

## **Planning to support the release of phosphate credits within the Somerset Levels and Moors Ramsar catchment to unlock stalled housing developments**

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### **Purpose of the Report**

1. The purpose of the report is to provide an update on work that has been undertaken between South Somerset District Council, Natural England and landowners and their agents within the River Parrett catchment of the Somerset Levels and Moors (SLAM) Ramsar site specifically to enable a credit market to be offered to developers of sites within this catchment and to set out recommendations that will allow for the sale of such third party credits (i.e. credits being presented to the market by private landowners rather than directly delivered by the Council) to be made available to applicants seeking planning permission, reserved matters consent and certain discharge of condition applications for which nutrient neutrality is a requirement to allow development to proceed.
2. For clarity, whilst South Somerset District Council (the Council) is impacted by two nutrient neutrality catchments, the SLAM as well as the River Axe, this report only relates to proposals impacting the SLAM catchment. By reason of the more recent designation of the River Axe catchment (March 2022) the level of work required to define suitable land management solutions and to engage with other landowners to bring forward land management proposals to either reduce phosphate use, or to remove phosphates from particular environments has not progressed to the same extent as is the case within the SLAM which was designated some 18 months earlier.

### **Forward Plan**

3. This report has appeared on the District Executive Forward Plan for the 3<sup>rd</sup> November 2022.

### **Public Interest**

4. The Council is responsible for determining development applications under the provisions of The Town & Country Planning Act 1990 (As amended).
5. As the Local Planning Authority, the Council is responsible for preparing and delivering a Local Plan that meets the assessed housing needs of the district. In this case the housing requirement was originally set out within the South Somerset Local Plan. (2006 – 2028) (The Development Plan).



6. Over the past 18 months the Council has received 2 appeal decisions which deal with the impact of phosphates upon housing supply.
7. As a matter of public interest, the ability to be able to release residential consents with a process that allows for landowners to sell land use change Phosphate (P) credits allows the planning authority to demonstrate a pathway back towards the delivery of a 5-year housing supply position thereby improving its ability to manage its planning decision making processes in the interests of the wider South Somerset community.

## Recommendations

8. The District Executive agrees:
  1. The structure that would be required to ensure any third-party nutrient neutrality credit market will provide appropriate safeguards to both the Council (as the Competent Authority) and Natural England as the relevant adviser, to ensure land use projects are designed to an appropriate specification, and provide certainty of delivery of the agreed P credits and ensuring:
    - the co-ordination of land use management projects that result in phosphate use reduction or phosphate removal,
    - the methodology for agreeing the level of P credits derived from each land use project,
    - the mechanisms for the marketing of credits, including the retention of any buffer, and;
    - the mechanisms and funding arrangements to ensure ongoing project monitoring and compliance over the “in perpetuity” term and the management arrangements for selling credits to developers.
  2. To delegate to lead officers (Director of Service Delivery and Lead Specialist Built Environment) authority to confirm to landowners who can demonstrate that they can meet the provisions set out in this report that their credit sales will be accepted as providing an appropriate solution to securing nutrient neutrality, and
  3. Furthermore, to advise the relevant land owners bringing forward P credits that securing a solution to phosphate mitigation alone, where the consequences of any such credit acquisition will result in the applicant seeking to re-visit issues of viability, or otherwise seek to diverge away from the other obligations normally sought by way of S.106 (A-C) will require the Council to assess (or re-assess) whether, the application proposal remains one that delivers a sustainable form of development, when considered against the provisions of the Development Plan as a whole.

## Executive Summary

9. Following advice received from Natural England in August 2020, new development is likely to increase phosphate levels within much of South Somerset are required to demonstrate “nutrient neutrality”.



## South Somerset District Council

10. To a large extent nutrient neutrality will be achieved through land use changes that either reduce the levels of phosphates applied to land or remove phosphates already within the environment. Solutions are required to deliver nutrient neutral benefits “in perpetuity”. In practice this means for at least 80 years.
11. South Somerset is not able to deliver the land use change requirements and are therefore dependent upon third party landowners promoting commercial solutions to generate P credits that enable development proposals to progress.
12. It is important that where land use changes are brought forward, the costs to manage and monitor their effectiveness are secured as part of the projects initial costing and does not become a resource burden upon the Council.
13. This report recommends the Council enters into agreement with third-party credit enabler(s) and individual landowners to allow P credits to be marketed with obligations upon the enabler(s) and landowners to meet any ongoing costs for project management that may fall to the Council in the future.
14. Appendix 1 to this report sets out a series of questions and responses arising from the previous consideration of the issue of nutrient neutrality by the Council’s Scrutiny Committee on 4<sup>th</sup> October 2022, and District Executive on 6<sup>th</sup> October 2022.

