

# **Somerset Levels and Moors: Phosphate Issue**

## **Proposed guidance for the determination of planning applications proposing the use of new Package Treatment Plants or the upgrading of existing Package Treatment Plants/Septic Tanks as phosphate mitigation.**

### **Phosphates Planning Sub Committee – 21 July 2022**

Report Authors: Emmeline Brooks (Phosphates Planning Officer), Jessica Picken (Nutrient Neutrality Officer), Paul Browning (Principal Planning Officer) and Alison Blom-Cooper (Assistant Director, Strategic Place and Planning)

#### **1 Executive Summary/Purpose of the Report**

- 1.1 The purpose of this report is to provide advice as to how Somerset West and Taunton Council will apply advice received by Natural England and Environment agency in relation to the use Package Treatment Plants (PTPs) or Septic Tanks as phosphate mitigation. The NE/EA advice received is to be jointly published by the Somerset Authorities in due course.
- 1.2 This report sets out how this guidance should be applied at a local level in Somerset West and Taunton (SWT) and relates to the determination of planning applications that propose to use Package Treatment Plants (PTPs) or Septic Tanks as phosphate mitigation.
- 1.3 The report covers both the use of new PTPs as phosphate mitigation, as well as upgrades to existing poorly performing PTPs and septic tanks. It sets out when using this equipment as mitigation would be considered to be acceptable to SWT Council, as the Local Planning Authority (LPA), and what steps planning applicants are required to take in order to secure their proposed phosphate mitigation.

#### **2 Recommendations**

- 2.1 That the Phosphates Planning Sub Committee resolves to:
  - a. Agree that the use of new PTPs and the upgrade of existing poorly performing PTPs and septic tanks as phosphate mitigation is acceptable in principle.
  - b. Agree that the use of biological systems in PTPs should be preferred over chemical dosing in PTPs which should only be used as a last resort. Applicants must demonstrate that they have considered the use of a biological system and should show that the use of a biological PTP would not be sufficient to meet their phosphate mitigation requirement for the

development proposed, before the LPA will consider a chemical dosing PTP as a possible mitigation option.

- a. Delegate to the Assistant Director Strategic Place and Planning in consultation with the Chair of the Phosphates Planning Sub Committee, clarifications and amendments to processes which govern the long-term maintenance and management of PTPs/Septic Tanks. It is proposed that these are to be agreed on a case by case basis between the LPA and the applicant.

### **3 Background to the Report**

- 3.1 As set out in the previous report to the Phosphates Planning Sub-Committee on 10 February 2022, in August 2020 Natural England (NE) issued a letter to Somerset West and Taunton Council (this is herein referred to as 'the August 2020 letter')<sup>1</sup>. The August 2020 letter set out that as a result of the court judgment known as Dutch N, SWT Council, as the Competent Authority, under The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations) must not permit any new residential development, infrastructure that supports agricultural intensification, anaerobic digesters, some tourism development and development that provides overnight accommodation (collectively known as 'affected development') 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.
- 3.2 In March 2022, SWT Council, along with others within Somerset, Devon and Dorset, received a further letter from NE<sup>2</sup> that confirmed the River Axe Special Area of Conservation (SAC) was in an unfavourable condition and therefore local planning authorities would need to ensure that affected development within this hydrological catchment also does not give rise to additional phosphates.
- 3.3 In effect this advice has meant that SWT Council (herein referred to as 'the Council') has not been able to grant planning permission for new affected development within the catchments of the Somerset Levels and Moors Ramsar site and the River Axe SAC. As a result, there are currently approximately 160 planning applications being held in abeyance (as well as approximately 38 discharge of conditions applications) which, applying the precautionary principle, cannot be determined until such time as it can be proven that the proposed developments will be 'phosphate neutral' in perpetuity<sup>3</sup>.

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<sup>1</sup>Available at: <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

<sup>2</sup> Available at: [https://www.southsomerset.gov.uk/media/5485/ne-water-quality-and-nutrient-neutrality-advice-16\\_03\\_2022-issue-1-final.pdf](https://www.southsomerset.gov.uk/media/5485/ne-water-quality-and-nutrient-neutrality-advice-16_03_2022-issue-1-final.pdf)

<sup>3</sup> Figures as at 8 June 2022

- 3.4 In order to alleviate this issue, and secure phosphate neutral development Full Council agreed on 5 October 2021, to progress a programme of interim measures designed to ‘unlock’ phosphate affected development, known as the interim strategy.
- 3.5 Notwithstanding the above, and separate to the interim strategy, the LPA is receiving planning applications that propose their own onsite or offsite phosphate mitigation solutions to bring forward the proposed development. The LPA continues to work with applicants, in consultation with Natural England (NE) on these applications.
- 3.6 There are several planning applications currently held in abeyance that are proposing either new PTPs or upgrades to existing PTPs and septic tanks as phosphate mitigation.
- 3.7 In light of the above, Officers have identified a need for a consistent and transparent approach to be taken to the determination of planning applications that are proposing the use of PTPs/septic tanks upgrades as phosphate mitigation. This is the overarching purpose of this report.
- 3.8 The Council, in collaboration with the other Somerset Authorities<sup>4</sup>, is preparing to jointly publish a guidance note developed by NE and the Environment Agency (EA) on the use of PTPs for small scale development in non-sewered areas which has been in development over several months. The guidance note is the starting point of this report and provides information to support applicants in considering options for PTP as mitigation, and what information is required to support a planning application. The purpose of this report is to provide advice as to how this guidance note can be applied at a local level in SWT, and in particular how the LPA, as competent authority under The Habitats Regulations can ensure that the mitigation proposed in maintained and monitored in perpetuity.
- 3.9 In light of the above the remainder of the report is organised as follows:
- **Section 4** - provides an introduction to PTPs as phosphate mitigation.
  - **Section 5** - sets out the proposed hierarchy approach to PTPs as phosphate mitigation in SWT whereby biological system PTPs are preferred over chemical dosing PTPs which should only be used as a last resort as advised by Natural England.
  - **Section 6** - is focused on maintenance and monitoring arrangements and how SWT Council could ensure that these arrangements are maintained in perpetuity.

