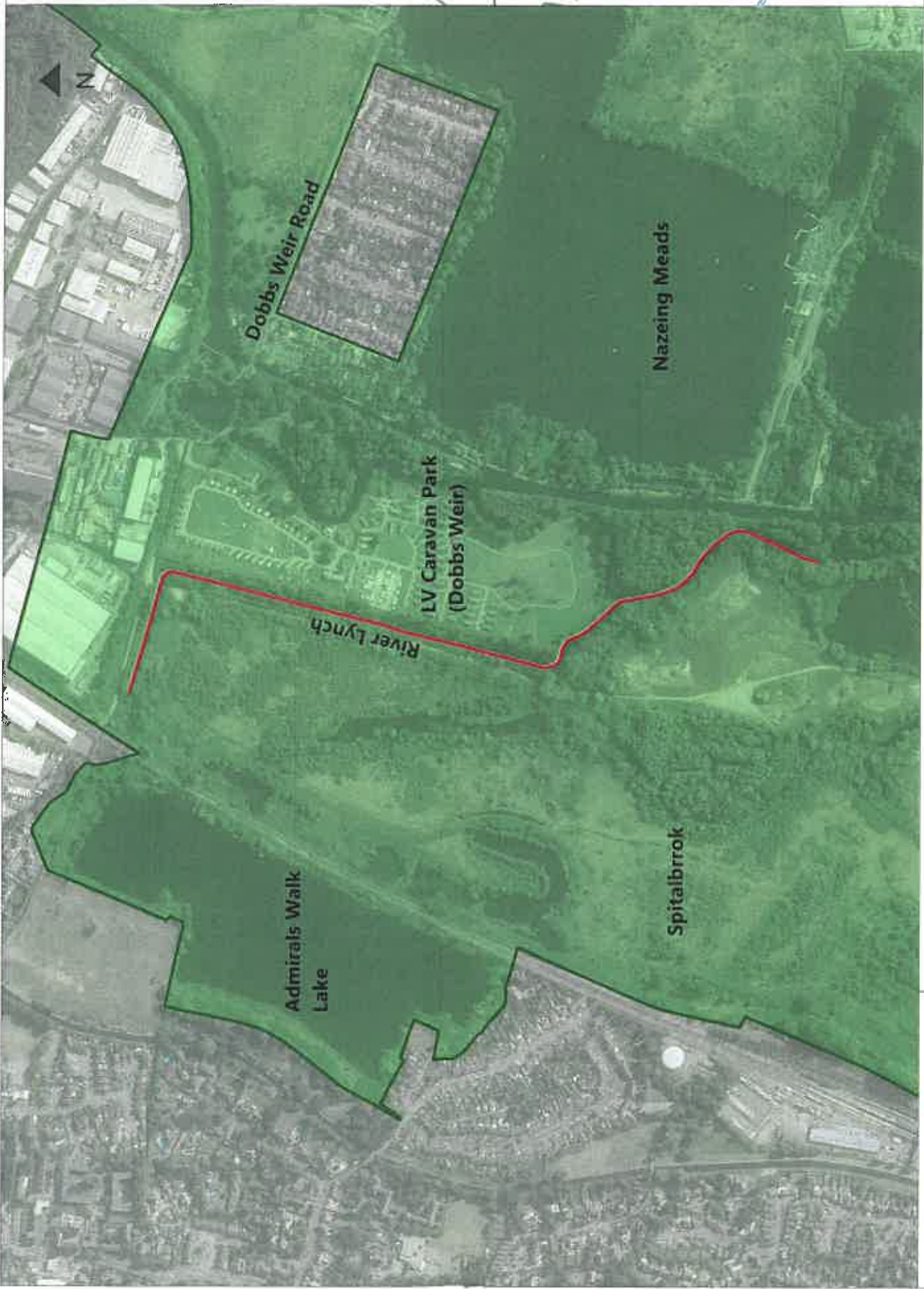
Hertfordshire County Council planning permission PL\0962\18

APPENDICES ATTACHED

- Appendix A Location of the proposed works
Appendix B Deed between Hertfordshire County Council and Lee Valley Regional Park Authority