### Background

15. The Council is “the Competent Authority” for undertaking Habitat Regulations Assessments for new development that may give rise to “Likely Significant Effects” upon the SLAM Ramsar site (as well as the River Axe Special Area of Conservation) under the provisions of The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations).
16. As a result of a court judgment known as Dutch-N, the Council were advised by NE in August 2020 that it must not permit new residential development, infrastructure that supports agricultural intensification, anaerobic digesters, some tourism development, and development that provides overnight accommodation unless it ‘can be certain beyond a reasonable doubt’ that it would not give rise to additional phosphates within the hydrological catchment of the Somerset Levels and Moors Ramsar Site.
17. The Dutch-N case has informed the way in which Regulation 63 of the Habitats Regulation 2017 should apply to pollution related incidents. This has resulted greater scrutiny of proposed developments that are likely to increase nutrient loads to internationally important sites where a reason for unfavourable condition is an excess of a specific pollutant.
18. The impacts of the NE letter has been to reduce certainty over housing delivery, resulting in a supply of less than 5 years being evidenced, re-engaging the “tilted balance” in favour of sustainable development as set out in the National Planning Policy Framework. (The NPPF).
19. There are more than 360 planning applications relating to 5,000 dwellings that cannot be progressed to a decision including large scale outline applications where the relevant



## South Somerset District Council

committee(s) have approved development in principle but S.106 Legal Agreements were outstanding as well as several Reserved Matters applications where the principle of development has previously been approved but cannot progress until it can be proven that the proposed developments will be 'phosphate neutral' in perpetuity.

20. Over the past 2 years, the Council has been able to make progress with a limited number of planning applications where applicants have been able to demonstrate nutrient neutrality on a project-by-project basis. These types of solution include:
- Retro-fitting water efficiency measures to retained housing stock in a single ownership to release credits to allow the same operation to demonstrate nutrient neutrality over the existing and proposed stock. In practice this is limited to Housing Associations and larger Care Operators where water appliance fittings are managed by a single property management body.
  - Fallow land strategies where land within the control of the applicant is set aside from established agricultural practices to "unlock" development, usually of an early phase of development.
  - Replacing inefficient septic tanks or Package Treatment Plants (PTP's) with more efficient models to release additional capacity to manage water release with a lesser phosphate output. This approach can be combined with woodland planting at the drainage field to enhance efficiency.
  - Small scale PTP solutions that fall below the Environment Agencies permit levels of 2 m<sup>3</sup> water / day.
  - The use of larger scale PTP solutions where the body retained to manage the PTP has been approved as an OFWAT appointed statutory sewerage undertaker.
21. Additionally, within the SLAM catchment (but not the River Axe Special Area of Conservation catchment) development proposals brought forward using "Prior Approval" under the Town & Country Planning (General Permitted Development) Order 2105 (GPDO) are excluded from the types of development that are required to provide nutrient neutrality mitigation.
22. The above measures have released some development since receipt of the August 2020 NE letter; however, they are not delivering long term, strategic solutions. Retrofitting water efficiency measures is limited by the scale of existing stock and the owner's commitment. Fallowing land is not an efficient use of agricultural land and does not represent a good long-term use of land whilst the smaller PTP solutions and use of Prior Approvals are respectively limited to more rural sites away from mains foul sewerage or limited by reason of site size and existing use criteria set out in the GPDO.
23. Furthermore, in most instances, the applicant for planning permission has needed to have access to land outside the proposed residential curtilages the subject of their application to enable the delivery of PTP drainage fields, alternative woodland planting or short-term fallow land uses, other properties to enable retrofitting or sufficient land for larger PTP and subsequent water disposal and suitable levels of PTP management.



## South Somerset District Council

24. These opportunities are not available to most smaller applications that may comprise windfall development in otherwise built-up settings or the conversion of existing buildings. For these applicants which will numerically comprise most applications awaiting nutrient neutrality solutions, the only realistic option is to acquire a credit from another party entering into land use management agreements to reduce or remove phosphates from the relevant environment.

### Interim Opportunities under Local Authority control

25. Following publication of the August 2020 letter, the Somerset Councils resolved to work jointly on developing approaches to deliver a phosphate mitigation strategy. This included commissioning the Royal Haskoning calculator a revised version of which currently informs all residential phosphate mitigation needs calculations within the catchment.
26. A further Solutions Report was published in March 2022 which set out the most likely land use management opportunities that could deliver efficient mitigation opportunities.
27. Whilst these documents were being prepared, officers reviewed the Councils property holdings to determine whether SSSC had access to land that may deliver nutrient neutrality mitigation. Generally, by reason of the Councils existing commitments to land use management measures including woodland planting and wetland development we were not able to transfer the phosphate benefits as the projects had been previously “badged” to a differing objective so were not primarily nutrient neutrality projects.
28. Additionally, we do not have the opportunity to retrofit existing housing with water efficient measures or to upgrade inefficient treatment works, particularly prevalent in more rural areas to offer a Council solution.
29. Where authorities have been able to deliver land use change including wetland creation as well as taking large scale / intensive farming operations out of existing uses initial feedback indicates credits costing between £5,000 and £10,000 per dwelling where Councils are leading on the projects.
30. The work done to date on unlocking phosphates credits has confirmed our initial views that nature-based solutions can only be part of a package of measures to unlock all the impacted development. In partnership with the other Somerset authorities, we are continuing to raise the challenges delivering phosphate neutral development with Government officials in Department for Environment, Food and Rural Affairs (DEFRA) and Department for Levelling Up, Housing and Communities (DLUHC).

