

DATED 2026

5th June

BETWEEN

WILTSHIRE COUNCIL

and

KEVIN DAVID WALSH

and

KEITH THOMAS MAYSTON HARTLAND

and

DARREN CHRISTOPHER CLARKE

and

PETER JAMES ALLEN

Deed under Section 106 of the Town and Country Planning Act 1990
and all other enabling powers
relating to Land to the rear of the Old Railway Hotel (formerly the Porton Hotel)
Winterslow Road, Porton SP4 0JU (Planning application reference
PL/2025/09067)

Wiltshire Council

Solicitor to the Council

Wiltshire Council

County Hall

Bythesea Road

Trowbridge

Wiltshire BA14 8JN

Ref: Iken 204646

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THIS DEED is dated 5th June 2026

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN (**Council**).
- (2) **KEVAN DAVID WALSH, KEITH THOMAS MAYSTON HARTLAND, DARREN CHRISTOPHER CLARKE AND PETER JAMES ALLEN** of the Old Railway Hotel, Station Road, Porton, Salisbury SP4 0JU ("**Owners**").

BACKGROUND

- (A) The Owners are the freehold owners of the Land registered at the Land Registry under title number WT179170.
- (B) The Council is the local planning authority for the purposes of the Act in which the Land is situated.
- (C) The Owners have submitted the Planning Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed without which the Planning Permission would not be granted.
- (D) Pursuant to its statutory duty under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 the Council has undertaken an assessment of the Development and has concluded that the Development is likely to have a significant effect upon the River Avon SAC as (in the absence of mitigation) the Development will give rise to additional phosphates in the Catchment Area and recreational impacts within the New Forest Protected Sites.
- (E) The Council has confirmed the quantity of P-Credits which will be required to ensure the Development will be phosphate neutral.
- (F) The Owners have agreed to pay to the Council the Phosphorus Contribution to secure the allocation of the P-Credit Requirement in order to mitigate the impact of the Development on phosphorus levels in the Catchment Area.
- (G) The Council is minded to grant planning permission for the Development subject to conditions and the prior completion of this Deed in the interests of the proper planning of the area.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. Definitions

The definitions and rules of interpretation in this clause apply in this deed:

"the Act"	means the Town and Country Planning Act 1990 as amended
"Administration Fee"	means the sum of nine hundred seventy-seven pounds and fifty pence (£977.50) being five percent (5%) of the Phosphorous Contribution towards the cost of administering the Phosphorous Mitigation
"Catchment Area"	means the fluvial catchment area upstream of the River Avon SAC Hampshire Catchment that is on the same hydrological pathway as the Land
"CIL Regulations"	means the Community Infrastructure Levy Regulations 2010 (as amended)
"Commencement of Development"	means the date on which any material operation as defined in section 56(4) of the Act forming part of the Development begins to be carried out with the exception of investigation of ground conditions and remedial work archaeological work, demolition and erection of hoardings and " Commence " and " Commenced " shall be construed accordingly

"Contribution" means each financial contribution payable to the Council under this Deed

"Deed" means this deed of agreement

"Development" means any development permitted by the Planning Permission

"Director" means the Corporate Director, Growth, Investment and Place or his appointed representative for the time being of the Council

"Index" means the Consumer Price Index and in the event that such index shall have changed the Council shall select a reasonable alternative index

"Index Linked" means increased in accordance with the following formula:
Amount payable = the Contribution x (A/B) where:

A = the figure for the Index that applied immediately preceding the date of actual payment and

B = the figure for the Index that applied when the Index was last published prior to the date of this Deed

"Interest"	means the interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time
"Land"	means the land to the rear of the Old Railway Hotel (formerly the Porton Hotel) Winterslow Road, Porton SP4 0JU, shown edged red on the Plan
"Nutrient Neutrality Strategy"	Means the programme of measures and projects to be undertaken by the Council (as adopted by the Council in 6 February 2024) to improve water quality and efficiency within the Catchment Area of the River Avon SAC which is appended to the Deed at Annex [B] or any other replacement or amendment of this strategy
"P-Credit"	means the instrument that represents the equivalent of 1kg of total phosphates removed per year from the Catchment Area generated by the Council through the Phosphorous Mitigation Strategy
"P-Credit Requirement"	means 0.46 Kg/TP/year P-Credits being the quantity of P-Credits which are required to be removed from the Catchment Area to ensure the Development will be phosphate neutral