LIST OF ABBREVIATIONS

INNS Invasive Non-Native Species



 Park Boundary
 Extent of Works

Appendix A: Location of proposed works

NTS @ A4
 16.09.20

Produced by: Corporate GIS (AAB)
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THIS Deed is made on this day of 2020 between:

1. **HERTFORDSHIRE COUNTY COUNCIL** of County Hall, Pegs Lane, Hertford, Hertfordshire SG13 8DE (the "**County Council**")

2. **LEE VALLEY REGIONAL PARK AUTHORITY** of Myddelton House, Bulls Cross, Enfield, Middlesex EN2 9HG (the "**Authority**")

Together the "Parties"

WHEREAS:

- (1) The County Council is a local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.

- (2) Hertfordshire County Council submitted the Planning Application to the County Council in its capacity as Highways Authority.

- (3) Hertfordshire County Council Ecology and the Environment Agency made representations to the County Council during the County Council's consideration of the Planning Application as a result of which the County Council considered that conditions were necessary in the Planning Permission to secure a biodiversity offsetting scheme to ensure the provision of a net biodiversity gain resultant from the Development.

- (4) On 4 April 2019 the County Council granted the Planning Permission for the Development under reference 7/0135-19.

- (5) Condition 6 of the Planning Permission required submission of the Biodiversity Offsetting Scheme to the County Council for approval within six months of the date of the Planning Permission and implementation of the Biodiversity Offsetting Scheme in accordance with the phasing arrangements within the Biodiversity Offsetting Scheme (or such other period as subsequently agreed in writing by the County Council).

- (6) The Biodiversity Offsetting Scheme was approved by the County Council on 26 September 2019 with reference 7/0135/19 (CC0809) PL/0962/18.**

- (7) The Biodiversity Offsetting Scheme relates to a project that is being delivered by the Authority and the Environment Agency.**

- (8) It has been agreed between the Parties that the Biodiversity Offsetting Contribution will be paid by the County Council to the Authority to facilitate the Biodiversity Offsetting Scheme and it is intended under this Deed to allocate the Biodiversity Offsetting Contribution to the Authority in accordance with the terms of this Deed.**

IT IS NOW AGREED as follows:

1. Definitions Interpretation and General

1.1 In this Deed the following terms shall have the following meanings:-

“Biodiversity Offsetting Contribution”	the sum of one hundred thousand pounds (£100,000).
“Biodiversity Offsetting Scheme”	means the biodiversity offsetting scheme submitted by the County Council (as developer) to the County Council and approved on 26 September 2019 relating to works to restore the River Lynch at Dobbs Weir, Hoddesdon to a naturally functioning chalk stream and annexed to this Deed at Schedule 1
“Biodiversity Offsetting Works”	Means the works to be carried out by the Authority or its agents in accordance with the Biodiversity Offsetting Scheme
“Completed”	means that a certificate of practical completion or a letter from the contractor stating that it has completed the works to all parties' satisfaction, as appropriate, is issued in respect of the Biodiversity Offsetting Works
“Data Protection Legislation”	Means all privacy laws applicable to the personal data which is processed under or in connection with this contract, including The Data Protection (Charges and Information) Regulations 2018 and where

	<p>applicable, Directive 2002/58/EC (Directive on privacy and electronic communications, and the GDPR (amongst others) as implemented by the applicable English and Welsh laws, including the DPA 2018, or as directly applicable, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time</p>
<p>“Finalised Designs”</p>	<p>means the final form designs and drawings for the Biodiversity Offsetting Works to be drawn up by the Authority, the Environment Agency and the contractors carrying out the Biodiversity Offsetting Works and to be submitted as part of the Environmental Permit application.</p>
<p>“Environmental Permit”</p>	<p>Means the permit issued by the Environment Agency in relation to the Biodiversity Offsetting Works</p>
<p>“Planning Application”</p>	<p>Means the application for the proposed new access and bridge between the A1170 Dinant Roundabout and Essex Road into the Hoddesdon Business Park relating to the land at Essex Road, Hoddesdon, Hertfordshire, EN11 0QX submitted by the County Council as developer to the County Council as Local Planning Authority under reference</p>

