
Phosphate progress report and Local Nutrient Mitigation Fund update

Executive Member: Lead member for Economic Development, Planning and Assets
Local Member(s) and Division: All within the affected river catchment areas of the
Tone, Parrett, and Brue

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Summary / Background

1. On 17 August 2020, all the planning authorities in Somerset Council and Dorset Council received an advice note from Natural England (NE) concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site (SL&M). As a result, since then a large proportion of new development (particularly housing development) in the impacted area, needs to demonstrate nutrient neutrality.
2. The Council has been awarded capital funding of £9.6m via the Local Nutrient Mitigation Fund to increase the supply of phosphate mitigation projects to unlock impacted developments. Funding was in two instalments. £0.5m was received at the end of February 2024. The remaining £9.1m was received in May 2024.
3. The first part of this report updates the Strategic Planning Committee on recent work undertaken across the Authority area, to achieve nutrient neutral development whilst also supporting housing growth. The second part of the report updates Members on recent Government announcements and letters received from central Government. The third part of this report considers matters relating to the Nutrient Mitigation Fund.
4. Although the advice note from Natural England in 2020 impacted on 18,000 homes across Somerset (a figure which included Local Plan Allocations), to date, circa 4,700 dwellings can be unlocked by P Credit schemes and a further 1,500 dwellings are consented awaiting a Section 106 Agreement with mitigation measures in place. Currently there are however approximately 370 applications in the planning pipeline involving circa 6,300 dwellings awaiting a phosphate solution. (see Appendix 3). An initial assessment of the future supply and demand for Nutrient Mitigation has been undertaken (see Appendix 4). With mitigation measures and credit schemes in place, together with the proposed

measures being funded through the Nutrient Mitigation Fund means that all these homes are anticipated to be unlocked.

Recommendations

5. That the Strategic Planning Committee notes:
 - a. The content of this report and the activity across the three affected river catchments that feed into the Somerset Levels and Moors (Tone, Parrett, and Brue) which continues to unlock the delivery of housing and affected development to ensure nutrient neutrality.
 - b. The spend to date from the Local Nutrient Mitigation Capital Funding to deliver nutrient mitigation schemes in line with grant conditions.
 - c. In order to demonstrate progress on phosphate related matters a further up-date report to be provided to this Committee in March 2025.

Background to Report

6. The Council as Local Planning Authority is required under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) to ensure that any adverse impacts arising from development (either alone or in combination with other plans or projects) can be mitigated to avoid harm to internationally important nature conservation sites, which are protected by law. For the SL&M Ramsar site, as a designated site, this requirement applies at all stages of both plan-making and decision-taking on planning applications.
7. The Strategic Planning Committee considered an update report on the 21 March 2024. The Committee noted the work being undertaken to unlock the delivery of homes across 3 affected river catchments (i.e. River Tone, Parrett, and Brue) and the unfavourable condition of the River Axe Special Area of Conservation (SAC), which affects the environs of the Blackdown Hills and Chard. The Committee resolved to agree an expansion to the allocations criteria for the Council run River Tone Phosphate Credit (P-credit) scheme. Furthermore, the Committee also noted the anticipated legislative changes flowing from the Levelling Up and Regeneration Act and the outcome of the Council's funding bid to the Government's Nutrient Mitigation Fund.

Update on Progress to Date

Across Somerset:

Progress on updating the Phosphate Budget Calculator

8. As set out in the March 2024 committee report, the latest version of the calculator allows the user to calculate their phosphate loading pre and post 2030, which is in line with the move towards Technical Achievable Limits (TAL) of 0.25mg/at Waste Water Treatment Works (WWTW's) which serve a population equivalent of over 2000, in phosphorus sensitive catchment areas by 2030.

9. More recently the Calculator has been updated to reflect:

a) The external evidence which shows a lower household size of 2.03 people

As Members will be aware, there is a legal duty for the Council to produce a new Local Plan for the new Authority area. The Local Plan process has commissioned a Housing Needs Assessment from Opinion Research Service (ORS) to inform the housing requirement for the Local Plan. Part of this work has also been to consider household size in Somerset and whether there is evidence to support the case for a lower figure in the Phosphate calculator. The national average household size is 2.4 people, and Natural England has currently agreed a figure of 2.29 for the current Somerset phosphate calculator. The external draft evidence now shows a lower household size of 2.03. At the time of drafting this report, a reply from NE was awaited. Subject to NE approval, this will reduce further the phosphate mitigation requirement for impacted developments.

b) Voluntary “stretch permits” at 3 Wastewater Treatment Works (WWTWs)

Wessex Water have offered to deliver stretch permits in each of the affected river catchment areas in Somerset. (i.e. at Taunton, Wells and Langport), the detailed matters of which are contained within a Memorandum of Understanding (MOU) (enclosed as Appendix 5). Wessex Water have also offered to provide additional sites as these are upgraded. The aim is to capture these during the annual review of the attached MOU.

For the period up to 2030, this will further reduce the requirement for temporary P-Credits for developments feeding into these WWTW's. These upgrades will also significantly reduce nutrient loads from WWTW's in designated catchments, whilst also reducing the average costs of nutrient mitigation for developers. Appendix 2 contains a worked example of how stretch targets will reduce phosphate requirements.