"Perpetuity"	means 80 years from the date of issue of the Redemption Certificate
"Phosphorous Contribution"	means the sum of nineteen thousand five hundred fifty pounds (£19,550) Index Linked to be paid by the Owner towards mitigation measures in accordance with the Nutrient Neutrality Strategy.
"Phosphorous Mitigation"	means measures to reduce the input of phosphorus to the Catchment Area to off-set the effects of increased phosphorus levels in the River Avon SAC caused by development in line with Natural England requirements from time to time;
"Plan"	means the site plan or drawing attached to this Deed at Appendix A which plan is for the purposes of identification only
"Planning Application"	means the planning application for full planning permission for the construction of three houses with access from Winterslow Road and allocated reference number PL/2025/09067

"Planning Permission"

means the planning permission for the Development that may be granted pursuant to the Planning Application

"Redemption Certificate"

means written confirmation by the Council that the P-Credit Requirement has been allocated to the Development, or part thereof, subject to the payment of the Administration Fee and the Phosphorous Contribution

"River Avon SAC"

means the River Avon Hampshire catchment Special Area of Conservation;

"Working Day(s)"

means days on which clearing banks in the City of London are open to the public and for the avoidance of doubt such days shall not include any Saturday or Sunday New Year's Day Good Friday Easter Monday May Day Christmas Day and Boxing Day

2. Construction of this Deed

- 2.1. Words importing the masculine include the feminine and neuter gender and vice versa

- 2.2. Words importing the singular include the plural and vice versa
- 2.3. Words importing persons include companies corporations and vice versa and all such words shall be construed interchangeable in that manner
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation (including by becoming a successor in title) all their obligations can be enforced against all of them jointly and against each individually
- 2.5. Insofar as different parts of or interests in the Land are owned by different persons each person Covenants with the Council and with one another to co-operate insofar as they are able to ensure that the Covenants herein on behalf of "the Owners" are fulfilled as expeditiously as possible
- 2.6. The headings throughout this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed
- 2.7. Any reference to a clause paragraph schedule or plan is to one in to or attached to this Deed and any reference to this Deed includes any schedule, plan, annexure or other attachment to this Deed
- 2.8. In the absence of contrary provision any reference to a Council document to be completed which is annexed or referred to in this Deed shall be the Council document which is current and in force at the date of its completion
- 2.9. In the absence of contrary provision any reference to a statute or statutory instrument includes any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference to a statute includes any statutory instrument direction or specification made or issued under the statute or deriving validity from it
- 2.10. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and successors to any statutory functions of the Council
- 2.11. Covenants to do or not to do an action shall include respectively a covenant to permit or not to permit that action to be done

3. Statutory provisions

3.1. This Deed is made pursuant to the following:

Section 106 of the Act
Section 111 of the Local Government Act 1972
Section 93 Local Government Act 2003
Section 1 Localism Act 2011
and all other enabling powers

and has been entered into by the Council pursuant to those powers

3.2. The covenants restrictions and requirements created by this Deed are planning obligations for the purposes of Section 106 of the Act to the intent that it shall bind the parties and their respective successors in title to each and every part of the Land and are enforceable by the Council as local planning authority

3.3. It is acknowledged that the obligations contained in this Deed are:

3.3.1. necessary to make the Development acceptable in planning terms;

3.3.2. directly related to the Development; and

3.3.3. fairly and reasonably related in scale and kind to the Development

in accordance with the requirements of Regulation 122 of the CIL Regulations

4. Commencement

4.1. Save for clause 7.5, 7.6 and 15 and paragraph 1 of Schedule 1 of this Deed which will become operative on the date of this Deed, and any other provisions which either expressly or by necessary implication are required to come into effect before Commencement of the Development, this Deed is conditional upon Commencement of Development.

