

Date: 16 March 2022



To: LPA Chief Executives & Heads of Planning,  
County Council Chief Executives and Heads of Planning,  
EA Area and National Team Directors,  
Planning Inspectorate,  
Natural Resources Wales (Cross border sites only) &  
Secretary of State for Department for Levelling Up Housing & Communities  
(DLUHC)

**BY EMAIL ONLY**

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Dear Sir / Madam

**Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites.**

**1.0 Summary**

This letter sets out Natural England's advice for development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites<sup>1</sup> cannot be ruled out.

It also provides an update to those Local Planning Authorities (LPAs) whose areas include catchments where Natural England has already advised on how to assess the nutrient impacts of new development and mitigate any adverse effects, including through application of the nutrient neutrality methodology. It includes:

- Supporting Information (Annex A) which summarises the key tools and guidance documents available and how to take account of certain issues in any Habitats Regulations Assessment (HRA)
- a national map showing the affected catchments (Annex B)
- a list of habitats sites in unfavourable condition due to nutrients, where new development may have an adverse effect by contributing additional nutrients and therefore where nutrient neutrality is a potential solution to enable development to proceed (Annex C)
- a national generic Nutrient Neutrality Methodology (attached in covering email with this letter)
- a nutrient assessment methodology decision tree (Annex D)
- a flow diagram of the HRA process (Annex E)
- guidance on thresholds for insignificant effects for phosphorus discharges to ground (Annex F)
- Natural England Area Team contacts for each habitats site and catchment (Annex G)
- Catchment Specific Nutrient Neutrality Calculators and associated Calculator Guidance (attached in covering email with this letter)
- Site specific catchment maps (attached in covering email with this letter)
- Site specific evidence documents (new catchments only - attached in covering email with this letter)
- Nutrient Neutrality Principles (attached in covering email with this letter)

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<sup>1</sup> Habitat sites are sites which are protected by the Habitats Regulations and includes Special Areas of Conservation (SAC) and Special Protection Areas (SPA). Any proposals that could affect them require a Habitats Regulations Assessment (HRA). Ramsar sites are also included as these are protected as a matter of government policy and also require a HRA where proposals may affect them.

- Nutrient Neutrality – A Summary Guide to Nutrient Neutrality (attached in covering email with this letter)

**Natural England advises you, as the Competent Authority under the Habitats Regulations, to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.**

This letter provides advice on the assessment of new plans and projects under Regulation 63 of the Habitats Regulations. The purpose of that assessment is to avoid adverse effects occurring on habitats sites as a result of the nutrients released by those plans and projects. This advice does not address the positive measures that will need to be implemented to reduce nutrient impacts from existing sources, such as existing developments, agriculture, and the treatment and disposal of wastewater. It proposes that nutrient neutrality might be an approach that planning authorities wish to explore.

This letter is being sent to the Environment Agency (EA) and all Heads of Planning and Chief Executives for the Local Planning Authorities (LPAs) which are affected by this advice as well as the following:

- The Planning Inspectorate as the Competent Authority for appeals and local plan examinations.
- Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC) as Competent Authority for called in decisions/appeals.
- County Councils where there is a 2-tier authority.
- Natural Resources Wales (for cross border sites).

NE will also be writing to Ofwat and water companies to inform them of our advice.

## **2.0 Background**

In freshwater habitats and estuaries, poor water quality due to nutrient enrichment from elevated nitrogen and phosphorus levels is one of the primary reasons for habitats sites being in unfavourable condition. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication. The effects of this look different depending on the habitat, however in each case, there is a loss of biodiversity, leading to sites being in 'unfavourable condition'. To achieve the necessary improvements in water quality, it is becoming increasingly evident that in many cases substantial reductions in nutrients are needed. In addition, for habitats sites that are unfavourable due to nutrients, and where there is considerable development pressure, mitigation solutions are likely to be needed to enable new development to proceed without causing further harm.

In light of this serious nutrient issue, Natural England has recently reviewed its advice on the impact of nutrients on habitats sites which are already in unfavourable condition. Natural England is now advising that there is a risk of significant effects in more cases where habitats sites are in unfavourable condition due to exceeded nutrient thresholds. More plans and projects are therefore likely to proceed to appropriate assessment.

The principles underpinning HRAs are well established<sup>2</sup>. At the screening stage, plans and projects should only be granted consent where it is possible to exclude, on the basis of objective information, that the plan or project will have significant effects on the sites concerned. Where it is not possible to rule out likely significant effects, plans and projects should be subject to an appropriate assessment. That appropriate assessment must contain complete, precise and definitive findings which are capable of removing all reasonable scientific doubt as to the absence of adverse effects on the integrity of the site.

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<sup>2</sup> See, amongst others Case C-127/02 *Waddenvereniging and Vogelsbeschermingvereniging (Waddenzee)*; *R (Champion) v North Norfolk DC* [2015] EKC 52 (Champion); C-323/17 *People Over Wind, Peter Sweetman v Coillte Teoranta (People Over Wind)*; C-461/17 *Brian Holohan and Others v An Bord Pleanála (Holohan)*; Joined Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Other (the Dutch Nitrogen cases)*.

Appropriate assessments should be made in light of the characteristics and specific environmental conditions of the habitats site. Where sites are already in unfavourable condition due to elevated nutrient levels, Natural England considers that competent authorities will need to carefully justify how further inputs from new plans or projects, either alone or in combination, will not adversely affect the integrity of the site in view of the conservation objectives. This should be assessed on a case-by-case basis through appropriate assessment of the effects of the plan or project. In Natural England's view, the circumstances in which a Competent Authority can allow such plans or projects may be limited. Developments that contribute water quality effects at habitats sites may not meet the no adverse effect on site integrity test without mitigation.

Mitigation through nutrient neutrality offers a potential solution. Nutrient neutrality is an approach which enables decision makers to assess and quantify mitigation requirements of new developments. It allows new developments to be approved with no net increase in nutrient loading within the catchments of the affected habitats site.

Where properly applied, Natural England considers that nutrient neutrality is an acceptable means of counterbalancing nutrient impacts from development to demonstrate no adverse effect on the integrity of habitats sites and we have provided guidance and tools to enable you to do this.

### **3.0 Natural England's Role and Advice**

Natural England is the government's adviser for the natural environment in England. As a statutory consultee in the planning and environmental assessment processes we provide advice to planning authorities to support them in making plans and decisions that conserve and enhance the natural environment and contribute to sustainable development.

In reviewing our advice on water quality effects on habitats sites Natural England has:

- Undertaken an internal evidence review to identify an initial list of water dependent habitats sites (which includes their underpinning Sites of Special Scientific Interest) that are in unfavourable condition due to elevated nutrient levels (phosphorus or nitrogen or both). These sites are listed in Annex C. Development which will add nutrients to these sites may not meet the site integrity test without mitigation. This will need to be explored as part of the HRA. Nutrient neutrality is an approach which could be used as suitable mitigation for water quality impacts for development within the catchments of these sites (please refer to the Nutrient Neutrality – A Summary Guide for an explanation of nutrient neutrality).
- Revised our internal guidance for planning, permitting and other HRA consultations which have the potential to have water quality and in particular nutrient effects on a habitats site.

This advice applies to the following types of habitats sites:

- Special Protection Areas (SPA) designated under the Habitat Regulations 2017.
- Special Areas of Conservation (SAC) designated under the Habitat Regulations 2017.
- Sites designated under the Ramsar Convention, which as a matter of national policy are afforded the same protection as if they were designated under the Habitat Regulations 2017.
- Sites identified or required as compensatory measures for adverse effects on SPAs, SACs and Ramsar sites.

A plan or project will be relevant and have the potential to affect the water quality of the designated site where:

- It creates a source of water pollution (e.g. discharge, surface run off, leaching to groundwater etc) of either a continuous or intermittent nature or has an impact on water quality (e.g. reduces dilution).

AND

- There is hydrological connectivity with the designated site i.e. it is within the relevant surface and/or groundwater catchment.

AND

- The designated sites interest features are sensitive to the water quality pollutant/impact from the plan/project.

