

# Wiltshire Council

## Cabinet

6 February 2024

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**Subject:** Revised Nutrient Neutrality Strategy

**Cabinet Member:** Cllr Nick Botterill - Cabinet Member for Finance, Development Management and Strategic Planning

**Key Decision:** Key

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### Executive Summary

Approval is sought to update the council's strategic approach to securing phosphorus neutral development in the catchment area of the River Avon (Hampshire) Special Area of Conservation (SAC).

The River Avon (Hampshire) is an internationally important wildlife site protected by law. For planning applications that could adversely affect the SAC (in this case where it would lead to a further decline in water quality through phosphorus entering the River Avon via sewerage treatment works), appropriate assessments must be carried out by Wiltshire Council in line with the Conservation of Habitats and Species (England and Wales) Regulations 2017 (as amended) (the Habitats Regulations). To enable such applications to be approved and appropriate assessments concluded favourably, it must be certain that phosphorus neutral development will be delivered. Appropriate Assessments are required at every planning decision stage – outline, full, reserved matters and discharge of condition stage.

In January 2021, the approval of the [interim strategic approach](#) allowed planned applications to continue to be permitted in the catchment, following a 9-month moratorium. This was always an interim approach to be reviewed by the Council and Natural England as evidence and legislation / policy changed.

Following recent changes to guidance and legislation including; the Levelling Up and Regeneration Act 2023 and a statement from the Minister of State, Lee Rowley MP, on 19 December relating to nutrient neutrality, it is necessary for the Council's interim nutrient neutrality approach to be updated.

The Government's announcement in December 2023 confirmed that the Council has been awarded up to £9.8m for capital projects via the Local Nutrient Mitigation Fund to help pump-prime nutrient neutrality interventions in the River Avon (Hampshire) catchment. This capital fund will also be supported with revenue funding to help deliver the mitigation projects. This grant has been awarded on behalf of all local authorities in the catchment and helps the council to continue to work proactively and strategically in the catchment to deliver mitigation projects that may be able to help some applicants.

The conditions of the grant are that it must be replenished to deliver more mitigation projects in the catchment and continue to help support, where possible, the delivery of development in the catchment. It is proposed that developer contributions via planning obligations are sought for planning applications that are able to use the Council-led scheme. Fees and charges for this are subject to approval by Council on 20 February 2024 as part of the annual budget setting process.

The Council-led scheme is one option that development can potentially use to achieve phosphorus neutrality. It will form part of the solution to achieving phosphorus neutral development in the catchment. Other options such as securing mitigation through private providers, as well as delivery of bespoke solutions on-site, where possible, can also be progressed by developers.

The revised strategy comes into effect immediately for all residential and overnight development seeking outline, full, reserved matters and discharge of conditions approval in the Hampshire Avon catchment (referred to as “qualifying development”).

One way that the Council will look to deliver nutrient interventions in the catchment using the capital grant awarded, is to upgrade domestic sewage systems by replacing septic tanks with more efficient package treatment plants. A Local Development Order allowing wider ‘permitted development’ entitlements beyond those specified in the Town and Country Planning (General Permitted Development) Order may be used to help streamline the planning process for these upgrades and would support the efficient delivery of mitigation projects.

The recent changes to legislation also help to stop pollution at source. This will reduce the long-term nutrient burden that needs to be delivered. The Levelling-up and Regeneration Act 2023 creates a new duty on water companies to upgrade wastewater treatment works (WwTW) by 1 April 2030, in catchments of Habitats Sites identified by the Secretary of State as being in an unfavourable condition due to nutrient pollution. This duty will be in effect from 26 January 2024. These upgrades will significantly reduce nutrient loads from WwTW in designated catchments, while also reducing the average costs of nutrient mitigation for developers. However, until these upgrades are completed in 2030, the high levels of mitigation will still need to be found and delivered. Also, some WwTWs in the catchment will be exempted from these upgrades.

The Council awaits more detail on these upgrades and, once available, this evidence will further inform the Council’s evolving nutrient neutrality strategy.

