



Department for Levelling Up, Housing & Communities

Chief Planning Officers
Local Planning Authorities

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Dear Chief Planning Officer,

NUTRIENT NEUTRALITY & HABITATS REGULATIONS ASSESSMENT UPDATE

I am pleased to be writing to update you on the action government is taking to address the issue of nutrient pollution. This update is further to my letter of 16 March in relation to the rollout of nutrient neutrality advice to additional catchments with the initial response from government.

Yesterday, the Secretary of State for the Environment laid a Written Ministerial Statement setting out the action government is taking to address the issue of nutrient pollution. This consists of three elements; obligating the upgrade of wastewater treatment works in nutrient neutrality areas, a strategic mitigation scheme and clarifying the application of Habitats Regulations Assessments for post-permission approvals.

NUTRIENT NEUTRALITY

Nutrient pollution in rivers, lakes and estuaries has an adverse effect by causing eutrophication and algal blooms, harming delicate ecosystems. Some areas are protected as Habitat Sites and under the Habitats Regulations. Competent authorities must carefully consider the impacts of any new plans and projects on habitats sites, and whether those impacts may have an adverse effect on the integrity of a habitat site which requires mitigation. Areas where there is a potential for harm to a failing habitats site due to additional nutrients can receive nutrient neutrality advice, meaning that additional nutrient impact from development must be mitigated.

As of March 2022, 74 LPAs have received advice from Natural England across 27 catchments (equating to 14% of England's land area). Nutrient neutrality places significant additional requirements on development and assessment by LPAs when plan-making or taking decisions. This has delayed the granting of planning permissions until mitigation is secured. To date there has been a high mitigation requirement, to achieve the necessary offsetting of nutrient pollution related to development, as well as an insufficient supply of accessible mitigation.

GOVERNMENT ACTION

The Government has announced two significant measures in response to the nutrient pollution issue, significantly reducing the mitigation that new development has to secure as well as making the access to mitigation far easier than it has been.

In the autumn, the government will table an amendment to the Levelling Up and Regeneration Bill (LURB). This will place a new statutory duty on water and sewerage companies in England to upgrade wastewater treatment works to the highest technically achievable limits by 2030 in nutrient neutrality areas. Water companies will be required to undertake these upgrades in a way that tackles the dominant nutrient(s) causing pollution in the catchment of habitats sites. To ensure regard is had to the required WWTW upgrades, the Habitat Regulations will be clarified, so the measures are considered certain in the assessment provisions.

To ensure mitigation is available for development to demonstrate neutrality, Natural England will establish a Nutrient Mitigation Scheme, working with Defra and DLUHC. Natural England will work with stakeholders to identify mitigation projects in nutrient neutrality catchments with Defra and DLUHC providing funding to pump prime the mitigation scheme; this is intended to frontload investment in mitigation projects, including wetland and woodland creation. Developers can then purchase 'nutrient credits' which will discharge the requirements to provide mitigation. Natural England will accredit mitigation delivered through the Nutrient Mitigation Scheme, enabling LPAs to grant planning permission for developments which have secured the necessary nutrient credits in their catchment. Mitigation from wetlands and woodlands will provide biodiversity enhancements to areas; with the scheme providing multiple benefits by promoting public access, helping to deliver on our levelling up missions for pride in place and well-being, by improving access to nature.

Natural England will deliver the scheme, with the support of Defra, DLUHC, Homes England and the Environment Agency. The scheme will be open to all developers while ensuring that SMEs are prioritised, given the difficulties they can face in securing mitigations due to access to funds and skills. This scheme will not be a requirement but an option to discharge mitigation requirements more efficiently. We recognise there are a number of private markets and LPA-led nutrient mitigation schemes that are already being established, and Natural England will be working closely with these providers to ensure they do not crowd out private markets, and will ensure that the national scheme dovetails with these markets and provides additional support as needed.

It is envisaged that the scheme will enable LPAs to grant permission subject to conditions or obligations securing mitigation and phasing developments (if needed) so that mitigation is operational and in place, prior to any nutrient pollution being discharged.

We will work closely with affected LPAs in the development of the scheme. Natural England local area teams are writing directly to affected LPAs to begin working

together at a catchment level and we will also work with the PAS Nutrient Network to engage collectively with LPAs in affected catchments. We will announce further details in the autumn when the scheme launches.

