

Somerset West and Taunton Council

Full Council – 5 October 2021

Somerset Levels and Moors Phosphate Mitigation: Somerset West and Taunton - proposed programme of interim measures.

This matter is the responsibility of Executive Councillor Member for Planning and Transportation: Mike Rigby

**Report Authors: Paul Browning: Strategy Specialist 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 demonstrate the Council's commitment to the delivery of, and allocation of funding for, a proposed programme of interim measures to secure phosphate neutral development in the District. This includes the appointment of dedicated officers to support the unlocking of development in the catchment of the River Tone and the setting up of a Phosphates Planning Sub Committee to oversee the delivery and implementation of the interim measures. These measures will allow some of the planning applications currently held in abeyance to be determined.
- 1.2 The report sets out the background to the issue and the response undertaken by the Council following the advice from Natural England issued in August 2020 concerning the unacceptable levels of phosphates in the Somerset Levels and Moors and provides information on the further work to be undertaken to bring forward a longer-term solution.
- 1.3 The report is focused on interim solutions that are in the gift of the Council to control or influence. Whilst there is no statutory responsibility for us to take this route the impact locally on businesses, developers, supply chain, and housing supply is a clear challenge. The Council will continue to lobby on the strategic solutions.

2 Recommendations

2.1 That Full Council resolves to:

- a) Confirm that the Council will, until such time as the responsibility falls to others, adopt interim measures to secure in perpetuity development which is phosphate neutral in the River Tone catchment.
- b) Confirm that the interim measures will include monitoring with annual reporting, to take an evidence led approach to ensure that phosphate offsets arising from the measures secured keep pace with permissions granted.

- c) Approve a Supplementary Capital Budget of £2m for Phosphates Mitigation Interim Measures, to be included in the General Fund Capital Programme for 2021/22 and 2022/23 (profile to be agreed by S151 Officer) , to be initially funded by borrowing. and agree that associated debt financing costs are included in the MTFP.
- d) Agree in principle that income received in respect of phosphates credits, for example through S106 contributions, be set aside first to repay borrowing and interest costs and then contribute to ongoing revenue costs associated with the interim measures implemented.
- e) To note the financial risks and potential market and asset valuation fluctuations, support the creation of an appropriate contingency within earmarked reserves, to be assessed and recommended by the S151 Officer as part of the annual budget report.
- f) Delegate authority to progress the purchasing of land and the creation of phosphate credits within the approved budget, and subject to a viable business case, to the Assistant Director Strategic Place and Planning in consultation with the Section 151 Officer and the Executive Councillor Member for Planning and Transportation.
- g) Delegate authority to progress the Appropriate Assessment of the interim programme of measures and its sign off by Natural England to the Assistant Director Strategic Place and Planning in consultation with the Executive Councillor Member for Planning and Transportation.
- h) Agree the governance and delegated authority arrangements for managing and setting up the subcommittee of planning to manage the interim strategy and the purchasing of phosphate mitigation credits to meet the needs of affected development (enclosed as Appendix A).
- i) Support where it is expedient to do so, in line with legislation and where there is a compelling case in the public interest, the use of legal powers (e.g. Compulsory Purchase Orders) to deliver cost-effective phosphate solutions.
- j) Require all new residential development to include water efficiency measures (110 litres per person per day) in line with SWT sustainability and climate change objectives, and that this will be a material planning consideration in the determination of affected proposals.
- k) With regard to determining planning applications, delegate authority to the Assistant Director of Strategic Place and Planning, the Lead Officer for Development Management and the Planning Policy Manager where appropriate to enter into Section 39 Agreements with landowners/farmers providing the mitigation project on their land.
- l) Delegate authority to the Assistant Director Strategic Place and Planning in consultation with the Executive Councillor Member for Planning and Transportation and the Phosphate Working Group to publish interim guidance clarifying the Council's position (as Local Planning Authority) on accepting Phosphate Credits purchased via third party trading platforms.

