

# Title of report: Phosphate Mitigation Strategy

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 29th February 2024</b>
<b>Cabinet Member:</b>	<b>Councillor Swinglehurst, Environment</b>
<b>Report by:</b>	<b>Corporate Director, Economy and Environment,</b>
<b>Report author:</b>	<b>Delivery Director, Environmental Transformation</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose**

To provide an update on the progress of the Cabinet Commission and set out the Council's future Phosphate Mitigation Strategy to enable housing development in the Lugg catchment and to provide a progress update on the work of the Cabinet Commission.

## Recommendation(s)

That:

- a) **To note the successful completion of Phase 1 of the Council's Nutrient Trading Phosphate mitigation scheme.**
- b) **To authorise the Section 151 Officer to accept the capital and revenue grants from the Department for Levelling up Homes and Communities outlined in this report.**
- c) **To authorise Phases 2 and 3 of the Council's Nutrient Trading Phosphate Mitigation scheme**
- d) **To delegate authorisation to proceed with Phases 2 and 3 of the Council's Nutrient Trading Phosphate Mitigation Scheme to the Corporate Director of Economy and Environment in consultation with the Cabinet members for Finance and Resources and the Cabinet member for Environment.**
- e) **To work with partner Council's to undertake a review of the future role of the Cabinet Commission**

## Alternative options

1. Not to proceed with any further Council led mitigation schemes. This would lead to continued under delivery of new Housing in the Lugg Sub-Catchment. Proceeding to phase 2 and 3 of the scheme will see costs met by additional grant from central government or developer fees and will not cause any additional burden on local council taxpayers.
2. To not develop any further wetlands and invite the private sector to bring forward their own mitigation schemes. Herefordshire is the first Council to bring forward a Phosphate mitigation scheme. Whilst the Council welcomes proposals for private mitigation schemes and recognises they form a vital part of the solution, the private sector does not have the delivery capabilities to provide sufficient mitigation of the scale and speed required and this would result in considerable delays before the market brought forward credits. The Ecology service has set up an advisory service to support private mitigation schemes.

## Key considerations

3. **Mitigation for New Development.** Since 2019, and in particular, as a result of the "Dutch Judgement," the levels of Phosphate in the Lugg sub catchment reached the point that nutrient neutrality measures needed to be introduced to ensure that new housing development fully offset their additional phosphate load so as not to increase levels further. In August 2020, the then Cabinet Member for infrastructure and development took a decision to commit £2m New Homes Bonus to commission the delivery on Constructed Integrated Wetlands with a further allocation of £1m subsequently being received from the LEP. Work had progressed sufficiently on this first phase that by July 2022, Cabinet were able to confirm that they were confident that Constructed Wetlands provided the required certainty of nutrient reduction to support the trading of Phosphate Credits. Luston is the first such site in the world and will enable around 1,112 homes to be built without any additional phosphate pollution entering the river.
4. **In order, to speed up the provision of credits to meet housing need a review of mitigation options took place.** The review ruled out a number of options such as rewilding or the taking of farms out of use. Discussions were held with Natural England, the Environment Agency and Dwr Cymru and their advice is to continue to focus on "end of pipe" solutions. This is because

other measures are more complex to deliver, less certain and would require more monitoring. So in addition to Constructed Integrated Wetlands, exploratory work has been undertaken with a number of schools which would see an end of life septic tank decommissioned and replaced with a modern Package Treatment Plant. This would reduce phosphate levels and as with the Wetland Programme, release phosphate credits.

5. **Local Nutrient Mitigation Funding.** In May 2023, the Council submitted a bid to the Department of Levelling up Homes and Communities (DLUHC) for funding under the first round of Local Nutrient Mitigation Funding. On 19<sup>th</sup> December 2023, DLUHC announced that Herefordshire Council had been awarded funding to deliver local mitigation as follows.
  - a) £1.76m capital project delivery funding for 2023/24 and 2024/25
  - b) £173k revenue funding this year to support mitigation work in the catchment (2023/24)

A Memorandum of Understanding will be entered into between Herefordshire Council and DLUHC to draw down the grant this Memorandum needs to be agreed by both parties by the 6<sup>th</sup> March 2024.

