

Date: 21 May 2020



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Customer Services
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CW1 6GJ

Folkestone and Hythe District Council

BY EMAIL ONLY

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Dear all,

Conservation of Habitats and Species Regulations 2017 as amended

Folkestone & Hythe DC Core Strategy Review Examination and Otterpool Park – nutrient neutrality re Stodmarsh designated sites

Following the call we had on Wednesday 13 May to discuss water quality issues and the implications for Folkestone and Hythe District Council's Core Strategy Review, and Otterpool Park, as agreed I am writing to provide Natural England's advice to date on these matters.

I hope that this information is helpful, and we would be happy to provide further advice through our [Discretionary Advice Service](#), discussed further below.

Summary

Information has recently emerged relating to existing water quality impacts (eutrophication) on the [Stodmarsh European designated sites](#) (Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site), caused by high nutrient levels including nitrogen and in particular phosphorous. The latter originates mainly from permitted wastewater discharges into the River Stour ([River Stour catchment](#)).

This has implications for the Otterpool Park application, and the Council's Core Strategy Review which we note is currently submitted for Examination.

In line with the Conservation of Habitats and Species Regulations 2017 as amended (the 'Habitats Regulations'), we advise the Council will need to assess the water quality issues for new plans and proposals which may contribute to nutrient levels in the Stour catchment, as part of the Habitats Regulations Assessment (HRA).

As we discussed, this will need to include the supporting HRA for the Core Strategy Review Examination, which should identify all allocations including Otterpool Park garden town which may discharge into the Stour catchment. The Otterpool Park application will also need to address the water quality issues through the Water Cycle Study and accompanying information for the HRA.

Please see further detailed advice in the Annex below, which includes the context of existing water quality impacts adversely affecting Stodmarsh, and recent information which identifies the Sellindge



wastewater treatment works (WwTW) as a contributor to these impacts. We also include advice on potential mitigation options, in particular the use of nature-based solutions.

Also attached with this letter is the latest published Natural England guidance on nutrient neutrality in relation to the Stodmarsh designated sites. Please note this guidance is currently being updated, which we will provide you with as soon as it is finalised.

Natural England is keen to work closely with the Council to address these issues in particular to support the Core Strategy Review Examination and the Otterpool Park application.

We can provide this advice through our Discretionary Advice Service, and encourage the Council to also engage with other key stakeholders including the Environment Agency, Kent CC and Southern Water, and other neighbouring local authorities as appropriate.

Please do contact me to discuss further.

With best wishes,

████████████████████

Senior Advisor
Sustainable Development network
Sussex and Kent area

Annex - Natural England's detailed advice on nutrient neutrality issues affecting Stodmarsh designated sites

I wish to draw your attention to environmental risks which we advise will need to be addressed in the Otterpool Park application, and the Core Strategy Review, which is currently submitted for Examination.

Need for Appropriate Assessment

Information has emerged relating to existing water quality impacts (eutrophication) on the Stodmarsh European designated sites, caused by high nutrient levels including nitrogen and in particular phosphorous. The latter originates mainly from permitted wastewater discharges into the River Stour (River Stour catchment). This has implications for the Otterpool application, and the Core Strategy Review Examination.

Your authority will be aware of CJEU's judgment on the [Coöperative Mobilisation case](#) (often referred to as the 'Dutch Nitrogen cases'. This ruling focuses on air quality matters; however it has application to other areas of Habitats Regulations Assessment (HRA), most notably water quality, where there are close similarities with exceeded environmental benchmarks, development pressures and reliance on strategic plans for reducing loading to the water environment.

The Stodmarsh sites are currently failing the agreed nutrient standards (as set out in Natural England's published guidance on nutrient neutrality in relation to Stodmarsh¹). As such, Natural England advises that new plans or projects which could contribute to the nutrient levels cannot be excluded from having a likely significant effect on the Stodmarsh sites, and will need to be examined through appropriate assessment.

We advise this assessment should take into account existing nutrient and conservation status of the receiving waters. Where an appropriate assessment for new plans/ projects intends to rely on existing and proposed measures that will, over time, achieve favourable condition of the Stodmarsh sites, there must be sufficient certainty about those measures and their benefits in terms of their effectiveness, timeframe, enforceability, implementation, permissions and funding (for example).

For Stodmarsh, wastewater treatment works (WWTWs) discharging into the River Stour and its surrounds are subject to an investigation of their impacts and connection with the Stodmarsh designated sites, under the Environment Agency Water Industry National Environment Programme (WINEP). The WINEP is due to report in 2022, and will identify what improvements need to be made, eg changing permitting levels, infrastructure improvements, or new treatment works, in order to restore the sites to favourable condition and remove the contribution of existing wastewater to the sites' failure of conservation objectives. Currently, there is no existing plan to address the existing failures at the Stodmarsh sites.

Natural England has worked constructively with Southern Water to add the assessment of planned growth to the investigation. Until the WINEP work is complete, uncertainty remains for future housing developments that discharge additional wastewater into the Stour catchment which add to the existing adverse effect. Before the WINEP investigation can report, Natural England is advising local authorities which may be affected to take a precautionary approach when addressing this uncertainty.

¹ Natural England Advice on Nutrient Neutrality for New Development in the Stour Valley Catchment in Relation to Stodmarsh Designated Sites – for Local Planning Authorities (December 2019)

To help local authorities, Natural England has set out a nutrient neutral methodology as a way of calculating whether mitigation is required for water quality impacts, for calculating the scale of the mitigation required, and advise on types of mitigation that may enable the competent authority to have confidence that an adverse effect has been avoided. More information on this is provided further below.

