

SWT Phosphates Planning Sub-Committee

Thursday, 21st July, 2022,
10.00 am

The logo for Somerset West and Taunton, featuring the text "Somerset West and Taunton" in white on a teal background with a white swoosh.

The John Meikle Room - The Deane House

[SWT MEETING WEBCAST LINK](#)

Members: Mark Blaker, Norman Cavill, Simon Coles (Chair),
Roger Habgood, John Hassall, Mark Lithgow and Gwil Wren

Agenda

1. Apologies

To receive any apologies for absence

2. Minutes of the previous meeting of the Subcommittee

To approve the minutes of the previous meeting of the Subcommittee

(Pages 5 - 8)

3. Declarations of interest

To receive and note any declarations of disclosable pecuniary or prejudicial or personal interests or lobbying in respect of any matters included on the agenda for consideration at this meeting.

(The personal interests of Councillors and Clerks of Somerset County Council, Town or Parish Councils and other Local Authorities will automatically be recorded in the minutes.)

4. Creation of phosphate credits to offset development in the River Tone sub catchment.

(Pages 9 - 104)

5. 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.

(Pages 105 - 134)

6. Any other business

A handwritten signature in black ink, appearing to read 'A Pritchard', with a stylized, cursive script.

ANDREW PRITCHARD
CHIEF EXECUTIVE

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SWT Phosphates Planning Sub-Committee - 24 March 2022

- Present: Councillor Simon Coles (Chair)
Councillors Mark Blaker, Norman Cavill (via zoom), John Hassall and Sarah Wakefield
- Officers: Alison Blom-Cooper, Paul Browning and Martin Evans (Shape Legal Partnership) and Tracey Meadows (Governance and Democracy)

(The meeting commenced at 1.00 pm)

8. **Apologies**

Apologies were received from Councillors Habgood, Rigby and Wren.

9. **Minutes of the previous meeting of the Subcommittee**

Councillor Wakefield proposed and Councillor Hassall agreed the minutes from the last meeting.

10. **Declarations of interest**

Councillor Cavill declared that he was a trustee for the Taunton Heritage Trust. No further declarations of interest were declared.

11. **Technical report: Somerset Levels and Moors Phosphate Mitigation Solutions (2022)**

The purpose of the report presented to the Sub-Committee was to convey the key findings and recommendations of the consultants Mitigation Solutions Report (2022) to Members to address the impact of development on the Somerset Levels and Moors Ramsar Site. The report to the sub-committee was for information and noting as background evidence to support future work and development of planning guidance.

In collaboration with the other Somerset Authorities, Consultants were appointed in May 2021 to provide further technical support and develop mitigation solutions following the Natural England letter received in August 2020 and to respond to the phosphate issue affecting the Somerset Levels and Moors Ramsar site. The purpose of the commission was to investigate a range of matters. These included the review of the geographical extent of the catchment area in Somerset, to make improvements to the phosphate calculator and provide information on potential mitigation options that could be delivered within the affected river catchments of the Rivers Tone, Parrett, and Brue.

Comments/ questions from Members included;
(summarised)

- Concerns that Wessex Water had not taken into account or projections for our build out rate in our Local Plan to 2032;
- Concerns that we have a heavier Phosphate burden compared to other districts;
- Concerns that the numbers quoted for Phosphate removal were based on our old housing numbers;
- Concerns with 5.2 in the report stating the temporary measure of taking land out of agricultural production and assurance for food security and distribution due to the current Ukraine situation;
- Can the water be filtered further back from the Ramsar sites to enable us to take this project forward ?;
- Was there an update for the SES and our planning application and the order that they would be determined;

Councillor Wakefield proposed and Councillor Blaker seconded a motion for the recommendations below to be approved.

Recommendations;

The Phosphate Planning Sub Committee to note;

- A. The contents of the recently published technical report: Somerset Levels and Moors Phosphate Mitigation Solutions (2022);
- B. The use of the revised boundary of the affected river catchment areas .
- C. The use of updated data sets for the phosphate calculator which will be used to update the information on the website.

The motion was carried.

12. **Any other business and actions arising**

Actions arising;

- Talks were needed with Somerset County Ecology services;
- Mitigation calculator to get projects going to break the deadlock;
- An updated was needed on the impact on the building trade due to the Phosphate problem;

(The Meeting ended at 1.40 pm)

Somerset West and Taunton Council

Creation of phosphate credits to offset development in the River Tone sub catchment.

Phosphates Planning Sub Committee – 21 July 2022

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

1 Executive Summary/Purpose of the Report

- 1.1 Following the receipt of the Natural England letter of August 2020,¹ there is a requirement for developers to ensure development is phosphate neutral in perpetuity. From a planning position this responsibility sits with developers not the Local Planning Authority. Whilst this is the accepted technical position, Somerset West and Taunton Council (SWT) considered the impact and burden on developers required some intervention. On 5 October 2021 Full Council² approved recommendations for interim measures to be brought forward to facilitate development and agreed a budget to support the bringing forward of projects that would enable us to purchase and/or create Phosphate credits (here in referred to as P credits) that would be managed by the establishment of a Phosphates Planning Sub Committee.
- 1.2 The purpose of this report is to update on the creation of P credits to offset development in the River Tone sub catchment area. It sets out the number of P credits being generated through the interim measures.
- 1.3 Having already agreed the prioritisation order / allocation policy for credits in February 2022, this Sub Committee is now required to consider the proposed pricing arrangements for P credits. This is in line with the Council's charging policy as set out in the report to Council, to recharge the cost of P credits to developers on a full cost recovery basis. The full cost of offsetting the resulting phosphate load from a development is to be met within the costs of the development.
- 1.4 In accordance with the approved prioritisation order, this will enable the Council to offer the P credits from the interim measures to some of the

¹ Natural England letter available on Council website at

<https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

² Full Council committee report available at

<https://democracy.somersetwestandtaunton.gov.uk/documents/s17540/Somerset%20Levels%20and%20Moors%20Phosphate%20Mitigation.pdf>

applications currently held in abeyance and to those applicants that are currently unable to provide the phosphate mitigation necessary for their proposed developments to be granted planning permission.

- 1.5 It is anticipated that further P credits will be identified in the future through the work being undertaken to develop a Somerset wide nutrient solutions strategy, following the report published in February 2022³.
- 1.6 Appendix A to this report sets out the interim measures being brought forward for the River Tone sub catchment area. **65.3 P credits are being generated in at a total cost to the Council of Circa £3,54m. This equates to circa £54,222 for one P credit.** This cost is before interest payments
- 1.7 How many homes these mitigation measures will release is a complex one. The volume of mitigation can vary for the same property type based on its location, proximity to a waste water treatment plant that the development will drain to, and the efficiency of that treatment plant. However, as a rough guide, **we would expect to be able to release somewhere in the region of between 150 and 780 homes within the River Tone sub catchment.** Based on the known phosphate requirements of planning applications currently held in abeyance (see Appendix B), the **typical cost per home is likely to be in the region of at least £5,500 :**
- 1.8 Being at the forefront of finding phosphate solutions, as we are, means that advice from Natural England and when appropriate the Environment Agency is still being formed. Our role as Local Planning Authority (LPA) has to take account of their positions. The creation of phosphate credits to offset development in the River Tone sub catchment area is a significant positive step that we expect to be welcomed by the developer community.
- 1.9 However, the work done to date on unlocking phosphates credits has confirmed our initial views that nature based solutions can only be part of a package of measures to unlock all of the impacted development. In partnership with the other Somerset authorities, we are continuing to raise the challenges delivering phosphate neutral development with Government officials in Department for Environment, Food and Rural Affairs (DEFRA) and Department for Levelling Up, Housing and Communities (DLUHC).

2 Recommendations

- 2.1 That the Phosphates Planning Sub Committee resolves to:
 - a. Note the number of P credits being generated through the interim measures. Based upon the contents of Appendix A and the supporting Habitats Regulation Assessment, (Appendix C), 65.3 P credits for the

³ Solutions Report available at: <https://www.somersetwestandtaunton.gov.uk/media/3232/solutions-report.pdf>

River Tone sub catchment are being generated at a total estimated cost to the Council of circa £3,54m.

- b. Agree the pricing of one P credit for the River Tone sub catchment area at £54,222 + VAT per kilogram of offset required per year.**
- c. In line with the Council's charging policy, to recharge the cost of P credits on a full cost recovery basis.**
- d. Note that the principle the Council's interim programme of phosphate mitigation measures has Natural England support (see Natural England letter dated 6 June 2022 enclosed as Appendix D).
- e. Note, continue with all further necessary preparations to enable the use of P credits to provide the required mitigation and support the determination of some planning applications held in abeyance for the River Tone sub catchment.
- f. Note, that the Local Planning Authority (LPA) will use the P Credit Allocation Procedure as agreed by this Phosphates Planning Sub Committee in February 2022.
- g. Agree that, where a developer has purchased P credits (or tenths of P credits), and the planning permission lapses or a developer chooses not to proceed to build, all unused P credits (and tenths of a P credit) will be forfeited, and the fee paid for them returned to the developer less the 10 % deposit and less an administration fee (as part of the Section 106 Agreement process).**
- h. Delegate to the Assistant Director Strategic Place and Planning in consultation with the Chair of the Phosphates Planning Sub Committee, minor clarifications, and amendments to processes which govern the release, monitoring, and pricing of P credits and the subsequent determination of planning applications for the River Tone sub catchment.**
- i. To review the price of P credits for the interim measures by April 2026, based on actual final build and three full years of actual operating costs.**

3 Background to the Report

- 3.1 As previously reported, on 17 August 2020, all the LPAs in Somerset received a letter from Natural England (NE) concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site. In June 2021 due to water quality issues, the Somerset Levels and Moors Ramsar site was determined by Natural England to be in an "unfavourable declining" condition. This follows water quality monitoring that revealed that phosphate levels are three times higher than they should be, causing algae blooms that are harmful to wildlife. Further advice from Natural England was issued in March 2022⁴. The River Axe catchment within East Devon District Council, a small part of

⁴ Available on the Council web site at: <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

which is within SWT was one of a further 42 areas caught by the nutrient neutrality issue. Further details are available on the Somerset West and Taunton Council (herein referred to as 'SWT') web site at:
<https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

- 3.2 As a result of a court judgment known as Dutch N, the LPA has not been able to grant planning permission for new affected development within the catchment of the River Tone, unless it can be certain beyond reasonable doubt that it would not give rise to additional phosphate loads in combination with other plans and projects within the hydrological catchment of the Somerset Levels and Moors Ramsar Site.
- 3.3 From a planning position this responsibility sits with developers and not the LPA. Whilst this is the accepted technical position, the Council considered the impact and burden required some intervention. The implications for the District have been considerable with a disproportionate effect on small and medium size enterprises (SMEs) and the associated supply chains; putting Central Government funding at risk and has resulted in a considerable number of planning applications held in abeyance whilst solutions are developed.
- 3.4 On 5 October 2021, SWT Full Council approved recommendations within an interim solutions report and a budget of £2m to enable the Council to purchase and/or create phosphate credits (herein referred to as P credits) that would be overseen by the Phosphates Sub Committee. This would assist in unlocking the delivery of some of the housing which had been on hold due to the nutrient neutrality issue. Further details of the report are available at:
(<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=325&MId=2887>)
- 3.5 In February 2022, this Sub Committee agreed the priority system for the allocation of P credits generated through the interim strategy, to those planning applications currently held in abeyance. It also agreed that P credits should be only allocated to applications for 'implementable development' as set out from Paragraph 7.9 of that committee report'. The committee report also noted that there will not be sufficient P credits to 'unlock' all planning applications held in abeyance.
(<https://democracy.somersetwestandtaunton.gov.uk/ieListDocuments.aspx?CId=461&MId=3105>)
- 3.6 At the time of drafting this report, there were approximately 160 planning applications in the planning system (including approximately 38 discharge of conditions applications) which are unable to progress for a positive determination as they are unable to demonstrate nutrient neutrality. This involves at total of circa 3000 new homes⁵, including approximately 1500

⁵ Figures as at 8 June 2022

which are held in abeyance due to the LPA being unable to discharge planning conditions or approve reserved matters.

4 Home Builders Federation (HBF) Report (March 2022)

- 4.1 To put the implications of not being able to determine planning applications in a wider context, in March 2022, a Home Builders Federation (HBF) Report set out the economic implications with the under-delivery of homes across the seven affected locations with a nutrient issue in England. The HBF Report estimates that approximately 60,600 dwellings are not being delivered as a result of the nutrient issues with an annual reduction of between £441.8 million and £2.2 billion economic output produced by builders, their contractors, and suppliers. The HBF's assessment of the economic impacts of reduced home building in the Somerset Levels catchment area is attached as Appendix E.

5 Proposed number of Phosphate Credits (P Credits) for the River Tone sub catchment

- 5.1 Work has been undertaken to bring forward a number of the interim measures set out in the report to Council of 5 October 2021. Officers have agreed Heads of Terms on the purchase of **34.8kg/yr** of phosphate mitigation from an external provider through the fallowing of agricultural land and are in the process of bringing this to its conclusion through a signed contract (see Legal Implications below). Through other projects the LPA expects to create a further **30.5kg/yr** of phosphate mitigation, largely through the delivery of retrofitting water saving measures in Council owned properties. This activity is very much customer led and aims to capture the benefits associated with reduced water consumption.
- 5.2 For the River Tone sub catchment area (based upon the contents of Appendix A) a total of **65.3/kg/yr**, equating to **65.3 P credits** are being generated through the interim strategy at a **cost to the Council of circa £3,54m**.
- 5.3 The overall interim strategy has been the subject of a standard Appropriate Assessment (AA) pursuant to a HRA (enclosed as Appendix C). The AA has been developed in consultation with Natural England and was peer reviewed. Natural England has provided a letter of 'in principle' support for the Interim Strategy, dated 6 June 2022. This is enclosed at Appendix D. Prior to formal sign off, final amendments are being made to the AA to confirm SWT liability for the implementation and monitoring of the strategy and the timescales for the delivery of the interim strategy mitigation projects (including temporary land fallowing and permanent wetland creation).

6 Proposed Pricing of Phosphate Credits (P Credits) for the River Tone sub catchment

- 6.1 As agreed at Full Council on 5 October 2021, the proposal is to recharge the cost of phosphate credits on a full cost recovery basis.
- 6.2 Based upon the contents of Section 5 of this report (see above) 65.3 P credits are being generated at a total cost to the Council of circa £3,54m. This equates to £54,222 for one P credit.
- 6.3 How many homes this will release is a complex question. The volume of mitigation varies for the same property type based on its exact location, proximity to a waste water treatment plant that the development will drain to, and the efficiency of that treatment plant. As a rough guide, we would expect to be able to release somewhere in the region of between 150 and 780 homes within the River Tone sub catchment area. Based on the known phosphate requirements of planning applications current held in abeyance (enclosed as Appendix B), the typical cost per home is likely to be in the region of at least £5,500.
- 6.4 The typical cost per home given in paragraph 6.2 is “Illustrative only”. Cost is dependent upon individual circumstances of each development which may increase or reduce the amount of offset needed as specified by the Somerset P Calculator.
- 6.5 In addition, the cost of entering into the Section 106 Agreement with the Council will also need to be covered. The fee is anticipated to be approximately £500 to £750. To assist this process attached as Appendix F, is a draft Section 106 Agreement. There have been no amendments or change to this document since it was approved by the Sub Committee in February 2022.
- 6.6 Some new developments are unable to connect to mains drainage and must connect to a Package Treatment Plant (PTP). With the assistance of Natural England and the Environment Agency, jointly prepared advice on this matter and the way in which the LPA will apply it is the subject of a separate report to this Sub Committee.

7 Proposed process governing the release of P credits to individual proposals (Overview)

- 7.1 Members will recall that the approved P Credit Allocation Process is a staged process setting out how Phosphate credits will be prioritised. Credits will only be released as they become available. The process necessitates a number of steps. This process is to be monitored throughout and will span several

services, as well as requiring engagement with statutory consultees, and applicants themselves.

- 7.2 As an overview of how the process is intended to operate, the first step is for developers to work out the number of credits needed using the Somerset Phosphate Budget Calculator⁶. Developer / applicants are also required to complete a project level appropriate assessment (a template for which enclosed as Appendix G). The developers are then kept on a list according to the priority set out in the allocations policy agreed by this Committee in February 2022. As credits become available and when applications are ready for determination, case officers will contact developers and provide them with an invitation to apply for credits. The developer /applicant submits information as part of the project level appropriate assessment (see Appendix G) including their phosphate calculations, and an online 10% deposit payment (non-refundable) for their allocated P credits. The minimum purchase is 1/10th of a P Credit. Their application will then be reviewed internally by Legal and Ecology in consultation with Natural England.
- 7.3 Where planning permission is granted, HRA conditions are applied, as set out in Schedule 1 of Appendix F, the developer shall Commence the Development within three calendar months of the date of the issue of the Permission unless otherwise agreed in writing with the Council. This requirement must be satisfied otherwise the P Credits are returned to the LPA and payment is reimbursed to developers (minus the 10% non-refundable deposit, as stated above).
- 7.4 Developers will also be asked to confirm that they are ready, willing, and able to proceed with their development if approved to reduce the risk of P credits being “banked” and not used. In the event that a planning permission subsequently lapses, or the developer informs us that they will not be proceeding with development after receiving P credits, then the P credits will be forfeited and returned to the LPA and the developer will be reimbursed their P credit cost (minus the 10% non-refundable deposit as stated above) subject to an administration fee.
- 7.5 Mindful of the purpose of the P Credit scheme, any developer no longer requiring the obtained credits may seek a reimbursement from the Council through the Section 106 Agreement process. Unused credits cannot be sold onwards to a 3rd party and must always be returned to LPA.
- 7.6 The Council is at the forefront of finding phosphate solutions, and this means that there are few examples for us to follow. Accordingly, delegated authority is sought for the Assistant Director of Strategic Place and Planning to continue with all further necessary preparations to enable the determination of planning applications held in abeyance with the P credits generated by the

⁶ Available on the Council web site at: <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

interim measures for the River Tone sub catchment area (Recommendation in Section 2 above).