3 Risk Assessment

- 3.1 As the Local Planning Authority (LPA) there is no statutory requirement for SWT to embark on the interim programme of measures. The Council are doing this to facilitate sustainable development; to support the economic recovery post Covid 19; to minimise impact on small and medium-sized enterprises and the local economy as set out in the National Planning Policy Framework (2021); to meet the requirement to maintain a 5

year housing land supply; and to meet our wider housing duties.

- 3.2 At a cost of £2m if successful the proposed interim strategy measures aim to release between 700 and 1,350 homes. It should be noted at the time of drafting this report there are currently circa 100 planning applications on hold involving approximately 2,000homes. In addition to the planning applications, there are approximately 13 sites which are awaiting the discharge of conditions to allow development to commence which is affecting approximately 450homes. It is important for the Council in meeting the Housing Delivery Test to deliver a minimum of 562 homes per year across the District – of which a significant contribution comes from planned development within the affected river Tone catchment area. (Further details of Housing Delivery Test 2020 enclosed as Appendix B).
- 3.3 There are several risks associated with the delivery of the series of interim measures. These are set out in Table 1 below. 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.
- 3.4 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.

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 may be variable and site specific</i>	2	2	4

		Likelihood	Impact	Overall		Likelihood	Impact	Overall
	Risk Description				Risk Mitigation Measures			
ii	Failure to generate and/or obtain sufficient phosphate credits	3	3	9	<i>Early indications are that the proposed programme of interim measures will involve both the purchase of phosphates credits and an Appropriate Assessment of site-specific schemes with Natural England signoff in order to increase the likelihood of achieving the stated interim target number.</i>	2	3	6
iii	Impact of this cost pressure on infrastructure delivery, financial viability, and affordable homes. 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. Also with a reduction in new homes comes an evitable reduction in affordable housing delivery.	3	4	12	<i>This will need careful management – the phosphate issue is here to stay. The Council is commissioning further infrastructure delivery work for the Garden Town which will include viability assessment</i>	2	2	4
iv	Post Purchase Management e.g. requirement to monitor schemes.	2	2	4	<i>The management and maintenance of sites will pass to the Council's in house Open Spaces service or other appropriate stewardship arrangements.</i>	2	2	4

4 Background and Full details of the Report

Background

- 4.1 On 17 August 2020, all the planning authorities in Somerset received an advice note from Natural England (NE) concerning the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site (Available on the SWT web site at <https://www.somersetwestandtaunton.gov.uk/media/2434/natural-england-advice-to-lpas-on-nutrients-in-the-somerset-levels-and-moors.pdf>)
- 4.2 As a result of the court Judgment (known as Dutch N), Natural England (NE) advised that, in light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site, before determining a planning application that may give rise to additional phosphates within the catchment, competent authorities are required to undertake a Habitats Regulations Assessment proceeding to an appropriate assessment on individual projects. The appropriate assessment of the proposed interim measures must rule out any reasonable scientific doubt as to the likelihood of an adverse impact on the site. The Council as the competent authority under the Habitats Regulations must consult Natural England (NE) and have regard to their advice in preparing assessments. Further background details are enclosed as Appendix C.
- 4.3 The Somerset authorities wrote to the Secretaries of State in December 2020 raising issues and concerns: (<https://www.somersetwestandtaunton.gov.uk/media/2535/letter-to-the-secretary-of-state-from-all-somerset-authorities.pdf>) and a further letter in July 2021 (<https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>). The Council continues to raise the need for a national response to address water quality issues given that the number of local authority areas experiencing similar problems is increasing and the fact that it is not within the remit of individual authorities to address farming practices and the function of waste water treatment works. This issue undermines the Government's ability to deliver against its target of 300,000 new homes per annum.
- 4.4 Furthermore, SWT officers continue to have:
- Regular meetings with Ministry of Housing, Communities and Local Government's (MHCLG) and Department for Environment, Food and Rural Affairs (DEFRA) officials.
 - Meetings with other local authorities who are also dealing with the Nitrates issue (e.g. Dorset and Hampshire) and a phosphates issue (e.g. Ashford, Kent and Wiltshire) to share understanding and mitigation strategies.
- 4.5 In response to the receipt of Natural England's advice the four Somerset district councils and Somerset County Council have been working together and have commissioned consultants (Royal Haskoning) to develop a strategic solution. The receipt and publication of the final Strategy document being produced; and consultation on a Supplementary Planning Document will provide an opportunity to review the interim programme, as will the experience of other local authorities across the country and longer-term initiatives.