### The South Somerset Solution

31. In the absence of any in house assets that would allow the Council to deliver its own credit market, the Council has opted to work with landowners and their agents to develop a catchment market bringing forward a range of land use projects within the River Parrett catchment.



## South Somerset District Council

32. The catchment market of most relevance to the Council will relate to the River Parrett catchment. It is a requirement that nutrient neutrality mitigation proposals are delivered within the same catchment as the development they are seeking to mitigate. Parts of the Council's administrative area impacted by the SLAM fall within the River Brue and Axe catchment which predominantly covers Mendip District.
33. Officers are working on similar land use change projects relating to land within Mendip District that will enable the release of credits to applicants within South Somerset where the Rivers Brue and Axe comprise the relevant catchment. Where the mitigation land lies within Mendip district it will be for that Council to develop the legal structures to ensure delivery of the mitigation and to manage the sale of credits albeit the credit sales would not be restricted only to Mendip Councils administrative geography.
34. The development of catchment markets whether for the River Parrett or Rivers Brue and Axe are the result of ongoing engagement between the Council (from a development management, planning policy and legal perspective), Natural England as the relevant body to advise upon the suitability of mitigation proposals as well as agreeing their levels of nutrient credit, and landowners and their agents or enablers. NE's support for the approach that is being adopted to deliver appropriate nutrient neutrality projects is confirmed by their letter attached at Appendix 2.
35. For the Council key principles are:
  - Ensuring that Natural England accepts both the process adopted to bring forward groups of projects to generate credits and will advise upon the phosphate credits generated by each project and round, and
  - Securing sufficient resources through the various agreements to ensure that the body charged with ongoing monitoring and compliance work has access to the resources necessary to undertake that work.

### Catchment Markets

Whether the catchment market involves a single site or multiple sites and landowners, there will be a series of assessment steps that will be common to the delivery of a successful mitigation scheme. These will cover:

- I. Identifying landowner interest – seeking interest from landowners looking to promote their land for in perpetuity land use changes as well as developers seeking to acquire P credits.
- II. Market Development- Working through the likely land use projects that are most appropriate to each parcel of land being promoted to deliver P credits, seeking NE agreement to the levels of P credit deriving from each project within that market round, and confirming the level of credits being sought by developers accurately reflect their application's needs.
- III. Market Round comprising the sale of the (single or various) projects and the process to match up the landowners' expectations with the developers offer.





36. The key elements of the catchment market are:

- To ensure that each land use mitigation project is designed using a specification for works that has been agreed beforehand by NE.
- To ensure that NE and the Council can review the detail of each land use project that is being presented for an upcoming market and as a part of this process NE and the Council are able to agree both individual and overall P credits to include any precautionary buffer. This step would comprise the Habitat Regulation Assessment stage of the plan or project. (In this case the plan or project would comprise the release to market of a series of individual land use change projects)
- Confirmation that each bid for credits arising from an undetermined planning application is based upon a calculation agreed by the Council.
- To ensure the Council can access a clear and up to date record of the credits that have been made available in each market, and the identity of the applicant / application reference for successful bidders to ensure the credit is only acquired once.
- That where either the individual landowner, or, where there are a number of landowners comprising a single catchment market project, the enabling body retains a register of projects that have been implemented but not directly sold, comprising the credit buffer if there is project failure in the future.
- To ensure the project costs include a fund to cover the cost of future monitoring and compliance work that reflects the differing frequency and complexity of compliance work required to ensure the projects continue to deliver “in perpetuity” and that this fund is available to the Council directly, in relation to single landowner projects, or, where an enabling body is involved when the monitoring, and compliance responsibility is transferred from any enabling body to the Council.
- To confirm the triggers for each credit acquisition relative to any development’s start on site and first occupation.

## **The Agreements**

37. The range of agreements required to regulate the catchment market are set out at Figure 2 below and explained in more detail at paragraphs 39 - 49.