8 Risk Assessment

- 8.1 There are several risks associated with the delivery of the interim phosphate mitigation measures and generation of P credits. The risks as set out in the Report to Full Council in October 2022 have been reviewed and updated. These are set out in Table 1 below.
- 8.2 The risk analysis assesses the key risks associated with the interim measures. These are expressed as the product of the likelihood multiplied by the impact to give a score (also colour coded red, amber, and green) for each risk.
- 8.3 Mitigation measures to reduce the risk are also outlined. All cost recovery investment carries risk. We aim to mitigate identified risks through the use of specialist advisors to ensure that acquisitions are subject to independent advice confirming the purchase represents reasonable value for money and the appropriate support to assist with the creation of a transparent approach in allocating phosphate credits to affected development. Also, through regular budgetary and programme monitoring.
- 8.4 The “Alternative Option of “do nothing” was dismissed in the report to Full Council in October 2021. Without a P credit pricing and P allocation policy, P credits cannot be offered to developers at cost and affected development within the River Tone catchment would be unable to proceed .

Table1 Key Risk Assessment of interim measures

	Risk Description	Likelihood	Impact	Overall	Risk Mitigation Measures	Likelihood	Impact	Overall
i	Failure to act commercially and recover initial Council expenditure and fees.	1	3	3	<i>The detail of costs to obtain phosphate credits will be assessed prior to recharge to ensure that the costs are recovered. These vary and are site specific.</i>	2	2	4
ii	Failure to generate and/or obtain sufficient phosphate credits.	3	3	9	<i>The proposed programme of interim measures involves both the purchase of phosphates credits and an Appropriate Assessment of site-specific schemes with Natural England signoff.</i>	2	3	6

	Risk Description	Likelihood	Impact	Overall	Risk Mitigation Measures	Likelihood	Impact	Overall
iii	<p>Impact of this cost pressure on infrastructure delivery, financial viability, and affordable homes.</p> <p>The cost of mitigating some sites where this is a significant additional cost and/or on sites that already have marginal viability may result in some developments proposals stalling in the long-term.</p> <p>Also, with a reduction in new homes comes an evitable reduction in affordable housing delivery.</p>	3	4	12	<p><i>This will need careful management – the phosphate issue is here to stay until such time as the Somerset Levels and Moors returns to a “favourable” condition. The Council is commissioning further infrastructure delivery work for the Garden Town which will include viability assessment.</i></p>	2	2	4
iv	<p>Post Purchase Management e.g. requirement to monitor schemes.</p>	2	2	4	<p><i>The management and maintenance of sites will pass to the Council’s in house Open Spaces service or other appropriate stewardship arrangements.</i></p>	2	2	4

9 Links to Corporate Strategy

- 9.1 The Corporate Strategy and its Key Objectives are set out on the SWT website at:
<https://www.somersetwestandtaunton.gov.uk/your-council/corporate-strategy/>
- 9.2 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.

9.3 There are also links to the Council's Climate Emergency plan and work being undertaken by the Local Nature Recovery Sub Group.

10 Finance/Resource Implications

10.1 The financial and resource implications to the Council of funding the Phosphates Mitigation Interim Measures were set out in the Full Council Report of October 2022.

10.2 The intent is for a full cost recovery of capital costs and that additional revenue costs required to maintain and/or monitor the assets will be included as part of these agreements which will be secured via contributions from S106 agreements as part of the determination of planning applications. The Council has received legal opinion to confirm that P-credits fall within the definition of a statutory charge and can be recovered via S106.

10.3 Where any maintenance/monitoring costs are not fully recovered they will need to be included as a pressure in the Medium Term Financial Plan of the New Council for Somerset

10.4 The Infancy of the nutrient neutrality market, with so many unknowns, along with a significant number of assumptions and variables, means that it has been extremely difficult at this point in time to understand the financial value of a P Credit in the marketplace. Therefore each possible purchase of land or phosphate mitigation measure, is being reviewed on a case by case basis.

10.5 In order to unlock current planning applications delayed by the requirements for Phosphates mitigation, mainly related to smaller developments, the Council is pursuing a variety of solutions which currently include:

- Developing a wetland at the Cotford St Luke site purchased for this purpose. The time taken to create wetlands is five to seven years. Given the continuing unfavourable status of the Somerset Levels and Moors, the extent to which Wessex Water's capital investment plan (i.e. Asset Management Plan 8, which covers the period 2025 to 2030) will resolve the issue is unclear. Long term (i.e. post 2030), this may lead to the write down of the value of this asset.
- Negotiating the purchase of 34.8kgs of mitigated phosphates from a local farmer who will designate 62ha of land to a fallowing scheme. As the Phosphates can be purchased in tranches of 10kgs, the risk to the Council is reduced. The gap between the purchase of the Phosphate credit and recovery via S106 will require internal bridging finance. It is likely that the

roll out of subsequent 10kg tranches may fall into the 2023/24 financial year, requiring bridging finance from Somerset Council. This has been referred to the SCC S151 Officer for approval.

- Utilising the Phosphates mitigated from Council owned property which is currently being used as Parks in Monkton Heathfield and Foxes Field, Wellington.
- There is potential for Phosphate mitigation to be obtained by the current Housing Retro-fit programme to reduce water consumption in the current housing stock. The option to use the current Housing Revenue Account programme to upgrade bathroom fittings to reduce water consumption in the current HRA housing stock, from 145 litres to 110 litres per person per day, is being developed.

- 10.6 The costs used to determine the cost per kilogram are based on actual costs where available, together with estimates based on consulting advice and Officer assessments. The quantity of Phosphate kilograms is determined using the Somerset Phosphate Calculator.

11 Legal Implications

- 11.1 As set in this report, the programme of interim measures is intended to apply and operate within the legal and policy framework of the planning system and statutory requirements of the Habitats Regulations.
- 11.2 The proposed approach is supported by an HRA / Appropriate Assessment. The principle of this has been agreed with Natural England subject to final amendments .
- 11.3 As previously advised, once schemes are implemented there is also the requirement to monitor i.e. ensure enough measures are in place prior to occupation of dwellings to achieve neutrality and are retained in perpetuity and a commitment to stop issuing permissions if mitigation delivery falls behind.
- 11.4 SWT officers have continued to seek legal advice from Shape Legal and Counsel on various matters associated with the determination of planning applications. In February 2022, Members will recall that this Sub Committee considered matters relating to planning conditions and a template for Section 106 Agreements which will be the legal mechanism formally allocating P credits to a specific development. The Sub Committee also considered the Council's approach on how phosphate credits would be allocated by the Council in a fair and transparent way.
- 11.5 With regard to the purchasing of P Credits associated with the fallowing of land in the Taunton locality, the legal aspects this purchase are being undertaken by Shape Legal. These P credits will be secured through a legal agreement between the Council and the landowners of the fallow land

pursuant to S39 Wildlife and Countryside 1981 which will allow for phased draw-down of the P credits in tranches over a period of up to 2 years. The legal agreement will be terminable by the Council if Government policy in relation to nutrient neutrality in the Taunton catchment changes in the future.

- 11.6 To accommodate new information and advice from Natural England, the SWT phosphate webpage was revamped in March 2022. A summary of Counsel's legal advice is on the SWT web site at:
<https://www.somersetwestandtaunton.gov.uk/media/2587/legal-summary.pdf>

12 Climate and Sustainability Implications

- 12.1 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.
- 12.2 The likely solution aimed at phosphate mitigation such as wetland creation at Cotford St Luke are thus likely to lead to biodiversity enhancements and accord with proposals and initiatives to address the climate emergency and biodiversity net gain. The sustainability credentials will be assessed through the project Habitats Regulation Assessment which will be agreed with Natural England.

13 Safeguarding and/or Community Safety Implications

- 13.1 None related directly to this report.

14 Equality and Diversity Implications

- 14.1 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.
- 14.2 None of the above relate directly to this report.

15 Social Value Implications

- 15.1 The social value implications set out in the Full Council Report of 5th October 2021, remain applicable.

- 15.2 At this stage we have not carried out a detailed analysis in this area. In line with our corporate priorities (see section 7 above), SWT is committed to providing much need affordable and social housing.
- 15.3 The interim programme of measures is aimed at unlocking the significant number of planning applications awaiting determination in the River Tone sub catchment area. As detailed in Appendix B many of these applications involve homes, including much needed affordable and social housing. Their delivery is essential to the social outcomes of our District.

16 Partnership Implications

- 16.1 As set out in section 6 and 7 of this report, the Council will continue to work with the other Local Authorities in Somerset and other public bodies (e.g. Natural England, the Environment Agency, and Wessex Water) to discuss potential interim solutions and strategic responses.
- 16.2 Liaison is also ongoing with local developers affected by this issue and representative bodies such as HBF to lobby central government for further support in addressing the overarching issue of water quality.

17 Health and Wellbeing Implications

- 17.1 By facilitating the delivery of housing, 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.

18 Asset Management Implications

- 18.1 The management of interim phosphate solutions on SWT owned sites will be passed to the External Operations team to manage in the long term.

19 Data Protection Implications

- 19.1 We may require information sharing agreements between the Council and any purchaser of P credits as part of the long-term implementation of sites for phosphate mitigation.

20 Consultation Implications

- 20.1 None related directly to this report.

Background Papers

Full Council Report of 5 October 2021

<https://democracy.somersetwestandtaunton.gov.uk/documents/s17540/Somerset%20Levels%20and%20Moors%20Phosphate%20Mitigation.pdf>

Progress on the Interim Strategy and determination of planning applications held in abeyance: 24 February 2022

<https://democracy.somersetwestandtaunton.gov.uk/documents/s18828/Report%20to%20the%20Phosphates%20Planning%20Sub%20Committee%20-%20Progress%20on%20the%20Interim%20Strategy%20and%20determinatio.pdf>

Home Builders Federation (HBF) Report (March 2022)

<https://www.hbf.co.uk/news/report-achieving-nutrient-neutrality-new-housing-development-economic-impact-under-delivery-housing/>

List of Appendices

Appendix A	For the River Tone sub catchment: summary of phosphate mitigation projects being progressed by the LPA.
Appendix B	Planning applications and discharge of conditions/reserved matters applications currently held in abeyance.
Appendix C	Supporting Habitats Regulations Assessment for the Interim Measures.
Appendix D	Natural England letter of support (dated 6 June 2022).
Appendix E	HBF's assessment of the Economic impacts of reduced home building in the Somerset Levels catchment area.
Appendix F	Draft Section 106 Agreement.
Appendix G	Project level appropriate assessment template.

Appendix A: For the River Tone sub catchment: summary of phosphate mitigation projects being progressed by SWT ⁷

Category	Measures	Precautionary Timeframe	P Mitigation in kg/yr
1 Utilising Council Assets	(a) Retrofitting of the Council's own housing stock to improve their water efficiency and create phosphate credits.	Short Term (up to 1 year)	16.47 ⁸
2 Land Use Measures	(b) The development of medium to large-scale strategic project(s), located in the River Tone sub-catchment. (e.g. Cotford St Luke) as well as exploring and progressing land purchase options.	Medium Term (1-5 years)	12.87
	(c) Seeking to secure phosphate credits from schemes / temporary measures / contracts which deliver small scale phosphorous offsetting measures (Small Schemes) e.g. woodland planting taking land out of intensive agricultural (arable or grass), fallowing land.	Short Term (up to 1 year)	1.16 ⁹
3 Working in partnership with the Private Sector	(d) Fallowing land in locations around Taunton (subject to landowner negotiations)	Short Term (up to 1 year)	34.8
Total			65.3
Total Cost to SWT (excluding interest payments)			£3,540,695

⁷ **Cautionary Note:** The following should be taken into consideration when reading the above table: Phosphate loads are estimated on a rate of phosphate produced per dwelling assuming an average occupancy of 2.4 people per dwelling. The phosphate load is calculated on the basis that residential development will be built to the highest water efficiency standards provided for. The phosphate loads for individual projects have been estimated in line with the environmental permit of the relevant connected Wastewater Treatment works contained with the phosphate calculator, as approved by Natural England

⁸ Based on estimated scope of works provided by SWT Housing colleagues.

⁹ Based on option with the lowest mitigation potential

Appendix B Planning applications current held in abeyance

- 160 planning applications in the planning system (including approximately 38 discharge of conditions applications) which are unable to progress for a positive determination as they are unable to demonstrate nutrient neutrality.
- This involves at total of circa 3000 new homes , including approximately 1500 which **are held in abeyance**

Appendix C: Supporting Habitats Regulation Assessment of interim measures



010722 - SWT
Generic AA for Interi

Appendix D: Natural England letter of support (dated 6 June 2022)



NE letter of support
for SW&T interim m

Appendix E: HBF's assessment of the Economic impacts of reduced home building in the Somerset Levels catchment area

Type of Economic Benefit		Past Completions	Effect of reduction in building		
			10% Reduction	25% Reduction	50% Reduction
Number of dwellings		4,727	473	1,182	2,364
Net Capital Expenditure	Acquiring or upgrading physical assets to support day-to-day operations	£23.8m	£2.4m	£6.0m	£11.9m
Economic Output	Builders, their contractors and suppliers	£822.6m	£82.3m	£205.6m	£411.3m
Employment	Direct	5,200	500	1,300	2,600
	Indirect	4,000	400	1,000	2,000
	Induced	5,900	600	1,500	2,900
	Total	15,100	1,500	3,800	7,600
UK Public Finance Revenue	Stamp Duty Land Tax Receipts	£8.5m	£849,000	£2.1m	£4.2m
	Corporation Tax Incurred	£34.6m	£3.5m	£8.7m	£17.3m
	NI and PAYE Contributions	£16.8m	£1.7m	£4.2m	£8.4m
Local Authority Revenue	New Homes Bonus payments	£31.6m	£3.2m	£7.9m	£15.8m
	Council Tax Receipts	£5.5m	£548,000	£1.4m	£2.7m
Local Community Benefits	S.106 Contributions	£18.2m	£1.8m	£4.6m	£9.1m
	Community Infrastructure Levy Payments	£4.1m	£407,000	£1.0m	£2.0m
	New Resident Expenditure	£153.7m	£15.4m	£38.4m	£76.8m
Affordable housing	Value of affordable housing sales	£90.9m	£9.1m	£22.7m	£45.5m

Extract from HBF Report (March 2022).

Appendix F: Draft Template Section 106 Agreement

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 situate 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 under 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 Council has identified the quantity of P-Credits which will be required to ensure the Development will be phosphate neutral
- 6 The Owner has agreed to pay to the Council the P-Credit Sum to secure the Initial Reservation and subsequent Allocation of the P-Credit Requirement to the Development
- 7 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 allocation of the P-Credit Requirement to the Development will ensure that the Development is phosphate neutral and thus will not result adversely affect the integrity of the Ramsar Site
- 8 The Council has resolved to grant the Permission subject to conditions and the completion of a Section 106 Agreement to secure various planning obligations
- 9 This Agreement has been entered into by the parties hereto to secure the planning obligations set out herein

NOW THIS DEED WITNESSES AS FOLLOWS:

- **DEFINITIONS**

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

- 9.1 **“1990 Act”** means the Town and Country Planning Act 1990 and all subsequent statutory amendments to it
- 9.2 **“Allocation”** means the permanent allocation by the Council of the P-Credit Requirement to the Development following receipt of the Final Payment from the Owner and **“Allocated”** shall be construed accordingly
- 9.3 **“Application”** means the full application for the [.....] at [.....]. and accorded Council reference number [.....]
- 9.4 **“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 and the word **“Commence”** and **“Commenced”** in relation to the Development shall be construed accordingly.
- 9.5 **“Development”** means the development of the Site in accordance with the Application and the Permission
- 9.6 **“Dwelling”** means each dwelling to be constructed on the Site pursuant to the Permission and the phrase **“Dwellings”** shall be construed accordingly
- 9.7 **“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)
- 9.8 **“Initial Deposit”** means 10% of the P-Credit Sum
- 9.9 **“Initial Reservation”** means the provisional reservation by the Council of the P-Credit Requirement to the Development following receipt of the Initial Deposit from the Owner
- 9.10 **“Interest”** means interest at 8% above the base lending rate of National Westminster Bank plc from to time
- 9.11 **“Interim Strategy”** means the programme of interim measures and projects to be undertaken by the Council (as adopted by Full Council on 5th October 2021) to improve water quality and efficiency within the catchment of the Ramsar Site
- 9.12 **“Final Payment”** means 90% of the P-Credit Sum

- 9.13 **"Permission"** means planning permission to be issued for the Development pursuant to the Application
- 9.14 **"P-Credit"** means the instrument(s) that represents the water quality and efficiency improvements generated by the Council through the Interim Strategy
- 9.15 **"P-Credit Sum"** means [£.....] being the total cost to the Owner of the P-Credit Requirement
- 9.16 **"P-Credit Requirement"** means [.....*number*.....] of P-Credits being the quantity of P-Credits which are required to ensure the Development will be phosphate neutral
- 9.17 **"Plan"** means the plan attached to this Agreement
- 9.18 **"Ramsar Site"** means the Somerset Levels and Moors Ramsar Site
- 9.19 **"Redemption Certificate"** means written confirmation by the Council that the P-Credit Requirement has been Allocated to the Development
- 9.20 **"Released"** means the release and cancellation of the Initial Reservation
- 9.21 **"Site"** means the land at [.....] Somerset against which this Agreement may be enforced as shown edged red for identification purposes on the Plan
- 9.22 **"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

10 CONSTRUCTION OF THIS DEED

- 10.1 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.
- 10.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 10.3 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.
- 10.4 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

- 10.5 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.
- 10.6 The headings are for reference only and shall not affect construction.