**For LPAs where Natural England has already provided advice on this matter:** Natural England has already provided advice to some local authorities on how to address the impacts of development which has the potential to increase nutrient emissions and adversely affect the integrity of habitats protected sites. The sites subject to this previous advice are listed in Annex C Table 1. There is an agreed approach between Natural England and these authorities on applying nutrient neutrality as a mitigation measure to enable development to proceed without causing harm to the integrity of those habitats sites (which are in unfavourable condition due to elevated nutrient levels). We have advised that a likely significant effect from development that increases these nutrients cannot be ruled out<sup>3</sup>. In the absence of evidence to the contrary, our advice has been and continues to be that all new housing development proposals (including any other additional locally specific advice which has been issued), will need to consider, via an appropriate assessment, the impact of adding to the existing nutrients levels / loads where water quality targets are not being achieved for these habitats sites. Having carried out that assessment, permission for the plan or project may only be given if the assessment allows you to be certain that it will not have an adverse impact on the integrity of the site i.e. where no reasonable scientific doubt remains as to the absence of effects<sup>4</sup>.

We are writing to your authority now to keep you updated on the development of the approach including the availability of an updated package of tools and guidance. We recommend that your authority moves to using the updated generic Nutrient Neutrality Methodology (attached) and the updated catchment calculators (attached) in preference to existing methodologies whether produced by Natural England or your own authority. Your authority will be best placed to consider how it transitions to the new tools and guidance. Natural England recognises that for some existing catchments where nutrient neutrality is being implemented and mitigation is being actively progressed, authorities may need to consider the associated practicalities of moving to the new guidance whilst recognising their role as Competent Authority. The updated generic Nutrient Neutrality Methodology and associated catchment calculators incorporates new information and evidence, which is explained in Annex A.

**For local authorities where this advice is new:** Natural England advises you, as the Competent Authority under the Habitats Regulations, to fully consider the nutrients implications on the sites identified in Annex C Table 2 when determining relevant plans or projects and to secure appropriate mitigation measures (see Annex A, para 6 for mitigation options).

When considering a plan or project that may give rise to additional nutrients within the affected catchments, you should undertake a HRA. An Appropriate Assessment will be needed where a likely significant effect (alone or in-combination) cannot be ruled out, even where the proposal contains mitigation provisions. The need for an Appropriate Assessment of proposals that includes mitigation measures intended to avoid or reduce the harmful effects of a plan or project is well established in case law<sup>5</sup>. The Competent Authority should only grant permission if they have made certain at the time of Appropriate Assessment that the plan or project will not adversely affect the integrity of a habitats site i.e. where no reasonable scientific doubt remains as to the absence of effects<sup>6</sup>.

The application of nutrient neutrality as mitigation for water quality effects from development has been tested in *Wyatt v Fareham case*<sup>7</sup>. The High Court dismissed an application for judicial review that planning permission which applied nutrient neutrality as mitigation did not satisfy the Habitats

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<sup>3</sup> Natural England has agreed that for some sites it is appropriate to screen out insignificant discharges to ground of phosphorus where certain criteria are met. See Annex E for further details

<sup>4</sup> Unless the further conditions in regs. 64 and 68 apply.

<sup>5</sup> *Gladman Developments Limited v S of S for Housing, Communities and Local Government and another* [2019] EWHC 2001 (Admin)

<sup>6</sup> Unless the further conditions in regs. 64 and 68 apply.

<sup>7</sup> *Wyatt v Fareham BC* [2021] EWHC 1434 (Admin)

Regulations. The case has now been appealed. Where properly applied Natural England considers that 'nutrient neutrality' can be a robust way to mitigate nutrient impacts from development.

Your authority may wish to consider a nutrient neutrality approach as a potential solution to enable developments to proceed in the catchment(s) where an adverse effect on site integrity cannot be ruled out. For such an approach to be appropriate, the measures used to mitigate nutrients impacts should not compromise the ability to restore the designated site to favourable condition and achieve the conservation objectives (Further guidance is provided on what this means in practice in the Nutrient Neutrality Principles document, attached).

#### **4.0 Plans and Projects Affected**

##### **Development**

The Nutrient Neutrality Methodology enables a nutrient budget to be calculated for all types of development that would result in a net increase in population served by a wastewater system.

It covers all types of overnight accommodation including new homes, student accommodation, care homes, tourism attractions and tourist accommodation and permitted development<sup>8</sup> (which gives rise to new overnight accommodation) under the Town and Country Planning (General Permitted Development) (England) Order 2015<sup>9</sup>.

For authorities where Natural England's advice is already being applied the development types affected remain as previously advised but are summarised in Table 1 Annex C.

This advice also applies to planning applications at the reserved matters approval stage of the planning application process, and to applications for grants of prior approval and/or certificates of lawfulness for a proposed use or operation.

Tourism attractions and tourism accommodation are included in the methodology as these land uses attract people into the catchment and generate additional wastewater and consequential nutrient loading on the designated sites. This includes self-service and serviced tourist accommodation such as hotels, guest houses, bed and breakfasts, self-catering holiday chalets and static caravan sites. Other types of proposal should be considered on their individual merits, for example conference facilities that generate overnight stays.

Other types of business or commercial development, not involving overnight accommodation, will generally not need to be included in the assessment unless they have other (non-sewerage) water quality implications. For the purposes of the Methodology, it is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.

##### **Permitting**

Activities that require an environmental permit (such as waste operations, water discharge activities and groundwater activities) should be subject to an HRA where they are carried out within the catchment of a habitats site and there is a risk that they may affect water quality within that catchment.

Where a likely significant effect on the habitats site cannot be ruled out, they should be subject to an appropriate assessment. Mitigation will be required if an adverse effect on the integrity of the site cannot be ruled out, although depending on the type of permit being considered it may not be appropriate, to apply the standard nutrient neutrality methodology to such plans and projects. This would need to be considered on a case by case basis.

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<sup>8</sup> Please note the condition on permitted development relating to European sites is set out in Regulation 75 of the Habitats Regulations 2017. The statutory condition on permitted development in regulation 75 only applies the HRA procedure (via regulations 76 and 77) to statutory European Sites. It therefore only applies to Special Areas of Conservation (SAC's) and Special Protection Areas (SPA's) it does not apply to Ramsar sites, proposed SAC's or potential SPA's or to sites identified, or required, as compensatory measures for adverse effects on habitats sites.

<sup>9</sup> Planning permission granted for permitted development is subject to regs. 75-78 of the Habitats Regulations.

## Other Plans and Projects

Whilst nutrient neutrality is only currently being applied to development that would result in a net increase in population served by a wastewater system, the HRA requirements will apply to any plans or projects, including agricultural or industrial plans and projects that have the potential to release additional nitrogen and / or phosphorus into the system and that require an LPAs or the EA's consent, permission or approval.

A case-by-case approach will need to be adopted for these. Early discussions with Natural England via our chargeable Discretionary Advice Service (DAS) are recommended [Natural England Discretionary Advice Service](#).

Competent Authorities must be cognisant of their duties under the Habitats Regulations when performing any of their functions. Competent Authorities may reasonably conclude that a HRA is required whenever they receive an application for any consent, approval, licence or permission for plans and projects not expressly referenced in this advice that may affect a habitats site. Natural England would welcome further discussion with you on any other types of plans and projects that you consider may have nutrients impacts.

### 5.0 Supporting Information

Annex A of this letter outlines the tools and guidance documents that will support LPAs in implementing this advice. There are also a suite of documents appended to this email including the generic Nutrient Neutrality Methodology, catchment specific calculators and associated guidance, catchment maps, Nutrient Neutrality Principles, Nutrient Neutrality – A Summary Guide and site specific evidence documents. We recommend reading the Nutrient Neutrality – A Summary Guide to help your understanding of what is a complex issue. Natural England has been working closely across government departments (Defra and DLUHC) in the preparation of this support package and will continue to do so in the development of longer term solutions.

