

# **Progress Report on work undertaken to address the issue of achieving phosphate neutral development in the River Tone catchment.**

## **Phosphates Planning Sub Committee – 30 March 2023**

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### **1. Executive Summary**

- 1.1 The purpose of this report is to update the Phosphates Planning Sub-Committee on work undertaken to date to address the issue of achieving phosphate neutral development within the River Tone catchment area of the Somerset Levels & Moors Ramsar site.
- 1.2 As Members are aware, Somerset West and Taunton (SWT) Council will cease to exist from 1 April 2023 with the new unitary Somerset Council taking over the running of all local authority services to communities in the County. With regard to phosphates, there is the continuing need for a coordinated and appropriately resourced approach to mitigation in the three catchments River Tone, Brue and Parrett which feed into the Somerset Levels and Moors in order to achieve nutrient neutral development whilst also supporting housing growth.
- 1.3 This report to the Phosphates Planning Sub-Committee is largely for information, it focuses on the work undertaken within the River Tone catchment area, undertaken by Somerset West and Taunton Council, in collaboration with stakeholders. It also asks the Phosphates Planning Sub-Committee to consider Officer recommendations for the allocation of the next round of Somerset West and Taunton Phosphate Credits generated through the Interim Mitigation Strategy.
- 1.4 In addition, and in recognition of the new Somerset Council from April 2023, the report also provides an update on work that has been undertaken jointly across Somerset. The Somerset Authorities continue to be at the forefront nationally in delivering phosphate mitigation solutions to ‘unlock’ nutrient-neutral development across the Somerset Levels & Moors catchment area.

### **2. Recommendations**

- 2.1 That the Phosphates Planning Sub-Committee resolves to:
  - a. Agree the preferred option 2 for the allocation of the next round of SWT P-credits as set out from section 6 onwards.
- 2.2 That the Phosphates Planning Sub-Committee notes:
  - b. The content of this report.
  - c. The activity of the SWT P-Credit scheme which is now starting to unlock the delivery of housing which has been on hold in the River Tone catchment due to the phosphate nutrient neutrality.
  - d. The outcomes of lobbying work undertaken by both Officers and Members of SWT.

- e. The planned future activities, as set out in the draft “Action Plan” (enclosed as Appendix A).

### 3. Purpose of the Report

- 3.1 The purpose of this report is to provide the Phosphates Planning Sub-Committee with an update on the work undertaken in relation to nutrient neutrality on a Somerset wide basis and in particular, within the River Tone catchment, on SWT’s Interim Phosphate Mitigation Strategy (‘The Interim Strategy’). The Local Planning Authority (LPA) is now starting to determine affected planning applications which were on hold due to the need for phosphate mitigation. The report also provides details of planned future activities across Somerset, enclosed as Appendix A.

### 4. Background to Report

- 4.1 As previously reported, on 17 August 2020, all the LPAs in Somerset received an advice note from Natural England (NE) concerning the unacceptable levels of phosphates present in the Somerset Levels and Moors Ramsar site<sup>1</sup>.
- 4.2 As a result of a European Court judgment known as *Dutch N*, the Somerset Authorities<sup>2</sup> were advised, as Competent Authorities under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), that they must not permit any new residential development, infrastructure that supports agricultural intensification, anaerobic digesters, some tourism development and development that provides overnight accommodation unless it ‘*can be certain beyond a reasonable doubt*’ that it would not give rise to additional phosphates (either alone or in combination with other plans or projects) within the hydrological catchment of the Somerset Levels and Moors Ramsar Site.

### 5. Review of Progress to Date

#### ***Progress across Somerset: Key Actions***

- 5.1 Since the NE advice letter of 17 August 2020, SWT as the lead authority on behalf of the Somerset Authorities, has worked to progress various measures which seek to reduce phosphates entering the Ramsar site. For example, in February 2021 SWT obtained funding from Homes England to commission work to develop the Somerset Phosphate Budget Calculator<sup>3</sup>.
- 5.2 SWT has also led work with the Somerset Authorities and Dorset Council in commissioning the Somerset Solutions Report<sup>4</sup>. The Solutions Report, published in February 2022, sets out a range of mitigation options that could potentially be used to offset the additional phosphorus load from a new development within the catchment of the Somerset Levels and Moors Ramsar Site, including consideration of strategic mitigation options.

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<sup>1</sup> See: <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>

<sup>2</sup> Mendip District Council, Sedgemoor District Council, Somerset County Council, Somerset West and Taunton Council and South Somerset Council

<sup>3</sup> Available at:

[https://ssccust1.spreadsheethosting.com/1/3d/08e177701b0026/Copy%20of%20P%20budget%20Calc\\_V3.1%20developer%20version/Copy%20of%20P%20budget%20Calc\\_V3.1%20developer%20version.htm](https://ssccust1.spreadsheethosting.com/1/3d/08e177701b0026/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version/Copy%20of%20P%20budget%20Calc_V3.1%20developer%20version.htm)

<sup>4</sup> Available at: <https://www.somersetwestandtaunton.gov.uk/media/3232/solutions-report.pdf>