### **Multiple Landowner Projects.**

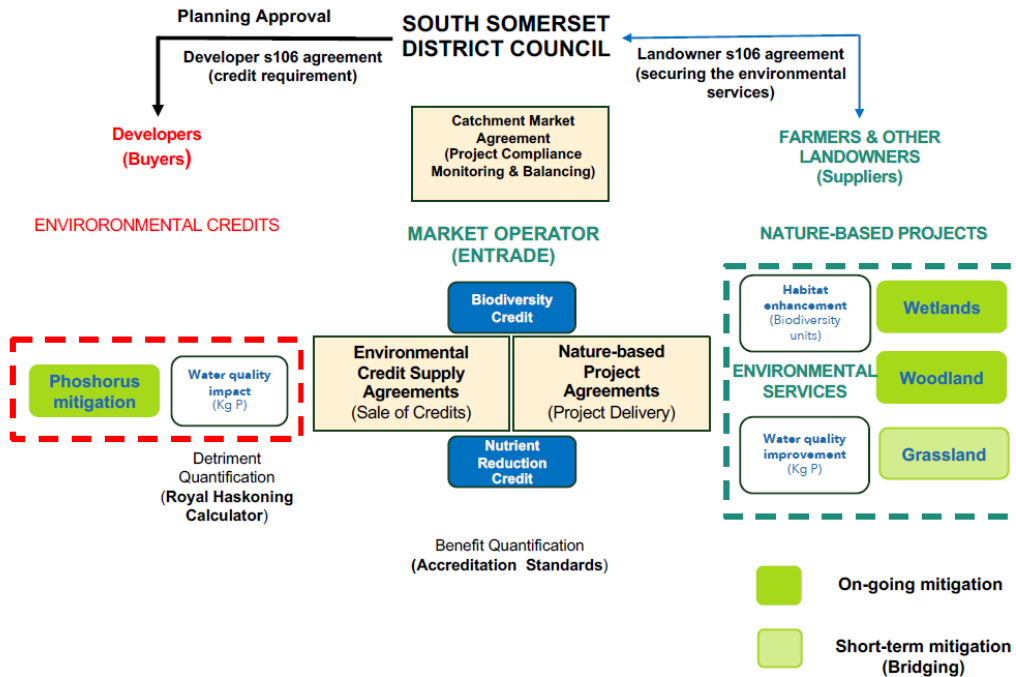


Figure 2: Example of Catchment Market Agreement structure.

38. The catchment market will be controlled by two sets of agreements. Firstly, the agreements between the Council and respectively the mitigation project provider, the applicant looking to acquire credits and any as project enabler, and secondly the contracts between any enabler and respectively the mitigation project provider and the applicant looking to acquire credits.

### The Council and Mitigation Project Provider.

39. It is intended to use S.106 as the agreement type between the mitigation provider and the Council. This would enable the steps required of each party to firstly deliver the project to an approved specification and secondly to maintain the project again in line with a monitoring and compliance regime also agreed with NE to be set out in an agreement with recourse to planning enforcement powers. The Agreement would also set out the steps to be pursued in the event of project failure. The Agreement would be registered as a land charge against the mitigation land.

### The Council and applicant seeking to acquire mitigation

40. Prior to bidding for a credit, the applicant is required to confirm they are bidding for an accurate credit requirement. Once an applicant is successful in bidding for a credit, if there are no other obligations, they can submit a S.106 Undertaking (The Council will issue a template S.106 Undertaking before the first market round is undertaken.) if the application is for a major type of development the applicant will have to choose between issuing a stand-alone Phosphate Undertaking or including the provision in the overarching S.106. The Undertaking will comprise a land charge on the planning application site.
41. The triggers for acquiring a credit will be defined by the nature of the particular land use change project. For projects with both a land use change (i.e. agriculture to orchard or creation of wetland) there will typically be 2 payment triggers as set out below:





## South Somerset District Council

(i) To acquire the capital cost element prior to a commencement on site, and

(ii) To acquire the ongoing maintenance and monitoring cost credit prior to first occupation.

42. Where capital works are proposed, i.e. the removal of an existing generally larger scale agricultural operation, typically more intensive pig or poultry operations there may only be a single credit payment requirement to fund the removal of buildings and reversion of land to an alternative use.

43. The undertaking will confirm that once the applicant / developer has acquired the relevant credit, their obligations are discharged insofar as phosphate mitigation is concerned.

### **The Council and Enabling Body**

44. The agreement between the Council and the enabling body would comprise a contract rather than S.106 agreement as the agreement will relate to the way the market is operated rather than being specific to a particular site. The contract will define the following:

- The projects comprising each Market Round
- The establishment of a project registry to confirm which land use projects are mitigating which planning applications requiring nutrient neutrality.
- The nature of separate agreements between the enabling body and landowners and developers
- Compliance monitoring undertaken by the enabling body and reported to the Council.
- The management of a “credit reserve”
- Market monitoring and balancing fees
- The process for the Council to step in and require works to any failed nature-based project
- The process for the enabling body to hand over residual monitoring and compliance obligations as well as funding to undertake such activities.

### **Separate Agreements for any enabling body**

45. Any enabling body will be acting as a broker / enabler, they will also require contracts with each of the landowner’s providing mitigation as well as the parties seeking to acquire mitigation to ensure the credits are accepted by the Council and to ensure that all specifications are agreed by the Council, advised by Natural England as comprising mitigation secured through a process that has successfully passed a Habitat Regulations Assessment.



## South Somerset District Council

46. Whereas from a planning perspective the triggers for credit purchase will relate to the delivery of housing projects, from the mitigation landowner's perspective the acquisition of the credit must also align with the timetable for the delivery of the mitigation project.

### **Single Landowner Projects**

47. Where the Council is approached by a single landowner the overall process to ensure the project specification, agreement to credit levels with Natural England and the Council as Competent Authority as well as subsequent land management regimes will remain the same as for the multi project option.

48. In this scenario the roles undertaken by both the landowner and the enabler are combined.

49. As such, the Council will require a land use agreement by way of S.106 with the landowner to secure the land use change and to provide enforcement powers to secure ongoing compliance. In addition, the Council will require the issues set out below to be addressed:

- The establishment of a project registry to confirm which planning applications have secured nutrient neutrality through credit acquisition.
- The nature of separate agreements between landowners and applicants / developers
- Compliance monitoring undertaken by the landowner and reported directly to the Council.
- The management of a "credit reserve"
- The process for the Council to step in and require works to any failed nature-based project

### **Allocation of Credits and Credit price**

50. Where Councils have managed their own land to release credits, they are able to also establish application blind criteria to develop a hierarchy of credit bidders. This may focus upon small to medium-sized enterprise (SME) developments, developments capable of being implemented in the short term and policy compliant developments.