The Planning Advisory Service will be hosting detailed teach ins and Q&A sessions on nutrient neutrality and we therefore strongly advise joining these as a first step to understanding the issue and as an opportunity to raise questions. Please follow the link for further details: [Nutrient neutrality and the planning system | Local Government Association](#)

Area Team contacts have been provided in Annex G as an initial point of contact for informal discussions. However, should you have any detailed or technical questions concerning this advice, please contact [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk) marked for the attention of the relevant Area Team. Please ensure that any formal consultations are also sent to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours faithfully,



Melanie Hughes

Sustainable Development Programme Director

## ANNEX A: Supporting Information

This Annex summarises the key information and tools that are available to enable LPAs to implement Natural England's advice contained in this letter. It also explains how to take account of the following issues in any HRA:

- Habitats sites which are in unfavourable condition due to nutrients
- Use of permitted Wastewater Treatment Works (WwTW) headroom
- Summary of the updated generic Nutrient Neutrality Methodology
- Status of the National Nutrient Methodology and Calculators
- Mitigation options
- Forthcoming tools and guidance

### 1.0 Available Tools and Guidance

To help competent authorities take account of these water quality issues and develop strategic solutions, Natural England has provisionally developed the following tools and guidance:

1. A national generic Nutrient Neutrality Methodology (attached)
2. A national map showing the affected catchments (Annex B)
3. Table 1 listing the habitats sites that Natural England has previously advised are in unfavourable condition due to excessive nutrients and will require a HRA and where nutrient neutrality is a potential solution to enable development to proceed (Annex C).
4. Table 2 listing the additional habitats sites which are in unfavourable condition due to excessive nutrients which will require a HRA and where nutrient neutrality is a potential solution to enable development to proceed (Annex C).
5. A nutrient assessment methodology decision tree (Annex D)
6. A HRA Flow chart (Annex E)
7. Thresholds for insignificant levels of phosphorus discharges to ground (Annex F)
8. Area Team contacts for each habitats site and catchment (Annex G)
9. Catchment specific Nutrient Neutrality Calculators and associated Calculator Guidance
10. Detailed catchment specific maps (attached)
11. Evidence summary for each habitats site (new catchments only) including, brief site description, habitats site designated water dependent features, names of component SSSIs where relevant and summary of water quality data including targets and exceedances (attached).
12. Nutrient Neutrality Principles (attached)
13. Nutrient Neutrality – A Summary Guide to Nutrient Neutrality

**The Nutrient Neutrality Methodology** is a national generic methodology which can be used for all affected catchments and sites (as listed in Annex C). The methodology can be used for both phosphorus and nitrogen. It provides a framework and a set of agreed "input values" to enable a nutrient budget to be determined for any development draining into a habitats site. These values are based on updated information and evidence; Natural England considers that they are suitably precautionary<sup>10</sup> and address impacts in perpetuity to remove risks to site integrity beyond reasonable scientific doubt. The nutrient budget calculated should form part of the Appropriate Assessment (AA) of any HRA produced to address nutrient impacts on affected habitats sites.

**The HRA Flow Chart** summarises the key stages in the HRA process and the questions which need to be answered in relation to the habitats site and the proposed development at the screening and the appropriate assessment stages.

**Guidance on Thresholds for Insignificant Effects from Phosphorus Only.** This identifies the conditions which must be met to enable the effects of phosphorus, where it discharges to ground, to be considered as being insignificant. Where best available evidence indicates that these

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<sup>10</sup> Precautionary values are used for key variables and an additional buffer is applied in stage 4 of the methodology.

conditions are met, Natural England's advice is that a conclusion of no LSE, either alone or in combination, for phosphorus can be reached. Note this does not apply to nitrogen.

**The Catchment Calculators** have been developed for each designated habitats site and its catchment. They enable nutrient budgets to be calculated for phosphorus and nitrogen. The calculators will be in an Excel spreadsheet format. There will be an associated guidance document for each calculator.

**Site Specific Catchment Maps** show the extent of the affected catchment. Natural England advises that a HRA of water quality impacts on the habitats sites is undertaken for developments that are within, or discharge to, Wastewater Treatment Works (WwTW) that are within these catchments.

**Evidence Summary for each habitats site.** This document includes the site name and site details including reasons for designation, nutrient pressure (i.e. whether it is nitrogen, phosphorus or both), water quality evidence and information on the underpinning Sites of Special Scientific Interest (SSSIs) for the habitats site.

**Nutrient Neutrality Principles.** These set out the key principles which must be met for nutrient neutrality to be an effective mitigation measure which can be relied upon to enable development to proceed that would otherwise adversely affect the integrity of habitats sites.

## **2.0 Where a Habitats Site is Currently Unfavourable Due to Nutrients**

Where a site is considered unfavourable due to exceeded nutrient levels and there is the possibility of further nutrient loading from a new plan or project, Natural England advises that Competent Authorities need to carefully consider the circumstances where plans or projects can be authorised. In many cases, an Appropriate Assessment (AA) is likely to be the appropriate stage to consider these matters more thoroughly.

Where the plan or project will (or it cannot be ascertained that it will not) contribute additional significant nutrients, alone or in-combination directly to, or upstream of, any unfavourable location which is important for maintaining or restoring the sensitive designated interest features, then Natural England advises that either there is a Likely Significant Effect (LSE) or a LSE cannot be ruled out and therefore, an Appropriate Assessment should be undertaken. We advise that as the Competent Authority you should consider the implications of relevant case law in any HRA. Annex F identifies "Thresholds for Insignificant Effects" for phosphorus discharges to ground.

## **3.0 Use of Permitted Wastewater Treatment Works (WwTW) Headroom**

Headroom (flow or quality) in WwTW discharge permits has largely come about due to decisions being made by the Competent Authority based on taking a 'fair share' approach that relies on proportionality (i.e. relying on action by each sector to achieve favourable conservation status) and/or through water companies significantly over-performing on their permits. In many situations, headroom has been eroded as the habitats site water quality objectives have become more stringent, or there is new available information since the last AA of the permit.

Competent Authorities who wish to rely on the reasoning or conclusions in previous AA should consider the age of the AA, its robustness and whether evidence or circumstances have changed and therefore whether additional consideration is needed. Careful consideration will be needed where the habitats site feature is unfavourable due to elevated nutrient levels and plans or projects contribute further loading. Competent Authorities should consider:

- Any changes to the habitats site nutrient objectives or related ecological objectives since the AA was undertaken.
- Any new relevant information since the AA e.g. change to site condition, information on how measures relied on in the AA have performed.



- Whether the previous AA complies with current legal requirements as a result of any changes to Case law.
- Whether any measures taken into account in the AA can be still be safely relied on to deliver the anticipated effects so that no reasonable scientific doubt remains as to their efficacy and delivery. For example, if a decision on a permit was based on another sector (such as agriculture) also delivering reductions to enable the site to achieve the water quality objectives, those measures to be taken on other sectors should be sufficiently certain so that they can lawfully be considered in an AA.

The preferred approach is to have a strategic plan which considers what is required from all sources (e.g. Diffuse Water Pollution Plan /Nutrient Management Plan) based on the latest evidence, is sufficiently certain and can therefore be used to identify and enable the development of WwTW headroom that can be used for growth, which competent authorities can then rely on to inform their AA. However due to the difficulties with providing sufficient certainty in these plans this may not be possible in the short to medium term for some habitats sites and may remain a longer term aim.

#### 4.0 Updated Nutrient Neutrality Methodology

This new methodology incorporates updated information as detailed below. For those authorities which are currently implementing nutrient neutrality Natural England recommends that they move to applying the updated methodology (attached) and the catchment calculators (attached) in preference to any existing methodologies whether produced by Natural England or your own authority.

- The Generic Methodology includes the latest version of Farmscoper (version 5) which includes more up to date values for the various variables. The updated approach also uses the actual outputs rather than averaged values from Farmscoper for detailed farm types broken down by rainfall, drainage and Nitrate Vulnerable Zones. The benefit of taking the detailed farm types approach is that it offers a more specific budget calculation for the actual nutrient losses from the development or mitigation land to be taken into account.
- The Generic Methodology covers all potential different situations on water usage that might occur across the full range of catchments.
- It provides a more consistent approach for dealing with onsite wastewater treatment systems.
- Pet waste is not considered in the greenspace export coefficient as this type of waste is taken into account in the urban surface water run off element of the calculator.
- The new methodology uses a different approach for calculating the urban export co-efficient so that it is applicable across the country. The values take into account the type of urban land and development site specific rainfall. This results in export values that will be specific to the rainfall at the location within the catchment.