- 5.3 Members will also recall that the Solutions Report also evidenced the quantum of phosphate to be mitigated against, for each river catchment, to deliver phosphate neutral development. For the River Tone (as set out in Table 5.8 of the Solutions Report) is estimated to be circa 1,200 kg/year for the period up to 2032. This equates to a mitigation requirement of approximately 110 kg/year.
- 5.4 These totals, along with the equivalent figures for the River Parrett and River Brue catchments will need to be recalculated once the revisions of the Somerset Phosphates Budget Calculator have been approved by NE. These proposed revisions are discussed in more detail later in this report.
- 5.5 The work on the Somerset Solutions Report also included a review of the geographical extent of the affected river catchment areas. Technical work reduced the overall size of the area where the NE advice note applies. The finding of the solutions report was reported to this Sub-Committee in March 2022. Available here:

<https://democracy.somersetwestandtaunton.gov.uk/documents/s19213/Technical%20Report%20Somerset%20Levels%20and%20Moors%20Phosphate%20Mitigation%20Solutions%202022.pdf>.

- 5.6 The revised smaller extent of the affected river catchment areas was placed on the SWT website on the 15 March 2022.
- 5.7 In September 2022, the Somerset Authorities jointly published an Advice Note on the use of Package Treatment Plants (PTPs) as phosphate mitigation. The Advice Note, prepared in consultation with NE the Environment Agency, is to assist applicants in considering the use new or upgraded PTPs as a possible phosphate mitigation option. The Advice Note has ensured that this form of mitigation is dealt with in a consistent way across Somerset and sets clear principles for the use of PTPs as phosphate mitigation for example, that chemical dosing PTPs will only be accepted as a last resort. A report was prepared for the Phosphate Planning Sub-Committee in July 2022, which set out the way in which Somerset West and Taunton Council would apply the Somerset Advice Note on PTPs. Available here:

<https://democracy.somersetwestandtaunton.gov.uk/documents/s19916/Proposed%20Guidance%20for%20the%20determination%20of%20planning%20applications%20proposing%20the%20use%20of%20new%20Package%20Tr.pdf>

#### ***Progress across Somerset: Regular Meetings with Key Stakeholders***

- 5.8 In addition to the above, since the receipt of the NE advice letter of 17 August 2020, Planning Officers from SWT have had regular monthly meetings with Environment Agency, NE, and Wessex Water officials. Since February 2023, these meetings have included Officers from the other Somerset Councils and Dorset Council.

#### ***Progress across Somerset: Lobbying Central Government***

- 5.9 Since the receipt of NE advice letter of the 17 August 2020, working with the other Somerset Authorities, Officers, and Members of SWT have lobbied central government on a range of issues. There have been updates on various matters. For example:
- Within the Levelling up and Regeneration Bill there are provisions which amend the Habitat Regulation Assessment process, so that the upgrades to plants / Wastewater Treatment Works (WwTW's) to 0.25mg/l are deemed certain when

calculating phosphate mitigation post 2030. There are exemptions to the 0.25mg/l where plants / WwTW's serve a population below 2,000 people. All these measures must be agreed by Parliament and are, therefore, subject to change. There is no certainty on how long this will take to achieve Royal Assent. Further details are available on the UK Parliamentary website here: <https://bills.parliament.uk/bills/3155>

- On behalf of all the Somerset Authorities, in March 2022, SWT submitted a successful £100k request for further funding support through the Nutrient Pollution Mitigation Fund. This money has, for example, been used to fund the technical updates to the Somerset Phosphates Budget Calculator.
- A more coordinated national approach to addressing nutrient neutrality. Since the summer of 2022, nationally the Planning Advisory Service (PAS) have arranged monthly meetings involving all the 70+ LPAs caught and impacted by NE advise on nutrient neutrality.
- Most recently officers from SWT through PAS were invited to meetings at Downing Street with officials from Defra and DHLUC. Amongst our asks of central government were:
  - Resources for additional staff/consultancy support and investment funding for nutrient credit schemes (both private and LPA led).
  - Consistent advice at a national level from NE and other departments.
  - Funding for piloting the effectiveness of new technologies to mitigate nutrient pollution.

### ***Progress in the River Tone Catchment: SWT Interim Strategy***

- 5.10 As reported to Full Council on 5 October 2021, there is no statutory requirement for SWT, or any of the Somerset Authorities, to intervene to address the phosphates issue. The 'do nothing' option was assessed within the Report to Full Council and due to the variety of challenges presented by the issue (for example, the impact on housing land supply and the effect on Small and Medium-sized Enterprises (SMEs)) it was decided that this was not an acceptable option.
- 5.11 As a result, Full Council resolved to take proactive action in order to try and find appropriate solutions. As an interim solution, SWT committed £2m to forward fund the delivery of the Interim Phosphates Mitigation Strategy ('the Interim Strategy'). The purpose of these measures is to generate phosphate credits (known as 'SWT P-Credits') that can be used to 'unlock' some of the planning applications held in abeyance.
- 5.12 The Interim Strategy includes the following projects within the River Tone catchment to generate SWT P-credits:
- Utilising Council Assets: including through retrofitting of the Council's own housing stock with water efficiency measures.
  - Land Use Measures: including the development of a wetland at Cotford Saint Luke.  
Working in partnership with the Private Sector: including land following at Orchard Portman to provide 'bridging credits' before wetland creation.