SWT Governance arrangements

The governance arrangements for managing the interim measures are those put forward by the Council's governance team (see Appendix A for the draft terms of

reference and key functions of the proposed Phosphates Planning Sub Committee). There will be a need following legal advice to put in place a process for the allocation of phosphate credits so that these are made available in a fair and transparent way. There is also a need for further engagement and legal advice on third party trading platforms (e.g. EnTrade).

Summary of Interim Measures

4.6 At this present time officers are unable to provide a definitive timescale for when applications held in abeyance will be determined. It should be noted that the Council has committed significant resources to addressing the unacceptable levels of phosphates in the Somerset Levels and Moors Ramsar site. Regular updates will be provided on the SWT website. The next steps for the interim measures are set out below:

- i) Develop large-scale strategic project(s), which are most likely to be wetland schemes down stream of existing WWTW's – to ensure phosphate neutrality in perpetuity is being created over several years providing a long-term solution. This is likely to involve existing land assets owned by SWT as well as exploring and progressing land purchase options.
- ii) Develop the programme for the retrofitting of the Council's own housing stock to improve their water efficiency and create phosphate credits
- iii) Complete the recruitment of two officers – a nutrient neutrality officer and a planning officer post to support implementation of the interim measures (funded for 12 months and recruitment is underway).
- iv) Develop an appropriate assessment for agreement to the interim measures with Natural England and the quantum of development that can be released.
- v) Introduce standard planning conditions on all residential permissions in the Tone catchment area to restrict water usage to 110 litres per person per day.
- vi) Put in place the governance arrangements to oversee the interim measures and monitor the programme and release of planning decisions.
- vii) Develop a standard Section 106 obligation template.

4.7 The indicative timeline for the various interim measures is set out in Table 2 below. This interim programme aims to start unlocking development over the next year to resolve a national issue which is having significant local impacts. If successful it will unlock some 700 to 1,350 homes currently on hold in SWT.

Table 2 : Indicative Timetable for Interim measures

	Timeline				
	2021 (Q4)	2022 (Q1)	2022 (Q2)	2022 (Q3)	2022 (Q4)
Activity					
Develop large-scale strategic project(s) for P credits	On going				

Retro fitting SWT Housing Stock with water saving measures (subject to agreement with the Housing Service)	Subject to further detailed work				
Staff Recruitment to support implementation	Commenced				
Appropriate Assessment / agreement of the interim measures with Natural England.	Sign off by NE				
Unlocking stalled planning applications / governance arrangements to monitor the release planning decision(s)					
Develop standard Section 106 / condition(s) Template					
Develop Supplementary Planning Guidance (SPD), consult and adopt					
Continue lobbying Central Government	On -going				
Briefing and engagement with development industry and key stakeholders	On going				

Detail of the Interim Options for the Council as Local Planning Authority

- 4.8 The Council finds itself in a difficult position, the phosphates issues are not of its creation and there is no statutory obligation to intervene with mitigation options. However, the impacts that are felt by these issues are so detrimental to business, employment and housing supply that simply waiting for a strategic solution is not considered to be appropriate. Until such time as alternative solutions are found to improving water quality in the catchment area for the Somerset Levels and Moors Ramsar site, planning decisions will need to ensure phosphate neutrality. At the current time there are approximately 113 planning applications involving approximately 2,450 dwellings which are stalled pending mitigation measures.
- 4.9 In response to this, a series of interim measures are proposed to offset additional phosphates resulting from new developments within the River Tone catchment area which will have an impact on the Somerset Levels and Moors Ramsar site. It is a commitment which follows a precautionary approach by putting in place effective and proportionate measures to remove, mitigate or offset the phosphate load from

proposed development. To enable such applications to be approved and appropriate assessments to be concluded favourably it must be certain beyond reasonable scientific doubt that phosphate neutral development will be delivered. A formal undertaking by the Council to commit sufficient resources to develop and deliver these interim measures is essential to provide the certainty that is needed for these assessments.