51. This type of prioritisation rationale could apply equally within this Council, particularly given the high number of SME developers and the desire to see credits being used as soon as possible to unlock development now, rather than being banked as part of a nutrient neutrality solution acquired for a large site taking many years to deliver. However, where the Council does not own the credits, we do not have the power to define a market priority that a third party will have to adopt in their market sales.

52. As such, we could not for instance prevent credits being acquired by the promoters of applications which may not, ultimately be supported for other reasons because the applicant will have an interest in dealing with the issue at appeal.



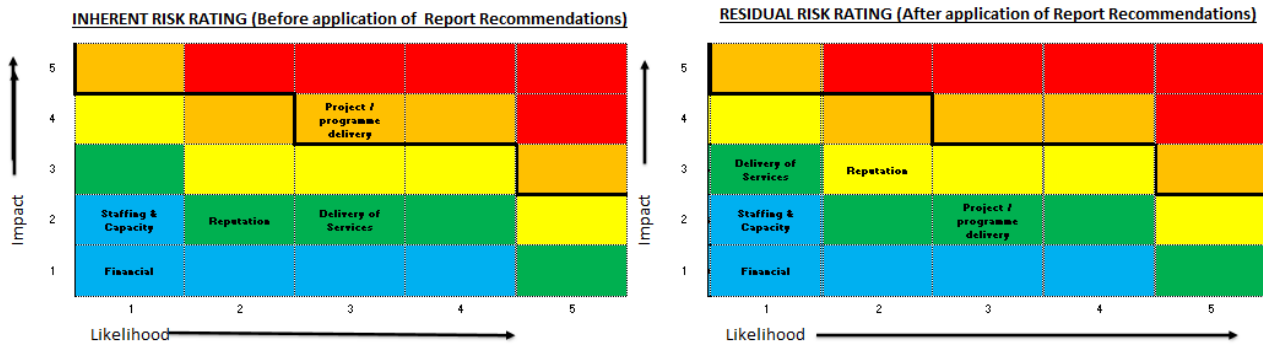
## South Somerset District Council

53. Additionally, where the Council does not own the market, we cannot dictate the price that may be offered to acquire P credits. Whereas we are seeing typical P credits having a value of £55,000 / kg, the value of a third-party credit could vary depending upon the aspirations of individual landowners when each land use project or range of projects are released to the market.
54. That said, given that the cost to a developer of acquiring a P credit will be directly influenced by the efficiency of the relevant sewerage treatment works the issue of P credit values and development costs will vary on a site by site basis.
55. From the perspective of the Council, all housing schemes within the minor category are excluded from seeking S.106 obligations therefore, for many SME projects the decision about the price to bid at will be a commercial decision for the developer but will not impact upon our requirement for affordable housing and social infrastructure.
56. Where larger applications are seeking to acquire P credits before being presented to committee, any argument that the cost of the P credit must be offset against other social infrastructure will be a standard viability assessment which would include an understanding of legitimate land value expectations. Equally, those applications caught after a favourable committee resolution at committee but prior to completion of the S.106 could require re-determination if the agreed heads of terms for the S.106 originally presented for approval are being varied.
57. As such, and in line with the third recommendation at Paragraph 8 above, the Council should make clear to any land use project promoter or enabler (and therefore parties bidding for credits) that securing a phosphate solution is only one part of the assessment that a development represents sustainable development when considered against the provisions of the Local Plan when read as a whole and as such, paying too high a price for securing P credits at the expense of other social infrastructure including affordable housing can still lead to an applications refusal.

### Legal implications (if any) and details of Statutory Powers

58. The relevant legislation comprises The Town and Country Planning Act 1990 (As amended) together with The Conservation of Habitats and Species Regulations 2017 and the Planning and Compulsory Purchase Act 2004.
59. The key duty within the process set out above is the undertaking of a project wide Habitat Regulations Assessment of each Market Round as the individual land use management projects are secured and brought forward.
60. The process behind the structure of the market involves ongoing engagement with NE to ensure the design and specification for each individual project is agreed, the cumulative value of P credits within any market round is agreed between the Council as competent authority and Natural England before any sales take place, the appropriate precautionary buffers are built into each project assessment as well as the overall market round and there is an appropriate post implementation monitoring and compliance capacity which is funded by the market round itself.