#### 5.0 Status of the National Nutrient Methodology and Calculators

Natural England is issuing the National Generic Methodology (and the associated catchment calculators) to provide Local Planning Authorities with the tools to progress nutrient neutrality as a potential mitigation solution to enable development that would otherwise adversely affect the integrity of habitats sites to proceed. However, at present this guidance **should be considered as provisional** due to the outstanding appeal to the Court of Appeal in **Wyatt v Fareham BC** [2021] EWHC 1434 (Admin), which although not concerned with the National Generic Nutrient Neutrality Methodology, could impact on certain elements contained within the Methodology because that case considers a similar (but not identical) earlier methodology for the Solent region. The Court of Appeal has granted permission for the appeal to be heard. The dates of the hearing are 5<sup>th</sup> and 6<sup>th</sup> April 2022. The outcome of the appeal hearing is not known. Nevertheless, Natural England is encouraged that the Judge in the High Court upheld Natural England's nutrient neutrality approach in principle and has responded to the Judge's comments in the Methodology. Natural England

intends to review this Methodology following judgement in the appeal in **Wyatt** which may require amendments to be made to the Methodology.

## 6.0. Mitigation Options

Mitigation to enable development to proceed within the affected catchments of the designated sites listed in Annex C can include nutrient neutrality as an option to avoid either permanent, or temporary increases in nutrients on the affected sites. Suitable mitigation measures might include constructed wetlands, land use change or retrofitting of Sustainable Urban Drainage systems (SUDs). Such measures must be effective for the duration of the impacts. In the case of new housing the duration of the impact is typically taken as in perpetuity, with the costs of maintaining, monitoring and enforcing mitigation calculated for a minimum of 80 – 125 years. It does not, however, follow that mitigation is not needed after that period, but rather the expectation is the mitigation will continue indefinitely (e.g. through securing appropriate permanent land use change).

There may be circumstances in which it is possible to define the 'lifetime of the development' more precisely, for example where consent is sought for the construction and use of a temporary structure that will be removed after a fixed period. In those circumstances, a Competent Authority may require mitigation to be maintained for a shorter period providing the Competent Authority is certain that adverse impacts on the integrity of a habitats site will not occur after the mitigation is removed. In those circumstances, a bespoke nutrient budget will be required, and early discussions with Natural England via our chargeable DAS are recommended [Natural England Discretionary Advice Service](#).

Natural England has identified that nutrient neutrality is an option which can be used to mitigate the impacts of excess nutrients from development for the majority of sites listed in Annex C. However, there may be instances where due to the nature of the habitats site and/ or the location and scale of development it may not be appropriate to apply nutrient neutrality, as doing so would compromise the ability to restore the site to favourable conservation status in the long term, or it may not be possible to identify mitigation which will enable the development to be nutrient neutral. Situations where this is more likely to apply are explained in Annex C.

The extent of these nutrient neutrality constraints will be site and often development specific so will need to be considered on a case-by-case basis. Natural England recommends that Competent Authorities should carefully consider whether it is possible to allocate development in catchments or parts of catchments of sites which are likely to have significant constraints in being able to apply nutrient neutrality. Where nutrient neutrality cannot effectively mitigate the nutrient impacts of new developments, then consent should only be granted where other mitigation can effectively prevent an adverse effect on the integrity of site.

When consulting Natural England on proposals with the potential to affect water quality resulting in nutrient impacts on habitats sites, please ensure that a Habitats Regulations Assessment is included which has been informed by the Nutrient Neutrality Methodology (attached). Further guidance on the process is provided by the Decision Tree (Annex D) and HRA flow Diagram (Annex E) Without this information Natural England will not be in a position to comment on the significance of the impacts or the scope of any mitigation which may be required. For large scale developments, Natural England may provide advice on a cost recovery basis through our Discretionary Advice Service

All queries in relation to the application of this methodology to specific applications or development of strategic solutions will be treated as pre-application advice and therefore subject to chargeable services.

## 7.0 Forthcoming Tools and Guidance

**Natural England's SSSI Impact Risk Zones** will also be updated to include the affected catchments.

## Annex B: National Map of Catchments



### European protected sites requiring nutrient neutrality strategic solutions Nutrient neutrality SSSI catchments

- SSSI subject to nutrient neutrality strategy
- Nutrient neutrality SSSI catchment

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**Annex C: Habitats sites in unfavourable condition and where nutrient neutrality has been identified as a potential mitigation solution to enable development to proceed.**

**Table 1: Existing sites in unfavourable condition due to excessive nutrients which require a Habitats Regulations Assessment (HRA) and where nutrient neutrality is being deployed as mitigation.**

| <b>Habitats Site &amp; Catchment</b> | <b>LPA Affected</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>Nutrient</b>                                                                                                                  | <b>Summary of Development Types Affected</b>                                                                                                                  | <b>Nutrient Neutrality Methodology and Calculator produced by Natural England or LPA*.</b> |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <b>Poole Harbour SPA / Ramsar</b>    | Dorset Council<br>Bournemouth, Christchurch and Poole Council                                                                                                                                                                                                                                                                                                                                                                                                                                   | Nitrogen and Phosphorus                                                                                                          | Additional development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation | Nitrogen Reduction in Poole Harbour Supplementary Planning Document (SPD)                  |
| <b>The Solent</b>                    | Basingstoke and Deane Borough Council<br>Chichester District Council<br>East Hampshire District Council<br>Eastleigh Borough Council<br>Fareham Borough Council<br>Gosport Borough Council<br>Havant Borough Council<br>Isle of Wight Council<br>New Forest District Council<br>New Forest National Park Authority<br>Portsmouth City Council<br>South Downs National Park Authority<br>Southampton City Council<br>Test Valley Borough Council<br>Wiltshire Council<br>Winchester City Council | Nitrogen for existing catchment (River Itchen includes Phosphorus and Nitrogen. See River Itchen in Table 2 for further details) | Additional development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation | Methodology and Calculator developed and provided by Natural England.                      |
| <b>River Avon SAC</b>                | Bournemouth Christchurch and Poole Council                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Phosphorus                                                                                                                       | Additional development that will result in a net increase in population served by a                                                                           | Interim Phosphate Calculator                                                               |

|                                                                 |                                                                                                                                                                                                                             |                         |                                                                                                                                                                                                                                                                                         |                                                                                           |
|-----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
|                                                                 | Dorset Council<br>New Forest District Council<br>New Forest National Park Authority<br>Test Valley Borough Council<br>Wiltshire Council                                                                                     |                         | wastewater system, including new homes, student and tourist accommodation                                                                                                                                                                                                               |                                                                                           |
| <b>River Camel SAC</b>                                          | Cornwall Council                                                                                                                                                                                                            | Phosphorus              | <ul style="list-style-type: none"> <li>Additional development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation.</li> <li>Additional locally specific advice</li> </ul>                            | Phosphate Calculator developed by consultants on behalf of Local Planning Authority       |
| <b>Stodmarsh SAC/Ramsar</b>                                     | Ashford Borough Council<br>Canterbury City Council<br>Dover District Council<br>Folkestone and Hythe District Council<br>Maidstone Borough Council<br>Swale Borough Council                                                 | Nitrogen and Phosphorus | Additional development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation.                                                                                                                          | Methodology and Calculator developed and provided by Natural England.                     |
| <b>River Wye SAC (only applies to the River Lugg component)</b> | Herefordshire Council<br>Malvern Hills District Council                                                                                                                                                                     | Phosphorus              | Additional development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation.                                                                                                                          | Phosphate Calculator developed by consultants on behalf of Local Planning Authority       |
| <b>Somerset Levels and Moors Ramsar</b>                         | Dorset Council<br>Exmoor National Park<br>Mendip District Council<br>Mid Devon District Council<br>Sedgemoor District Council<br>Somerset West and Taunton District Council<br>South Somerset District<br>Wiltshire Council | Phosphorus              | <ul style="list-style-type: none"> <li>Additional residential and commercial development that will result in a net increase in population served by a wastewater system, including new homes, student and tourist accommodation.</li> <li>Additional locally specific advice</li> </ul> | Methodology and calculator developed by consultants on behalf of Local Planning Authority |

\*Note: Nutrient neutrality calculators have been provided for all the catchments listed above, even where there is an existing nutrient neutrality calculator .

