

North Somerset Council Decision

**Decision of: Councillor Steve Bridger – The Executive Member
Assets and Capital Delivery**



With advice from: The Director of Place

Decision No: 21/22 DP 247

Subject: Adoption of Portbury Wharf Nature Reserve

Key Decision: Yes

Public notice/reasons for urgency

Reason:

The decision affects people living in two wards and has an interest from the wider Portishead community

Background:

Portbury Nature Reserve (PNR) was created to mitigate the impact of a large housing development by a predecessor of Persimmon Homes under provisions of a s106 agreement.

The terms of the s106 agreement provided for Persimmon to maintain the PNR pending its transfer to either North Somerset Council (NSC) or a legal entity approved by NSC.

Persimmon created an arrangement which:

- required each household on the development to pay an annual levy towards the maintenance of PNR. This requirement was enforced by covenants in the purchase deeds of those households.
- set up Port Marine Management Limited (PMML) to act as the collection agent for the levy.
- sought a third party to undertake the maintenance obligation in return for reimbursement from the funds collected by PMML (this was originally undertaken for some years by Avon Wildlife Trust).

This arrangement of the levy funding maintenance operated for a number of years before coming under some criticism from some local resident levy payers who considered the amount of the levy to be excessive; and who were concerned that there was no

mechanism to cap the levy. At one stage the levy was set at c. £50 per household raising a sum of c. £100k pa. It is recognised that criticism of the levy was not universal.

In mid 2015 PMML wrote to all levy payers explaining that the levy would no longer be collected.

This decision did not receive universal support with concerns raised by local residents about the way in which Avon Wildlife Trust had been treated, the inability of NSC to manage the land effectively and initiating an unnecessary cost to NSC at a time of ongoing financial constraint.

The decision was taken in May 2016 to adopt the land under Decision CSD 151. This approved that adoption be carried out in accordance with the option in the Section 106 agreement (of the Town and Country Planning Act 1990) relating to Land to the East of Portishead Dock and the East Quays Development Portishead. The adoption was subject to the following conditions being met:

1. That Port Marine Management Ltd (PMML) transferred/committed its reserves to North Somerset Council
2. That PMML and Persimmon completed requirements to lift the covenant regarding levypayments or have it deemed satisfied.

The Decision was called in by the Community and Corporate Organisation Policy and Scrutiny Panel in 2016. The scrutiny panel requested that Decision CSD 151 be overturned but the request was not acceded to by the Executive Member at the time.

The land remains unadopted because both conditions of Decision CSD 151 have not yet been met. This is largely due to historical failings in the administrative arrangements of PMML. When the Council commenced its due diligence work to implement CSD 151 and take transfer of the site and PMML reserves it was discovered that a number of actions had not been properly taken or recorded by PMML. Of most significance was the fact that changes in the company directors over many years had not been correctly effected or recorded at Companies House. This necessitated tracing the original directors and making appropriate changes and updates. Liberata was appointed as replacement company secretary and has worked to resolve the historical issues. This has now been completed so that the transfers can now proceed. To that end, draft documentation for the transfer of the land and s106 changes have been received from Persimmon/Ideal Homes lawyers and details of the process for the removal of the restrictions protecting the estate rentcharges and draft letter to property occupiers releasing them from payment of the estate rentcharge received from PMML lawyers.

This Decision now reviews the Council's position because PMML's funds are almost fully spent meaning that funding for future maintenance needs to be resolved urgently. It is also usual practice to revisit Decisions that have not been resolved within one year.

Management of the reserve since 2016.

North Somerset Council and its contractor Glendale have been successfully managing the reserve for six years on behalf of Persimmon/Ideal Homes. During this time, we have:

1. Increased volunteer numbers and hours worked carrying out a range of projects

2. Developed a Facebook page to keep residents and volunteers up to date with ongoing activities on the reserve
3. Monitored wildlife activity – notable findings include; Spoonbill, Caspian Tern, Purple Heron and Penduline Tit
4. Managed the land for wildlife creating improvements with the following:
 - a. Regular reed management
 - b. Clearance of the island vegetation on the pond for over wintering birds
 - c. Rotation management of the vegetation on the rhyne banks
 - d. Rotation management of the vegetation in the Great Crested newt ponds
 - e. Topping and removal of creeping thistle within the fields
 - f. Management of hedges to continue to allow flight lines from the salt marsh
5. Daily management for visitors including continuous maintenance of infrastructure

The nature reserve continues to play an important landscape role as a buffer between Portishead development and the port but also as a key recreational area and space for biodiversity.

