

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE MEETING – 21 DECEMBER 2021

NITRATE NEUTRALITY IN NEW DEVELOPMENT – UPDATE

Report by: David Illsley, Policy Manager

1. Introduction

- 1.1 Excessive nutrients (principally nitrogen) in the Solent's protected habitats are causing eutrophication, leading to an increase in algae growth. This has an adverse impact on the habitats and species within the international nature conservation designations.
- 1.2 Following legal case law, Natural England has advised all planning authorities in the Solent area that there is a likely significant effect on the Solent's designated sites due to the increase in wastewater from new housing and any other development providing overnight accommodation which would discharge into the Solent.
- 1.3 Natural England has subsequently published guidance on the issue of nitrates from new development affecting the protected Solent habitats; how to undertake a nitrate budget calculation; and the mitigation options available to deliver 'nitrate neutrality' in new development. This information is available on the Authority's website at [Nutrient mitigation - New Forest National Park Authority \(newforestnpa.gov.uk\)](https://www.newforestnpa.gov.uk/nutrient-mitigation) and comprises:
 - Solent nutrients guidance – Version 5, June 2020
 - Solent nutrients advice – non-technical summary, June 2020. This includes a Frequently Asked Questions section in Annex A.
 - Nitrogen budget calculator: This spreadsheet standardises nutrient budget calculations

2. Nitrate neutrality in the New Forest National Park

- 2.1 The majority of land in the New Forest National Park falls within the Solent catchment (the exception being land in the west of the New Forest forming part of the separate River Avon catchment, which is itself affected by elevated levels of nutrients). The requirement for nitrate neutrality applies to all net new dwellings and new overnight accommodation delivered within the four defined villages; all of the adopted Local Plan housing site allocations; and other development brought forward on windfall sites in the Solent catchment. It should be emphasised that the requirement for nitrate neutrality applies to development delivered through national permitted development rights and through the prior notification/approval processes, as well as to full planning applications.
- 2.2 Natural England's current guidance to planning authorities (Version 5, June 2020) sets out practical advice on how to calculate nitrate budgets (Section 4) and these have been required within the National Park for some time. The majority of new development within the New Forest will result in a net increase in the level of nitrates generated and will therefore require measures to be implemented to ensure neutrality in perpetuity.

- 2.3 The impacts of new development in terms of the level of nitrates generated and the options for mitigation/off-setting varies across the Solent catchment. Factors include the particular nitrate permit limits on the wastewater treatments works that serve the development; and the sub-catchment that the development is located within.
- 2.4 The majority of the wastewater treatment works in the National Park are river-based (e.g. Lyndhurst, Brockenhurst, Sway, Boldre, Beaulieu, East Boldre) and these works do not currently have Total Nitrate (TN) permit limits on them. This situation contrasts with several of the New Forest's coastal treatment works such as Pennington and Slowhill Copse, Marchwood, which do have existing Total Nitrate permits. The consequence of existing treatment standards is that one new dwelling constructed in Brockenhurst, for example, results in a greater level of nitrates than one dwelling constructed in Pennington due to the different permit limits at the receiving works.

3. The options for mitigation/off-setting to deliver neutrality

- 3.1 Section 5 of Natural England's June 2020 guidance contains practical advice on options for mitigation, should it be required. The purpose of the mitigation is to avoid impacts to the protected sites, rather than compensating for the impacts once they have occurred. Avoiding impacts is achieved by 'neutralising' the additional nutrient burden that will arise from the development, achieving a net zero change at the designated sites.

(i) Guidance on the location of mitigation

- 3.2 The appropriate location for mitigation depends on the catchment within which the development occurs; and location of the wastewater treatment works outfall. It is Natural England's position that mitigation land within the same catchment as the development location is usually most appropriate, but they also recognise that it may be appropriate to provide mitigation in a number of locations or adjacent catchments.
- 3.3 In June 2021 Natural England issued further advice to the National Park Authority on the geographical scope for nutrient mitigation within the 'New Forest Rivers' sub-catchment and this advice is available on our website. This advice essentially divides the National Park into three areas for nitrate neutrality purposes, as summarised below:
- *Development within the Bartley Water catchment:* Development within the Bartley Water catchment – covering the Ashurst, Netley Marsh, Cadnam area of the National Park – can be included within the Test and Itchen catchments when considering options for mitigation. This is due to the close proximity of the outfalls within Southampton Water and the tidal flows between these estuaries.
 - *Development draining to Beaulieu and Lymington river estuaries* (including Lyndhurst and Brockenhurst): Mitigation should be located within these river catchments as a first and preferred option. If it can be reasonably shown that mitigation cannot be delivered within these catchments, it may be considered appropriate to locate mitigation in adjacent/nearby catchments – i.e. the wider New Forest southern coastal catchment, and/or the Western Yar and Newtown catchments on the Isle of Wight.
 - *Development draining to other New Forest catchments and sea outfalls draining to the Solent* (including Avon Water, Danes Stream, Dark Water and Sowley Stream, and Pennington STW): Mitigation would be appropriate in the wider New Forest southern coastal catchment (including Beaulieu and Lymington rivers), and/or the Western Yar and Newtown catchments on the Isle of Wight.