**Table 2: Additional habitats sites in unfavourable condition due to excessive nutrients which require a Habitats Regulations Assessment (HRA) and where nutrient neutrality is a potential solution to enable development to proceed.**

| <b>Habitats site &amp; Catchment</b>                                                                                                                                                                    | <b>LPA Affected</b>                                                                                                                                                                                                                                              | <b>Nutrient</b>         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| Chesil and the Fleet SAC/SPA                                                                                                                                                                            | Dorset Council                                                                                                                                                                                                                                                   | Nitrogen and Phosphorus |
| Esthwaite Water Ramsar                                                                                                                                                                                  | South Lakeland Council                                                                                                                                                                                                                                           | Phosphorus              |
| Hornsea Mere SPA                                                                                                                                                                                        | East Riding of Yorkshire Council                                                                                                                                                                                                                                 | Nitrogen and Phosphorus |
| Lindisfarne SPA/Ramsar                                                                                                                                                                                  | Northumberland County Council                                                                                                                                                                                                                                    | Nitrogen                |
| Oak Mere SAC                                                                                                                                                                                            | Cheshire West and Chester Council                                                                                                                                                                                                                                | Phosphorus              |
| Peak District Dales SAC                                                                                                                                                                                 | Derbyshire Dales District Council<br>High Peak Borough Council<br>Peak District National Park Authority                                                                                                                                                          | Phosphorus              |
| River Axe SAC                                                                                                                                                                                           | Dorset Council<br>East Devon District Council<br>Somerset West & Taunton Council<br>South Somerset District Council                                                                                                                                              | Phosphorus              |
| River Clun SAC                                                                                                                                                                                          | Herefordshire Council<br>Shropshire Council                                                                                                                                                                                                                      | Nitrogen and Phosphorus |
| River Derwent & Bassenthwaite Lake SAC (only applies to catchments of Bassenthwaite Lake (River Derwent and Tributaries SSSI unit 1) and River Marron (unit 124 of River Derwent and Tributaries SSSI). | Allerdale Borough Council<br>Copeland Borough Council<br>Eden District Council<br>Lake District National Park                                                                                                                                                    | Phosphorus              |
| River Eden SAC                                                                                                                                                                                          | Allerdale Borough Council<br>Carlisle City Council<br>Durham County Council<br>Eden District Council<br>Lake District National Park<br>Northumberland County Council<br>Northumberland National Park<br>Richmondshire District Council<br>South Lakeland Council | Phosphorus              |
| River Itchen SAC (part of Solent Catchment)                                                                                                                                                             | Basingstoke and Deane Borough Council<br>East Hampshire District Council<br>Eastleigh Borough Council<br>Winchester City Council                                                                                                                                 | Nitrogen and Phosphorus |
| River Kent SAC (only applies to catchments of units 104 and 111 of River Kent SSSI)                                                                                                                     | Eden District Council<br>Lake District National Park<br>South Lakeland Council                                                                                                                                                                                   | Phosphorus              |
| River Lambourn SAC                                                                                                                                                                                      | Swindon Borough Council<br>Vale of White Horse District Council<br>West Berkshire Council<br>Wiltshire Council                                                                                                                                                   | Phosphorus              |
| River Mease SAC                                                                                                                                                                                         | East Staffordshire Borough Council<br>Hinckley and Bosworth Borough Council<br>Lichfield District Council<br>North Warwickshire Borough Council                                                                                                                  | Phosphorus              |

|                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                   |                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
|                                                                                                                                                                                                                                                                                                        | North West Leicestershire District Council<br>South Derbyshire District Council                                                                                                                                                                                                                                   |                             |
| River Wensum SAC                                                                                                                                                                                                                                                                                       | Borough Council of King's Lynn and West Norfolk<br>Breckland Council<br>Broadland & South Norfolk Council<br>North Norfolk District Council<br>Norwich City Council                                                                                                                                               | Phosphorus                  |
| Roman Walls Loughs SAC                                                                                                                                                                                                                                                                                 | Northumberland County Council<br>Northumberland National Park Authority                                                                                                                                                                                                                                           | Phosphorus                  |
| Rostherne Mere Ramsar                                                                                                                                                                                                                                                                                  | Cheshire East Council                                                                                                                                                                                                                                                                                             | Nitrogen and Phosphorus     |
| Teesmouth & Cleveland Coast SPA/Ramsar                                                                                                                                                                                                                                                                 | Darlington Borough Council<br>Durham County Council<br>Eden District Council<br>Hambleton District Council<br>Hartlepool Borough Council<br>Middlesbrough Council<br>North York Moors National Park<br>Redcar and Cleveland Borough Council<br>Richmondshire District Council<br>Stockton-on-Tees Borough Council | Nitrogen                    |
| The Broads SAC/Ramsar (only the following are included: <ul style="list-style-type: none"> <li>• Bure Broads and Marshes SSSI</li> <li>• Trinity Broads SSSI</li> <li>• Yare Broads and Marshes SSSI</li> <li>• Ant Broads and Marshes SSSI</li> <li>• Upper Thurne Broads and Marshes SSSI</li> </ul> | Borough Council of King's Lynn and West Norfolk<br>Breckland Council<br>Broadland & South Norfolk Council<br>Great Yarmouth Borough Council<br>North Norfolk District Council<br>Norwich City Council<br>The Broads Authority                                                                                     | Nitrogen and Phosphorus and |
| West Midlands Mosses SAC (only catchments of Abbots Moss SSSI and Wynbunbury Moss SSSI are included)                                                                                                                                                                                                   | Cheshire East Council (Wynbunbury)<br>Cheshire West and Chester Council (Abbots)                                                                                                                                                                                                                                  | Nitrogen and Phosphorus     |