LEGAL BASIS

- 11 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.
- 12 The covenants on the part of the Owner contained in Schedule 1 hereto are planning obligations for the purposes of Section 106 of the 1990 Act which are enforceable by the Council
- 13 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

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

COVENANTS

- 15 The Owner covenants with the Council so as to bind the Site as set out in Schedule 1 hereto
- 16 The Council covenants with the Owner as set out in Schedule 2 hereto

MISCELLANEOUS

- 17 This Agreement shall be registrable as a local land charge by the Council
- 18 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
- 19 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 or its interest in the part of the Site in relation to which the breach subsists but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 20 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.
- 21 This Deed shall not be enforceable against any tenant of an individual Dwelling nor against those deriving leasehold title from them.
- 22 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

- 23 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
- 24 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
- 25 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
- 26 This Agreement shall not be binding on nor enforceable against any statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
- 27 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

- 28 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

- 29 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) together with the area of the Site or unit of occupation purchased by reference to a plan within 15 Working Days of the said change in ownership PROVIDED THAT this clause shall not apply to individual disposals of Dwellings to tenants

SETTLEMENT OF DISPUTES

- 30 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

- 31 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
- 32 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:
- 32.1 the charges and expenses of the Expert shall be borne equally between the Relevant Parties unless the Expert shall otherwise direct
- 32.2 the Expert shall give the Relevant Parties an opportunity to make representations and counter representations to him before making his decision
- 32.3 the Expert shall be entitled to obtain opinions from others if he so wishes
- 32.4 the Expert shall make his decision within the range of any representations made by the Relevant Parties themselves
- 32.5 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

- 33 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.
- 34 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.
- 35 All monies paid in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

JURISDICTION

- 36 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

- 37 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 1
Owner's Covenants

The Owner hereby covenants with the Council:

1. On the date hereof to pay the Initial Deposit to the Council and the Owner acknowledges that the Initial Deposit shall be non-refundable
2. The Owner shall Commence the Development within three calendar months of the date of the issue of the Permission unless otherwise agreed in writing with the Council (such agreement to be at the Council's absolute discretion)
3. Not to Commence the Development until the Final Payment has been paid to the Council and the Council has issued the Redemption Certificate
4. In the event that the Development is not Commenced within the period stipulated in or otherwise agreed pursuant to Paragraph 2 of this Schedule:
 - 4.1 the Initial Reservation shall be Released and the Owner acknowledges that the Council shall then be entitled to re-allocate the relevant P-Credits to other development and projects in its administrative area; and
 - 4.2 the Council shall be released from the obligation in Paragraph 4 of Schedule 2 to accept the Final Payment and issue the Redemption Notice
5. Not to Occupy or allow or permit the Occupation of any Dwelling unless and until the Council has issued the Redemption Notice or unless otherwise agreed in writing with the Council
6. To notify the Council in writing of the Commencement of Development within 5 Working Days of the date of the same

SCHEDULE 2
Council's Covenants

1. Within 5 Working Days of receipt of the Initial Deposit the Council shall provide the Owner with written confirmation of the Initial Reservation
2. On receipt of the Initial Deposit from the Owner the Council shall not allocate the P-Credit Requirement to any other development or project within its administrative area unless Released in accordance with Paragraph 4 of Schedule 1
3. In the event that the Development is not Commenced within the period stipulated in or otherwise agreed pursuant to Paragraph 2 of Schedule 1 the Council's agrees and acknowledges that the Owner shall be released from the obligation in Paragraph 4 of Schedule 1 to pay the Final Payment
4. Subject to Paragraph 4.2 of Schedule 1, within 5 Working Days of receipt of the Final Payment from the Owner the Council shall issue the Redemption Notice

THE COMMON SEAL of)

SOMERSET WEST AND TAUNTON COUNCIL)

was affixed in the presence of:)

Authorised Signatory

EXECUTED by affixing the Common Seal of)

)

in the presence of:)

Director

Director/Secretary

Appendix G: Project level Appropriate Assessment Template



2022-06-29
Somerset West and

Generic Appropriate Assessment of Somerset West and Taunton's Interim Phosphate Mitigation Strategy



This document has been prepared by Somerset West and Taunton Council.

Photographs show:

The Somerset Levels and Moors, obtained from the RSPB Source:

<https://www.rspb.org.uk/our-work/conservation/landscape-scale-conservation/sites/somerset-levels-and-moors/>

Copies of this document are available from:

Somerset West and Taunton

The Strategy Team, Deane House, Taunton, TA1

1HE

Tel: 0300 304 8000

Email: strategy@somersetwestandtaunton.gov.uk

Accessibility: this document is also available in Braille, large print, on tape and on disc and we can translate it into different languages. We can provide a member of staff to discuss the details. (confirm / insert appropriate equalities logos / text)

Document control record

Name of Document:

Approach to Habitat Regulations Assessment of Somerset West and Taunton's Interim Phosphate Mitigation Strategy

Author: Somerset West and Taunton

Description of content: The Appropriate Assessment that applies to affected planning applications for residential and non-residential development within the River Tone catchment area.

Authors

Paul Browning

Emmeline Brooks

Jessica Picken

Approved by:

Date of approval:

insert 2022

Version	Date	Comments
1	2 nd November 2021	First draft.
2	5 th November 2021	Track changes version
3	9 th December 2021	NE comments and track changes
4	22 nd December	Track changes accepted
5	17 th February 2022	NE comments addressed.
6	7 th April 2022	Updated version with NE comments addressed. Sent to Arup for peer review.
7	14 th April 2022	Comments from peer review addressed. Sent to NE for approval.
8	30 th May 2022	Updated version with appendices sent to NE for 'in principle' approval
9	1 st July 2022	Final version with appendices issued to NE for approval.

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Appendix A – Qualifying Features of European Sites

Appendix B - Map of Somerset Levels and Moors Surface Water Catchment

Appendix C – Summary of Strategic Projects being progressed through Interim Strategy

Summary

In August 2020 Natural England issued an Advice Note to Somerset West and Taunton Council cornering the 'unfavourable condition' of the Somerset levels and Moors Ramsar Site. As a result of high levels of phosphates having significant effects on the integrity of the Ramsar site, Natural England advised that certain types of new development, including all new residential development, should be put on hold until such time as it could be demonstrated that it would be 'nutrient neutral' i.e. not add additional phosphates into the existing wastewater treatment system.

There is no statutory duty for Somerset West and Taunton Council, as the Local Authority to intervene to address the phosphate issue. However, since Natural England issued their advice there are currently over one hundred planning applications held in abeyance that cannot be determined without a phosphate solution. This hold on development is having wide-ranging issues on the Council's ability to meet its statutory duties including for example meeting housing targets and supporting post-Covid 19 recovery. In light of this, Somerset West and Taunton Full Council has agreed a series of interim phosphate mitigation measures with the overarching aim of 'unlocking' some phosphate-affected development within the District. This programme of measures is known as the 'Interim Strategy'.

Regulation 63 of the Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations') requires a competent authority, before deciding to undertake or give consent for a plan or project which (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or project), and (b) is not directly connected with or necessary to the management of that site, to make an 'appropriate assessment' of the implications of the plan or project for that site in view of its conservation objectives.

In their August 2020 advice note, Natural England advised Somerset West and Taunton Council, as the competent authority, that 'before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment proceeding to an appropriate assessment where a likely significant effect cannot be ruled out, even where the development contains pollution mitigation provisions.'

The purpose of this document sets out Somerset West and Taunton Council's approach to Habitats Regulations Assessment (HRA) for projects progressed through the Interim Strategy. It sets out how this proposed approach to HRA will allow the Council to conclude that projects progressed through the Interim Strategy will not adversely affect the integrity of the Ramsar site.

1. Introduction

- 1.1. This document sets out how Somerset West and Taunton Council (SWT) will ensure that their interim programme of phosphate mitigation measures¹ complies with the requirements of the Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').
- 1.2. On 5 October 2021, SWT Full Council approved a £2 million Supplementary Capital Budget in order to fund a programme of interim mitigation measures to secure phosphate neutral development in perpetuity. More specifically, the measures were approved in order to facilitate the delivery of some new development in the District, particularly new homes, without having an adverse effect on the integrity of the Somerset Levels and Moors Ramsar Site. This interim programme of measures is herein referred to as the 'Interim Strategy'.
- 1.3. In accordance with Natural England guidance, *'where plans or projects will contribute additional nutrients to Habitats sites which are close to or already in unfavourable condition for nutrients, then a robust approach to the Habitats Regulations Assessment of the effects of plans and projects is required'*².
- 1.4. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations') requires a competent authority, before deciding to undertake or give consent for a plan or project which (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or project), and (b) is not directly connected with or necessary to the management of that site, to make an 'appropriate assessment' of the implications of the plan or project for that site in view of its conservation objectives³.
- 1.5. This document contains information setting out SWT's to Habitats Regulations Assessment (HRA) and Appropriate Assessments therein for projects progressed through the Interim Strategy. It sets out how this proposed approach to HRA will allow the Council to conclude that projects progressed through the Interim Strategy will not adversely affect the integrity of the Ramsar site.
- 1.6. The Council as the competent authority under The Habitats Regulations has consulted Natural England (NE) and has had paid due regard to their advice in preparing this report.
- 1.7. For the avoidance of doubt, whilst background information has been provided for context, this document is focused solely on the phosphates mitigation

¹ As set out in the SWT Report to Full Council on the 5 October 2021, available at: <https://www.somersetwestandtaunton.gov.uk/media/2894/somerset-levels-and-moors-phosphate-mitigation-report-to-full-council-05-oct-2021.pdf>

² Ricardo/Natural England (2022) Nutrient Neutrality Generic Methodology *Issue 1*

³ See: <https://www.legislation.gov.uk/uksi/2017/1012/regulation/63/made>

measures being put place as part of the Interim Strategy. It sets out the key phosphate mitigation measures proposed through Interim Strategy and the quantum of nutrient neutral development that can be released as a result. It has been prepared on the basis of best available evidence at the time of writing.

- 1.8. The baseline for the assessment is the condition of the Somerset Levels and Moors at the time that Natural England issued their advice note in August 2020⁴.
- 1.9. Overall it is anticipated that the interim strategy will provide suitable mitigation for approximately 65.3 kg/year of phosphates into the Somerset Levels and Moors, which will generate P credits that can be sold by SWT to allow some nutrient neutral development to proceed within the District. This is explained in more detail throughout this report.
- 1.10. The figures above are based on minimum predicted values, in consideration of the need to take a precautionary approach. The Interim Strategy will be monitored by SWT to confirm whether the minimum values above have been met, exceeded or whether there is a shortfall. If the minimum values are exceeded, additional P credits will be able to be released through the interim strategy. If it is the case that there is a shortfall in required mitigation, SWT understands that further mitigation would be required to fulfil the deficit.

2. Background to the Issue and Affected Sites

Phosphates and the Somerset Levels and Moors

- 2.1. Phosphates are a salt containing the element phosphorus. They occur naturally through the weathering and erosion of rocks, or in agriculture and food production, through the use of fertilisers and food additives, and in animal and human waste. A high level of nutrients in rivers and lakes affects water quality. Increased nutrient loads causes an excess growth of algae in the water, which in turn deteriorates water quality and depletes the oxygen, which plants and animals need to survive. This process is known as eutrophication.
- 2.2. The main source of poor water quality through the Somerset Levels and Moors is diffuse water pollution e.g. agricultural run-off. Within the domain of land-use planning, various types of development within the River Tone catchment have the potential to contribute to elevated phosphorous through foul water discharges from sewage treatment works and package treatment plants.
- 2.3. The Somerset Levels and Moors is one of the largest wetlands in England covering approximately 35,000ha. It is a Ramsar Site and Special Protection

⁴ Available at: <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

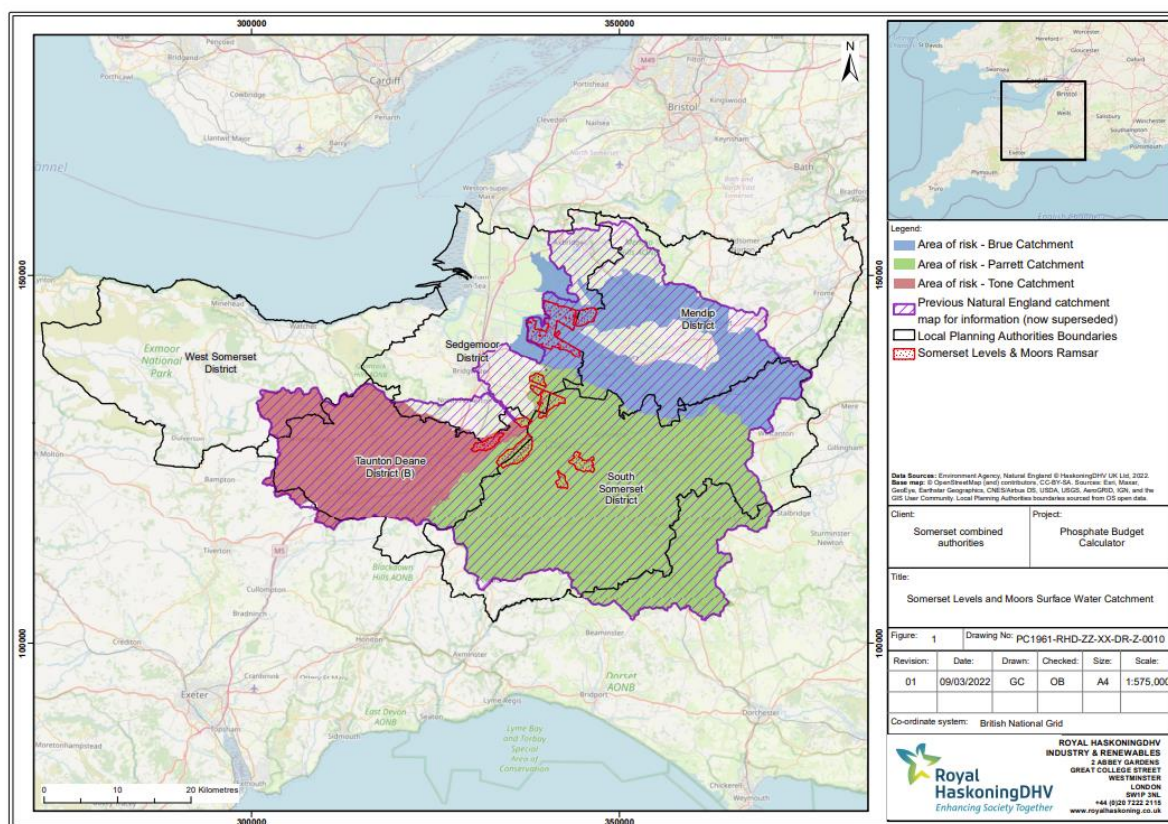
Area (SPA) and is comprised of a series of Sites of Special Scientific Interest (SSSI)⁵.

- 2.4. The Ramsar Site broadly covers the same area as the Somerset Levels and Moors SPA. While the SPA is designated for its international waterbird communities, the Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest (SSSIs).
- 2.5. Further information on the characteristics of the European Site is provide in Appendix A and further information relating to the unfavourable condition of the Ramsar Site and the underpinning SSSIs designated under the Wildlife & Countryside Act 1981 (as amended) can be found at Annex 1 of the Natural England Advice Note⁶. A map showing the location of the Ramsar Site and the Somerset Levels and Moors Catchment Area is shown in Figure 1 below and at Appendix B.
- 2.6. It should be noted that in their Advice Note to the Somerset Authorities (dated August 2020) Natural England confirmed that 'additional nutrients from typical new developments...are unlikely, either alone or in combination, to have a likely significant effect on the internationally important bird communities for which the site is designated.'
- 2.7. Based on our current understanding, Natural England is satisfied that additional nutrients from typical new developments are unlikely, either alone or in combination, to have a likely significant effect on the internationally important bird communities for which the SPA is designated. On this basis, Natural England is satisfied that the effects of additional nutrients from development on the SPA can normally be screened out of further assessment.
- 2.8. The interest features of the Somerset Levels and Moors Ramsar Site however are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates. The vast majority of the ditches within the Ramsar Site and the underpinning SSSI's are classified as being in unfavourable condition due to excessive phosphates and the resultant ecological response.
- 2.9. In light of this, effects on the SPA from excessive phosphates have been 'screened out' of further assessment. This document therefore focuses on likely significant effects on the Somerset Levels and Moors Ramsar Site.

⁵ Including: Catcott Edington and Chilton Moors SSSI Curry and Hay Moors SSSI King's Sedgemoor SSSI Moorlinch SSSI Shapwick Heath SSSI Southlake Moor SSSI Tealham and Tadham Moors SSSI West Moor SSSI West Sedgemoor SSSI Westhay Heath SSSI Westhay Moor SSSI Wet Moor SSSI

⁶ <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

Figure 1 Somerset Levels and Moors Surface Water Catchment Area (including extent of Ramsar Site designation and Local Authority Boundaries)



Source: RoyalHaskoningDHV as part of the Somerset Solutions Report

Natural England Advice Note

2.10. As briefly mentioned above, On 17 August 2020, in light of a court judgment (known as Dutch N)⁷, all the planning authorities in Somerset received an advice note from NE concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar Site, reporting that ‘phosphorus levels are frequently 2-3 times higher than the target for total phosphorus set out within the Conservation Objectives underpinning the Ramsar Site⁸.’

2.11. NE has advised that as a result of the unfavourable condition of the Ramsar Site, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment (HRA) proceeding to an appropriate assessment where a likely significant effect cannot be ruled out, even where the development contains pollution mitigation provisions.

⁷ (Joined Cases C-293/17 and C-294/17 *Coöperatie Mobilisatie for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others*)

⁸ Natural England (2020) <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

- 2.12. In line with other Local Planning Authorities (LPAs) with nutrient related issues, SWT have advised affected applicants of the need to undertake project-level appropriate assessments for: full planning applications, outline planning applications, reserved matters applications and applications to discharge implementing planning conditions (pre-commencement planning conditions).
- 2.13. This has resulted in planning applications at SWT being held in abeyance until such time as a phosphate solution is found. As of 27 January 2022, our records indicated that there are:
- Approximately 112 planning applications held in abeyance
 - 36 planning applications are on hold as the LPA is unable to discharge pre-commencement conditions
 - This equates to approximately 3,200 dwellings.
- 2.14. This has resulted in a significant halt on the development of new residential development, as well as other development types (e.g. tourist accommodation) within the River Tone catchment area.
- 2.15. This halt to development is having wide-ranging implications on SWT's ability to deliver on wider objectives including:
- Facilitating sustainable development
 - Supporting post-Covid 19 recovery
 - Supporting small and medium-sized businesses (SMEs)
 - Maintaining a 5-year housing land supply (5YHLS) and meeting
 - the housing delivery test (HDT)
 - Meeting other housing duties, including facilitating the delivery of affordable housing.
- 2.16. It is for these reasons that SWT's Interim Strategy has been agreed.
- 2.17. The overarching purpose of the Interim Strategy is to allow some nutrient neutral development to proceed within the District without having an adverse effect on the integrity of the Somerset Levels and Moors Ramsar Site.

