

Planning and Phosphates – adoption of a phosphate load calculator

Executive Portfolio Holder:	Tony Lock, Protecting Core Services
Ward Member(s)	All
Strategic Director:	Netta Meadows, Director (Service Delivery)
Lead Officer:	Barry James, Interim Lead Specialist (Planning)
Contact Details:	Barry.James@southsomerset.gov.uk

1. Purpose of the Report

- 1.1 This report provides a summary of the current situation with regard to phosphates within the Somerset Levels and Moors catchment area, and also asks the Council to approve the use of a phosphate budget calculator which has been commissioned for use by all the Somerset Councils.

2. Forward Plan

- 2.1 This item is not on the Forward Plan but is brought to this meeting due to the urgency of needing to put a phosphate load calculator into use to assess current and future planning applications.

3. Public Interest

- 3.1 Currently applications that are impacted by the phosphates situation within the Somerset Levels and Moors catchment are on hold until we are able to understand their impact and conduct an appropriate assessment. This means these applications are not going to be determined positively until we are able to assess developments and source suitable mitigations/offsetting measures.
- 3.2 There is a great deal of uncertainty for developers, agents, applicants, landowners and communities. By putting a phosphate load calculator in place we will be able to understand the level of phosphates generated from developments (the phosphate load or budget), which will need to be offset/mitigated if the development is to be granted planning permission. This means we are in a position to undertake an appropriate assessment and progress to a position to being able to determine applications positively.

4. Recommendations

- 4.1 The Council is asked to:

- i. Note the update on the latest situation with regard to phosphates within the Somerset Levels and Moors catchment area and also note that until there is definitive guidance from Natural England a variety of methods may be legitimately be used to calculate phosphates.
- ii. Agree that the Council adopts the position that the phosphate load budget calculator is our preferred method to assess the potential impact of development sites affected. We will accept applications using other methods to assess the impacts and potential mitigations, subject to the alternative calculations being justified and accepted by both Natural England and the Somerset County Ecologist Service.

5. **Background**

- 5.1 In August the Council received a letter from Natural England stating that phosphates levels within the Somerset Levels catchment had rendered the protected sites on the Levels and Moors to be in an unsatisfactory condition. As a result, Natural England indicated that the scope for the local planning authority to grant planning permission for further developments – the details of which are noted in the bullet points below – was limited.
- 5.2 The developments caught by this situation are:
 - New residential units – including tourist accommodation, gypsy sites / pitches
 - Agricultural Development – additional barns, slurry stores etc. where it is likely to lead to an increase in herd size
 - Prior Notifications of agricultural development where, as a result of the development, the herd size may increase. Also, prior notifications for change of use of office to dwellings and agricultural buildings to dwellings
 - Anaerobic Digesters
 - Possibly some tourism attractions
- 5.3 The catchment area affected covers a large area of Somerset and has led to around 11,000 dwellings being caught in the planning system across the county, which has obvious impacts on the Council's ability to meet the demand for housing delivery and to maintain the five-year housing land supply.
- 5.4 The relevant planning applications need to have an appropriate assessment produced under the Conservation of Habitats and Species Regulations 2017. As the competent authority, the Council is responsible for this process. This situation affects outline, full and reserved matters applications of the types of



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development that could increase phosphates within the catchment (as noted in 5.2 above).

- 5.5 The Council website has more information:

<https://www.southsomerset.gov.uk/services/planning/somerset-levels-and-phosphates/>

- 5.6 The Councils in Somerset have been working hard to find a resolution to this situation. The main activities, either planned or ongoing are noted below:

- Development Management and Policy Groups have been set up with representatives across the Councils to ensure consistency and a collective approach to issues and finding solutions.
- The Leaders of Somerset have written to the relevant Ministers to bring the matter to their attention and to ask for funding to help find a solution.
- Somerset West and Taunton Council was successful in getting £105,000 Government money which they have agreed will pay for the phosphate load calculator and additional ecological support.
- The procurement process for the Somerset Nutrients Strategy is in train (it was intended to go out to tender in 2020 however for various reasons this was not possible) and will provide a framework for the planning system. The closing date for submissions of interest is the 11th February, with an award of contract expected in March. It is anticipated the work should be completed by the Autumn 2021.
- Agents and Applicants have been informed of the situation (direct emails have been sent plus there was an Agents Forum in early December 2020) and have been asked to agree extensions of time to applications whilst we work through the issues.
- A catchment credits/trading scheme is to be set up which will enable developers to buy credits for their development as a means of offsetting the impact of their development. An arm of Wessex Water, EnTrade, has presented to the Councils and other agencies the way this could work. They are currently seeking expressions of interest from landowners that are amenable to offsetting their land for this purpose. If there is sufficient interest, they may be able to bring nutrient credits to an online market by May 2021.
- In order to provide direct assistance to officers and applicants in the district South Somerset is recruiting an ecologist, with interviews due in late January.

