

**Item for Information
Nutrient Neutrality**

Summary: Natural England has published new advice in relation to the legal requirements of the Habitat Regulations to protect watercourses which are designated as Special Areas of Conservation (SACs) from excessive nutrient enrichment.

This protection is expected to be achieved by planning applications and Local Plans demonstrating that developments achieve 'Nutrient Neutrality'. This report explains Nutrient Neutrality and how it might impact on the submission of the North Norfolk Local Plan for Independent Examination.

Recommendations: **That members note the potential implications of Nutrient Neutrality on the timeline for preparation and submission of the Local Plan.**

Cabinet Member(s)	Ward(s) affected
Cllr J Toye	All Wards
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1. Summary

1.1 Both the Norfolk and Suffolk Broads and the River Wensum are designated as Special Areas of Conservation (SACs). This means that they are habitats which are recognised as nationally important for wildlife. Their condition is recorded by the Environment Agency with the objective of ensuring that they remain in favourable status. Both are currently recorded as in less than favourable condition.

1.2 Both are subject to high levels of nutrient enrichment. Nutrients, mainly phosphorous and nitrates, are either discharged into them via Waste Water Recycling Centres (WWRCs) or via run off from agricultural land (fertilisers) or roads (pollutants). As a result Natural England have advised Local Authorities (all Norfolk Authorities) that they would be failing to meet the legal requirements of the Habitat Regulations unless they are satisfied that planning permissions and Local Plans achieve at least a neutral position in relation to nutrient discharge.

1.3 This advice is applicable to a wide range of development proposals including all residential development together with other types of development incorporating overnight accommodation, such as tourist accommodation. The affected areas in Norfolk and North Norfolk are extensive and comprise the drainage catchments for both the River Wensum and the Broads. In North Norfolk, these cover around two thirds of the District including the entirety of the district south of Fakenham and Holt. Only the coastal area in the west of the District including Cromer, Sheringham, Wells and the surrounding areas is not impacted (Map attached Appendix A). Around 75% of existing and proposed future growth in the District lies within one, or both, of the affected catchments. From the date of the issue of the new advice, all qualifying developments within these areas must demonstrate, beyond reasonable scientific doubt, that the proposals will not have an adverse effect on the integrity of the designated sites. Demonstrating 'nutrient neutrality', would meet the legal requirements. In short, each planning application (or Local Plan) must show that the proposal would result in no more nutrients entering the protected watercourse than is currently the case.

1.4 Demonstrating nutrient neutrality for the majority of 'qualify' developments is likely to require some sort of mitigation. In many cases, but not all, such mitigation is likely to comprise off site measures. Until effective mitigation is demonstrated it is unlawful to grant planning permissions for qualify developments. ***All authorities in Norfolk, and most of the Authorities affected elsewhere in the country, have paused granting permissions for such developments pending further consideration of this issue.***

2. Background

2.1 England's protected sites, namely those designated as Natura 2000 sites such as SACs and RAMSARs are a vitally important part of the government's commitments on the environment, including delivering the Environment Act target to halt species decline by 2030. Government is currently consulting on a range of new environmental targets including new water quality targets which would, if adopted, aim to secure substantial reductions in nutrient discharge. Fresh water rivers, lakes and broads are some of the most precious and sensitive habitats, providing wintering and breeding habitats for wetland birds, and supporting rare species. They also provide many important services to society, including flood control, carbon capture, climate change adaptation, and access to nature, with many benefits to public health and wellbeing. Often they are also the receiving water courses for the discharge of treated waste water from Waste Water Recycling Centres (sewage treatment works).

2.2 One of the significant causes of decline in these protected sites is the damage caused by nutrient pollution. Nutrient pollution is a particular problem in freshwater habitats and estuaries. Increased levels of nutrients (especially nitrogen and phosphorus) can speed up the growth of certain plants, disrupting natural processes and impact wildlife. This process damages water dependent sites, harming the plants and wildlife, and affects the oxygen carrying capacity of the water. Sites damaged in this way are described as in 'unfavourable condition'. The sources of excess nutrients are site specific, but predominantly originate from Wastewater Treatment Works which are licenced to discharge treated water into receiving watercourses,

and agricultural pollution caused mainly via the widespread use of artificial fertilisers which run off and leach out of soils.

3. The legal framework for Nutrient Neutrality

3.1 Many of our most internationally important water bodies are designated as protected sites under the [Conservation of Habitats and Species Regulations 2017](#), and termed “Habitats Sites” in the National Planning Policy Framework. Under the Habitats Regulations, competent authorities, such as local planning authorities and the Environment Agency, must assess the environmental impact of projects and plans (such as planning applications or local plans) which affect these sites. Local Planning Authorities can only approve a project, or adopt a Local Plan, if they are satisfied it will have no negative effect on the protected site. Failure to do so may render any permission granted unlawful and subject to potential challenge via judicial review.