## Risk Matrix



Risk Re	Risk Category	Inherent Risk Rating	Residual Risk Rating
1	Project / programme delivery	19	9
2	Financial	1	1
3	Delivery of Services	9	6
4	Staffing & Capacity	2	2
5	Reputation	8	13
6	Health & Safety	0	0
7	Governance & Legal	8	2

Risk Description	Mediation / Controls
Failure to agree phosphate mitigation solutions will worsen the Council's housing supply position.	There is scope to review the value of each Market Round therefore approval for the mechanism to commence does not
There is no financial obligation upon the Council arising from this project	N/A
Not enabling the approval of housing project will increase the level of complaints about inactivity and	Opportunity to review value and beneficial impact will remain available to the Council for future rounds, however this would
The use of the En Trade model reflects the Council's need to draw upon 3rd party solutions, lacking in	Staffing capacity is unlikely to change in the medium term
Being able to release development held up by phosphates is a significant factor in current	We will need to have template Agreements and HRA's available to ensure smooth progress
N/A	N/A
The project requires good drafting of the various agreements to ensure no challenge to SSDC	Capacity to review mechanisms before entering into further rounds

## Council Plan Implications

61. The Corporate Plan vision for South Somerset is for a naturally beautiful and sustainable environment which also allows for businesses to flourish and good homes to be delivered. The lack of a phosphate solution has prevented housing delivery from taking place since August 2020.
62. There is scope for land management solutions to contribute positively to Priority 1 Environment which includes enhancing the natural environment.
63. Enabling the release of planning permissions for new housing will contribute towards our local SME developer sector assisting businesses and supporting growth within South Somerset within Priority 3.

## Carbon Emissions and Climate Change Implications

64. Phosphorus has no direct effects on climate, but mitigation measures do have indirect effects, such as increasing carbon sinks by fertilizing plants. There may be wider benefits flowing from this project such as carbon sequestration, improved and enriched flora and fauna and so help deliver carbon reduction targets. The inclusion of projects such as wetland creation could lead to biodiversity enhancements and accord with proposals and initiatives to address the climate emergency and biodiversity net gain. The sustainability credentials will be assessed through the project Habitats Regulation Assessment which will be agreed with NE.

## Equality and Diversity Implications

<i>An Equality Impact Relevance Check Form has been completed in respect of the Proposal?</i>	Yes
<i>The Impact Relevance Check indicated that a full EIA was required?</i>	No
<i>If an EIA was <b>not</b> required, please attach the Impact Relevance Check Form as an Appendix to this report and provide a summary of its findings in the comments box below.</i>	
<i>If an EIA <b>was</b> required, please attach the completed EIA form as an Appendix to this report and provide a summary of the result of your Equality Impact Assessment in the comment box below.</i>	
<b>Additional Comments</b>	
<p>The Public Sector Equality Duty has the following aims which the authority must have due regard to:</p> <ul style="list-style-type: none"> <li>• Eliminate discrimination, harassment, victimisation.</li> <li>• Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.</li> <li>• Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li> </ul> <p>None of the above relate directly to this report which relates to land use management and is at this scale tenure and end user blind.</p>	

## Privacy Impact Assessment

65. There are no privacy issues raised by this report.

## Background Papers

- Appendix 1 – Questions and responses from October meetings of the Scrutiny Committee and District Executive
- Appendix 2 - NE letter
- Appendix 3 – Equality Impact Assessment Check Form

## **Questions raised by Scrutiny Committee and District Executive meetings in October 2022**

### **1. How does this approach relate to the Council's previous resolutions in relation to phosphate impacts?**

From receipt of the original Natural England letter in August 2020, the Somerset Councils have resolved to submit joint representations combining the views of the five councils into single submissions to the relevant Secretaries of State.

In December 2020, the Council's joint letter raised the following issues:

- The need for Government to commit to support affordable housing and infrastructure delivery in locations where the costs for mitigating phosphates is an issue;
- Capital funding to assist the Somerset Council's unlock mitigation and engage additional ecologist support to achieve this; and
- Seeking a commitment that the relevant Government Agencies (Ofwat, Environment Agency & Natural England will address the major polluters responsible for the discharge of nutrients into Somerset watercourses.

In July 2021 the Council's again issued a joint letter to the Secretaries of State setting out further evidence and areas of particular concern, including:

- Applications for 11,000 dwellings are held up by the phosphate issue;
- The disproportionate impact of the situation upon SME developers, particularly with a local trading geography;
- The cost to deliver off site credits and the impact upon viability and delivery of infrastructure;
- Support for the HBF view that the most cost effective and sustainable long-term solution is to invest in upgrades to wastewater treatment works;
- Requested Government commitment to invest in treatment works upgrades as well as working with the Somerset Councils to develop an investment strategy to address water quality issues;
- Specifically request the Government makes capital funding available for strategic scale nature-based solutions to avoid negative impacts upon social and community infrastructure;
- Reiterated the request for Government to require the relevant regulators to do more deal with the major contributory polluters.

At the full Council Meeting on 17 March 2022, the Council resolved to:

- a) Instruct the Chief Executive to write to Ministers at DEFRA to request intervention to resource the statutory undertakers to address the phosphate overload.
- b) Press the DEFRA / DLUHC Task Force to develop a co-ordinated approach with relevant stakeholders reduce nutrient pollution.





## South Somerset District Council

- c) Urge Government to secure a strategic solution from Ofwat including short terms and long-term solutions including large scale habitat creation
- d) Demand Wessex Water brings forward additional investment in phosphate removal projects
- e) Express dissatisfaction with the delays in bringing forward the En Trade mitigation proposals
- f) Invite LGA to apply pressure to stakeholders to deliver a strategic phosphate strategy.