## **Proposals**

That Cabinet

- I. Confirms that the Council will, until such time as the responsibility falls to others, continue to deliver a Council-led strategic approach (as set out in (ii and iii)) to secure in perpetuity measures to ensure qualifying development is phosphorus neutral in the catchment for the River Avon (Hampshire) Special Area of Conservation.
- II. Agrees that developer contributions via planning obligations will be sought from developers wishing to use the Council-led scheme where mitigation is available.
- III. Agrees that in accordance with the requirements of the Habitats Regulations and case law the revised strategic approach applies to all housing and overnight accommodation (and other qualifying development) in the River Avon SAC catchment seeking outline, full, reserved matters and discharge of condition approval.
- IV. Delegates authority for the Corporate Director of Place in consultation with the Cabinet Member for Finance, Development Management and Strategic Planning approval to:
  - a. oversee delivery of this strategic approach including approving any policy/process documents needed to support implementation of the revised strategy.
  - b. accept the Local Nutrient Mitigation Fund grant as lead authority for the Hampshire Avon catchment.
  - c. spend of the Local Nutrient Mitigation Fund and delivery of nutrient interventions in line with grant conditions.
  - d. oversee and approve the preparation and public consultation of a Local Development Order (LDO) to replace septic tanks with package treatment plants.

## **Reason for Proposals**

To demonstrate the council's commitment to the delivery of a revised strategic solution to secure phosphorus neutral development.

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

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### Purpose of Report

1. The purpose of this report is to:
  - (i) To update Members on recent Government announcements and changes to legislation in relation to nutrient neutrality.
  - (ii) Agree to update the council's strategic approach to securing phosphorus neutral development in the catchment area of the River Avon (Hampshire) Special Area of Conservation to support delivery of development, particularly new homes.

### Relevance to the Council's Business Plan

2. The Business Plan 2022-2023 'Sustainable Environment' seeks to improve and protect biodiversity and to promote and encourage sustainable sympathetic development. Delivery of new homes where they are needed through implementation of the Wiltshire Core Strategy and Local Plan Review in a way to ensure a 'Thriving Economy'.

### Background

3. The council as Local Planning Authority is required under the Conservation of Habitats and Species (England and Wales) Regulations 2017 (as amended) (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 requirement applies at all stages of both plan-making and decision-taking.
4. 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. The council as competent authority under the Habitats Regulations, must consult Natural England and have regard to their advice in preparing assessments.
5. In 2018, a Memorandum of Understanding was signed between Wiltshire Council, New Forest District Council, New Forest National Park Authority, Natural England, Wessex Water and the Environment Agency. The signatories agreed to deploy a range of measures to ensure development between March 2018 and March 2026 will be phosphorus neutral. It was originally envisaged that the entire load would be offset by a performance commitment (Outcome Delivery Incentive - ODI) which was being sought by Wessex Water through the water company Price Review (PR19).

Although Ofwat agreed the principle of the ODI, it did not consider it should be funded entirely by water customers. As a result, third parties need to provide for offsetting for developments to be able to proceed.

6. This work was superseded in March 2020 when Natural England formally advised affected LPAs that all development that provides new overnight accommodation must achieve phosphorus neutrality prior to occupation. Following this, and a 9-month moratorium of housing growth, Wiltshire Council set up an interim strategic solution to address the phosphorus neutrality requirement.
7. In [January 2021](#) Cabinet confirmed the council's strategic approach to help to secure phosphorus neutral development in the catchment area of the River Avon and agreed to ring fence and commit an initial sum of money from the Community Infrastructure Levy strategic fund to start the delivery of mitigation measures to help secure phosphorus neutrality development in the period up to 2026.
8. In August 2023, government reforms were announced to make a targeted and specific change to the law so that housing development could proceed in areas currently affected by nutrient neutrality. However, the proposed necessary amendments to the Levelling Up and Regeneration Bill did not receive sufficient support in the House of Lords and were not added to the Bill. The Government has advised that in the near term, it is important that planning decision-making continues in areas affected based on current legal framework.
9. The Government's announcement in December 2023 confirmed that the council has been awarded, as lead authority for the Hampshire Avon catchment, up to £9.8m for capital projects via the Local Nutrient Mitigation Fund to help pump-prime nutrient neutrality interventions in the catchment. This capital fund will also be supported with revenue funding to help deliver the mitigation projects. The condition of the funding is that it is replenished to deliver further mitigation to continue to support the delivery of growth. Developer contributions via planning obligations (section 106 legal agreements, section 111 agreements, Unilateral Undertakings) will be sought for planning applications able to use the council-led scheme.
10. The grant has been awarded on behalf of all the local authorities in the Hampshire Avon catchment – New Forest District Council, New Forest National Park Authority, Dorset Council, Bournemouth Christchurch and Poole Council, and Test Valley Borough Council– and will be used to deliver projects in all those areas. It will be used to pump prime the supply of mitigation projects in the catchments to help progress this revised strategy.
11. This revised approach comes into effect immediately and is led by the supply of mitigation projects in the catchment and funded by developer contributions via planning obligations. Fees and charges related to this will be considered as part of the annual budget setting process and will be subject to approval by Council on 20th February 2024. It will apply to all housing and overnight tourism accommodation (and other qualifying development) in the River Avon SAC catchment seeking outline, full, reserved matters and discharge of condition approval. The council-led scheme will only be available in parts of the catchment where there is a sufficient supply of mitigation projects.
12. The council-led scheme is one option that development can potentially use to help achieve phosphorus neutrality. It will form part of the solution to achieving phosphorus neutral development in the catchment. Other options such as securing mitigation through private providers, as well as delivery of bespoke solutions on-site where possible can also be progressed by developers.