4.10 The proposed interim Measures involve:

- The development of large-scale strategic project(s), which are most likely to be wetland schemes down stream of existing WWTW's – to ensure phosphate neutrality in perpetuity is being created over several years providing a long-term solution. This is likely to involve existing land assets owned by SWT as well as exploring and progressing land purchase options. A short video below showing the benefits of constructed wetlands downstream of a WWTW's is available at ([Cromhall Wetland Bioblitz - YouTube](#)).
- In line with the Council's sustainability objectives and declaration of a climate change emergency all new residential development to include water efficiency measures (110 litres per person per day). This will have the effect of slightly reducing the amount of water reaching sewage treatment works. Most treatment works are restricted through their Environmental Permit on the amount of phosphorous that can be discharged per litre of water. The water use restriction will thereby achieve a reduction in total phosphorous discharged and thereby reduce the offsetting.
- Retrofit of SWT housing stock. The proposal to retrofit the Council's housing stock presents an excellent opportunity to gain phosphate credits without the timescale and cost draw backs of wetland creation. With an estimated 5766 housing units in the Council's housing stock, Royal Haskoning estimate that by changing the taps in the bathroom and kitchens, the bath sizes, shower heads and WC cisterns we could reduce the water usage per individual from an average of 145 L/day to 110L/Day which would result in the generation of an estimated ~3,852 phosphate credits as shown in Table 3 below. The final figure this proposal will be subject to sign off by Natural England.

Table 3: Potential of Housing Stock Retrofit

Timescales	Phosphate offsetting potential (kg/yr)	Housing equivalent (5 mg/l)	Housing equivalent (2 mg/l)	Housing equivalent (1 mg/l)
Current permit limits				
125 l/person/day	382.17	793	2,203	4,406
110 l/person/day	668.16	1,386	3,852	7,704
AMP7 permit limits				
125 l/person/day	89.95	186	518	1,037

110 l/person/day	159.14	330	917	1,835
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4.11 The estimated costs of such a scheme have been provided by Royal Haskoning and are set out in Table 4 Below. In discussion with our colleagues in Housing, officers consider there will need to be some refinement to these costings to include for contingency, decant costs, design, (potential) audit of properties, salaries or interest costs and full costing details will need to be prepared.

4.12 The proposal would build upon our current, accelerated 5-year Housing Revenue Account programme for replacement of kitchens and bathrooms which is as follows:

- Kitchens – 345/annum
- Bathrooms – 236/annum

Table 4: Estimated Costs of Retrofit

Water Usage Savings Strategy	unit cost	whole housing stock	Housing Stock
Item			5766
Toilet (new)	£200	£1,153,200	
Showerhead	£40	£230,640	
Baths	£550	£3,171,300	
Basin Taps	£100	£576,600	
Sink Taps	£100	£576,600	
	£990	£5,708,340	

4.13 As an interim measure utilising up to the £2m budget this could mean retrofitting up to an estimated ~ 2020 homes and generate an estimated 1350 credits towards unlocking the planning applications held in abeyance. Utilising half the budget would release around 700 credits. The impact and deliverability requires further work and as such it is proposed as one of the options available to the Council.

4.14 The aim is to recover costs through developer contributions. These measures are intended to apply within the legal and policy framework of the planning system, the use of planning conditions and Section 106 agreements. The Council will be able to facilitate this process by producing a standard Section 106 agreement or unilateral undertaking to cover such matters. The recharge would ensure that any Council generated phosphate credits would be on a full cost recovery basis to affected planning applicants whether they are internal or external to the Council.

4.15 The Council is currently recruiting a nutrient neutrality officer and a planning officer post to support this work from existing budgets. If agreed the proposed interim measures will require an Appropriate Assessment in order to obtain Natural England sign-off that mitigation is being put in place to enable the determination of some of the

planning decisions currently held in abeyance. Once schemes are implemented there is also the requirement to monitor i.e. ensure enough measures are in place prior to occupation to achieve neutrality and a commitment to stop issuing permissions if mitigation delivery falls behind.

