

Scrutiny Climate and Place Water Quality Session

Briefing to Executive
5th June 2024

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Somerset
Council

Scrutiny Climate and Place recommendations

- Climate and Place Scrutiny Committee – special water quality session 26th April
- **Purpose:**
- Share with the committee research underway to understand the nutrient pollution sources on Somerset Levels and Moors
- Outline the roles and actions key organisations taking to reduce nutrient pollution
- Somerset Council does not have a statutory responsibility for water quality
- Chair's introduction – session was not about revisiting 'nutrient neutrality'
- Note: Nutrient Neutrality is a national approach supported by case law and followed by approximately 70 LPAs (including Cornwall Council)

Scrutiny Climate and Place recommendations

1. Immediately remove the 20% buffer included in the Somerset Phosphate Calculator
2. Conduct a speedy review of the huge inconsistency between what Dr Clegg said, echoed by Wessex Water and what the calculator says with how much of the river borne phosphorus enters the Somerset Levels and Moors, as that calculator is what informs developers as to how much phosphate we are requiring them to offset
3. Conduct an urgent review of the entire nutrient neutrality policy in light of the legal advice we have received, which makes it clear that headroom exists and that it could be used in the mitigation of new housing development

Scrutiny Climate and Place recommendations

4. The Climate and Place to set up a Task and Finish Group which will report back to the Committee on a tight timescale to set out the options available to the Council once it is in possession of the correct data
5. The Council looks to work on a Land Use Strategy as part of a Local Plan

Legal Advice Summary

- Natural England – Statutory Nature Conservation Body
- PAS Legal Briefing (Appendix A) – paragraph 1:
 1. Decision makers must adopt a **precautionary approach** where protected sites might be affected – Somerset Levels and Moors and River Axe
 2. Development can only be consented where there is no **reasonable scientific doubt**, that it will not affect the integrity of the site
 3. Local Planning Authorities are ultimate decision-maker but they are required by law to consult Natural England as part of habitats assessment, to give NE's advice considerable weight, provide cogent reasons if they depart from it.

Nutrient Neutrality

- Legal matter – the LPA doesn't need to understand sources or quantities of pollutants from different sources
- Nutrient Neutrality seeks to mitigate additional nutrient load from impacted development (eg each new dwelling) based on permit level of relevant WwTW
- Technological and nature-based solutions for nutrient mitigation and calculations for quantum of nutrient mitigation required are approved by Natural England

Recommendation 1 – remove 20% buffer in Somerset Phosphate calculator

- 20% buffer – all national calculators utilised by 70 LPAs based on NE advice
- Built in to ensure mitigation measures satisfy **precautionary approach and reasonable scientific certainty**
- LPAs required by law to give NE's advice considerable weight and provide cogent reasons if they depart from it.
- There are no cogent reasons to depart from NE's advice

Recommendation 2 – review quantum of phosphates entering SLM

- Dr Clegg's research and NE review (Appendix B):
 1. Hydrological connectivity between SLMs and River Parrett – flood storage and overtopping from River Parrett and transportation of phosphates
 2. Sampling size, timescale and area covered - small part of River Parrett
 3. Impact of Climate Change and flow rates/water take from River Parrett in long dry summers increasing phosphorus concentrations and mobilisation
 4. Water flows and movements complex on SLMs – water levels controlled
 5. Dr Clegg acknowledges NE's feedback. Research informing action rather than comprehensive understanding. Council does not expertise, resources or statutory responsibility to undertake a research project of this scale and complexity

Rivers Trust

Mind the Evidence Gap

- Evidence from published studies have shown that spot sampling can underestimate phosphorus pollution loads by 60% and that up to 80% of phosphorus pollution load can enter rivers in just 2 or 3 rainfall runoff events

State of our Rivers Report 2024

- Our rivers are not healthy
- Further decline since last report in 2021
- More data is needed to truly understand the scale of the problems and deploy solutions

- Source: [Mind the evidence gap \(arcgis.com\)](https://arcgis.com) and [State of our Rivers Report 2024 | The Rivers Trust](#)