3. Phosphorous Neutrality Measures Currently in Place

- 3.1. In response to the receipt of Natural England's advice note as LPAs the four Somerset District Councils and Somerset County Council have been working together to progress possible solutions namely through the Somerset Wide Solutions Report which is discussed further below.

Somerset Wide Solutions Report

- 3.2. The Somerset Authorities have been working together to investigate potential medium and long term strategic solutions for the four river catchment areas which feed into the Somerset Levels and Moors⁹. Consultants Royal Haskoning DHV was commissioned by the Somerset Authorities to carry out this work in Spring 2021.
- 3.3. The final Somerset Levels and Moors Phosphate Mitigation Solutions Report ('The Solutions Report') was published in March 2022 and provides Somerset wide framework to work within.
- 3.4. Critically, the Solutions Report also finalised (with agreement from Natural England) the extent of the affected catchment areas in Somerset, and the Somerset Levels Catchment Areas Map can be viewed in Appendix B of this report.

Third Party Solutions

- 3.5. In addition to the above, SWT anticipates that further solutions will be brought forward by third parties. SWT is aware of potential online trading¹⁰ and continues to engage with such providers in order to be in a position to be able to accept such credits as phosphate mitigation when platforms are actively trading. At the time of writing, SWT is not aware of an online platform that is currently open to trading in the SWT local authority area, and although in principle SWT would accept credits from third party platforms, it is awaiting further legal advice on this matter prior to being able to confirm this position.
- 3.6. Planning applicants are also beginning to come forward with their own on or off-site solutions to ensure their development proposals are phosphate neutral. SWT LPA is supporting such applications through the planning process, in consultation with Natural England.
- 3.7. For the avoidance of doubt, these activities have been presented as background information and fall outside the scope of this document which focuses on the approach to HRA for developments brought forward as part of the SWT Interim Strategy which is presented in more detail from Section 4 below.

4. Somerset West and Taunton Interim Strategy

- 4.1. As set out in paragraph 1.3, SWT is progressing an Interim Strategy in order to facilitate some phosphate neutral development in the district.

⁹The Tone, Parrett, Axe and Brue

¹⁰ e.g. the Solent Nutrient Market pilot programme, see: <https://www.push.gov.uk/defra-trading-platform/>

- 4.2. The overarching aim of SWT's Interim Strategy is to allow the approval of some phosphate neutral development in the District, ensuring that there will be no adverse impacts on the Somerset Levels and Moors.
- 4.3. The Interim Strategy contains the following actions which SWT will take/have taken to ensure that any planning applications dated from the 17 August 2020 will avoid adverse effects on the Somerset Levels and Moors Ramsar Site:
- In February 2021, the Somerset Authorities published their own phosphate calculator¹¹. This is a free online tool which has been approved by NE which enables developers to calculate their phosphate load and helps inform possible nature-based solutions required to unlock their development.
 - The Council's trajectory of housing completions will be used to anticipate the amount of offsetting required and ensure sufficient offsetting is in place before housing becomes occupied.
 - SWT is imposing a condition on all residential permissions to restrict water usage to 110 litres per person per day (this is an immediate measure that has already been implemented)¹².
 - SWT has completed the recruitment of two officers – a nutrient neutrality officer and a planning officer post, to support the implementation of the interim measures (this is an immediate measure that has already been implemented). The officers are currently assisting in the determination of planning applications for which applicants are proposing their own phosphate mitigation solutions to ensure that suitable measures are put in place to secure nutrient neutrality in perpetuity.
- 4.4. In addition to the above, SWT is also taking a precautionary approach by putting in place effective and proportionate measures to remove, mitigate or offset the phosphate load from proposed development. To do this, it is progressing with strategic interim projects to generate 'Phosphate Credits' (herein referred to as P Credits) which are outlined in more detail in Table 1 below. The mitigation projects have been organised into 3 no. categories focused on upgrading Council-owned assets, land use measures and private sector partnerships.

¹¹ Available at: <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors>

¹² N.B. This model condition is based upon current case law (Planning Appeal Ref: APP/A1720/W/21/3272188 - Land to the east of Downend Rd, Portchester, Fareham)

Table 1 Phosphate Credit Mitigation Projects being progressed by SWT

Category		Measures	Precautionary Timeframe
1	Utilising Council Assets	(a) Implementing a programme for the retrofitting of the Council's own housing stock to improve their water efficiency and create phosphate credits.	Short Term (up to 1 year)
2	Land Use Measures	(a) The development of medium to large-scale strategic project(s), which will mainly comprise new wetlands and possibly woodlands located in the River Tone sub-catchment. In the first place this is likely to involve existing land assets owned by SWT (e.g. Cotford St Luke) as well as exploring and progressing land purchase options.	Medium Term (1-5 years)
		(b) Seeking to secure phosphate credits from schemes / temporary measures / contracts which deliver small scale phosphorous offsetting measures (Small Schemes) e.g. taking land out of intensive agricultural (arable or grass), fallowing land.	Short Term (up to 1 year)
3	Working in partnership with the Private Sector	(b) Fallowing land in locations around Taunton (subject to landowner negotiations)	Short Term (up to 1 year)

- 4.5. A full breakdown of P credit mitigation projects in terms of the total phosphate removed (in kilograms per year) is provided in Appendix C. It should be noted that the Phosphate Budget Calculator does take into account planned improvements to Wastewater Treatment Works up to December 2024.
- 4.6. Overall, the Interim Strategy is anticipated to provide phosphate offsetting equivalent to an approximate 65.3 kg/year to April 2023. It is recognised that this will likely only allow some of the projected growth in SWT to be brought forward.
- 4.7. For the avoidance of doubt, the definition of a P Credit is equivalent to 1 kilogram per year (kg/yr) of removed total phosphate.

5. Delivery of the Interim Strategy

Delivery Strategy

- 5.1. The intention is that the Interim Strategy is a rolling programme.
- 5.2. It is anticipated that the first credits to become available will come forward as a result of category 1 projects (utilising council assets) and category 3b projects (fallowing land) given the shorter delivery timescales.

- 5.3. The intention is to utilise the P credits generated from these projects in the short term to enable SWT to set up its P credit programme. Further medium-long projects will be progressed to allow SWT to generate further P credits over a longer timeframe.
- 5.4. P Credits generated through the Interim Strategy will be made available to planning applicants in order of priority. A method for agreeing the prioritisation of applications has been agreed by SWT and more information on this is available within the Report to the Phosphates Planning Sub Committee, dated 10 February 2022¹³.
- 5.5. Planning applications offered SWT generated P credits will be required to confirm the number P credits they require to ensure that their development proposals would be phosphate neutral. This would be done using the established Phosphate Calculator as described in section 4.3. These calculations would be reviewed and approved by SWT's appointed Nutrient Neutrality Officer, as set out in further detail in section 5.11 below. Once this has been approved P credits would be 'reserved' for that development.
- 5.6. The Council will confirm that, upon a developer entering into a Section 106 (S106) agreement and reserving the agreed number of P credits, the Council (as competent authority) is satisfied beyond reasonable scientific doubt that the development will be 'phosphate neutral' in perpetuity and that it will not adversely affect the integrity of the Ramsar Site i.e. that the development satisfies the HRA Regulation 63 test.
- 5.7. In addition to a S106 agreement all applicants will be required to produce a project level Appropriate Assessment to show on an individual project basis that the proposed development will achieve phosphorous neutrality. This will allow SWT, as the Local Planning Authority (LPA) and competent authority under The Habitats Regulations, to carry out an Appropriate Assessment of the implications of the individual development projects to confirm beyond reasonable doubt that there is sufficient mitigation through the P credit system for the project to progress without having an adverse impact on the integrity of the Somerset Levels and Moors Ramsar Site, having regard to its conservation objectives.
- 5.8. The developer will covenant not to implement the development (i.e. start on site) unless and until it has paid the remaining balance to the Council to 'redeem' the P credits required. The development may then be implemented and proceed to completion/occupation.

¹³ See:

<https://democracy.somersetwestandtaunton.gov.uk/documents/s18757/Update%20Report%20on%20Phosphates%20and%20criteriaprocess%20for%20allocation%20of%20credits%20to%20support%20the%20determinati.pdf>

5.9. A 20% buffer has been incorporated into phosphorous projections to account for uncertainties inherent in the approach to determining whether development is phosphorous neutral, in line with Natural England guidance¹⁴. This is already built into the Somerset Phosphate Budget Calculator which has been used to calculate the P credits generated through the Interim Strategy as presented in Appendix C.

5.10. SWT as the Local Planning Authority will engage with the Phosphates Planning Sub Committee through regular meetings to consider the progress of phosphate mitigation against updated housing trajectories and to periodically review the approach to P credit prioritisation to ensure it remains fit for purpose.

Nutrient Neutrality Officer and Phosphates Planning Officer Post

5.11. As noted in paragraph 4.3, SWT has appointed 2 no. new officers to work as part of the planning service and support ongoing work in relation to phosphate mitigation, namely the Interim Strategy. Their responsibilities are as follows:

- Maintain records and share information with stakeholders and partners.
- Track housing permissions and completions and ensure contracts are in place in a timely way to ensure mitigation measures are on the ground before dwellings are occupied.
- Oversee landowner negotiations, monitoring, compliance of contracts and satisfactory maintenance. The aim is to expand the use of the current Exacom management system which manages the Council's CIL and Sections 106 data in a clear and transparent way.
- Work with partners and landowners to develop proposals for long term habitat creation schemes in the River Tone catchment which will be suitable for in-perpetuity phosphorous mitigation for some development proposals.
- Working with partners to develop proposals for habitat creation schemes to offset additional development coming forward through the next Local Plan Review.

5.12. The appointment of these Officers allows SWT to ensure that HRA processes and associated Appropriate Assessment are evaluated robustly prior to a planning application being determined.

Funding

5.13. The SWT Full Council on the 5th of October 2021 made an unequivocal commitment to providing mitigation measures including the approval of Capital Budget of £2m for funding interim programme of phosphates measures, to be initially funded by borrowing and agreed that associated debt financing costs are included in the Medium-Term Financial Plan (MTFP) process.

¹⁴ Ricardo/Natural England (2022) Nutrient Neutrality Generic Methodology Issue 1

5.14. In addition, the UK Government recently announced financial support to Local Authorities affected by nutrient neutrality¹⁵.

5.15. Longer term, the intent is the full cost recovery of capital costs will be secured via contributions from Section 106 agreements as part of the determination of planning applications (as mentioned above) and that additional revenue costs required to maintain the assets/ liabilities will be included as part of these agreements.

5.16. As such there is sufficient financial mechanisms in place to secure the delivery of the Interim Strategy.

6. Additional Issues to be Addressed

6.1. Travel to work data has historically shown high levels of self-containment within SWT (i.e. residents tend to live and work in the same area). Current advice from NE regarding nutrient neutrality indicates that employment can be discounted on the assumption there is no net migration into the catchment for employment purposes and no overnight accommodation.

6.2. Based on SWT analysis approximately 5% of completions are within unsewered areas in the River Tone catchment area. Natural England and the Somerset Ecology Service has agreed interim guidelines and nutrient neutrality principles for small scale thresholds within the Somerset Levels and Moors Ramsar catchment¹⁶.

6.3. Natural England considers that it is difficult to make robust arguments around generic standardised thresholds for levels of water quality impacts that exclude the risk of likely significant effects (alone and in combination). The exception to this position is in relation to discharges of phosphorus to ground. The interim guidelines set out conditions in which the level of discharge is considered to be so insignificant that the development has a very low likelihood of resulting in significant effects on the Ramsar Site. Where developments meet these conditions they can be 'screened out' of the HRA process and do not need to complete an Appropriate Assessment. This guidance is already being applied to applicable developments within SWT.

7. Long term approach – Post March 2023

7.1. Work carried out by Royal HaskoningDHV as part of the Solutions Report¹⁷ (as described in paragraph 3.2) has confirmed anticipated phosphate loading for Somerset West and Taunton.

¹⁵ See: <https://www.gov.uk/government/publications/nutrient-pollution-reducing-the-impact-on-protected-sites/nutrient-pollution-reducing-the-impact-on-protected-sites>

¹⁶ See: <https://www.somersetwestandtaunton.gov.uk/media/2586/interim-guidelines-on-small-scale-thresholds.pdf>

¹⁷ See: <https://www.somersetwestandtaunton.gov.uk/media/3232/solutions-report.pdf>

- 7.2. The findings conclude that the total additional phosphate load from the projected housing growth¹⁸ this works out at an average of 100.62kg/year, equating to a cumulative figure for the period 2022-2032 of 1,191.23kg. This includes a 20% buffer in line with Natural England advice.
- 7.3. From April 2023 it is anticipated that a Shadow/Transition Authority for the County of Somerset will come into effect following the decision by the Secretary of State to implement the proposal for a single unitary council for Somerset, incorporating the current district Councils of SWT, Mendip, Sedgemoor and South Somerset¹⁹. Following its establishment, the new Council will need to ensure that development must continue to be phosphate neutral and will be responsible for agreeing an approach to secure this beyond the SWT Interim Strategy. Specific governance arrangements are being developed, however the projects developed as part of the Interim Strategy will carry into the new authority in order to provide phosphate mitigation in perpetuity.
- 7.4. Beyond Interim Strategy, any further phosphate mitigation solutions developed approach will take account of water company planning, as well as government policy and legislation.

8. Conclusion

- 8.1. This document has set out SWT's approach to HRA associated with the agreed Interim Strategy and measures therein.
- 8.2. In summary, SWT is progressing strategic phosphate mitigation projects (e.g. retrofit of Council owned assets and wetland creation) that will allow P credits to be generated.
- 8.3. The Interim Strategy will therefore allow SWT to 'unlock' some phosphate development in the District, up to a threshold of 65.3 kg/year (at present) whilst ensuring that, as the competent authority, there would be no adverse effects on the Somerset Levels and Moors Ramsar site.
- 8.4. The P credits allocated to affected development proposals across the District will allow planning applicants to demonstrate that, subject to an HRA (including Appropriate Assessment), their proposed development would be phosphate neutral in perpetuity.
- 8.5. A critical part of SWT's approach to HRA is that a requirement has been established that **all** affected planning applications (including those utilising SWT generated P Credits as phosphate mitigation) must be subject to a project-level Appropriate Assessment, This process will allow SWT, as the competent

¹⁸ N.B. These figures relate to projected housing growth that at the time of writing do not have phosphate mitigation measures in place.

¹⁹ See: <https://newsomersetcouncil.org.uk/>

authority, to assess the project-level impacts of proposed development to be certain beyond a reasonable doubt that it would not result in adverse effects on the Somerset Levels and Moors Ramsar site, thereby fulfilling its duties under Regulation 63 of The Habitats Regulations.

Natural England Response

- 8.6. In an email dated XX Natural England's (insert name and designation) the following response:

"insert extract"

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Appendix A

Qualifying Features of European Sites

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Somerset Levels and Moors Ramsar Site

Characteristics of the Somerset Levels and Moors Ramsar Site (refer to Information Sheet on Ramsar Wetlands (RIS)²⁰ and Natural England Advice Note^{Error! Bookmark not defined.} for further information)

Name of European Site and its EU Code	Somerset Levels and Moors Ramsar EU Site Code UK11064 (914)
European Site size	6,388 ha
Description of European Site	<p>The Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest (SSSIs)^{Error! Bookmark not defined.}.</p> <p>The Ramsar site consists of a series of Sites of Special Scientific Interest (SSSI) within the largest area of lowland wet grassland and associated wetland habitat remaining in Britain. It covers about 35,000 ha in the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries.</p> <p>The majority of the site is only a few metres above mean sea level and drains through a large network of ditches, rhynes, drains and rivers. Flooding may affect large areas in winter depending on rainfall and tidal conditions. Parts of the site in the Brue Valley include areas of former raised peat bog which have now been substantially modified by agricultural improvement and peat extraction which has created areas of open water, fen and reedbed.</p> <p>The site attracts internationally important numbers of wildfowl in winter and is one of the most important sites in southern Britain for breeding waders. The network of rhynes and ditches support an outstanding assemblage of aquatic invertebrates, particularly beetles.</p>
Qualifying Features of the European Site	<p>Ramsar criteria 2 - A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened ecological communities.</p> <ul style="list-style-type: none"> Supports 17 species of Red Data Book invertebrates. The vascular plants <i>Wolffia arrhiza</i>, <i>Hydrocharis morsus-ranae</i> and <i>Peucedanum palustre</i> are considered vulnerable by the GB Red Book <p>Ramsar criteria 5 - A wetland should be considered internationally important if it regularly supports 20,000 or more waterbirds.</p> <ul style="list-style-type: none"> Species with peak counts in winter: 97,155 waterfowl (5 year peak mean 1998/99-2002/2003) <p>Ramsar criteria 6 - A wetland should be considered internationally important if it regularly supports 1% of the individuals in a population of one species or subspecies of waterbird.</p> <ul style="list-style-type: none"> Qualifying Species/populations (as identified at designation) Species with peak counts in winter:

²⁰ Ramsar Sites Information Service <https://rsis.ramsar.org/ris/914>

	<ul style="list-style-type: none"> - Eurasian teal, <i>Anas crecca</i>, NW Europe 21,231 individuals, representing an average of 4.2% of the population (5 year peak mean 1998/9-2002/3) - Northern lapwing, <i>Vanellus vanellus</i>, Europe - Breeding 36,580 individuals, representing an average of 1.8% of the population (5 year peak mean 1998/9-2002/3) <ul style="list-style-type: none"> • Species/populations identified subsequent to designation for possible future consideration under criterion 6. <p>Species with peak counts in winter:</p> <ul style="list-style-type: none"> - Eurasian wigeon, <i>Anas penelope</i>, NW Europe 25,759 individuals, representing an average of 1.7% of the population (5 year peak mean 1998/9-2002/3) - Mute swan, <i>Cygnus olor</i>, Britain 842 individuals, representing an average of 2.6% of the population (5 year peak mean 1998/9-2002/3) - Northern pintail, <i>Anas acuta</i>, NW Europe 927 individuals, representing an average of 1.5% of the population (5 year peak mean 1998/9-2002/3) - Northern shoveler, <i>Anas clypeata</i>, NW & C Europe 1,094 individuals, representing an average of 2.7% of the population (5 year peak mean 1998/9-2002/3)
Vulnerability of the European Site	<p>The interest features of the Somerset Levels and Moors Ramsar Site are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates <small>Error! Bookmark not defined.</small></p> <p>The vast majority of the ditches within the Ramsar Site and the underpinning SSSI's are classified as being in unfavourable condition due to excessive Phosphate and the resultant ecological response <small>Error! Bookmark not defined.</small></p> <p>The hydrological value of the site lies in flood water storage / desynchronisation of flood peaks and maintenance of water quality (removal of nutrients).</p>
European Site Conservation Objectives <small>Error! Bookmark not defined.</small>	<p>Site specific conservation objectives for Ramsar Sites have not been published. However, the following generic Conservation Objectives for all Ramsar Sites have previously been signed off by Natural England:</p> <p>"With regard to the Ramsar Site and the wetland habitats, individual species and/or groups of species for which the site has been listed (its 'Qualifying Features'), and subject to natural change;</p> <p>Ensure that the integrity of the [Ramsar] site is maintained or restored as appropriate, and ensure</p> <p>that the site contributes to achieving the wise use of wetlands across the UK, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of qualifying habitats and habitats of qualifying species • The structure and function of qualifying habitats and habitats of qualifying species • The supporting processes on which qualifying habitats and habitats of qualifying species rely • The populations of each qualifying species, and, • The distribution of each qualifying species within the site."

