

Date: 26 August 2022



Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

[REDACTED]
Dorset Council

By Email Only

Dear [REDACTED]

Implications of the Written Ministerial Statement dated 20 July 2022 for Nutrient Neutrality in the Poole Harbour.

Thank you for forwarding the request from the Inspector for the Independent Examination of the Purbeck Local Plan (2018-2034) for clarification on the implications of the Written Ministerial Statement on nutrient neutrality requirements for the Poole Harbour Habitats Sites.

Background

Poole Harbour is classified by the UK government as a Special Protection Area (SPA) pursuant to Article 4 of the Wild Birds Directive, and as a wetland of international importance under the Ramsar Convention (Ramsar site) and as such is part of the national site network. Under the Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 appropriate authorities must manage this network to achieve its management objectives. These management objectives, for SPAs such as Poole Harbour, are the conservation objectives that relate to the requirements of the Wild Birds Directive. Ramsar sites are afforded similar protection to SPAs by virtue of Government policy.

Some bird features of Poole Harbour SPA and the habitats required by these birds are not in favourable condition and therefore the site is not contributing as it should to the favourable conservation status of the national site network. Eutrophication is the primary cause of this failure and has resulted in, or contributed to, widespread macroalgal mats on mudflats, loss of saltmarsh, absence of eelgrass over most of the harbour and severe declines of some

bird species. The particular characteristics of the harbour; one of very few microtidal estuaries in Britain (and by far the largest), make it especially vulnerable to eutrophication.

Nutrient neutrality advice

Nitrogen is generally considered the main cause of eutrophication in the marine environment. For example, EA guidance on water company improvements does not provide for phosphorus improvements for marine environments under the Urban Waste Water Treatment Regulations. However, there is also evidence that phosphorus has a significant role in some estuaries, with the balance of nutrient availability along the continuum from inflowing rivers to the open coast an important factor. In Poole Harbour Natural England considers that nitrogen has a central role in driving eutrophication and its harmful ecological impacts. However, an imbalance of nitrogen relative to phosphorus is also an important factor and can lead to a dominance of dinoflagellates within the marine plankton. Further, modelling in relation to the abundance of macroalgae suggests that with continued high phosphorus loads greater reductions in nitrogen will be required than might otherwise be the case. Reductions in both nutrients are therefore necessary for the restoration of the marine ecology within Poole Harbour, but a substantial reduction in nitrogen remains the primary driver.

Diffuse Water Pollution Judicial Review Consent Order (JRCO)

Poole Harbour was one of the sites included within the Diffuse Water Pollution Judicial Review Consent Order (JRCO) which required the identification of causes of the pollution and the measures and mechanisms needed to achieve the conservation objectives for each site. The resultant report (Poole Harbour Consent Order Technical Investigation and Recommendations) was issued in February 2021.

The JRCO interim target requires the nitrogen load entering Poole Harbour from the catchment to be reduced to a limit of 1500 tonnes inorganic nitrogen per year (a 35% reduction from that calculated for the 2010 baseline) and the phosphorus load to a limit of 22 tonnes inorganic phosphorus per year (a 57% reduction from that calculated for the 2010 baseline). A final nitrogen target giving confidence in meeting the site conservation objectives has yet to be agreed. Based on a broad body of scientific evidence from the harbour and elsewhere Natural England has advised that, in order to achieve the conservation objectives for the site, the input limit for nitrogen into the harbour is likely to need to be reduced beyond the interim target to a level closer to 1000 tonnes per year.

Regarding phosphorus, it is Natural England's advice that provided the interim target of 22 tonnes per year were achieved or a load close to this, the level of phosphorus reaching the harbour would not then be an impediment to the harbour reaching favourable condition, so further reductions would not be required. A target of 22 tonnes of inorganic phosphorus per year is therefore considered appropriate to enable the sites conservation objectives to be achieved.

The proposals set out in the JRCO for the delivery of these targets differ between nitrogen and phosphorus, reflecting differences in the sources of the two nutrients – the main sources being agriculture and wastewater treatment work discharges. For nitrogen, diffuse pollution from agriculture (the predominant land use in the catchment), is the main (74%) source of the current load so consequently, the main measure for achieving this reduction involves an overall reduction in this diffuse load at source, with measures that need to be rolled out

across the entire agricultural catchment to achieve incremental reductions. In contrast, for phosphorus the emission load reduction required can only be delivered through improvements at the waste water treatment works (WWTWs).