- 5.13 On 9 November 2022, NE confirmed their support for SWT's Interim Strategy as set out in the Standard Appropriate Assessment of the Strategy. Further details are available on the SWT web site at:

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

- 5.14 In total, and as set out within the Standard Appropriate Assessment, SWT has estimated that the Interim Strategy will generate a minimum phosphate offset of 75.5 kg/year equating to 75.5 SWT P-Credits (1 credit = 1 kg of phosphates removed per year). We anticipate that this will unlock between circa 174 and 871 homes.

***Progress in the River Tone Catchment: SWT P-credits***

- 5.15 SWT is one of only a handful of Councils across the country to have an operational nutrient credit scheme. The scheme has enabled the development of phosphate credits (known as 'SWT P-Credits').
- 5.16 In summary, the SWT P-credit scheme allows eligible planning applications to apply to secure the requisite number of SWT P-credits to offset the additional phosphate generation arising from the development proposal.
- 5.17 Further details on the SWT P-credit Scheme are available on the SWT Phosphates webpage:
- <https://www.somersetwestandtaunton.gov.uk/planning/phosphates-on-the-somerset-levels-and-moors/>
- 5.18 In October 2022, SWT issued a survey to all applications held in abeyance to 'test' the level of interest in the SWT P-credit scheme. At the time of the survey, SWT P-credits were not available. The findings of this survey were presented to the Phosphates Planning Sub-Committee in November 2022, and are available to view on the SWT Phosphates webpage:
- [https://www.somersetwestandtaunton.gov.uk/media/3614/somerset-west-and-taunton-phosphate-credit-survey\\_summary-of-findings\\_november-2022.pdf](https://www.somersetwestandtaunton.gov.uk/media/3614/somerset-west-and-taunton-phosphate-credit-survey_summary-of-findings_november-2022.pdf)
- 5.19 The first round of SWT P-credits became available for allocation in December 2022, as a result of the 'bridging credits' generated through the following project at Orchard Portman, being delivered in partnership with a private landowner.
- 5.20 In December 2022, SWT issued 'SWT P-credit Offer Letters' to those planning applications held in abeyance which met the criteria for SWT P-credits as agreed by the Phosphates Planning Sub-Committee in February 2022. Applications are added to the list of applications held in abeyance at such time when the Planning Case Officer has assessed the application and has found it to be acceptable in all other planning terms.
- 5.21 In broad summary, the criteria prioritised minor applications for housing development (i.e. C3 use classes and traveller sites). Applications for these uses that exceed affordable housing policy requirements and/or relate to applications for the discharge of conditions will be afforded more weight and therefore will be placed at the top of the priority list.

- 5.22 Applications for outline planning permission were not prioritised for the first round of SWT P-Credits as the Phosphates Planning Sub-Committee agreed that priority should be given to 'implementable development' i.e. development that is able to commence work on site within 3-months of planning permission being granted.
- 5.23 In total 53 no. planning applications were offered SWT P-credits as part of the first round. There were 3 no. factors that informed this:
1. Applications that met the criteria agreed by the Phosphates Planning Sub-Committee.
  2. Applications that confirmed their interest in the SWT P-credit scheme in the survey issued in October 2022.
  3. Applications confirmed to be 'ready' in all other planning respects by the Case Officers.
- 5.24 In order to apply to acquire SWT P-credits applicants were asked to complete the following:
- An SWT P-credit Application Form.
  - Phosphate Budget Calculations using the Somerset Phosphate Budget Calculator.
  - A Shadow Habitats Regulations Assessment (sHRA)<sup>5</sup>.
- 5.25 Following review of the above by the Nutrient Neutrality Officer, all planning applications seeking to acquire SWT P-credits are subject to a Section 106 (S106) legal agreement to secure the acquisition of the credits with the Council.
- 5.26 To assist applicants and Officers with the administration associated with the SWT P-credit scheme and to ensure efficiency, an sHRA template has been prepared and is available for download on the SWT website<sup>6</sup>. In addition, a template S106 Agreement has been prepared and is also available to view on the SWT phosphates webpage. This documentation has been produced in consultation with NE.
- 5.27 The intention is that these documents will apply to the new Council post-vesting day. Reflecting the specialist nature and being resource intensive, the above has involved the appointment of three dedicated Officers (1½ Full Time Equivalent (FTE)). Funding for these posts has been found by including the cost in the delivery of the credit scheme.
- 5.28 The first round of SWT P-credits becoming available has meant that SWT has been able to start to grant planning permissions with SWT P-credits as phosphate mitigation. At the time of writing:
- SWT has received 26 no. applications for SWT P-credits.
  - 20 no. of these applications have had their Phosphate Budget Calculations approved by the Nutrient Neutrality Officer and therefore a total of 8.2 no. SWT P-credits have been allocated equating to 36 no. dwellings.

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<sup>5</sup> The sHRA can then be adopted as the HRA for the project by Somerset West and Taunton Council following review by the Nutrient Neutrality Officer in order to fulfil the requirements of the Habitats Regulations.