4.2. The Owners shall notify the Council of the Commencement of Development and agree that no time shall run to the detriment of the Council if and so long as the Owners have failed to serve notice.

4.3. If the Owners have not provided the information referred to in clause 4.2 above within 20 Working Days of its becoming available the Council shall have the right to obtain

this information by other reasonable means and to charge the Owners its costs in obtaining this information subject to a maximum of one thousand pounds (£1,000) per time **PROVIDED THAT** the information is in fact obtained as aforesaid and reasonable evidence of this is provided by the Council to the Owners.

5. The Owners' Covenants

The Owners will observe and perform the obligations set out in this Deed and the First Schedule

6. The Council's Covenants

The Council covenants with the Owners as set out in the Second Schedule

7. General

The parties agree that:

- 7.1. Nothing in this Deed constitutes an obligation to grant planning permission or any other approval consent or permission required from the Council in the exercise of any other statutory function and nothing in this Deed constitutes and such approval, consent or permission.
- 7.2. This Deed does not and is not intended to confer a benefit on a third party within the meaning of the Contracts (Rights of Third Parties) Act 1999 (other than any replacement body of the Council)
- 7.3. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Land or that part of the Land in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 7.4. Insofar as any clause or clauses or any part thereof of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.5. If before Commencement of Development the Planning Permission:
 - a) expires within the meaning of Sections 91 92 or 93 of the Act; or
 - b) is revoked, quashed or modified without the consent of the Owner;this Deed shall cease to have effect

- 7.6. The Owners shall pay to the Council its proper and reasonable legal costs incurred in negotiating preparing and entering into this Deed upon completion of this Deed and the Council's admin fee of £300 in completing and sealing this Deed and in relation to any transaction arising therefrom upon completion of the same.
- 7.7. The Owners shall pay to the Council its proper and reasonable legal costs incurred in respect of the transfer or other disposal of any land or facility as required by this Deed.
- 7.8. This Deed shall be registerable as a local land charge by the Council.
- 7.9. If required by the Council the Owners shall secure registration of this Deed in the Charges Register of the Registered Title to the Land at the Land Registry.
- 7.10. Where the agreement approval consent or expression of satisfaction is required by the Owners from the Council under the terms of this Deed such agreement approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement consent approval or expression of satisfaction shall be given in writing on behalf of the Council by the Engineer or Director as appropriate
- 7.11. Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.12. Nothing contained or implied in this Deed shall prejudice affect fetter or restrict the rights powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority or any other statutory function rights duties powers and obligations under all public and private statutes byelaws and regulations
- 7.13. This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.
- 8. Notices**
- Any notice or other communication given or made under this Deed shall be in writing and (unless otherwise herein provided) shall be deemed to be sufficiently served if sent by pre-paid first class post or other next working day delivery service to the

address of the party specified in this Deed or to such other address (in substitution thereof) as may be notified in writing by that party from time to time for this purpose and in the case of the Council shall be addressed to the Head of Legal Services and quote reference **Iken 204646** and copied to the Section 106 and Community Infrastructure Levy Officer

9. Waiver

No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

10. Change in Ownership

The Owners agree with the Council to give the Council written notice within 5 Working Days of any change in ownership of any of its interests in the Land occurring before all the obligations under this Deed have been discharged. Such notice to give details of the transferee's name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation transferred by reference to a plan PROVIDED THAT this clause shall not apply to the disposal of an individual Residential Unit

11. Indexation

All financial contributions payable to the Council under this Deed shall be Index Linked

12. Interest

If any payment due under this Deed is paid late Interest will be payable from the date payment is due to the date of actual payment compounded annually.

