

Position Statement

The use of Pre-commencement Conditions in the Poole Harbour catchment to address Phosphorus Loading

November 2022

1.0 INTRODUCTION

- 1.1 Poole Harbour is a large natural harbour comprising of extensive tidal mudflats and saltmarshes, reedbeds, freshwater marshes, wet grasslands, and seagrass beds. These habitats are important to a variety of protected bird species and the reason for its Special Protection Area (SPA) and Ramsar status.
- 1.2 Increased levels of nitrogen and phosphorus entering the harbour via surface water and groundwater threatens these habitats and species through eutrophication, leading to algal blooms which disrupt normal ecosystem function. These algal blooms result in reduced levels of oxygen within the water, which in turn can lead to the death of many aquatic organisms.
- 1.3 The approach advocated by Natural England is that any development that leads to an increase in nutrient loading within the harbour catchment, should be nutrient neutral for both phosphorus and nitrogen. This would result in no net increase in levels of both nutrients entering the harbour arising from development via wastewater recycling centres and via surface water flows. The advice was issued by Natural England on 16 March 2022.

Qualifying Development: *Development that is caught by the nutrient neutrality advice includes any new development that would result in a net increase in population served by a wastewater system. This includes all developments that increase overnight accommodation including new residential units, tourist accommodation and tourist attractions.*

In some instances, commercial development that does not create additional overnight accommodation may also need to demonstrate nutrient neutrality.

2.0 PHOSPHORUS MITIGATION IN POOLE HARBOUR

- 2.1 Subsequent to the advice from Natural England, there have been several announcements at the national level including a written ministerial statement by the Secretary of State for the Environment, Farming and Rural Affairs on 20 July 2022. This statement set out a number of measures that the government will be putting in place to help address the issue of nutrient pollution at protected habitat sites. The two main measures are:
 - The intention to table an amendment to the Levelling Up and Regeneration Bill to require the upgrade of all wastewater treatment works within the affected catchments

- A nutrient mitigation scheme to be managed by Natural England aimed at delivering nutrient mitigation within the affected catchments
- 2.2 The Natural England managed nutrient mitigation scheme will be put in place to deliver mitigation across all the affected catchments around the country, including Poole Harbour. This scheme is not likely to be delivering significant amounts of mitigation in the Poole Harbour catchment over the coming months but is more likely to be a longer-term solution.
 - 2.3 The proposed amendment to the Levelling Up and Regeneration Bill to require the upgrade of all wastewater treatment works will serve to significantly reduce the nutrient burden placed on developers by reducing the permitted levels of nutrients in the freshwater and estuarine habitats. There will however remain discharge of nutrients from wastewater treatment works and therefore nutrient neutrality will continue to apply to qualifying developments.
 - 2.4 Within marine environments, nitrogen is the primary nutrient of concern that causes eutrophication, and this is the case for Poole Harbour. However, it is the interaction of both phosphorus and nitrogen that is leading to increased levels of microalgae. Without reductions in the levels of phosphorus a far greater reduction in nitrogen would be necessary to restore the ecology of the harbour.
 - 2.5 Evidence and modelling of the harbour has concluded that a substantial reduction in nitrogen within the catchment is necessary. It has also concluded that a smaller reduction in phosphorus would enable Poole Harbour to achieve a more favourable status but only if this was coupled with the necessary reductions in nitrogen.
 - 2.6 The main sources of nitrogen within the Poole Harbour catchment are agriculture and wastewater treatment works discharge and therefore reductions in nitrogen from both of these sources will help in achieving an improved status for the harbour. For phosphorus, the necessary reductions can be achieved through upgrades to the wastewater treatment works.
 - 2.7 The amendment to the Levelling Up and Regeneration Bill will secure the upgrades to wastewater treatment works to reduce the phosphorus levels in the harbour to levels that would enable favourable status to be achieved. Natural England have concluded that once the necessary upgrades to wastewater treatment works has been secured in legislation (through the Levelling Up and Regeneration Bill or subsequent legislation), the requirement for phosphorus neutrality within the Poole Harbour catchment would be removed leaving only a requirement for nitrogen neutrality.¹
 - 2.8 A recent statement by the Secretary of State for Levelling Up, Housing and Communities² indicated that the Levelling Up and Regeneration Bill is currently progressing through

¹ Nitrogen neutrality can be addressed through the application of the Nitrogen Reduction in Poole Harbour SPD however, this SPD needs to be updated to reflect the methodology within the March 2022 advice from Natural England.

