

January 2021

To whom it may concern:

Following recent advice from Natural England you may have been notified that your planning application could require a Habitats Regulations Assessment (HRA), due to recent CJEU Dutch Nitrogen case law.

This is most likely because the application site falls within the catchment flowing into the Somerset Levels and Moors Ramsar site, designated for its rare aquatic invertebrates. There is a significant issue with nutrients entering watercourses that flow through this designated site, which adversely change environmental conditions for these species'.

Many new housing schemes (including single dwellings), visitor accommodation/attractions and some other developments, will result in an increase in phosphates contained within foul water discharge. As the designated site is in 'unfavourable' condition, any increase in nutrients (specifically Phosphates) is seen as significant.

In order to inform the initial requirement for a Habitats Regulations Assessment and to provide any subsequent quantitative and qualitative data required for the LPA to complete an Appropriate Assessment, the applicant is advised to work through the following steps. An Environmental and/or Ecological Consultant will be able to provide assistance in completing the calculation and any required mitigation strategy.

## **1. Calculation of Phosphate Budget**

### 1.1 Overview

In order to assess the proposed developments phosphate budget the applicant will be required to complete a Phosphate budget calculation.

In lieu of catchment specific guidelines Natural England have advised the Somerset Local Planning Authorities (LPAs) to follow the guidance and example calculations included for the Stour catchment in Kent – *Advice on Nutrient Neutrality for New development in the Stour Catchment in relation to Stodmarsh Designated Sites* (Natural England, July 2020) and updated. Here referred to as the Stodmarsh Guidance

Somerset Local Planning Authorities have created a nutrient budget calculator based on the Stodmarsh guidance, which includes figures for Phosphorous kg per hectare for different land use types within Somerset, pre-development. At present the calculator is specific to developments which lead to the production of wastewater containing Phosphates, however a related calculator for other development types, such as new agricultural building housing an increase in farming stock, and a linked Phosphate decision tree is currently in production. The wastewater nutrient budget calculator can be provided by the LPA on request, if not otherwise supplied with this guidance document.

#### No mitigation required

If the Phosphate Budget Calculator results in a zero or minus nutrient loading figure, then the need for mitigation is negated. Please submit the calculations within the provided spreadsheet for the LPA to review and confirm next steps.

#### Mitigation required

If the Phosphate Budget Calculator indicates a net nutrient loading from the proposed development, then mitigation will be required.

### 1.2 Development types

The following development types that are hydrologically connected to the Ramsar Site, either through foul water discharge and/or surface or ground water run-off, are may need a Phosphate Budget Calculation to indicate loading levels on the Ramsar site

- New residential units.
- Commercial / industrial developments which includes overnight accommodation.
- Some employment sites (including hosting employees from outside of the catchment, and/or overnight accommodation)
- Agricultural Development that supports intensification of livestock numbers (and therefore increased phosphorous in the catchment).
- Prior Notifications that result in additional development.
- Anaerobic Digesters.
- Some tourism attractions, including over-night tourist accommodation.
- Local Development Order's.
- County planning matters (e.g. Minerals and waste)
- General Permitted Development Major infrastructure

### 1.3 Application types

The following application types (for the development types listed in Section 1.2) are also likely to need a Phosphate Budget Calculation to indicate loading levels on the Ramsar site

- All new full and outline planning applications.
- Section 73 applications, to amend previous conditions, that lead to an increase on floor space and associated nutrient loading. Applications will be assessed on a case by case basis, following a precautionary approach.
- Reserved matters applications that did not assess and mitigate nutrients loading implications out the Outline planning determination.
- Retrospective works planning applications that result in nutrient loading.
- Where class Q applications under The Town and Country Planning (General Permitted Development) (England) Order 2015 affects the Ramsar site it is no longer considered class Q development, and such, requires a calculation to inform a Habitat Regulations Assessment.

### 1.3 Residential and other development containing foul water discharge facilities

For residential and other development containing foul water discharge facilities please confirm and enter the following details into the Phosphate calculator:

- How foul water is to be processed; this will be either through a mains wastewater treatment plant, Package Treatment Plant, septic tank or bespoke treatment methods.
  - Where connection to the mains wastewater network, or **Sewage Treatment Works**, are proposed, details of the Wastewater Treatment Works and the permitted amount of phosphate in mg/litres shall be submitted for consideration. This information can be gained from Wessex Water.
  - Where **Package Treatment Works (PTP), or bespoke treatment or storage methods** (Septic tanks) are proposed information on the efficiency of the specific equipment or method of treating phosphates, such as percentage figure e.g., 90%, and information on field ground conditions will be required. On confirmation that this nutrient management option is to be adopted as part of the development the LPA will request the specified further information required to undertake the HRA screening assessment. \*
  - Where **Package Treatment Works (PTP), or bespoke treatment or storage methods** (Septic tanks) are proposed a detailed scheme for such a system will need to be submitted for consideration. The detailed scheme shall include design, location, layout and location on the site, details of any watercourse to be used for discharge and/or information on field ground conditions plus information on the efficiency of the specific equipment or method of treating phosphates, such as percentage figure e.g., 90%. This information will be used to assess the overall acceptability of such an approach and provide the further information required to undertake the HRA screening assessment.\*
- Information of current land use and management, including figures in Hectares.