3.2 Natural England had previously advised a total of 32 local planning authorities that where protected sites are in unfavourable condition due to excess nutrients, projects and plans should only go ahead if they will not cause additional pollution to sites. They can demonstrate this through “nutrient neutrality”. This means, for example, that new residential development can only happen if the nutrient load created through additional wastewater from the development is mitigated. Elsewhere this mitigation has typically involved creating new wetlands to strip nutrients from water, creating buffer zones to revert to nature, or taking land out of agricultural use to reduce fertiliser run off. This has had a significant negative impact on the number of homes granted planning permission in affected areas.

4. Potential Impacts in North Norfolk

4.1 Natural England published the new advice with no prior discussion or engagement with the impacted authorities. It has immediate effect, with no transitional arrangements, and across the affected areas has resulted in the temporary suspension of the determination of qualifying planning applications. This suspension is likely to remain in place until such time as applicants are able to demonstrate compliance with the Habitat Regulations either via incorporation of on-site mitigations or more likely via contributions towards agreed mitigation projects. The expectation is that such projects will need to be agreed at a whole catchment level so will require endorsement of a number of planning authorities and will require sign-off from Natural England.

4.2 Elsewhere this has resulted in lengthy delays in the processing of applications leading to a range of impacts including:

- Significant reductions in housing delivery including affordable homes.
- Impacts on permissions for other types of developments.
- *Possible* inability to maintain a five-year land supply.
- *Possible* failure to comply with the Housing Delivery Test.

4.3 At this stage, the impacts on Local Plan production remain less clear. There are two separate issues which the Plan will need to address to the satisfaction of the Inspector in order for the Plan to be found sound. Firstly, that the Plan may lawfully be adopted. Secondly that, once adopted it is likely to be effective in delivering the development proposed when it is required.

4.4 Under regulation 63(5) of the Habitats Regs, a local plan may not be given effect i.e. adopted, unless the competent authority is satisfied beyond reasonable scientific doubt that its proposals will not have an adverse effect on the integrity of any relevant site. The Inspectors will expect the Authority to show that this is the case, otherwise the Plan could not be lawfully adopted.

4.5 Secondly, the Inspectors will need to conclude that the Plan will be effective and will deliver the required development at the right time to address identified needs. This means that the Plan will need to be clear in relation to any constraints which might impact on the timing of delivery

4.6 It appears likely that a Plan which does not effectively address Nutrient Neutrality by working with Natural England to agree at least a broad outline of a deliverable package of mitigation and other appropriate policy measures would fail to meet the legal requirements of the Habitat Regs, and the soundness tests of local plan examination.

4.7 It appears likely that addressing these issues could take a considerable period and as a minimum will require:

1. An update of the Local Plan Habitat Regulation Assessment which support the Plan to address the issue of nutrient enrichment.
2. Inclusion of any required policy modifications in the Plan – most likely requiring nutrient neutrality to be demonstrated in association with qualifying developments
3. Development of a catchment wide mitigation strategy with partner authorities, Natural England and other key stakeholders.

5 Recommendations

That Working Party note the potential delays in submission of the Local Plan for examination.

6. Legal Implications and Risks

- 6.1 The Council must produce a Local Plan which complies with various regulatory and legal requirements and in determining its policy approaches must be justified and underpinned by up to date and proportionate evidence, be informed by appropriate sustainability appraisals and take account of and demonstrate how public feedback, national policy & guidance have been used to inform the production through the application of a consistent methodology.
- 6.2 The statutory process requires plan production to accord to the statutory requirements as set out in The Town and Country Planning (Local Planning),

(England) Regulations 2012 (as amended). Failure to undertake plan preparation in accordance with the regulations and NPPF is likely to render the plan 'unsound' at examination and result in the need to return to earlier stages. Substantial additional costs would be incurred.

- 6.3 Failure to meet the legal requirements of the Habitat regulations would render the Plan both unlawful and unsound.

7. Financial Implications and Risks

- 7.1 Failure to undertake Plan preparation in accordance with the regulations and NPPF is likely to render the Plan 'unsound' at examination and result in the need to return to earlier stages. Substantial additional costs would be incurred.
- 7.2 Failure to reach the required stage of plan production ahead of any transitional arrangements introduced through planning reform would introduce substantial delay and costs into the production of a revised Local Plan.

Appendices

Appendix 1 – Map of catchment areas affected.