### **Situations where Nutrient Neutrality may not be an appropriate Mitigation Measure**

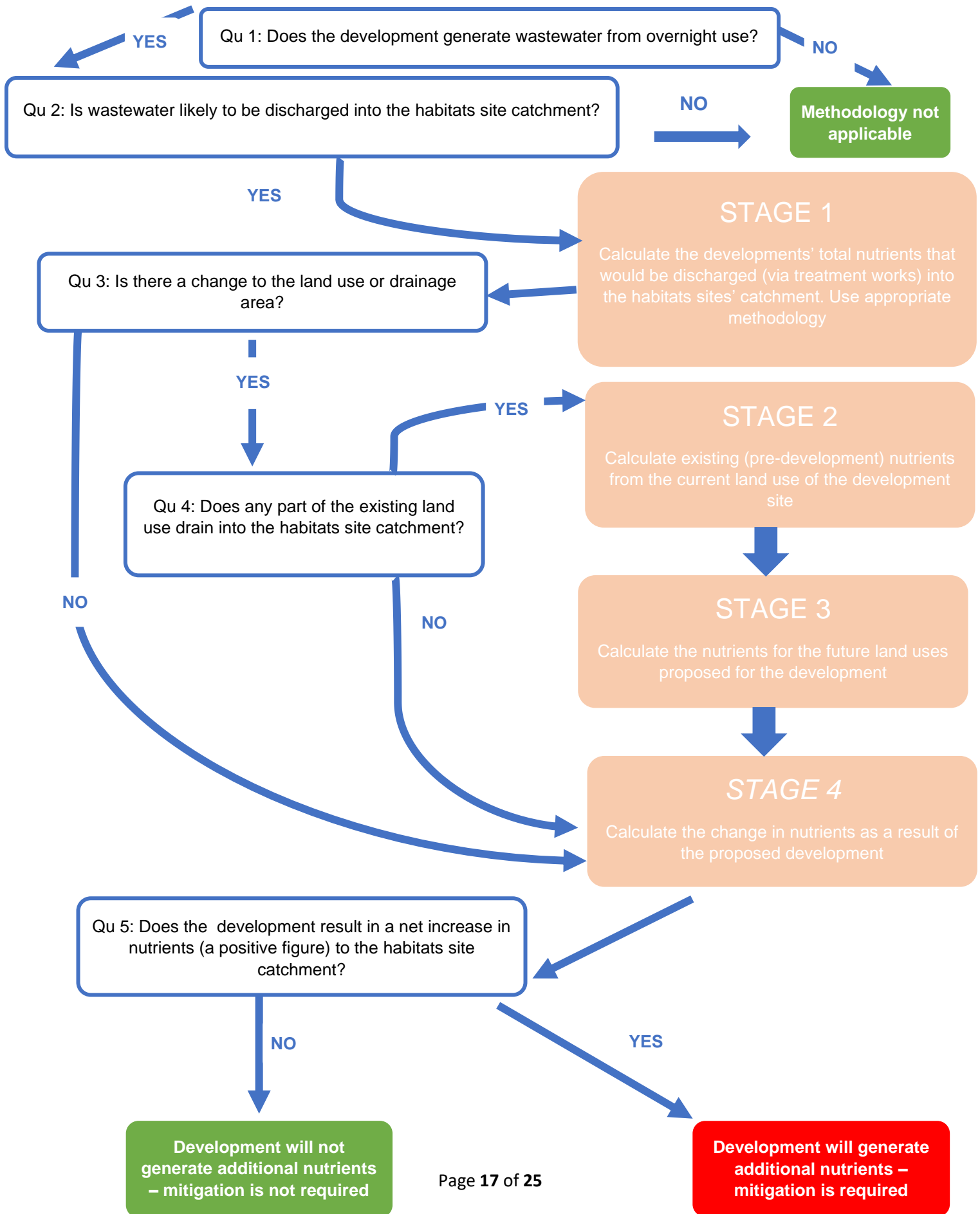
- Lake or wetland sites and particularly those with long residence times or which have a limited or no outflow. For these types of sites nutrients will accumulate over time and therefore they are particularly vulnerable to even small increases in nutrients which will further hinder restoration. Where one of these sites is already unfavourable due to nutrient enrichment it is also likely that current sources of nutrients will need to be reduced to restore the site and therefore using these measures for nutrient neutrality would undermine the ability to restore the site.
- Where the development impact is direct to a habitats site terrestrial wetland habitat rather than to surface water. In these circumstances the mitigation would need to be

at the exact same location where the development is having its effect on the site, as reductions in nutrients in other locations of the wetland would not neutralise the effect of the development. Therefore, potential mitigation options will likely be very limited.

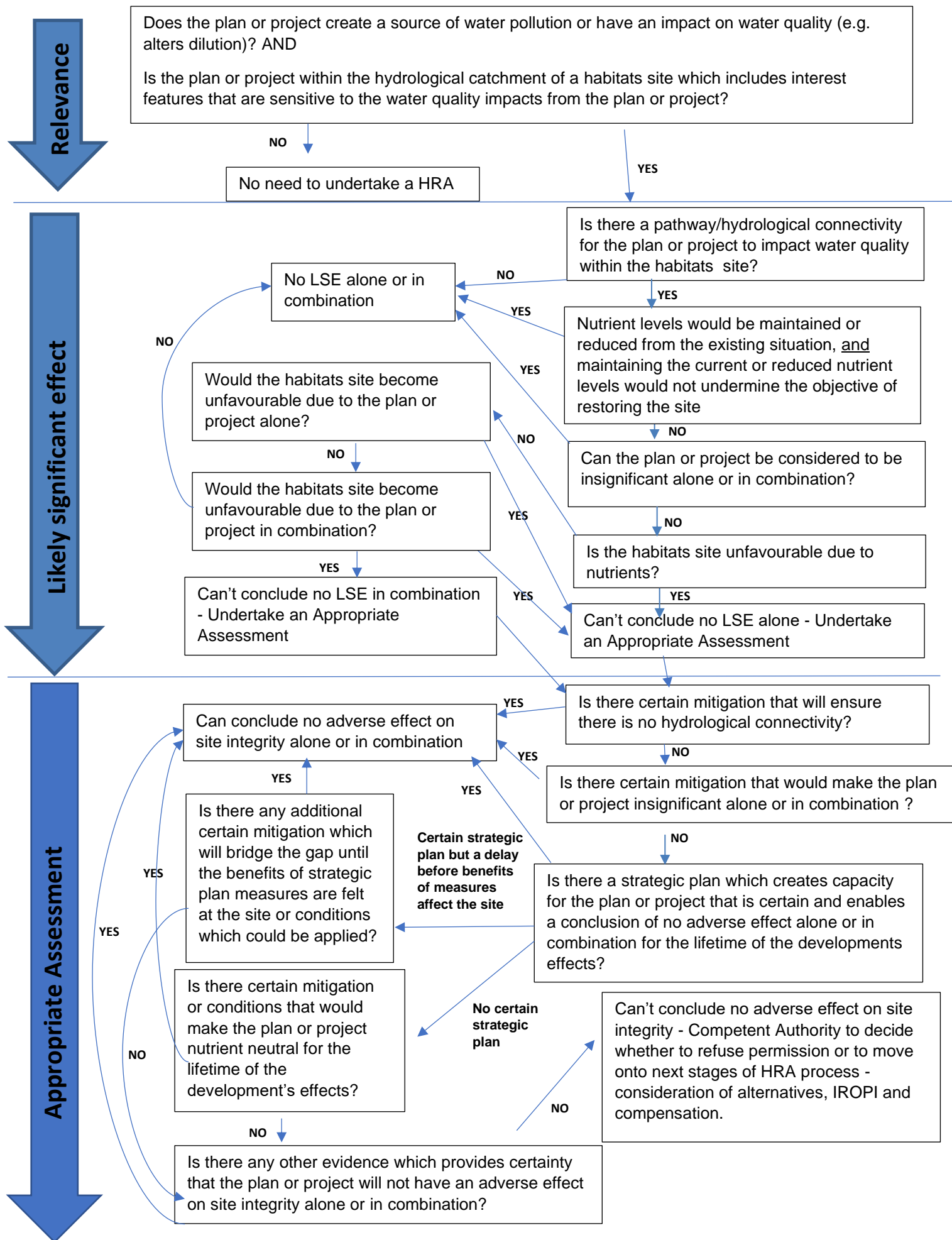
- Where the development impact is via groundwater discharging direct to a habitats site terrestrial wetland habitat rather than to groundwater discharging to surface water. In these circumstances there will be variation in the effectiveness of measures depending on their location within the groundwater catchment compared to development. This means measures may need to be located in the same part of the groundwater catchment to ensure that it would neutralise the nutrient increase from the development before it reaches the site, thereby constraining the area where mitigation could be targeted to a smaller area.
- Development (particularly larger developments) in the headwaters of a catchment. In these circumstances the area upstream of the development where nutrient neutrality mitigation can be located will be restricted to a small area, providing much more limited and perhaps in some cases no feasible opportunities for mitigation through nutrient neutrality, although other mitigation measures may be possible.
- Habitats sites with small catchments. Again, there will be a much more limited area where mitigation can be targeted thereby limiting potential nutrient neutrality mitigation opportunities.
- Where widespread and/or large-scale uptake of measures are needed to restore the habitats site or part of the site (e.g. identified in the DWPP or NMP) thereby significantly constraining the measures available for counterbalancing additional nutrient inputs in a way which will not undermine site restoration.



**Annex D: Nutrient Assessment Methodology for Development which Generates Wastewater Decision Tree**



## Annex E: Flow Diagram of HRA Process for Consultations Contributing Nutrients



## **Annex F: Thresholds for Insignificant Effects – Phosphorus Discharges to Ground**

Waddenzee established that an Appropriate Assessment (AA) is required where there is a “probability or a risk” of a significant effect on the site concerned. In light of the precautionary principle, a plan or project is likely to have a significant effect if the risk cannot be excluded on the basis of objective evidence. Any site specific rationale or thresholds to demonstrate the insignificance of effects would need to ensure that the risk of Likely Significant Effect (LSE) (alone or in combination) can be excluded. Where evidence is not currently available or it is uncertain, it would be more appropriate to take the plan or project through to AA for further consideration. It may still be possible to conclude no adverse effect on site integrity (alone or in combination) in the AA through further consideration as to the specific facts of the case in question and/or through consideration of appropriate mitigation.

