

## **Phosphates on the Somerset Levels and Moors**

**Q: What are the current permitted levels of agricultural water discharge activities?**

A: We are currently seeking clarification on this issue.

**Q: What is the acceptable level of phosphates?**

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**Q: Why now? What has changed given that that legal decision that Natural England make reference too was some time ago?**

A: Natural England have issued the letter due to the unfavourable status of the nutrient levels in the Ramsar sites within the Somerset Levels and Moors. As a number of stakeholders have informed us, the decision upon which Natural England refer was made some time ago. Natural England have not released their legal advice on this matter. Furthermore, we currently do not know why Natural England have issued their letter at this moment in time.

**Q: Will all planning applications within the River Tone catchment be stalled?**

A: No, having taken legal advice, only those currently listed on the SWT web. This list may change in light of further legal advice and advice from Natural England.

**Q Does this affect canals?**

A: Any water course that directly or indirectly affects the Ramsar sites within the Somerset Levels and Moors is affected. We will seek clarification on this issue.

**Q: What area does the letter from Natural England relate too?**

A: A map accompanying the letter from NE shows the broad geographical extent. It covers most of the former Taunton Deane and parts of the former West Somerset Local Plan areas. It also appears to extend in to a small area of Exmoor National Park.

**Q How long will the restrictions last?**

A: We are working with our ecologist, Natural England and others to find a solution as quickly as possible. We will update our SWT page with further information as soon as we are able.

**Q: What is the effect on small and medium-sized enterprises (SME's)?**

A: We acknowledge that this could affect SME's. We are working with our ecologist, Natural England and others to find a solution as quickly as possible. During the week commencing 5th October 2020, for the types of development that could be affected, we contacted their agents.

**Q: How do we move forward on planning applications?**

A: Natural England have issue as similar letter to all of the Somerset Local Planning Authorities (LPA's). We are all re-consulting the county ecologist on all those planning applications that could be affected either directly or indirectly the Ramsar Sites within the Somerset Levels and Moors. Where possible, we will seek to agree a time extension on determining planning applications.

**Q: Are we working with the other LPA's to find joint solutions?**

A: Yes, as Natural England have issue a similar letter to all of the Somerset Local Planning Authorities (LPA's). Over the coming months this joint working is expected to increase.

**Q: What is the Local Planning Authority to find solutions?**

**A: Phosphates Solutions Project**

Natural England submitted a letter to Somerset West and Taunton Council stating that the Somerset Levels and Moors Ramsar Site is in unfavourable condition and that , if a development is identified as giving rise to additional phosphates within the catchment, planning permission should not be granted until a Habitats Regulations Assessment has been undertaken. Subsequently, every planning application within the defined catchment area is required to provide evidence and information relating to the phosphate loading of the site, and if it is not neutral, what measures would be undertaken to offset the phosphate loading.

As there is no current formalised process of calculating the net phosphate loading from developments (other than Natural England's Stodmarsh guidance) and as some developments (particularly small and medium sized) may not have the capacity to mitigate the phosphate loading on site, Somerset West and Taunton Council have commissioned Royal HaskoningDHV to prepare a model which can:

1 – Provide transparent and rapid calculation of net phosphate loading from developments, including phosphate offsetting calculations for on or off site locations. This will be called the Phosphate Budget Calculator.

2 – Provide a model which identifies potentially feasible locations for phosphate offsetting (presented as heat mapping), or can be used to screen specific locations as to suitability and potential phosphate offsetting capacity.

The Phosphate Budget Calculator is in development and we are working with Natural England and Somerset County Council amongst others to gain agreement on the Calculator, such that it could be used to provide a standardised and transparent decision making tool for the Local Authority and developers. The Calculator is currently being trialled on a number of development sites and is also being reviewed by Natural England and others. We are hoping the final Calculator will be available early in the New Year. Soon followed by the phosphate solutions feasibility model.

**Q: Will the Somerset Rivers authority need to be involved?**

A: Yes – given its existing responsibilities or accountabilities.

**Q: Will this affect adopted Local Plan allocations such as Firepool and planning applications like Comeytrove? If so, what is the affect?**

A: Yes. At this stage, there will be a time delay associated with re-consulting the ecologist and submitting a HRA to NE, Prior to receiving a response from the county ecologist we are not in a position to say.

**Q: Will this affect the Council's 5 Year Housing Land Supply (5YHLS)?**

A: Yes. We aim to write to the government to ask that 5YHLS be suspended in Somerset. Across England, this was already an "ask" from local government due to Covid 19. Natural England's letter adds impetus to this request.

**Q Does this affect Local Development Orders?**

A: On our current knowledge, Yes. We will take further advice from legal on this matter.

**Q Do we know what the planned improvements are at Ham STW?**

A: We do not know the details at this stage. We will contact Wessex Water and place their briefing on this matter on the Member Portal and SWT website.

**Q: Who could challenge planning application decisions made by SWT?**

A: Now that Natural England have formally sent us a letter formally setting out their concerns, before granting future planning permission, SWT have to reflect and adhere to their advice on the need for a HRA. When determining planning applications, if SWT does not, then there is a risk of challenge by NE or any aggrieved 3<sup>rd</sup> parties.

**Q: Will NE advice on this matter still apply when we leave the European Union?**

A: Yes. It's an international treaty and remains law until changed by Parliament.

