

Decision Report

Committee: Executive

Meeting Date – 4 November 2024

Key Decision – yes



Local Nutrient Mitigation Funding Allocation Approval

Chair of Committee: Cllr Bill Revans

Executive Member(s): Cllr Mike Rigby - Lead Member for Economic Development, Planning and Assets

Local Member(s) and Division(s) affected: All

Executive Director: Chris Hall - Executive Director Community, Place and Economy

Executive Summary

1. On 17th August 2020, all the planning authorities in Somerset Council (at that time the four District Councils and the County Council), as well as Dorset Council received an advice note from Natural England (NE) concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site (SL&M). As a result, since then a large proportion of new development (particularly housing development) in the impacted area is required to demonstrate nutrient neutrality.
2. The Council has been awarded capital funding of £9.6m via the Local Nutrient Mitigation Fund to increase the supply of phosphate mitigation projects to unlock impacted developments. Funding has been received in two instalments - £0.5m at the end of February 2024 and £9.1m received in early May 2024. Ministry of Housing, Communities and Local Government (MHCLG) requires Somerset Council to commit the funding to deliver nutrient mitigation schemes in line with grant conditions by 31 March 2025. The funding must be recovered via the sale of nutrient credits to developers and recycled to deliver additional phosphate mitigation projects in the catchment.
3. This funding will help pump-prime nutrient neutrality interventions within the river catchment areas of the SL&M Ramsar site and ultimately secure the release of homes in Somerset and Dorset (within the environs of Sherborne), which are held up by the phosphates issue. The grant funding conditions require the Council to deliver committed spend by 31st March 2025 otherwise we risk having to return uncommitted funds. In the long term, once sufficient phosphate mitigation schemes have been provided, the funding will then be recycled to support the restoration of the Somerset Levels and Moors Ramsar sites. Any reduction in grant funding, if the Council is unable to deliver committed spend by 31st March 2025, reduces options to recycle the funding longer term into action to help restore the Somerset Levels and Moors back to a favourable condition.

Recommendations

4. That the Executive agrees to:
 - a. delegate authority to the Executive Director Community, Place and Economy, in consultation with the Chief Finance Officer, to commit spend up to £9.6m from the Local Nutrient Mitigation Capital Funding to deliver nutrient mitigation schemes in line with grant conditions in the financial year 2024/25.
 - b. delegate authority to the Executive Director Community, Place and Economy, in consultation with the Chief Finance Officer, to reallocate funding as necessary between the projects listed below, in Table 2, to ensure that the entirety of the £9.6m funding is committed by 31st March 2025, as required by MHCLG .

Reasons for Proposals

5. The Interim Delivery Strategy (endorsed by the Strategic Planning Committee in March 2024) outlines how Somerset Council is proposing to use the grant funding awarded across the Somerset Levels and Moors catchment area. The Council is committed to enabling a delivery programme to create Phosphate (P)-credits in all three river catchment areas. A range of projects are being progressed to provide both permanent and temporary/bridging credits.
6. Six projects are currently being promoted to provide additional phosphate credits:
 - Project One: Salinity Solutions.
 - Project Two: Call for sites for Land/Nature Based Solutions.
 - Project Three: Working with Registered Social Housing Providers and our Council Property Stock.
 - Project Four: Opportunities for nature-based solutions on Council-owned land/assets.
 - Project Five: Miscanthus Grass.
 - Project Six: New technical innovations – this currently includes trialling water flow control measures on Council housing stock

7. Below is an extract from the Interim Delivery Strategy showing the original proposed allocation to each project:

Table 1: Provisional allocations reported to Strategic Planning Committee on 21st March 2024

Project	Provisional Allocation
Project one: Salinity Solutions	£2,000,000
Project two: Call for sites for land/nature based solutions	£3,500,000
Project three: Working with Registered Social Housing Providers and our Council Property Stock	£1,000,000
Project four: Opportunities for nature-based solutions on Council-owned land/assets	£2,000,000
Project five: Miscanthus	£620,000
Project six: New technical innovations (TBC)	£480,000
Total capital cost	£9,600,000

8. The provisional allocations were made earlier in the year, in consultation with the previous Lead Member for Economic Development, Planning and Assets. Progress has been made on a number of projects. The Call for Sites has received a strong response from applicants, the Salinity Solutions trial has recently started and the HRA will be receiving £1m (in two separate instalments) from the fund to assist with upgrading septic tanks.
9. However, there is a risk that the Council land holding projects may not be in a position to commit the allocated funding by the end of this financial year (i.e. 31st March 2025). On that basis we are proposing to reallocate funding from this project to support the delivery of phosphate credits arising from the call for sites and to increase the allocation to the provision of temporary/bridging credits. When the funding is recovered via the trading of phosphate credits and the phosphate mitigation schemes on the Council land holdings are confirmed, the provision of funding to support delivery will be reviewed.