## **Main Considerations for the Council**

13. Until such time as alternative solutions are found to improve water quality in the River Avon SAC and the responsibility falls to others (for example increased phosphorus stripping at source from sewage treatment works or greater controls exerted over farming to prevent phosphorus entering the watercourses) planning decisions will need to ensure qualifying developments are phosphorus neutral.
14. The recent changes to legislation help to stop pollution at source and reducing the long-term nutrient burden that needs to be delivered. The Levelling-up and Regeneration Act 2023 creates a new duty on water companies to upgrade wastewater treatment works (WwTW) by 1 April 2030, in catchments of Habitats Sites identified by the Secretary of State as being in an unfavourable condition due to nutrient pollution. This duty will be in effect from 26 January 2024.
15. These upgrades will significantly reduce nutrient loads from WwTW in designated catchments, while also reducing the average costs of nutrient mitigation for developers. However, until these upgrades are completed in 2030, the high levels of mitigation will still need to be found and delivered. Also, some WwTWs in the catchment will be exempted from these upgrades. The council awaits more detail on these upgrades and, once available, this evidence will further inform the council's evolving nutrient neutrality strategy.
16. The council is committed to enabling a delivery programme in all parts of the catchment. A portfolio of projects will be progressed which includes council-owned sewage upgrades, householder sewage upgrades and first-time sewerage, wetlands, woodland planting and water efficiency measures.
17. To help streamline the delivery of nutrient interventions in the catchment, a Local Development Order may be progressed for the replacement of septic tanks with more efficient package treatment plants. A Local Development Order allows wider 'permitted development' entitlements beyond those specified in the Town and Country Planning (General Permitted Development) Order and will be subject to public consultation. This report seeks delegated authority to oversee and approve the progression of a Local Development Order for these projects to streamline the approval process.
18. The council-led scheme is one potential option that development can potentially use to achieve phosphorus neutrality. All developers would still have the option to find bespoke mitigation projects or to purchase credits from a 3<sup>rd</sup> party (rather than purchasing from the council-led scheme or where credits in that locality are not available within the council-led scheme) Facilitating a private market of mitigation solutions helps to increase supply available to developers.
19. A policy document that details a clear approach for decision-making in the allocation of available capacity will be put in place. This will recognise the role of on-site and 3<sup>rd</sup> party mitigation solutions in providing mitigation, alongside the council-led scheme.

## **Overview and Scrutiny Engagement**

20. A briefing with the Environment Select Committee chairs was undertaken on 7 December 2023. Future monitoring and evaluation reporting will be presented to the Environment Select Committee.

## **Safeguarding Implications**

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

## **Public Health Implications**

22. 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**

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

## **Equalities Impact of the Proposal**

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

## **Environmental and Climate Change Considerations**

25. The proposal will ensure that there are no adverse effects from phosphorus 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 phosphorus 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**

26. The council would not be able to accept the Local Nutrient Mitigation Fund grant if there is not a mechanism for it to be replenished. The grant also allows the council to pump priming mitigation projects across the catchment to increase the supply of options and meet the demand for housing delivery. No other funding pots are available for pump priming nutrient interventions.

27. Without the required level of certainty that mitigation projects can be found and funded, the council, as Local Planning Authority, will not be able to approve planning permissions within the River Avon SAC catchment, nor move forward with the Local Plan Review.

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

28. A financially sustainable solution is required to replenish the Local Nutrient Mitigation Fund grant and continue to support development within the catchment area. The proposed changes to the approach may lead to delays dealing with planning applications, especially if there are challenges relating to viability. In this situation, there would be a reputational risk for the council. These impacts could be mitigated through effective negotiation with developers and through agreeing on-site mitigation.