Scrutiny Climate and Place recommendation 3

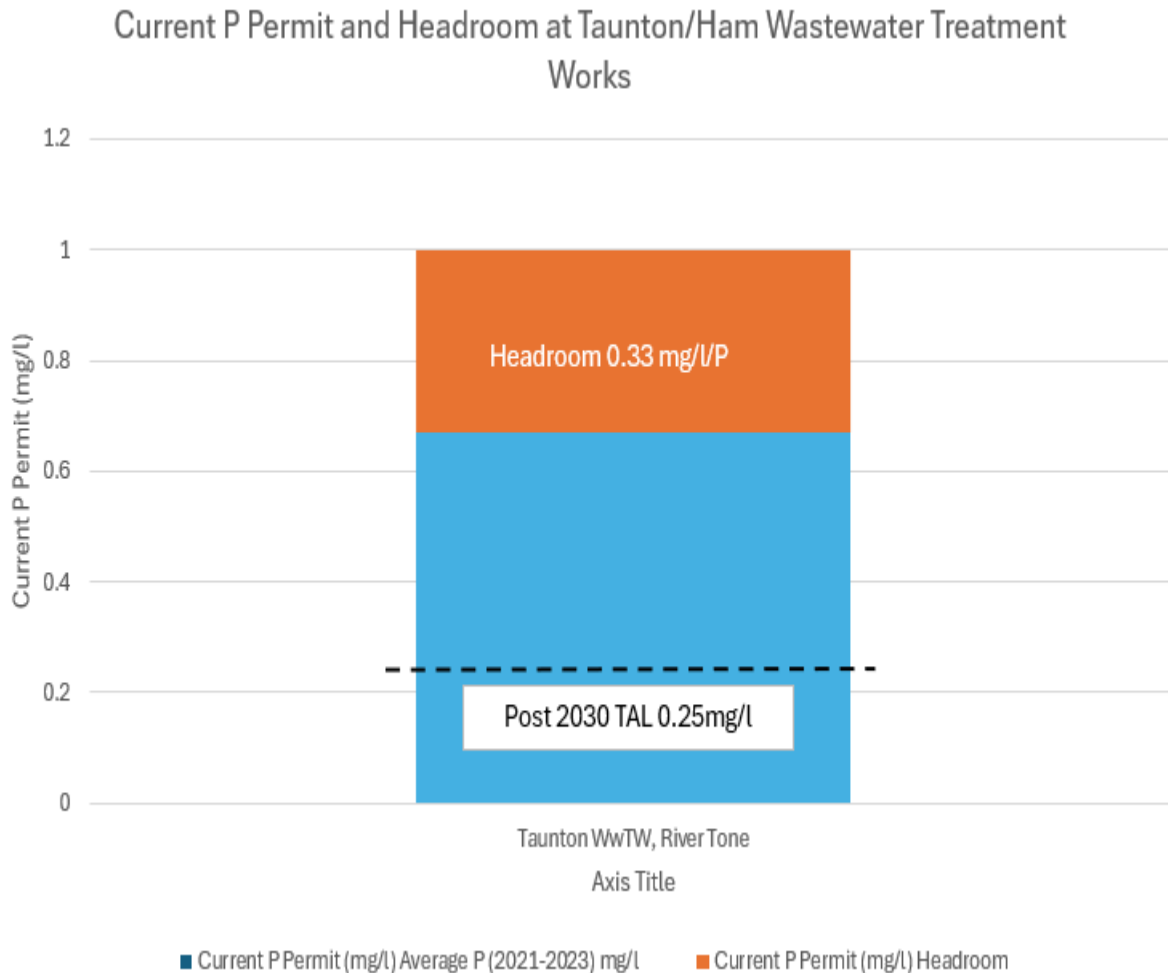
Conduct an urgent review of the entire nutrient neutrality policy in light of the legal advice we have received, which makes it clear that headroom exists and that it could be used in the mitigation of new housing development

Recommendation 3 – review NN

The Legal Advice (Appendix A) does not support this recommendation – 70 LPAs following NN advice including Cornwall – no development industry challenge on NN:

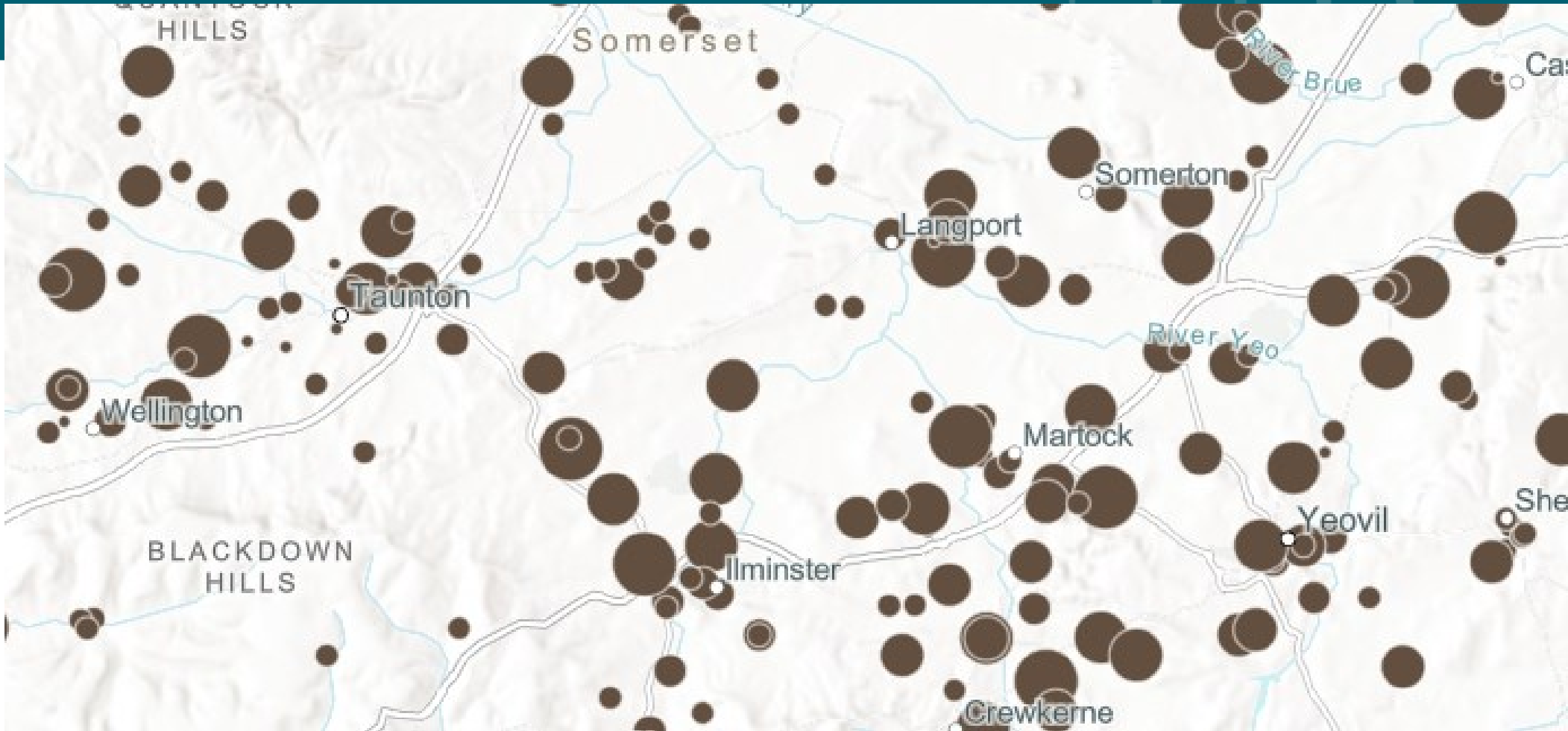
1. Case law – for mitigation to be lawful, it must be preventative – so it must stop any net gain in nutrients entering the water (Para 64 PAS legal advice)
2. Case law requirements for practical certainty mean that LPAs will not be able to rely on nutrient reduction plans and strategies from water industry. They do not provide requisite certainty to eliminate reasonable scientific doubt (Para 65 PAS legal advice)
3. WW upgrades were not provided as mitigation for future development and cannot be relied upon by the LPAs. Many years of headroom in the flow part of WW permit and outperformance on the concentration part of the permit does not alter the fact that additional housing will increase nutrient discharged to rivers (Para 9c SC Legal advice)

