

## Wiltshire Council

### Cabinet

5 January 2021

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**Subject:** Allocation of Community Infrastructure Levy Funding to manage phosphates in the River Avon Special Area of Conservation

**Cabinet Member:** Cllr Toby Sturgis, Cabinet Member for Spatial Planning, Development Management and Investment

**Key Decision:** Key

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#### Executive Summary

Approval is sought to ring fence and use money from the Community Infrastructure Levy strategic fund to demonstrate the Council's commitment and ability to secure in perpetuity phosphate mitigation measures in the catchment area of the River Avon (Hampshire) Special Area of Conservation (SAC), an internationally important wildlife site protected by law.

The funding will be directed to delivering a strategic programme that will be managed and monitored by a dedicated project officer. This will deliver long-term strategic measures to ensure phosphate neutrality in perpetuity, such as large-scale habitat schemes, which will in time replace the current less efficient approach of incrementally identifying small scale measures (e.g. woodland or wetland creation).

For planning applications that could adversely affect the SAC (in this case where it would lead to a further decline in water quality through phosphates entering the River Avon via sewerage treatment works), appropriate assessments must be carried out by Wiltshire Council in line with the Habitats Regulations. To enable such applications to be approved and appropriate assessments concluded favourably, it must be certain that phosphate neutral development will be delivered. A similar issue relates to nitrates in the internationally important wildlife sites in the Solent and the need to secure nitrate neutral development.

A formal undertaking by the Council to commit sufficient resources to develop and deliver a strategic programme is essential to provide the certainty that is needed for these assessments. Such an approach will support the council's ability to unlock the current embargo on development in part of the county.

#### Proposal(s)

That Cabinet:

- (i) Confirms that the Council will, until such time as the responsibility falls to others, adopt a strategic approach to secure in perpetuity measures to ensure development is phosphate neutral in the catchment for the River Avon (Hampshire) Special Area of Conservation; including short term temporary measures followed up by long term strategic mitigation measures, such as a large scale habitat creation scheme, to ensure in perpetuity phosphate neutrality;

- (ii) Confirms that the strategic approach will include monitoring with annual reporting, to take an evidence led approach to ensure that phosphate offsets arising from the measures secured keep pace with permissions granted;
- (iii) Agrees to ring-fence and commit an initial fund of £850,000 from the Community Infrastructure Levy strategic funds for the delivery of off-setting measures to achieve phosphate neutral development and fund a project officer to oversee delivery, monitoring and reporting; and
- (iv) Delegates authority for the Interim Corporate Director of Place and Environment in consultation with the Cabinet Member for Spatial Planning, Development Management and Investment and Interim Corporate Director of Resources to oversee the spending of this fund.

**Reason for Proposal(s)**

To demonstrate the Council's commitment to the delivery of, and allocation of funding for, a strategic solution to secure phosphate neutral development including a dedicated project officer; unlocking development in the catchment of the River Avon (Hampshire) Special Area of Conservation. The project officer will also have the capability to help address similar issues of nitrate neutrality for development in the catchment of the River Test that affects wildlife sites in the Solent.

**Terrence Herbert**  
**Chief Executive**

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### Purpose of Report

1. The purpose of this report is to:
  - (i) Confirm the Council's strategic approach to securing phosphate neutral development in the catchment area of the River Avon (Hampshire) Special Area of Conservation to support delivery of development, particularly new homes; and
  - (ii) Agree to ring-fence and commit a sum of money from the Community Infrastructure Levy strategic funds accrued for the delivery of mitigation measures to secure phosphate neutral development in the period to 2026.

### Relevance to the Council's Business Plan

2. The Business Plan 2017-2027 'Forward Thinking' seeks to create strong communities. Delivery of new homes where they are needed through implementation of the Wiltshire Core Strategy in a way that protects the environment forms part of the priority 'Growing the Economy'.