**Q: What applications does it affect?**

A: It affects the following:

- New residential units – including tourist accommodation, gypsy sites etc.
- Agricultural Development – additional barns, slurry stores etc. where it is likely to lead to an increase in herd size;
- Commercial / industrial developments that including overnight accommodation
- Prior Notifications of agricultural development where, as a result of the development, the herd size may increase and prior approval applications relating to changes of use to affected categories of development such as office to dwelling and agricultural to dwelling applications;
- Anaerobic Digesters;
- Possibly some tourism attractions

**Q: What is the process for determining permitted development prior notification applications under the General Permitted Development Order?**

A: Article 3(1) of the GPDO imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat. The permitted development cannot be lawfully commenced until an application under regulation 77 of the Conservation of Habitats and Species Regulations has been made and approved by the Local Planning Authority. The purpose of this application will be for the Local Planning Authority, in conjunction with the appropriate nature conservation body to make an appropriate assessment of the implications for the protected site. The Local Planning Authority can only approve the application if it is ascertained that it will not adversely affect the integrity of the site.

A prior notification application can therefore be approved without the above assessment taking place, although the commencement cannot lawfully take place until the separate application under regulation 77 is approved.

Regulation 77 does not provide a power to impose conditions on the grant of approval. Accordingly if the assessment of the impact on the protected site requires

mitigation to be secured, such mitigation would need to be secured through a Section 106 planning obligation.

Informative for Prior Approvals:

The applicant is reminded that regulation 75 of the Conservation of Habitats and Species Regulations 2017 (Habitat Regs) provides that it is a **condition of any planning permission** granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), made on or after 30 November 2017, that development which is likely to have a significant effect on a European site, alone or in combination with other plans or projects, **must not be commence until the developer has received written approval from the Local Planning Authority under regulation 77 of the Habitat Regs.**

This application has been identified as likely to have a significant effect on the Somerset Levels and Moors Ramsar Site and an application for written approval under regulation 77 of the Habitat Regs must therefore be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

**Commencement of development without such written approval will invalidate the prior approval and make the development unlawful and at risk of enforcement action.**

For information - an application for written approval under regulation 77 of the Habitat Regs must -

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
  - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and
  - (ii) any fee required to be paid, in this case £30.

All agents / applications of prior approvals that have been determined since January 2019 which are either residential development or livestock accommodation have been written to and made aware of the need to obtain written approval under regulation 77 of the Habitat Regs.

**Q: Is a HRA required for a reserved matters application?**

A: Yes, Regulation 63 applies to decisions which involve the granting of consents and permissions - but also to 'other authorisations' for a plan or project.

**Q: Is a HRA required for a S.73 application?**

A: Yes. Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. However, each application will be assessed and if the new proposal does not create any additional floor space or amend the drainage arrangements, it is unlikely to require a HRA and will be able to proceed.

**Q: Does it include Annexes?**

A: If the annexe is attached to the main dwelling, it will not require a HRA. However, if it is a detached building, a HRA will be required.

**Q: Can an application be refused if it needs a HRA if there are other reasons for refusal?**

A: Yes, suggested reason for refusal is as follows:

*The proposed development would adversely impact upon the Somerset Levels and Moors Ramsar site by adding to the concentration of phosphates in the area. In the absence of technical information demonstrating the level of phosphates generated by the development, it is not possible to produce a Habitat Regulations Assessment or put in place the measures necessary to off-set the impact. As such the proposal is contrary to Policies C8, Environment, and DM1, general requirements, of the adopted Core Strategy and Paras. 175-177 of the NPPF.'*

**Q: Have there been any appeal decisions?**

A: Yes, Mendip District Council has had an appeal dismissed on this matter, the full appeal decision can be found [here](#). The decision is in relation to a planning application that Mendip District Council determined, ref: 2019/1461/FUL, The Mermaid Inn, 1-2 Tucker Street, Wells

**Q: Why does a change of use of an existing building used for offices to residential dwellings require a HRA and mitigation?**

A: Whilst the change of use of an existing building from offices (or retail) to residential dwelling(s) is not likely to result in a significant effect (LSE) on the achievement of the conservation objectives of a European site (Special Area of Conservation (SAC), Special Protection Area (SPA), or Ramsar site) as no additional footprint effects or other indirect effects would be expected to arise, there is one element of such a change that does result in an increase in a 'discharge' with the potential to cause a likely significant effect. This impact and its subsequent effect have been raised as an issue in a European Court of Justice case (the 'Wealden' case) whereby projects need to be considered in-combination where there is a potential for additive impact to European sites. In the case of increased population in an area, this is specifically identified as relevant with respect to increased nutrient levels in a catchment, which could result in a LSE on wetland habitats of European sites (and in the case of Somerset, the Somerset Levels and Moors Ramsar site in particular).

How does a change from commercial (or other similar) to residential result in an increase in nutrient discharges? Essentially, the people who are or were present (employed) in a commercial / other development also lived in the area and had a residence in the area, whereas changing to residential results in an increase in the capacity for 'additional' residents to reside in the area. This increase in resident population results in an increase loading on the nutrient treatment of the waste water treatment plants. Such plants have a capacity, and when reached there is no easy way to create available capacity (without significant infrastructural investment from extending existing sites to constructing new sites). Consequently, for every 'unit' of residence, this adds an increase in the population which impacts on the capacity of the current waste water treatment plants and in consideration, results in an increase in nutrient discharges into watercourses that are hydrologically linked to the European sites thus resulting in subsequent impacts on wetland habitats.