29. A policy document that details a clear approach for decision-making in the allocation of available mitigation will be in place to minimise reputational impact. Information will also be provided on the council's website including explanation videos to help with the process. Template agreements will be progressed to make the system as streamlined as possible.

30. The council is also working with partners to help increase the availability of private mitigation solutions in the catchment to supplement the council-led delivery. If supply for council-led projects in some of the areas take time to come forward, developers can opt for bespoke mitigation solutions or private mitigation providers where available.

### **Financial Implications**

31. The acceptance of the Local Nutrient Mitigation Fund grant will have financial implications for the council. The fund will be added to the capital programme. This report seeks approval for delegated authority to oversee and approve the grant acceptance and spend in line with grant conditions. The governance arrangements between the relevant local authorities will be progressed.
32. Staff resource costs to deliver the projects for the scheme were initially covered by CIL but since January 2023 a Department for Levelling Up, Housing and Communities grant is being used to fund an officer until January 2026. The new Local Nutrient Mitigation Fund grant includes revenue funding and this will be used on an interim basis until this is fully covered by charges associated with the council-led scheme.
33. The financial risk of repayment of developer contributions via planning obligations applies in accordance with the usual provisions of a planning obligation if the payments are not allocated within the reasonable period (usually 10 years).

### **Legal Implications**

34. The Conservation of Habitats and Species (England and Wales) Regulations 2017, 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.
35. In *CG Fry & Son Ltd v Secretary of State and Somerset Council* [2023] EWHC 1622 the Court held that the requirements imposed under Regulation 63 of the Habitat Regulations 2017 to ascertain that the proposal will not adversely affect the integrity of the site apply whenever the competent authority gives "*any consent, permission or other authorisation for a plan or project*" and it is the whole project that is to be assessed. Therefore, Nutrient Neutrality Requirements apply at all stages of the Planning Process and must be assessed by the Council throughout the life of the development.
36. In accordance with the Habitats Regulations, all development proposals which could have a likely significant effect on the integrity of the River Avon catchment must demonstrate that the project can mitigate these impacts. This is demonstrated through phosphorus neutrality. Before the planning permission can be granted the mitigation measures necessary to prevent a development impacting on the River Avon catchment must be secured. Planning obligations under s106 Town and Country Planning Act 1990 will be used for developers to enter the strategic scheme.
37. The purchase of the phosphorus credits will be secured through planning obligations pursuant to Section 106 Town and Country Planning Act 1990. The council, as competent authority, will be required to ensure that the mitigation projects are maintained and monitored in perpetuity to ensure that phosphorus neutral



development is delivered.

38. The acceptance of the Local Nutrient Mitigation Fund capital grant will have legal implications. The grant has been awarded on behalf of all the local authorities in the Hampshire Avon catchment – New Forest District Council, New Forest National Park Authority, Dorset Council, Bournemouth, Christchurch and Poole Council, and Test Valley Borough Council– and will deliver projects to support delivery of housing in all those areas. Governance arrangements between the local authorities will need to be progressed to enable the delivery of mitigation projects in a different local planning authority area to where the planning application is permitted. This work has progressed on specific schemes to date through section 106 agreements of the Town and Country Planning Act 1990 and agreements pursuant to Section 33 of the Local Government (Miscellaneous Provisions) Act 1982.

### **Workforce Implications**

39. The council has been awarded revenue funding to set up the capital programme and this will be used to cover resources on an interim basis until this is fully covered by charges associated with the council-led scheme.

### **Options Considered**

40. One option considered would be for the fund to be replenished by CiL funding; but given the other competing demands on this and that most other authorities use, developer contributions via planning obligations, this is the most appropriate option.

### **Conclusions**

41. Until such time as the responsibility falls to others, new development in the Hampshire Avon catchment will need to be phosphorus neutral. This paper sets out the details of a revised strategic approach, which is led by mitigation supply and funded by developer contributions via planning obligations (section 106 legal agreements, section 111 agreements, Unilateral Undertakings).

**Parvis Khansari**  
**Corporate Director - Place**

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10 January 2023

### **Background Papers**

Cabinet Paper 5 January 2021 - Allocation of Community Infrastructure Levy Funding to manage phosphates in the River Avon Special Area of Conservation

Strategic Appropriate Assessment for developments in Wiltshire occurring in the River Avon SAC catchment, 16 March 2023

Ministerial Letter – Nutrient Neutrality and Local Nutrient Mitigation Fund update – 19 December 20