Regular Meetings with Key Stakeholders

10. Officers from the area planning teams, and Dorset Council, continue to have regular monthly meetings with the Environment Agency (EA), NE, and Wessex Water officials. As part of this work, the Council is lobbying Government to deliver funding to support the evidence base required to understand the measures required to bring the Somerset Levels and Moors back into a favourable condition. At the time of drafting this report, a Council letter to the Ministry of Housing, Communities and Local Government (MHCLG) was being prepared.
11. The last agents / developer forum meeting was held on the 27 March 2024. The next meeting is scheduled for the 3 October 2024. Audio recordings of Developer

Forum meetings are circulated to all those invited, as well as being uploaded onto the Somerset Council YouTube page, see the [Phosphates Webpage](#).

Legal Challenge to Nutrient Neutrality: Jurston Farm, Wellington

12. Details on the background to this case were reported to this committee in July 2023 (See paragraphs 17 to 19 of the Committee Report available [here](#)). Following a dismissed planning appeal, on the 30 June 2023, the High Court dismissed a challenge by CG Fry and Son to the operation of the Habitats Regulations. This judgment is available here: [High Court Judgment Template \(landmarkchambers.co.uk\)](#).
13. The Appellants appealed this judgment. The Court of Appeal handed down their judgment on 28 June 2024 dismissing all three grounds of appeal. <https://www.judiciary.uk/wp-content/uploads/2024/06/C.G.-Fry-v-SSLHC-and-another-Approved-Judgment-28.06.24-1.pdf>. This confirmed the Council's position that Regulation 63 of The Conservation of Habitats and Species Regulations 2017 applies to the determination of reserved matters approvals and discharging planning conditions, even if the condition does not relate to drainage matters.
14. The applicants have now applied for leave to appeal the matter to the Supreme Court and we wait to hear whether leave has been granted.

Third Party Phosphate Credit (P-credit) Schemes

15. Where applicants have their own phosphate mitigation solution, planning applications are progressing across all three river catchment areas. In addition, Officers continue to liaise with third party phosphate credit providers to create further P-credit solutions, details of which can be found on the Council's website [here](#).
16. The Council is also aware of several strategic residential development sites where developers are working to progress their own phosphate mitigation solutions, to facilitate their development.

Development Management: Use of pre-commencement condition(s)

17. As a result of the progress that has been made and the ability to source P-Credits from a range of providers, Officers propose to move to a pre-commencement condition on approved planning applications rather than having phosphate mitigation already in place at the application stage. This will assist developer cashflow issues and reduce potential delays associated with drafting Section 106 Agreements. The agent's forum on the 3 October 2024 affords an opportunity to discuss the details with applicants. In accordance with the Council's Constitution, the Head of Planning/Chief Planning Officer, will

introduce the implementation of pre-commencement condition(s) following this consultation taking account of comments received.

River catchment area updates

18. A small part of Area North (former Sedgemoor DC area) is subject to nutrient neutrality advice with parts of the area falling within the Brue, Parrett, and Tone river catchments. Notwithstanding this, given that only a small part of the area is affected, the need for phosphate neutrality is not having such wide-ranging impacts on the delivery of new development in Area North, compared with the other planning areas across Somerset Council, and as such a detailed update is not provided in this report. Based upon the Council records, information on the number of homes within the other planning areas that have approved nutrient neutrality measures in place, is enclosed as Appendix 3.

River Axe (Devon/ Somerset)

19. A small geographical area of Somerset falls within this river catchment area, as does a small part of Dorset. For the River Axe, the lead authority is East Devon District Council (EDDC). Using our collective experience of having made successful bids in Round 1, Officers from Somerset and Dorset Councils assisted EDDC in submitting a Round 2 LNMF bid. At the time of drafting this report there have been no Government announcements on whether the bid was successful. Further information is available on the Gov.UK website at [Local Nutrient Mitigation Fund Round 2: expression of interest - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/local-nutrient-mitigation-fund-round-2-expression-of-interest).
20. There are no land use change credit schemes operating in the River Axe catchment. Solutions presented to date relate to the replacement of septic tanks with more efficient PTP's.

River Brue

21. This catchment covers the western half of Somerset East and parts of Somerset South area with 4 out of 5 of the main towns impacted in the Somerset East area.
22. There are 8 applications (over 5 dwellings) equating to 700 units which do not have a proposed phosphate solution. However, this includes the Cannards Grave allocated site in Shepton Mallet (620 dwellings) where a revised application is under consideration.
23. The Council have signed off four third party P-Credit schemes in the Brue catchment:
 - a. Yew Tree Farm, Walton. A scheme involving the closure of a pig farm generating 48 P-credits. All allocated releasing 499 dwellings.
 - b. A second phase of the Yew Tree scheme agreed December 2023. (23 P Credits have been allocated or reserved totalling 224 dwellings.
 - c. Hillcrest Farm providing 13.8 P-Credits (13.42 P Credits available).

- d. Manor Farm, Prestleigh (farm closure/fallowing of land – agreed May 2023) generating 143 P-credits which is anticipated will unlock approximately 1400 dwellings. 35.3 P-Credits are reserved or allocated equating to 385 dwellings.
 - e. In addition to agreed schemes the Somerset-wide WCI septic tank upgrades will provide 3.29 credits in this catchment.
24. With regard to 3rd Party P-Credits, management plans are agreed with NE and secured via a S106 Agreement. However, all P-Credit sales/allocations are agreed between promoter and applicant. The LPA does not control the prioritisation for applicants or credit pricing. Agreed allocations are confirmed by a certificate provided to the LPA.
25. A limited number of applications have also been agreed to date with their own mitigation solutions (woodlands, PTP upgrades). A Table providing further details is enclosed as Appendix 3.