Transfer of cash reserves

PMML informed the Council in 2015 that it held reserves of c. £400k which would fund approximately 10 years of maintenance based on the annual costs of maintenance by Glendale on behalf of NSC.

A recent update from PMML has identified that the remaining cash reserves will be depleted by December 2021. Overall PMML's cash reserve will therefore have funded six years of maintenance. This is not for as long as forecasted at the time when NSC started the maintenance of the site on behalf of Persimmon. PMML's finances are outside of the Council's control, but it is likely that PMML has faced legal costs in terms of resolving the historical company issues, the covenant and other costs for its closure which has reduced the available cash reserves. It is also possible that the cash reserves were at a lower level in 2015 than had been suggested.

Lifting the covenant

In addition to resolving the historical company issues, resolving the issue of the covenant has proven to be complex and outside of the Council's control. Again, following appointment as company secretary, Liberata has expended much effort in addressing this issue with the Land Registry.

However, a method of lifting the covenant has been proposed by PMML and is outlined in more detail in Appendix A. In summary the Land Registry have agreed with PMML's solicitor that the restrictions protecting the estate charges can be removed. This matter cannot be fully resolved until the time of the transfer of the land.

The solution also involves owners of the properties submitting an application to the Land Registry when properties are next sold. That application will be supported by submission of a letter issued by PMML. However as future sales of properties may not be for many years into the future, these letters may be mislaid and NSC may therefore need to reissue copies of the original PMML letter in future years.

Future maintenance funding

Earlier proposals for NSC to adopt the land and absorb the management and maintenance costs have been reviewed in the light of different priorities from the new administration and significant, ongoing financial issues faced by the Council.

This paper therefore looks to the future and proposes how the site could be managed and maintained for the long term.

Subsequently, NSC has been engaging with Persimmon, Portishead Town Council and Portbury Parish Council to consider how future maintenance costs can be met given the need to minimise the impacts on NSC's revenue budgets. Although the Nature Reserve sits within Portbury Parish rather than Portishead, it has been acknowledged that it is well used by residents of the town and is an important local asset.

As a small parish council, Portbury does not have the resources to manage such a large and well used open space and they have decided not to contribute to future maintenance costs.

Persimmon has agreed to provide a cash contribution of £75,000 to facilitate maintenance funding for the short term.

Portishead Town Council has not yet reached agreement with NSC in terms of future support for maintenance and management of the site. Due to the urgent need to resolve the land adoption issue discussions on this matter will continue after the nature reserve is adopted.

By adopting the land NSC will retain responsibility for the significant structural features of the site such as the strategic sea defence; and for legacy issues related to the site's previous purpose (e.g. contaminated land).

PMML currently funds a significant level of maintenance which exceeds the historical and current levels provided by NSC to its own open space estate. When NSC adopts the site the maintenance regime will therefore change to reflect the Council's usual working practices. With maintenance aligning with the Council's wider estate this will reduce costs to c. £12,500 per year.

The reduced maintenance cost will be reflected in a lower level of site presence reducing from the current level of 3.5 days per week to 1.5 days. Some key tasks will be retained such as attendance on a Monday to clear up after the weekend or make repairs to features as required (such as the bird hides) and on Fridays to prepare for the weekend. Appendix B describes in more detail the changes that will result to the work carried out each week.

It is important to note that based on £12,500 annual costs, and utilising the £75,000 provided by Persimmon, NSC will not be required to find additional funding for maintenance until 2027/28 at the earliest. In the intervening period, we will investigate other sources of funding to support the site's maintenance. There will be a small administrative cost for dealing with mislaid letters referenced in the 'Lifting the Covenant' section above but this is expected to be minimal.

Rising sea levels and a deteriorating outer sea wall (managed and maintained by the independent Portbury Sea Wall Commissioners) will mean that eventually the nature reserve will be inundated with sea water and its ecology will change to salt marsh. It is not possible to predict when this will happen, but it does offer opportunities for funding future maintenance costs because this is a valuable land type for offsetting carbon use.

