
Progress Report: Phosphates and work undertaken to achieve nutrient neutral development.

Executive Member(s): Lead Member for Economy, Planning and Assets

Local Member(s) and Division: All within the affected river catchment areas of the Tone, Parrett, and Brue

Lead Officer: Alison Blom-Cooper: Assistant Director Strategic Place and Planning

Author: Paul Browning: Principal Planning Policy Officer

Contact Details: Email: alison.blomcooper@somerset.gov.uk
paul.browning@somerset.gov.uk

Summary / Background

1. The purpose of this report is to update the Strategic Planning Committee on work undertaken to date across the new Authority area, to achieve nutrient neutral development whilst also supporting housing growth.
2. This report is for information. It focuses on recent work undertaken within the three river catchments of the River Tone, Brue and Parrett which feed into the Somerset Levels and Moors. The report also provides details about the Council's recent funding bid for £10m to the Government's Nutrient Mitigation Fund. A decision on whether the bid is successful is awaited.
3. Somerset continues to be at the forefront nationally in delivering phosphate mitigation solutions to 'unlock' nutrient-neutral development.

Recommendations

4. That the Strategic Planning Committee notes
 - a. The content of this report.
 - b. The activity across the 3 affected river catchments which is now starting to unlock the delivery of housing and affected development which has been on hold due to the need to ensure nutrient neutrality.

- c. The Council's recent funding bid to the Government's Nutrient Mitigation Fund.

Purpose of the Report

- 4. The Council's constitution agreed on 22 February 2023 set out the remit of the Strategic Planning Committee. This included:
 - a. to have oversight of the programme and delivery of nutrient mitigation projects to support a series of interim measures to offset additional phosphates resulting from affected new developments within the River catchment areas (i.e., Rivers Tone, Parrett, and Brue) affecting the Somerset Levels and Moors Ramsar site and River Axe Special Area of Conservation.
 - b. To have oversight of the monitoring of the performance of the above interim projects once delivered;
 - c. Noting that there is an operational phosphate credit scheme for the River Tone catchment, agree the rollout of criteria to be used for the allocation of any phosphate credits generated from further Council led interim projects and the creation of a legally robust and transparent process for such allocation (including the terms of any S106 obligations with developers/landowners);
 - d. To receive technical reports and updates on the strategic solution to the nutrient enrichment issue.
- 5. The purpose of this report therefore is to provide the Strategic Planning Committee with an update on the work undertaken in relation to nutrient neutrality on a Somerset wide basis in the three river catchments of the River Tone, Brue and Parrett which feed into the Somerset Levels and Moors Ramsar site. The geographical extent of the affected river catchment areas is shown in Appendix A.
- 6. Across Somerset, the Council as the Local Planning Authority (LPA) is starting to determine affected planning applications which were on hold due to the need to provide phosphate mitigation.
- 7. The report also provides details of the Council's recent funding bid to the Government's Nutrient Mitigation Fund. The letter to local MPs seeking their support for the bid is attached as Appendix B.

Background to Report

8. On 17 August 2020, all the LPAs in Somerset¹ received an advice note from Natural England (NE) concerning the unacceptable levels of phosphates present in the Somerset Levels and Moors Ramsar site. The letter was also sent to Dorset Council as the River Parrett catchment area extends beyond Somerset into the environs of Sherborne.
9. As a result of a European Court judgment known as Dutch N, the Somerset Authorities were advised, as Competent Authorities under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), that they must not permit any 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 (either alone or in combination with other plans or projects) within the hydrological catchment of the Somerset Levels and Moors Ramsar Site.
10. On 16 March 2022, Natural England issued a letter in relation to the unfavourable condition of the River Axe SAC which also affects part of the Somerset area around the Blackdown Hills and Chard. Officers are working with colleagues in Devon and Dorset on this, but it is causing less wide-ranging issues in Somerset.

Update on Progress to Date

Across Somerset:

11. Officers gave a phosphate briefing and an overview of the activities of the former LPAs to all Members on the new Somerset Council on the 25 May 2023.

Progress on updating the Phosphate Budget Calculator

12. The current Somerset Phosphate Budget Calculator was developed and published in early 2021 to enable applicants to calculate the quantum of phosphate mitigation required to support their proposed development. The Somerset Calculator uses bespoke local data and Natural England have agreed the use this calculator rather than using the generic calculator that was subsequently developed by Natural England for national use.