	number 7/0135-19
“Planning Permission”	Means the permission granted on 4 April 2016 by the County Council pursuant to the Planning Application
“Site Investigation Quotes”	means not less than two quotes to be provided by suitably qualified persons for the Site Surveys
“Site Surveys”	Means topographical and cross sections to establish the river gradient and morphology and ecological surveys covering protected species, invasive non-native species and fish populations to be carried out as part of a feasibility assessment for the Biodiversity Offsetting Scheme to provide baseline information for the design and ongoing monitoring of the Biodiversity Offsetting Scheme
“Suitable Alternative Scheme”	Means a scheme proposed by the Authority and approved by the County Council acting reasonably, in writing, which is deemed to be a suitable replacement biodiversity offsetting scheme for the Development if the Biodiversity Offsetting Scheme is not brought forward by the Authority
“Working Days”	Means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and Working Day shall be construed accordingly
“Works Timetable”	Means the timetable for the Biodiversity Offsetting Works to be agreed in writing between the Authority and the County Council

2. In this Deed:

- 2.1 any reference to any statute or any section of a statute includes any statutory re-enactment or modification**
- 2.2 any reference to clauses and schedules are references to clauses and schedules to this Deed**
- 2.3 headings in the Deed shall not form part of or affect its construction**
- 2.4 where a party is required to give consent or approval by any specific provision of this Deed such approval shall not be unreasonably withheld or delayed**
- 2.5 any provision of this Deed which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Deed**
- 2.6 where two or more people form a party to this Deed the obligations they undertake may be enforced against them all jointly or against each of them individually**
- 2.7 words of the masculine gender shall incorporate the feminine and neuter genders and words of the singular shall include the plural and vice versa**
- 2.8 references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to its functions**
- 2.9 Save where the context otherwise requires the expressions used in this Deed shall have the same**

meaning or meanings as those stated in the Section 106 Agreement

3. It is hereby agreed as follows:

3.1 This Deed is entered into pursuant to Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and all other powers enabling the County Council

County Council's Obligations

3.2 The County Council shall pay to the Authority into the account details of which are set out in clause 3.3:

- a) 15% of the Biodiversity Offsetting Contribution (£15,000) within 30 days of receipt of written notification from the Authority that the Site Investigation Quotes have been received;
- b) 15% of the Biodiversity Offsetting Contribution (£15,000) within 30 days of receipt of written notification from the Authority that the quotes for the work to prepare the Finalised Designs have been received; and
- c) 70% of the Biodiversity Offsetting Contribution (£70,000) within 30 days of receipt of written notification from the Authority of :
 - i) Receipt of the Environmental Permit; Finalised Designs; and
 - ii) Confirmation that a contract has been entered into to deliver the Biodiversity Offsetting Works in accordance with the Finalised Designs.

3.2.1 For the avoidance of doubt, no VAT is payable on the Biodiversity Offsetting Contribution.

3.3 Bank: Nat West

Account no: 42539242

Sort Code: 60-07-38

Account Name: Lee Valley Regional Park Authority

3.4 The parties may vary the percentage Biodiversity Offsetting Contributions set out in 3.2 a), b) and c) by agreement in writing in the event that the quotes obtained by the Authority in respect of the works specified in 3.2 a) or b) exceed the specified percentage Biodiversity Offsetting Contributions subject to the following limits:

(a) no instalment of the Biodiversity Offsetting Contribution to be paid pursuant to clause 3.2 (a) shall exceed 20% of the total Biodiversity Offsetting Contribution; and

(b) no instalment of the Biodiversity Offsetting Contribution to be paid pursuant to clause 3.2 (a) and 3.2(b) together shall exceed 40% of the total Biodiversity Offsetting Contribution.

Authority's Obligations

3.5 Subject to clause 3.2, the Authority or its agents shall carry out the Biodiversity Offsetting Works pursuant to the Biodiversity Offsetting Scheme in accordance with the Works Timetable.