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<sup>4</sup> Mendip District Council, Sedgemoor District Council, South Somerset Council and Somerset County Council.

- **Section 7** - sets out the next steps including guidance for applicant's as to what information will be required as part of a planning application that proposes the use of PTPs (new or upgraded) as phosphate mitigation.
- **Section 8** – presents the conclusions of this report.
- **Section 9** - set out potential implications for the Council should the recommendations be approved.

#### 4 Introduction to PTPs as Phosphate Mitigation

- 4.1 As set out within the Somerset Levels and Moors Phosphate Mitigation Solutions Report<sup>5</sup> (the Solutions Report), 'Package treatment plants (PTPs) can be used to treat wastewater onsite and are normally used where connection to mains sewerage system is not possible.'
- 4.2 The Solutions Report further sets out, 'correctly operated and well-maintained package treatment plants produce a higher quality effluent which may be able to be discharged to surface water or groundwater, as well as to drainage fields' in addition, they include phosphorous stripping measures, reducing the amount of phosphorous present within the effluent. As a result, this plant can be used to achieve nutrient neutrality within new development.
- 4.3 It is important to note however that advice from NE and the EA is clear: **new development must connect to a public foul sewer rather than use a PTP/Septic Tank where it is reasonable to do so.**
- 4.4 This report considers 2 no. different types of PTP: biological PTP systems and chemical dosing PTP systems. In summary, some PTP systems require the use of chemical dosing to achieve a sufficient phosphate reduction to be able to demonstrate the proposed development would be 'phosphate neutral'. Put simply, this involves PTPs being maintained through the use of chemical solutions.
- 4.5 NE and the EA have advised that the use of biological systems would be their preference due to the potential risks posed to the environment by chemical dosing systems as a result of inadequate maintenance and monitoring and the potential need to store chemicals on site. This is discussed further in section 5 of this report.
- 4.6 They have also advised that in many cases a biological PTP would be sufficient to meet the phosphate offset requirement for a new development, and that the existing gap between the two types of system is narrowing in terms of their performance.

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<sup>5</sup> Royal HaskoningDHV (2022) <https://www.somersetwestandtaunton.gov.uk/media/3232/solutions-report.pdf>

- 4.7 It should be noted that the Council do not intend to endorse specific PTP manufacturers/systems and proposals will be considered on a case-by-case basis. Applicants should be aware though that there are various different PTPs on the market including 'intelligent' systems which adopt telemetry that can notify the owners of issues with its operation. Such systems could be considered by applicants in order to assist with maintenance and monitoring.
- 4.8 It should also be noted that the Council is aware of other more strategic drainage solutions related to the provision of wastewater facilities by an Ofwat-appointed sewage undertaker. This is not covered within this report and applicants are advised to get in touch with NE and the LPA to discuss these solutions in more detail prior to submitting their phosphate mitigation solution to the LPA.
- 4.9 This report also does not cover the use of cesspits which are unlikely to be considered to be an appropriate phosphate mitigation solution.

## **5 Principles of PTP use and the Establishing the PTP Hierarchy**

- 5.1 This report addresses both biological PTPs and chemical dosing PTPs.
- 5.2 As set out above, in contrast to biological systems, some PTPs require chemical dosing to achieve nutrient reduction. The timetable for chemical dosing varies from system-to-system, however advice from NE and the EA is that these chemical dosing PTPs require increased maintenance and monitoring and specialist involvement to carry out the dosing in a safe manner. Guidance from NE/EA also highlights the following:
- Applicants should consider whether a chemical dosing system is necessary to achieve nutrient neutrality; and
  - There should be a viable option in terms of securing long term maintenance and liabilities for the PTP.
- 5.3 They have also advised the LPA that they would discourage the use of chemical dosing PTPs in smaller scale/domestic settings.
- 5.4 In light of the above, Officers are proposing that the LPA establishes a hierarchy for the use of PTPs. The hierarchy would establish that applicants must demonstrate that they have considered the use of a biological PTP system and provide suitable evidence to show that the use of a biological PTP would not be sufficient to meet their phosphate mitigation requirement, before the LPA will consider a chemical dosing PTP as a possible mitigation option.
- 5.5 Furthermore, based on advice from the EA and NE, Officers are also recommending that the use of chemical dosing PTPs should not generally be accepted as mitigation for applications for single dwellinghouses or on small-scale applications for other uses (e.g. 1 no. holiday let). This will be determined by the LPA on a case-by-case basis and would be highly dependent on the proposed management and monitoring arrangements the

applicant would put in place. This proposed position is also based on advice received by Royal Haskoning, who prepared the Somerset Solutions Report on behalf of the Somerset LPAs<sup>6</sup>. Paragraph 196 of the Somerset Solutions Report states the following:

*'Alterations to existing PTPs and Septic tanks or installing new tanks to provide additional phosphate dosing could deliver mitigation. This solution is likely to be viable for properties under control of local authorities, registered providers or developers with existing developments in the catchment with management agreements in place.'*

- 5.6 This is discussed in more detail in section 6 below.
- 5.7 In addition, it should be noted that NE has advised that where small-scale thresholds cannot be met, new PTPs generally need drainage areas designed to achieve neutrality. There are several ways this can be achieved e.g. through the addition of small orchards and again, applicants are advised to consider this in consultation with NE prior to submitting their phosphate mitigation solution to the LPA.

