

February 2021

Somerset Nutrient Information Request Sheet

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 changes 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.

This advice should be read in conjunction with the Interim guidelines on small scale thresholds and nutrient neutrality principles for the Somerset Levels and Moors Ramsar catchment [Web Page](#) This document is relevant if you are proposing to use a **septic tank or package treatment plant**.

1. Developments that are affected:

1.1 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 maybe affected:

- 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

1.2 Out of the above development types, the following application types are likely to be affected:

- 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.
- Discharge of pre-commencement conditions.
- Reserved matters applications that did not assess and mitigate nutrients loading implications in the Outline planning permission.
- Retrospective planning applications that result in nutrient loading.

1.3 For the above application and development types an HRA maybe required before planning permission can be granted. Mitigation may also be required.

In order to inform the initial requirement for an HRA, and to provide any subsequent quantitative and qualitative data required to enable the Local Planning Authority to complete an Appropriate Assessment, the applicant is advised to work through the following steps.

It is strongly recommended that you employ an Environmental and/or Ecological Consultant to provide assistance in completing the calculation and to research and design any required mitigation strategy.

1.4 Please note, due to the significant number of applications being affected by this issue, the majority of affected applications will be subject to significant delays whilst the LPA considers the impact of the development on the Somerset Levels and Moors Ramsar site in detail. A further delay is then likely whilst the Applicant/Agent completes the steps outlined below and, where able to, provides the information for an HRA to be carried out and then, consequently, for a final recommendation on the application to be reached. In light of this the LPA is likely to request a long extension of target for the application and it is strongly suggested that you agree to this.

The LPA also reserves the right to refuse planning permission due to a lack of information and/or failure to demonstrate that the proposal would achieve a

phosphate neutral development. The LPA will however seek to discuss this with the Applicant/Agent before a refusal is issued.

2. Calculation of Phosphate Budget

2.1 Overview

As it has been confirmed by the LPA that your planning application could require an HRA, or you have satisfied yourself of this, the first step is to calculate the phosphate budget for the site - that is the net increase of phosphates being generated by the proposed development in comparison with its current use.

The Applicant is therefore required to complete a phosphate budget calculation in order to assess the proposed development's phosphate budget.

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 and which can be found here: [Web Page](#)

Somerset LPA's have developing a Phosphate budget calculator based on the Stodmarsh guidance, which includes figures for Phosphorous kg per hectare for different land use types within Somerset, pre-development. The calculator can be found here: [Web Page](#)

At present the calculator is specific to developments which lead to the production of wastewater containing Phosphates, such as residential proposals.

It should be noted that it is not a requirement that the Somerset Phosphate Budget Calculator is used to understand and confirm the proposed development's phosphate budget. Applicants/Agents are free to submit their own calculations although any calculations submitted using another calculator will be subject to additional scrutiny. Therefore, as the Somerset Phosphate Budget Calculator is approved by Natural England, and has been designed specifically for the Somerset district you are strongly advised to use it.

2.2 Completing the Phosphate Budget Calculator

2.3 Residential and other development containing foul water discharge facilities

For residential and other development containing foul water discharge facilities you will need to enter the following details into the Phosphate budget calculator:

- How foul water is to be processed;
 - 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's website:
<https://www.wessexwater.co.uk/services/building-and-developing>.
- 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.
- Information on potential off site land where mitigation can be provided. Please note that any off site land being included into the phosphate budget calculations **must be within the river catchment of the development site**.

2.3 Development not including foul water discharge facilities

For other developments that do not include foul discharging facilities ie non-residential or commercial floorspace (see para 1.1) a separate calculation for the level of Phosphate loading from the proposal will be required. The applicant is advised to seek professional advice from an Environmental Consultant to assess the amount of phosphate generated from this type of development.

Phosphate Budget Calculator Results

The Phosphate Budget Calculator will provide you with a result confirming the following:

No mitigation required

If the Phosphate Budget Calculator results in a zero or minus nutrient loading figure ie nutrient neutrality, then the need for mitigation is negated. You will need to submit the calculations for the LPA to review and confirm whether an HRA can be carried out, see para 4 below. Please also see the Interim guidelines on small scale thresholds and nutrient neutrality principles for the Somerset Levels and Moors Ramsar catchment [Web Page](#)

Mitigation required

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

3. Mitigation methods

Once it has been confirmed that mitigation in the form of habitat creation is required, there are a number of different methods available, although they depend on whether you can provide on or off site mitigation, or a mixture of both.