<sup>6</sup> N.B. the sHRA template was prepared to assist the SWT P-credit scheme but can be used by any applicant that requires an sHRA for phosphate mitigation in the catchment area of the Somerset Levels and Moors Ramsar site.

- 1 no. planning application has been granted full planning permission (reference: 38/21/0223) and 1 no. planning application has a resolution to grant following Planning Committee on 23 February (reference: 42/22/0008). The remaining 18 no. planning applications are currently progressing through the S106 process before decision notices can be issued.
- Even though SWT sent reminders, 12 no. applications in Round 1 have not issued any response to our offer of SWT P-credits. Thus without phosphate mitigation in place, these planning applications are likely to be recommended for refusal.
- 9 no. applications have withdrawn their interest in SWT P-credits in Round 1. This is because they are either progressing their own phosphate mitigation solution, they wish to withdraw their planning application, or they have stated they cannot meet the required terms of SWT P-credit acquisition e.g. commencement on site within 3 months of planning permission being granted. Several of these applications have stated that whilst they wish to withdraw from this round of SWT P-credits, they would like to be considered for SWT P-credits in the future.
- In total, within the first round of the SWT P-credit scheme, Officers anticipate allocating between 10 and 15 SWT P-credits.

5.29 Further information on the next steps proposed for the SWT P-credit scheme is provided in section 6 below.

***Progress in the River Tone Catchment: Proposals not reliant on SWT P-credits***

- 5.30 Since the receipt of the receipt of NE advice letter of 17 August 2020, SWT has determined several large/major planning applications where the site promoters have proposed phosphate mitigation which will be sufficient to achieve nutrient neutrality without the use of SWT P-Credits. Those planning applications involving the largest number of homes include:
- Application reference: 42/21/0004 – Application for approval of reserved matters following outline application 42/14/0069 in respect of the appearance, landscape, layout and scale for the erection of 166 No. dwellings. Mitigation proposals include the fallowing of agricultural land in developers control.
  - Application reference: 34/22/0011 - Application for Approval of Reserved Matters for the appearance, landscaping, layout and scale following outline approval 34/16/0007 for the northern ecological buffer, public open space, drainage and landscaping for Staplegrove West Phase 1, north of Staplegrove Road, Taunton. Mitigation proposals include constructed wetland on land within developers control. Outline approval 34/16/0007 sought permission for up to 713 dwellings.
  - Application reference: 53/21/0010- Application for Outline Planning with all matters reserved, except for principle means of access, for the erection of up to 80 No. dwellings, local centre (of up to 1000sqm of Class E and hot food takeaway) and access onto Dene Road with associated road/footway/cycleway provision, open space, landscaping, surface water attenuation and ancillary works on land at Dene Road, Cotford St Luke. Mitigation proposals include the fallowing of agricultural land in developers control.
- 5.31 Officers have also been involved in a high profile dismissed appeal involving Application reference 43/19/0106 associated with Phase 3 at land at Jurston Farm, Wellington. The applicant's appealed SWT's non-determination of the discharge

conditions at the reserved matters stage. SWT's position is that the conditions could not be discharged for Phase 3 of the proposed development without phosphate mitigation for the proposed development being in place. On the key issue, the Inspector agreed with the Council that an Appropriate Assessment pursuant to the Habitats Regulations was necessary in order to discharge conditions attached to a Reserved Matters Approval, regardless of whether those conditions directly related to the phosphate output arising from the proposed development. This appeal decision is of national significance. The appellants have challenged the Inspector's decision in the High Court on points of law. At the time of writing this report, the outcome of this challenge is awaited. The court has granted leave for a 2-day hearing to discuss the matter which will take place in Bristol with a date to be confirmed.

### ***Progress in the River Parrett and River Brue Catchment Areas***

- 5.32 In addition to work that has been completed within the River Tone Catchment, our colleagues across Somerset have also been working to deliver phosphate mitigation solutions, particularly through third-party credit schemes.
- 5.33 In the Brue catchment, Mendip District Council has agreed the Yew Tree Farm phosphate credit scheme. Credit allocations from this scheme amount to 48kg/year of phosphate removal, facilitating the delivery of around 370 dwellings. Natural England has agreed a further third-party credit scheme, on land located south of Shepton Mallet which is currently going through Council validation/legal agreement process with Mendip District Council. This is a farm closure/fallowing proposal and could realise around 143kg/year of phosphate credits, facilitating the delivery of approximately 1400 dwellings.
- 5.34 In the River Parrett catchment, South Somerset District Council (SSDC) has approved or has resolution to approve the following nutrient neutrality mitigation projects:
- 3 no. schemes that use the retrofitting of water efficiency measures to enable 120 dwellings. The solutions require the applicant to control a significant stock of rental properties where retrofitting at particular addresses can be audited. SSDC is working with its Stock Transfer Registered Provider (Abri) to release P credits from similar measures which could unlock larger sites with meaningful affordable housing offers.
  - 3 no. schemes using Albion / Severn Trent management to enable 210 dwellings, 1 no. at outline & 2 no. as detailed / reserved matters schemes.
- 5.35 In addition, to the above SSDC has agreed terms for EnTrade to open its first market round in the River Parrett catchment. EnTrade will act as a broker bringing together multiple parties interested in land use change projects together with applicants and developers needing to acquire nutrient neutrality credits. EnTrade have engaged with NE to agree template specifications for a range of land use change projects including short term cropping, woodland planting and wetland design, together with specifications for post implementation efficiency and monitoring work as well as long term project compliance. Each land use project includes provision for project monitoring costs over the 80+ year term to be provided to the planning authority.
- 5.36 Before each market round can be released, EnTrade will present its package of land use change projects to both NE and the local authority to agree the level of P credits being generated. EnTrade will also maintain a credit register to ensure no double selling and to ensure the appropriate buffer is retained.