- Information on proposed plans and figures, in Hectares, showing the development's allocation between green space and urban areas, including hardstanding.
- Confirmation that **the applicant is able to provide nutrient mitigation habitat creation either onsite, or offsite** (through alternative owned landholdings, or through secured land purchase) along with full details of the proposed habitat creation, including location plans and a Nutrient Neutrality Assessment and Mitigation Strategy for the land, shall be submitted for consideration. Options include the creation of specifically designed wetland or appropriate woodland planting to remove phosphates. \*\* Where off-site habitat creation is proposed, a new red line plan plus certificate will be required to be submitted as part of the application for planning permission. A full re-consultation exercise for the application may also be required. Please also note, separate planning permission may also be required for the mitigation proposals themselves.
- For proposals feeding into mains wastewater treatment where **the applicant is unable to provide the required amount of mitigation habitat creation on or offsite** then the proposal will either need to need to put on hold until the scheme can contribute, through financial payment, towards the Somerset Nutrient Mitigation Strategy., or demonstrate nutrient neutrality has been achieved through paid contributions towards a nutrient credits scheme provide by an LPA agreed nutrient trading broker. See Section 2 - Methodology

Please note:

\*The provision of such a scheme of water treatment may require a license from the Environment Agency (EA) and it is the Applicants responsibility to ensure that, in proposing this type of sewage treatment, that they are able to gain a license from the EA prior to submitting this information to the LPA. Please also note that the EA are unlikely to grant a license, where required, if mains drainage is reasonably available to the site.

\*\*Permanent mitigation habitat creation will be required to be implemented, or secured through legal agreement, e.g. s106, prior to commencement of development and will need to be in place before occupation commences. Habitat creation on private land may not be suitable for schemes mitigating nutrient loading from wastewater production due to the inability to reasonably monitor long term efficiency of the habitat to process nutrients, notwithstanding permanent woodland. An exception to this is agricultural intensification schemes where it is reasonable for mitigation to be achieved within the application landholding.

#### 1.4 Development not including foul water discharge facilities

For other developments, that do not include foul discharging facilities, see Section 1.2, a separate calculation for the level of Phosphate loading from the proposal will be required. The Somerset LPAs are developing a bespoke calculator with guidance from Natural England based on nutrient input for these development types, which is anticipated to be published in Spring 2021. In the interim, the applicant is advised to seek professional advice from an Environmental Consultant to assess the amount of phosphate generated from the proposed development.

For agricultural development, mitigation methods, including technical specifications for septic tanks and the results of a Simple Calculation of Atmospheric Impact Limits assessment (<http://www.scail.ceh.ac.uk/>) will need to be included within a NNA.

## 2. Mitigation methods

If the Phosphate Budget Calculator indicates a nutrient loading from the proposed development, then mitigation will be required.

### 2.1 Calculator results and reporting

Please incorporate the input and output figures from the completed Phosphate budget calculator into the following reports, referencing the steps and stages outlined within the Stodmarsh Guidance:

- **Nutrient Neutrality Assessment (NNA)**, appending the spreadsheet calculation figures, and submit to the LPA.
- For applicants able to provide mitigation within the red or blue boundary, or offsite though still within the same river catchment, then please incorporate the input and output figures from the completed Phosphate budget calculator and the proposed method of mitigation into a **Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS)** report, appending the spreadsheet calculation figures, and submit to the LPA.

### 2.3 Somerset Nutrient Mitigation Strategy

For proposals feeding into mains wastewater treatment where the applicant is unable to provide the required amount of mitigation habitat creation on, or off site, a strategic approach comprised of the Somerset Nutrients Strategy is being developed by the Somerset LPAs, where it is proposed that developers will be able purchase credits through a tariff based system, including financial contributions per development, to fund habitat banking for mitigation habitat creation. However, habitat type, including their efficiencies for processing and storing Phosphorus, their locations and viability has yet to be determined. The LPA will be able to advise further regarding the development and publication of the Somerset Nutrient Strategy.

## 3. Habitat Regulations Assessment completion

Once the above details have been submitted, the Local Planning Authority, as the 'competent authority' under the Habitats Regulations 2017, will be able to carry out the Habitats Regulations Assessment for both proposals providing mitigation habitat and contributing towards the Somerset Nutrient Strategy. Note a response on this assessment is required from Natural England before a decision can be made on the application.

For those applications unable to provide the full information, or secure the required habitat creation, as indicated above, and thus need to provide financial contributions as set out in the forthcoming Somerset Nutrient Strategy, it is advised that the application is withdrawn until said information is provided, or the strategy completed and operational.

These comments are made by Somerset Ecology Services, in their role as advisors to the Planning Authority in their consideration of planning applications.

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Somerset County Council

## Document Control Sheet

This is a controlled document. It is the responsibility of the user to ensure that this document is current. Printed documents and locally copied files may become obsolete due to changes to the master document.

## Revision History

This document has the following history:

Version No	Version Date	Summary of Changes	Author	Authorised by
1.0	12/01/2021	draft	SB	HV