	The conservation objectives for the Ramsar Site are also consistent with the published conservation objectives for the Somerset Levels and Moors SPA (refer to Error! Reference source not found. in Error! Reference source not found. for details).
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Somerset Levels and Moors SPA

Summary characteristics of the Somerset Levels and Moors SPA (refer to Natural England website 'European Site Conservation Objectives for Somerset Levels & FA Moors SPA' for further information ²¹)

Name of European Site and its EU Code	Somerset Levels and Moors SPA EU Site Code UK9010031 (NB: The boundary of this site coincides with the Somerset Levels and Moors Ramsar Site)
European Site size	6,395 ha
Description of European Site	<p>The Somerset Levels and Moors contain the largest area of lowland wet grassland in England: 21% of the resource. Huge flocks of migratory waterfowl arrive in winter; more than at any other inland site in the UK. Its importance is year-round as it is one of the UK's most important breeding areas for Lapwing, Curlew, Redshank and Snipe: wading birds that depend on extensively grazed wet grassland. Meadows with more than 60 species in a single field and ditches supporting a unique assemblage of rare invertebrates add to its diversity.</p> <p>The floodplain's surviving biodiversity is recognised by a series of statutory designations. There are 17 Sites of Special Scientific Interest reflecting the national importance of 7,300 ha for lowland wet grassland, breeding wader populations and aquatic invertebrates. Twelve of the SSSIs, covering almost 6,400 ha, have been classified as important for wintering wildfowl and designated a Special Protection Area under the EC Birds Directive. The tiers of conservation designations are completed by recognition under the Ramsar Convention that the best habitats on the floodplain are notable for rare aquatic invertebrates and wintering waterbirds, making it one of the world's premier wetlands.</p> <p>The accumulation of designations makes it easy to lose sight of the fact that together they cover only 12% of the area of the floodplain. While they have helped attract limited investment to protect their biodiversity, little attention and few resources are given to the remainder, optimistically known as the "wider wetland". Much of the area outside the designated sites is a farmed grassland monoculture: too dry at critical times of the year to support wetland wildlife. This does not mean that it will always be of substantially lower value for wildlife. Promoting sustainable flood management and farming practices tailored to a wetland environment would rapidly reverse past losses and provide greater protection for the SPA.</p>

²¹ Natural England website 'European Site Conservation Objectives for Somerset Levels & Moors SPA' (includes Somerset Levels and Moors SPA Conservation Objectives Supplementary Advice 2019/03/12, Somerset Levels and Moors Conservation Objectives 2019/02/14, and Somerset Levels and Moors SPA Citation 2014/09/26).
<http://publications.naturalengland.org.uk/publication/4598158654963712>

Qualifying Features of the European Site	<p>Qualifying individual species listed in Annex I of the Wild Birds Directive (article 4.1)</p> <p>Non-breeding (overwintering):</p> <ul style="list-style-type: none"> • A037 <i>Cygnus columbianus bewickii</i>; Bewick's swan • A140 <i>Pluvialis apricaria</i>; European golden plover <p>Qualifying individual species not listed in Annex I of the Wild Birds Directive (article 4.2)</p> <p>Non-breeding (overwintering):</p> <ul style="list-style-type: none"> • A052 <i>Anas crecca</i>; Eurasian teal • A142 <i>Vanellus vanellus</i>; Northern lapwing <p>Qualifying assemblage of species (Article 4.2)</p> <ul style="list-style-type: none"> • Waterbird assemblage (In addition to the Annex 1 and 2 species above the assemblage included Gadwall <i>Anas strepera</i>, Wigeon <i>Anas penelope</i>, Shoveler <i>Anas clypeata</i>, Pintail <i>Anas acuta</i>, Snipe <i>Gallinago gallinago</i> and Whimbrel <i>Numenius phaeopus</i>) <p>NB: Since notification there has been a substantial increase in numbers. The representation of species exceeding national and international population thresholds in the assemblage has changed with eight species exceeding the international threshold (Golden Plover <i>Pluvialis apricaria</i>, Teal <i>Anas crecca</i>, Lapwing <i>Vanellus vanellus</i>, Gadwall <i>Anas strepera</i>, Wigeon <i>Anas penelope</i>, Shoveler <i>Anas clypeata</i>, Pintail <i>Anas acuta</i> and Mute Swan <i>Cygnus olor</i>), and five exceeding the national threshold (Bittern <i>Botaurus stellaris</i>, Little Egret <i>Egretta garzetta</i>, Ruff <i>Philomachus pugnax</i> and Green Sandpiper <i>Tringa ochropus</i>).</p> <p>Note: This SPA is ecologically linked to the Severn Estuary SPA with bird species notified as mobile qualifying features using either the inland or coastal European Sites as alternative winter feeding grounds according to the weather conditions</p>
Names of component Site of Special Scientific Interest (SSSIs)	<p>The SPA is comprised of 12 SSSIs located across the Somerset Levels and Moors floodplain.</p> <ul style="list-style-type: none"> • Catcott Edington and Chilton Moors SSSI • Curry and Hay Moors SSSI • King's Sedgemoor SSSI • Moorlinch SSSI • Shapwick Heath SSSI • Southlake Moor SSSI • Tealham and Tadham Moors SSSI • West Moor SSSI • West Sedgemoor SSSI • Westhay Heath SSSI • Westhay Moor SSSI • Wet Moor SSSI
European Site Conservation Objectives	<p>With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;</p>

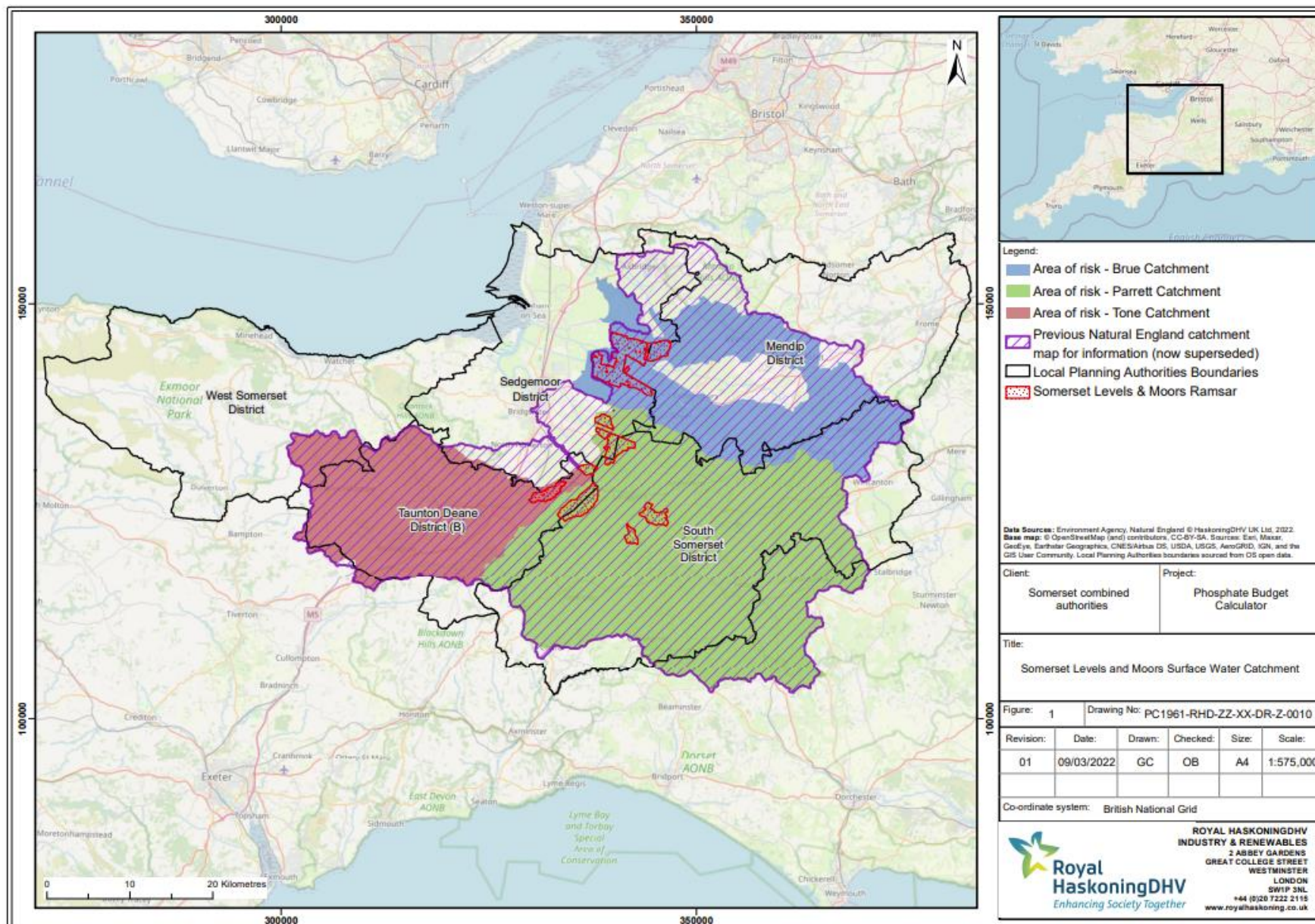
	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site
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Appendix B

Map of Somerset Levels and Moors Surface Water Catchment

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Appendix C

Summary of Strategic Projects being progressed through Interim Strategy

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Category	Measure	Total phosphorus removed (kg/yr)	Housing Equivalent (no. of housing units)		Timescale
			Min. ²²	Max. ²³	
Utilising Council Assets	1a - Implementing a programme for the retrofitting of the Council's own housing stock to improve their water efficiency and create phosphate credits.	16.47 ²⁴	38	190	Short term (up to 1 year) – Medium term (5 year programme in total)
Land Use Measures	2a - The development of medium to large-scale strategic project(s), which will mainly comprise new wetlands and possibly woodlands located in the River Tone sub-catchment. In the first place this is likely to involve existing land assets owned by SWT (e.g. Cotford St Luke) as well as exploring and progressing land purchase options.	12.87	30	149	Medium term (1-5 years)
	2b - Seeking to secure phosphate credits from schemes / temporary measures / contracts which deliver small scale phosphorous offsetting measures (Small Schemes) e.g. taking land out of intensive agricultural (arable or grass), fallowing land.	1.16 ²⁵	2	13	Short term (up to 1 year)
Working in partnership with the Private Sector	3a - Fallowing land in locations around Taunton	34.8	87	435	Short term (up to 1 year)
Total		65.3	157	787	

Cautionary Note:

The following should be taken into consideration when reading the above table:

- Phosphate loads are estimated on a rate of phosphate produced per dwelling assuming an average occupancy of 2.4 people per dwelling.
- The phosphate load is calculated on the basis that residential development will be built to the highest water efficiency standards provided for.
- The phosphate loads for individual projects have been estimated in line with the environmental permit of the relevant connected Wastewater Treatment works contained with the phosphate calculator, as approved by Natural England

²² WwWT permit limit of 5 mg/l

²³ WwWT permit limit of 1 mg/l

²⁴ Based on information received from SWT housing colleagues, December 2021

²⁵ Option with the lowest mitigation potential

DRAFT

Date: 08 June 2022
Our ref: n/a
Your ref: n/a



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Dear Emmeline

Somerset West and Taunton Council's Interim Phosphorous Mitigation Strategy

Following our recent discussions I can confirm that Natural England supports the mitigation measures proposed for the above interim strategy, as detailed in the latest version of the document detailing the approach to Habitats Regulations Assessment.

Natural England is satisfied that, providing the delivery profile for the package of mitigation measures stays ahead of that for occupation of authorised housing, they will be an effective means of ensuring nutrient neutrality and avoiding harm to the Somerset Levels and Moors Ramsar Site.

Natural England is ready to endorse a final version of the Habitats Regulations Assessment for these measures when it is completed.

Yours sincerely

Simon Stonehouse
Wessex Team

HRA Template – Phosphorous Affected Development

Habitats Regulations Assessment (HRA) Report



Photographs show:

The Somerset Levels and Moors, obtained from the RSPB Source:

<https://www.rspb.org.uk/our-work/conservation/landscape-scale-conservation/sites/somerset-levels-and-moors/>

Document control record

Name of Document: HRA Template Report

Author: Arup on behalf of Somerset West and Taunton Council

Description of content: The Project Level HRA template that applies to affected planning applications for residential and non-residential development within the River Tone catchment area.

Authors: Rosemary Cripps

Reviewed by: Leah Grint

Approved by: Dr Paul Clack

Date of approval: 29th June 2022

Date of Natural England approval:

Version	Date	Comments
1	22 nd April 2022	First draft issued to P Clack for technical review.
2	25 th April 2022	Draft issue to Natural England following approval
3	9 th June 2022	Draft issue incorporating comments from Natural England review
4	29 th June 2022	Final issue incorporating further comments from Natural England

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HRA Template – Phosphorous Affected Development

1 Introduction

This document is a Habitats Regulation Assessment (HRA) template report in compliance with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended); hereafter referred to as the 'Habitats Regulations'.

This document has been prepared to assess the potential for effects from nutrient changes caused by the proposed plan or project on the Somerset Levels and Moors Ramsar Site as required by Regulation 63 of the Habitats Regulations.

This HRA template has been developed for use by applicants of plans or projects that meet the definition of a 'typical development' (as defined in Appendix A). The plans and projects should be located within the Somerset West and Taunton Council area and have the potential to affect only the Somerset Levels and Moors Ramsar Site through risk of discharging phosphorous into its catchment area.

Appendix A contains important background information and guidance on completing an HRA using this template and **must be read in full** before using this document.

The Somerset Levels and Moors Ramsar Site is vulnerable to nutrient loading and is located within the Somerset West and Taunton Council catchment area. The site is protected by the Habitats Regulations and any proposals that could affect it requires an HRA.

This document is to be submitted to Natural England (NE) as the statutory advisor for designated nature conservation sites in England to formally request their views on the assessment under Regulation 76 of the Habitats Regulations, and specifically whether they can concur with the conclusions.

1.1 The HRA Process

Regulation 63 of the Habitats Regulations requires a competent authority to make an 'Appropriate Assessment' of the implications of the plan or project for that site in view of its Conservation Objectives, before deciding to undertake or give consent for a plan or project which (a) is likely to have a significant effect on a European Site (either alone or in-combination with other plans or project), and (b) is not directly connected with or necessary to the management of that site. In light of the conclusions of the assessment, the competent authority may proceed with or consent to the plan or project only after having ascertained that it will not adversely affect the integrity of the European Site.

All plans and projects should identify any possible effects early in the process and then either alter the plan or project to avoid them or introduce mitigation measures to the point where no adverse effects remain. The ‘competent authority’ shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned, and if appropriate, having obtained the opinion of the general public.

The assessment of a project under the Habitats Regulations can be split into four stages as shown in Table 1. This template covers Screening (Stage 1) and Appropriate Assessment (Stage 2).

Table 1: Stages of HRA

Stage	Description
Screening (Stage 1)	Assessment of the likelihood of a plan or project, alone or in-combination, having a significant effect on a European Site or its features. If a significant effect is likely, an Appropriate Assessment is required as set out in Regulation 63(1).
Appropriate Assessment (Stage 2)	<p>A detailed consideration of the potential effects of the plan or project in relation to the Conservation Objectives for the European Site(s) to determine if there is likely to be an adverse effect on the integrity of the site (i.e. an effect that would compromise the site meeting its Conservation Objectives).</p> <p>If it can be demonstrated that with appropriate mitigation measures the plan or project would not give rise to an adverse effect on the integrity of a European Site, the plan or project can proceed.</p>
Assessment of Alternative Solutions (Stage 3) <u>not covered in this template</u>	Where it cannot be demonstrated that there is no adverse effect, or there is uncertainty, the assessment would then need to consider if there were any other alternatives to the plan or project that would not give rise to adverse effects on the integrity of the European Site.
Assessment where no alternative solutions exist and where adverse impacts remain (Stage 4) <u>not covered in this template</u>	If adverse effects are still likely then the competent authority would then consider if there are any Imperative Reasons of Overriding Public Interest (IROPI), only at this stage can Compensatory Measures be considered. It is very unusual for plans or projects to be considered in Stages 3 or 4.

2 Guidance and policy when assessing the potential effects of a plan or project

The following guidance and policy must be followed when assessing the potential effects of the plan or project:

- The Habitats Regulations Assessment Handbook, DTA Publications Ltd¹; which includes analysis of relevant recent caselaw, and
- Gov.uk website²;

Professional advice should be sought when required in order to ensure a thorough and scientific assessment of the plan or project and its potential effects on a European Site.

