

## Record of Officer Decision

<b>Decision title:</b>	To acquire land and associated access rights at Tarrington in order to develop a phosphorous-reducing wetland site
<b>Date of decision:</b>	27 January 2023
<b>Decision maker:</b>	Service Director Highways and Transport
<b>Authority for delegated decision:</b>	<p>A cabinet member decision was taken on 10<sup>th</sup> August 2020 authorising land purchasing and lease negotiations with landowners to progress acquisition of up to 8 suitable sites:</p> <p>The Assistant Director for Regulation, Environment &amp; Waste be authorised to take all operational decisions necessary to implement the scheme including the required land acquisitions and leases. In accordance with the cabinet member decision dated 10<sup>th</sup> August 2020</p> <p><a href="https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?!D=7049">https://councillors.herefordshire.gov.uk/ieDecisionDetails.aspx?!D=7049</a></p>
<b>Ward:</b>	Backbury
<b>Consultation:</b>	Consultation has been carried out with the Cabinet Member for Infrastructure and Transport, the Council's Section 151 Officer, the Strategic Capital Finance Manager and the Council's Legal Team.
<b>Decision made:</b>	<p>1, To proceed with the acquisition of an area of land adjacent to Tarrington Water Treatment Works totalling approximately 4.55 acres, for an agreed price of [REDACTED] inclusive also of necessary access and easement rights for drainage infrastructure required between the water treatment works and the land in question.</p> <p>2, To grant the vendor of the land (or their nominated developer) as part of the consideration the option to purchase phosphate offsetting credits released by the Tarrington wetland scheme when they are made publicly available for sale, subject to the following conditions:</p> <ul style="list-style-type: none"> <li>• The cost of the phosphate credits will be the price applicable in respect of phosphate credits at the time of purchase.</li> <li>• The option is limited to phosphate offsetting credits sufficient for up to four dwellings forming the subject of planning application [REDACTED]. The phosphate credits will not be transferrable to another scheme and must be used on the scheme relating to the planning application referred to herein.</li> <li>• The right to exercise the option to purchase phosphate credits must be exercised prior to the grant of planning permission pursuant to the planning application referred to, and must be exercised within the period of 36 months commencing on the date upon which the phosphate credits are made available to the vendor by the Council.</li> <li>• The right to exercise the option to purchase phosphate credits is conditional upon the applicant entering into a planning agreement with the Council pursuant to Section 106 of the Town and Country Planning Act 1990 relating to the purchase of the Phosphate Credits.</li> <li>• In the event that the Phosphate Credits purchased are not used within 36 months of the date of purchase the Council will reimburse the applicant the cost of the unused credits.</li> </ul>

For the avoidance of all possible doubt this does not in any way fetter the Council's Local Planning Authority in how it may choose to determine any request for planning permission, this being a completely separate process.

3, To make a contribution to the legal and other fees incurred by the vendor, up to an estimated maximum of [REDACTED]

4, To authorise expenditure of up to £5,000 in fees and disbursements for legal representation to complete the acquisition of the land and the associated agreements for access and easement.

(All sums are exclusive of VAT, where VAT applies)

**Financial Summary:**

Land Acquisition	[REDACTED]
Third Party Fees	[REDACTED]
Legal Representation	£5,000
<b>Total:</b>	[REDACTED]

**Reasons for decision:**

As set out in the cabinet member decision, the creation of wetland areas will, in addition to improving the water quality of the River Lugg, positively contribute toward the delivery of the environmental and economic priorities within the County Plan 2020-2024; enhancing local biodiversity, enabling sustainable housing growth in the north of the county and reducing carbon emissions through carbon sequestration.

The benefits of wetlands in releasing prospective housing development currently unable to complete the planning process because of phosphate load will be of particular value in terms of the local construction economy and the delivery of established housing targets.

Acquisition of suitable land is essential if wetland schemes are to be progressed so that their benefits can be realised.

The area of land in question is suitably positioned in relation to the wastewater treatment works and the watercourse, and has been identified as having the physical properties necessary to form a well-functioning integrated wetland.