River Parrett

26. The majority of Area South is impacted by nutrient neutrality predominantly in relation to the River Parrett catchment area, but with areas south and west of Chard impacted by the River Axe SAC catchment area.
27. The number of applications impacted by the issue remains constant as applications that have secured permission with phosphate solutions are replaced by new proposals for development. The headline figure of schemes awaiting solutions has fallen to circa 3,000 dwellings the subject of live planning applications comprising a total of 250 applications with a further 1,000 dwellings benefiting from resolutions to approve permission with a phosphate solution awaiting a S.106 Agreement. As dwellings are released however new proposals are coming forward reflecting the more positive environment in relation to solution availability.
28. Across Area South there has been an increase in the number of providers of land use change credit proposals, with a mix of approved solutions, as well as land use change schemes currently being progressed to S.106 Agreement.
29. Additionally, the former SSDC Stock Transfer Registered Provider, Abri is rolling out a programme of retro-fitting retained stock to enable it to acquire sites to deliver 100% affordable dwellings.
30. En Trade has now completed 2 markets within the terms of its agreement with the council allowing for a series of markets over a 5 year period.

River Tone

31. This catchment falls largely within the Somerset West area with the towns of Taunton and Wellington and its environs impacted.

32. At the time of drafting this report, approximately 111 planning applications are awaiting a phosphate solution. This includes circa 31 applications for major development, circa 3 applications for the discharge of conditions and 3 applications for the approval of reserved matters. Overall, this equates to circa 2600 dwellings.
33. As Members are aware, Somerset is one of only a handful of Councils across the country to have its own operational P-credit scheme, known as the 'River Tone P-Credit scheme', Round 3 of this scheme is currently in operation and prior to commencing this latest round, the scheme was reviewed and amended by this Committee in October 2023, as set out in the in the [Report to Committee](#).
34. Progress on the scheme is set out below:
 - In Round 1: 9 planning applications are progressing to acquire River Tone P-Credits equating to 11 dwellings. 12 planning applications have received planning permission (i.e. signing and completion of a Section 106 (S106) Agreement) with River Tone P-credits unlocking 30 dwellings.
 - In Round 2: there are 8 planning applications progressing to acquire River Tone P-Credits equating to 3.6 River Tone P-Credits and 33 dwellings. Of these, 3 planning applications have received planning permission with Round 2 River Tone P-Credits equating to 0.6 P-Credits and 9 dwellings.
 - At the time of writing there have been 3 no. applications for Round 3 P-Credits equating to 0.6 P-credits and 4 dwellings
35. In addition to the Somerset Council River Tone P-credit scheme, there are 3 no. third party P-Credit schemes (known as Burrow Environmental, Flyboat Farm and WCI) currently operating in the River Tone catchment area. These schemes provide mitigation through land use change and septic tank/Package Treatment Plant (PTP) upgrades.
36. Between 1 April 2024 and 30 June 2024 the number of third-party P-credits requested for dwellings totals:
 - Burrow Environmental: 0.7 credits totalling 22 dwellings (these dwellings were mitigated using a blended approach of both credits and alternative mitigation).
 - Flyboat Farm: 2.29 credits totalling 11 dwellings
 - WCI: 30.7 credits totalling 240 dwellings.
37. As noted above, planning applications have also progressed in the River Tone catchment area where the applicant has proposed their own phosphate mitigation solution (e.g. Staplegrove West strategic site and Monkton Heathfield. Also following agreement at Comeytrowe).
38. Across the River Tone catchment area there has also been an increase in the number of planning applications seeking their own phosphate mitigation solutions through accepted mitigation measures e.g. septic tank to PTP upgrades. See Appendix 3 for further details.

39. In total, c. 60 applications for dwellings with phosphate mitigation have received planning consent since August 2020, equating to approximately 545 homes. A further c.75 dwellings (55 applications) have been consented which were originally caught by phosphates but were then screened out of requiring mitigation.

Other Matters: technical officer working group for SL&M's

40. The Council is seeking costings from NE to provide baselining information for the S L & M, similar to that undertaken in Poole Harbour, to understand what evidence and measures are required to remove the need for further phosphate mitigation. At the time of drafting this report, we are awaiting confirmation on the cost and time to undertake similar work to that undertaken for the Poole Harbour Special Protection Area.

Other Matters: Consultation on revisions to National Planning Policy Framework (NPPF)

41. Members will be aware that an updated National Planning Policy Framework (NPPF) is now out for consultation until 24 September 2024. The consultation seeks views on the proposed approach to revising the National Planning Policy Framework in order to achieve sustainable growth in our planning system. Within the revised NPPF document there are currently no proposed changes or weakening of policies that afford protection to designated sites such as the Somerset Levels and Moors Ramsar site. Details about the proposed reforms are available on the Government's website at: [Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework). A Council response to the proposals is being prepared.