(ii) *Types of mitigation*

- 3.4 Mitigation can be either ‘direct’ through upgrading sewage treatment works and through alternative measures, e.g. interceptor wetlands; or ‘indirect’ by taking land out of high nitrogen uses, e.g. crops or intensive livestock systems that result in an excess of nitrogen lost to the water environment. Both approaches are supported.
- 3.5 Paragraph 5.6 of Natural England guidance confirms, “...it is ultimately the decision of the local planning authorities, as competent authorities, to determine the suitability of the proposed mitigation scheme in line with the legal tests in the Habitats Regulations.”

4. Purchase of off-site nitrate mitigation credits – agreement in principle

- 4.1 As outlined above, Natural England’s recent advice to the Authority on nitrate neutrality (June 2021) recognises mitigation may: (i) be provided off-site from the development; and (ii) in a range of catchment areas, including several outside the New Forest.
- 4.2 Through the work of local planning authorities, the Partnership for South Hampshire, landowners and conservation groups such as the Wildlife Trust, a series of nitrate mitigation sites have been brought forward across South Hampshire. The Partnership for South Hampshire’s website contains more details on these mitigation sites - <https://www.push.gov.uk/work/mitigation-schemes-available-to-developers/> - and work is also continuing to bring forward a nitrate mitigation site within the New Forest.
- 4.3 These sites provide off-site mitigation to assist in the delivery of much needed new housing and other overnight accommodation, which has stalled due to the nutrient neutrality issue. The mitigation sites operate on the principle that permanent land use change through the conversion of agricultural land (with higher nitrogen loading) to alternative uses with lower nitrogen loading, such as woodland, wetland or managed for wildlife, can ‘neutralise’ the nutrient burdens from new development. The conversion of agricultural land also contributes to wider Government and planning policy objectives, including carbon sequestration, flood alleviation and biodiversity net gain.
- 4.4 Natural England’s advice to the Authority confirms that new development in the National Park can be off-set (or mitigated) in the surrounding catchments of the Test and Itchen on the mainland; and the Western Yar and Newtown catchments on the Isle of Wight. Mitigation schemes with credits available exist in each of these neighbouring catchments and these are acceptable off-site mitigation options for development in the National Park. These mitigation schemes are offering credits at circa £3,000 - £3,500 per credit (one credit equates to 1kg of total nitrates off-set per annum).
- 4.5 This report recommends that Authority members endorse the principle of officers working with neighbouring planning authorities and landowners to agree the legal framework to enable the off-site purchase of credits to ensure new development within the National Park is nitrate neutral. Such an approach has been adopted by other planning authorities across the Solent and would enable the delivery of mitigation and new housing in a manner than is consistent with Natural England’s advice.
- 4.6 We are receiving regular enquiries from planning applicants within the National Park who are looking to purchase off-site mitigation credits in line with Natural England’s advice in the appropriate catchments. Template legal agreements to secure nitrate mitigation credits have been prepared by local planning authorities and their partners within South Hampshire and the important principles they cover include:

- The mitigation will be legally secured in perpetuity (typically 80 - 125 years).
- The planning authority consenting the development has confidence that the mitigation will be delivered, thereby fulfilling its legal obligations as the 'competent authority' under the Habitats Regulations.
- Appropriate monitoring and enforcement provisions are in place to ensure land use change is delivered and future uses are fully implemented.
- The agreement covers the respective responsibilities of the 'development land authority' which gives permission for the development; the 'mitigation land authority' where the mitigation is located; and the 'mitigation landowner' which will provide the mitigation through land use change.

4.7 A legal framework that facilitates the purchase of nitrate credits for applicants; provides certainty that the 'mitigation land' will be appropriately managed over the required time period; and sets out how monitoring will be undertaken to ensure legal compliance, allows a simpler approach to legal agreements for individual applications. The amount of mitigation needed for each development will still need to be agreed by the National Park Authority through the nutrient budgets as part of the planning application process.

5. Conclusions

- 5.1 The requirement for 'nitrate neutrality' in new housing and other forms of overnight accommodation in the Solent catchment plays a key role in protecting the integrity of the Solent's designated sites – which include all 26 miles of the National Park's coastline.
- 5.2 Natural England's advice to planning authorities (Version 5, June 2020) and their more recent advice to the Authority (June 2021) covers the approach to nitrate budget calculations; the appropriate types of mitigation; and their spatial focus. In accordance with this advice, new development in the National Park can be mitigation (or 'off-set') in adjacent catchments. Given the absence of nitrate mitigation sites within the National Park, this is the best option for securing mitigation credits at the current time.
- 5.3 The change of use of agricultural land within the appropriate river catchment area to uses such as woodland, heathland, saltmarsh, wetland or wildlife conservation reduces the nitrogen produced. Such an approach also accords with other national agendas around the natural environment. Securing such land use changes and the nitrate mitigation 'credits' provided is legally complex. This report recommends that members endorse the principle of officers working with neighbouring planning authorities and landowners to agree the legal framework to enable the off-site purchase of credits to support planned new development within the National Park.

Recommendation:

That:

- (i) The current Natural England advice on achieving nitrate neutrality in respect of new development in the area of the National Park within the Solent catchment be noted;**
- (ii) Members endorse the principle of working with neighbouring planning authorities and partners on nutrient mitigation schemes as set out in the report; and**
- (iii) authority be delegated to the Executive Director take all action as necessary to put in place the legal framework to secure schemes allowing the off-site purchase of nutrient mitigation credits to support development, including the negotiation and execution of legal agreements as necessary.**

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- Papers:** **PC 381-21** – cover paper
- Equality Impact Assessment:** No impacts have been identified.