

# Draft Phosphate Credits Process Allocation Information Pack

MAY 2022

---

**ALL INFORMATION IN THIS PACK SUBJECT TO CHANGE:**

---

## Document history and reviews

|                    |  |
|--------------------|--|
| <b>Version 1.0</b> |  |
|                    |  |
| <b>Author</b>      | Ana Coxixo   |
| <b>Date</b>        | 20/05/2022   |
|                    |  |
| <b>Approved by</b> | Florence Churchill                                       |
| <b>Title</b>       | INTERIM SERVICE DIRECTOR ECONOMY AND REGULATORY SERVICES |
| <b>Date</b>        | 27/05/2022   |
|                    |  |
|                    |  |
|                    |  |
|                    |  |

# Contents

|  |    |
|--|----|
| Introduction .....                                   | 1  |
| Background on the River Wye and Phosphate issue..... | 1  |
| Herefordshire Councils Integrated Wetlands .....     | 1  |
| Credit Process .....                                 | 2  |
| Background.....                                      | 2  |
| Those involved in the process and role .....         | 3  |
| Phosphate credit Policy.....                         | 3  |
| Overview of the process.....                         | 4  |
| FAQS and process requirements .....                  | 6  |
| Supporting Maps.....                                 | 10 |

## **Introduction**

### **Background on the River Wye and Phosphate issue**

The River Wye has one of the highest protections available to habitats, designated as a European conservation site. The stretch of the River Lugg before it enters the Wye is considered a Special Area of Conservation (SAC) with the area above the SAC designated a Special Site of Scientific interest (SSSI). What this means in terms of habitat regulations is that it has strong guidelines and regulations on any activities or planning that can have an effect on this site. This is regulated under the Habitats Directive.

In 2018 a ruling made by the Court of Justice of the European Union, known as the Dutch case pertaining to the Habitats Directive meant that from then on any development in a protected site that has a 'likely significant effect' is unable to obtain planning permission in protected areas that are 'failing'. The stretch of the Lugg is currently failing in regards to nutrients. Therefore in order to obtain a planning permission, sites must demonstrate nutrient neutrality. Because of this ruling development within the Lugg catchment; which covers most of the north of the county, is restricted (see map on page 10). The Wye catchment is also at risk of requiring similar mitigation in the future if there are no improvements in water quality.

The ruling has led to a backlog of unbuilt homes, having an effect on the economy and community. The integrated wetlands project was established as a solution to this environmental issue.

### **Herefordshire Councils Integrated Wetlands**

In August 2020, Herefordshire council approved the construction of integrated wetlands in order to reduce phosphate levels within the River Lugg catchment area. A catchment wide assessment was carried out by The Wye and Usk Foundation and 8 sites were highlighted as viable for progression (see map on page 11). The Luston site was the first to be purchased and is currently under construction.

On sites that are progressed, Herefordshire Council will create integrated Wetlands next to Welsh Water Waste Water Treatment Plants to act as a tertiary treatment and provide a greater reduction in phosphates. These wetlands remove phosphate from the otherwise clean effluent, reducing the nutrient load entering the watercourse. The removal of these nutrients allow Herefordshire Council to offset the reduction against future development; generating credits that can be traded with developers to allow planning permissions to be granted.

This concept has to date not been adopted elsewhere in the country. The innovativeness of the project has meant the process surrounding it has had to be built from the ground up. A significant element of this work is the setting out of the phosphate credit allocation process which has been developed with input from a variety of service areas within Herefordshire Council.

## Credit Process

### Background

The Phosphate Credit Allocation Process is a step procedure used to describe how Phosphate credits that are generated by Herefordshire Councils Integrated Wetlands can be exchanged with applicants. The whole process involves multiple departments, statutory consultees, and applicants (developers).

Credits are currently offered based on a validation date, but in the future may be based on Herefordshire Councils Phosphate allocation Policy that is being developed by Ricardo-AEA Ltd. The process starts with the applicant applying for credits using the Natural England Phosphate Calculator Budget Tool. Applications are kept on a list and as credits become available are then invited to apply for credits.