On 16th March 2022 Natural England issued further advice to Dorset Council and BCP Council on nutrient neutrality requirements for all the affected catchments in their areas. The advice concerned the application of Regulation 63 of the Habitat Regulations 2017 for new plans or projects that have the potential to affect water quality. The issued advice for Poole Harbour included the existing requirement for nitrogen neutrality along with an additional requirement for phosphorus neutrality. As the competent authority under the Habitats Regulations, Dorset Council must take into account this advice when considering plans and projects within the catchment.

Future requirements for nutrient neutrality in Poole Harbour following the Written Ministerial Statement dated 20 July 2022.

On 20 July 2022, the Secretary of State for Environment, Food and Rural Affairs released a written statement setting out two measures to respond to nutrient pollution. These measures are:

- an amendment to the Levelling Up and Regeneration Bill (LURB) to place a new statutory duty on water and sewerage companies in England to upgrade wastewater treatment works to the highest technically achievable limits by 2030 in nutrient neutrality areas.
- a Nutrient Mitigation Scheme to be managed by Natural England, working with Defra and DLUHC to enable developers to purchase 'nutrient credits' which will discharge the requirements to provide mitigation.

It is Natural England's view that once the statutory duty is in place then it is reasonable to conclude that the legally required improvements to the WWTWs will be secured. On this basis once the LURB is enacted nutrient budgets for schemes can account for the required WWTWs improvements from 2030 or sooner if the relevant WWTW is upgraded before 2030. The LURB is currently due to be in place by April 2023.

Implications for nitrogen neutrality

Once the LURB is enacted then new schemes will be able to calculate their nutrient neutrality requirements based on the improvements at the WWTWs that will be delivered by 2030. In such circumstances, new developments would require measures to offset any additional nitrogen loads that would result from discharges from the WWTWs up to 2030 at the current rates, reducing to take account of the lower WWTWs consent limits from 2030 onwards. Should the WWTWs improvements be completed before 2030 then this may also be taken into account within the nutrient budgets for new schemes. A requirement for nitrogen neutrality for new development after 2030 would however remain until such time it can be demonstrated that nitrogen loads from all sectors are reduced to a level that would allow recovery of the Harbour to a favourable condition. Therefore, there will remain a requirement to address nitrogen discharge within the catchment and there is an existing strategy¹ in place to achieve nitrogen neutral development. There will also be continued need for the agricultural sector to achieve nitrogen pollution reductions across the whole

¹ [Nitrogen Reduction in Poole Harbour](#)

catchment. Although the current strategy continues to deliver nitrogen neutrality in Poole Harbour, it does require reviewing and updating to take account of the latest advice from Natural England. A timetable for this update will need to be agreed between Dorset Council, BCP Council and Natural England but in the interim, the existing strategy can continue to be relied upon to deliver nitrogen neutrality requirements for the purpose of the Habitats Regulations.

Implication for phosphorus neutrality

In contrast to nitrogen the Government announced improvements at the WWTWs would deliver the entire phosphorus reductions required to ensure that phosphorus is no longer an impediment to the harbour reaching favourable condition. Therefore, provided the LURB statutory requirement for improvements at the WWTWs is in place, from 2030 onwards phosphorus neutrality will no longer be a requirement for new development within the Poole Harbour catchment. Further, Natural England is also satisfied that the small increases in phosphorus that would result from new development up to 2030 would not cause further harm to the designated sites or have any impact on achieving the necessary reductions in phosphorus loads from the WWTWs. That is, the reduction in phosphorus from WWTW discharges required in the LURB (once enacted) would be enough to secure favourable condition irrespective of any additional phosphorus resulting from development up to 2030 and for the foreseeable future. On this basis new development assessed after the LURB is enacted (anticipated April 2023) would no longer be required to implement phosphorus neutrality measures. However, new permissions given prior to the enactment of the LURB will be required to demonstrate through Appropriate Assessment that appropriate measures or safeguards are in place to ensure phosphorus neutrality. Natural England is currently in discussion with Dorset Council as to how this can be achieved.

For any queries relating to the specific advice in this letter please contact [REDACTED] on [REDACTED]

Yours sincerely

[REDACTED]