² Written Ministerial Statement – Michael Gove 17-Nov-2022

<https://questions-statements.parliament.uk/written-statements/detail/2022-11-17/hcws375>

Parliament and has reached the third stage reading in parliament and will then pass to the House of Lords. It is therefore likely to be enacted in spring/summer 2023.

Interim period

- 2.9 Natural England's position is that once the upgrade to wastewater treatment works is secured through the Levelling Up and Regeneration Bill, the need for developments within the Poole harbour catchment to demonstrate phosphorus neutrality, will drop away. The detail of this position statement is set out in the letter received from Natural England on 26 August 2022³. This does however leave an interim period between now and when the Levelling Up and Regeneration Bill is enacted where the requirement for developments to demonstrate phosphorus neutrality is necessary.
- 2.10 As the timetable for the Levelling up and Regeneration Bill's passage through Parliament is not certain, and therefore the upgrades to wastewater treatment works is not secure, there is the possibility that phosphorus mitigation may be needed over the longer term to aid in achieving a more favourable status for Poole Harbour. Until the necessary legislation is in place Dorset Council, as the competent authority under the Habitats Regulations, needs to put in place safeguards to ensure that any development that is approved within the catchment is unlikely to have an impact on the harbour.

Short term options considered

- 2.11 Dorset Council, working with partner organisations, has considered a number of options for putting the necessary safeguards in place. These options are short term but could be put in place to last for the whole period until the Levelling Up and Regeneration Bill is enacted.
- Option 1: Additional chemical dosing over a short period of time to remove additional phosphorus from wastewater treatment works discharge
 - Option 2: Logging all additional qualifying consents issued by Dorset Council within the Poole Harbour catchment and securing a payment towards the delivery of phosphorus mitigation
 - Option 3: The use of a pre-commencement condition to prevent development beginning of any new qualifying development until the necessary wastewater treatment works upgrade is required through legislation
- 2.12 Option 1 would involve additional chemical dosing by Wessex Water at a limited number of wastewater treatment works within the Poole Harbour catchment. This would be expected to remove around 200kg of total phosphorus per year which would be equivalent to the load from up to 1,800 new dwellings.

³ [Nutrient Neutrality in Poole Harbour - Dorset Council](#)

- 2.13 To have certainty about this approach, there would be a need for a formal agreement between the parties involved (Wessex Water, Dorset Council, Natural England and the Environment Agency). There would also be a need for qualifying developments to fund the costs of the additional chemical dosing over the period that it was required. There are a number of uncertainties around this approach including the arrangements for securing and transferring the necessary payments to Wessex Water to fund the costs of the additional chemical dosing; the impact of the additional chemical dosing on the water environment; the exact level of mitigation that could be secured and the quantum of new development that could therefore be released. The approach would require the preparation of legal agreements for each qualifying development consented within the catchment.
- 2.14 Option 2 would require Dorset Council to maintain a log of all new qualifying developments granted consent within the Poole Harbour catchment including keeping a record of the anticipated phosphorus discharges that would need to be mitigated. Developments that were granted consent would be required to pay a contribution secured through a legal agreement which would be held to deliver phosphorus mitigation should the wastewater treatment works upgrade not be secured through legislation.
- 2.15 If however the legislation did secure the wastewater treatment works upgrade, the contribution secured to provide phosphorus mitigation would be used to fund additional affordable housing provision or, for developments where affordable housing or additional affordable housing was not a requirement, the contribution would need to be handed back to the developer. This creates an additional level of complexity to this option.
- 2.16 Option 3 would involve all developments within the Poole Harbour catchment granted consent during the interim period being subject to a pre-commencement condition that would prevent development beginning until the Levelling Up and Regeneration Bill, or other legislation, is enacted requiring upgrade to the wastewater treatment works. This would be a discrete arrangement where phosphorus mitigation would not be necessary as the upgrade to wastewater treatment works would be secured in legislation prior to development taking place.