Taunton Wastewater Treatment Works Headroom



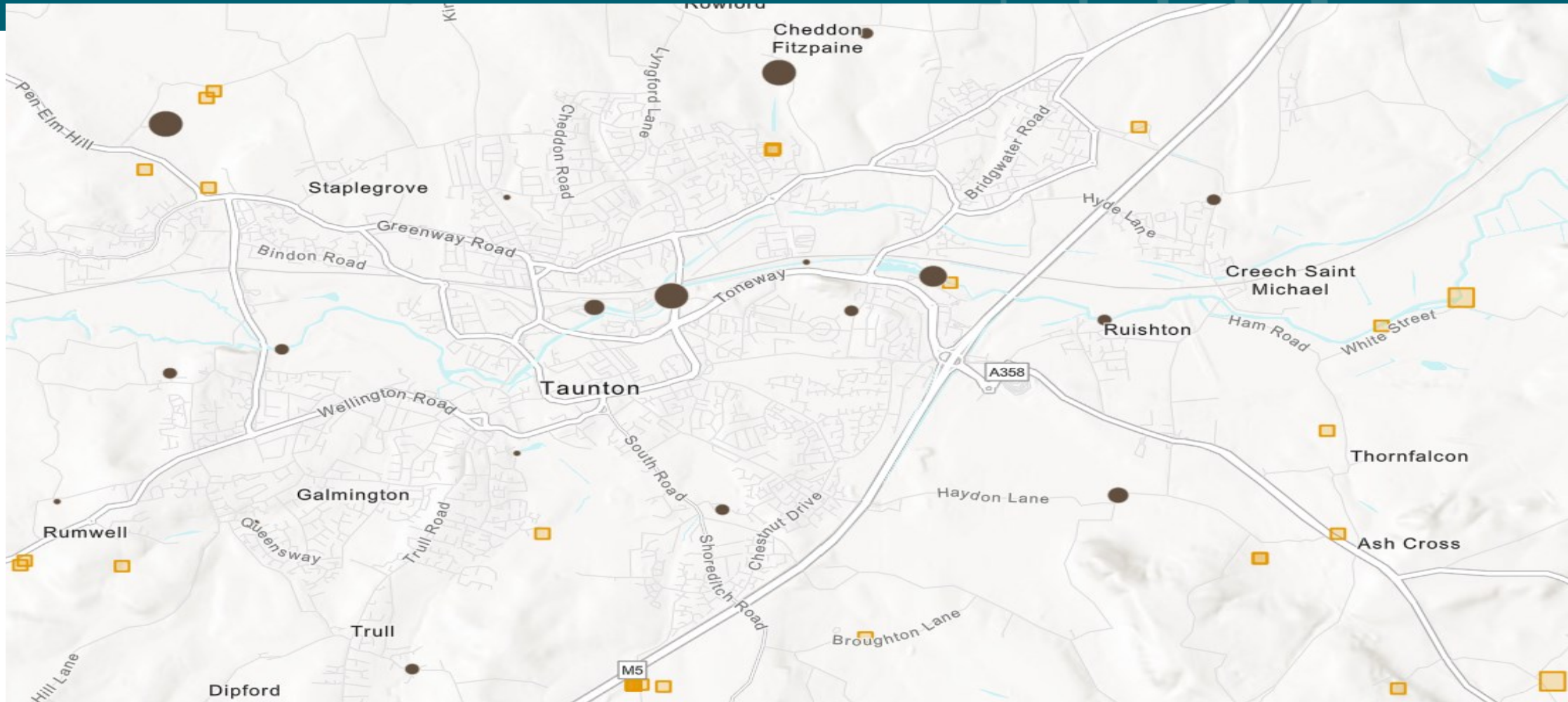
1. Headroom to accommodate future growth within the permit limit - litre of treated effluent cannot exceed 1 mg/l/p - not Nutrient Neutrality
2. Additional sewage is transported into Taunton WwTW
3. Only covers the sewage at the WwTW
4. WwTWs headroom built in part of infrastructure upgrades

Raw sewage discharge/CSO capacity



Source: <https://therivertrust.org/sewage-map> Event Duration Monitoring – water levels sensors
Environment Agency

Rivers Trust Sewage Map



Source: <https://theriverstrust.org/sewage-map>

Current Risks

- Risk of legal challenge
- National water quality debate – level of scrutiny on Water Companies
- £9.6m mitigation funding – measures to improve water quality, nature recovery and flood management – call for sites
- Significant delivery risk limited staff resource and regularly diverted

Recommendation 4 – establish a Task and Finish Group

- Somerset Council does not have a statutory responsibility for water quality
- Resources currently focused on statutory roles and delivering phosphate mitigation - £9.6m grant March 2025
- Partnerships such as Somerset Catchment Partnership and NE are establishing a Technical Working Group for Somerset Levels and Moors
- Longer term grant can be repurposed for restoration work for Somerset Levels and Moors – appropriate time for Task and Finish Group
- All Member briefing scheduled as part of reporting to Strategic Planning Committee in September 2024 on update to Interim Phosphate Mitigation Delivery Strategy

Interim P Mitigation Delivery Strategy

- £9.6m grant March 2025
- Strategic Planning Committee in September 2024 on update to Interim Phosphate Mitigation Delivery Strategy + all member briefing
- Supporting third party credit market – over 600 dwellings and other large scale developments. P Credits available for 4,500 dwellings (Source: Strategic Planning Committee 21st March 2024). Signposted on Council website

Interim P Mitigation Delivery Strategy

- Call for sites – 20th May – 15th July – nature-based solutions to deliver P mitigation and BNG sites
- Additional public benefits – natural flood management, nature recovery and public access
- Upgrades to septic tanks for Council properties
- Progressing the Salinity Solutions and Miscanthus Trial to provide strategic scale temporary credits – assisting SMEs
- Update Phosphate mitigation strategy – seeking to progress with pre-commencement conditions rather than demonstrating upfront mitigation
- Longer term -recycling funding into restoration of Somerset Levels and Moors

Recommendation 5 – prepare Land Use Strategy as part of Local Plan

- Land Use Strategy – carbon sequestration, food production and security, tree planting and forestry, nature recovery, energy and infrastructure, minerals and waste, future development and public open space
- Council does not have statutory powers to control some of these land uses
- Government committed to publishing Land Use Framework for England by end of 2023 – not yet published
- Likely to provide guidance
- Limited staff resource available for Local Plan
- Land Use Framework considered when Government guidance is published (subject to resource constraints)

Thank You and Questions



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