- 4.17 The proposed approach is similar to that being used by Wiltshire Council and agreed by Natural England. In order to deliver approval from Natural England for the interim measures the requested budget of £2m is required together with:
- A commitment from the Council to underwrite the phosphate offsetting requirements for all permissions granted and implemented under the interim programme; and
 - the recruitment of a nutrient neutrality officer to implement the programme (already funded - see paragraph 4.7 above).
- 4.18 As part of the interim measures the LPA and fitting in with sustainability objectives/climate change agenda all new development will be required to include water efficiency measures (110 litres per person per day). In addition to a Habitats Regulation case, the policy basis for new builds to incorporate water efficiency measures are the adopted Taunton Deane Core Strategy Policy DM5 (p.25-27) and the adopted West Somerset Local Plan Policy CC5 (p.53).
<https://www.somersetwestandtaunton.gov.uk/planning-policy/adopted-local-plans/>
- 4.19 Policy DM5 states that “Development Proposals shall: “Help to minimise water consumption, for example by the use of water conservation and recycling measures”. Policy CC5 states that “The design of development schemes which include measures to economise on the use of water supplies will be encouraged.” The Council’s Climate Positive Planning (CPP) equates this to the standard of 110 litres/person/day. (For further details about the CCP, visit the SWT web site at
<https://www.somersetwestandtaunton.gov.uk/planning-policy/climate-positive-planning/>)
- 4.20 In addition to these measures the Council will continue to engage with Wessex Water via their trading platform EnTrade to see how the use of any credits generated through this mechanism can be used to unlock affected development sites. The Council had proposed the purchasing from EnTrade of the phosphate credits. Unfortunately, this was not acceptable to EnTrade and so the role of the LPA is therefore limited to raising questions, issues and concerns regarding the operation of the EnTrade scheme and its effect upon the playing system. The LPA is not in a position to formally ‘accredit’ the EnTrade scheme as this could fetter the LPA’s discretion to determine planning applications on a case by case basis. The LPA needs to reserve the ability to refuse applications where the viability of a scheme (including the cost of acquiring EnTrade credits) results in developers being unable to deliver infrastructure that is necessary to ensure the acceptability of their development.
- 4.21 As the Local Planning Authority there is no statutory requirement for Somerset West and Taunton to seek such measures as set out in paragraph 4.7 above. However the Council are doing this: to facilitate sustainable development; to minimise impact on small and medium-sized enterprises and the local economy; the requirement to maintain a 5-year housing land supply and to meet our wider housing duties

5 Links to Corporate Strategy

5.1 These are set out on the SWT website at:

<https://www.somersetwestandtaunton.gov.uk/your-council/corporate-strategy/>

5.2 The report and its recommendations strongly support 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.

Homes and Communities

- Increasing the number of affordable and social homes.
- Seeking additional funding for new strategic infrastructure.

An Enterprising Council

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

6 Finance / Resource Implications

6.1 The request is to approve a Supplementary Capital Budget of £2m for Phosphates Mitigation Interim Measures, to be included in the General Fund Capital Programme for 2021/22 and 2022/23 (profile to be agreed by S151 Officer), to be initially funded by borrowing. and agree that associated debt financing costs are included in the MTFP.

6.2 The Executive approved an updated Financial Strategy in July 2021 (also included on this agenda for Full Council on 5 October 2021). The Strategy highlights a significant financial pressure in future years with a sharp reduction in funding and rising costs. The Strategy proposes to utilise one-off income and reserves to balance 2022/23, but Members are advised that additional capital investment will increase the revenue budget gap. The capital strategy seeks to deliver a capital programme that is affordable and sustainable. Increasing the Council's capital debt represents additional costs whereas the planned budget approach has intended to reduce debt costs. However, this additional debt is within approved borrowing limits as set to comply with the Prudential Code.

6.3 Long term debt financing costs for £2m up front capital investment are estimated at an annual cost of interest (2%), at £40,000 p.a. and a Minimum Revenue Position (MRP) of approximately £48,000 for 40 years or until the debt is repaid.

