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**BY EMAIL ONLY**

Dear Heads of Planning / Senior Planners,

As your Authority will be aware, there are impacts on nationally and internationally important wildlife sites in the Stour Valley arising from excessive nutrients from wastewater discharge. Until a long-term strategic solution is in place to address these impacts, Natural England is issuing standard advice in response to planning consultations / proposals that meet the following criteria:

Consultations with the potential to impact the following sites:

- Stodmarsh Special Area of Conservation (SAC)
- Stodmarsh Special Protection Area (SPA)
- Stodmarsh Ramsar site
- Stodmarsh Site of Special Scientific Interest (SSSI)
- Stodmarsh National Nature Reserve (NNR)

Where:

- the proposal is for fewer than 400 homes and
- no accompanying Habitats Regulations Assessment (HRA) is submitted or
- an incomplete / insufficient HRA is submitted.

Your authority should demonstrate that the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) have been considered by your authority, i.e. consultations should include a Habitats Regulations Assessment.

It is Natural England's view that a likely significant effect on the internationally designated Stodmarsh sites (SAC, SPA and Ramsar site) cannot be ruled out due to the increases in wastewater from new developments coming forward in the River Stour catchment. To complete an HRA to determine likely significant effects on these sites and the scope for mitigation of these effects within the River Stour catchment the following information is required:

- Consideration of the proposal's implications on total nitrogen and total phosphorus nutrient levels within the River Stour catchment
- Mitigation measures to avoid these effects on nutrient levels
- Consideration of the proposal and required mitigation measures at the Appropriate Assessment stage of the HRA – please note that any mitigation proposed must be

- robust and secured in advance of planning permission being granted, or suitable to be secured through a planning condition
- Natural England must be consulted on any Appropriate Assessment your authority may decide to make

Where a satisfactory HRA, completed or adopted by the competent authority, concludes no adverse effect of a proposal on the integrity of the site Natural England will review the proposal. Further information on carrying out an HRA as a competent authority can be found [here](#).

Please find outlined below Natural England's further advice regarding nutrient neutrality in the Stour Valley.

### **The Nutrient Neutrality Methodology**

The Stodmarsh designated sites are important principally for wetland habitats and the rare and special wildlife they support. As an NNR, Stodmarsh is also special for people and their access to nature. The wetlands, in particular the lake habitats, rely on a high quality of water and stable water levels. Some of the lakes are currently impacted by an excess of both nitrogen and phosphorus and are not achieving the required standard to support their favourable condition.

Natural England has provided your Authority and other relevant local planning authorities with advice on a short-term solution for new developments to avoid impacts on the Stodmarsh designated sites, through achieving 'nutrient neutrality.' A copy of this advice, the 'Nutrient Neutral Methodology', has been provided to your Authority and should be published on their website <sup>1</sup>. It includes associated guidance on undertaking nutrient neutrality calculations. Please note that this methodology is one proposed solution and Local Authorities are encouraged to develop / explore alternative options. Your Authority will also be aware of case law decisions <sup>2</sup> regarding the assessment of elements of a proposal aimed towards mitigating adverse effects on designated sites and the need for certainty that mitigating measures will achieve their aims. Assessing and mitigating all the nutrients from a development is a means of ensuring that development does not add to existing nutrient burdens.

This methodology has been developed to enable development to proceed without adverse impacts to water quality at the above sites and is for all types of development in the Stour Valley catchment <sup>3</sup> that would result in a net increase in population served by a wastewater system. This includes new homes, student accommodation, tourism attractions and tourist accommodation. Other commercial development, not involving overnight accommodation, will generally not be included unless it has other (non-sewerage) water quality implications.

Natural England is unfortunately unable to engage with individual applications beyond our existing statutory duties. We will therefore not be routinely providing bespoke detailed advice on individual application's nutrient assessments or mitigation proposals beyond the methodology available on your Authority's website and will be issuing standard advice in response to the consultations described above. Where appropriate, for large scale developments, we may offer to engage on a cost recovery basis through our Discretionary Advice Service <sup>4</sup>.

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<sup>1</sup> Natural England (November 2020). Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites. Available at <https://www.ashford.gov.uk/media/13dgnfyu/stodmarsh-nutrient-neutral-methodology-november-2020.pdf>

<sup>2</sup> For example, Cooperative Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) People Over Wind and Peter Sweetman v Coillte Teoranta. (Case C-323/17).

<sup>3</sup> The area captured by this advice is described in figure 1 and appendix 1 of Natural England's November 2020 advice on nutrient neutrality.

<sup>4</sup> For more details see: <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>

Natural England recognises that achieving nutrient neutrality may be difficult for smaller developments, developments on brownfield land, or developments that are well-progressed in the planning system. However, as your Authority will be aware, Natural England is fully committed to working closely with your Authority to develop a strategic approach for delivering a nutrient neutral strategic solution to help development to proceed.

Please note that if your Authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your Authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Yours sincerely,

Natural England  
Sussex and Kent Team

## **Annex A – Information required for mitigation**

### **Water efficiency improvements**

As explained in paragraphs 5.17 to 5.22 of the NNM, implementing water use restrictions in existing dwellings as a potential mitigation option is only appropriate where these dwellings connect to a wastewater treatment works (WwTW) with a total nitrogen (N) and/or total phosphorus (P) permit limit which is operating without headroom. This is because there is a direct relationship between water use and the amount of total N and / or P in its effluent where WwTW operation is either at the permit concentration or close to it (i.e. within 90% of permit values)

An applicant seeking to use water efficiency improvements must confirm that the WwTW they intend to connect to is operating without headroom for its permit limits.

