

## **Phosphates on the Somerset Levels and Moors – Frequently Asked Questions**

**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?**

**A:** We are currently seeking clarification on this issue.

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

**A:** Natural England has 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 website. This list may change in light of further legal advice and advice from Natural England.

**Q Does this affect canals?**

**A:** Any watercourse that directly or indirectly affects the Ramsar sites within the Somerset Levels and Moors is affected.

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

**A:** The Somerset Solutions Report was published in March 2022, this includes clarification of the geographical of risk. A [map](#) is now available on the SWT website.

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

**A:** Until such time as monitoring demonstrates that the Somerset Levels and Moors Ramsar site is in a favourable condition, the phosphate issue will persist. Somerset West and Taunton Council is working to progress its [Interim Phosphates Mitigation Strategy](#) to try and progress our own solutions as quickly as possible.

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

**A:** We acknowledge that this could affect SMEs. We are working to progress the Council's Interim Mitigation Strategy to try and provide some mitigation options for SMEs.

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

**A:** Natural England has issued a 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 LPAs to find joint solutions?**

**A:** Yes, as Natural England has issued a similar letter to all of the Somerset Local Planning Authorities (LPAs). The Somerset wide Solutions Report is due to report shortly which has been jointly prepared by the Somerset LPAs: Mendip District Council, South Somerset District Council, Sedgemoor District Council and Somerset County Council. The Somerset LPAs have also worked together to publish the [Phosphorous Budget Calculator](#) to assist in developing mitigation solutions.

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

**A:** As the Local Planning Authority (LPA) there is no statutory requirement for SWT to embark on the interim programme of measures. The Council are doing this to facilitate sustainable development; to support the economic recovery post Covid 19; to minimise impact on small and medium-sized enterprises and the local economy as set out in the National Planning Policy Framework (2021); to meet the requirement to maintain a 5 year housing land supply; and to meet our wider housing duties.

Since the Full Council Meeting on 5 October 2021, SWT has:

- Appointed two dedicated Officers to support the unlocking of development in the catchment of the River Tone;
- Established the Phosphates Planning Sub Committee; and
- Started to identify a series of projects to generate phosphate mitigation credits.

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

**A:** Yes – given its existing responsibilities or accountabilities. SWT continues to engage with the Rivers Authority on this matter.

**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 Natural England. The revised masterplan for Firepool will take account of the requirement to be phosphate neutral. Comeytrove has agreed a short term phosphate mitigation solution in the form of a Fallow Land Management Plan to be able to proceed with development. Long term solutions remain under consideration.

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

**A:** Yes. We have written to the government to ask that 5YHLS be suspended in Somerset. Currently there has been no movement from central government on this matter.

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

**A:** On our current knowledge, yes. We will take further advice from legal on this matter as it arises.

**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 has formally sent us a letter formally setting out their concerns, before granting future planning permission, SWT has to reflect and adhere to their advice on the need for an HRA. When determining planning applications, if SWT does not, then there is a risk of challenge by NE or any aggrieved 3rd parties.

**Q: Will NE advice on this matter still apply following the UK's exit from 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 overnight tourist accommodation, traveller 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
- 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:** Natural England in conjunction with the Somerset Planning Authorities has reviewed the role of the Regulation 77 submission as a measure to secure nutrient neutrality mitigation by way of the application of a Habitat Regulations Assessment. The guidance upon the relationship between “permitted development”, i.e. development approved by the Town & Country Planning (General Permitted Development) Order 2015 (as amended) and biodiversity is dealt with by ODPM Circular 06/2005 / Defra Circular 01/2005 “Biodiversity and geological conservation –

statutory obligations and their impact within the planning system.”

The Circular applies to candidate Special Areas of Conservation (cSAC's) Special Areas of Conservation (SAC's), and Special Protection Areas (SPA's) as a matter of law and to Ramsar sites and potential Special Protection Areas (pSPA's) as a matter of policy. Paragraph 5 of the circular confirms that:

*“As a matter of policy, the Government has chosen to apply the procedures described below, unless otherwise specified, in respect of Ramsar sites and potential SPA's (pSPA's), even though these are not European sites as a matter of law. This will assist the UK Government in fully meeting its obligations under the Birds Directive and Ramsar Convention.”*

However in relation to permitted development, Paragraph 43 goes on to state:

*“Regulation 60 imposes controls on all permissions granted under the GPDO to ensure that any permitted development is not in breach of the terms of Article 6 of the Habitats Directive. This regulation prevents any development which is likely significantly to affect a European site, alone or in combination with other plans or projects, and is not directly connected with or necessary to the management of the site, from commencing unless the local planning authority has ascertained, after consulting English Nature, that such development would not adversely affect the integrity of the site. It should be emphasised that the condition does not automatically withdraw permitted development rights for such developments, but instead requires them to be subject to a prior approval process. This regulation does not apply to pSPA's and Ramsar sites as a matter of policy.”*

Regulation 60 of the Conservation (Natural Habitats & c) Regulations 1994 (and its requirement for further submissions under Regulation 62) referred to in the Circular has been replaced by Regulations 75 and 77 of The Conservation of Habitats and Species Regulations 2017. Having taken advice on the matter the Planning Authorities position is that there is no requirement to assess the Likely Significant Effects of development approved under the GPDO upon the Somerset Levels and Moors Ramsar site and therefore submissions under Regulation 77 will not be sought as part of any decision notice and there will be no requirement for prior approvals within the risk area to be subject to a Habitats Regulation Assessment.

**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 an HRA. However, if it is a detached building, an 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, there have been several appeal decisions which can be viewed via the Planning Portal. A recent appeal decision in SWT includes reference: APP/W3330/W/21/3285797 for the erection of a single dwelling at Higher Knapp Lane, Knapp North Curry, Taunton, which was dismissed for two reasons, one of which related to lack of information submitted by the applicant in relation to nutrient neutrality measures.

**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).

**Q: 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 wastewater 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 wastewater 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.

## **Questions in Relation to SWT's Interim Phosphate Mitigation Strategy and Council-generated Phosphate Credits (P Credits)**

**Q: When does SWT anticipate that the first planning permissions will be issued?**

**A:** No clear understanding as we are still trying to finalise projects to include within first tranche of P Credits. Of course we are looking to do this asap but can't provide timescale yet.

**Q: Will the council accept phosphate credits from third party providers, such as EnTrade?**

**A:** Yes in principle, but SWT is in discussions with EnTrade and we are waiting for them to come back to answer our questions.

**Q: Having already signed a Section 106 agreement, how would we purchase credits should they become available to us?**

**A:** It will be dependant on what your Section 106 agreement says, for example if P credits required for pre-commencement conditions it would be tied into that.

**Q: How will the 3-month requirement for 'implementable development' work if there are pre-commencement conditions?**

**A:** SWT would look to release P credits when all matters have been resolved. We would look for pre-commencement conditions to be discharged prior to P credits being released.

**Q: Approximately how many homes will the SWT scheme offset?**

**A:** At the moment we are looking at a range, SWT cannot confirm at this stage but the first tranche is likely to produce approximately 100 credits. It should be noted that the SWT scheme is not the 'only game in town'. There are other options to purchase P credits, as well as potential mitigation solutions.

**Q: As our development is classed as a major development, when do you see P credits being available to us?**

**A:** SWT has made the decision to prioritise minor developments given the limited number of P credits available. We encourage applicants to consider other opportunities for phosphate mitigation as well.

**Q: Anybody who has a development of over 10 plots is not being considered as an SME, is there a plan in place to help these developments?**

**A:** We are using definition of minor development as presented within the National Planning Policy Framework for P credit prioritisation which is development to *up to* 10 dwellings.

**Q: As an HRA is no longer required for a Class Q Prior Notification why is one being insisted upon for a replacement dwelling on the same site?**

**A:** A replacement dwelling is not covered by Class Q and therefore requires a new planning application.

**Q: When will be the second tranche of projects take place?**

**A:** We are looking for projects all of the time and will continue to work on this although we can't give an exact date.

**Q: How does reducing water use in housing stock reduce Phosphate output?**

**A:** The less water into the system results in less phosphates going into the system and this has been agreed with Natural England.

**Q: In areas where phosphates have been identified as an issue, have any longer term solutions come forward which NE have accepted?**

**A:** No Local Planning Authority as far as we are aware have managed to identify sufficient mitigation to cover all growth proposals in their area. There are a number of potential longer-term nature-based solutions e.g. wetlands, cover crops, temporary fallowing. We are also trying to stimulate Central Government, including Defra to accept that there needs to be action in relation to agricultural practices as well as Wastewater Treatment Works.