The full Written Ministerial Statement may be found at the following link:

<https://questions-statements.parliament.uk/written-statements/detail/2022-07-20/hcws258>

HOW DOES THIS ADDRESS THE ISSUE OF NUTRIENT POLLUTION?

The majority of nutrient pollution from residential properties enters waterbodies via treated discharges from wastewater treatment works (WWTW). The performance of WWTW varies based on the limits in environmental permits issued by the Environment Agency, which in turn reflect the environmental requirements of the waterbodies to which the effluent is discharged. The performance of WWTW is therefore the central factor in the level of nutrient pollution associated with existing homes and new development. It is therefore logical that effort on reducing nutrient pollution associated with housing focusses on upgrading WWTW. The statutory obligation for upgrading WWTW, which will be introduced into the LURB, will ensure that WWTW in nutrient neutrality catchments are operating at the highest level of performance, rectifying nutrient pollution at source. This will reduce the pollution from not only new development coming forward, but also from the majority of existing dwellings in affected catchments, representing a significant decrease in overall pollution from housing.

The specific performance levels of the connected WWTW is a major variable when determining the amount of mitigation new development has to secure to achieve nutrient neutrality. Suitable mitigation measures might include constructed wetlands or land use change, which can be land intensive. Under Natural England's Nutrient Neutrality methodology, the permit limit is used, or where there is no permit limit on nutrient discharges from WWTW, a standard precautionary figure is used (8mg/l for phosphates (P) and 27mg/l for nitrates (N)). The statutory obligation from 2030 will require WWTW to operate at the technically achievable limit (TAL); for phosphates this is 0.25mg/l and nitrates 10mg/l. This action will ameliorate nutrient pollution and significantly reduce the mitigation burden for developments.

The habitat regulations require that mitigation be secured for the lifetime of the development which Natural England consider to be 80-120 years. The obligated upgrades to WWTW required from 2030; will provide clarity from the point of the LURB measures coming into force. For developments this means that the current high level of mitigation will only be required up to the end of 2030. After 2030, the pollution levels via WWTW will be much reduced and so a lower level of mitigation will be required. This reduces the overall mitigation burden on housing developments coming forward in nutrient neutrality catchments.

The focus of these measures is addressing nutrient pollution at source, but in most catchments they won't remove the nutrient neutrality requirement, though they will

reduce a significant proportion of the pollution. We must act to address the sources of pollution so that habitats sites are no longer in an unfavourable condition due to eutrophication. Nutrient neutrality can only be an interim solution; to remove the requirement site restoration is required or a strategic plan demonstrating forthcoming restoration with confidence. This role should be addressed by Nutrient Management Plans (Protected Site Strategies, or Diffuse Water Pollution Plans), to secure the actions required for site restoration which will be different for each habitats site but the definitive action on pollution from WWTW may be considered in due course.

WHAT DOES THIS MEAN FOR DECISION AND PLAN MAKING?

For planning applications in the affected areas, the possibility of adverse effects will still need to be considered, in relation to additional nutrient loads (as part of a Habitat Regulations Assessment (HRA)). It is for decision-takers to determine, based on the information provided (including any mitigation secured), whether the development will avoid adverse effects, such as through neutrality. The increased availability of mitigation as a result of the Natural England scheme will enable applications to more easily demonstrate the nutrient neutrality requirement is met.

The amendment to the LURB will seek to enable decision-makers to be confident the upgrades will be in place by 2030, enabling them to treat as certain the lower levels of pollution after 2030 as part of a HRA. Reducing the mitigation requirements for the in-perpetuity period, as the current (higher) levels of pollution need only be mitigated until 2030 (or earlier if the upgrades take place sooner), with the lower pollution levels of TAL needing to be mitigated thereafter.

In this regard, the Court of Appeal recently handed down its judgment on an appeal against the High Court decision in *Wyatt v Fareham BC*. The Court of Appeal dismissed the case on all grounds and concluded that the planning permission had been lawfully granted. This positive outcome should give all those involved confidence in the approach and methodology that Natural England has proposed to help LPAs to address nutrient impacts from new development. Natural England, when developing its nutrient neutrality methodology, guidance, and tools, incorporated the recommendations provided by Jay J. in his High Court judgment.