Decision:

North Somerset Council adopts the land known as Portbury Wharf Nature Reserve in accordance with the option in the section 106 agreement (of the Town and Country Planning Act 1990) relating to land to the east of Portishead Dock and the East Quays Development Portishead, provided that:

1. PMML transfers any remaining cash reserves to the Council to support the funding of future maintenance
2. PMML and Persimmon complete requirements in respect of lifting the covenant regarding levy payments or have it deemed satisfied as set out in Appendix A.
3. Persimmon provide a one-off sum of £75,000 to be paid in two instalments of £37,500 to support the funding of future maintenance.

Portishead Town Council and other organisations will be approached to seek further funding contributions towards maintenance.

Future maintenance will reflect available finances and is outlined in Appendix B.

North Somerset Council will retain responsibility for infrastructure and any legacy issues relating to the land's previous use.

Reasons:

See background

Options Considered:

1. To re-introduce the levy to fund future maintenance. PMML have informed NSC that they will be winding up meaning that this will not be possible.
2. To invite other parties to adopt the land and deliver its maintenance. This has also been rejected because there is no funding mechanism to finance the required maintenance to manage the land (see above).

Financial Implications:

There are financial risks associated with the infrastructure issues identified in the risk section below relating to the outer sea wall, inner sea wall and legacy issues.

It is not possible to accurately identify a cost for these risks but the likelihood of issues arising for them is low in the medium term. The most unpredictable risk relates to rising sea levels. However, when this occurs there are opportunities to seek funding from carbon offsetting schemes related to the expansion of the saltmarsh into the nature reserve, which is recognised as an effective carbon sink.

The other significant funding issue relates to ongoing maintenance. The Persimmon contribution will pay for maintenance for approx. 6 years. Thereafter funding will need to be raised as a growth item in the Parks revenue budget. There is the potential to raise additional income in the future through carbon credits for the salt marsh but the timeframe or level of income is not yet known.

Costs:

The legal fees for the adoption of the land will be no more than £1,000

Funding:

Existing revenue budgets (DSC028)

Legal Powers and Implications:

Persimmon have requested that a Deed of Variation (DoV) be entered into concerning the original s106 agreement which will revise the agreement to reflect the way the land is transferred to the Council and maintained in future

Climate Change and Environmental Implications:

The site is primarily managed to benefit wildlife and this is demonstrated by the following species; Water Vole, Great Crested Newts, Smooth Newts, Cetti's Warbler, Kingfisher, Eel, Bats, Barn Owl, a range of wetland bird species. Rising sea levels caused by climate change are likely to cause the area to eventually become saltmarsh. This may impact access to the site and will affect the freshwater ecology of the site now; but saltmarsh is a rare habitat that will provide valuable habitat in the future and offers the potential for offsetting future maintenance costs with carbon capture credits.

Consultation:

This matter has been discussed with Portishead Town Council and Portbury Parish Council. The ward member for Portbury and the adjoining Portishead ward members have also been consulted.

Risk Management:

1. The nature reserve remains at risk from inundation by the sea because the Portbury Sea Wall is over 200 years old and was not constructed to account for rising sea levels caused by climate change. Management of the reserve will need to be adapted when this occurs. It will not be possible to receive grant funding to make the outer sea wall capable of withstanding higher tides because the inner sea wall already provides the key strategic defence for Portishead properties.
2. The Inland Bund is the local strategic sea defence, and this will prevent local properties from being flooded when the Portbury sea wall is breached. The Environment Agency will not take full responsibility for the Inland Bund defences beyond ensuring it is properly inspected to ensure that defects are identified at an early stage. If repairs are necessary, it is very probable that Environment Agency grants will fully fund works because of the importance of the defences.
3. Legacy land issues (e.g. asbestos disposal) are well documented and considered to present a low risk of harm
4. The Hinkley Point pylon project which includes the undergrounding of the electricity cables is progressing as determined by the Development Control Order and the

Council will need to be vigilant to ensure that the safeguards to the nature reserve are in place during the works.

Equality Implications:

No. This report addresses administrative changes of ownership. Maintenance of the accessible areas of the nature reserve will not change from their current condition.

Corporate Implications:

The site is an important feature of the green infrastructure of North Somerset and its adoption means that the benefits to the local community and wider wildlife will continue to be provided.