¹ i.e. the former Mendip District Council, Sedgemoor District Council, South Somerset Council and Somerset West and Taunton Council

13. At the time of drafting this report, work with partners is nearing completion to develop an update to the Somerset Phosphate Budget Calculator. When completed it will be made available on the Council phosphates webpage. The Calculator will also be accompanied by a video which explains how to use it. A non-technical summary of the changes made to the data sets will also be made available on the website, the key changes of which are:
- a. New Water Usage data.
 - b. Updates to discharge concentrations limits (permitted and unpermitted sites).
 - c. Urban Land Runoff Coefficients (which should assist phosphate mitigation on brownfield sites).
 - d. Local Rain data.
 - e. Various anticipated changes associated with the Levelling up and Regeneration Bill (currently at Committee Stage in the House of Lords as of March 2023).
 - f. A new GIS interface which has been jointly produced with Wessex Water.
14. Key partners involved in updating the Calculator include consultants Royal Haskoning, and officers from Wessex Water, Natural England (NE) and the Environment Agency (EA).

Regular Meetings with Key Stakeholders

15. Since the receipt of the NE advice letter of 17 August 2020, Planning Officers from SWT have had regular monthly meetings with the EA, NE, and Wessex Water officials. Since February 2023, these meetings have included Officers from all of the area planning teams and Dorset Council. Officers also hold regular agents / developer forum meetings, the next scheduled event is on the 27 July 2023. Audio recordings of such event are also circulated to all those invited.

Lobbying Central Government

16. Since the receipt of the NE advice letter of the 17 August 2020, working with the other Somerset Authorities, Officers, and Members have lobbied central government on a range of issues. The various letters that the Council have sent cover a range of matters, such as the funding and delivery of interim mitigation solutions, 5 Year Housing Land Supply, and the effect of Small and Medium-sized Enterprises (SMEs). Letters to Ministers and their replies are available on the Council website at: <https://www.somerset.gov.uk/planning-buildings-and->

land/phosphates-on-the-somerset-levels-and-moors-ramsar-site/phosphates-templates-and-guidance/

Nutrient Neutrality in the High Court: Jurston Farm, Wellington

17. In what has become a national test case, on the 30 June 2023, the High Court dismissed a challenge by CG Fry to the operation of the Habitats Regulations. The judgement is available at [High Court Judgment Template \(landmarkchambers.co.uk\)](https://www.landmarkchambers.co.uk/high-court-judgment-template/)
18. The issue arose because, in 2015, planning permission had been granted in outline for up to 650 homes at Jurston Farm, Wellington. In June 2020, reserved matters approval was given for a number of aspects of that scheme, subject to further conditions. However, in August 2020, as a result of the advice note from Natural England issued to all the Somerset councils about the risk of water discharge from new development increasing nutrient loads, causing an adverse effect on the Somerset Levels and Moors Ramsar site the Council has taken the view that it could not discharge the outstanding conditions. This is because the Council considered that because likely significant effects of the entire project could not be ruled-out, an appropriate assessment of the entire project under the Regulations was required. The Inspector agreed and refused the appeal to discharge the outstanding pre-commencement conditions.
19. The appellants appealed to the High Court and the latest judgment confirms the Council's current position that Appropriate Assessment applies at the reserved matters and discharge of conditions stage and that the scope of such an assessment is the whole project and not just the condition under consideration. The applicants are appealing this decision and on 6 July 2023 were given leave to apply direct to the Supreme Court to hear their appeal. We wait to hear whether or not the Supreme Court will accept their application – if not the next stage will be a substantive appeal hearing in the Court of Appeal.

Creation of phosphate (P) credits

20. As the LPA, there is no statutory requirement for the Council to intervene to address the phosphates issue. Like other planning obligations (e.g. education and transport contributions), addressing the requirement for affected development to be nutrient neutral is a planning obligation that the applicant has to address.
21. Due to the variety of challenges presented by the phosphate issue (for example, the impact on housing land supply and the effect on SMEs) the former Councils of

Somerset resolved to take proactive action in order to try and find appropriate solutions.

22. Somerset is one of only a handful of Councils across the country to have its own operational nutrient credit scheme. This is in place in the River Tone catchment area, as phosphate mitigation solutions must be carried out on a catchment-by-catchment basis. The decision to establish a River Tone P-credit scheme was made by the former Somerset West and Taunton (SWT) Phosphates Planning Sub-Committee through an 'Interim Phosphates Mitigation Strategy' (the Interim Strategy). Further information on this is available on the phosphates' webpage.
23. The Interim Strategy agreed that the Council would progress phosphate mitigation projects to generate P-credits which could then be acquired by affected developments. This included projects such as the retrofitting of housing stock with water efficiency measures and working in partnership with the private sector on fallowing land projects prior to wetland creation.
24. In the River Brue and Parrett catchment areas, the Council is also at the forefront of implementing third-party credits schemes, which are discussed further below.
25. To note, 1 P-Credit = 1 kg of phosphates removed per year and is not equivalent to 1 dwelling.