## **6 Maintenance and Monitoring Arrangements**

- 6.1 Within Natural England's August 2020 letter it is set out that the 'duration of the effect' i.e. the increased phosphorous output from new affected development 'is typically taken as in perpetuity with the costs of maintaining, monitoring and enforcing mitigation calculated for a minimum of 80 – 125 years.' This means that SWT, as the competent authority under the Habitats Regulations, must ensure that PTPs/septic tanks accepted as phosphate mitigation are managed and monitored in perpetuity.
- 6.2 In all cases, appropriate mechanisms will need to be agreed between the applicant and the LPA to ensure that the PTPs are consistently continuing to meet their phosphate offset requirements to ensure the development is 'phosphate neutral' in perpetuity and Officers propose that this is on a case-by-case basis. Draft template Section 106 agreements for both new and upgraded biological and chemical dosing PTPs are provided in Appendix B of this report for information which sets out the type of information that would need to be secured. These are particularly likely to be required for larger scale development/PTPs that require chemical dosing.
- 6.3 Table 1 summarises the general principles that Officers consider are likely to be established by Section 106 agreements (or other obligations/conditions) by development type and sets out what will be required of applicants as part of their legal obligation. The exact requirements for long term maintenance and monitoring, and the mechanism used to secure this are to be agreed on a case by case basis between the applicant and the LPA.

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<sup>6</sup> Available to view online at: <https://www.somersetwestandtaunton.gov.uk/media/3232/solutions-report.pdf>

**Table 1 - Ensuring the in-perpetuity maintenance and monitoring of new or upgraded PTPs/Septic Tanks used for phosphate mitigation**

<b>For single dwellings/small scale development proposing a Biological PTP</b>	<b>For larger scale development proposing a Biological or Chemical Dosing PTP</b>
<p>Applicant is likely to be required to identify an appropriately competent person to complete yearly monitoring of the efficiency of their PTP to ensure it at least meets the phosphate offsetting requirement agreed at the time the planning application was determined.</p>	<p>Applicant is likely to be required to submit a Management and Maintenance Plan with their planning application detailing specific mitigation and monitoring measures based on the system proposed. The Plan should identify an appropriately competent person to complete yearly monitoring of the efficiency of their PTP to ensure it at least meets the phosphate offsetting requirement.</p>
<p>Officers consider that yearly monitoring should be required. Should the site be sold, the responsibility to complete yearly monitoring rests with the land.</p>	<p>It is likely that the LPA will request that the Management and Maintenance plan includes details of a management company which would have responsibility for the efficient management of the PTP rests. In the case of chemical dosing PTPs, the Management and Maintenance Plan would be likely to require details of the frequency of dosing, safe storage of chemicals and the type of chemical to be used.</p>
<p>Officers recommend that provisions should be put in place to allow the LPA to reserve the right to 'spot check' PTP efficiency at any time.</p>	<p>A resident's management company may not be accepted unless further information around insurance against any company failure is provided.</p>
<p>Officers recommend that duty should be placed on applicants to notify the LPA if the PTP fails 2 no. consecutive tests.</p>	<p>Officers recommend that provisions should be put in place to allow the LPA to reserve the right to 'spot check' PTP efficiency at any time.</p>
<p>An obligation/condition should be put in place to agree that if the PTP reaches the end of its operational life it is to be replaced with a new PTP with at least the same level of efficiency, or an alternative form of phosphate mitigation is required.</p>	<p>Officers recommend that duty should be placed on applicants to notify the LPA if the PTP fails 2 no. consecutive tests.</p> <p>An obligation/condition should be put in place to agree that if the PTP reaches the end of its operational life it is to be replaced with a new PTP with at least</p>