Sellindge WwTW

Natural England has recently received a more detailed scope of the WINEP study from Southern Water of WwTWs to be examined due to their known contribution to the phosphorous and nitrogen loading in the River Stour at Stodmarsh. These include the Sellindge WwTW which are now a named works in the investigation. As such, there is an impact pathway with Otterpool Park, if wastewater is to be discharged via Sellindge WwTWs or an onsite treatment works, into the East Stour.

Natural England understands that the Sellindge WwTW is due to be upgraded by 2024 to address its discharge of phosphorous, which is contributing to the existing Water Framework Directive (WFD) river phosphorous failures of good ecological status in the Stour catchment. However, projected permit values for the proposed upgrades at Sellindge treatment works up until 2045 and the contribution of these permits to the phosphorous sources ([Source Apportionment Geographical Information System](#) (SAGIS)) are based on modelling for population equivalence which does not take account of the Otterpool Park garden town proposals. Natural England is aware there is a disparity of proposed growth in the Stour catchment including Otterpool and the future modelled growth for the WFD upgrades. Natural England has agreed with Southern Water Services more accurate growth values should be included in the company's WINEP investigation.

Nutrient Neutrality

One way for competent authorities to address the uncertainty for new development proposals is for schemes to achieve 'nutrient neutrality', to ensure they do not add to the existing nutrient burden on the designated sites, and to give certainty that schemes are deliverable in line with the Habitats Regulations.

Natural England has provided a method to calculate nutrient neutrality, set out in Natural England's Stodmarsh nutrient neutrality guidance note (latest published version December 2019), attached to this letter. This guidance is currently being updated to reflect changes to the similar Solent methodology which has been agreed across government (MHCLG, Defra, the EA and NE), and to clarify the catchment and WwTWs identified in the more detailed scope for the WINEP Study, as recently received by Natural England.

Natural England's advice to Folkestone and Hythe District Council on the Core Strategy Review and Otterpool Park

For the Core Strategy Review, which is currently submitted for Examination, Natural England advises the HRA needs to be updated to address the water quality impacts affecting the Stodmarsh sites. This will need to include all allocations which propose discharge into wastewater treatment works within the catchment, including the Otterpool Park scheme. This should include calculation of the nutrient budget for all affected allocations with respect to nitrogen and phosphorous, with all mitigation options outlined, along with the fundamental principle that each scheme must achieve nutrient neutrality in order to provide certainty of avoiding adverse effect on integrity of the designated sites.

The Council may wish to discuss this with other local authorities who are undergoing similar assessments of their Local Plans review, such as Canterbury in the Stour catchment or Chichester District Council in the Solent.

For the Otterpool Park application, the Water Cycle Study should be updated to incorporate assessment of water quality of discharges into the Stour catchment on the Stodmarsh designated sites, using best available data, and set out necessary mitigation measures to achieve nutrient neutrality. This will need to be considered in the HRA of any application. As the development will be phased, budgets and mitigation could be assessed for each phase, with calculations revised over time to take account of changes (eg WwTW upgrades, change to evidence base etc). For the outline application, this will need to have an overall nutrient budget for the scheme with mitigation measures for the whole scheme which provide the level of certainty described above. However, it is acceptable to include phasing of the mitigation measures and break clauses should the level of certainty of restoration of Stodmarsh sites change, for example following the WINEP investigation report in 2022.

We advise a number of options should be assessed, including all options proposed for discharge of wastewater including via the Sellindge WwTW, any proposed new onsite treatment works, or via West Hythe WwTW out to sea. For the latter, this option would exclude possible impacts on Stodmarsh. However the Council should be aware Natural England is undertaking a review of coastal sites in Kent for nutrient impacts in our three year plan to identify whether sites are found to be failing because of high nutrient levels, which may have implications for longer term future development. We can provide the Council with further information on this.

Mitigation for high nutrient levels can take a number of forms including:

- **Upgrades to existing WwTWs** – this can only be secured through the water industry regulatory process via their regulators (OFWAT and Environment Agency). The upgrades needed for existing wastewater will be assessed in the WINEP investigation that will be finalised by 2022. The upgrade measures are not yet certain and we cannot yet confirm the timetable over which upgrades to remove the adverse effect will be achieved, or if these upgrades are achievable using conventional technologies. Natural England has encouraged the company to ensure that the proposed upgrades take account of future growth.
- **New onsite WwTW** (for large schemes such as Otterpool) – the developers could identify an inset provider or agree with the water company a new WwTW to make use of novel technology to treat waste water such as drinking water technologies. These would need to be permitted and regulated by the Environment Agency and would still need to meet the requirements of the Habitats Regulations, the Water Framework Directives and other environmental standards. This would need to be sufficiently certain at the time of permitting to meet the requirements listed above.
- **Nature based solutions: interceptor wetlands** – wetlands can be effective at uptake of nutrients. They include storm interceptor wetlands (eg as part of SuDS strategies) and interceptor wetlands to take effluent from WwTWs before discharge into watercourses. Wetlands need to be appropriately designed and located to be effective and this can only be assessed on a case by case basis. The solution should be sufficiently certain at the time of permitting to meet the requirements listed above.
- **Nature-based solutions: offsetting** – through change in land use, eg converting agricultural land (high phosphorous and nitrogen inputs) to woodland or semi-natural grassland such as chalk grassland (no additional nutrient inputs and low natural discharge).

Natural England strongly encourages the use of nature-based solutions for permissions before the WINEP has reported, in particular the use of wetlands, and for this to be delivered strategically given the issue is affecting a number of districts and developments in the Stour catchment. In addition to helping meet the requirements of the Habitats Regulations, wetlands can deliver a number of additional benefits which contribute to the Government's 25 Year Environment Plan targets.