In addition to the guidance noted above, a number of websites can be used to gather information on the European Sites in order to inform the assessment, in particular, the Management Plans for European Sites and Regulation 37 information. This is not an exhaustive list, however commonly used websites used include:

- Natural England (NE) website³;
- MAGIC (Multi-Agency Geographic Information for the Countryside) website⁴; and
- Joint Nature Conservation Committee (JNCC) website⁵.

2.1 A note on case law regarding the consideration of mitigation

With regards to recent case law (Coillte vs People Over Wind⁶) the inclusion of plainly established and uncontroversial mitigation during Stage 1 is no longer considered appropriate. Mitigation, as considered by the Centre Européen de Coopération Juridique (CECJ) in regard to the case law, is interpreted to mean measures that are intended to avoid or reduce the harmful effects of the envisaged plan or project on the site concerned.

Consequently, any plan or project which identifies an impact on a European Site and where avoidance and mitigation is applicable will need to address these measures during Stage 2 Appropriate Assessment.

¹ Tyldesley, D. and Chapman, C. (2013) The Habitats Regulations Assessment Handbook. Nov 2019 edition. UK, DTA Publications Ltd <https://www.dtapublications.co.uk/>

² <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

³ Natural England Access to Evidence <http://publications.naturalengland.org.uk/>

⁴ MAGIC. Magic interactive Mapping Application. <http://www.magic.gov.uk/MagicMap.aspx>

⁵ JNCC Website <https://jncc.gov.uk/>

⁶ People over Wind, Case C323/17 European Court of Justice, 12th April 2018.

3 Details of the plan or project

3.1 Overview

Table 2: Project or Plan Details

Application reference number	if applicable	Date	dd/mm/yyyy
Applicant details	name address email telephone number	Document prepared by/ and on behalf of	by on behalf of
Plan or Project Name*	Plan or project name		
Plan or Project Location	name and grid reference	European Site(s) potentially affected	Somerset Levels and Moors Ramsar
Component SSSI(s):	any SSSI(s) within or adjacent to the site, or hydraulically connected.		

3.2 Plan or Project site location

- Describe the location of site in relation to its surroundings.
- Provide a location plan/site boundary in Appendix C.

3.3 Environmental baseline

- Describe the habits present at the site. As applicable include the results of the ecological desk study, Preliminary Ecological Appraisal, and any Phase 1 surveys and maps.
- Describe any hydraulic connectivity to the Somerset Levels and Moors Ramsar Site
- Include any information relevant to the inputs for the Somerset West and Taunton Phosphorous Budget Calculator for example the defined current land use etc.
- List any relevant supporting documents here and provide them in Appendix D.

3.4 Plan or Project description

- Describe the plan or project in detail including so that its potential impacts can be determined.
- Drawings of the plan or project are to be provided in Appendix E.
- List any other relevant supporting documents here and provide them in Appendix E.

3.5 Construction methodology and programme

- Briefly summarise the construction techniques to be used and when the plan or project will be constructed or implemented (if known).
- If construction is not relevant due to the nature of the plan or project then state 'N/A' under this heading and move to Section 3.6 'Operation'
- If any methods are proposed with potential pathways for effect to the European Site (for example pollution through silt run off, over-pumping of sewage or slurry during construction, noise disturbance etc) then describe these here, particularly non-standard methods.
- List any relevant supporting documents here and provide them in Appendix F.

3.6 Operation

3.6.1 Operational phosphorous outputs

3.6.1.1 Before mitigation

- Describe how the proposed plan or project will operate before mitigation.
- Describe the phosphorous output (how often will it be produced, over what duration, and in what quantities) of the plan or project before any mitigation, conditions or restrictions are put in place. Use the most recent version of the Somerset West and Taunton Phosphorous Budget Calculator⁷ to calculate the phosphorous output for the plan or project before mitigation. Input this value into the box below.

⁷ Somerset Authorities Phosphorous Budget Calculator available at:
https://ssccust1.spreadsheethosting.com/1/3d/08e177701b0026/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version.htm

Total Phosphorous produced by the plan or project before mitigation = X kg/yr (or use other more appropriate unit)

- Provide supporting summary tables or statements to show the phosphorous output before any mitigation, using figures from the Phosphorous Budget Calculator⁷[Error! Bookmark not defined.](#). The table structure will depend on what is relevant for your scale and type of plan or project.
- List any relevant supporting documents here and provide them Appendix G.

3.6.1.2 After mitigation

- Describe how the proposed plan or project will operate after mitigation. Describe the mitigation measures that will be used to prevent, or to reduce phosphorous getting into the Ramsar Site; include any evidence and supporting documents in Appendix G.
- Mitigation measures must be underpinned by deliverable and achievable actions. Examples could include (but are not limited to):
 - on-site and off-site land use changes or nature-based solutions (e.g. constructed wetlands)
 - Sustainable Urban Drainage Systems designed to reduce nutrient levels of on-site surface water run-off.
 - the upgrade of existing treatment of phosphorous sources (e.g. upgrading package treatment works)
 - biological or chemical treatment
 - filtration recovery, etc.
 - purchase of phosphorous credits from Somerset West and Taunton Council
 - A Construction Environmental Management Plan (CEMP) including specific measures to ensure that retained habitats are protected during the construction phase
 - A Landscape and Ecological Management Plan (LEMP) that includes specific actions to ensure that retained habitats and phosphorous are mitigated and managed appropriately for the lifetime of the development

If any mitigation arrangements are still to be secured, make this clear and include actions proposed to get these secured/agreed.

- Describe the phosphorous output of the plan or project after mitigation, conditions or restrictions are put in place. Use the most recent version of the Somerset West and Taunton Phosphorous Budget Calculator⁷ to calculate the

phosphorous output for the plan or project after this mitigation. Input this value into the box below.

Total Phosphorous produced by the plan or project after mitigation = X kg/yr (or use other more appropriate unit)

- Provide supporting summary tables or statements to show the phosphorous output after any mitigation, using figures from the Phosphorous Budget Calculator⁷. The table structure will depend on what is relevant for your scale and type of plan or project.
- Include the full output from the Phosphorous Budget Calculator⁷Error! Bookmark not defined. in Appendix G.
- List any other relevant supporting documents here and provide them in Appendix G.

Maintenance and monitoring

- Include details of any maintenance and monitoring that will be in place to ensure that the mitigation remains in place and effective in perpetuity. Full details should be included in Appendix G.

3.6.1.3 Limitations

The Phosphorous Budget Calculator⁷ used to calculate phosphorous outputs for the plan or project follows a generic ‘board-brush’ approach and therefore cannot be tailored to meet each specific sites or situations. This is detailed in the calculator information page which states, “The tool has been designed so that the user is able to update the data and methods in light of any new research or understanding” and “The information supplied in this tool is for guidance purposes only and is not intended to provide an exact budget calculation due to the limitations and assumptions of the model. The user is responsible for ensuring the accuracy and completeness of all data entered, be it manually or automatically, and used by this tool.”

- Describe any additional limitations here, for example limitations to the information available, uncertainties on the ground conditions, limitations within any survey data, any uncertainty on the efficacy of mitigation measures, etc.

4 Information about the Somerset Levels and Moors Ramsar Site

4.1 Identifying sites

European Sites that are located close to the plan or project or are linked by pathways such as hydrological connections must be identified. This template is for plans or projects potentially affecting the Somerset Levels and Moors Ramsar Site via nutrient change.

Please note that if European Sites other than the Somerset Levels and Moors Ramsar Site are identified as being linked to the project, this template alone may not be suitable, and further professional advice should be sought.

4.2 European Site conservation objectives and qualifying features

Distance of the Plan or Project from Somerset Levels and Moors Ramsar European Site* = state distance and direction

*distance and direction are measured as a straight line from the closest edge of the plan or project to the closest edge of the European Site.

The features and the conservation objectives of the Somerset Levels and Moors Ramsar Site and the potential vulnerability of the features to any effects that might arise from the plan or project are summarised in Table 3.

Somerset Levels and Moors Ramsar Site

Table 3: Characteristics of the Somerset Levels and Moors Ramsar Site (refer to Information Sheet on Ramsar Wetlands (RIS) ⁸ and Natural England Advice Note⁹ for further information)

Name of European Site and its EU Code	Somerset Levels and Moors Ramsar EU Site Code UK11064 (914)
European Site size	6,388 ha

⁸ Ramsar Sites Information Service <https://rsis.ramsar.org/ris/914>

⁹ Natural England Advice Note <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

**Description
of European
Site**

The Somerset Levels and Moors Ramsar is one of the largest and richest areas of traditionally managed wet grassland and fen habitats in lowland UK. The majority of the site is only a few metres above mean sea level and drains through a network of ditches, rhynes, drains and rivers, between numerous small, low-lying fields and meadows. Many of the meadows have a diverse flora. Large numbers of wintering birds visit and feed on the moors during the winter months as well as significant numbers of passage waterfowl. The hydrological value of the site lies in flood water storage / desynchronisation of flood peaks and maintenance of water quality (removal of nutrients).

The Ramsar site is designated for its internationally important wetland features including floristic and invertebrate diversity and consists of a series of Sites of Special Scientific Interest (SSSIs)¹⁴ within the largest area of lowland wet grassland and associated wetland habitat remaining in Britain. It covers about 35,000 ha in the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries. The site attracts internationally important numbers of wildfowl in winter and is one of the most important sites in southern Britain for breeding. The network of rhynes and ditches support an outstanding assemblage of aquatic invertebrates, particularly beetles. The designated invertebrate assemblage is outlined in the Table below.

The designated invertebrate assemblage associated with the Somerset Levels and Moors Ramsar

Scientific name	Common name	Habitat
<i>Hydrochara caraboides</i>	Lesser silver water beetle	Shallow water, generally less than 20cm deep. This could be as a separate temporary pool that completely dries up in the summer or as a wide, shallow shelf of an otherwise permanent pool.
<i>Bagous nodulosus</i>	Flowering rush weevil	It is understood to be a monophagous species closely associated with flowering-rush <i>Butomus umbellatus</i> .
<i>Odontomyia angulata</i>	Orange-horned green colonel (soldier fly species)	The amphibious larvae develop amongst the wet vegetation of pools. Adults fly from June until August.
<i>Oulema erichsoni</i>	Beetle species	Wet peat cuttings or trenches with little other vegetation.
<i>Valvata macrostoma</i>	A minute freshwater snail species	Range of freshwater ditches in long-established aquatic habitats.
<i>Odontomyia ornata</i>	Ornate brigadier (soldier fly species)	Grazing marsh species, larvae like slow-flowing ditches.
<i>Stethophyma grossum</i>	Large marsh grasshopper	Found in wet, marshy locations, typically quaking acidic bogs. It was formerly known from fenland habitat, wet meadows and riverside areas.
<i>Pteromicra leucopeza</i>	Snail-killing marsh fly species	Parasitic.
<i>Lejops vittata</i>	Sea club-rush hoverfly	Associated with stands of <i>Scirpus maritimus</i> in grazing marsh ditches.
<i>Cantharis fusca</i>	Soldier beetle species	Wet grassland.
<i>Paederus caligatus</i>	Beetle species	Both larvae and adults, inhabit ecotones of water-related habitats (e.g., peat bogs, ponds, slow-flowing waters, floodplain meadows).

	<i>Hydaticus transversalis</i>	Predatory water beetle species	Most frequently associated with ditches in grazing levels that are rich in emergent and submerged macrophyte vegetation.
	<i>Dytiscus dimidiatus</i>	Diving beetle species	Occurs in ponds, ditches and open fen, usually where there is plenty of submerged and emergent vegetation.
	<i>Hydrophilus piceus</i>	Great silver water beetle	Favours late succession grazing marsh ditches.
	<i>Limnebus aluta</i>	A small water beetle species	Typically occurs among moss and litter on wet mud or silt among marginal vegetation.
	<i>Laccornis oblongus</i>	Diving beetle species	Occurs mainly in standing waters of bog and marshes.
Qualifying Features of the European Site	<p>Ramsar criteria 2 - A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened ecological communities.</p> <ul style="list-style-type: none"> Supports 17 species of Red Data Book invertebrates. The vascular plants <i>Wolffia arrhiza</i>, <i>Hydrocharis morsus-ranae</i> and <i>Peucedanum palustre</i> are considered vulnerable by the GB Red Book <p>Ramsar criteria 5 - A wetland should be considered internationally important if it regularly supports 20,000 or more waterbirds.</p> <ul style="list-style-type: none"> Species with peak counts in winter: 97,155 waterfowl (5 year peak mean 1998/99-2002/2003) <p>Ramsar criteria 6 - A wetland should be considered internationally important if it regularly supports 1% of the individuals in a population of one species or subspecies of waterbird.</p> <ul style="list-style-type: none"> Qualifying Species/populations (as identified at designation) Species with peak counts in winter: <ul style="list-style-type: none"> Eurasian teal, <i>Anas crecca</i>, NW Europe 21,231 individuals, representing an average of 4.2% of the population (5 year peak mean 1998/9-2002/3) Northern lapwing, <i>Vanellus vanellus</i>, Europe - Breeding 36,580 individuals, representing an average of 1.8% of the population (5 year peak mean 1998/9-2002/3) Species/populations identified subsequent to designation for possible future consideration under criterion 6. Species with peak counts in winter: <ul style="list-style-type: none"> Eurasian wigeon, <i>Anas penelope</i>, NW Europe 25,759 individuals, representing an average of 1.7% of the population (5 year peak mean 1998/9-2002/3) Mute swan, <i>Cygnus olor</i>, Britain 842 individuals, representing an average of 2.6% of the population (5 year peak mean 1998/9-2002/3) Northern pintail, <i>Anas acuta</i>, NW Europe 927 individuals, representing an average of 1.5% of the population (5 year peak mean 1998/9-2002/3) Northern shoveler, <i>Anas clypeata</i>, NW & C Europe 1,094 individuals, representing an average of 2.7% of the population (5 year peak mean 1998/9-2002/3) 		
European Site	<p>Site specific conservation objectives for Ramsar sites have not been published. However, the following generic Conservation Objectives for all Ramsar sites have previously been signed off by Natural England:</p>		

Conservation Objectives¹⁰	<p><i>‘With regard to the Ramsar Site and the wetland habitats, individual species and/or groups of species for which the site has been listed (its ‘Qualifying Features’), and subject to natural change;</i></p> <p><i>Ensure that the integrity of the [Ramsar] site is maintained or restored as appropriate, and ensure that the site contributes to achieving the wise use of wetlands across the UK, by maintaining or restoring:</i></p> <ul style="list-style-type: none"> <i>• The extent and distribution of qualifying habitats and habitats of qualifying species</i> <i>• The structure and function of qualifying habitats and habitats of qualifying species</i> <i>• The supporting processes on which qualifying habitats and habitats of qualifying species rely</i> <i>• The populations of each qualifying species, and,</i> <i>• The distribution of each qualifying species within the site’.</i> <p>The conservation objectives for the Ramsar Site are consistent with the published conservation objectives for the Somerset Levels and Moors SPA (refer to Table 7 in Appendix H for details).</p>
Vulnerability of the European Site	<p>The vast majority of the ditches within the Ramsar Site and the underpinning SSSI's are classified as being in unfavourable condition, or at risk, from the effects of eutrophication caused by excessive phosphorous⁹.</p> <p><u>Aquatic invertebrate assemblage</u></p> <p>The designated invertebrate assemblage is sensitive to changes in water quality. Water beetles and large mouthed valve snails associated with the Ramsar are particularly dependent on the maintenance of water quality¹¹. The interest features of the Ramsar are in unfavourable condition, or at risk, due to the effects of eutrophication caused by excessive phosphates.</p> <p>Phosphorus levels are frequently 2-3 times higher than the target for total phosphorus set out within the Conservation Objectives underpinning the Ramsar. There is widespread evidence of biological harm linked to eutrophication, which in lowland ditch systems such as the Somerset Levels and Moors, are in the form of excessive filamentous algae growth (forming large mats on the water surface) and increasing blooms of <i>Lemna</i> species. This can adversely affect the ditch invertebrate and plant communities through a variety of mechanisms including shading, smothering and anoxia, leading to a dominance of plant species better able to deal with these conditions, with negative competitive effects on others. This can lead to a significant negative shift in habitat quality and structure, which in turn threatens the integrity of the invertebrate communities that should be specially protected under the Ramsar designation.</p> <p>High risk activities include:</p> <ul style="list-style-type: none"> • Sewage effluent from both single dwellings (i.e. Package Treatment Plants, septic tanks) and mains Sewage Treatment Works (STW); • Changes in land use that increase the risk of pollution run-off (maize, increase in herd size etc.); • Use of fertilisers, run-off from new roads and urban environments;

¹⁰ Natural England website ‘European Site Conservation Objectives for Somerset Levels & Moors SPA’ (includes Somerset Levels and Moors SPA Conservation Objectives Supplementary Advice 2019/03/12, Somerset Levels and Moors Conservation Objectives 2019/02/14, and Somerset Levels and Moors SPA Citation 2014/09/26). <http://publications.naturalengland.org.uk/publication/4598158654963712>

¹¹ Foster, G. & Eyre, M. 1993. Classification and Ranking of Water Beetle Communities. *Journal of Animal Ecology*, 62: 216-217. Also see: <http://www.environment-agency.gov.uk/yourenv/eff/1190084/wildlife/970605/?version=1&lang=e>.