### Background

3. The Council as Local Planning Authority is required under the Habitats Regulations to ensure that any adverse impacts arising from development can be mitigated to avoid harm to internationally important nature conservation sites, which are protected by law. This is at both the plan-making and decision-taking stage. Ecologists use 'Appropriate Assessment' to test whether proposals meet the requirements in the Habitats Regulations. It is unlawful for the Council to permit planning applications unless these assessments can be concluded favourably.
4. The Council as competent authority under the Habitats Regulations, must consult Natural England and have regard to their advice in preparing assessments.
5. In preparing the Wiltshire Housing Site Allocations Plan (adopted February 2020), the Council made assurances through a [memorandum of understanding](#) with Natural England, Environment Agency and other Local Planning Authorities that development would be phosphate neutral to ensure no adverse impact on the River Avon (Hampshire) Special Area of Conservation (SAC). In addition to direct delivery of on-site mitigation by developers where necessary, the Community Infrastructure Levy (CIL) would be the appropriate means of funding the delivery of off-site mitigation

measures. The Council's prioritisation process for CIL spending recognises that habitat mitigation measures would need to be prioritised ahead of other infrastructure because without it development cannot proceed.

6. Phosphate neutral development means that any residual phosphates from foul water discharge arising from occupation of residential developments (e.g. that which can't be stripped out at sewerage treatment works (STW)) can be off-set through mitigation to reduce phosphates entering the watercourse upstream of the point at which the relevant STW discharges into the river. Such mitigation measures include for example, wetlands and woodlands creation. A similar newly arising issue relates to nitrates in the internationally important wildlife sites in the Solent and the need to secure nitrate neutral development in the small part of Wiltshire in the River Test catchment area.
7. In [December 2018](#) Cabinet delegated authority to the Director for Economic Development and Planning (in consultation with the Cabinet Member and Director of Finance) to approve the allocation of CIL funding towards mitigation projects relating to protected sites, as and when required, to support efficient and effective decision making. However, this anticipated a piecemeal approach of a series of projects for phosphate mitigation that individually related to a cost of circa £20k. To date the services of Entrade have been commissioned to run auctions with farmers to find suitable land for mitigation measures, some small wetland projects are being progressed as a result of this.

### **Main Considerations for the Council**

8. Until such time as alternative solutions are found to improving water quality in the River Avon SAC and the responsibility falls to others, for example increased phosphate stripping at source from sewerage treatment works or greater controls exerted over farming to prevent phosphates entering the watercourses, planning decisions will need to ensure phosphate neutrality.
9. Natural England has raised concerns about the Council's approach to securing phosphate neutral development, seeking greater certainty on in perpetuity measures, and as a result there is in effect a current embargo on related planning permissions. To provide the certainty that is needed for Appropriate Assessment to conclude favourably, it is considered that the Council needs to demonstrate that it is firmly committed to the delivery of, and has allocated the funding for, a strategic programme approach to secure phosphate neutral development in the River Avon SAC catchment area. This commitment includes the appointment of a dedicated project officer to oversee delivery, monitoring and reporting of measures to ensure they keep pace with development and sufficient offsets are secured into the future.
10. The strategic programme approach involves the development of a large-scale strategic project(s), referred to as a habitat creation schemes, which can ensure phosphate neutrality in perpetuity and be created over several years providing a long-term solution. Many authorities are now taking this approach. Such projects take time to deliver and in the short term the current piecemeal approach of identifying small scale projects that may have a limited lifespan will need to continue, as a bridge, while the long-term strategic solution is put in place.
11. Recent discussions have confirmed that such an approach would be supported by Natural England.
12. As the current Local Plan period is to 2026, an initial cost for mitigation measures has been calculated based on projected housing delivery over this period and local evidence on the costs of wetland projects being progressed through Entrade. This

together with the costs of a project officer is estimated to be around £850,000. See risks and financial implications below.

### **Overview and Scrutiny Engagement**

13. No engagement has been undertaken with the Council's Overview and Scrutiny function.

### **Safeguarding Implications**

14. There are no safeguarding implications associated with the proposal.

### **Public Health Implications**

15. There are no direct public and health wellbeing implications associated with the proposals. However, the ability to secure provision of housing while protecting the integrity of wildlife sites helps meet the needs of a growing population in a sustainable way supporting the well-being of communities.