3.6 To Complete the Biodiversity Offsetting Works by 31st March 2021 or such other date agreed in writing between the parties (both parties acting reasonably);

3.7 Following receipt of the Biodiversity Offsetting Contribution the Authority shall:

- i) acknowledge receipt of such payments in writing to the County Council within 5 Working Days of receipt;**
- ii) hold the Biodiversity Offsetting Contribution in an identifiable and interest bearing account at all times maintain a proper record of all payments received and expenditure made from the above described account with regard to the Biodiversity Offsetting Contribution;**

- iii) apply the Biodiversity Offsetting Contribution solely and diligently and with reasonable care and skill strictly in accordance with the terms of this Deed and specifically towards the costs of the works outlined in the Biodiversity Offsetting Scheme;
 - iv) upon request provide to the County Council full and audited accounts of all expenditure paid out of or allocated to the Biodiversity Offsetting Contribution;
 - v) repay any unspent sum together with any accrued interest to the County Council if any part of the sums received by the Authority in respect of the Biodiversity Offsetting Contribution have not been spent in accordance with this Deed and the terms of clause 5 below do not apply within five (5) years of the date of this Deed upon receiving a written request from the County Council.
4. The Authority shall indemnify the County Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the expenditure or otherwise of the Biodiversity Offsetting Contribution.
5. If the Biodiversity Offsetting Works are unable to commence on or before 31 March 2020 the Parties will use reasonable endeavours to identify a Suitable Alternative Scheme within 28 Working Days of notification by the Authority to the County Council that the Biodiversity Offsetting Works are unable to be carried out.
6. If a Suitable Alternative Scheme is approved by the County Council within the timeframe specified in clause 5 then the Biodiversity Offsetting Contribution shall be used towards delivering the Suitable Alternative Scheme. Clauses 3.4, 3.5 (iv) and (v) 4, 5 7, 8 and 9 of this Deed shall apply to the Suitable Alternative Scheme as if it were the Biodiversity Offsetting Scheme.

7. If the Biodiversity Offsetting Works are unable to be Completed in accordance with the Works Timetable by the appointed contractor, the Authority (or its agents) shall step in and complete the Biodiversity Offsetting Works in accordance with the Works Timetable at no additional cost to the County Council.
8. This Deed shall be deemed to have become operative as from the date hereof and shall remain in full force and effect until full and complete performance of the obligations contained in this Deed by the Parties, save in the event that this agreement is terminated earlier in accordance with its terms.

8.1 The County Council may terminate this Deed if:

8.1.1 three (3) months' written notice is given by the County Council to the Authority to terminate this Deed at the address above, on the grounds that the County Council's Chief Executive and Director of Environment for the time being (or their officers or agents) acting reasonably determine that expenditure of the Biodiversity Offsetting Contribution is not in accordance with the terms of this Deed; or

8.1.2 there is no Suitable Alternative Scheme approved within the 28 Working Day period as specified in clause 5.
9. If this Deed is terminated in accordance with Clause 8.1 then the Authority shall within 30 days of such termination repay to the County Council any part of the Biodiversity Offsetting Contribution which has not been spent or is payable under the terms of a contract in accordance this Deed together with any interest accrued on such unspent sum.
10. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to

enforce any of the terms and provisions herein on any person who is not a party hereto or a statutory successor to such a party

11.

11.1 Except as otherwise expressly provided within this Deed, no notice from one Party to the other shall have any validity under this Deed unless made in writing by or on behalf of the Party concerned.

11.2 Any notice which is to be given by either Party to the other shall be given by letter (sent by hand or signed for special delivery post), such letters shall be addressed to the other Party in the manner referred to in clause 11.3. Provided the notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was hand delivered or posted or sooner where the Party acknowledges receipt of such letters. Notices under this Deed may not be sent or received by email.

11.3 For the purposes of clause 11, the address of each Party shall be as follows:

11.3.1 The County Council:

Chief Legal Officer Hertfordshire County Council County Hall
Hertford Hertfordshire SG13 8DE REF 008220

11.3.2 The Authority:

Director of Corporate Services
Lee Valley Regional Park Authority, Myddelton House, Bulls
Cross, Enfield, Middlesex EN2 9HG

12. The Parties shall comply with their obligations under Data Protection Legislation at all times.

13.