	<ul style="list-style-type: none"> • Animal waste and slurries; • Industrial sources such as dairy processing plants; • Processes involving decomposition and leachate; • Peat workings; and • Processing involving the release of large volumes of tap water to the environment <p>Due to the unfavourable condition of the Somerset Levels and Moors Ramsar resulting from excessive phosphates, if new development is identified as giving rise to additional phosphates within the hydrological catchment and left unmitigated, the development would result in a Likely Significant Effect upon the Ramsar. Therefore, developments giving rise to additional phosphates must demonstrate 'nutrient neutrality' to be permitted.</p> <p><u>Migratory/wintering birds</u></p> <p>The availability of an abundant food supply is critically important for adult fitness and survival and the overall sustainability of the population. As a result, inappropriate management and direct or indirect impacts which could affect the distribution, abundance and availability of prey and hence adversely affect species' populations.</p> <p>The nature, scale, timing and duration of some human activities can result in the disturbance of birds at a level that may substantially affect their behaviour, and consequently affect the long-term viability of the population. This includes increased recreational pressure.</p>
<p>Identified ways in which the Qualifying Features of the European Site could be affected by the plan or project</p>	<p><u>There are several main identified ways by which the qualifying features of the European Site could be affected. These are noted below.</u></p> <p><u>Aquatic invertebrate assemblage</u></p> <p>The main factors considered to potentially cause loss or decline in the aquatic invertebrate assemblage of the Ramsar include:</p> <ul style="list-style-type: none"> • Degradation or changes to water quality resulting from increased nutrients entering watercourses which are hydrologically linked to the Ramsar. In freshwater habitats it is often the case that the abundance of nutrients, especially phosphorus, is a key limiting factor of excessive primary productivity, particularly algae, which in turn affects habitats on which aquatic invertebrates depend. The key sources of phosphorous, commonly assessed in the form of phosphates, derive from diffuse water pollution (such as agricultural leaching) and point discharges (such as from sewage effluent) within the catchment. • Loss or degradation of ecologically supporting habitat outside the designated site due to development. <p><u>Migratory/wintering birds</u></p> <p>The main factors considered to potentially cause loss or decline in the migratory/wintering birds of the Ramsar/SPA include:</p> <ul style="list-style-type: none"> • Increased disturbance arising directly from development outside the designated site due to human activity, noise and introduced/increased levels of lighting. This includes recreational disturbance from increased visitor access. Birds respond to disturbance by engaging in activity that is energetically expensive (e.g. flying) or behaviour is affected in a way to reduce food intake (e.g. moving to a less preferred and less profitable feeding site; losing time loafing before

	<p>resuming feeding). A number of studies have measured these costs and show that they sometimes can be considerable¹².</p> <ul style="list-style-type: none"> • Loss or degradation of ecologically supporting habitat outside the designated site due to development.
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¹² Goss-Custard, J. 2005. *National Cycle Network – Exe Estuary Proposals: Assessment of the Anticipated Effects on the Exe Estuary Special Protection Area*. Exeter: Devon County Council.

5 Stage 1 - Screening of the plan or project

5.1 Likelihood of Significant Effects alone

Stage 1 of the HRA, the screening, is a test of Likely Significant Effect (LSE) to determine whether an Appropriate Assessment is required against all impact pathways identified. The screening is done considering the proposal in isolation and therefore not in-combination with any other plans or projects. It is also done in the absence of avoidance or other mitigation measures. Note that the assessment is made with awareness of the conservation objectives for the features of the European Site, however the actual assessment of the plan or project against the conservation objectives is not required until the Appropriate Assessment (Stage 2).

Potential Impact Pathways

List all impact pathways that are relevant to each designated feature in Table 4, column 3.

Consider all potential impact pathways that could result from the plan or project (all stages including construction and operation), that may have an impact on the Somerset Levels and Moors Ramsar Site features.

Impact pathways will be specific to your plan or project, however some examples of impact pathways that could apply to a typical project are below (but are not limited to):

- The proposed development will result in an increase in phosphate loading within the hydrological catchment of the Ramsar, through the production of wastewater/slurry during construction or operation, potentially leading to degradation of habitat or changes in water quality.
- The proposed development could result in species mortalities and injuries e.g. through pollution incidents during wet weather to the adjacent watercourse. The increased phosphorous input could lead to eutrophication of the watercourse and connected waterbodies during construction or operation.

Likely Significant Effects

State the Likely Significant Effect of the project alone in Table 4, column 4 against each impact pathway. Insert the relevant colour coded statements.

- **There is no impact pathway from the proposal to the designated feature**
- **There is an impact pathway and significant effects cannot be ruled out**

In the assessment of Likely Significance Effects, professional judgement should be sought and applied using the following criteria if there is ever insufficient information about the elements and interests available:

- The vulnerability/sensitivity of the receiving environment/features of interest;
- When the risk of effects are likely to occur (e.g. construction and/or operation);
- The likely geographical extent of the effects; and
- Likelihood of significant effects (e.g. those above negligible in magnitude) occurring based on previous experience with similar elements, where available.

Where there is not enough information about the risk of qualifying interest being present, or of the risk of effects, the assessment should use the precautionary principle to inform the judgement. The precautionary principle is applied to ensure that any assessment errs on the side of caution, without being overly cautious. This principle means that the conservation objectives should prevail where there is uncertainty or that harmful effects will be assumed in the absence of evidence to the contrary.

Note that if there is a net gain of phosphorous due to the plan or project, with an impact pathway to the Ramsar Site then there will be a Likely Significant Effect on the Ramsar site integrity. This is due to the current position of Natural England on the unfavourable condition of the Somerset Levels and Moors Ramsar Site (refer to Appendix A for more information).

Table 4: Potential effects of the plan or project alone on the Somerset Levels and Moors Ramsar Site and its qualifying features

Qualifying Feature*	Relevant conservation objectives	Potential impact pathway	Likely Significant Effect alone
1	2	3	4
European Site: Somerset Levels and Moors Ramsar			
Ramsar criteria 2 - A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened ecological communities. <ul style="list-style-type: none"> • Supports 17 species of Red Data Book invertebrates. The vascular plants <i>Wolffia arrhiza</i>, <i>Hydrocharis morsus-ranae</i> and <i>Peucedanum</i> 	<p>Reference the relevant conservation objectives from Table 3 i.e.:</p> <p>Ensure that the integrity of the Ramsar site is maintained or restored as appropriate, and ensure that the site contributes to achieving the wise use of wetlands across the UK, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of qualifying habitats and habitats of qualifying species 	<p>Short explanation of the potential impact pathway. Create a new row for each impact pathway for example:</p> <p>The proposed development will result in an increase in phosphate loading within the hydrological catchment of the Ramsar, through the production of wastewater/slurry during operation, potentially leading to degradation</p>	<p>Choose from the following, for each impact pathway. Keep colour coding for ease of reference:</p> <p>There is an impact pathway and significant effects cannot be ruled out</p> <p>There is no impact pathway from the proposal to the designated feature</p>

<p><i>palustre</i> are considered vulnerable by the GB Red Book</p>	<ul style="list-style-type: none"> • The structure and function of qualifying habitats and habitats of qualifying species • The supporting processes on which qualifying habitats and habitats of qualifying species rely • The populations of each qualifying species, and, • The distribution of each qualifying species within the site 	<p>of habitat or changes in water quality.</p>	
<p><i>* Note that criteria 2 is the one most directly impacted by phosphorous however if other criteria (5 and 6) are relevant for the plan or project then please insert additional rows. This is because based on current understanding, Natural England is satisfied that additional nutrients from typical new developments¹³ are unlikely, either alone or in-combination, to have a likely significant effect on the internationally important bird communities for which the site is designated (and the bird communities come under criteria 5 and 6). Refer to Appendix A for more information.</i></p>			
<p>Screening Decision of the Plan or Project Alone</p>			
<p>Select from one of the following statements, and delete those that do not apply:</p> <ul style="list-style-type: none"> - If all rows in column 4 are green 'The plan or project is not likely to have a significant effect on the Somerset Levels and Moors Ramsar Site because there is no impact pathway from the plan or project to its qualifying features, and therefore no further consideration under the Habitats Directive/Regulations is required in order to determine the application.' (Insert 'N/A' under the heading for Section 6 'Stage 2 – Appropriate Assessment' and delete all text within this Section. Then go to Section 7 'Conclusions on Site Integrity') or - If there are any red rows in column 4 'The risk of Likely Significant Effects on the Somerset Levels and Moors Ramsar Site from the plan or project alone cannot be ruled out, and therefore an Appropriate Assessment (Stage 2) is required'. (Go to Section 6 'Stage 2 – Appropriate Assessment') 			
<p>Limitations</p> <p>State any limitations to the data provided or decisions made on screening here.</p>			

Note that within the HRA process it would be normal to carry out an in-combination assessment at screening stage, should a conclusion of no Likely Significant Effect be reached. However, the position adopted by Natural England means that if there is an increase in phosphorous due to the project, then a conclusion of no Likely Significant Effect should not be reached.

¹³ Refer to Somerset West and Taunton Council website for definition of a 'typical new development' <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

6 Stage 2 - Appropriate Assessment

6.1 Appropriate Assessment of the plan or project alone

Where screening in Table 4 has determined that the plan or project may have a likely significant effect on the Somerset Levels and Moors Ramsar Site alone, an Appropriate Assessment is required. The Appropriate Assessment is detailed in Table 5 and Table 6.

Only include impact pathways where a Likely Significant Effect could not be ruled out from Table 4 i.e. those rows in **red** - 'There is an impact pathway and significant effects cannot be ruled out'. Any impacts that are **green** in Table 4 do not need to be considered further.

6.1.1 Assessment of potentially adverse effects without additional mitigation measures

Complete Table 5 for the plan or project without any additional mitigation measures, conditions or restrictions taken to reduce the output of phosphorous. Note that if phosphorous is produced, then there will be an adverse effect on the Ramsar site integrity.

The Somerset West and Taunton Phosphorous Budget Calculator⁷ should be used to calculate the total quantity of phosphorous that is expected to be produced by the plan or project; insert this figure into the last row of the table as indicated (as calculated in Section 3.6.1.1).

Table 5: Appropriate Assessment of the plan or project alone and in the absence of any mitigation measures

Qualifying Feature	Impact pathway	Description of impacts and adverse effects	Assessment of adverse effects in relation to conservation objectives	Can adverse effect on Somerset Levels and Moors Ramsar Site integrity be ruled out? Yes or No
European Site: Somerset Levels and Moors Ramsar				
Ramsar criteria 2 - A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened	Insert impact pathway in red from Table 4 where significant effects could not be ruled out.	Describe impacts and adverse effects from each relevant impact pathway, for example: The wastewater produced by the project will be piped to the	Describe for each impact pathway how any adverse effects could impact the conservation objectives for the site which are listed	State whether an adverse effect on the Ramsar site can be ruled out or not. Note that if there is a net gain of phosphorous in the absence of mitigation then

ecological communities. <ul style="list-style-type: none"> Supports 17 species of Red Data Book invertebrates. The vascular plants <i>Wolffia arrhiza</i>, <i>Hydrocharis morsus-ranae</i> and <i>Peucedanum palustre</i> are considered vulnerable by the GB Red Book 	<p>Create a new row for each impact pathway.</p> <p>For example:</p> <p>The proposed development will result in an increase in phosphate loading within the hydrological catchment of the Ramsar, through the production of wastewater during operation, potentially leading to degradation of habitat or changes in water quality.</p>	<p>treatment works at X. This will result in an increase in phosphorous (x/kg/yr) that will be treated in the catchment and ultimately discharged into the Ramsar Site. Due to the sensitivity of the Ramsar to any increase in phosphorous, this increase could cause further degradation or changes to water quality to the waterbodies which support the aquatic invertebrate assemblage and vascular plants named under criteria 2.</p>	<p>in Table 4, column 2.</p> <p>For example:</p> <p>The increase in phosphorous could adversely affect all of the conservation objectives listed for the site; it will contribute to eutrophication of water bodies and changes to water chemistry within the site, thus making it unfavourable to aquatic invertebrates, affecting the structure and function of the habitats that support both them and vascular plants named under criteria 2.</p>	<p>there will be an adverse effect on the Ramsar Site integrity.</p>
<p>Total Phosphorous produced by the plan or project <u>in the absence</u> of mitigation (as calculated in Section 3.6.1.1) = X kg/yr (or use other more appropriate unit)</p>				

6.1.2 Assessment of potentially adverse effects with additional mitigation measures

Where adverse effects on the Somerset Levels and Moors Ramsar Site integrity cannot be ruled out (i.e. for any rows stating 'No' in the final column of Table 5), mitigation must be provided. Bring forward any rows stating 'No' into Table 6. Any rows stating 'Yes' do not need to be considered further.

Full descriptions and details of the mitigation measures proposed including how they will be secured and monitored are to be included in the 'After mitigation' section 3.6.1.2.

Note that if there is still a net gain of phosphorous after mitigation, then there will still be an adverse effect on the Ramsar site integrity.

The Somerset West and Taunton Phosphorous Budget Calculator⁷ should be used to calculate the total quantity of phosphorous that is expected to be produced by the plan or project after mitigation measures are implemented; insert this figure into the last row of Table 6 as indicated (as calculated in Section 3.6.1.2).

Table 6: Appropriate assessment of the plan or project alone with any mitigation measures, conditions or restrictions

Qualifying Feature	Description of adverse effects	Can adverse effects be mitigated? Yes or No	Description of mitigation measures including how they would be applied	Can adverse effect on site integrity be ruled out? Yes or No
European Site: Somerset Levels and Moors Ramsar				
Ramsar criteria 2 - A wetland should be considered internationally important if it supports vulnerable, endangered, or critically endangered species or threatened ecological communities. Supports 17 species of Red Data Book invertebrates. The vascular plants <i>Wolffia arrhiza</i> , <i>Hydrocharis morsus-ranae</i> and <i>Peucedanum palustre</i> are considered vulnerable by the GB Red Book	Describe impacts and adverse effects from each relevant impact pathway from Table 5. Create new rows for adverse effects as required	State Yes or No	Brief description of proposed mitigation measures which will prevent additional phosphorous or pollution from entering the Ramsar Site. Full details of mitigation measures and how they will be applied are to be provided in Section 3.6.1.2.	State Yes or No. Note that if there is still a net gain of phosphorous after mitigation, then there will still be an adverse effect on the Ramsar site integrity.
Total Phosphorous produced by the plan or project <u>with</u> mitigation (as calculated in Section 3.6.1.2)* = X kg/yr (or use other more appropriate unit)				
*Negative values show phosphorous removed from the catchment, '0' shows nutrient neutrality and positive values show that more mitigation is needed				
Concluding Statement of Appropriate Assessment Alone				
Select from one the following statements: - When considered alone, it has been determined that the proposal has no adverse effect on the integrity of the Somerset Levels and Moors Ramsar Site'. (Go to Section 6.2). or				

- 'When considered alone, it has not been possible to determine that the proposal has no adverse effect on the integrity of the Somerset Levels and Moors Ramsar Site'. (Go to Section 6.2)

Residual Effects

List any residual effects here, which are not significant on their own, but could become significant if considered in-combination with the effects of other plans and projects. If there are no residual effects, state N/A.

6.2 Likelihood of Adverse Effects on Site Integrity in-combination other plans and projects

6.2.1 Likelihood of adverse effects in-combination due to nutrients

If nutrient neutrality is demonstrated for the project alone with mitigation in place, then there will be no adverse effect on integrity of the Ramsar Site due to nutrients. Therefore, no in-combination assessment is required. If this is the case, state: 'Nutrient neutrality has been demonstrated for the project alone with mitigation in place and therefore there will be no adverse effect on integrity of the Ramsar Site due to nutrients. Therefore, no in-combination assessment is required'.

If this is not the case, adverse effect on integrity of the Ramsar Site from the project alone must be concluded and subsequent stages of HRA would be necessary (Stage 3 or 4 as described in Table 1) which are not included in this template. This due to the current position of Natural England on the unfavourable condition of the Somerset Levels and Moors Ramsar Site (refer to Appendix A for more information). If this is the case, state: 'Nutrient neutrality cannot be demonstrated for the project alone with mitigation in place and therefore there will be an adverse effect on the Ramsar Site due to nutrients. Therefore, subsequent stages of HRA are necessary that are not included in this template.'

7 Conclusions on site integrity

Concluding Statement on the Somerset Levels and Moors Ramsar Site Integrity

Select from one the following statements:

'It is concluded that the project will not adversely affect the integrity of the Somerset Levels and Moors Ramsar Site, either alone or in-combination with other plans or projects, subject to the mitigation identified in section 3.6.1.2 being secured in perpetuity'

or

It cannot be concluded that the project will not adversely affect the integrity of the Somerset Levels and Moors Ramsar Site, either alone or in-combination with other plans or projects'

Appendix A

Background on phosphorous and planning applications in Somerset West and Taunton Council and Notes on use of the HRA Template

Background on phosphorous and planning applications in Somerset West and Taunton Council

Background

In August 2020 Natural England issued an Advice Note¹⁴ (see Appendix B) to Somerset West and Taunton Council regarding the implications of the Court of Justice of the European Union CJEU case known as the “Dutch N” in relation to planning applications that may affect the Somerset Levels and Moors Ramsar and Special Protected Area (SPA) European Sites.

The ruling has resulted in greater scrutiny of plans or projects that are likely to, either directly or indirectly, increase nutrient loads to internationally important sites (i.e. Special Areas of Conservation (SACs), Special Protection Areas and Ramsar Sites) where a reason for unfavourable condition is an excess of a specific pollutant.

Natural England advised that, in light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site (due to high levels of phosphorous), before determining a planning application that may give rise to additional phosphorous within the catchment, competent authorities should undertake a Habitats Regulations Assessment (HRA) proceeding to an Appropriate Assessment where a likely significant effect cannot be ruled out, even where the development contains pollution mitigation provisions.

The Appropriate Assessment must rule out any reasonable doubt as to the likelihood of an adverse impact on the integrity of the site, having regard to its conservation objectives. Permission for the plan or project may only be given if the assessment allows you to ascertain that it will not have an adverse effect on the integrity of the site.

Somerset Levels and Moors Protected Site(s)

The Somerset Levels and Moors are designated as an SPA under the Habitat Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site broadly covers the same area as the Somerset Levels and Moors SPA. While the SPA is designated for its international waterbird communities, the Ramsar Site is designated for its internationally important wetland features including the floristic and invertebrate diversity and species of its ditches, which is shared as a designated feature of the underpinning Sites of Special Scientific Interest (SSSIs). Further information relating to the unfavourable condition of the Ramsar Site and the underpinning SSSIs designated under the Wildlife & Countryside Act 1981 (as amended) is provided in Annex 1 of the Advice Note¹⁴.