Please note that any mitigation will need to be in place prior to occupation or commencement of use.

3.1 Developments that are able to provide on or off site mitigation

If the site is large enough to provide on site mitigation, or off site land for mitigation has been secured, the input and output figures from the completed Phosphate budget calculator will need to be incorporated into the following reports, referencing the steps and stages outlined within the Stodmarsh Guidance. In order to progress the application the following documents should be submitted to the LPA:

- 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) **within the river catchment of the development site.**
 - Where off-site habitat creation is proposed, a new red line plan plus ownership certificate will be required.
- **A Nutrient Neutrality Assessment and Mitigation Strategy (NNAMS)** appending the spreadsheet calculation figures.
 - 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 the NNAMS.
- A detailed scheme of proposed habitat creation, including location plans, drawings, sections and any other supporting reports or information to demonstrate that the required level of phosphate mitigation will be achieved. Options include the creation of specifically designed wetland or appropriate woodland planting to remove phosphates.
- A detailed scheme of implementation and long-term maintenance (>80 years) for all proposed permanent mitigation habitat creation. This will need to be secured through a legal agreement e.g. s106, before permission is granted.

- Where an interim mitigation solution is proposed, to bridge the gap between the grant of permission and the confirmed upgrade of the waste water sewage treatment works (WWSTW) relevant to the development site, full details of the solution, including location plans, timescales, maintenance plans and any other supporting reports or information to demonstrate that the required level of phosphate mitigation will be achieved, is required to be submitted. This will also need to be secured through a legal agreement e.g. s106, before permission is granted.

**Please note that where off site mitigation is proposed a full re-consultation exercise for the application may be required.

Please also note, separate planning permission may be required for the mitigation proposals themselves.

3.2 Developments where on or off-site mitigation cannot be provided

If your site is not large enough, or is too constrained, to be able to provide on site mitigation, and you have been unable to secure off-site mitigation, then you have the following options:

- Provide evidence to demonstrate nutrient neutrality has been achieved through paid contributions towards a nutrient credits scheme provided by an LPA agreed nutrient trading broker.
- Wait until the scheme can contribute, through financial payment, towards the Somerset Nutrient Mitigation Strategy, see para 5 below. In these circumstances the LPA is likely to put the application on hold until such time as this information can be provided (estimated 9-12 months).
- Withdraw the application until such time as the above options can be achieved.

4. **Completion of the Habitat Regulations Assessment**

An HRA will only be carried out once the LPA and Somerset Ecology Service are satisfied that sufficient information has been submitted to fully complete the assessment process. Therefore, the LPA, as the 'competent authority' under the Habitats Regulations 2017, will only carry out an HRA in the following circumstances:

- Where information has been submitted, to the satisfaction of the LPA, to demonstrate that an acceptable scheme of on or off site mitigation, or a mixture of both.

- Where information has been submitted, to the satisfaction of the LPA, to demonstrate that the development will result in a zero or minus nutrient loading figure.
- Where evidence has been submitted, to the satisfaction of the LPA, to demonstrate nutrient neutrality has been achieved through paid contributions towards a nutrient credits scheme provided by an LPA agreed nutrient trading broker.

Please note that a response on this assessment is required from Natural England before a recommendation that the proposed development is acceptable can be reached by the LPA, in so far as its impact on the Somerset Levels and Moor Ramsar site is concerned.

Unfortunately, for those developments that are unable to provide the above information, an HRA will not be carried out and you are advised to follow the steps in para 3.2 above.

5 Somerset Nutrient Mitigation Strategy

Alongside the interim approaches available to developments described above, a strategic approach comprising the Somerset Nutrients Strategy is being explored by the Somerset LPAs. 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 have yet to be determined. It is hoped that the Strategy will be in place by the end of 2021 although the tariff based system may take longer.

Further information on the development and publication of the Somerset Nutrient Strategy can be found on the LPA's respective websites.

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

This document is subject to change as and when new information becomes available. Please ensure that you are using the current version.

Simon Breeze MCIEEM
County Ecologist

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
2.0	25.2.21	Publication version	SB/LPAs	HV