6.4 The intent is that full cost recovery of capital costs will be secured via contributions from S106 agreements as part of the determination of planning applications and that additional revenue costs required to maintain the assets/ liabilities will be included as part of these agreements . However, modelling of several scenarios suggest that full cost recovery may not be possible, which if not recoverable will need to be included as a pressure in the MTFP. Given the underlying budget gap this would place added pressure on affordability of other services.

- 6.5 The project team has currently prioritised a number of interim measures, or scenarios, funded from the General Fund, with one measure being proposed within our Housing Stock. (Legal opinion is being sought as to whether and how this could be done, accounted for and funded).
- 6.6 Scenarios have been modelled at a very high level with a number of assumptions and variables, it is extremely difficult at this point in time to understand the financial impact with so many unknowns and thus it is suggested that for each possible purchase of land or phosphate mitigation measure a detailed business case be developed, to be reviewed on a case by case basis.
- 6.7 The high level scenario modelling has highlighted the key points, as follows, which may be of interest:
- buying specific pieces of land and laying it “fallow” does not appear to demonstrate value for money, with phosphate credit production low, and cost to create high, with little ability to repay debt, further liability of ongoing revenue costs and further risk of de- valuation of asset.
 - if the time taken to create wetlands is as suggested, five to seven years, Wessex Water’s capital investment plan should have resolved the phosphate issue. This may lead to no market value for credits and investment to date being worth less, with no ability to buy back borrowing, or future revenue costs.
- 6.8 Long term commitment to maintaining land and wetlands for 80 years carries many risks although this will be built into the legal agreements.
- 6.9 It is important to note that once these parcels of land are re-zoned from agricultural to either ‘wetland’ or ‘fallow/meadow’, their value may be significantly impaired and require write down in SWT financial statements.
- 6.10 To purchase credits from Wessex Water’s trading platform “ Entrade” could lead to less risks, if credits can be purchased and “traded” within short time scales, as market value may be more static, Liabilities associated with maintaining the credits could be minimal although there would be on going revenue costs.
- 6.11 An option to use the current Housing Revenue Account programme to upgrade kitchen and 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.as has happened elsewhere for example in Portsmouth and officers will be discussing with them how this has been managed.
- 6.12 SWT are looking to investigate hybrid model of the scenarios, and it is hoped that the scenarios help to highlight the risks of this innovative solutions to the phosphates issue.
- 6.13 Tax advice will be sought as required on SDLT/VAT/Tax implications of the preferred interim method(s) selected.

- 6.14 Finance will support a case by case development and the S151 officer will be consulted on its viability and evaluate the impact to the MTFP and mitigate risk as required in Earmarked Reserves.
- 6.15 **Legal Implications**
- 6.16 As set in this report, the programme of interim measures are intended to apply and operate within the legal and policy framework of the planning system
- 6.17 The proposed approach will require an Appropriate Assessment in order to obtain Natural England agreement. 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.
- 6.18 SWT officers have sought legal advice from Shape Mendip and Counsel on various matters associated with the determination of planning applications. A summary of Counsel's legal advice is on the SWT web site at:
<https://www.somersetwestandtaunton.gov.uk/media/2587/legal-summary.pdf>
- 6.19 We have also sought advice on matters, such as management agreements with owners and occupiers of land used for phosphate mitigation. Legal advice from Shape Mendip is to control such matters through the use by way of planning conditions and Section 106 agreements. The Council will produce a standard Section 106 agreement to cover such matters.
- 6.20 There is a need to seek legal advice to understand how phosphate credits can be allocated by the Council in a fair and transparent way and any associated risks with underwriting schemes designed to deliver phosphate mitigation.
- 6.21 With regard to sites purchased by the Council for the purpose of phosphate mitigation, the legal implications will be considered by the usual report on title and the conveyancing being undertaken by external lawyers or Shape Mendip.

7 Climate and Sustainability Implications

- 7.1 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 of this interim programme such as carbon sequestration, improved and enriched flora and fauna and so help deliver carbon reduction targets. The likely solution aimed at phosphate mitigation such as wetland creation and tree planting are thus likely to lead to biodiversity enhancements and accord with proposals and initiatives to address the climate emergency and biodiversity net gain.
- 7.2 The sustainability credentials of the interim mitigation measures will be assessed through a Habitats Regulation Assessment which will be agreed with Natural England.