	the same level of efficiency, or an alternative form of phosphate mitigation is required.
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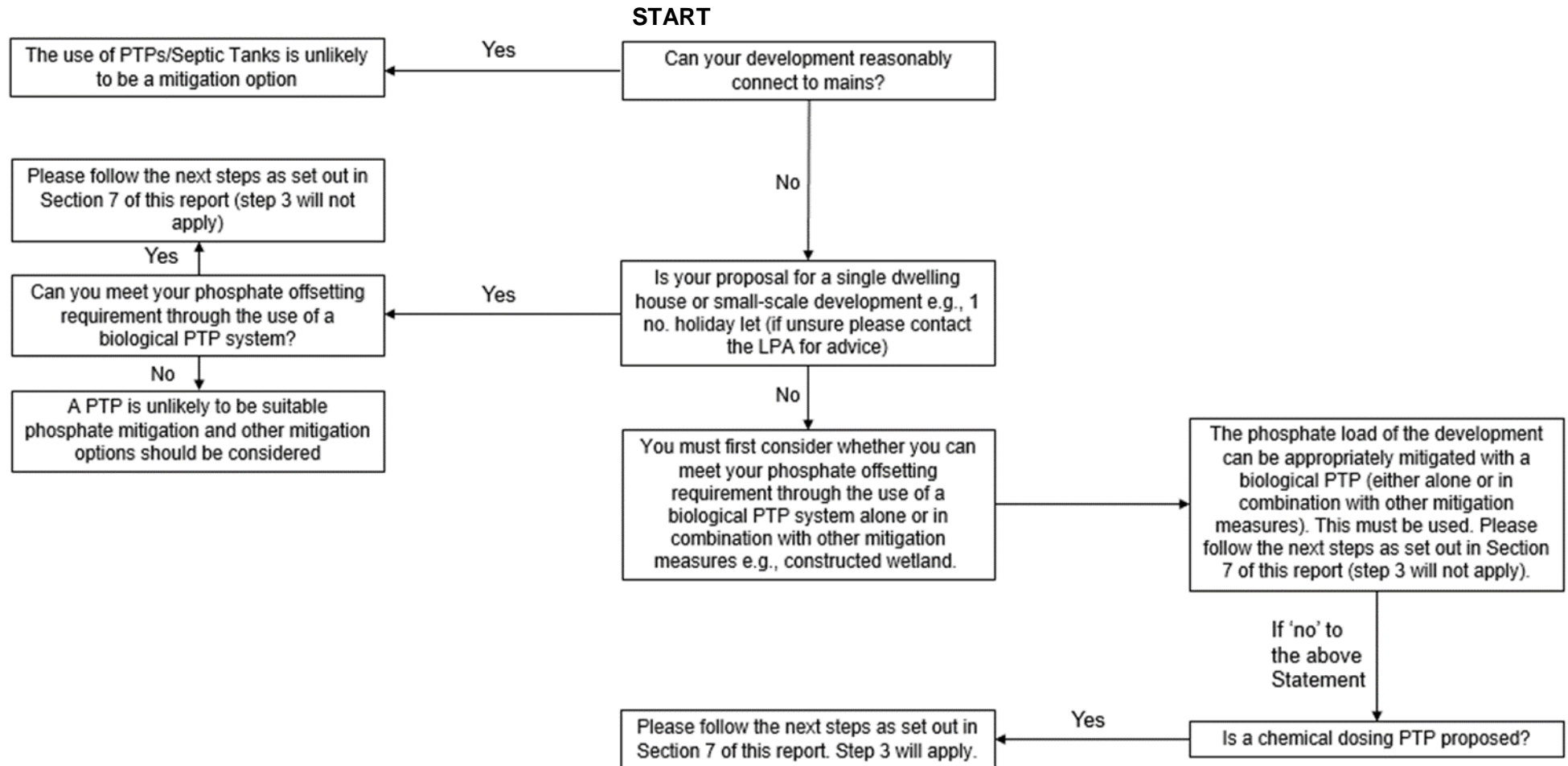
## 7 Next Steps

7.1 Should applicant's wish to pursue the use of PTPs/septic tank upgrades as phosphate mitigation in line with above requirements, the following will be required (See **Figure 1** for additional support):

1. Clear evidence to demonstrate why a mains drainage connection would not be possible.
2. Submission of a Nutrient Neutrality Assessment as part of the planning application detailing information on the chosen PTP/septic tank system and appropriate information (including phosphate calculations using the Somerset Phosphate Budget Calculator) to demonstrate that this would provide the phosphate offset required to ensure that the proposed development would be nutrient neutral.
3. If a chemical dosing PTP is proposed, as part of their Nutrient Neutrality Assessment, the applicant must submit an 'options assessment' to include appropriate evidence as to why a biological PTP could not be used.
4. All applications proposing PTPs as phosphate mitigation (biological and chemical dosing) will require a Habitats Regulations Assessment, proceeding to Appropriate Assessment to demonstrate that there would be no significant effects on the Somerset Levels and Moors Ramsar site as a result of the proposed development. This will require sign off from Natural England. It should be noted that in many cases the process can be expedited in circumstances where applicant's submit a 'Shadow Habitats Regulations Assessment' or 'sHRA' as part of their mitigation proposal.
5. A Maintenance and Monitoring Plan should be submitted as part of the planning application. The Maintenance and Monitoring Plan should set out arrangements for ensuring the development remains phosphate neutral in perpetuity through the use of a PTP/septic tank. Adherence to the Maintenance and Monitoring Plan will be secured to any grant of planning consent.
6. The Nutrient Neutrality Assessment, sHRA (if applicable) will be reviewed by the LPA (in consultation with legal services and Natural England) who will then advise further how the application should progress and how long term maintenance and monitoring should be secured.



Figure 1 – Flow diagram for PTPs/septic tank upgrades as phosphate mitigation



## **8 Conclusion**

8.1 In conclusion, for the reasons set out in this report, the recommendations to the Phosphates Planning Sub-Committee are:

- a. To agree that the use of new PTPs and the upgrade of existing poorly performing PTPs and septic tanks as phosphate mitigation is acceptable in principle.
- b. To agree that the use of biological systems in PTPs should be preferred over chemical dosing in PTPs which should only be used as a last resort. Applicants must demonstrate that they have considered the use of a biological system and should show that the use of a biological PTP would not be sufficient to meet their phosphate mitigation requirement for the development proposed, before the LPA will consider a chemical dosing PTP as a possible mitigation option.
- b. To delegate to the Assistant Director Strategic Place and Planning in consultation with the Chair of the Phosphates Planning Sub Committee, clarifications and amendments to processes which govern the long term maintenance and management of PTPs/Septic Tanks which will be agreed on a case by case basis between the LPA and the applicant.

## **9 Implications of this Report**

### **Links to Corporate Strategy**

The Corporate Strategy and its Key Objectives are set out on the SWT website at: <https://www.somersetwestandtaunton.gov.uk/your-council/corporate-strategy/>

As previously reported, this interim programme has links to various corporate priorities. In particular the Council's ambition to:

#### *Our Environment and Economy*

- Shape and protect our built and natural environment.
- Encourage wealth creation and economic growth.
- Support town centres.

#### *Homes and Communities*

- Increasing the number of affordable and social homes.

#### *An Enterprising Council*

- Ensure our land and property assets support the achievement of the council's objectives.

### **Finance/Resource Implications**

There will be finance/resource implications associated within ongoing monitoring of the mitigation. Where appropriate, costs required to monitor the assets/liabilities would be included are would be included within legal obligations attached to grants of planning consent.