Other Matters: Department for Environment, Food and Rural Affairs.(DEFRA) Letter dated 24 May 2024

42. On the 24 May 2024, DEFRA wrote to Somerset Council advising us of the invalid designation of the Somerset Levels and Moors Ramsar site as a phosphorus sensitive catchment area. The error has now been rectified by central Government. The catchment has now, been designated as a phosphorus sensitive catchment in reference to Somerset Levels and Moors SPA, which covers the same geographical area as for the Ramsar site. (<https://www.gov.uk/government/publications/notice-of-designation-of-sensitive-catchment-areas-2024/notice-of-designation-of-sensitive-catchment-areas-2024>.) The DEFRA letter is enclosed as Appendix 1.
43. To avoid uncertainty associated with the statutory upgrades of WWTW's to Technically Achievable Limits (TAL) slipping back to potentially 16 May 2031, the Council has sought and obtained its own reassurances from Wessex Water and Natural England that permit compliance with the nutrient pollution standard

to TAL can be achieved by 1 April 2030. This assurance is contained within the signed MOU on Stretch targets (enclosed as Appendix 6).

44. These upgrades will significantly reduce nutrient loads from WWTW's in designated catchments, whilst also reducing the average costs of nutrient mitigation for developers. However, until these upgrades are completed in 2030, high levels of mitigation will still need to be found and delivered.
45. Further information on the phosphorus sensitive catchment area designation is available on the Gov.UK website at:
<https://www.gov.uk/government/publications/notice-of-designation-of-sensitive-catchment-areas-2024/notice-of-designation-of-sensitive-catchment-areas-2024>.

Government Nutrient Mitigation Fund

The Successful Bid: update

46. Members will recall that, at the end of February 2024, the Council received £0.5m, with the remaining balance of £9.1m from central Government being promised in the first quarter of financial year 24/25. This payment from central Government was received at the beginning of May 2024. As part of the conditions of the grant funding the Council is required to demonstrate the proposals to spend the grant funding before the end of March 2025.

The Council's Interim Delivery Strategy

47. The Interim Delivery Strategy (IDS) outlining how Somerset Council is proposing to use the grant funding awarded across the Somerset Levels and Moors catchment area was considered and agreed by this Committee in March 2024. The IDS (enclosed as Appendix 1) is intended to provide a high-level project plan setting out key interventions that the Council has identified to deliver, both temporary and permanent, nutrient neutrality solutions.
48. In terms of an update on the delivery against the key projects:
 - **Project One: The Salinity Solutions trial** commenced in September 2024 to establish the cost of a temporary P credit.
 - **Project Two: Call for sites for Land/Nature Based Solutions.** In May 2024, the Council launched a call for sites seeking submissions of land for potential delivery of phosphate mitigation schemes and/or Biodiversity Net Gain (BNG) schemes, to support the delivery of new development in Somerset. The submission window was open for a period of 8 weeks from 20 May to 15 July 2024.

The call for sites was publicised through emails to people and organisations signed up for the Council's Plan-It Somerset newsletters and SEEN newsletters, contact with specific people and organisations who had showed

an interest previously and the planning agents forum. These were supplemented by a [press release](#) and an online briefing session held on 24th May 2024.

Submission guidance setting out the process and information requirements was published on the [website](#) along with transparent scoring and assessment criteria. Sites would be assessed over 2 stages and in 3 tranches. Sites which pass all pass/fail criteria at stage 1a, and which score well would be considered as initial priority sites for assessment. Sites submitted before an interim cut-off date of 17 June 2024 and coming out as initial priority sites would be assessed in full as part of Tranche 1. Sites submitted after that date and coming out as initial priority sites would be assessed in full as part of Tranche 2. Sites submitted at any time, but coming out as initial non-priority sites would be assessed in full as part of Tranche 3. Sites failing pass/fail criteria at stage 1a would not be assessed in full at this time.

A total of 70 sites were submitted. Of these:

- 8 were just for phosphate mitigation.
- 35 just for Biodiversity Net Gain (BNG).
- 24 for both phosphate mitigation and BNG.

These 70 sites are split across the former district council areas as follows:

- 15 in Area East (Mendip).
- None in Area North (Sedgemoor).
- 34 in Area South (South Somerset).
- 21 in Area West (Somerset West and Taunton).

All sites have been subject to initial stage 1a automatic assessments. This has enabled initial priority sites to be identified and sites to be allotted to the appropriate assessment tranche for full assessment. At the time of drafting this report:

- 12 sites in Tranche 1 (full assessments have been completed, applicants provided with feedback, and where necessary additional information / clarification has been requested).
- 13 sites in Tranche 2 (starting assessment in coming weeks).
- 14 sites in Tranche 3 (starting assessment later in the year).
- 31 sites are not being assessed in full at this time because they failed stage 1a pass/fail criteria. This does not necessarily mean that these sites may not become options in the future, but they are not sufficiently developed to progress towards assessment at this stage.