Appendices:

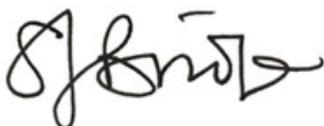
Appendix A - proposed process for removal of restrictions from property titles Appendix B – proposed changes to maintenance following reduced revenue

Background Papers:

CSD 151 (2016) – earlier decision to adopt the nature reserve S106 agreement

Signatories:

Decision Maker(s):

Signed:  Executive Member for Assets and Capital Delivery

Date: 24 November 2021

With Advice From:

Signed:  Director of Place

Date: 24 November 2021

Appendix A

Proposed Process for Removal of Restrictions from Property Titles

1. The following process proposed by Humphrey's and Co Solicitors has been accepted in principle by HMLR as an appropriate process to follow:
 - (1) a letter from PMML to be sent to each title owner unilaterally telling them that they are released from the charges.
 - (2) a single RX4 releasing restrictions (for the benefit of PMML) on each of the 2,500 titles to be sent to the Land Registry;
 - (3) a transfer of the nature reserve land to be entered into from Ideal Developments to the council and filed with the Land Registry;
 - (4) a deed of variation of terms of the section 106 agreement to be entered into between the council and Ideal Developments (and others) to be filed at Land Registry;
 - (5) a deed of indemnity to be entered into from [new landowner] in favour of PMML indemnifying PMML against its obligations in respect of having to actually collect the rent charges (levy). [NOTE: the Council has advised that such indemnity will not be given as PMML will be wound up after the transfer and thus should not require any indemnity]

2. HMLR responded to advise:

In principle HMLR would accept applications for registration, regarding items 2 3 and 4. Items 1 and 5 seem to be proportionate to the situation but would not seem to require any input from us, other than to acknowledge that applications could be made in the future as envisaged in point 5. If such applications were made in the future, it would probably be useful for the letter dated 9 March 2020 filed under title number ST237349 to be referred to. Let me know when you are ready to lodge applications, and we'll sort out how best to achieve that.

3. The fundamental rationale for this is that:
 - (a) the restrictions protecting the estate charges and maintained land charges are to be removed;
 - (b) reference to those charges cannot be removed from the titles without writing to the more than 2,500 title owners;
 - (c) there would be substantial administration in doing this, which is sought to be avoided;
 - (d) therefore, the neatest and most effective way to remove the estate charges and maintained land charges above is to send out a letter from PMML (as above (1)) advising the title owners of their release; and so
 - (e) when each of those title owners come to eventually sell, the title owners' solicitors will each deal with the removal of the entries on the titles.

Appendix B – proposed changes to maintenance following reduced revenue

Day	PMML funded maintenance 3.5 days per week	North Somerset Council funded maintenance 1.5 days per week
Monday	litter pick site	litter pick site
	litter pick hides - clear up any damage/litter from antisocial behaviour	litter pick hides, site clear up any damage/litter from antisocial behaviour/
	infrastructure inspections i.e. dipping pond/fences	infrastructure inspections i.e. dipping pond/fences
	emergency repairs - ongoing damage to the hides to repair/damage to fencing	emergency repairs - small emergency repairs
	monthly WeBs counts - bird surveys	
	other/winter works	other/winter works
Tuesday	follow up repairs and maintenance noted from inspections	
	volunteers*	
	mowing	
	access management	
	other/winter works	
Wednesday	litter pick site	follow up repairs
	litter pick hides - clear up any damage/litter from antisocial behaviour	mowing and access management - reduced activity with essential works prioritised
	infrastructure inspections i.e. dipping pond/fences	other/winter works
	emergency repairs - ongoing damage to the hides to repair/damage to fencing	
	other/winter works	
Thursday	follow up repairs and maintenance noted from inspections	
	volunteers	
	mowing	
	access management	
	other/winter works	
Friday	litter pick site	litter pick site

	Litter pick hides – clear up any damage/litter from antisocial behaviour	Litter pick hides – clear up any damage/litter from antisocial behaviour
	Infrastructure inspections, i.e. dipping pond/fences	Infrastructure inspections, i.e. dipping pond/fences
	Emergency repairs – ongoing damage to the hides to repair damage to fencing	Small emergency repairs
	Other/winter works ****	WeBS counts (if time)/other/winter works
Weekend	Survey sessions with volunteers (time in lieu/swap from an afternoon in the week)	