13. VAT

13.1. All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable in respect thereof

13.2. If at any time VAT becomes chargeable in respect of any supply made in accordance with the terms of this Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall have the right to issue a

VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

14. Future Permissions

If after the date of this Deed any planning permission is granted pursuant to section 73 of the Act in respect of conditions attached to the Planning Permission references in this Deed to the Planning Application and Planning Permission shall be deemed to include respectively any such subsequent section 73 planning applications and any planning permissions granted pursuant to the section 73 planning applications and this Deed shall apply and take effect and be read and construed accordingly PROVIDED ALWAYS THAT nothing in this Clause shall fetter the discretion of the Council in determining any such section 73 planning application from requiring that any consequential planning obligations be secured by way of a new deed or supplemental deed under section 106 and/or section 106A of the Act

15. Liability

The obligations in this Deed will not be enforceable against:

- 15.1. any statutory undertakers or utility companies which have received or receive a transfer of a freehold or leasehold interest or take an easement over any part of the Land if solely for the provision of laying and/or maintaining of pipes, services and substations and for the avoidance of doubt this clause shall not apply should any such statutory undertaker or utility company take a transfer of the freehold or leasehold interest in the whole or any part of the Land otherwise than in connection with the laying and or maintenance of pipes, services and sub stations.
- 15.2. anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant, or as the owner of the sub soil of any highway within the Land.
- 15.3. the owner or occupier or tenant of an individual Residential Unit or their mortgagee or chargee.

16. Delivery

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 – Covenants to the Council

The Owners covenant with the Council,

2. To pay the Administration Fee to the Council on or before the completion of this Deed
3. to pay the Phosphorous Contribution to the Council on or before Commencement of the Development; and
4. not to Commence the Development prior to paying the New Forest SAMM Contribution and the Phosphorous Contribution to the Council.

Second Schedule - Covenants by the Council

Repayment of Contributions

The Council covenants with the Owner:

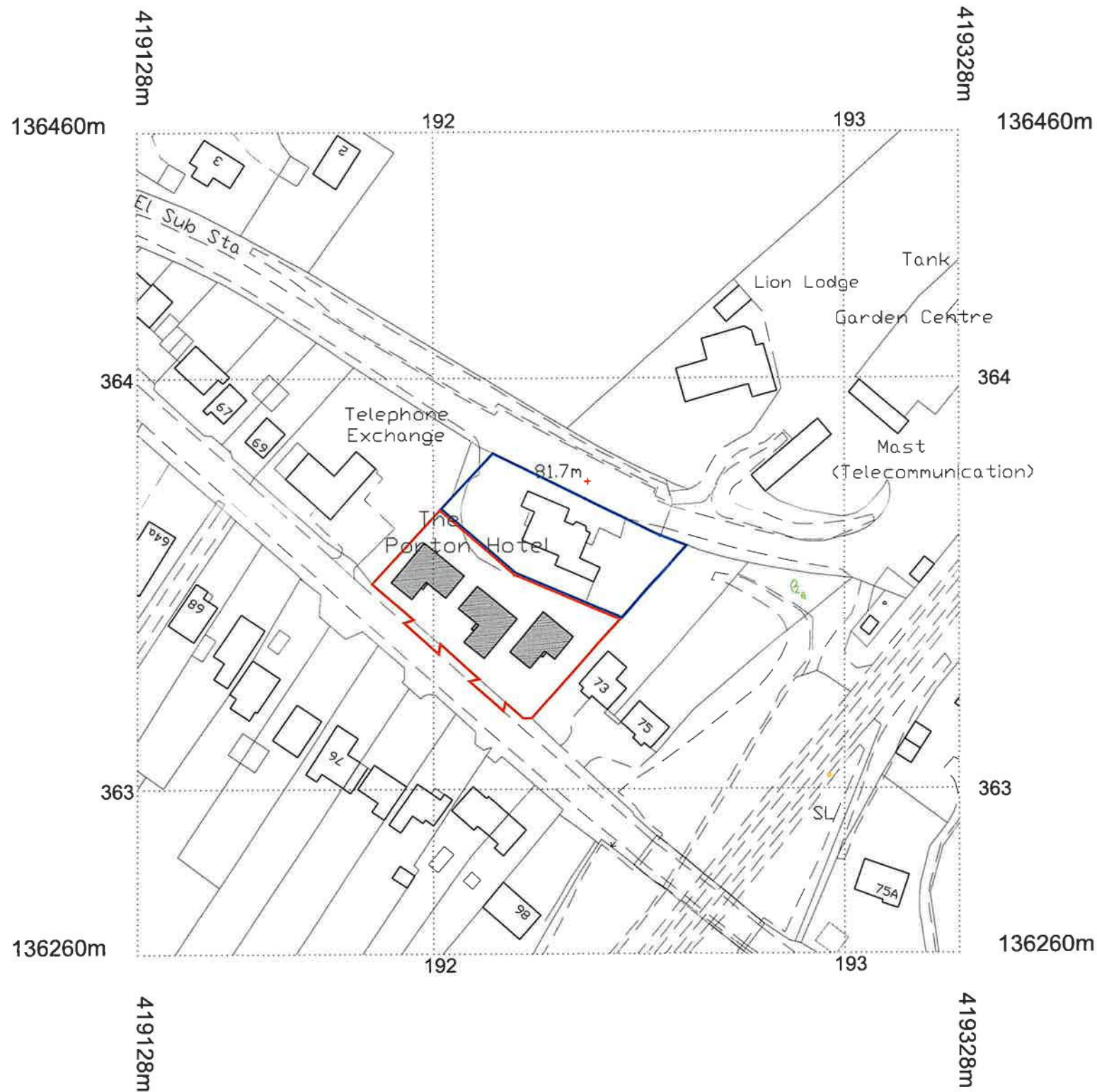
1. To use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid
2. Following receipt of the Phosphorous Contribution to implement the mitigation measures as set out in Nutrient Neutrality Strategy
3. To allocate the P-Credit Requirement to the Development and issue the Redemption Certificate to the Owner within 14 days of receipt of the Phosphorous Contribution.
4. From the date of issue of the Redemption Certificate to implement and maintain the Nutrient Neutrality Strategy so as to ensure that the P-Credit Requirement for the Development is maintained in Perpetuity.