The initial site assessment shows that several sites have the potential to deliver phosphate mitigation as well as additional environmental and social benefits (e.g. Biodiversity Net Gain (BNG), nature recovery, natural flood management and public access). Subject to provision of further clarifications requested of Tranche 1 sites, full assessment of Tranche 2 sites, and negotiation with site promoters/owners, there look to be a total of 8 priority sites promoting phosphate mitigations across Tranches 1 and 2, promoting a total of 515.41 kg P-Credits. These Credits are split across the river catchments as follows:

- Tone catchment: 119.18 kg P
- Parrett catchment: 298.71 kg P
- Brue catchment: 97.52 kg P

As per the Interim Delivery Strategy, the intention was to use a proportion of the Local Nutrient Mitigation Fund to bulk-buy P-Credits from appropriate and successfully negotiated schemes, then recoup the costs of this through sale of Credits to developers on a full cost recovery basis. The total potential cost of purchasing all Tranche 1 and 2 P-Credits would be £20,524,740 (based on credit prices promoted by the applicants). This is significantly above the £3.5m currently budgeted for the call for sites work (see report recommendations). However, not all of these P-Credits will be appropriate for the Council to purchase using the LNMF funding. Where the Council does not look to purchase the P-Credits, the Council may still look to legally secure their proposals via a S106 Agreement, but site promoters will be free to market them as a third-party credit scheme like others already in existence.

S106 negotiations are due to begin with Tranche 1 priority sites in early September 2024. The hope is that negotiations with Tranche 2 priority sites will follow off the back of these later in the Autumn. Collectively, this means that this should be on track to at least demonstrate commitment of spend by March 2025.

- **Project Three: Working with Registered Social Housing Providers and our Council Property Stock.**

As set out in the financial section (see paragraph 60 below) funds will be transferred to the Housing Revenue Account to implement a series of schemes that replace septic tanks in council owned properties to earn phosphate credits. Officers are also exploring water saving measures on vacant Council properties.

The Housing Revenue Account owns circa 20 small scale sewage treatment plants which serve rural residential properties primarily within the former Somerset West and Taunton Council and Sedgemoor District council areas. While many of these rural properties are now in private ownership, the Council has a duty to maintain these systems. A large proportion of these plants are now 40+ years old and are at the end of their expected lifespans.

The LNMF gives Somerset Council the opportunity to work with Registered Social Providers and the Council's Housing Service and Property Team to accelerate these solutions. It creates P-Credits and facilitates the delivery of affordable housing.

The Housing Revenue Account proposes to use the Local Nutrient Mitigation funding of £1m to facilitate the replacement of five of the worst performing plants with equipment which is highly efficient at removing phosphate.

The Executive Director for Climate and Place has approved the transfer of funds via an Officer Non Key Decision. As set out in the financial section (see

paragraph 60 below), 50% of this funding is up front, to be able to rollout a programme of work and enter into the necessary legal agreements. The remaining 50% of funding is tied to the completion of works which is anticipated to earn circa 30 P Credits through the reduction of circa 30kg/pa of phosphate pollution .

- **Project Four: Opportunities for nature-based solutions on Council-owned land/assets.**

Strategic Asset officers have also explored options for phosphate mitigation on sites owned by Somerset Council. Feasibility studies are underway and subject to the outcome funds will be made available to support the development delivery through nature based solutions (wetlands and or riparian buffer strips).

- **Project Five: Miscanthus Grass.**

The trialling of miscanthus grass on Council owned land currently fallowed is planned to commence in Spring 2025 to align with the planting season.

- **Project Six: New technical innovations.**

The Housing Revenue Account is also investigating the use of water efficiency measures to achieve phosphate reductions. This method involves fitting flow control devices to existing HRA homes when they become vacant.

49. Officers will report on progress to the Strategic Planning Committee by March 2025. Furthermore, it is proposed to update the IDS document by March 2025, once further information on the projects, and notably their costs are known. An initial assessment of the future supply and demand for Nutrient Mitigation has been undertaken (see tables enclosed as Appendix 4). The figures provided are based upon the current annual housing requirement for each river catchment area. They also show the likely requirement of temporary P Credits to 2030 (i.e the date of statutory upgrades to WWTW's to Technically Achievable Limits (TAL). See paragraph 43 above). The figures within Appendix 4 are not against the governments "standard methodology" which is currently out for consultation until the 24 September 2024. The standard methodology results in a significant increase in the number of homes that Local Planning Authorities (LPA's) across England (including those LPA's affected by Nutrient Neutrality) should deliver.

Conclusion

50. Until such time as the SL&M's Ramsar site returns to a favourable condition, planning decisions will need to ensure affected developments are nutrient neutral.

51. Achieving TAL in April 2030 and the recently agreed stretch targets with Wessex Water and Natural England will help to stop pollution at source but will not bring the SL & M into a favourable condition. These upgrades will significantly reduce nutrient loads from WWTW's within the designated river catchment areas, while also reducing the average costs of nutrient mitigation for developers and require lower levels of mitigation post 2030. However, until these upgrades are completed in 2030, higher levels of mitigation will still need to be found and delivered.
52. Through the Nutrient Mitigation Fund, the Council is committed to enabling a delivery programme to create P-Credits in all three river catchment areas. As set out in this report, the trialling of new technology (Reverse Batch Osmosis) by Salinity Solutions has commenced. A range of nature-based projects are also being progressed through the "call for sites". The initial site assessment shows that several sites have the potential to deliver additional environmental and social benefits (e.g. Biodiversity Net Gain (BNG), nature recovery, natural flood management and public access). Funding is also being transferred to the Housing Revenue Account to create credits from upgrades to existing poorly performing septic tanks and measures which control the flow of water on vacant Council properties. The Council are also looking to bring forward nature-based solutions on Council-owned land.
53. As set out in paragraph 69 below, the projects are being progressed in accordance with Council's governance and procurement processes. Based upon current knowledge, as cost(s) become known, we anticipate the need to adjust some of the budgets associated with these work streams. These changes will be governed by the Councils' Executive.
54. Developers still have the option to find bespoke mitigation projects or to purchase P-Credits from third party providers. By facilitating the private/third-party market of mitigation solutions helps to increase supply and reduces the cost of P-Credits.
55. Lastly, it is worth noting that the range of options and overall number of P-Credits available to be used to achieve nutrient neutrality has increased over time. Overall, the advice note from Natural England in 2020 impacted on 18,000 homes across Somerset (a figure which included Local Plan Allocations). To date, circa 4,700 dwellings can be unlocked by P Credit schemes. Together with the proposed measures being funded through the Nutrient Mitigation Fund means that further homes are anticipated to be unlocked in the future.