8 Safeguarding and/or Community Safety Implications

- 8.1 None related directly to this report.

9 Equality and Diversity Implications

- 9.1 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.
- 9.2 None of the above relate directly to this report.

10 Social Value Implications

- 10.1 At this stage we have not carried out a detailed analysis in this area. In line with our corporate priorities (see section 5 above), SWT is committed to providing much need affordable and social housing.
- 10.2 The interim programme of measures is aimed at unlocking the significant number of planning applications awaiting determination in the River Tone catchment area. Many of these applications involve homes, including much needed affordable and social housing. Their delivery is essential to the social outcomes of our District.

11 Partnership Implications

- 11.1 As set out in Appendix C and the “partnership section, we are working with all the other Somerset LPA’s to identify the strategic solution to the nutrient enrichment issue. A joint report and draft Supplementary Planning Document will be ready in the Autumn 2021, but the adoption of the later will take some time (see Table 2 above).
- 11.2 We are also working with other public bodies, in particularly the Department of Levelling Up, Housing and Communities , DEFRA, Natural England, the Environment Agency and Wessex Water (see paragraph 4.4 above and Appendix C: Section D :Strategic solutions/Somerset wide Nutrient Strategy).
- 11.3 In addition we are working with developers in the sector affected by the issue and the House Builders Federation to seek support from National Government to address water quality issues

12 Health and Wellbeing Implications

- 12.1 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.

13 Asset Management Implications

- 13.1 The management of SWT owned sites used to created phosphate credits will be passed to the External Ops team to manage in the long term.

14 Data Protection Implications

14.1 None related directly to this report. We may require information sharing agreements between the Council and any purchaser of phosphate credits as part of the long-term implementation of sites for phosphate mitigation.

15 Consultation Implications

15.1 None related directly to this report.

List of Appendices

Appendix A	Proposed governance and delegated authority arrangements for managing the interim strategy.
Appendix B	Housing Delivery Test 2020.
Appendix C	Background and further details.
Appendix D	Phosphate Pie Chart: the relative contribution from each activity.
Appendix E	Wessex Water Phosphorus and investment slide

List of web links

17 August 2020, Natural England (NE) advice note

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

Video showing the benefits of constructed wetlands downstream of a WWTW's [Cromhall Wetland Bioblitz - YouTube](#).

Council's Climate Positive Planning (CPP)

<https://www.somersetwestandtaunton.gov.uk/planning-policy/climate-positive-planning/>

Adopted Taunton Deane Core Strategy and the adopted West Somerset Local Plan

<https://www.somersetwestandtaunton.gov.uk/planning-policy/adopted-local-plans/>

SWT letters to the Secretary of State in December 2020

:(<https://www.somersetwestandtaunton.gov.uk/media/2535/letter-to-the-secretary-of-state-from-all-somerset-authorities.pdf>) and in July 2021

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

SWT Corporate Strategy: <https://www.somersetwestandtaunton.gov.uk/your-council/corporate-strategy/>

Summary of Counsel's legal advice:

<https://www.somersetwestandtaunton.gov.uk/media/2587/legal-summary.pdf>

The National Planning Policy Framework (2021).

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Wessex Water (EnTrade): <https://www.entrade.co.uk/>

Planning Advisory Service (PAS) webinars (ie 20 and 29 July 2021) [website](#)

Newspaper Articles: River Pollution

<https://www.theguardian.com/environment/2021/sep/15/pollution-is-damaging-uk-rivers-more-than-public-thinks-report-says>

<https://www.theguardian.com/environment/2021/sep/13/government-failing-to-stop-sewage-discharge-into-english-rivers-says-charity>

Contact Officers

Name	Paul Browning	Name	Alison Blom-Cooper
Direct Dial	01984 600164	Direct Dial	01823 217517
Email	p.browning@somersetwestandtaunton.gov.uk	Email	a.blom-cooper@somersetwestandtaunton.gov.uk