River catchment area updates

River Tone

26. This catchment is within the Somerset West area with the towns of Taunton and Wellington and its environs impacted.
27. At the time of drafting this report, approximately 110 planning applications are held in abeyance seeking a phosphate solution. This includes 30 applications for major development, 6 applications for the discharge of conditions and 6 applications for approval of reserved matters. Overall, this equates to circa 3,000 dwellings of which approximately 1,000 are linked to applications for the discharge of conditions/approval of reserved matters.
28. On-site solutions coming forward by developers including on-site fallowing (including Comeytrove) wetland proposals (including Staplegrove West), woodland planting and upgrading of poorly performing septic tanks and Package Treatment Plants (PTPs).

29. As set out above, there is currently a Council-led P-credit scheme in operation within the River Tone catchment, known as The River Tone P-credit Scheme. The River Tone P-credit scheme is currently focused on planning applications held in abeyance as at the 30 March 2023. Reflecting committee resolutions of the former SWT Council Planning Phosphates Sub-Committee which agreed the criteria for prioritising the allocation of P credits in February 2022² these have been made available in accordance with the following criteria:

- a. **Round 1:** Minor applications for Use Class Order C3 housing development (or traveller sites) that can be implemented within 3 months of the grant of planning permission (December 2022).
- b. **Round 2:** Remaining minor applications for Use Class C3 housing development (or traveller sites) and all applications that exceed affordable housing policy that can be implemented within 3 months of the grant of planning permission (June 2023)³.

30. The requirement for the development to be implemented within three months is unless an alternative period for commencement is agreed with the Council.

31. The Standard Appropriate Assessment of the River Tone Mitigation Strategy (November 2022) which Natural England approved anticipated that the Interim Strategy, in its entirety will unlock between 174 and 871 homes.

32. With regard to progress to date:

- 53 planning applications have been offered River Tone P-credits as part of Round 1.
- 26 no. applications for River Tone P-credits have been received.
- 8.2 P-credits have been allocated, equating to 36 no. dwellings.
- Currently 22 no. planning applications have been offered P-credits in Round 2. This equates to 160 dwellings.
- There are a further c. 25 planning applications which may also be offered P-credits in the second round. Officers are currently confirming that these applications are 'ready to proceed' before an offer letter can be issued.

² See report here:

<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=461&MId=3105&Ver=4>

³ As agreed by the former SWT Phosphates Planning Sub-Committee on 30 March 2023. Please see report available here:

<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=461&MId=3179&Ver=4>

33. Applications for outline planning permission have not been prioritised as the SWT Phosphates Planning Sub-Committee agreed that priority should be given to 'implementable development' i.e. development that can commence work on site within 3-months of planning permission being granted.

34. In order to apply to acquire River Tone P-credits applicants are asked to complete the following:

- a. A River Tone P-credit Application Form.
- b. Phosphate Budget Calculations using the Somerset Phosphate Budget Calculator.
- c. A Shadow Habitats Regulations Assessment (sHRA) on a standard template available to view on the website⁴.

35. Following review of the above by the Nutrient Neutrality Officer, all planning applications seeking to acquire River Tone P-credits are subject to a Section 106 (S106) legal agreement. A standard agreement has been drafted and is available on the website⁵) to secure the acquisition of the credits with the Council.

36. The preparation of a standard sHRA and S106 templates have assisted applicants and Officers with the administration associated with the P-credit scheme. This documentation has been produced in consultation with NE.

37. As set out within the template S106 agreement, Somerset Council is responsible for the monitoring of the River Tone P-credit scheme. This is done through the Council's existing Exacom system used for the monitoring of Planning Obligations.

River Brue

38. This catchment covers the western half of Somerset East and parts of Somerset South area with 4 out of 5 of the main towns impacted in the Somerset East area.

39. At the time of drafting this report, approximately 67 planning applications are held in abeyance seeking a phosphate solution equating to circa 1,100 dwellings.

40. The Council have signed off three private phosphate credit schemes in the Brue catchment.

⁴ Available to view at: <https://www.somerset.gov.uk/planning-buildings-and-land/phosphates-on-the-somerset-levels-and-moors-ramsar-site/phosphates-templates-and-guidance/>

⁵ Template Section 106 Agreement also available to view at link above.