6. **Mitigation Need and Phased Delivery.** At present, the Local Plan identifies a housing need of circa 4,000 new homes in the Lugg sub-catchment and now proposes a three Phase Nutrient Mitigation Scheme to deliver nearly all of that need. Phasing of the scheme will ensure supply is released to match demand and the council's capacity to bring the new assets on stream is focussed and not over stretched.
7. Phase 1, comprised a strategic sites assessment, development of the Phosphate Calculator, the purchase of Titley and Tarrington sites, together with the purchase, design and delivery of Luston wetland which is already delivering credits for circa 1,112 of these homes.
8. Phase 2, comprises the purchase of a further Wetland site, the design, delivery and commissioning of the Tarrington wetland and the replacement of a septic tank at a school in the catchment with a new PTP, this will swiftly see the release of additional sufficient credits for circa 1,159 new homes. As with Phase 1, twenty percent of the phosphate reduction will be set aside for "river betterment" and will not be sold to developers for credits. Water companies and agriculture will still be expected to address their own pollution.
9. Phase 3, comprises the Design and Delivery of up to two further Wetland sites and the replacement of further schools Septic Tanks with package treatment plants. Credits for circa 1,200 homes will be delivered from this phase. It is proposed Phase 3 is authorised to come on stream at the point developers are able to take up the available credits.
10. The Council's Nutrient Trading Phosphate Mitigation Scheme will deliver a minimum of 3,471 homes. To ensure legal obligations to achieve scientific certainty beyond reasonable doubt have been secured it has been prudent to take a conservative view of the amount of phosphate mitigation that will be produced from each site. Once sites are established and being monitored it may become evident that they are performing above expectations. Should that be the case then there is a potential for a further credits enabling 416 homes which nearly closes the gap with the proposed development in the local plan.
11. A Financial Model has been developed which sets out the funding and expenditure flow through the Council's Nutrient Trading Phosphate Mitigation Scheme. Costs include the design, delivery and commissioning of mitigation assets together with full provision for maintaining the sites over 80 years, the standard set by Natural England for mitigation to be regarded as permanent. The model is detailed in the resource implications of this report.

12. The Council is unwilling and unable to make a profit or loss on the cost of phosphate mitigation credits. In May 2022, Cabinet approved the sale of credits at £14,000 per kg resulting in a typical additional cost to developers of around £2,380 per new home. A commitment was given to review the price of credits after three years in April 2025. At present, the financial model shows a small surplus of c£208k if all credits are sold (or less than 2.5% of the latest delivery estimate) but it is considered that inflation etc will reduce this sum. It is proposed to continue with the decision made by Cabinet on 22nd May 2022 to review the price of phosphate credits in March 2026 based on actual final build and three years actual operating costs.
13. **The Cabinet Commission.** In March 2023, Cabinet Considered a report on initial findings of the Cabinet Commission created with Powys, Monmouthshire and Forest of Dean. The report recommended two things, the development of a business case for a more ambitious river recovery plan and a review of NMB governance. Our agency partners indicated that they would prefer to undertake the governance review first so that a newly refreshed Nutrient Management Board could oversee the development of the plan.
14. The Governance review was completed in September 2023; this led to the expansion of the Nutrient Management Board to include the Council for the Protection of Rural England, the Council for the Protection of Rural Wales, the Friends of the Upper and Lower Wye and Save the Wye Groups. A role has also been created for an independent “River Guardian” who will speak for the river rather than particular interests and the January meeting of NMB agreed to take this forward.
15. The Statutory Officers Group have taken over the ownership of the Nutrient Management Plan and is now considering the Commissions second recommendation, how to develop the Nutrient Management *Plan*. At the time, Cabinet considered the Cabinet Commission report, it was explicitly made clear, that developing the plan, as envisaged in the Cabinet Commission report depended upon partner support. Our partners from the national agencies have indicated that they would like to see progress made through the Statutory Officers Group. The Cabinet Commission have continued to meet informally to monitor progress and will meet again in February 2023 to consider what next for the Commission.

## Community impact

16. The development of integrated wetlands and the trading of credits will positively contribute to the following ambitions within the County Plan 2020-2024.
  - a. Seek strong stewardship of the county’s natural resources.
  - b. Protect and enhance the county’s biodiversity, value nature and uphold environmental standards through “River Betterment.”
17. The removal of the current development moratorium in the River Lugg catchment area will enable future economic development in a significant proportion of North Herefordshire.