- 5.37 For the first market round EnTrade has capped P credit purchase at 5kg / project. Whilst this now excludes larger sites, it does have the benefit of releasing more stalled permissions, targets SME operators and allows for early use of the credit as they are not being “banked” against future years delivery. Further details are available at: <https://www.somersetcatchmentmarket.uk/>.
- 5.38 SWT and SSDC offers are also in the process of working on a small scale but potentially repeatable project to replace septic tanks with higher efficiency PTPs. The proposals need to demonstrate that they are not overly ‘resource hungry’ from the local authority perspective and this will require legal and ecology input to define a template pack of submissions to enable windfall releases.

## 6. Somerset Wide Future Work

### *Actions for the New Somerset Council*

- 6.1 Looking beyond the 1st of April 2023, for the new Somerset Council, oversight of the programme of activities associated with the phosphate agenda will be the role of the new Strategic Planning Committee. The Terms of Reference as agreed by Full Council on 22 February 2023 are set out in Appendix C of this report.
- 6.2 Below, we have set out a series of actions that Officers consider to be priority for the new Council in regard to phosphates.

### Short Term Actions

- 6.3 The following short term actions have been progressed to ensure that there is a consistent to the phosphates issue across the Somerset Levels and Moors at the establishment of the new Council:
- Creation of a Somerset Council Phosphates Webpage.
  - Updates to the Somerset Phosphorus Budget Calculator. To be the most up-to-date calculator for use across Somerset
  - Updates to the Somerset Nutrient Information Request Sheet and Interim Guidelines for Small Scale Thresholds.
  - Preparation of an Officer Guidance note to ensure consistency in decision-making across Somerset.
- 6.4 In addition to the above, Officers will continue to meet monthly with key stakeholders including NE, The Environment Agency and Wessex Water to discuss the wider picture and other environmental issues, this offers the opportunity to look and consider how this fits in with the work that the Somerset Council and partners are doing as part of their longer term wider strategy to address nutrient issues. It also performs a ‘watching brief’ role, exploring whether further funding and resources may be available.

### The Somerset Phosphate (P) Budget Calculator

- 6.5 As set out above, the Somerset Authorities have been at the forefront of finding solutions and assisting applicants with the phosphates issue including the publication of the Somerset Phosphate Budget Calculator in 2021.
- 6.6 In March 2022, a national generic nutrient calculator was published by Natural England. However, NE have agreed that decisions on affected planning applications will continue to be based upon the use of the Somerset Phosphate Budget Calculator.

The Somerset Councils and Dorset Council are updating the original calculator to take account of the methodology used by NE in the national generic nutrient calculator. The aim is to have the updated Somerset Phosphate Budget Calculator signed off by NE so that only the one bespoke calculator will continue to be used to calculate the nutrient impact in the Somerset Levels and Moors catchment area.

6.7 The likely changes to the Somerset Phosphate Budget Calculator involve:

- New Water Usage data.
- Updates to discharge concentrations limits (permitted and unpermitted sites).
- Urban Land Runoff Coefficients (which should assist phosphate mitigation on brownfield sites).
- Local Rain data
- Various anticipated changes associated with the Levelling up and Regeneration Bill (currently at Committee Stage in the House of Lords as at March 2023).
- A new GIS interface which has been jointly produced with Wessex Water.

6.8 It is anticipated that revised Somerset Phosphate Budget Calculator will be launched by the end of spring 2023. As with the current version, it will be accompanied by a video on how to use the calculator.

#### Strategic Mitigation Solutions

6.9 In the longer term, Officers across the Somerset Authorities recognise the need to consider strategic solutions to the phosphates issue across the 3no. affected river catchment areas, to both bring forward development but also to address nutrient pollution 'at source'.

6.10 Officers have proposed the development of a Somerset Nutrient Catchment Management Plan. This will involve liaison with stakeholders and landowners to develop strategic mitigation projects for each affected river catchment. A brief has been prepared for this work.

#### Lobbying Central Government

6.11 Notwithstanding, the successes in relation to lobbying central government, as set out in paragraph 5.9, there is still more to achieve, as follows:

6.12 Based on Wessex Water's fact sheet giving details of total phosphorus already removed by upgrades to infrastructure (enclosed as Appendix B) we are still seeking a satisfactory response from Government Ministers and NE as to why the phosphate removed at the end of Asset Management Planning (AMP6) in Taunton and proposed measures in AMP7 are not addressing the issue of the proposed planned growth in the adopted Taunton Deane Local Plan area. It is a matter we are proposing that the new Council for Somerset should pursue.