APPENDIX A

THE PLAN

NOTES:
This drawing is copyright of the Architects and must not be used without their permission.
All dimensions to be checked on site.
Discrepancies and omissions to be reported immediately to the Architect.

Rolph Ross Partnership.
O.S. Licence Number 100000004.



- KEY
- 0.13 Hectares
 - Extent Of Other Land Owned By Applicant

Location Plan

1:625 @A1 - 1:1250 @ A3

D	Plots 1 & 2 Position Updated.	04.10.23
C	Dwellings added	12.07.23
B	Drawing Updated	13.02.23
A	Site Boundary Updated	21.07.21
Rev	Revision	Date



Title: Location Plan
Project: Proposed Housing to rear of Porton Hotel, Porton, Salisbury, Wiltshire, SP4 0LA
Client: TBC
Drawing Scale: 1:625 @A1 - 1:1250 @ A3
Drawing Date: July 2023
Drawn By: TS-B Checked By: JPR

Drawing Number: 20/3332/LOC1 D

APPENDIX B

NUTRIENT NEUTRALITY STRATEGY

Wiltshire Council

Cabinet

6 February 2024

Subject: Revised Nutrient Neutrality Strategy

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

Key Decision: Key

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

Wiltshire Council

Cabinet

6 February 2024

Subject: Revised Nutrient Neutrality Strategy

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

Key Decision: Key

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 3rd 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 3rd 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

Executed as a deed by affixing The
common seal of WILTSHIRE COUNCIL
in the presence of:

[Redacted]

Authorised signatory

Authorised Signatory
Wiltshire Council



SIGNED AS A DEED by
~~KEVIN~~
KEVIN DAVID WALSH

[Redacted Signature]

Signature

in the presence of

[Redacted Signature]

Witness Signature:

) Witness Signature
)

Witness Name:

GARY DARROCK

Witness Address:

[Redacted Address]

SIGNED AS A DEED by

PETER JAMES ALLEN

in the presence of

Witness Signature:

Witness Name:

Witness Address:

) [Redacted Signature]
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