Water efficiency measures must be suitably secured for the lifetime of the development. As such, it may not be appropriate to rely on water efficiency improvements resultant from high efficiency appliances or fixtures that could be readily replaced by homeowners.

Applications that discharge to a WwTW that does not operate at permit headroom or does not have a total N and/or P permit limit will not be able to rely on water efficiency measures. This is because increased water efficiency will have either no or uncertain mitigating / offsetting benefit at these WwTW. The applicant would need to reconsider their calculations and overall mitigation strategy.

### **Package Treatment Plants (PTPs)**

Please note Natural England's view (see paragraph 5.18 of the NNM) that relying on PTPs that discharge to the mains sewage network lacks the required certainty as a mitigation measure, and therefore should not be considered in an Appropriate Assessment.

For applicants seeking to achieve nutrient neutrality with the use of high reduction efficiency PTPs we advise that justification of proposed N and P reduction efficiencies should be provided. The NNM guidance (see paragraph 5.53) advises that the evidence supporting these efficiencies should include:

- Test result documents from the lab (in English) and / or;
- Measured effluent concentrations from real world applications, not just the covering certificate, to be sufficiently certain to be considered in an appropriate assessment.

To note:

- Applicants relying on PTP for mitigation need to agree a suitable means of discharge with the Environment Agency. NE recommends liaising directly with the EA.
- Site specific factors (e.g. in proximity to watercourses, soil saturation levels, etc.) also need to be considered when evaluating this risk. For instance, whether decommissioning PTP once suitable public sewer upgrades are implemented would be feasible.
- Monitoring and maintenance of PTPs will need to be secured in perpetuity.

### **New mains WwTW with tighter permits**

For sufficiently large developments (not relevant to proposals for fewer than 400 homes) seeking to rely on high reduction efficiency PTP it may be more feasible and agreeable with other statutory

consultees, such as the Environment Agency, to pursue the delivery of a new WwTW with very tight permit limits for N & P. Be advised that permitting and regulating a new mains WwTW is a matter for the Environment Agency via a regulatory process with the water sector. As such, early consultation would be advised.

Please note the Technically Achievable Limit (TAL) for phosphorous reduction at WwTWs was tightened from 0.5 mg P/l to 0.25 mg P/l for PR19 (the 2019 water industry price review). In PR19 the Environment Agency would not impose permit standards tighter than TAL on a water company, however companies were able to agree to tighter standards.

There are some exceptions to this TAL. For example, legally enforceable operational agreement standards at Pevensey Levels SAC, Ramsar and SSSI in Sussex of 0.1 and 0.08 mg/l total phosphorus on the Hailsham North and South WwTW have been agreed as a stretch target. The upgrades to these two works, which use membrane technology more frequently used in drinking water treatment, will be completed by 2021. Housing that will discharge to these works has been given permission with a Grampian-style condition linked to a first occupancy date of December 2021. The agreement was first secured in the company's PR14 business plan and Environment Agency's WINEP in 2014.

The creation of new WwTW with tighter permits than current TAL could theoretically be delivered by your mains or an inset sewage provider. If this is an option the applicant wishes to consider we advise that the applicant ensures early consultation with your Authority, the Environment Agency and the relevant sewage companies.

### **Wetland creation and Sustainable Drainage Systems (SuDS)**

The NNM identifies that wetlands receiving nutrient-rich water can remove a proportion of these nutrients through natural processes. The effectiveness of any such wetland to remove nitrogen and phosphorus from its receiving water is highly dependent on the specific design and maintenance of such a wetland (see Appendix 7 of the NNM).

#### Guidelines for wetland creation

For mitigation to demonstrate the required level of certainty we advise that proposals will need to demonstrate the following criteria:

- Be at least 2 ha in size as inconsistencies in nutrient removal are particularly acute, and therefore uncertain, in wetlands smaller than 2 ha in size;
- Have a permanent input of water;
- A detailed design of the proposed wetland;
- Calculate wetland specific N and P removal rates (factoring in approximate hydraulic loading, inlet N & P loading, temperature, wetland area and temporal variation in flow rates and or water levels); Use of median rates is not recommended as an alternative to robust bespoke calculations;
- Demonstrate that monitoring and maintenance of proposed wetlands will be suitably secured for the lifetime of the development.

#### Large scale interceptor wetlands

Large scale interceptor wetlands should be considered in a landscape scale mitigation strategy (not relevant to proposals for fewer than 400 homes) to maximise mitigation benefit and reduce risk of

double-counting nutrient benefits. The outline calculations should factor in precautionary values based on the proposed wetland's:

- hydraulic loading or inlet flow;
- minimum nutrient loading;
- area of functional wetland

We suggest working with partners who may be able to facilitate the creation and / or management of wetlands, such as the Kent Wildlife Trust or other partnerships or community groups.

Natural England would expect relevant planning conditions to require that the proposed wetland achieve at least the nutrient reduction values required to achieve nutrient neutrality. As such, they should ensure hydraulic loading, nutrient loading, and wetland area do not fall below the minimum required values presented by the applicant.

Given the nature of wetland creation, before the wetland's delivery can be considered certain / feasible the applicant should consult with the Environment Agency to ensure that the proposal will be acceptable in principle with regards to issues such as land drainage, flood risk and abstraction.

### SuDS

Not all SuDS will be effective at treating nutrients, as such, applicants should demonstrate the specific nutrient treatment capability of their proposed SuDS features, using the above criteria where appropriate. For example, there is insufficient certainty re the use of seasonally dry detention basins to mitigate nutrient impacts and they can, if poorly designed and managed, become nutrient exporters.