¹⁴ Natural England Advice Note <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>

In relation to the Somerset Levels and Moors SPA, based on current understanding, Natural England is satisfied that additional nutrients from typical new developments¹⁵ (as described in the Advice Note) are unlikely, either alone or in-combination, to have a likely significant effect on the internationally important bird communities for which the site is designated. On this basis, Natural England is satisfied that the effects of additional nutrients from development on the SPA can normally be screened out of further assessment.

The types of development classed as 'typical' include:

- New residential units – including tourist accommodation, gypsy sites /pitches
- Commercial developments – where overnight accommodation is provided
- Agricultural Development – additional barns, slurry stores etc. where it is likely to lead to an increase in herd size
- Anaerobic Digesters
- Possibly some tourism attractions

However, the interest features of the Somerset Levels and Moors Ramsar Site are considered unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphorous. The vast majority of the ditches within the Ramsar Site and the underpinning SSSIs are also classified as being in unfavourable condition due to excessive phosphorous and the resultant ecological response. Any plan or project which has the potential to affect the features of a European Site such as the Somerset Levels and Moors Ramsar Site is required to have an HRA.

Due to the number of applications for plans or projects being received by Somerset West and Taunton Council with phosphorous outputs, an HRA template was developed.

The purpose of the HRA template is to facilitate the HRA process for applicants and decision makers; a standardised approach will facilitate its review and the decision on whether the HRA can subsequently be adopted by the competent authority.

¹⁵ Refer to Somerset West and Taunton Council website for definition of a 'typical new development' <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

Notes on use of the HRA Template

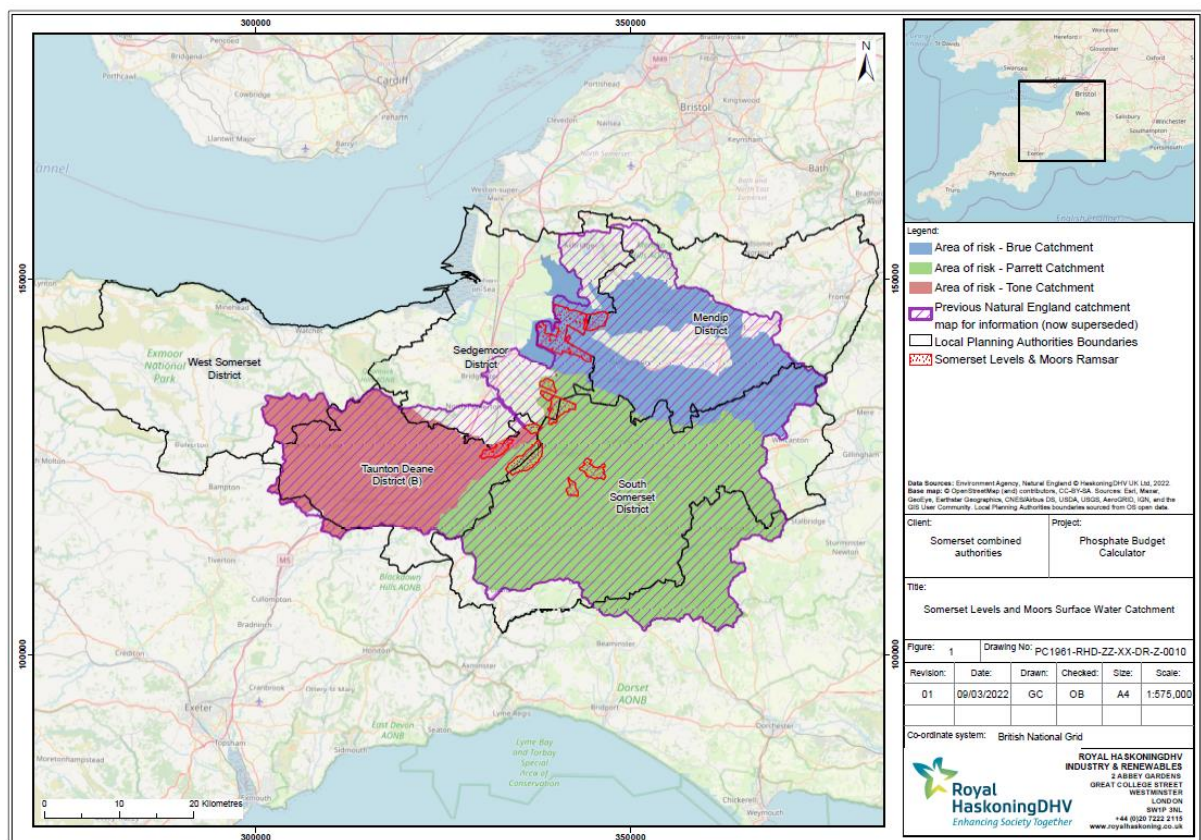
This HRA template has been developed for use by applicants of plans or projects that meet the definition of a 'typical development' (as defined in this document)*. The plans and projects should be located within the Somerset West and Taunton Council area and have the potential to affect only the Somerset Levels and Moors Ramsar Site** through risk of discharging phosphorous into its catchment area.

**Note: if the project does not fit under this classification, or is not considered straightforward, contact the Council for advice; a modified or extended version of this HRA may need to be carried out considering all European Sites.*

***Note: other European Sites are present throughout the Somerset West and Taunton Council area (for example the Severn Estuary Ramsar and SAC) and if these or any other European Site could be affected by the plan or project, a separate HRA should be prepared.*

A plan showing the boundary of the Somerset West and Taunton Council area and the Somerset Levels and Moors Ramsar Site is shown in Figure 1.

Figure 1 Somerset West and Taunton Council area, river catchments and the Somerset Levels and Moors Ramsar Site



Please note the following when completing this template:

- The applicant should read all of the information and guidance in this document including Sections 1 and 2 and then start filling in the template from Section 3.
- Guidance notes in each section are provided in **green** and should be deleted after use and before submitting the template to the Council.
- For any unused appendices state 'N/A' under the appendix heading
- The Somerset West and Taunton Phosphorous Budget Calculator¹⁶ should be used to calculate phosphorous outputs. Refer to the Somerset West and Taunton Council website for further information on how to use it.
- Further subheadings may be created as appropriate under the existing sections to structure the information provided, but should not be numbered so as to preserve the existing section numbering
- When filling out tables, extra rows should be inserted as appropriate.
- Additional information may be referenced under the most relevant section and included in an Appendix (Appendices can be added as necessary as long as they are referenced in the text)
- If a section is not required, the numbered section heading should be preserved, but any guidance information and tables deleted and replaced with 'N/A'
- The template is provided for guidance purposes only, the applicant remains fully responsible for its content and for ensuring that it contains thorough, correct and scientifically accurate information.
- If the applicant is unsure of how to complete the HRA or does not possess the necessary skills and expertise to complete it accurately, they must seek professional advice.

When complete, the HRA is to be submitted to Somerset West and Taunton Council, as the competent authority under the Habitats Regulations. Natural England is the statutory nature conservation body and will be consulted at the appropriate assessment stage of the HRA process in line with statutory responsibilities¹⁷.

This template has been prepared using the guidance stated in Section 2 and has also drawn upon the HRA template available from Natural Resources Wales 'OGN 200 Form 1 Record of a Habitat Regulations Assessment of a project', Version 1.3, in particular using the same format of screening and appropriate assessment tables and the method of colour coding impact pathways for simplicity.¹⁸

¹⁶ Somerset Authorities Phosphorous Budget Calculator available at:

https://ssccust1.spreadsheethosting.com/1/3d/08e177701b0026/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version.htm

¹⁷ See: <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

¹⁸ Natural Resources Wales 'OGN 200 Form 1, Record of a Habitat Regulations Assessment of a project' Version 1.3 <https://cdn.cyfoethnaturiol.cymru/media/690578/eng-habitat-regulations-assessment.pdf>

Appendix B

Natural England Advice Note

Appendix C

Location Plan

Appendix D

Environmental Baseline

Appendix E

Plan or Project Details

Appendix F

Construction Methodology

Appendix G

Operational Methodology and Phosphorous Budget Calculator Output

Appendix H

Somerset Levels and Moors SPA Summary Characteristics

Somerset Levels and Moors SPA

Table 7: Summary characteristics of the Somerset Levels and Moors SPA (refer to Natural England website 'European Site Conservation Objectives for Somerset Levels & FA Moors SPA' for further information ¹⁹)

Name of European Site and its EU Code	<p>Somerset Levels and Moors SPA</p> <p>EU Site Code UK9010031</p> <p>(NB: The boundary of this site coincides with the Somerset Levels and Moors Ramsar Site)</p>
European Site size	6,395 ha
Description of European Site	<p>The Somerset Levels and Moors contain the largest area of lowland wet grassland in England: 21% of the resource. Huge flocks of migratory waterfowl arrive in winter; more than at any other inland site in the UK. Its importance is year-round as it is one of the UK's most important breeding areas for Lapwing, Curlew, Redshank and Snipe: wading birds that depend on extensively grazed wet grassland. Meadows with more than 60 species in a single field and ditches supporting a unique assemblage of rare invertebrates add to its diversity.</p> <p>The floodplain's surviving biodiversity is recognised by a series of statutory designations. There are 17 Sites of Special Scientific Interest reflecting the national importance of 7,300 ha for lowland wet grassland, breeding wader populations and aquatic invertebrates. Twelve of the SSSIs, covering almost 6,400 ha, have been classified as important for wintering wildfowl and designated a Special Protection Area under the EC Birds Directive. The tiers of conservation designations are completed by recognition under the Ramsar Convention that the best habitats on the floodplain are notable for rare aquatic invertebrates and wintering waterbirds, making it one of the world's premier wetlands.</p> <p>The accumulation of designations makes it easy to lose sight of the fact that together they cover only 12% of the area of the floodplain. While they have helped attract limited investment to protect their biodiversity, little attention and few resources are given to the remainder, optimistically known as the "wider wetland". Much of the area outside the designated sites is a farmed grassland monoculture: too dry at critical times of the year to support wetland wildlife. This does not mean that it will always be of substantially lower value for wildlife. Promoting sustainable flood management and farming practices tailored to a wetland environment would rapidly reverse past losses and provide greater protection for the SPA.</p>
Qualifying Features of the European Site	<p>Qualifying individual species listed in Annex I of the Wild Birds Directive (article 4.1)</p> <p>Non-breeding (overwintering):</p> <ul style="list-style-type: none"> • A037 <i>Cygnus columbianus bewickii</i>; Bewick's swan • A140 <i>Pluvialis apricaria</i>; European golden plover <p>Qualifying individual species not listed in Annex I of the Wild Birds Directive (article 4.2)</p>

¹⁹ Natural England website 'European Site Conservation Objectives for Somerset Levels & Moors SPA' (includes Somerset Levels and Moors SPA Conservation Objectives Supplementary Advice 2019/03/12, Somerset Levels and Moors Conservation Objectives 2019/02/14, and Somerset Levels and Moors SPA Citation 2014/09/26). <http://publications.naturalengland.org.uk/publication/4598158654963712>

	<p>Non-breeding (overwintering):</p> <ul style="list-style-type: none"> • A052 <i>Anas crecca</i>; Eurasian teal • A142 <i>Vanellus vanellus</i>; Northern lapwing <p>Qualifying assemblage of species (Article 4.2)</p> <ul style="list-style-type: none"> • Waterbird assemblage (In addition to the Annex 1 and 2 species above the assemblage included Gadwall <i>Anas strepera</i>, Wigeon <i>Anas penelope</i>, Shoveler <i>Anas clypeata</i>, Pintail <i>Anas acuta</i>, Snipe <i>Gallinago gallinago</i> and Whimbrel <i>Numerius phaeopus</i>) <p>NB: Since notification there has been a substantial increase in numbers. The representation of species exceeding national and international population thresholds in the assemblage has changed with eight species exceeding the international threshold (Golden Plover <i>Pluvialis apricaria</i>, Teal <i>Anas crecca</i>, Lapwing <i>Vanellus vanellus</i>, Gadwall <i>Anas strepera</i>, Wigeon <i>Anas penelope</i>, Shoveler <i>Anas clypeata</i>, Pintail <i>Anas acuta</i> and Mute Swan <i>Cygnus olor</i>), and five exceeding the national threshold (Bittern <i>Botaurus stellaris</i>, Little Egret <i>Egretta garzetta</i>, Ruff <i>Philomachus pugnax</i> and Green Sandpiper <i>Tringa ochropus</i>).</p> <p>Note: This SPA is ecologically linked to the Severn Estuary SPA with bird species notified as mobile qualifying features using either the inland or coastal European Sites as alternative winter feeding grounds according to the weather conditions</p>
Names of component Site of Special Scientific Interest (SSSIs)	<p>The SPA is comprised of 12 SSSIs located across the Somerset Levels and Moors floodplain.</p> <ul style="list-style-type: none"> • Catcott Edington and Chilton Moors SSSI • Curry and Hay Moors SSSI • King's Sedgemoor SSSI • Moorlinch SSSI • Shapwick Heath SSSI • Southlake Moor SSSI • Tealham and Tadham Moors SSSI • West Moor SSSI • West Sedgemoor SSSI • Westhay Heath SSSI • Westhay Moor SSSI • Wet Moor SSSI
European Site Conservation Objectives	<p>With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;</p> <p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site

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')¹. 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 NE² 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 perpetuity³.

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

² Available at: https://www.southsomerset.gov.uk/media/5485/ne-water-quality-and-nutrient-neutrality-advice-16_03_2022-issue-1-final.pdf

³ 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 Authorities⁴, 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.

⁴ 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 Report⁵ (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.

⁵ 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 LPAs⁶. 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.

⁶ 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

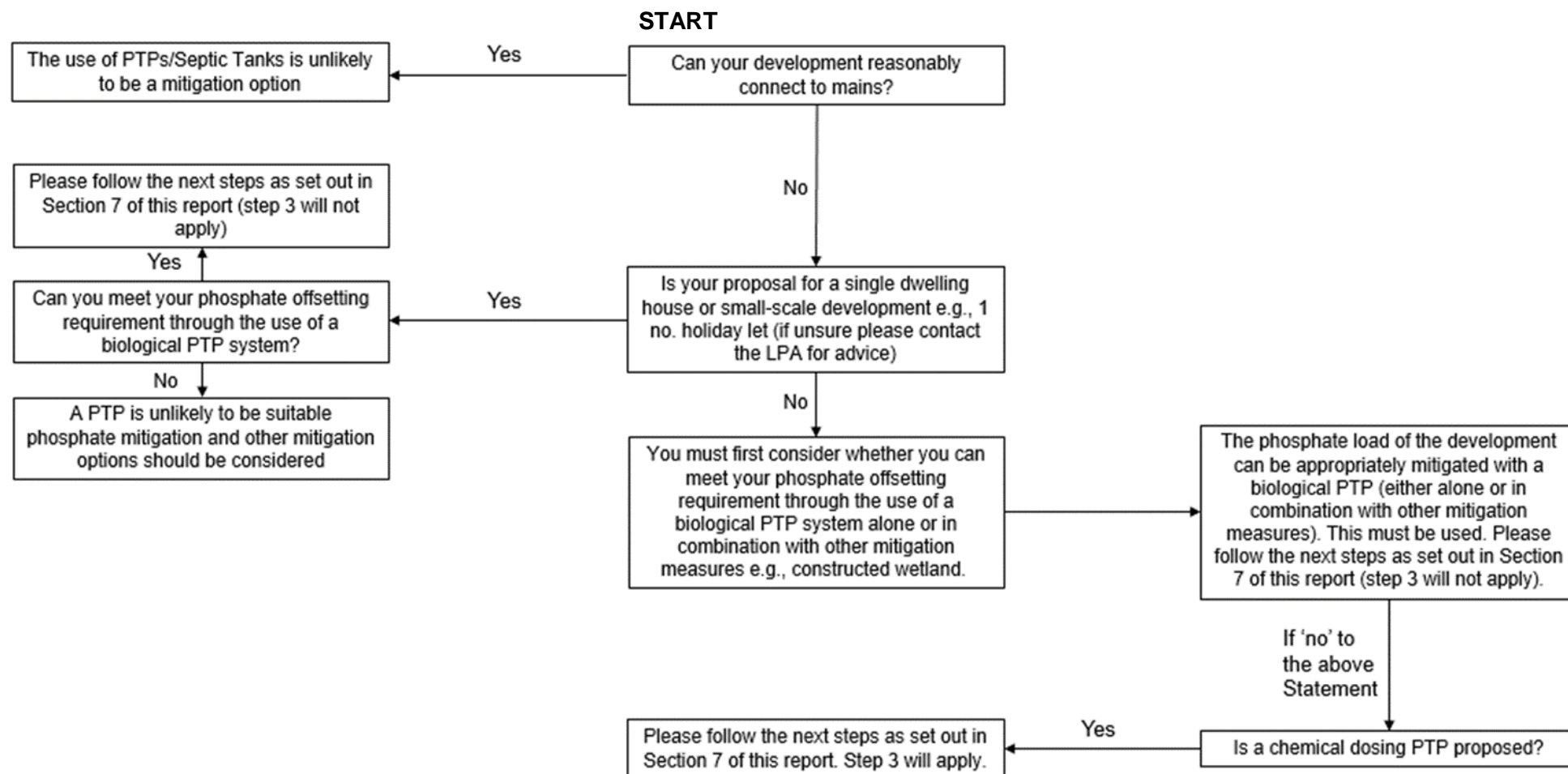
For single dwellings/small scale development proposing a Biological PTP	For larger scale development proposing a Biological or Chemical Dosing PTP
Applicant is likely to be required to identify an appropriately competent person to complete yearly monitoring of the efficiency of their PTP to ensure it at least meets the phosphate offsetting requirement agreed at the time the planning application was determined.	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.
Officers consider that yearly monitoring should be required. Should the site be sold, the responsibility to complete yearly monitoring rests with the land.	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.
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.	A resident's management company may not be accepted unless further information around insurance against any company failure is provided.
Officers recommend that duty should be placed on applicants to notify the LPA if the PTP fails 2 no. consecutive tests.	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.
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.	Officers recommend that duty should be placed on applicants to notify the LPA if the PTP fails 2 no. consecutive tests.
	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.
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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

Appendix A	Draft Template Section 106 Agreement for a single dwelling (for approval)
Appendix 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 situate 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

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

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

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- 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