Natural England currently considers that it is difficult to make robust arguments around generic standardised thresholds for levels of water quality impacts that exclude the risk of likely significant effects (alone or in combination) for all sites and situations. There are a number of different factors that are variable between sites which can influence the risk of cumulative effects and the sensitivity and vulnerability of the site and therefore what might be significant.

### **Thresholds for insignificant levels of phosphorus discharges to ground**

Natural England considers that there is an exception to this position on generic thresholds in relation to discharges of phosphorus to ground.

Any plan or project which requires planning permission, Building Regulations approval or an environmental permit from the Environment Agency must comply with the requirements of those regulatory regimes as well as what is needed to meet the Habitat Regulations. For example, all of these regimes require that developments should be connected to the public foul sewerage network wherever this is reasonable. This includes areas where the Habitats Regulations apply and any need to reduce nutrient inputs in those areas should not lead to the installation of non-mains foul drainage systems in circumstances where connection to the public foul sewer would otherwise be considered reasonable. Any plan or project then connecting to mains would still need to also be compliant with Habitat Regulations.

### Summary of evidence

Septic tank systems or package treatment plants that discharge to ground via a drainage field should pose little threat to the environment, because much of the P discharged is removed from the effluent as it percolates through the soil in the drainage field<sup>11</sup>. The risk of water pollution by these types of discharges to ground depends on a range of factors that affect their success or failure and can be summarised by three key factors<sup>12</sup>:

1. improper location
2. poor design
3. incorrect management

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<sup>11</sup> Robertson WD, Van Stempvoort ER & Schiff SL. 2019. Review of Phosphorus attenuation in groundwater plumes from 24 septic systems.

<sup>12</sup> MAY, L., PLACE, C., O'MALLEY, M. & SPEARS, B. 2015. *The impact of phosphorus inputs from small discharges on designated freshwater sites*. Natural England Commissioned Reports, [NECR 170](#).

Phosphorus is removed from the effluent within the drainage field through retention in the soil through sorption within the aerated soil zone and mineral precipitation. How much phosphorus is removed will depend on the soil type and phosphorus characteristics, mineral content, pH, texture, and the hydraulic loading rate. P sorption can be reversed and P desorption can occur in certain conditions e.g. change in redox conditions<sup>13</sup>. For the drainage field to work effectively the drainage field needs to have acceptable year round percolation rates which will be influenced by the soil type, as if they drain too quickly or too slowly effective phosphorus removal will not take place. In addition if infiltration rates are lower than the loading rate of the effluent into the drainage field then hydraulic failure can occur which results in the effluent being discharged over the soil surface. Therefore correct design of the system is important. The Building Regulations<sup>14</sup> set out design and construction standards for septic tanks, package treatment plants and drainage fields. In relation to drainage fields they include the need for a percolation test, a method for how this should be undertaken and the minimum and maximum percolation values ( $V_p$ ) which ensure that the drainage field effectively removes pollutants. This is then used to calculate the size of the drainage field required for the size of the household it will be serving.

Robertson et al (2019)<sup>8</sup> found that the carbonate mineral content of the drainage field sediments can also affect the P retention within the drainage fields and therefore the distance any P plume extends. Calcareous sediments having very high P retention (average 97%), with plumes not extending beyond 10m and non-calcareous sediments showing greater variability and having a lower P retention (average 69%) with some of the P plumes extending beyond 15m up to 100m in one case.

The evidence has shown that it is the aerated drainage field sediments which provides a key function in terms of removing the phosphorus from the effluent before it enters a receiving water body (surface or groundwater). Any enhanced connectivity to a water body, which short circuits this process, is probably one of the main factors that causes pollution of habitats sites (and other water dependent sites) by these systems<sup>15 16</sup>. Therefore it will be important that the drainage field is sited far enough away from any watercourse, ditch, drain etc. as well as that it is not in a location where the groundwater is high enough that comes into connection with this aerated zone. Fractured rock or fissured geology could also short circuit this process. In addition seasonal flooding can wash out the contents of the tanks. Slope also affects the way the drainage field functions, with steeper slopes having a higher risk of run off.

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<sup>13</sup> Mary G. Lusk, Guralp S. Toor, Yun-Ya Yang, Sara Mechtensimer, Mriganka De

& Thomas A. Obreza. 2017. *A review of the fate and transport of nitrogen, phosphorus, pathogens, and trace organic chemicals in septic systems*, Critical Reviews in Environmental Science and Technology, 47:7, 455-541,

<sup>14</sup> [Building Regulations, Drainage and Waste disposal](#) (2015), Document H, Section H2.

<sup>15</sup> MAY, L., WITHERS, P.J., STRATFORD, C., BOWES, M., ROBINSON, D. & GOZZARD, E. 2015. *Development of a risk assessment tool to assess the significance of septic tanks around freshwater SSSIs: Phase 1 – Understanding better the retention of phosphorus in the drainage field*. Natural England Commissioned Reports, [NECR171](#)

<sup>16</sup> MAY, L., DUDLEY, B.J., WOODS, H. & MILES, S. 2016. *Development of a Risk Assessment Tool to Evaluate the Significance of Septic Tanks Around Freshwater SSSIs*. [NECR 222](#)

There is also some evidence that density (i.e. number) of these types of systems in an area also has a bearing on the risk of pollution. In general, lower densities of tanks tend to cause less contamination of downstream water bodies than higher densities of tanks.

### Proposed thresholds

Small discharges to ground i.e. less than 2m<sup>3</sup>/day<sup>17</sup> that are within the surface or groundwater catchment of a designated site will present a low risk that the phosphorus will have a significant effect on the designated site where certain conditions are met:

- a) The drainage field is more than 50m from the designated site boundary (or sensitive interest feature)<sup>18</sup> **and**;
- b) The drainage field is more than 40m from any surface water feature e.g. ditch, drain, watercourse<sup>19</sup>, **and**;
- c) The drainage field in an area with a slope no greater than 15%<sup>20</sup>, **and**;
- d) The drainage field is in an area where the high water table groundwater depth is at least 2m below the surface at all times<sup>21</sup> **and**;
- e) The drainage field will not be subject to significant flooding, e.g. it is not in flood zone 2 or 3 **and**;
- f) There are no other known factors which would expedite the transport of phosphorus<sup>9</sup> for example fissured geology, insufficient soil below the drainage pipes, known sewer flooding, soil/geology type and its ability for P sorption/mineralisation or presence of conditions would cause remobilisation phosphorus, presence of mineshafts, etc **and**;
- g) To ensure that there is no significant in combination effect, the discharge to ground should be at least 200m from any other discharge to ground<sup>22</sup>.

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<sup>17</sup> A limit of 2m<sup>3</sup>/day is used based on this being the size used for discharges to ground in the General Binding Rules and is representative of the size of the majority of the septic tanks investigated within [NECR171](#), from which most of the criteria are based.

<sup>18</sup> 50m is the distance as which no measurable phosphorus signal was detected at this distance (NECR171 and NECR222). Robertson *et al* (2019) also found that the majority (although not all) of plumes did not extend further than this distance

<sup>19</sup> 40m is the distance that represents a low risk, based on there was a weak phosphorus signal this distance for some of the small discharges (NECR171 and NECR222) This is a slightly less precautionary value than the 50m distance to the Habitats site as there will be the capacity for further attenuation and dilution before the site.

<sup>20</sup> 15% is the slope that represents a low risk based on the methodology outlined in NECR222.

<sup>21</sup> 2m is the groundwater depth that represents a low risk, based on very low levels being detected in soil at depth below this (NECR171 and NECR222)

<sup>22</sup> The 200m is based on the 50m distance where no measurable phosphorus signal was detected (NECR171) for each septic tank. So for two drainage field areas not to overlap they need to be at least 100m apart. A safety factor of two is then applied to ensure that in the long term there will be the certainty that the effective drainage field phosphorus retention areas don't overlap. This then also takes account of the greatest distance that Robertson *et al* (2019) found a plume to extend which was 100m to ensure there would be no overlap. It also ensures that the maximum density of these systems is no more than one for every 4ha (or 25 per km<sup>2</sup>), as identified in NECR170.