- a. Yew Tree Farm. A scheme involving the closure of a pig farm generating 48 P-credits. Currently, 45.8 P-credits have been allocated releasing 450 dwellings.
- b. Manor Farm, Prestleigh (farm closure/fallowing of land – agreed May 2023) generating 143 P-credits which is anticipated to unlock approximately 1400 dwellings. A second phase may come forward if all these are allocated.
- c. Hillcrest Farm in Somerset South area anticipated to deliver c. 13 P-credits.

41. Both the calculation of credits and management plans have been agreed with Natural England and secured via a S106 agreement. However, all P-credit sales/allocations are agreed between promoter and applicant. The LPA has no control on prioritising applicants or credit pricing. Agreed allocations are confirmed by a certificate provided to the LPA.

42. A limited number of applications have also been agreed to date with their own mitigation solutions (woodlands, PTP upgrades).

River Parrett

43. This catchment includes Somerset South. All of the main towns are impacted, and the extent of the affected areas crosses into Dorset in the environs of Sherborne.

44. At the time of drafting this report, there are approximately 360 planning applications held in abeyance seeking a phosphate solution including 58 majors. This equates to approximately 4,500 dwellings. This figure includes 2,500 houses at the post committee / Section 106 stage.

45. With regard to progress to date:

- a. 5 applications involving 320 dwellings are awaiting a Section 106 Agreement with phosphate solutions, comprising of managed Packet Treatment Plans (PTP's) and retrofitting of water efficiency measures.
- b. There are resolutions to approve 3 schemes that use the retrofitting of water efficiency measures to enable 120 dwellings.
- c. There are 3 schemes progressing with Albion / Severn Trent wastewater management to enable 210 dwellings.
- d. Agreed terms for EnTrade to open its first market round in the River Parrett catchment. (Further information available at: somersetcatchmentmarket.uk).

46. EnTrade provides a range of environmental services and is a subsidiary of Wessex Water. With regard to P Credits, EnTrade acts as a broker bringing together multiple parties interested in land use change projects together with applicants and developers needing to acquire nutrient neutrality credits. EnTrade have engaged with NE to agree template specifications for a range of land use change projects including short term cropping, woodland planting, and wetland design, together with specifications for post implementation efficiency and monitoring work as well as long term project compliance. Each land use project includes provision for project monitoring costs over the 80+ year term to be provided to the planning authority.
47. Before each market round can be released, EnTrade presents its package of land use change projects to both NE and the local authority to agree the level of P credits being generated. EnTrade will also maintain a credit register to ensure no double selling and to ensure the appropriate buffer is retained. For the first market round EnTrade has capped P credit purchase at 5kg / project. Whilst this now excludes larger sites, it does have the benefit of releasing more stalled permissions, targets Small and Medium sized Enterprise (SME) operators, and allows for early use of the credit as they are not being “banked” against future years delivery.
48. Somerset Council is currently drafting the relevant S106 Agreements to enable an initial third-party land use change project based upon short term following leading to wetland with a woodland fallback to release a further 99 P-credits.

Other Matters: Government Nutrient Mitigation Fund

49. At the end of May 2023, Somerset Council, in partnership with Dorset Council, Farming and Wildlife Advisory Group (FWAG), Plymouth University and Salinity Solutions, submitted a funding bid to the Government’s Nutrient Mitigation Fund. The funding proposal seeks capital funding (£9.63m) and revenue funding (£0.9m)
50. The funding aims to deliver both interim (to 2030) and in perpetuity phosphate mitigation measures to unlock affected housing development at scale. The programme seeks to significantly increase the supply of P credits, to assist all impacted developments in Somerset.
51. The proposed mitigation measures in the bid include:

- a. Modular water treatment plants to co-locate at WwTW's to reduce the P levels prior to 2030⁶(bridging solution). This new energy efficient water processing technology has been developed by Salinity Solutions. This technology is not new and has been used elsewhere (for example in the mining industry) and is currently being piloted to verify its efficacy.
- b. Retro-fitting Registered Provider housing stock with water efficiency & septic tanks (working with existing providers).
- c. Sourcing nature-based phosphate mitigation projects in partnership with Farming and Wildlife Advisory Group.
- d. A programme of septic tank upgrades to PTP.
- e. Land use change including wetlands, both single site and brokered solutions.
- f. A call for sites/reverse auction supported by the South West Farming and Wildlife Advisory Group (FWAG SW) to provide sufficient in perpetuity nature-based solutions, to mitigate development at the lower Technically Achievable Limit (TAL) of 0.25mg/l/p level.
- g. A research pilot, led by Plymouth University, to verify the effectiveness of small-scale water attenuation measures for phosphate mitigation. The results will also help inform other nutrient neutrality catchment areas.

