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Phosphate Update

In August 2020 this Council, along with the other Somerset Council's as well as Dorset Council received a letter from Natural England concerning high levels of phosphates in the Somerset Levels and Moors and stressing the need to protect them from further phosphate pollution.

Parts of the district fall within the Somerset Levels and Moors which are designated as a Special Protection Area (SPA) under the Habitat Regulations 2017 and listed as a Ramsar Site under the Ramsar Convention.

In light of a court Judgement (known as Dutch N), Natural England have advised SSDC that, in light of the unfavourable condition of the Somerset Levels and Moors Ramsar Site, before determining a planning application/submission that may give rise to additional phosphates within the catchment, competent authorities should undertake a Habitats Regulations Assessment (HRA).

SSDC is taking measures to protect the Somerset Levels and Moors when determining planning submissions following advice from Natural England.

The types of development include:

- New residential units – including tourist accommodation, gypsy sites /pitches
- Agricultural Development – additional barns, slurry stores etc. where it is likely to lead to an increase in herd size
- Prior Notifications of agricultural development where, as a result of the development, the herd size may increase. Also, prior notifications for change of use of office to dwellings and agricultural buildings to dwellings
- Anaerobic Digesters
- Tourism attractions with over-night accommodation

This means the Council is currently unable to determine some applications until the impact the development would have on phosphate levels has been addressed.

In December 2020 the Somerset Councils wrote to the Secretary of State for Housing, Communities and Local Government and the Secretary of State for the Department of Environment, Food and Rural Affairs to set out their concerns relating to the halt in construction across the county resulting from the phosphate issue. A copy of the letter can be found [here](#). The response from the Minister of State for Housing can be found [here](#).

Along with the four District Councils, Somerset County Council and Natural England we have been working to find a solution to the phosphate issues as quickly as possible.

The first step in this process is the publication of a Phosphate Calculator. Read the Council's press release.

The phosphate budget calculator can be used on proposed developments across Somerset. It will provide a transparent and rapid calculation of net phosphate loading

from developments, including phosphate offsetting calculations for on or off site locations. The calculator has been approved by Natural England and it can therefore be used to provide a standardised and transparent decision making tool for the Local Planning Authority and Developers.

It is requested that developers use the calculator to calculate the level of phosphates a proposed development will generate and for this information to be submitted as part of a package of information to support the planning application as it will need to form part of the HRA. A planning application will only be able to proceed to a positive recommendation if the proposed development is phosphate neutral or there is identified mitigation that can be secured. The calculator will remain under constant review and updated to ensure that it reflects any data changes.

The calculator will also be updated in due course to take into account planned upgrades to Waste Water Treatment Works (WwTw) within Somerset by Wessex Water.

The calculator was updated on 8 March 2021 with the following amendments:

- Correction of a glitch relating to the runoff coefficients of meadow / natural grassland
- Removed wetland land use from the proposed land use options in stage 3 and replaced with an option to input bespoke values for wetland or SuDS following guidance by natural England that the previous value is no longer endorsed by them due to uncertainties.
- Definitions have been added for all of the land uses
- Land uses with the same coefficients have been collated where possible
- The runoff coefficient for a bog changed from 0.00 to 0.02 kg/ha/yr
- Permit limits for some Wastewater Treatments Works were updated following advice from the Environment Agency
- Various dwelling types and the appropriate occupancy rates have been added

Note: Calculator was further updated on the 19 March to correct an error in stage 7

The phosphate calculator can be accessed by following this link:

Phosphate Calculator

Note: Calculator updated on the 19 March to correct an error in stage 7.

The calculator is subject to ongoing review and revision. When the document is updated a new link is provided to the calculator. As such any saved versions of the previous link will no longer take you to the calculator. You should always use the embedded link in our website to access the most up to date version.

Following the publication of this calculator, some applicants for development will be able to clarify whether they have the capacity to deliver on site mitigation and therefore be able to present suitable land management proposals to allow their proposals to make progress.

For small scale schemes that can use Septic Tanks or Package Treatment Plants Somerset Ecology Services together with Natural England have prepared Interim Guidelines about the scope to achieve drainage solutions that do not trigger the significant effect test. View the Guidelines [here](#). Please note the original guidance issued in February 2021 has been replaced by updated guidance dated May 2021. The key impact of this change is to reduce the discharge threshold to 2 cubic metres per day.

For those applications where applicant's do not have the capacity to provide an on-site solution the next step for the Somerset Council's to develop an off-site mitigation

strategy to include costed projects that can deliver the necessary mitigation and to apply a cost per dwelling (or alternative, impacted development type) that can allow new development to progress without resulting in a significant impact upon the protected site.

Prior Approvals and Regulation 77

Where the planning authority has issued approval for developments presented under a "Prior Approval" route available under the Town & Country Planning (General Permitted Development) Order 2015 (As amended) the planning authority is required to consider whether the development is likely to have an adverse effect upon the integrity of the Ramsar site. If it concludes that an adverse effect may occur then Article 3(1) of the GPDO imposes a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat.

The permitted development cannot be lawfully commenced until an application under Regulation 77 of the Conservation of Habitats and Species Regulations has been made and approved by the Local Planning Authority. The purpose of this application will be for the Local Planning Authority, in conjunction with the appropriate nature conservation body to make an appropriate assessment of the implications for the protected site.

The Local Planning Authority can only approve the application if it is ascertained that it will not adversely affect the integrity of the site. A prior notification application can therefore be approved without the above assessment taking place, although the commencement cannot lawfully take place until the separate application under Regulation 77 is approved. Regulation 77 does not provide a power to impose conditions on the grant of approval. Accordingly if the assessment of the impact on the protected site requires

mitigation to be secured, such mitigation would need to be secured through a Section 106 planning obligation.

Where applicants are able to acquire credits forming a part of an approved mitigation scheme delivered by a third party the Regulation 77 application will need to be accompanied by a Section 106 Undertaking confirming the level of credit required to mitigate the particular proposal as well as confirmation that a credit forming part of an approved mitigation scheme has been acquired.

Where applicant's propose to provide their own mitigation the Section 106 Undertaking will need to present a detailed mitigation plan including measures to provide for ongoing management for the life of the project as well as confirmation of the method of delivery including whether or not planning permission is required for the mitigation project.

Regulation 77 applications must be accompanied by a £30 application fee.

The Regulation 77 application will allow the planning authority, in conjunction with Natural England to undertake the Habitat Regulations Assessment necessary to enable the development to commence.

We will update our website when the position changes and more information can be made available.

View Somerset Levels map

1. Our position statement

Phosphates Management Strategy Position Statement

The position statement on the progress with the Phosphates Management Strategy is an informative to demonstrate that work on the various elements of the strategy is being progressed in a timely manner to ensure that the elements of the strategy, including the draft supplementary planning document, are delivered by autumn 2021.

Our position statement

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