Links to Council Plan

56. The Council Plan 2023 to 2027 sets out the Key Priorities of the Council and is available on the Council website at: <https://www.somerset.gov.uk/council-and-democracy/somerset-council-council-plan-2023-2027/>.
57. This report has links to various corporate priorities including:
 - a. Greener, More Sustainable Somerset.
 - b. A Flourishing and Resilient Somerset.

Financial and Risk Implications

58. As a commitment, the Local Nutrient Mitigation fund has been added to the capital programme and the Interim Delivery Strategy has been recorded on the Council Corporate risk register / risk management software (JCAD) where risks are regularly monitored, reviewed, and mitigated against.
59. At the time of drafting this report, dedicated staff resource (i.e. programme manager) to deliver the Interim Delivery Strategy has been identified and appointed.
60. In line with the Council's governance and finance procedures, via a Non Key Decision, £1.0633m will be transferred to the Housing Revenue Account to implement a series of schemes that replace septic tanks in council owned properties to earn phosphate credits. 50% of this funding is up front, to be able to rollout a programme of work and enter into the necessary legal agreements. Officers are also exploring water saving measures on vacant Council properties. Funds will be transferred to the appropriate service area to deliver nature-based solutions (wetlands and/or riparian buffer strips), including the trialling of miscanthus grass to facilitate the implementation of temporary phosphate credits. Where funds are transferred to another service, there is the expectation that the service area will monitor, review and mitigate scheme risks.
61. In both cases, the Council needs to demonstrate delivery to MHCLG and manage the risk in case the Kg/P are not delivered within the necessary timescales. At the time of drafting this report, discussions are currently taking place regarding payment arrangements for the Kg/P anticipated to be delivered.
62. As final cost(s) become known, Members are asked to note that we anticipate the need to adjust some of the budgets associated with the work streams within the Interim Delivery Strategy and within the overall Nutrient Mitigation Fund Grant to make best use of the grant available. These changes are governed by processes associated with Executive.
63. In line with Council financial procedures, where possible, staff resources and costs to deliver the projects will be capitalised. The aim is to fully recover these costs by income generated by the sale of P-Credits to developers and then recycling this money into further nature-based solutions in line with the terms of the LNMF.
64. The detailed arrangements for the disposal and allocation of P-Credits have yet to be finalised. Members are already aware that there is a Council-led scheme covering the River Tone. It is a "not for profit" scheme. The aim is to still use this experience through a "not for profit" scheme, where the sale of P-Credits allows the council to recover the funding to invest the income generated into land use mitigation projects, across the affected river catchment areas, which in turn increases the supply of options.

65. Without the required level of certainty that mitigation projects can be found and funded, the Council, as the Local Planning Authority will not be able to continue to approve planning applications and other consents, nor move forward with the Somerset Local Plan .

Legal Implications

66. The legal and policy background to the 'phosphates issue' have been set out in the body of previous reports and presentations to Members. A legal update on the Levelling up and Regeneration Act 2023 was reported to this Committee in March 2024 (see paragraphs 38 to 40). The concept of 'nutrient neutrality' seeks to ensure that new development proposals and wastewater discharge permits cause no net increase in nutrients for the duration of the authorisation.
67. The enclosed report draws attention to legal matters associated with the DEFRA letter dated 24 May 2024 and how these matters have been addressed (see paragraphs 42 to 43 above). An update on the Jurston Farm, Wellington is also given (see paragraphs 12 to 14 above). With the Court of Appeal dismissing all three grounds of appeal, it has confirmed the Council's position that Regulation 63 of The Conservation of Habitats and Species Regulations 2017 applies to the determination of reserved matters approvals and discharging planning conditions, even if the condition does not relate to drainage matters.

HR Implications

68. None related directly to the information parts of this report. With regard to the Council having been awarded revenue funding to set up the capital programme, as previously advised, this will be used to cover some staff resources on an interim basis with the aim that it is fully covered by charges associated with the council-led P-credit scheme.

Other Implications:

69. Procurement has and will be undertaken in line with corporate procedures,. For example, prior to commencing the Salinity Solutions trial the Council legal department worked on contractual and indemnity insurance matters.

Equalities Implications

70. The Public Sector Equality Duty has the following aims which the authority must have due regard to:
- a. Eliminate discrimination, harassment, 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.

71. None of the above relate directly to this report.

Community Safety Implications

72. This can include:

- Possible impact upon local crime rates.
- Likely impact upon reoffending rates.
- Ability for services to help prevent crime and disorder.
- Overall impact upon quality of life and wellbeing.
- Increase or reduce fear of crime.
- Impact on social isolation or exclusion.