## Environmental Impact

18. Herefordshire Council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors, we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire’s outstanding natural environment.
19. The Integrated Wetlands project has been designed to enable Nutrient Neutral Development in the River Lugg SAC by enabling nutrient neutral development and to provide a net river

betterment. The net improvement to the river quality will be delivered through the reservation of 20% of the phosphate credits for the river betterment.

20. In addition to improving water quality in the River Lugg, the wetlands will also support the Council's commitment to address the climate and ecological emergency as the wetlands will also become excellent wildlife habitats and will help to sequester local carbon emissions. 21. The site surrounding some wetlands in partnership with other council biodiversity projects will be planted with local native species to increase biodiversity and the local habitat. Opportunities to secure biodiversity net gain and educational access to Wetlands sites will also be explored.

## **Equality duty**

21. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows: A public authority must, in the exercise of its functions, have due regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
22. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.
23. The certification of the phosphate credits from the Integrated Wetland sites will enable the Council to support sustainable housing growth in the north of the county which will benefit all sections of the community. This will include affordable housing in line with the Herefordshire's Planning Policy.

## **Resource implications**

24. The following Financial Model sets out the funding and expenditure flow through of the Council's Nutrient Trading Phosphate Mitigation Scheme. Costs include the design, delivery and commissioning of mitigation assets together with full provision for maintaining the sites over 80 years, the standard set by Natural England for mitigation to be regarded as permanent. This is summarised below for phase 1 & 2:

Capital (C) and Revenue (R) cost of project	Spend in previous years	2024/25	2025/26	Future Years	Total
<b>Phase 1:</b>	£	£	£	£	£
Capital works delivered (C)	2,432,914	25,423	0	0	2,458,337
Future maintenance cost (R)	0	0	0	874,800	874,800
Staff costs to support delivery (R)	130,000	0	0	0	130,000
<b>Phase 1 Total:</b>	<b>2,562,914</b>	<b>25,423</b>	<b>0</b>	<b>874,800</b>	<b>3,463,137</b>
<b>Phase 2:</b>					
Project-wide development & project management costs (C)	0	159,264	85,072	0	244,336
Acquisition of further wetland site (C)	0	333,566	11,134	0	344,700
Design and build of Tarrington site (C)	0	376,466	974,334	0	1,350,800
Replacement of school PTP (C)	0	263,250	0	0	263,250
Staff costs to support delivery (R)	0	27,950	15,050	0	43,000
Future maintenance cost (R)	0	0	0	1,840,800	1,840,800
<b>Phase 2 Total:</b>	<b>0</b>	<b>1,160,496</b>	<b>1,085,590</b>	<b>1,840,800</b>	<b>4,086,886</b>
<b>Phase 1 &amp; 2 TOTAL</b>	<b>2,562,914</b>	<b>1,185,919</b>	<b>1,085,590</b>	<b>2,715,600</b>	<b>7,550,023</b>
Funding streams (indicate whether base budget / external / grant / capital borrowing)	Previous Years	2024/25	2025/26	Future Years	Total
<b>Phase 1:</b>	£	£	£	£	£
New Homes Bonus (G)	1,432,914	0	0	0	1,432,914
LEP Grant (G)	1,000,000	0	0	0	1,000,000
Part phase 1 phosphate credit income (external)			0	290,137	290,137
DLUHC revenue grant 23/24 (grant)	130,000	0	0	0	130,000
<b>Phase 2:</b>					
New Homes Bonus (G)		0	468,509	98,577	567,086
DLUHC capital grant	0	1,157,969	602,031	0	1,760,000
DLUHC revenue grant (grant)	0	27,950	15,050	0	43,000
Part phase 2 phosphate credit income (external)	0	0	0	2,326,886	2,326,886
<b>Phase 1 &amp; 2 TOTAL</b>	<b>2,562,914</b>	<b>1,185,919</b>	<b>1,085,590</b>	<b>2,715,600</b>	<b>7,550,023</b>

## 25. Delivery Tranche - Phase 1 (status: Complete)

### Comprises

- All strategic assessments to identify appropriate Wetland Sites
- The Purchase of sites at Luston, Titley and Tarrington
- The Design, Build and Commissioning of our Luston Wetland

Capital Delivery Cost	£2,458,337
Staff Costs to support delivery of nutrient mitigation in the catchment	£130,000
Ongoing Revenue Maintenance for 80 years	£874,800
<b>Total cost of Phase 1</b>	<b>£3,463,137</b>