## **Legal Implications**

The legal duties imposed upon the Local Planning Authority by the Habitat Regulations and the implications of accepting the Officers' recommendations are set out in the body of this report.

## **Climate and Sustainability Implications**

As previously reported, 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 interim programme such as carbon sequestration, improved and enriched flora and fauna and so help deliver carbon reduction targets.

## **Safeguarding and/or Community Safety Implications**

None related directly to this report.

## **Equality and Diversity Implications**

The Public Sector Equality Duty has the following aims which the authority must have due regard to:

- Eliminate discrimination, harassment, victimisation.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

None of the above relate directly to this report.

## **Social Value Implications**

At this stage we have not carried out a detailed analysis in this area. In line with our corporate priorities, as set out above. SWT is committed to providing much need affordable and social housing.

## **Partnership Implications**

As set out in the main body of this report, the Advice Note provided at Appendix A has been prepared jointly by the Somerset Authorities, Natural England and the Environment Agency. In addition, SWT Council has consulted the other Somerset Authorities, NE and EA on the contents of this report.

Liaison is also ongoing with local developers affected by this issue

## **Health and Wellbeing Implications**

By facilitating the delivery of housing and other affected development types we will contribute to the provision of infrastructure, affordable housing and homes that are good for our health and a local economy that provides opportunities for all.

### **Asset Management Implications**

Responsibility for 'spot checks' of PTPs and monitoring Section 106 agreements will rest with the Local Planning Authority however where appropriate, Section 106 agreements would ensure that responsibility for the asset rests with the landowner or an established management company.

### **Data Protection Implications**

None related directly to this report.

### **Consultation Implications**

None related directly to this report.

## Background Papers

[Full Council Report of 5 October 2021](#)

[Progress on the Interim Strategy and determination of planning applications held in abeyance: 24 February 2022](#)

[Somerset Levels and Moors Phosphate Mitigation Solutions Report: March 2022](#)

## List of Appendices

<b>Appendix A</b>	Draft Template Section 106 Agreement for a single dwelling (for approval)
<b>Appendix B</b>	Draft Template Section 106 Agreement for larger scale development (over 2 dwellings)

**Appendix A - Draft Template Section 106 Agreement for a single dwelling (for information)**

**THIS DEED of AGREEMENT** is made the

day of

2022

**PARTIES:**

- (1) **SOMERSET WEST AND TAUNTON COUNCIL** of The Deane House, Belvedere Road, Taunton, Somerset TA1 1HE (**“the Council”**)
- (2) [.....] (Co. Regn. No. [.....]) whose registered office is situated at [.....] (**“the Owner”**)

**RECITALS:**

- 1 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Site is situated
- 2 The Owner is the registered freehold proprietor of the Site with title absolute at the Land Registry with Title Number [.....]
- 3 The Application was submitted to the Council by [the Owner] on [.....] and validated on [.....].
- 4 Pursuant to its statutory duty under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 the Council has undertaken an assessment of the Development and has concluded that the Development is likely to have a significant effect upon the Ramsar Site as (in the absence of mitigation) the Development will give rise to additional phosphates within the catchment of the Ramsar Site
- 5 The Owner proposes to install the PTP to serve the Development and thereafter maintain the PTP as necessary for the duration that the Development is in use and Occupation
- 6 Pursuant to its statutory duty under Regulation 63 The Conservation of Habitats and Species Regulations 2017 to undertake an appropriate assessment of the implications of the Development the Council is satisfied beyond reasonable doubt that the installation of the PTP to serve the Development and its continued maintenance in accordance with the requirements of this Agreement will ensure that the Development is phosphate neutral and thus will not result adversely affect the integrity of the Ramsar Site
- 7 The Council has resolved to grant the Permission subject to conditions and the completion of a Section 106 Agreement to secure various planning obligations
- 8 This Agreement has been entered into by the parties hereto to secure the planning obligations set out herein

**NOW THIS DEED WITNESSES AS FOLLOWS:**

1 **DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the following meanings:

- 1.1 “**1990 Act**” means the Town and Country Planning Act 1990 and all subsequent statutory amendments to it
- 1.2 “**Application**” means the [full/outline] application for the [.....*description of development*.....] on the Site and accorded Council reference number [.....]
- 1.3 “**Commencement of Development**” means the date on which a material operation as defined in Section 56(4) of the 1990 Act shall be commenced in respect of the development provided that it shall not include operations in connection with site investigation demolition site clearance archaeological work and the erection of hoarding or other means of enclosure for the purpose of securing the site
- 1.4 “**Development**” means the development of the Site in accordance with the Application and the Permission
- 1.5 “**Dwelling**” means the dwelling to be constructed on the Site pursuant to the Permission
- 1.6 “**Indexation**” means the Building Cost Information Service General Building Cost Index of the Royal Institution of Chartered Surveyors (or in the event of the said index being discontinued the nearest equivalent index)
- 1.7 “**Interest**” means interest at 8% above the base lending rate of National Westminster Bank plc from time to time
- 1.8 “**Monitoring Fee**” means £[.....] Index Linked to be paid by the Owner to the Council as a contribution towards the cost of monitoring compliance with this Agreement
- 1.9 “**Occupation**” means occupation of the Dwelling for the purposes permitted by the Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the phrase “**Occupy**” shall be construed accordingly
- 1.10 “**Permission**” means planning permission to be issued for the Development pursuant to the Application
- 1.11 “**Phosphate Offsetting Requirement**” means [.....*offsetting figure*.....] being the amount of phosphate which is required to be mitigated to ensure the Development remains phosphate neutral
- 1.12 “**Plan**” means the plan attached to this Agreement
- 1.13 “**PTP**” means a biological package sewage treatment plant details of the design specification and model of which are appended hereto at Appendix 1 (or such other design, specification and model which may be agreed in writing



with the Council) and which shall be installed and operated in accordance with the requirements of this Agreement

- 1.14 **"PTP Land"** means the land on which the PTP is to be installed as shown on Drawing No. [.....] annexed hereto
- 1.15 **"Ramsar Site"** means the Somerset Levels and Moors Ramsar Site
- 1.16 **"Site"** means the land at [.....*site address*.....] Somerset against which this Agreement may be enforced as shown edged red for identification purposes on the Plan
- 1.17 **"Working Days"** means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday and including the days between Christmas Day and New Years Day and **"Working Days"** shall be construed accordingly

## 2 **CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it
- 2.5 Unless the context otherwise requires, references to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.6 The headings are for reference only and shall not affect construction.