It is of note that the communication received from DEFRA and DLUHC in March 2022 which accompanied the publication of the Natural England Calculator together with the announcement of additional catchments needing to deal with the issue of nutrient neutrality indicated a commitment to deal with the issue of nutrient neutrality through land use changes.

By the time of the July correspondence from DEFRA and DLUHC however, this position had evolved to one that included an obligation for Utility Companies to upgrade their wastewater treatment works to the highest technically achievable standards by 2030, recognising the positions previously presented that Ofwat needed to do more to manage existing pollution and that engineered solutions at source represented an efficient and cost-effective solution to phosphate reduction.

Furthermore, DEFRA committed that Natural England would lead on the delivery of strategic solutions within impacted catchments and DLUHC committed to review the housing delivery test in areas impacted by nutrient neutrality.

Given this, the three changes of approach indicated above indicate that after some 23 months Government has begun to accept several of the positions that had been presented by the Somerset Councils since December 2020.

### **2. How is inefficient land use mitigation being dealt with?**

Following the Natural England letter in August 2020, the first schemes to progress nutrient neutrality solution of any scale were large scale developers who were able to propose the fallowing of agricultural land comprising the latter phase of a large development to enable a first phase of housing to progress.

In Somerset in early 2021 two reserved matters applications were approved based on later phase fallowing. (Taunton and Crewkerne) In both cases the fallow land also benefitted from outline planning permission for residential development. As such it was accepted that the developer would secure a nutrient neutrality solution to allow the release of the final phase, however it may be several years before that latter part of the site would need to come forward for development. As such, the fallow land strategy was seen as an interim solution that the developer would resolve in due course to benefit from the residential values of the latter phases of housing development.

The value of a fallow land approach to mitigation is that it can release credits immediately the land is taken out of use. This makes it a very time efficient solution to allow immediate development to take place.

The negative issue is the phosphate credit released is small by comparison with cover crops, riparian buffer strips, woodland, or wetlands. As such, it is accepted as comprising a part of



## South Somerset District Council

a bridging solution delivering immediate reliable mitigation but in combination with a more space efficient long-term solution being brought forward to replace it.

For the purposes of an illustrative comparison the land take required to provide a long-term fallow land solution in an area served by an unpermitted wastewater treatment works is likely to require in the order of 1 Hectare of land to be taken out of agricultural use for every dwelling released.

By comparison, the wetland scheme at Nailsbourne Taunton (Application reference 4 34/21/0017) provides for wetlands on 4.26 Ha agricultural land to release some 700 new dwellings. (The relevant wastewater treatment works has a permit level of 1 mg/ltr)

Within South Somerset, as an illustration, the initial, enabled multi-site scheme under consideration is proposing circa 12 wetlands across the River Parrett catchment. This long-term solution requires ancillary “bridging credits” to come forward to provide the immediate solution, however these are likely to revert to agricultural uses within a 2–5-year period.

### **3. Should the Council be looking at delivering wetland solutions given that they are the most efficient use of mitigation land?**

As illustrated above and confirmed by the Somerset Levels and Moors Phosphate Mitigation Solutions Report (March 2022) <https://www.southsomerset.gov.uk/services/planning/phosphates-and-nutrient-neutrality/somerset-levels-and-moors-ramsar-site/> wetlands are likely to prove the most space efficient land use change solution to reduce phosphate levels in water courses.

To work effectively wetlands need to be adjacent to a watercourse with a high level of phosphates running through it. Other factors that influence the efficiency of a wetland will relate to flow rates, topography, ground conditions and planting regimes.

Clearly, the locations of land likely to respond well to the criteria above can be readily identified, however, to deliver a wetland solution requires either landowner willingness or the use of compulsory powers.

Given the time and resources required to pursue compulsory purchase, where landowners are presenting proposals for wetland upon their land, the Council is engaging with them with a view to enabling rather than managing and owning the delivery of solutions.

### **4. How will phosphate mitigation impact upon site viability assessments?**

As noted within the various communications with Government, the Somerset Councils have expressed concerns that the costs of delivering nutrient neutrality may impact upon site viability and the capacity to negotiate for social and community infrastructure which are supported by the Local Plan.

By reason of the need to deliver land management change in most cases the obligation to continue the land management for an “in perpetuity” term will impact upon credit costs as this period needs to be built into the up-front credit cost calculations.



## South Somerset District Council

To date we have taken the position that for an application on behalf of an established landowner it is of note nutrient neutrality is an issue of land value to the potential purchaser rather than a viability case.

That said, in parts of the district where unpermitted treatment works operate the potential cost of mitigation may reduce land values to a point at which a landowner is not incentivised to bring forward development.

Equally, there are major applications for which decisions have not been issued where the Council has already accepted a viability case in delivering the overall range of benefits and did so before phosphates became a further cost to the development.

Moving forward the issue of the cost of acquiring P credits will need to be considered when the new Council consider its approach to setting any new or revised CIL charge since this regime needs to be based upon an assessment of viability and site development costs.