- 13.1 The Authority acknowledges that the County Council is subject to the requirements under the Freedom of Information Act 2000 ("FOIA") and the Environment Information Regulations 2004 ("EIR") and shall cooperate with the County Council to enable the County Council to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR.**
- 13.2 The County Council acknowledges that the Authority has adopted the FOIA as if it were a body to which the FOIA applies and therefore complies with it as if it were subject to its provisions and that the Authority is subject to the provisions of the EIR. The County Council shall cooperate with the Authority to enable the Authority to comply with these information disclosure requirements and any requests for information under the FOIA and/or EIR.**
- 14. No variation shall be effective unless it is recorded in writing and signed by duly authorised representatives of the County Council and the Authority and accordingly neither the County Council nor the Authority shall implement a variation other than one which is made in accordance with this clause 14.**
- 15. The Parties shall each use reasonable endeavours to resolve any dispute by means of prompt discussion between authorised representatives for either Party.**
- 16. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.**

IN WITNESS whereof the parties hereto have executed this Deed as a deed but the same remains undelivered until the day and year first before written

The COMMON SEAL of)
HERTFORDSHIRE COUNTY)
COUNCIL was hereunto affixed)
in the presence of:-)

Authorised Officer

The COMMON SEAL of)
LEE VALLEY REGIONAL PARK)
AUTHORITY was hereunto affixed)
in the presence of:-)

.....
Chairman

.....
Authorised Signatory
Name of Authorised Signatory:

THE SCHEDULE
Biodiversity Offsetting Scheme

NEW RIVER BRIDGE – CONDITION 6 DISCHARGE

Condition 6 - Biodiversity Offsetting

Within six months of the date of the decision notice, a biodiversity enhancement scheme shall be submitted to the County Planning Authority for approval. The biodiversity enhancement scheme shall be fully implemented in accordance with the phasing arrangements embodied within the approved scheme, or within any other period as may subsequently be agreed, in writing, by the County Planning Authority.

Discharge Documents/Note

Project aim: Restoration of the River Lynch at Dobbs Weir, Hoddesdon to a naturally functioning chalk stream.

Background: The river was previously re-aligned during gravel extraction on the adjacent Spitalbrook. Plans to restore the river to its natural course did not materialise following the gravel extraction works and since then the river has seen only minimal management, predominantly to reduce shading from bankside trees.

Site Extents: The site extent is shown in the figure below (red dashed line). The whole site sits within Hertfordshire and is owned by Lee Valley Regional Park (LVRPA).

