

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

## **Phosphates Planning Sub Committee – 21 July 2022**

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### **1 Executive Summary/Purpose of the Report**

- 1.1 Following the receipt of the Natural England letter of August 2020,<sup>1</sup> 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 Council<sup>2</sup> 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

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<sup>1</sup> Natural England letter available on Council website at

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

<sup>2</sup> Full Council committee report available at

<https://democracy.somersetwestandtaunton.gov.uk/documents/s17540/Somerset%20Levels%20and%20Moor%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 2022<sup>3</sup>.
- 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

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<sup>3</sup> 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 2022<sup>4</sup>. The River Axe catchment within East Devon District Council, a small part of

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<sup>4</sup> 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&MIId=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&MIId=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 homes<sup>5</sup>, including approximately 1500

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<sup>5</sup> 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 **65.3kg/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 Calculator<sup>6</sup>. 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 1/10<sup>th</sup> 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

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<sup>6</sup> 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

	<b>Risk Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall</b>	<b>Risk Mitigation Measures</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall</b>
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 following 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

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

**Appendix A: For the River Tone sub catchment: summary of phosphate mitigation projects being progressed by SWT <sup>7</sup>**

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 <sup>8</sup>
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 <sup>9</sup>
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
<b>Total</b>			<b>65.3</b>
<b>Total Cost to SWT (excluding interest payments)</b>			<b>£3,540,695</b>

<sup>7</sup> **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

<sup>8</sup> Based on estimated scope of works provided by SWT Housing colleagues.

<sup>9</sup> 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 a 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 situated 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 tome
- 9.11 **“Interim Strategy”** means the programme of interim measures and projects to be undertaken by the Council (as adopted by Full Council on 5<sup>th</sup> 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