

Phosphates & Natural England's new guidance issued on 16th March 2022.

Following the issue of Natural England's original letter to the Somerset Council's in August 2020, the Council's undertook a number of projects to enable a phosphate strategy to be progressed, including commissioning Royal Haskoning to develop a "Phosphate Calculator" to enable the Councils to put in place a mechanism to enable applicants to quantify the impact of phosphate emissions arising from any particular development upon the Somerset Levels and Moors Ramsar catchment.

The calculator was developed in conjunction with Natural England and the Environment Agency and published in Spring 2021. The Calculator has been through subsequent iterations as evidence has been tested and refined. This Calculator was used with the Appellant to calculate the necessary mitigation to make the development Phosphate neutral. The Appellant then produced the Fallow Land Strategy which the Council has accepted and does not dispute.

The background to this process can be found at:

<https://www.southsomerset.gov.uk/services/planning/phosphates-and-nutrient-neutrality/somerset-levels-and-moors-ramsar-site/>

On 16th March 2022, Natural England released a number of documents to all local authorities impacted by phosphate and nitrate levels within a variety of catchments. This included the issue of a Natural England phosphate calculator for each affected catchment.

Simultaneously, the Chief Planner wrote to the affected councils to confirm:

"For planning applications in the affected areas, this means you need to consider the possibility of adverse effects, as a result of additional nutrient loads (including from residential developments); as part of a Habitat Regulations Assessment (HRA). In practical terms, this means that before granting any new permissions following the receipt of the Natural England advice, you will need to be confident that the development in question does not require nutrient neutrality to be acceptable under the regulations or that nutrient neutrality is secured, as part of the proposal."

"I appreciate that this will have an immediate impact on planning applications and appeals in affected areas. There may be a need to reconsider the acceptability of current proposals, in light of the advice issued and you may need to consider seeking further information from applicants and reconsult as appropriate. In this situation you should follow the usual process of requesting a reasonable extension of time as necessary."

Prior to receipt of the Natural England and Chief Planner letters the Somerset Authorities in association with Natural England had identified further work was required to refine the Royal Haskoning calculator and catchment map. It was intended that this work would be undertaken in Spring 2022. For clarity, the refinements were not of sufficient impact to require delays in the use of the current version of the Royal Haskoning calculator.

For the Somerset councils' therefore the publications on the 16th March resulted in projects that impacted upon the Levels and Moors Ramsar site being potentially tested against two calculators, both of which had the approval of Natural England, and a requirement from the Chief Planner for authorities to re-consult Natural England as appropriate.

The Somerset councils engaged with Natural England regarding this position and the resultant confusion to applicants and councils as the competent authority regarding the uncertainty that immediately arose regarding the reliability of the established Royal Haskoning calculator.

Natural England in a meeting with the Somerset council's on Monday 21st March acknowledged that both their advice and the Chief Planner letter provided generic statements to all impacted councils regardless of their position in dealing with the nutrient neutrality issue and whilst for some authorities the Natural England calculator would be a helpful next step, for the Somerset authorities which had already published a calculator the result was an alternative calculator. Whilst the Somerset authorities understood and had agreed, in conjunction with Natural England the various factors and calculations within the Royal Haskoning calculator (for instance the 5 mg/l default for treatment works lacking a permit level, they were not aware of the evidence behind a revised, 8 mg/l default.

In response specifically to the Chief Planner letter SSDC re-consulted Natural England on the Fallow Land Strategy that had been previously signed off by Natural England and SSDC's ecologist as delivering nutrient neutrality based upon the current version of the Royal Haskoning calculator. The re-consultation included the Chief Planner letter and identified its requirements from 16th March.

Natural England responded on 24th March to confirm:

"The nutrient neutrality advice released by Natural England on 16 March, accompanied by tools including a generic national methodology and catchment calculators, acknowledged that a transitional period would likely be required where existing, agreed tools and methodologies were in place, such as those for the Somerset Levels and Moors catchment. The intention is to allow planning authorities time to review the new information and consider reasonable timeframes for any changes that are made.

I cannot say with any certainty how long this transitional period will last in Somerset, and your authority may have a view on that, but it is very unlikely to be completed within a few weeks. I would therefore advise that there is no need to revise calculations for the Inquiry next week and that calculations based on the existing tools in Somerset, including those in the Fallow Land Strategy that you refer to below, are acceptable to Natural England."

(e mail attached)

To provide interim clarity for applicants, the Somerset authorities are currently agreeing the wording for a press release to be issued during the week beginning 28th March 2022 confirming that until we jointly advise otherwise, the Royal Haskoning calculator will remain the agreed approach to calculating phosphate impacts