We understand the concerns that some Local Planning Authorities have around the impact of nutrient neutrality on their ability to demonstrate they have a sufficient and deliverable housing land supply.

We will make clear in planning guidance that judgements on deliverability of sites should take account of strategic mitigation schemes and the accelerated timescale for the Natural England's mitigation schemes and immediate benefits on mitigation burdens once legislation requiring water treatment upgrades comes into force. DLUHC will revise planning guidance over the summer to reflect that sites affected by nutrient pollution forming part of housing land supply calculations are capable of being considered deliverable for the purposes of housing land supply calculations, subject to relevant evidence to demonstrate deliverability. It will be for decision takers to make

judgements about impacts on delivery timescales for individual schemes in line with the National Planning Policy Framework.

For those preparing local, strategic or neighbourhood plans, the Habitats Regulations require plans ensure they have no adverse effects. Local Plans are also tested for soundness, including deliverability over the plan period. With plans also setting out the contributions from development, including setting out the levels and types of affordable housing provision required. Today's measures will contribute to the evidence base for plans; helping to show they are deliverable with the NE mitigation scheme being in place until 2030 and with a reduced mitigation burden.

Where authorities are not entirely covered by nutrient neutrality advice, it may be appropriate to consider how phasing of development through the plan period can reflect the timing of upgrades to WWTW, to further reduce mitigation burden on new developments, and therefore potentially ensuring more development contributions are available for other important infrastructure.

HRA FOR POST-PERMISSION APPROVALS

The rollout of advice in relation to nutrient pollution to additional catchments in March, and for those already caught by the issue, resulted in a number of planning permissions having been granted prior to the nutrient neutrality issue being raised, but where a post-permission approval is still required. We are providing clarity on this matter.

The Habitats Regulations Assessment provisions apply to any consent, permission, or other authorisation, this may include post-permission approvals; reserved matters or discharges of conditions. It may be that Habitats Regulation Assessment is required in situations including, but not limited to:

- Where the environmental circumstances have materially changed as a matter of fact and degree (including where nutrient load or the conservation status of habitat site is now unfavourable) so that development that previously was lawfully screened out at the permission stage cannot now be screened out; or
- development that previously was lawfully screened in but judged to pass an Appropriate Assessment cannot now do so because the mitigation (if any) secured is not adequate to enable the competent authority to be convinced of no adverse effect on integrity of the habitats site.

DLUHC will update the Planning Practice Guidance on the application of the Habitats Regulations Assessment in this regard and consider additional revisions as necessary over the summer.

SUPPORT FROM THE PLANNING ADVISORY SERVICE

The Planning Advisory Service has been supporting LPAs by offering training and advice to help them to understand nutrient neutrality and what it means for their catchments. This support has included a series of workshops on the nutrients issue, with sessions covering the principles underpinning nutrient neutrality, how LPAs can begin to respond to the issue and catchment-based approaches. These sessions have been recorded and are available online as a public resource on nutrient neutrality. PAS have also convened a “Nutrient Network”, allowing the local authorities affected by nutrient pollution to share their experiences. PAS will continue to support local planning authorities through the Nutrient Network and with additional workshops to support LPAs. Please find a link to the resources on the PAS website below:

<https://www.local.gov.uk/pas/topics/environment/nutrient-neutrality-nn-and-planning-system>

In March, the department announced it would be providing £100k funding to each catchment affected by the nutrient neutrality issue, through the Nutrients Support Fund. The funding has already been issued to all catchments which first received nutrient neutrality advice prior to March and is available for all other catchments affected by nutrient neutrality. Catchments should agree a lead authority and provide evidence of spend. Officials are engaging with these catchments to ensure the funding is issued by September. Regarding this funding, please contact nutrient.ppd@levellingup.gov.uk.

Finally, I appreciate the issue of nutrient neutrality is challenging for LPAs and developers alike. Through this action we will enable sustainable development, protect our most sensitive ecosystems, improving water quality overall in the catchments; and ensure that there is more access to nature in line with our levelling up commitments. These measures represent a substantial step towards reducing nutrient pollution from both new and existing houses; complementing the leadership that LPAs are showing on this issue at a local level.

Yours faithfully,

Joanna Averley

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