### **Procurement Implications**

16. Procurement will be undertaken in line with corporate procedures.

### **Equalities Impact of the Proposal**

17. There are no equalities impact implications in relation to the proposal.

### **Environmental and Climate Change Considerations**

18. The proposal will ensure that there are no adverse effects from phosphates on the integrity of internationally important wildlife sites. Land secured for phosphate strategic mitigation may also be used to meet other local and central government objectives unrelated to phosphates e.g. securing biodiversity net gain, natural flood management, carbon sequestration or public open space to avoid recreational pressures on other wildlife areas.

### **Risks that may arise if the proposed decision and related work is not taken**

19. There will be insufficient certainty that phosphate neutral development can be achieved and the Council, as Local Planning Authority, will not be able to approve planning permissions within the River Avon SAC catchment.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

20. The costs to deliver mitigation can only be estimated at this time and will need to be monitored. This will be the role of the project officer, who will report annually. Should a need for further funding be identified, a report will be brought back to Cabinet in a timely way to allow for further funding to be released.

### **Financial Implications**

21. It is estimated that around £850,000 should initially be ring fenced from the existing strategic CIL fund that has accrued, to ensure that permissions for the period up to 2026 will be phosphate neutral in perpetuity through the delivery of a programme of mitigation solutions. This includes the costs of a project officer over a period of 5 years. This sum represents a relatively small proportion of the

strategic CIL fund, which at September 2020 was approximately £25.7m and is accruing with the delivery of new developments.

## **Legal Implications**

22. The Conservation of Habitats and Species Regulations (2017 as amended), referred to as the 'Habitats Regulations' place significant responsibilities on the Council as competent authority for the protection of ecology. Regulation 63 requires competent authorities to undertake an 'Appropriate Assessment' before granting an authorisation for planning permission if it is likely to have a significant effect on a site protected under the Habitats Regulations.
23. Such sites include Special Areas of Conservation (SAC) designated to conserve important and rare habitats. Significant effects on designated sites can be caused through a number of impact pathways such as direct/indirect habitat loss, and increased water pollution.
24. The Appropriate Assessment is a technical analysis of the potential impacts of proposals on the integrity of the site in the light of the best scientific knowledge. Authorisation may only be granted if the competent authority can determine there will be no adverse effect on the integrity of the site where the test is 'no reasonable scientific doubt as to the absence of adverse effects.'
25. Where it cannot be concluded that there will be no adverse effects on a sites integrity mitigation measures can be taken into account if they meet certain tests. If mitigation measures are not available or sufficient to avoid an adverse effect in perpetuity, then the competent authority cannot conclude the Appropriate Assessment favourably as per paragraph 24 above. It is unlawful for the Council to permit planning applications without a favourable Appropriate Assessment.

## **Workforce Implications**

26. To date work on phosphate neutral development has been undertaken by staff in the Spatial Planning service supported by officers in legal and procurement. There is insufficient capacity for this to continue and a dedicated specialist post is needed to drive this forward, providing the certainty that the habitat regulations require.

## **Options Considered**

24. One option considered is to continue the current approach, which involves an on-going programme of identifying small scale solutions. This has proved to be resource intensive and does not provide the opportunity to secure additional benefits, such as those identified in paragraph 18. Also, it is likely that the Council in preparing the Wiltshire Local Plan Review, which plans to 2036, will need to be able to demonstrate to Natural England the deliverability of a longer-term strategy for phosphate neutral development. The option set out in this paper of delivering a large-scale mitigation project for the longer term is therefore considered to be the optimal way forward.

## **Conclusions**

27. The Council will, until such time as the responsibility falls to others, need to secure phosphate mitigation measures in perpetuity, supplementing on site measures where they cannot be achieved. Ensuring phosphate neutral

development in perpetuity will support the delivery of the current Local Plan growth to 2026, particularly new homes.

28. A strategic programme approach is needed that continues to deliver small scale measures in the short term (e.g. woodland and wetland creation) to provide sufficient off setting until such time as a large scale habitat creation scheme can be put in place that would provide in perpetuity mitigation. To do this effectively and provide certainty ensuring planning applications can be supported by favourable Appropriate Assessment requires a dedicated project officer to oversee the development, delivery and monitoring of mitigation measures, and sufficient funding to be allocated to secure project delivery.

**Sam Fox**  
**Interim Corporate Director - Place and Environment**

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Date of report

9 December 2020

### **Appendices**

None

### **Background Papers**

None