Credits already released for purchase by developers (181 kg/P)	1,112 homes
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26. **Delivery Tranche - Phase 2 (status: Current January 2024 – October 2025)**

Comprises

- The purchase of a further Wetland Site
- The Design Build and Commissioning of our Tarrington Wetland
- The Replacement of a Septic Tank for PTP at a School

Capital Delivery Cost	£2,203,086
Staff Costs to support delivery of nutrient mitigation in the catchment	£43,000
Ongoing Revenue Maintenance for 80 years	£1,840,800
<b>Total cost of Phase 2</b>	<b>£4,086,886</b>

Credits to be released during 2024/25 (194 kg/P)	1,159 homes
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<b>Project Income for Phase 1 &amp; 2</b>	
Herefordshire Council New Homes Bonus (previously approved)	£2,000,000
Local Enterprise Partnership Grant (DLUCH) – Getting Britain Building	£1,000,000
Credit Income- Developers via upfront S106 payment- Phase 1	£2,534,000
Credit Income- Developers via upfront S106 Phase 2	£2,758,000
DLUHC Capital Grant 2024/25	£1,760,000
DLUHC Revenue Grant in 2023/24	£173,000
<b>Total Nutrient Trading Scheme Income Phases 1 and 2</b>	<b>£10,225,000</b>

27. **Delivery Tranche - Phase 3 (status: Gateway review planned upon completion of Phase 2)**

Comprises

- Design and build of two wetland sites- purchased in previous phases
- Delivery of further schools Septic tank replacements with PTPs

Indicative Capital Cost	£3,403,500
Indicative Revenue Maintenance	£1,919,800
<b>Total cost</b>	<b>£5,323,300</b>

Credits to be released – date(s) tbc (204 kg/P)	1,200 homes
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<b>Income</b>
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Surplus from Nutrient Trading Scheme Phase 1&2	£2,674,977
Credit Income from Phase 3 sale of credits	£2,856,000
<b>Total phase 3 income</b>	<b>£5,530,977</b>

<b>Provisional trading position upon completion of phase 3</b>	£207,677
<b>Total credits for homes released across all three phases</b>	<b>3,471 homes</b>

## Legal implications

28. This is an Executive function under the Council's Constitution Part 3 Section 3 as it is a key decision.
29. This mitigation strategy will be facilitated through the Council's planning functions where relevant development will be required to mitigate development by entering a section 106 agreement with the Council for the payment of phosphate credits.
30. Where the Council (through the use of public funds) contributes to the mitigation (whether through a paying for a particular scheme or by contribution to the costs – for example by applying a grant) where the beneficiary is private individual or organisation, then this could amount to subsidy. This requires the Council to consider its duties under the Subsidy Control Act 2022.

## Risk management

Key risks and mitigation are summarised below.33.

Risk / opportunity	Mitigation
Achieving the required phosphate reduction	A robust and externally verified assessment of nutrient certainty has been undertaken and peer reviewed as set out in the May 2022 Cabinet report – Nutrient Certainty.
Maintaining the wetland sites in perpetuity	An 80yr management plan has been developed which will be resourced through the propos
Securing effective project management and control	The project will be managed by a team service representatives and the PMO. This is overseen by a Monthly Project Board who review, progress, cost and risk through a structured set of processes.

## Consultees

31. This report encompasses a further phase of the Council's phosphate mitigation scheme which was subject to consultation leading up to May 2022.

## Appendices

- Appendix 1 – Project Delivery Timeline
- Appendix 2 – Spend profile



## Background papers

- [Herefordshire Cabinet Meeting 26th May 2022, Nutrient Certainty](#)
- [Herefordshire Cabinet - 22nd May - Phosphate Credit Pricing](#)

## Report Reviewers Used for appraising this report:

Please note this section must be completed before the report can be published		
Governance	John Coleman	Date 21/02/2024
Finance	Karen Morris	Date 30/01/2024
Legal	Sean O'Connor	Date 26/01/2024
Communications	Luenne Featherstone	Date 29/01/2024
Equality Duty	Harriet Yellin	Date 29/01/2024
Procurement	Lee Robertson	Date 30/01/2024
Risk	Kevin Lloyd	Date 29/01/2024
Approved by	Ross Cook	Date 21/2/204

**Please include a glossary of terms, abbreviations and acronyms used in this report.**