6.13 We are still awaiting expected / revised planning guidance from Department for Levelling Up, Housing and Communities (DLUHC) confirming that sites affected by nutrient issues can form part of housing land supply calculations.

6.14 We are still awaiting changes that would allow either developers or the LPA to directly fund improvements to WWTW's as part of their proposed mitigation.

- 6.15 Phosphate neutral development is what says it is – its “neutral.” It seeks to make sure that the affected development does not make the impact any worse in terms of nutrient outputs to the Somerset Levels and Moors and does not improve the situation. To that end, Officers have prepared a draft Action Plan setting out proposed future actions to a) achieve nutrient neutrality and b) to improve the ‘unfavourable declining’ status of the Somerset Levels and Moors Ramsar site.
- 6.16 Recognising that farmers and landowners are an important part of the solution and the pilot trading platform for phosphate credits will sit alongside a review of agricultural pollution (led by the Environment Agency), and the wider agricultural reforms under the proposed Environmental Land Management (ELM) scheme.

## 7. River Tone Catchment Future Work

### *The SWT P-Credit Scheme: Round 2*

- 7.1 Although the first round of SWT P-credits is currently being allocated to eligible applications, there remains approximately 90 planning applications held in abeyance without a phosphate mitigation solution. This figure includes approximately 30 no. planning applications for major developments and approximately 60 no. applications for minor development. It also includes approximately 20 no. applications for the discharge of planning conditions (related to both major and minor development proposals).
- 7.2 The approximately 90 planning applications still held in abeyance amount to approximately 2000 dwellings which, applying the precautionary principle<sup>4</sup>, cannot be determined until such time as mitigation is in place to ensure that the proposed developments will be ‘phosphate neutral’ in perpetuity<sup>5</sup>.
- 7.3 As noted above, the first round of SWT P-credit scheme is anticipated to allocate between 10 and 15 credits. It is proposed to ‘close’ Round 1 of SWT on the 7 April 2023. There therefore remains sufficient SWT P-credits available to allocate to further planning applications held in abeyance. Officers have considered what approach should be taken to allocate for Round 2 of SWT P-credits. Several options have been considered set out in Table 1 below.
- 7.4 In all cases, applicants will be asked to submitted Phosphate Budget Calculations and a shadow HRA which will be reviewed on a ‘first come, first served’ basis. Members and applicants should note that SWT P-credits are a finite resource, as such applicants offered SWT P-credits in Round 2 will be proceeding at risk, there is a possibility that applicants will prepare an sHRA and phosphate calculations, and there will not be sufficient SWT P-credits available to satisfy their requirements.
- 7.5 In all cases, applications must be ‘implementable development’ i.e. the applicant must agree to commence on-site within 3 months of planning permission being granted, unless otherwise agreed by the Local Planning Authority.

**Table 1 SWT P Credit Allocation: Options for Round 2 Prioritisation**

Summary	Approximate No. of potential Applications	Approximate No. of potential
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			<b> dwellings unlocked.</b>
<b>Option 1</b>	<p>SWT P-credit offer letters sent to all remaining minor applications for housing development that relate to discharge of conditions, approval of reserved matters, full planning applications or 'Section 73' applications.</p> <p>These applications were not offered SWT P-credits in round 1 as at that time (December 2022) they did not meet the requirements stipulated in paragraph 5.25 above. This will be reviewed to see if these applications are now ready to be offered SWT P-credits.</p> <p>The list will include all planning applications assessed to be 'ready' by Case Officers and placed on the list of applications held in abeyance before 30 March 2023.</p> <p>SWT P-credit applications to be processed on a 'first come, first served basis'.</p>	37 planning applications	81 dwellings
<b>Option 2</b>	<p>SWT P-credit offer letters sent to all remaining minor applications for housing development that relate to discharge of conditions, approval of reserved matters, full planning applications or 'Section 73' applications AND all applications (major and minor) that relate to discharge of conditions, approval of reserved matters, full planning applications or 'Section 73' applications that exceed affordable housing policy.</p> <p>The list will include all planning applications assessed to be 'ready' by Case Officers and placed on the list of applications held in abeyance before 30 March 2023.</p>	41 planning applications	192 dwellings

*N.B. Figures shown in the table are as at 21 March 2023, subject to change.*

- 7.6 In addition to the two options presented above, Officers considered several other potential approaches to the allocation of Round 2, including for example, offering SWT P-credit on a 'rolling basis' to applications for minor housing development. Ultimately, Option 2 above was considered to be the preferred option in order to ensure that the SWT P-credit scheme releases more dwellings, more quickly whilst still remaining in accordance with the criteria agreed by the Phosphates Planning Sub-Committee informed by key objectives of the scheme. The overarching objectives informing the allocation criteria are as presented to the Phosphates Planning Sub-Committee in the report dated February 2022 and include supporting small and medium-sized businesses (SMEs), maintaining a 5-year housing land supply and ensuring timely delivery of development.
- 7.7 In all cases, applications must be 'implementable development' i.e. the applicant must agree to commence on-site within 3 months of planning permission being granted, unless otherwise agreed by the Local Planning Authority.
- 7.8 Based on the uptake of the SWT P-credit scheme to date, the objectives of the scheme, in particular ensuring 'timely delivery', Officers suggest that **Option 2 should be considered as the preferred option for Round 2.**

***Proposals not reliant on SWT P-credits***

- 7.9 SWT acknowledges the need to continue to assess planning applications that propose their own phosphate mitigation solutions, and work will continue in consultation with Somerset Ecology Service and Natural England to support these applications through the planning process.