Negotiations with the landowner have concluded and the value set out in the 'decision made' section of this report have emerged as the minimum values which will be accepted by the landowner. All negotiations have been carried out by agents with appropriate expertise and experience in this area, appointed to represent the council's interests.

The council has undertaken the required due diligence in considering the acquisition, in particular:

- A commercial 'red book' valuation of the land in question has been commissioned previously. At the close of negotiations the agreed land purchase cost and arrangements set out in the 'decision made' section of this report are recommended by the council's appointed agents as being appropriate to the circumstances.

	<ul style="list-style-type: none"> <li>• A range of site investigations have been undertaken to verify the suitability of the land, including soil sampling, ground water risk assessment, preliminary ecological survey and phosphate load monitoring from the waste water treatment works. A preliminary wetland design was also undertaken by a specialist consultant on the basis of the information generated by the site investigations to confirm that the area of land proposed for acquisition would be suitable and adequate for the wetland proposed.</li> <li>• The council’s legal representatives have, through the conveyancing process, fully assessed the proposed land purchase agreement to ensure that the acquisition is appropriate and suitably robust in terms of risk. No unacceptable liabilities or obligations have been identified which would impact on the proposed use of the land as a wetland or otherwise result in unacceptable levels of risk to the council.</li> <li>• A formal pre-planning consultation was undertaken to establish the suitability of the proposal for the granting of planning approval.</li> <li>• The Environment Agency, and Natural England have been consulted.</li> </ul>
<p><b>Highlight any associated risks/finance/legal/equality considerations:</b></p>	<p>There is a risk that the land may have constraints not yet identified limiting its potential or future performance as a wetland. The due diligence consisting of specialist consultancy advice/assessment, site investigations, preliminary design and planning pre-application advice minimises this risk as far as is practicable.</p> <p>The option granted as part of the land acquisition transaction will operate as an exception to the Council’s adopted Phosphate Credit Pricing and Allocation Policy dated 26 May 2022.</p> <p>The Council has sought legal advice from Counsel regarding the exception. Based on Counsel’s advice the operation of the exception is justified and reasonable and the Council is of the view that the exception is necessary as the land acquired will create a mechanism to generate sufficient credits to offset the effects of new developments in terms of their predicted phosphorous output.</p> <p>The number of credits which will not be publicly available as a result of the option would only relate to a small number of units and would therefore have limited impact in comparison to the number of credits generated and made publicly available to developers as a result of the land acquired.</p> <p>This purchase will be funded from the current £2m budget for Integrated Wetlands, around £1.4m has been spent to date on delivering these projects.</p>
<p><b>Details of any alternative options considered and rejected:</b></p>	<p>Not to proceed with the acquisition. This is not recommended as the land acquisition costs are assessed as being appropriate. Should the acquisition not proceed then the proposal to develop an integrated wetland site at this location would not be able to progress and the identified benefits would not be realised.</p> <p>This would result in the continuing shortfall of water quality in the River Lugg in relation to its conservation target.</p>

	<p>It would also result in a continuing inability on the part of the council to grant planning permission for development proposals within the Lugg catchment area where such developments have the potential to increase the phosphate load within the watercourse.</p> <p>As a further consequence, the Council will be at risk of failure to deliver its required housing supply for the projected plan period and the local construction economy would continue to suffer detrimental effect.</p> <p>The project is being part-funded by a grant from the Marches LEP, which requires a target level of expenditure during the 22/23 financial year. Not proceeding to acquisition may impact on the Council's ability to achieve the planned expenditure.</p>
<p><b>Details of any declarations of interest made:</b></p>	<p>None</p>

Signed:

Date: 27 January 2023

Certain parts of this document have been redacted in line with the provisions of section 43 sub-section (2) of the Freedom of Information Act 2000. These provisions exempt information where disclosure would, or would be likely to prejudice the commercial interests of any person, including those of the public authority holding the information. The purchase of land referred to herein is part of a wider scheme and negotiations remain ongoing. The redacted information if disclosed may have the effect of prejudicing ongoing negotiations.