Table 2 below provides revised allocations to support phosphate mitigation schemes able to progress in the financial year 2024/25:

Table 2: Revised allocations from Local Nutrient Mitigation Fund

Project	Allocation
Project one: supply of temporary/bridging credits including Salinity Solutions (subject to the outcome of the trial), Miscanthus and other potential opportunities to increase supply of temporary/bridging credits between 2024-2030	£3,000,000
Project two: call for sites subject to the ongoing site assessment process and negotiation with landowners.	£5,600,000
Project three: Council housing stock septic tank upgrades	£1,000,000
Total capital cost	£9,600,000

Conclusion

10. Officers are seeking delegated authority to the Executive Director for Community, Place and Economy, in consultation with the Chief Finance Officer, to ensure the committed spend deadline of 31st March 2025 can be achieved. An update report on progress will be provided to the Strategic Planning Committee in March 2025.
11. Until such time as the SL&M's Ramsar site returns to a favourable condition or until the legal position changes, planning decisions will need to ensure affected developments are nutrient neutral. The recent changes to legislation in the Levelling Up and Regeneration Act will help to reduce phosphorus discharge levels at a number of wastewater treatment works. However, until these upgrades are completed in 2030, high levels of mitigation will still need to be found and delivered.
12. The grant funding conditions require committed spend by 31st March 2025 and the Council risks losing funding if we fail to deliver on this timescale. Any resultant loss in funding also reduces the Council's ability to recycle the funding into actions to help restore the Somerset Levels and Moors Ramsar sites back to a favourable condition.

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Main report and supporting information



Background and purpose of report

Links to Council Plan and Medium-Term Financial Plan

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

Other options considered

15. The Local Nutrient Mitigation Funding will be allocated to a range of potential phosphate mitigation measures to help increase the provision of both temporary/bridging and permanent phosphate credits.

Key considerations for the Council

Scrutiny comments / recommendations:

16. Climate and Place Committee has previously considered the Phosphates issue.

Consultation and feedback

17. We have been consulting with the Environment Agency, Wessex Water, Natural England, Agents and Developers and a range of phosphate mitigation providers. Somerset Officers continue to work closely with Dorset Officers given that parts of west Dorset are impacted by the Somerset Levels and Moors catchment area. Somerset officers supported East Devon colleagues with their funding bid submission to the Round 2 LNMF bid for River Axe catchment.

Financial and Risk Implications

18. The acceptance of the Local Nutrient Mitigation Fund grant will have financial implications for the Council. As a commitment, the fund has been added to the capital programme. The grant funding conditions require committed spend by 31st March 2025. Failure to do so risks having to return the funding to Government. If the Council are required to return any grant funding to Government this also reduces the funding available to assist with the work to restore the Somerset Levels and Moors Ramsar sites back to a favourable condition.

19. The Interim Delivery Strategy has been recorded on the Council Corporate risk register / risk management software (JCAD) and risks will be regularly monitored, reviewed, and mitigated. The risks were last updated on the 2 October 2024. The current risk score is shown below. It is high. Given the challenging committed spend deadline of 31st March 2025 there is a risk that not all the funding will be fully committed. Measures to mitigate against risk(s) will need to be recorded and implemented which take account of MHCLG evaluation arrangements. These involve quarterly monitoring returns. There are currently no agreed control measures to reduce the high-risk score.
20. This report also seeks approval for delegated authority to oversee and spend in line with grant conditions and monitoring arrangements set by central government. If not, we risk having to return the grant funding to central government.
21. In line with Council financial procedures, where possible, staff resources and costs to deliver the projects will be capitalised. The Reverse Batch Osmosis trial is progressing. The aim is to fully recover these costs by income generated by the sale of temporary/bridging P-credits in a Council-led scheme to developers. However, if the trial does not result in being a cost-effective approach, the wider roll out of this new technology will not proceed.
22. The detailed arrangements for selling and trading P-credits have yet to be finalised. There is already a Council-led scheme covering the River Tone. It is a “not for profit” scheme. The aim is to utilise this experience and work up the detailed arrangements alongside getting the contractual arrangements in place for the priority sites, identified from the assessment of the recent call for sites.
23. Subject to legal advice on a “not for profit” scheme, the sale of P-credits allows the council to recover the funding to invest the income generated into further phosphate mitigation projects, across the affected river catchment areas, which in turn increases the supply of options. Without the required level of certainty that mitigation projects can be found and funded, the council, as LPA, will not be able to approve planning permissions, nor move forward with the Local Plan Review.