When applications are ready for determination, case officers contact applicants and provide them with an invitation. The applicant submits this alongside a legal document and an online payment for their allocated credits. Depending on the type of development they either submit a template S106 or a tailored S111 that forms part of the S106. The S111 is required for phased developments. Their application is then reviewed by Legal (the S106), and Ecology, who will prepare the HRA. After a 21 day consultation period for comments from Natural England on the Habitats Regulation Assessment (HRA) the application is sent to the development management (DM) team to be determined.

Permission can then be granted or refused. If refused developers have a set amount of time to go through the appeals procedure. Credits during the appeal procedure are only held for applicants that have officer recommendation at planning committee. For developers whose application is to be approved, HRA conditions will be applied to the decision notice and the applicant has a set amount of time to finalise and complete the legal agreement to secure the credits. The legal agreement has to be completed before a decision notice can be issued.

The entire process is monitored from start to finish by the planning team, and once credits are brought there will be onsite monitoring to ensure development has started by the established time period on the legal documents.

In the event that the developer chooses not to implement the permission or the permission is not implemented within the requisite timescale then the credits are returned to Herefordshire Council and payment is reimbursed to developers.

The whole process has been created and developed by the internal stakeholders to ensure the process has been fully worked through and modelled.

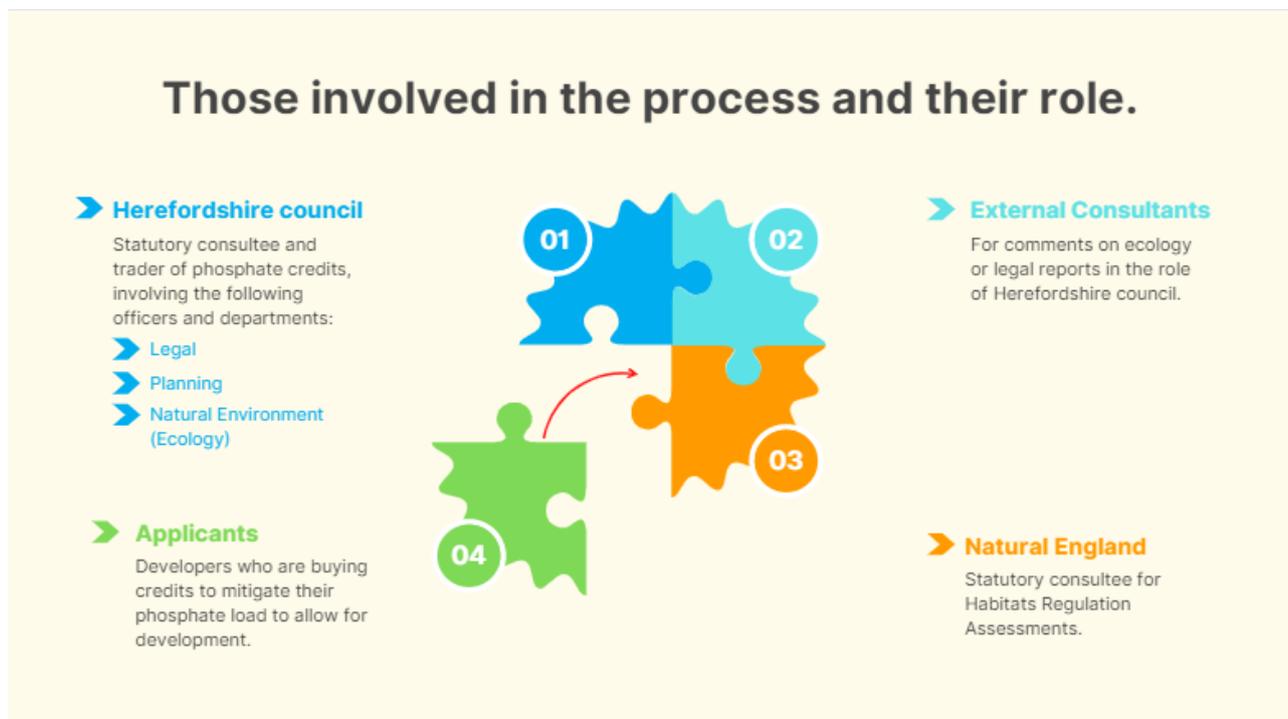
An overview of the model can be seen on page 4 and initial FAQs are available on page 6. A website will be published shortly with more information.