A GIS layer is available from NE<sup>23</sup> which looks at conditions b, c and d above only, for the whole of England. Where this layer indicates that there is a low risk, then the three conditions (b, c & d) above can be considered to be met. Where there is a high or medium risk identified, then one or more of the three conditions (b, c & d) will not be met. This GIS layer can be shared with the EA and Local Authorities with the relevant data licence via our GI team, but not with developers due to the terms in the data licence. If site specific monitoring/modelled data is presented for conditions b, c or d which provides greater certainty than the national dataset used to produce the risk map, then this can override the risk map. It may be time consuming and/or costly to undertake site-specific monitoring that provides certainty for some of the conditions such as groundwater depth, due to the inherent variability over time and therefore the need for any monitoring to cover a long enough time period (several years) and to a sufficient frequency to determine the highest groundwater depth. So it is acceptable to rely on modelled or national dataset where these are the best available data and scientifically robust.

To consider the other three conditions (a, e and f) other data sources will need to be considered. Condition a can be looked at through using the designated site data layer<sup>24</sup> and calculating the distance from the site boundary. Condition e can use the EA flood risk maps (<https://flood-map-for-planning.service.gov.uk/>). Condition f should make use of any sewer flood data, information on local geology and soils, groundwater phosphorus concentration monitoring within the catchment or other local information which it is readily available. Elevated concentrations of phosphorus in groundwater would indicate phosphorus transport being short circuited e.g. through fissures, that it is not being effectively retained within the drainage field or it is being remobilised. It can be assumed that phosphorus is being effectively retained and not remobilised unless there is existing evidence at the discharge location or within the wider catchment which suggest that this may be occurring in the same conditions to those present at the location of the proposed discharge. Such evidence could include investigations, known soil or geological conditions or groundwater water quality (P) data from similar soil/geological conditions.

As not all of the phosphorus will be retained by the soil, condition g is to ensure that there is no in combination or cumulative effect from a number of these discharges in an area which together could add up to have a significant effect.

If conditions a to g are all met this represents a low risk that phosphate will reach the site, and not zero risk (i.e. not that no phosphorus from the discharge will ever reach the site in all cases). There will be further processes of dilution and attenuation between the drainage field and the site, which will provide further reduction and the current evidence would suggest that the scale of any inputs from these sources would not be significant.

Where best available evidence indicates that these conditions are met, Natural England advice is a conclusion of no LSE alone or in combination for phosphorus can be reached in these circumstances. Where uncertainty remains so LSE cannot be ruled out or evidence exists that there is a risk of phosphate from small discharges to ground causing a significant effect to a designated site (e.g. from SAGIS modelling or monitoring investigations), then Natural England advice is that there is a LSE or LSE cannot be ruled out and an AA should

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<sup>23</sup>. The dataset LPAs can [request the GIS layer](#) for the England sewage discharge risk map from Natural England. The dataset is called - Small\_Sewage\_Discharge\_Risk\_Zone\_Map\_For\_England (Dissolved).

<sup>24</sup> The Special Protection Area (England), Potential Special Protection Area (England), Special Areas of Conservation (England), Possible Special Areas of Conservation (England), Ramsar (England) and Proposed Ramsar (England) data layers can be download from [Natural England Open Geodata portal](#)

be undertaken. Where evidence is presented which provides certainty that there will be no LSE even though these conditions are not met e.g. better local information, then Natural England's advice may be no LSE, but would be determined on a case by case basis.

The Competent Authority, as the decision maker, will need to determine whether it agrees with NEs advice.

For developments which allow for increases in the number of people that will be served by an existing discharge to a drainage field, it will be important to consider whether the existing system has sufficient capacity in its design to accommodate the increase, without increasing the risk of pollution.

The evidence underpinning these thresholds will be periodically reviewed and the thresholds will be amended as necessary to take account of any new evidence.

This approach does not apply to nitrogen as it does not get taken up by the soil like phosphorus.

Further work is necessary to review the evidence and determine if it is possible to establish any other generic insignificance thresholds for other development or discharge types. It may also be possible to develop site specific insignificance thresholds.



### Annex G: Natural England Area Team Contacts

| Habitat Site                           | Area Team                           | Area Team Manager                                        | Additional Area Team contact                                              |
|----------------------------------------|-------------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------|
| Oak Mere SAC                           | Cheshire and Lancashire             | Ginny Hinton<br>ginny.hinton@naturalengland.org.uk       | Petula Neilson Bond                                                       |
| Rostherne Mere RAMSAR                  |                                     |                                                          |                                                                           |
| West Midlands Mosses SAC               |                                     |                                                          |                                                                           |
| Estwaite Water Ramsar                  | Cumbria                             | Helen Kirkby<br>helen.kirkby@naturalengland.org.uk       | Helen Smith                                                               |
| River Derwent & Bassenthwaite Lake SAC |                                     |                                                          |                                                                           |
| River Eden SAC                         |                                     |                                                          |                                                                           |
| River Kent SAC                         |                                     |                                                          |                                                                           |
| River Axe SAC                          | Devon, Cornwall and Isles of Scilly | Wesley Smyth<br>wesley.smyth@naturalengland.org.uk       | Denise Ramsay for LPAs in Devon and Simon Stonehouse for LPAs in Somerset |
| River Camel SAC                        |                                     |                                                          | Denise Ramsay                                                             |
| Peak District Dales SAC                | East Midlands                       | Vicky Manton<br>victoria.manton@naturalengland.org.uk    | Ian Butterfield                                                           |
| River Mease SAC                        |                                     |                                                          |                                                                           |
| River Wensum SAC                       | Norfolk and Suffolk                 | Helen Dixon<br>helen.dixon@naturalengland.org.uk         | Jack Haynes                                                               |
| The Broads SAC/Ramsar                  |                                     |                                                          |                                                                           |
| Lindisfarne SPA/Ramsar                 | Northumbria                         | Christine Venus<br>christine.venus@naturalengland.org.uk | Lewis Pemberton<br>Andrew Whitehead                                       |
| Roman Walls Loughs SAC                 |                                     |                                                          |                                                                           |



|                                        |                            |                                                                                                                                                                                                  |                |
|----------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Teesmouth & Cleveland Coast SPA/Ramsar |                            |                                                                                                                                                                                                  |                |
| Stodmarsh SAC/Ramsar                   | Sussex and Kent            | James Seymour<br>james.seymour@naturalengland.org.uk                                                                                                                                             | Sue Beale      |
| Solent                                 | Thames Solent              | Allison Potts<br>allison.potts@naturalengland.org.uk                                                                                                                                             | Becky Aziz     |
| River Itchen SAC                       |                            | Please contact the Thames Solent Team for developments in Hampshire and Isle of Wight and the Kent and Sussex Team for developments in Chichester and Wessex Team for developments in Wiltshire. | Becky Aziz     |
| River Lambourn SAC                     |                            |                                                                                                                                                                                                  | Amy Kitching   |
| River Avon SAC                         | Wessex                     | Rachel Williams<br>rachel.williams@naturalengland.org.uk                                                                                                                                         | Tom Lord       |
| Somerset Levels & Moors Ramsar         |                            |                                                                                                                                                                                                  |                |
| Chesil and the Fleet SAC/SPA           |                            |                                                                                                                                                                                                  |                |
| Poole Harbour SPA Ramsar               |                            |                                                                                                                                                                                                  |                |
| River Clun SAC                         | West Midlands              | Emma Johnson<br>emma.johnson@naturalengland.org.uk                                                                                                                                               | Hayley Fleming |
| River Lugg (part of River Wye SAC)     |                            |                                                                                                                                                                                                  |                |
| West Midland Mosses SAC                |                            |                                                                                                                                                                                                  |                |
| Hornsea Mere SPA                       | Yorkshire and Lincolnshire | Paul Duncan<br>paul.duncan@naturalengland.org.uk                                                                                                                                                 | Hannah Gooch   |