**8. Conclusion**

- 8.1 In conclusion, action continues under a number of workstreams as outlined within this report both within the River Tone catchment, and on a Somerset-wide basis.
- 8.2 With regard to phosphates, there is the continuing need for the foreseeable future for a coordinated and appropriately resourced approach to phosphate mitigation in order to achieve nutrient neutral development within the Somerset Levels and Moors catchment and deliver the planned housing development compliant with the Habitats Regulations.
- 8.3 As Members are aware, from 1 April 2023 future updates will be presented to the Strategic Planning Committee of the new Council.

## **9. Risk Assessment**

9.1 Not relevant to this information report. The risks have been set out in previous reports to this sub-committee.

## **10. Links to Corporate Strategy**

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

10.2 This report has links to various corporate priorities including:

### **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.

10.3 Looking beyond the 1st April 2023, for the new Somerset Council, key corporate objectives are likely to be set in the next financial year. Oversight of the programme and monitoring of performance will be within the remit of the Strategic Planning Committee.

## **11. Finance/Resource Implications**

11.1 None related directly to this report. Financial and resource implications have been set out in the body of previous reports.

## **12. Legal Implications**

12.1 None related directly to this report. The legal and policy background to the 'phosphates issue' have been set out the body of previous reports.

## **13. Climate and Sustainability Implications**

13.1 None related directly to this report.

13.2 The climate and sustainability implications of development proposals is a material planning consideration which will be assessed for each planning application which applies for P-Credits.

## **14. Safeguarding and/or Community Safety Implications**

14.1 None related directly to this report.

## **15. Equality and Diversity Implications**

15.1 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.

15.2 None of the above relate directly to this report.

## **16. Social Value Implications**

16.1 None directly related to this report.

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

## **17. Partnership Implications**

17.1 Liaison is also ongoing with local developers affected by this issue and representative bodies such as Home Builders Federation (HBF) to lobby central government for further support in addressing the overarching issue of water quality.

## **18. Health and Wellbeing Implications**

18.1 None directly related to this report.

18.2 The Health and Wellbeing implications set out in the Full Council Report of 5th October 2021, remain applicable.

## **19. Asset Management Implications**

19.1 None related directly to this report. The management of interim phosphate solutions on SWT owned sites will be passed to Service Director – Strategic Asset Management in the new Council to manage in the long term.

## **20. Data Protection Implications**

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

## **21. Consultation Implications**

21.1 None directly related to this report.

## Background Papers

1. Full Council Report of 5 October 2021. Available here:

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

2. Report on the Progress on the Interim Strategy and determination of planning applications held in abeyance of 24 February 2022. Available here:

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

3. Somerset West and Taunton Shadow Habitat Regulations Assessment Template:. Available here:

<https://www.somersetwestandtaunton.gov.uk/media/3599/phosphates-on-the-somerset-levels-and-moors-shra-and-project-level-appropriate-assessment-template-for-website-publication-november-update.pdf>

4. Somerset West and Taunton Phosphate Credit Scheme: Template Section 106 Agreement. Available here:

<https://www.somersetwestandtaunton.gov.uk/media/3653/phosphates-template-s106-agreement.pdf>

5. Report to Somerset County Council setting out the new constitution of 22 February 2023. Available here:

<http://democracy.somerset.gov.uk/documents/b6466/Supplement%204%20-%20Item%206%20-%20Report%20of%20the%20Constitution%20and%20Governance%20Committee%2022nd-Feb-2023%2010.00%20Co.pdf?T=9>

<https://newsomersetcouncil.org.uk/new-constitution-strategic-with-a-local-focus/>

## List of Appendices

<b>Appendix A</b>	Draft Action Plan: details of future activities
<b>Appendix B</b>	Wessex Water's fact sheet
<b>Appendix C</b>	Strategic Planning Committee. draft Terms of Reference



## Appendix A

### Draft Action Plan: Details of proposed future activities.

To achieve nutrient neutral development in the Somerset Levels and Moors catchment area in compliance with the Habitats Regulations, there are several proposed actions required over the short term (i.e. the next 5 years). These are outlined below:

1. Retention of specialist technical staff to assist affected applicants, address the backlog of planning applications, assisting on the operation and roll out of Council phosphate credit scheme(s) and legally robust and transparent processes.
2. Ensuring a consistent approach to determining planning proposals across Somerset and consolidating advice on the website (work underway)
3. Production of an updates to templates for a project and programme level Appropriate Assessments, Section 106 Agreements.
4. Updating the Somerset Phosphate Calculator and technical update on the overall scale of phosphate mitigation required for each river catchment area.
5. Maintain on going monitoring work Includes speculative development applications / appeals in towns/villages outside risk area, effect on delivery of affordable housing.
6. Maintain on going engagement with applicants / agents to communicate key issues.
7. Present technical work to Members e.g. to Committee.
8. More lobbying of central government focused on the following key issues:
  - i. Implications of the Retained EU Law (Revocation and Reform) Bill 2022.
  - ii. Implications of Levelling up and Regeneration Bill (2022) (including proposed government amendments to upgrade WwTW to TAL by 2030)
  - iii. DEFRA : details, funding arrangements for their Nutrient Mitigation Scheme
  - iv. Nature based solutions being only part of the solution. The scale of land and impact on food security/cost of living.
  - v. Need Government intervention on national solutions and clarity around regulation of Environmental/Natural Capital Markets.
  - vi. Government guidance on 5YHLS in nutrient neutrality areas and HDT dispensation
  - vii. Addressing pollution from agriculture and legacy phosphates.

### To improve the 'unfavourable declining' condition of the Somerset Levels and Moors.

Phosphate levels are three times higher than they should be, causing biological harm and producing algae and duckweed that is harmful to wildlife. Actions required to fix this include:

1. More detailed monitoring of the scale of the problem, the economic impact and challenge (similar to 2013/2014 Somerset flood issue)
2. Completing the nutrient catchment management plan for the Somerset Levels and Moors Ramsar site

3. Utilising existing partnerships - Somerset's unique position with the Somerset River Authority (SRA) and its partners.
4. Recognising that farmers and landowners are an important part of the solution and the pilot trading platform for phosphate credits will sit alongside a review of agricultural pollution (led by the Environment Agency), and the wider agricultural reforms under the proposed Environmental Land Management (ELM) scheme
5. Flood Action Plan and Nutrient Catchment Management Plan – managing the water and the content of the water.
6. Strengthen Somerset's ask of Government (through the LGA and PAS): agri-tech and ADs.

## Appendix B Wessex Water's fact sheet



9282 Somerset catchments factsheet

# SOMERSET CATCHMENTS - THE FACTS

Within the county of Somerset, we operate in several major hydrological catchments:

- The Parrett catchment.
- The Tone catchment.
- The West Somerset Coastal Streams catchment.
- The Bristol Avon, Brue and Axe catchments and the headwaters of the Otter and Stour catchments.

**KEY ISSUES**

**Sewage treatment**

Within the Somerset Catchment Partnership area, we operate 155 Water Recycling Centres (WRC, formerly known as sewage treatment works), 601 Sewage Pumping Stations and 311 Storm Overflows (SO).

**Nutrients**

One of the main issues to affect the Somerset catchments is the impact of nutrients in rivers and wetlands. This is primarily from phosphorus, although nitrogen can also have an effect particularly around our coasts and estuaries. Phosphorus causes eutrophication (where the nutrients cause excessive growth of plant life) in rivers and wetlands and is a particular problem for

In AMP7 (2020-2025), we will extend our work with farmers in the River Tone catchment upstream of the abstraction point for Durlleigh Water Treatment Centre to reduce pesticide runoff from agricultural land.

**Key investments completed to 2020**

**Nutrients**

By the end of AMP6 (2020) we have installed phosphorus removal at:

Site	Approximate cost (£k)	Year	Approximate Phosphorus removed (tonnes/year)
Pilton	700	2020	0.2
Bruton	850	2020	1.1
Ilton	800	2020	0
Thornford	2,000	2020	0.9
Sparkford	750	2020	0.4
Ilchester	700	2020	0.5
Taunton	2,850	2019	44.3

## **Appendix C**

### **Strategic Planning Committee: Suggested Terms of Reference (draft)**

To achieve nutrient neutral development and deliver the planned housing development compliant with the Habitats Regulations, on behalf of the Local Planning Authority, SWT Officers suggested that the new Strategic Planning Committee will have the following responsibilities:

- a. To have oversight of the programme and delivery of nutrient mitigation projects to support a series of interim measures to offset additional phosphates resulting from affected new developments within the River catchment areas (i.e., Rivers Tone, Parrett, and Brue) affecting the Somerset Levels and Moors Ramsar site.
- b. To have oversight of the monitoring of the performance of the above interim projects once delivered.
- c. Noting that there is an operational phosphate credit scheme for the River Tone catchment, agree the rollout of criteria to be used for the allocation of any phosphate credits generated from further Council led interim projects and the creation of a legally robust and transparent process for such allocation (including the terms of any S106 obligations with developers/landowners).
- d. To commission updates to technical tools (e.g., the Somerset phosphate budget calculator) and technical reports.
- e. To have coordination role to resolving the nutrient neutrality issue. Working with statutory government bodies, the water industry, home builders, landowners, and environmental groups on the phosphate issues across the sub-region. For example, commissioning further research and lobby central government.

Note: for the avoidance of doubt the role of the Strategic Planning Committee does not include the determination of any planning applications that include Phosphate mitigation measures, that would ordinarily fall to one of the area-based Planning Committees.

**END**