---

More detailed information on the process and applicant requirements will be released in the future. **Trading of credits will not commence until cabinet approval is in place.**

---

## Those involved in the process and role



## Phosphate credit Policy

Currently the policy is based on a dated 'first come first served' order to help address the backlog. A developers list has been compiled and will be released on the website with the cut-off date established as 31<sup>st</sup> October 2021.

Ricardo–AEA Ltd environmental consultants are creating a phosphate credit framework to be used by Herefordshire Council when allocating phosphate credits to forthcoming development.

This framework is being developed with key internal and external stakeholders. Ricardo will provide Herefordshire Council with a set of criteria and draft policy documents for use in scoring planning applications across the key areas of environment, community and economy. This framework will be used to allocate Phosphate credits to developers in a fairer more equitable system which supports high quality development proposals. The inclusion of this new stakeholder policy should not affect the current process. This may result in a requirement to submit further information to support the request to acquire credits.

---

A list of undetermined applications validated before 31/10/2021 in dated order will be published on the Herefordshire website.

---

## Overview of the process



*Continued on next page*

09

### Permission

Permission is granted or refused.

**Granted:** HRA conditions applied. Developers have a set date to lawfully commence construction.

**Refused:** Taken off credit register. To join register must reapply and go through process again.

10

### Credit use

Applicants use credits as outlined in legal documentation. Credits are returned back to the council as reimbursements or breach of limit.

**Reimbursements:** Developers who have not lawfully started construction before the date on the legal document may contact the council to return the credits and have their credit payment reimbursed.

**Breach of limit:** If developers have not lawfully implemented development and permission is extant then credits will be returned to the council and planning permission is revoked.

## FAQS and process requirements

### Credits Register

**Phased developments:** Phased developments also included.

STEP  
01

STEP  
02

### Letters

**Website notice:** Notice on website will give developers a list of information required to prepare and have up to date so that they are able to proceed with their application as quickly as possible.

**Interest:** they must then decide if they want to continue and reconfirm their interest within an officer set period or they are removed from the register. They can also choose to be removed from the register, their place is not held.

### Application Prep

**Invitation:** Invitation has a time period of 3 months for minor and 6 months for major applications. If within this time they are unable to complete their application and provide all documents they will be taken off the register. **To note:** officers are able to establish longer preparation dates on a case by case basis.

STEP  
03

Continued

## Natural England (external)

21 days statutory consultation.

STEP  
04

STEP  
05

## Applicant (external)

**Action applicant must complete.**

**Minor applications:** Applicant submits online payment for credits and a completed template of a Section 106.

**Major applications:** Drafted by legal in partnership with planning obligations manager.

**Phased development:** Phased developments will require a section 106 including a Section 111 element.

## Credits Register

This step is an ongoing part of the process throughout but it is highlighted as a step here as applicants are given a deadline to supply application documents. This is the deadline given in step 3.

**Credits:** Credits that are offered are now logged in the credit log sheet and held.

STEP  
06

Continued

## STEP 07

### Legal

**Minor applications:** Section 106 drafted by applicant is reviewed by legal.

**Major applications:** Section 106 drafted by legal following receipt of head of terms by planning obligations manager.

**Phased applications:** Section 106 including Section 111 drafted by legal following receipt of head of terms by planning obligations manager.

## STEP 08

### DM/Committee

Application is determined this links to step 9.

## STEP 09

### Appeals

- **If officer recommendation is for approval** and application is refused (by committee) then credits will be held for/until appeal period
- **If officer recommendation is for refusal** and application is approved (by committee) then delegation to officers will be sought to complete the HRA/S106 process
- **If the application is refused under the Council Scheme of Delegation to Officers**, then credits will not be held (or be available for purchase) for an appeal.

Continued

## STEP 10

### Credit use

**Officers will visit site to ensure construction has started by given date.**

**Reimbursement:** For developers who have not lawfully started construction before the set date on the Section 106 (also including Section 106 with Section 111) and wish for a reimbursement, they may contact the council to return the credits and have their credit payment reimbursed subject to an administration fee. As part of Section 106 agreement credits unused by developers cannot be sold onward to a 3rd party, they must always be returned to the council. Planning permission is also revoked.

**Breach of time limit:** Developers who have not commenced building by the time limit on the legal documentation will have their planning application revoked, their money reimbursed and credits are returned to the council. Reimbursement will be subject to a monitoring fee and a 5% penalty fee.

## Supporting Maps