## **LEGAL BASIS**

- 3 This Agreement is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Owner and its successors in title to each and every part of the Site.

- 4 The covenants on the part of the Owner contained in the Schedule hereto are planning obligations for the purposes of Section 106 of the 1990 Act which are enforceable by the Council
- 5 This Agreement is also entered into pursuant to Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling legislation.

#### **CONDITIONALITY**

- 6 This Agreement is conditional upon the grant of the Permission

#### **COVENANTS**

- 7 The Owner covenants with the Council so as to bind the Site as set out in the Schedule hereto

#### **MISCELLANEOUS**

- 8 This Agreement shall be registrable as a local land charge by the Council
- 9 This Agreement shall cease to have effect if the Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 11 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission or a further planning permission granted pursuant to Section 73 of the 1990 Act in relation to the Permission) granted (whether or not on appeal) after the date of this Agreement.
- 12 If and to the extent that the Permission or any condition attached to the Permission shall be varied or amended then any covenant in this Agreement which is inconsistent with the Permission or condition as so varied or amended shall be deemed to have been discharged by virtue of such variation or amendment of the Permission or condition
- 13 Any provisions in this Agreement referring to the consent or approval of the Council are to be construed as imposing an obligation on the Council not to refuse any such consent or approval unreasonably or to delay in the provision of such consent or approval and to act reasonably
- 14 The Council shall upon receipt of a written request from the Owner and without unreasonable delay at any time after the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and thereafter note all related entries in the Register of Local Land Charges
- 15 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and its terms shall not be enforceable by or against anyone other than the Owner and the Council and any person deriving title from them
- 16 This Agreement shall not be binding on nor enforceable against any statutory undertaker or other person who acquires any interest in the Site it for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;

- 17 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation preparation and execution completion and registration of this Agreement

#### **WAIVER**

- 18 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

#### **CHANGE IN OWNERSHIP**

- 19 The Owner agrees to give the Council written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) within 15 Working Days of the said change in ownership

#### **SETTLEMENT OF DISPUTES**

- 20 Any dispute arising out of the provisions of this Agreement may be referred with the agreement of all parties to that dispute to a person having appropriate qualifications and experience in such matters ("**the Expert**") for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Agreement by the Courts and/or in accordance with Section 106(6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106(6) of the 1990 Act for the resolution of any matter arising from the Agreement
- 21 The Expert shall be appointed jointly by the relevant parties to the dispute ("**the Relevant Parties**") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties
- 22 The decision of the Expert shall save in the case of manifest error or fraud be final and binding upon the Relevant Parties and the following provisions shall apply:
- 22.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct
- 22.2 the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision
- 22.3 the Expert shall be entitled to obtain opinions from others if he so wishes
- 22.4 the Expert shall make his decision within the range of any representations made by the Relevant Parties themselves
- 22.5 the Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment

### **INDEXATION, INTEREST AND VAT**

- 23 Any sum to be paid to the Council hereunder shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is due to be paid pursuant to this Deed.
- 24 If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.
- 25 All monies paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

### **JURISDICTION**

- 26 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England

### **DELIVERY**

- 27 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**IN WITNESS** whereof the Owner and the Council have executed this Agreement as a Deed on the day and year first before written

DRAFT

**Appendix B - Draft Template Section 106 Agreement for larger scale development (over 2 dwellings) (for information)**

**THIS DEED of AGREEMENT** is made the \_\_\_\_\_ day of  
2022

**PARTIES:**

- (3) **SOMERSET WEST AND TAUNTON COUNCIL** of The Deane House, Belvedere Road, Taunton, Somerset TA1 1HE (**“the Council”**)
- (4) [.....] (Co. Regn. No. [.....]) whose registered office is situate at [.....] (**“the Owner”**)

**RECITALS:**

- 28 The Council is the Local Planning Authority for the purposes of the 1990 Act for the area in which the Site is situated
- 29 The Owner is the registered freehold proprietor of the Site with title absolute at the Land Registry with Title Number [.....]
- 30 The Application was submitted to the Council by [the Owner] on [.....] and validated on [.....].
- 31 Pursuant to its statutory duty under Regulation 63 of The Conservation of Habitats and Species Regulations 2017 the Council has undertaken an assessment of the Development and has concluded that the Development is likely to have a significant effect upon the Ramsar Site as (in the absence of mitigation) the Development will give rise to additional phosphates within the catchment of the Ramsar Site
- 32 The Owner proposes to install the PTP to serve the Development and thereafter to procure the maintenance of the PTP as necessary for the duration that the Development is in use and Occupation through the Management Company
- 33 Pursuant to its statutory duty under Regulation 63 The Conservation of Habitats and Species Regulations 2017 to undertake an appropriate assessment of the implications of the Development the Council is satisfied beyond reasonable doubt that the installation of the PTP to serve the Development and its continued maintenance in accordance with the requirements of this Agreement will ensure that the Development is phosphate neutral and thus will not result adversely affect the integrity of the Ramsar Site
- 34 The Council has resolved to grant the Permission subject to conditions and the completion of a Section 106 Agreement to secure various planning obligations