73. None of the above relate directly to this report.

Climate Change and Sustainability Implications

74. Somerset Council has declared both a Climate and Ecological Emergency. Through that, the Council has committed to working towards making the whole county, including our own estate and operations, 'Carbon Neutral' by 2030 and to take positive action to reverse the damage on our natural habitats by man-made activity. We have also pledged to ensure that Somerset is resilient to, and prepared for, the effects of Climate Change.

75. The climate and sustainability implications of development proposals is a material planning consideration which will be assessed for each planning application which applies for P-credits.

76. As explained within the report, in light of NE letter of August 2020, concerning the unacceptable levels of phosphates present in the SL&M Ramsar site, nutrient neutral development does not make the situation any worse, but neither does it help to improve the situation.

77. The income generated from the sale of P-credits will be reinvested into land/nature-based solutions, land secured for phosphate strategic mitigation may also be used to meet other local and central government objectives unrelated to phosphates e.g. securing biodiversity net gain (BNG) , natural flood, management, carbon sequestration or public open space to avoid recreational pressures on other wildlife areas.

Health and Safety Implications

78. None related to this report.

Health and Wellbeing Implications

79. None related to this report.

Social Value

80. None related to this report.

Asset Management Implications

81. The management of interim phosphate solutions on SWT owned development sites has passed to Service Director – Strategic Asset Management in the new Council to manage in the long term.

Data Protection Implications

82. None related to this report.

Background Papers and web links

Natural England Advice to LPAs on Nutrients in the Somerset Levels and Moors (17 Aug 2020): PDF of letter available at:

<https://somersetcc.sharepoint.com/sites/SCCPublic/Planning%20and%20Land/Forms/AllItems.aspx?id=%2Fsites%2FSCCPublic%2FPlanning%20and%20Land%2FSW%26T%20Natural%20England%20Advice%20to%20LPAs%20on%20Nutrients%20in%20the%20Somerset%20Levels%20and%20Moors%20%2817%20Aug%202020%29%2Epdf&parent=%2Fsites%2FSCCPublic%2FPlanning%20and%20Land&p=true&ga=1>

Somerset Levels and Moors: Background to phosphates

<https://www.somerset.gov.uk/planning-buildings-and-land/phosphates-on-the-somerset-levels-and-moors-ramsar-site/>

River Axe Special Area of Conservation

<https://www.somerset.gov.uk/planning-buildings-and-land/river-axe-special-area-of-conservation/>

Somerset Phosphate Budget calculator

<https://www.somerset.gov.uk/planning-buildings-and-land/phosphate-budget-calculator/>

Somerset Strategic Planning Committee: July 2023: Progress Report Phosphates:

<https://democracy.somerset.gov.uk/documents/s10992/Update%20Phosphate%20committee%20report%207.7.23.pdf>

Somerset Strategic Planning Committee: March 2024 Progress Report: Phosphates:

<https://democracy.somerset.gov.uk/documents/g2530/Public%20reports%20pack%2021st-Mar-2024%2010.00%20Strategic%20Planning%20Committee.pdf?T=10>

Third Party Phosphate (P) Credit Schemes

<https://www.somerset.gov.uk/planning-buildings-and-land/potential-third-party-phosphate-mitigation-schemes-in-the-somerset-levels-and-moors-catchment-area/>

Developer Forum meeting: March 2024 available to listen to at:
<https://www.somerset.gov.uk/planning-buildings-and-land/phosphates-guidance-template-documents-and-useful-information/>

Jurston Farm, Wellington G Fry and Son to the operation of the Habitats Regulations.

[High Court Judgment Template \(landmarkchambers.co.uk\)](https://www.landmarkchambers.co.uk)

<https://www.judiciary.uk/wp-content/uploads/2024/06/C.G.-Fry-v-SSLHC-and-another-Approved-Judgment-28.06.24-1.pdf>

Levelling Up and Regeneration Act

<https://www.legislation.gov.uk/ukpga/2023/55/enacted>

Phosphorus sensitive areas: designation by central government

<https://www.gov.uk/government/publications/notice-of-designation-of-sensitive-catchment-areas-2024/notice-of-designation-of-sensitive-catchment-areas-2024>

Round 2 Local Nutrient Mitigation Fund

[.Local Nutrient Mitigation Fund Round 2: expression of interest - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/local-nutrient-mitigation-fund-round-2-expression-of-interest)

Somerset Council Plan 2023 to 2027

<https://www.somerset.gov.uk/council-and-democracy/somerset-council-council-plan-2023-2027/>

Somerset Council: Constitution: May 2024

<https://democracy.somerset.gov.uk/ieListDocuments.aspx?CId=137&MId=7466&Ver=4>

Appendices

Appendix 1 Nutrient Mitigation Fund: Interim Delivery Strategy: (Revision date 12.03.2024)



Somerset Council -
Nutrient Mitigation

Appendix 2 How stretch targets will reduce phosphate requirements



Current and stretch
targets phosphate c

Narrative:

The table below is an example of how stretch permit limit targets will reduce the phosphate requirement for proposed developments that feed into Langport, Taunton or Wells Wastewater Treatment Works.

A proposed development with 10 additional homes has been used as an example.

