

Discharge of Conditions Guidance Note Relating to affected development within the catchment area of the Somerset Levels and Moors Ramsar Site

The Council has taken legal advice on issues surrounding the letter from Natural England (NE) dated 17 August 2020. The summary of the advice can be found on the [Council's website](#) in the document called Legal Summary.

This guidance note has been written to specifically deal with the legal advice provided in relation to the discharge of pre-commencement conditions attached to planning permissions for developments affected by the advice contained within the NE letter and the Council's actions in response. This guidance note should also be read alongside the wider guidance provided on the Council's website.

The following is a summary of the legal advice:

Do the Appropriate Assessment requirements under the Habitat Regulations 2017 also apply to the discharge of conditions on full or outline permissions – if so, is it all conditions or just those affecting phosphate discharge i.e. drainage?

A: As the requirement for assessment continues until such point as the relevant authority has made the 'implementing decision' and given the strong protection given to the environment, in conjunction with the requirement to apply the precautionary principle, the Habitats Regulations continue to apply in principle in terms of applications to discharge at least negatively worded planning conditions whether or not they relate specifically to 'phosphates' (and arguably the discharge of all planning conditions).

Somerset West and Taunton Council have taken the view that 'pre-commencement' conditions relating to affected developments within the catchment area, cannot be discharged until it has been confirmed that either:

- a) an HRA is not required for the development; or
- b) the development would not have a likely significant effect and sufficient information to demonstrate this has been provided and found to be acceptable; or
- c) an HRA is required and sufficient information to demonstrate that the development would not adversely affect the integrity of the European site has been provided and the HRA has been submitted and found to be acceptable.

Furthermore, in line with the legal advice, ALL pre-commencement conditions will be considered using this approach and not just those potentially directly relating to phosphate discharge ie surface water drainage or foul sewage.

It is also confirmed that this affects all current applications to discharge conditions as well as any submitted in the future unless an appropriate assessment has been carried out at an earlier part in the decision making process and there has been no changes which could have a likely significant effect on the Ramsar site

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

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1.0 Current applications

All current applications to discharge pre-application conditions will be referred to the Ecologist for their view. The following path will be followed:

If it is confirmed that an HRA is not required:

The application will proceed as normal.

If it is confirmed that the development would not have a likely significant effect:

In order for this conclusion to have been reached the application will have been considered in light of the Interim [Guidelines on Small Scale Thresholds](#) by the LPA with advice from the Ecologist.

If an on-site solution that discharges to ground is proposed, full details of this scheme will need to have been submitted in accordance with the interim guidelines and found to be acceptable.

For applications where 'nutrient neutrality' can be demonstrated, the guidance contained within the Interim Guidelines above and also the [Somerset Nutrient Information Request Sheet](#) will need to be followed with all relevant information submitted to the LPA and found to be acceptable.

If it is confirmed that an HRA is required:

The Planning Officer will make the Applicant/Agent aware of this advice. The Applicant/Agent will then be required to submit sufficient information to demonstrate that the development would not adversely affect the integrity of the European site has been provided. It is only once this information has been assessed, and been found to be acceptable, that the LPA will be able to approve the discharge of the relevant conditions. If mitigation needs to be secured, a S106 legal agreement or Unilateral Undertaking, may also be required.

The information to be submitted will be the same as that required for applications for planning permission and guidance for this can be found within the [Somerset Nutrient Information Request Sheet](#)

Unfortunately, due to the short timescale within which discharge of condition applications should be dealt with, the potential refund of fees at 12 weeks and the deemed discharge procedure, if it is concluded that there is insufficient information to demonstrate that the development would not adversely affect the integrity of the European site, it is likely that the application will be refused. In this event the Applicant/Agent is strongly encouraged to seek pre-application advice before re-submission to avoid a further refusal due to insufficient information.

2.0 New Applications to be submitted

For the discharge of all pre-commencement conditions for which an application is still to be submitted, as above, Applicants and Agents are strongly encouraged to seek pre-application advice before submission. This will enable us to provide clear advice as to whether the scheme will require an HRA and, if so, the scope of information that will be required. We can also assess the design and acceptability of any mitigation proposals at this stage.

Applicants and Agents are strongly encouraged to take note of the guidance information referred to above and on the [website](#) before submitting an application and/or a pre-application proposal.