### **5. How critical is the likely supply of housing that could be released by a credit market?**

Until the Council can point to a supply of credits available to the wider development market our housing supply position continues to worsen.

Without solutions, either owned by the Council or enabled by them, applicants with a self-contained phosphate solution will seek to apply the tilted balance in their favour. Conversely, where we can point to (preferably multiple) solutions to either deliver on or off-site P credits we will start to develop a “direction of travel” case to show that we do have ways of unlocking development and reducing the housing supply gap.

Aside from the housing supply calculations however, the ability to acquire an off-site credit will appeal to smaller developers lacking access to possible mitigation land and therefore release development opportunities for several local SME operators who have been significantly and adversely impacted by the nutrient neutrality issue over the past 26 months.

### **6. Can the Council limit the applicants that can acquire third party credits to SME operations as is happening at Somerset West?**

This report deals with an approach to regulating a market where third parties will bring forward land as a nutrient neutrality mitigation project. As such the project owner will be a private landowner not the Council.

Within this situation the Council needs to deal with its role as a regulator rather than owner of the market. Legal advice to date has been that it is not for the Council to determine who can and therefore cannot bid for a credit that may unlock their development without unduly prejudicing the parties excluded from bidding for credits.

This position differs from that adopted by Somerset West & Taunton where the Council owns the credit project and can frame a set of conditions to constrain the market, particularly at a time when they can reasonably expect bids to acquire credits to outstrip supply.



## South Somerset District Council

In their case they have assessed priorities based upon themes within the Corporate and Local Plans to support schemes capable of immediate delivery, schemes that are policy compliant and schemes promoted by SME's generally the 1-9 dwelling scale.

Whilst legal advice within this Council is that we could not apply a similar hierarchy to a commercial sale of credits on the market, it is of note that the first multi-site enabled proposal to be presented to the Council generated some 96 expressions of interest in acquiring credits of which 68 relate to applications for less than 10 dwellings and a further 16 are schemes of 10 – 50 dwellings.

The attractiveness of the credit market to the smaller developer reflects the need to spend capital to mitigate the whole project prior to commencement, something which is more readily accomplished for a small scheme with a single build phase. By contrast the desire to acquire the complete mitigation for a project at the outline stage, before a developer is on board may suggest to larger scale promoters of land that on site PTP's which do not need to be paid for until development commences is a more attractive cash flow arrangement.

### **7. Will there be a countywide approach to phosphate mitigation following unitary status?**

The bringing together of five Council could provide an economy of scale to allow for more project working on phosphate mitigation, however any decisions about staffing structures and priorities will be for 2<sup>nd</sup> and 3<sup>rd</sup> tier directors and portfolio holders to resolve moving forward.

### **8. Is there a risk that developers will look to build outside Somerset due to the phosphate issue?**

Where developers have a wider than SLAM catchment market, they will concentrate on developing schemes that can be delivered outside a catchment where demonstrating nutrient neutrality is a requirement. That said, as parts of East Devon, Dorset and Wiltshire are also covered by other, similarly affected catchments there are large parts of the southwest where the issue of nutrient neutrality will delay much development.

### **9. Will phosphate mitigation take high grade agricultural land out of use for future generations?**

See Question 4 above, Natural England are now more focused upon not tying up best & most versatile agricultural land with long term land management solutions. Acceptable long-term solutions are likely to include wetlands, orchard / woodland crops or buffer strips rather than fallow land solutions.

### **10. If mitigation requirements reduce in the future would those who have acquired credits secure refunds?**

This is currently a speculative point for which we do not have an answer, however the July announcements relating to phosphate removing efficiencies required from 2030 are leading to larger sites calculating a need for permanent post 2030 credits and a larger but shorter-term bridging credit from commencement to 2030.

### **11. What else is the council doing to reduce phosphate levels with its own property?**

The Council has reviewed its property stock, however the types of property that can release P credits are limited in type to dwellings, managed housing for care, hotels, or privately managed rental housing where there is a common point of control over the future management of the retrofitted units. The Council does not control any suitable housing so again is in a position of being an enabler rather than project promoter.

**12. How much agricultural land would be locked up by phosphate mitigation?**

This question is impossible to quantify as the level of mitigation required will take as a starting point the efficiency of the local wastewater treatment works. As such a development in an unpermitted catchment will need to deliver 5 x the mitigation (and therefore land take) as a scheme serviced by for instance Yeovil Pen Mill.

As noted above at Question 2, the more efficient large-scale wetland capable of releasing circa 700 dwellings for a 4.26 Ha land take would represent a deliverable part of the land budget for a strategically important site, provided it has some proximity to a suitable watercourse.

**13. Are the planning and development management teams resourced to deal with workload spikes if credits are released?**

The need to deliver efficiencies across local government means that authorities are not resourced to deal with peaks in demand. Where larger scale land use proposals are brought forward as grouped projects however it is easier to forecast the likely demand for planning resource in terms of progressing applications through the decision-making process and to outsource work on legal agreements where we are likely to receive a considerable number of bilateral and unilateral undertakings relating to similar projects. (i.e. the control of mitigation land or the confirmation that a developer has acquired suitable mitigation credits).

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