Current Risk Score:

Likelihood	4	Impact	5	Risk Score	20
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Projected risk score if recommended actions are agreed and delivered:

Likelihood	n/a	Impact	n/a	Risk Score	na/
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Legal and Procurement Implications

24. The legal and policy background to the ‘phosphates issue’ have been set out in the body of previous reports and presentations to Members. Further documentation is also available to view on the phosphates’ webpage at: [Phosphates in Somerset background information](#)

25. As set out within the Financial and Risk Implications of this report, the spend to deliver the projects within the delivery programme must be in line with grant conditions and monitoring arrangements set by central government. The Councils quarterly returns to MHCLG, must be approved by the Council's Section 151 Officer.
26. Procurement will be undertaken in line with the Council's Contract Procedure Rules and Financial Regulations. To that end, enclosed as Appendix A is a redacted copy of the summary of the signed waiver for procuring Salinity Solutions to trial their new technology. This process involves background checks. This waiver covers the initial trial, and should the technology not prove to be a cost-effective method, the roll out of the technology will not proceed. Legal and Procurement services have advised and overseen the contractual arrangements for the trial.

HR / Workforce Implications

27. No specific implications have been identified. With regard to the Council having been awarded revenue funding to set up the capital programme, this will be used to cover some staff resources on an interim basis with the aim that future staffing costs are fully covered by charges associated with the council-led P-credit scheme.

Equalities Implications

28. 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.

No specific implications have been identified.

Community Safety Implications

29. No specific implications have been identified.

Climate Change and Sustainability Implications

30. 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.

31. 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.
32. As explained within the report, in light of Natural England's letter of August 2020, concerning the unacceptable levels of phosphates present in the SL&M Ramsar site, nutrient neutral development does not make the situation any worse, but neither does it help to improve the situation.
33. The income generated from the sale of P-credits will be reinvested into land/nature-based solutions, land secured for phosphate strategic mitigation may also be used to meet other local and central government objectives unrelated to phosphates e.g. securing biodiversity net gain (BNG), natural flood, management, carbon sequestration or public open space to avoid recreational pressures on other wildlife areas.
34. This funding will help pump-prime nutrient neutrality interventions within the river catchment area of the SL&M Ramsar site and ultimately secure the release of homes in Somerset and Dorset (within the environs of Sherborne), which are held up by the phosphates issue.

Health and Safety Implications

35. No specific implications have been identified.

Health and Wellbeing Implications

36. The income generated from the sale of P-credits will be reinvested into land/nature-based solutions, land secured for phosphate strategic mitigation may also be used to meet other local and central government objectives unrelated to phosphates e.g. public open space to avoid recreational pressures on other wildlife areas.

Social Value

37. No specific implications have been identified.

Background Papers

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

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

Somerset Levels and Moors: Background to phosphates

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

Somerset Council Plan 2023 to 2027

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

Somerset Council: Constitution

<https://democracy.somerset.gov.uk/ieListDocuments.aspx?CId=137&MId=104&Ver=4>

Appendices

- **Appendix A:** Waiver for procuring Salinity Solutions to trial their new technology

Report assurance

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	22/10/2024
Finance & Procurement	Nicola Hix	23/10/2024
Executive Director	Chris Hall	21/10/2024
Executive Lead Member	Cllr Mike Rigby	23/10/2024
Consulted:		
Local Division Members	n/a	n/a
Opposition Spokesperson(s)	Cllr David Fothergill	18/10/2024
Relevant Scrutiny Chair(s)	Cllr Martin Dimery	22/10/2024