3.0 SHORT TERM PREFERRED APPROACH

- 3.1 The period over which there remains a need for phosphorus mitigation in Poole Harbour is likely to be relatively short. It is likely that the Levelling Up and Regeneration Bill will be enacted within the current parliamentary term and therefore by early 2024 at the latest. The latest announcement from Government anticipates a much faster timetable with enactment in spring/summer 2023
- 3.2 Dorset Council considers that, as this is less than the three-year lifetime of a planning consent, it is appropriate to grant consents for qualifying development within the Poole Harbour catchment and to include a pre-commencement condition to prevent development

beginning until there is a legislative requirement to upgrade the wastewater treatment works within the catchment.

3.3 In order for conditions to be imposed on a development, they must comply with the following tests. They must be:

- Necessary

Dorset Council consider that the suggested pre-commencement condition is necessary to give certainty that the development to which the pre-commencement condition applies, will not increase the phosphorus loading on Poole Harbour during the interim period between the granting of consent and the enactment of the Levelling Up and Regeneration Bill.

- Relevant to planning

The requirement for phosphorus neutrality and the associated impact on Poole Harbour habitat site, is a relevant planning consideration for all qualifying developments within the Poole Harbour catchment

- Relevant to the development permitted

As the pre-commencement condition will apply only to those developments within the Poole Harbour catchment that may result in an additional phosphorus loading on Poole Harbour, the pre-commencement condition is therefore considered relevant to the development being permitted.

- Enforceable

Dorset Council commit to enforcing the pre-commencement condition. This will be undertaken through physical monitoring of development within the Poole Harbour catchment.

- Precise

The wording of the condition will be standardised and is considered to be sufficiently precise and unambiguous to mean that the developer, Dorset Council and any other interested party can understand the restrictions being placed on the consented development.

- Reasonable in all other respects

There are no other workable approaches that are as straight forward to manage and implement as the use of a pre-commencement condition. With the anticipated timetable for the Bill's enactment being less than three years (within the period for implementation of a planning consent), granting consent with a pre-commencement condition is a reasonable approach to take to give some degree of certainty to applicants

that development will be able to take place once the Levelling Up and Regeneration Bill is enacted.

- 3.4 The National Planning Practice Guidance urges caution in the use of pre-commencement conditions stating that⁴ *"Such pre-commencement conditions should only be used where there is a clear justification, which is likely to mean that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would otherwise be necessary to refuse the whole permission"*.
- 3.5 For a pre-commencement condition to be imposed on a development, express written agreement⁵ to the terms of the pre-commencement condition must be received from the applicant in order for the development to be granted consent.
- 3.6 The approach of using pre-commencement conditions will give sufficient certainty to Dorset Council and to Natural England that in the interim period to the Levelling Up and Regeneration Bill being enacted that there will not be increased phosphorus loading on Poole Harbour as a result of new development.
- 3.7 Granting consents in this way gives some certainty to developers and enables preparatory arrangements to start to deliver development. This not only helps to support the development industry but also helps with the delivery of new homes, including affordable homes, all of which have been on hold since the updated advice from Natural England was received in March 2022.
- 3.8 The approach outlined in this paper, and the associated pre-commencement condition, will **start to be used in January 2023**. A standard pre-commencement condition will be used to ensure consistency across the catchment and will only apply within the Poole Harbour catchment. This condition will be worded as follows:

The development shall not commence until the enactment of the Levelling Up and Regeneration Bill or any subsequent legislation requires upgrades to qualifying wastewater treatment works so that they achieve the highest technically achievable limit for phosphorus reductions.

⁴ National Planning Practice Guidance Paragraph: 007 Reference ID: 21a-007-20180615

⁵ Town and Country Planning (Pre-commencement Conditions) Regulations 2018