- 5.7 To enable the Council to determine applications the key issues are therefore:

- The ability to assess the likely phosphate budget of each development – the phosphate-load calculator is a key element of this work.
 - Capacity to produce appropriate assessments for each application - the impending appointment of an ecologist will help us do this.
 - Suitable availability of measures to offset/mitigate the impacts can be identified – the developers will hopefully present a solution for each application once they know what the phosphate impact of their development is. Many developers have engaged specialists to present a phosphate-neutral proposal as part of their application. If they are unable to do so they may need to access the catchment credit market, which as noted above may not be available until May.
 - Appropriate conditions/legal agreements when determining planning applications to ensure the offsetting/mitigation requirements are in place in perpetuity – work is ongoing to formulate appropriate wording that will provide suitable control.
- 5.8 Royal Haskoning has been commissioned by the Councils to produce a phosphate load budget calculator. A briefing was given to Members to give an overview of how the calculator works on Monday 1st February. The calculator provides a transparent process, allowing the existing characteristics of a site to be assessed and its current phosphates contribution, then the likely impacts of the proposed development can be assessed, so that we are clear on any additional phosphate load that it will create. The tool takes a precautionary approach, and has been developed to assess all manner of land uses and development proposals to give a likely phosphate output from the site, measured in kilograms. The method of waste treatment, either from a package plant or via mains sewerage, will also affect the result and the calculator makes provision for both (going down to the particular characteristics of each local waste water treatment works).
- 5.9 The calculator also allows the user to input various mitigation land uses/options, e.g. wetland, woodland, green space, which will then reduce the phosphate impact of a development so that it gets to the point of being “nutrient/phosphate neutral”. It is at that point that the Council, as the “competent authority” and decision maker, is able to issue permission for developments if all other planning matters are suitably resolved.
- 5.10 The calculator comes in spreadsheet form and it is possible for the Council to put it on the website for developers/agents to use. It has been submitted to Natural England for official endorsement.
- 5.11 Trials of actual development sites have been put through the calculator, and have provided phosphate levels for the developments. The data used in these

trials has resulted in significant offset requirements. Whilst the base data may be subject to further discussion the calculator itself, as a method of assessing each application, is a sound and effective tool.

- 5.12 Members should note that the Council cannot enforce applicants to use this particular calculator. It is being provided as a tool for developers to use in order to help progress their cases. It has been produced using the relevant guidance and at the time of writing this report is being assessed by Natural England for endorsement. It will be a useful tool for calculating the impact and mitigations of developments across Somerset although alternatives can be put forward for the Council, and its consultees, to assess.

6. Financial Implications

- 6.1 The inability to deliver planning decisions for applications caught by the current situation creates potential problems for the Council, developers and landowners. Delays in issuing decisions could result in applicants asking for their fees to be returned if the Council has held the application for over 26 weeks. For landowners, the situation can delay sale of land (activities on the land may be on hold with the prospect of future development). For developers – in particular small and medium size businesses – the delay caused by the situation can be extremely serious for a number of reasons but all of them will come down to financial impacts. In some cases the ability of developers to survive the delay could be brought into question, let alone a difficulty in finding suitable mitigation, a serious situation that the Councils are working hard to avoid.
- 6.2 The Council needs to therefore drive forward with sorting this situation out, and implementing a calculator is an important step forward. The Council will continue to keep agents and applicants informed and an Agents Forum if planned for February. It is important that the Council continues to work with all involved in the development process through this difficult time given the potential financial impacts.

Council Plan Implications

Protecting Core Services –

- *Deliver a high quality, effective and timely service to our customers and communities.*

Carbon Emissions and Climate Change Implications



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There are environmental and climate change implications of phosphates within the catchment and the consequent impact upon the protected areas on the Somerset Levels and Moors. By reducing the level of phosphates entering the system the chance of eutrophication, meaning reduced oxygen in the water system.

Equality and Diversity Implications

None

Privacy Impact Assessment

There are no privacy impact implications

Background Papers

There are no background papers but additional information on the Council website is available here:

<https://www.southsomerset.gov.uk/services/planning/somerset-levels-and-phosphates/>