Actual phosphate reduction for live planning applications will vary because of site specific differences.

WWTW	Example number of additional homes	Current P output	Stretch Target P output	Total phosphate reduction
Langport	10	4.77	1.57	3.2
Taunton		1.69	1.57	0.12
Wells		2.78	1.69	1.09

Appendix 3 Number of homes with Somerset that have approved nutrient neutrality measures in place,

Catchment	Application pipeline (approximate number awaiting a solution)	Consented / awaiting S106 applications with phosphate mitigation solutions (approximate)	No. dwellings unlocked via third-party credit schemes
River Brue	8 applications (over 5 dwellings) equating to 700 units which do <u>not</u> have a proposed phosphate solution	No figure provided	2123 Yew Tree Farm, Walton. 499 dwellings. Yew Tree (Phase 2) 224 dwellings. .Manor Farm, Prestleigh 1400 dwellings.
River Parrett	250 applications totalling 3,000 dwellings (A figure of 4,500 dwellings as reported in March 2024)	1,000 dwellings	765 dwellings was reported in March 2024 Progress in last 6 months. Circa 1,500 dwellings (ie difference between 4,500

			and 3,000 dwellings)
River Tone	111 applications totalling 2 600 dwellings	60 applications totalling 545 dwellings	273 dwellings <ul style="list-style-type: none"> •Burrow Environmental: (22 dwellings)). •Flyboat Farm (11 dwellings • WCI: (240 dwellings). <p>Note 43 dwellings unlocked by River Tone P Credits not included</p>
Totals	Circa 370 applications Circa 6,300 dwellings	Circa 1,500 dwellings	Circa 4660 dwellings

Notes:

Figures are approximate numbers. They exclude Local Plan allocations where a planning application(s) have yet to be submitted.

Appendix 4
River Tone Catchment Area
Annual requirement for P Credits per annum

	Year								
	2024	2025	2026	2027	2028	2029	2030	2031	2032
Permanent credits	33.36	33.36	33.36	33.36	33.36	33.36	33.36	33.36	33.36
Temporary credits	43.34	43.34	36.92	36.92	36.92	36.92	36.92		
Total	76.7	76.7	70.28	70.28	70.28	70.28	70.28	33.36	33.36

Anticipated total supply of Permanent P Credits from the Nutrient Mitigation Fund

Project	Anticipated Number of kg/P Credits
Project One: The Salinity Solutions trial	Not yet known -
Project Two:: Call for sites	119.18
Project Three: Social Housing Providers	26.46
Project Four: nature-based solutions on Council-owned land	n/a
Project Five: Miscanthus Grass.	n/a
Project Six: New technical innovations	Not yet known
Total	145.64

**River Parrett Catchment Area
Annual requirement for P Credits per annum**

	Year								
	2024	2025	2026	2027	2028	2029	2030	2031	2032
Permanent credits	49.49	49.49	49.49	49.49	49.49	49.49	49.49	49.49	49.49
Temporary credits	116.84	116.84	24.11	24.11	24.11	24.11	24.11		
Total	166.33	166.33	73.6	73.6	73.6	73.6	73.6	49.49	49.49

Anticipated total supply of Permanent P Credits from the Nutrient Mitigation Fund

Project	Anticipated Number of Kg / P Credits
Project One: The Salinity Solutions trial	Not yet known -
Project Two:: Call for sites	298.71
Project Three: Social Housing Providers	n/a

Project Four: nature-based solutions on Council-owned land	
Project Five: Miscanthus Grass.	Not yet known
Project Six: New technical innovations.	Not yet known
Total	298.71

River Brue Catchment Area
Annual requirement for P Credits per annum

	Year								
	2024	2025	2026	2027	2028	2029	2030	2031	2032
Permanent credits	38.1	38.1	38.1	38.1	38.1	38.1	38.1	38.1	38.1
Temporary credits	95.54	95.54	30.03	30.03	30.03	30.03	30.03		
Total	133.64	133.64	68.13	68.13	68.13	68.13	68.13	38.1	38.1

Anticipated total supply of Permanent P Credits from the Nutrient Mitigation Fund

Project	Anticipated Number of kg/P Credits
Project One: The Salinity Solutions trial	Not yet known -
Project Two: Call for sites	97.52
Project Three: Social Housing Providers	n/a
Project Four: nature-based solutions on Council-owned land	n/a
Project Five: Miscanthus Grass.	n/a
Project Six: New technical innovations	Not yet known
Total	97.52

Note:

- 1) All figures within Appendix 4 are provisional. The required P Credit figures are based upon current housing requirements and current permit limits at WWTW's. These projections take account of the TAL requirement in 2030.
- 2) The overall supply figures relate to the Nutrient Mitigation Fund. They do not take account of additional P Credits coming forward through 3 party Credit schemes.
- 3) For individual planning applications, actual phosphate reduction(s) post 2030 will vary because of site specific differences.

Appendix 5 Stretch targets: a Memorandum of Understanding (MOU)

SLMs stretch
targets MOU June 2

Appendix 6 Defra Letter to Somerset Council: 24 May 2024

240524 Somerset
letter (2).pdf

Report Sign-Off (if appropriate)

Alison Blom-Cooper: Assistant Director Strategic Place and Planning
Kate Murdoch: Service Manager Planning Policy and Implementation
Martin Evans: incorporates suggested changes 23 August 24