35 This Agreement has been entered into by the parties hereto to secure the planning obligations set out herein

**NOW THIS DEED WITNESSES AS FOLLOWS:**

36 **DEFINITIONS**

For the purposes of this Agreement the following expressions shall have the following meanings:

- 36.1 **“1990 Act”** means the Town and Country Planning Act 1990 and all subsequent statutory amendments to it
- 36.2 **“Application”** means the [full/outline] application for the [.....*description of development*.....] on the Site and accorded Council reference number [.....]
- 36.3 **“Commencement of Development”** means the date on which a material operation as defined in Section 56(4) of the 1990 Act shall be commenced in respect of the development provided that it shall not include operations in connection with site investigation demolition site clearance archaeological work and the erection of hoarding or other means of enclosure for the purpose of securing the site
- 36.4 **“Development”** means the development of the Site in accordance with the Application and the Permission
- 36.5 **“Dispose”** means the disposal of a Dwelling pursuant to a transfer of the freehold interest in the said Dwelling or the grant of a leasehold interest in the said Dwelling of more than 7 years and **“Disposed”** shall be construed accordingly
- 36.6 **“Disponee”** means a person to whom a Dwelling is Disposed.
- 36.7 **“Dwelling”** means each dwelling to be constructed on the Site pursuant to the Permission and **“Dwellings”** shall be construed accordingly;
- 36.8 **“Indexation”** means the Building Cost Information Service General Building Cost Index of the Royal Institution of Chartered Surveyors (or in the event of the said index being discontinued the nearest equivalent index)
- 36.9 **“Interest”** means interest at 8% above the base lending rate of National Westminster Bank plc from time to time
- 36.10 **“Management Company”** means a management company to be set up or appointed by the Owner in accordance with the Management Company Details in order to manage and maintain the PTP

- 36.11 **“Management Company Details”** means the details of the Management Company which shall include the name and registered address of the Management Company, details of the person to contact at the Management Company and details of how the Management Company shall be constituted and funded including who shall be its members and evidence of its working capital and surety/insurance arrangements in the event the Management Company ceases to exist or is in default of its obligations to maintain the PTP
- 36.12 **“Nutrient Neutrality Measures”** means the scheme of measures set out in the Nutrient Neutrality Measures dated [ ] and as prepared by [ ] as appended hereto at Appendix 1
- 36.13 **“Monitoring Fee”** means £[.....] Index Linked to be paid by the Owner to the Council as a contribution towards the cost of monitoring compliance with this Agreement
- 36.14 **“Occupation”** means occupation of the Dwelling for the purposes permitted by the Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the phrase **“Occupy”** shall be construed accordingly
- 36.15 **“Permission”** means planning permission to be issued for the Development pursuant to the Application
- 36.16 **“Phosphate Offsetting Requirement”** means [.....*offsetting figure*.....] being the amount of phosphate which is required to be mitigated to ensure the Development remains phosphate neutral
- 36.17 **“Plan”** means the plan attached to this Agreement
- 36.18 **“PTP”** means a [biological/chemical dosing] package sewage treatment plant details of the design specification and model of which are appended hereto at Appendix 2 (or such other design, specification and model which may be agreed in writing with the Council) and which shall be installed and operated in accordance with the requirements of this Agreement
- 36.19 **“PTP Land”** means the land on which the PTP is to be installed as shown on Drawing No. [.....] annexed hereto
- 36.20 **“PTP Management and Maintenance Plan”** means details of the arrangements to secure the long-term management and maintenance of the PTP (including the Management Company Details) and arrangement for renewing and replacing the PTP with a new package treatment plant with at least the same level of efficiency as the PTP
- 36.21 **“Ramsar Site”** means the Somerset Levels and Moors Ramsar Site



36.22 **"Site"** means the land at [.....*site address*.....] Somerset against which this Agreement may be enforced as shown edged red for identification purposes on the Plan

36.23 **"Working Days"** means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory bank holiday and including the days between Christmas Day and New Years Day and **"Working Days"** shall be construed accordingly

37 **CONSTRUCTION OF THIS DEED**

37.1 Where in this Agreement reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Agreement.

37.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

37.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.

37.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

37.5 Unless the context otherwise requires, references to any party to this Agreement shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its statutory functions.

37.6 The headings are for reference only and shall not affect construction.

**LEGAL BASIS**

38 This Agreement is made pursuant to Section 106 of the 1990 Act to the intent that it shall bind the Owner and its successors in title to each and every part of the Site.

39 The covenants on the part of the Owner contained in the Schedule hereto are planning obligations for the purposes of Section 106 of the 1990 Act which are enforceable by the Council

40 This Agreement is also entered into pursuant to Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling legislation.

## **CONDITIONALITY**

41 This Agreement is conditional upon the grant of the Permission

## **COVENANTS**

42 The Owner covenants with the Council so as to bind the Site as set out in the Schedule hereto

## **MISCELLANEOUS**

43 This Agreement shall be registrable as a local land charge by the Council

44 This Agreement shall cease to have effect if the Permission is quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development

45 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

46 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission or a further planning permission granted pursuant to Section 73 of the 1990 Act in relation to the Permission) granted (whether or not on appeal) after the date of this Agreement.