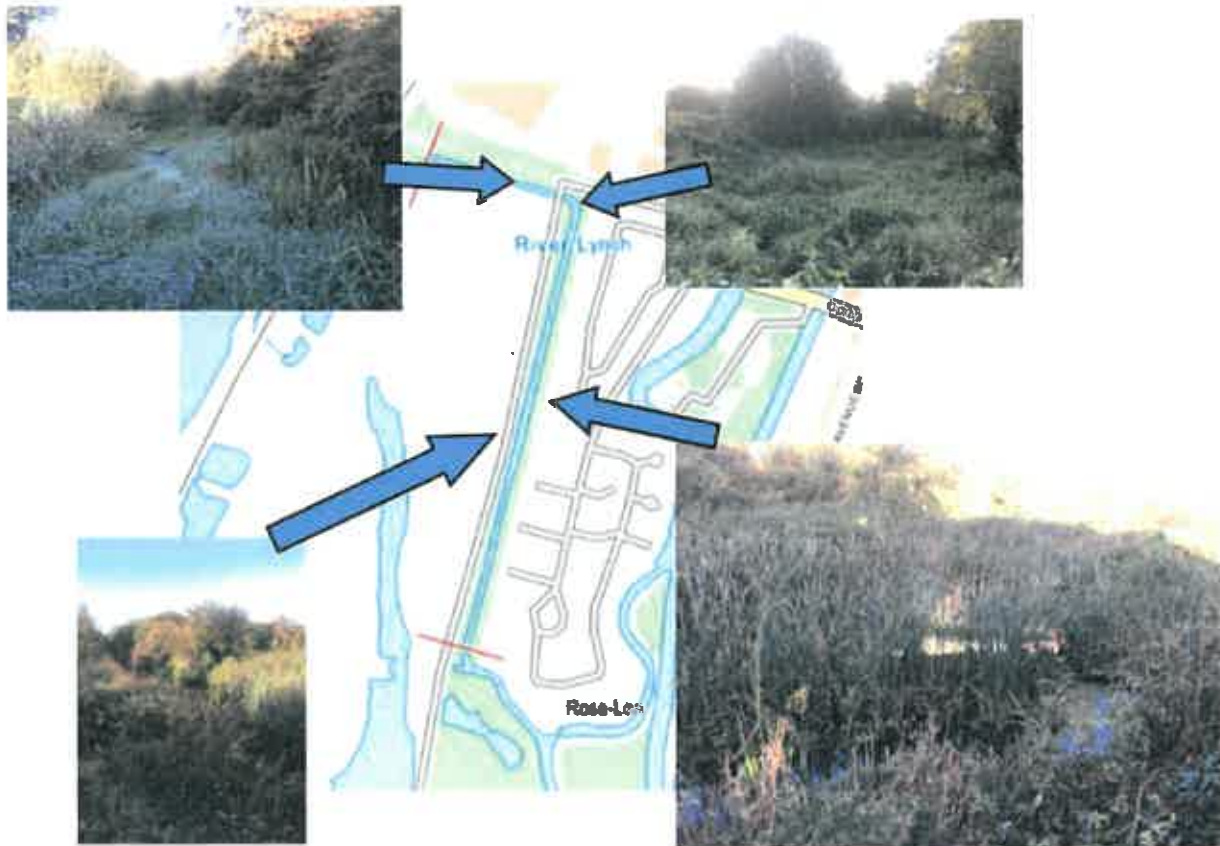


NEW RIVER BRIDGE – CONDITION 6 DISCHARGE

Project overview: The project will focus on the restoration of the natural morphology of the river through the installation of in-channel features, including gravels, berms and deflectors. Tree works along the length of the river will also be required to allow light into shady sections.

This artificial river channel is currently too wide and deep to sustain a functioning chalk stream habitat. This is a low-energy, groundwater-fed system, which would naturally be in a narrow, shallow channel, well connected to its floodplain. The average discharge for the River Lynch is therefore sluggish and ponded, leading to high rates of sedimentation and choking of the channel with vegetation. Topographic and cross-sectional surveys will provide details on how best to improve this channel, through the installation of gravels to give the channel a better gradient and depth, as well as providing flow diversity through riffle and pool formations. Combining this with channel narrowing using large wood and earthwork will provide the river with enough energy to produce flushing flows, keeping the gravels clean and oxygenated. This will provide valuable habitat for fish and invertebrates. The reduction of overshading of large parts of this reach through selective tree management will also allow chalk stream macrophytes to thrive.

There are a number of invasive non-native species present including, Himalayan Balsam, Orange Balsam and Buddleia which require surveying and management.



NEW RIVER BRIDGE – CONDITION 6 DISCHARGE

There would be a couple of key phases in the delivery of the project:

Site surveys

This would include topographical and cross sections to establish the river gradient and morphology, and ecological surveys covering protected species, invasive non-native species and fish populations.

Project design and phasing

Detailed designs will be drawn up following the site investigations and an application for an Environmental Permit submitted.

Phasing of the project may be needed if additional funding is required

Delivery Arrangement

The project contribution of £100K will be made to LVRPA who will deliver the scheme in partnership with the Environment Agency.

LVRPA will be responsible for overseeing the scoping of the scheme as well as the procurement and management of the appointed contractor. There is potential for the input of LVRPA capital funds into the scheme to maximise the outputs as they align closely with the Lee Valley Biodiversity Action Plan.

The funding contributions could be phased to ensure that the planned scheme is acceptable and key deliverables are met.

Phase one: Initial release triggered once the site investigation quotes have been received.

Phase two: Second release triggered once the designs are finalised and EA Environmental Permit received.

Date _____ 2020

HERTFORDSHIRE COUNTY COUNCIL

- and -

LEE VALLEY REGIONAL PARK AUTHORITY

Agreement relating to Biodiversity

Offsetting Scheme

**QUENTIN BAKER
Chief Legal Officer
County Hall
Hertford
SG13 8DE**

Ref:- 008220