52. A letter (enclosed as Appendix B) has been sent out to all local MP's drawing their attention to the bid. At the time of drafting this report, a decision on the bid is awaited – there has been no indication of timescale.

Conclusion

53. Action continues under several workstreams as outlined within this report on a Somerset-wide basis.

54. With regard to phosphates, there is the continuing need for the foreseeable future for a coordinated and appropriately resourced approach to phosphate mitigation in order to achieve nutrient neutral development within the Somerset Levels and Moors catchment and deliver the planned housing development compliant with the Habitats Regulations.

⁶ This takes account of current draft provisions within the Levelling Up and Regeneration Bill for WwTW to be upgraded by 2030 to the technically achievable limit of 0.25mg/l.

55. This report is about ensuring nutrient neutral development and unlocking stalled planning applications within the river catchments of the Tone, Parrett and Brue which are hydrologically linked to the Somerset Levels and Moors. Nutrient neutrality does not make the nutrient situation any worse, but neither does it make the situation any better. Restoration of the Ramsar site depends upon a range of other activities which go beyond land use planning. As the recently published paper; ‘Restoration management of phosphorus pollution on lowland fen peatlands: A data evidence review from the Somerset Levels and Moors⁷’ concluded:

“An increasing body of evidence shows that although significant efforts are being employed by the relevant Water Company over the next 5 years to reduce loads of P to the SLMs, this is unlikely to be sufficient for site restoration given inflow water pollution from agriculture and ongoing water level and flood risk management approaches.”

56. In consultation with Members it is therefore for the Climate & Change team to agree the role that the Council may wish to have in to progressing programmes and schemes which reverse the current declining ecological status of the Somerset Levels and Moors.

Links to Council Plan

57. The Council Plan sets out the Key Priorities of the Council and is available on the Council website at: <https://www.somerset.gov.uk/council-and-democracy/somerset-council-council-plan-2023-2027/>

58. This report has links to various corporate priorities including:

- a. Greener, More Sustainable Somerset
- b. A Flourishing and Resilient Somerset

Financial and Risk Implications

59. Not relevant to this information report. Risks have been set out the body of previous reports and presentations to Members of the former Councils.

⁷ Restoration management of phosphorus pollution on lowland fen peatlands: available at ’

[https://authors.elsevier.com/sd/article/S0378-3774\(23\)00284-6](https://authors.elsevier.com/sd/article/S0378-3774(23)00284-6)

Legal Implications

60. The legal and policy background to the 'phosphates issue' have been set out the body of previous reports and presentations to Members of the former Councils. To assist applicants, template Section 106 Agreements has been prepared and are also available to view on the phosphates' webpage. This documentation has been produced in consultation with NE.

HR Implications

61. None related directly to this information report.

Other Implications:

Equalities Implications

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

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

63. None of the above relate directly to this information report.

Community Safety Implications

64. This can include:

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

65. None of the above relate directly to this information report.

Climate Change and Sustainability Implications

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

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

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

Health and Safety Implications

69. None related to this information report.

Health and Wellbeing Implications

70. None related to this information report.

Social Value

71. None related to this report.

Asset Management Implications

72. None related directly to this report. The management of interim phosphate solutions on SWT owned sites has passed to Service Director – Strategic Asset Management in the new Council to manage in the long term.

Data Protection Implications

73. None related to this report.

Background Papers and web links

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

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

Somerset Levels and Moors: Background to phosphates

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

River Axe Special Area of Conservation

<https://www.somerset.gov.uk/planning-buildings-and-land/phosphates-on-the-somerset-levels-and-moors-ramsar-site/river-axe-special-area-of-conservation/>

Somerset Phosphate calculator

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

SWT Council Planning Phosphates Sub-Committee: February 2022

<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=461&MId=3105&Ver=4>

SWT Phosphates Planning Sub-Committee: 30 March 2023.

<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=461&MId=3179&Ver=4>

Shadow Habitats Regulations Assessment (sHRA): and Section 106 templates available at:

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

Levelling Up and Regeneration Bill

<https://bills.parliament.uk/bills/3155>

Restoration management of phosphorus pollution on lowland fen peatlands: available at '

[https://authors.elsevier.com/sd/article/S0378-3774\(23\)00284-6](https://authors.elsevier.com/sd/article/S0378-3774(23)00284-6)

Appendices

Appendix A: the geographical extent of the affected river catchment areas