47 If and to the extent that the Permission or any condition attached to the Permission shall be varied or amended then any covenant in this Agreement which is inconsistent with the Permission or condition as so varied or amended shall be deemed to have been discharged by virtue of such variation or amendment of the Permission or condition

48 Any provisions in this Agreement referring to the consent or approval of the Council are to be construed as imposing an obligation on the Council not to refuse any such consent or approval unreasonably or to delay in the provision of such consent or approval and to act reasonably

49 The Council shall upon receipt of a written request from the Owner and without unreasonable delay at any time after the planning obligations under this Agreement have been fulfilled issue written confirmation thereof and thereafter note all related entries in the Register of Local Land Charges

50 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and its terms shall not be enforceable by or against anyone other than the Owner and the Council and any person deriving title from them

- 51 This Agreement shall not be binding on nor enforceable against any statutory undertaker or other person who acquires any interest in the Site it for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
- 52 The Owner shall pay to the Council on completion of this Agreement the reasonable legal costs of the Council incurred in the negotiation preparation and execution completion and registration of this Agreement

#### **WAIVER**

- 53 No waiver (whether expressed or implied) by the Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council and the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

#### **CHANGE IN OWNERSHIP**

- 54 The Owner agrees to give the Council written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) within 15 Working Days of the said change in ownership PROVIDED THAT this clause shall not apply to individual disposals of Dwellings to private purchasers or the creation of a legal charge over any part of the Site.

#### **SETTLEMENT OF DISPUTES**

- 55 Any dispute arising out of the provisions of this Agreement may be referred with the agreement of all parties to that dispute to a person having appropriate qualifications and experience in such matters ("**the Expert**") for the determination of that dispute PROVIDED THAT the provisions of this clause shall be without prejudice to the right of any party to seek the resolution of any matter relating to the Agreement by the Courts and/or in accordance with Section 106(6) of the 1990 Act and the referral of any matter to the Expert shall not prejudice prevent or delay the recourse of any party to the Courts or to the provisions of Section 106(6) of the 1990 Act for the resolution of any matter arising from the Agreement
- 56 The Expert shall be appointed jointly by the relevant parties to the dispute ("**the Relevant Parties**") or in default of agreement by a person nominated by the President for the time being of the Royal Institution of Chartered Surveyors on the application of any of the parties

57 The decision of the Expert shall save in the case of manifest error or fraud be final and binding upon the Relevant Parties and the following provisions shall apply:

57.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct

57.2 the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision

57.3 the Expert shall be entitled to obtain opinions from others if he so wishes

57.4 the Expert shall make his decision within the range of any representations made by the Relevant Parties themselves

57.5 the Expert shall comply with any time limit or other directions agreed by the Relevant Parties on or before his appointment

#### **INDEXATION, INTEREST AND VAT**

58 Any sum to be paid to the Council hereunder shall be increased by an amount equivalent to the increase in the Index from the date of this Deed until the date on which such sum is due to be paid pursuant to this Deed.

59 If any payment due under this Deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

60 All monies paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

#### **JURISDICTION**

61 This Agreement is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England

#### **DELIVERY**

62 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated.

**IN WITNESS** whereof the Owner and the Council have executed this Agreement as a Deed on the day and year first before written

**SCHEDULE**  
**Package Treatment Plant Obligations**

The Owner covenants as follows:

1. To pay the Monitoring Fee Index Linked to the Council prior to Commencement of Development
2. Not to Occupy or cause or permit the Occupation of any of the Dwellings unless and until:
  - a. the PTP has been installed to the reasonable satisfaction of the Council and is operational;
  - b. the Management Company has been established or appointed in accordance with the Management Company Details; and
  - c. ownership of the PTP Land and the PTP has been transferred to the Management Company
3. From the date of installation of the PTP and at all times thereafter the Owner shall:
  - a. procure the maintenance and monitoring of the operation of the PTP in perpetuity in accordance with the PTP Management and Maintenance Plan and the Nutrient Neutrality Measures by an appropriately qualified and competent person or body to be approved in writing by the Council prior to Occupation of any of the Dwellings (**'Competent Person'**) and not appoint any alternative Competent Person without the first obtaining the written approval of the Council;
  - b. keep up-to-date record of all maintenance and monitoring undertaken to the PTP by the Owner and/or Competent Person AND make such record available to the Council on request; and
  - c. procure yearly monitoring by the Competent Person of the efficiency of the PTP to ensure that its operation at least meets the Phosphate Offsetting Requirement (**'Monitoring Tests'**)
  - d. in the event that the PTP is shown to be failing to meet the Phosphate Offsetting Requirement in two consecutive Monitoring Tests report the same to the Council within 5 Working Days of the Owner becoming aware of the same
  - e. in the circumstances described in sub-paragraph (d) above, the Owner shall use their best endeavours to remedy the said failure within 20 Working Days of becoming aware of the same

- f. renew or replace the PTP at the end of its operational life in accordance with the PTP Management and Maintenance Plan

PROVIDED THAT once the PTP has been transferred to the Management Company, these obligations shall be enforced against the Management Company as successor in title to the Owner

- 4. Without prejudice to the Council's statutory powers of entry contained in the 1990 Act, the Owner hereby agrees that the Council may enter the Site on giving the Owner not less than twenty-one days' notice in writing of their intention to do so for the purpose of ascertaining whether there has been compliance with the planning obligations contained in this Schedule (including but not limited to undertaking a monitoring test of the PTP to ensure that its operation is meeting the Phosphate Offsetting Requirement)
- 5. [The Owner shall procure that there is included in each deed or lease pursuant to which each and every Dwelling is Disposed:
  - a. a requirement that each Disponee of a Dwelling shall become a member of the Management Company and on the transfer of or devolution of a Dwelling to ensure that the Disponee becomes a member of the Management Company; and
  - b. a requirement that the Management Company and its successors in title will maintain the PTP in good repair and condition to the reasonable satisfaction of the Council in perpetuity]

THE COMMON SEAL of )  
**SOMERSET WEST AND TAUNTON COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

EXECUTED AS A DEED  
by