Improvements to Wastewater Treatment Works can only happen through Asset Management Process (AMP). Central Government has set out their strategic priorities for Ofwat recently, including information on the next round of improvements to WwTW infrastructure for the period 2025-2030. It is important you inform and influence this as much as possible.

In terms of agricultural practices, the Council had a meeting with Rebecca Pow MP on Friday 25<sup>th</sup> February in relation to improvements in this area. In addition the Council is considering the potential for funding new Officers to help enforcement against poor farming practices.

**Q: What 'alternative solutions' are available and where can we find information on them?**

**A:** The Somerset wide Solutions Report will be published imminently, and this contains information on the kind of mitigation projects that might be able to be bought forward. We have also highlighted to Central Government that there is no one place for the information in relation to phosphates neutrality despite the fact that it is now affecting Local Authority (LA) areas across the country. We are working on this in collaboration with other affected LAs.

**Q: Is there a flow chart to show the process of P credit prioritisation?**

**A:** Yes, it is available to view within the [report presented to the Planning Phosphates Sub Committee](#) on 24 February.

**Q: Will the new Somerset unitary authority need to endorse the Interim Strategy post the elections in May 2022?**

**A:** SWT retain sovereign powers until April 2023, so the new authority will not need to endorse this post-May 2022 elections. Despite new governance arrangements that will be required, we are intending for this programme to go into the new Authority as the need for nutrient neutrality likely to remain an issue beyond April 2023.

**Q: Is the onus on the council to contact us once assessment has been made as to how applications will be screened/what P-credits will be available or is further information required from applicants?**

**A:** SWT will make contact will be made in due course, SWT will write to applicants to commence screening process.

**Q: Can you advise on 'best practice' learning for wetland solutions and where this has been successfully implemented/passed planning?**

**A:** We understand there is going to be National Guidance issued in relation to this. There is some learning available, for example SWT officers went to visit Cromhall wetland in Gloucestershire. This is referenced in our previous Report to Full Council on 5 October 2021 and there is a link on the website to watch an informational video on this.

**Q: Do you foresee the HRA requirement for new development falling away if/when the water companies upgrade the treatment infrastructure?**

**A:** No, the Somerset Levels and Moors are in an unfavourable condition and through the mitigation we are only seeking to not make it worse. Do not see the HRA requirement going away until it is in a favourable condition. SWT is engaging with Natural England and the Water Companies about how planned growth was taken in to account in the AMP programme and the impact this has on mitigation requirements.

**Q: Is there a specific channel to filter lobbying of DEFRA and other Government bodies to have the biggest impact?**

**A:** SWT are doing this through the Local Government Association. There are increasing numbers of LAs in this position. We are also engaging Rebecca Pow MP, who is also a DEFRA Minister as well as a local MP.

**Q: What are the other proposals/third party operators who could assist?**

**A:** As a Council we are only aware of EnTrade who we understand are not officially trading as of yet.

**Q: In terms of mitigation for a single dwelling development, is an upgrade/ installation of a bio-digester system that removes phosphates etc from the system adequate mitigation?**

**A:** Yes, it would require NE sign off and they would require sufficient information to conclude that it would be retained and function in perpetuity.

**Q: Currently on-site post treatment plant phosphate removal systems give around 95% efficiency. Is there an anticipated threshold where the system will be deemed 'phosphate free' and not require P credits etc. at all?**

**A:** We would have to be satisfied as Competent Authority or HRA that it is nutrient neutral and therefore would not have any impact on the RAMSAR site.

**Q: Will SWT secure such upgrades to septic tanks by condition?**

**A:** We are awaiting seeking legal advice on this matter, but the likelihood is that a Section 106 agreement will be required.

**Q: If a Section 106 is required, will there be a template agreement provided by SWT?**

There is draft Section 106 template within the report presented to the Planning Phosphates Sub Committee on 24 February 2022 related to SWT generated P credits. We are also looking into whether we can develop a standard Section 106 agreement for maintenance and monitoring arrangements of PTPs/Septic Tanks as well. We will also be producing a standard project level Appropriate Assessment for applications utilising SWT generated P credits, as this is required in line with the Habitats Regulations.

**Q: There seems to be little guidance or focus on agricultural developments?**

**A:** Many agricultural developments don't require planning permission. SWT is concerned about the impact agricultural practices have on phosphates but we understand that the Environment Agency are appointing officers to work with farmers to improve practices and we are looking at how SWT could potentially support this.