

Report subject	<b>Phosphates in the River Avon</b>
Meeting date	25 October 2023
Status	Public Report
Executive summary	<p>This report asks Cabinet to agree to adopt the advice from Natural England that all new developments should be nutrient neutral in respect of phosphates to protect the River Avon Special Area of Conservation (SAC) and Ramsar site.</p> <p>This will require all applicants seeking planning permission for new homes in the Christchurch area to demonstrate they have secured phosphate mitigation measures before we can register the planning application. This is an additional up-front requirement placed upon applicants.</p> <p>This report sets out our proposed interim approach while clarity on the national picture set out in the Levelling Up and Regeneration Bill is understood. Through the BCP Local Plan we will develop a strategy to prevent housing sites becoming stalled and provide certainty to the market.</p>
Recommendations	<p><b>It is RECOMMENDED that:</b></p> <ul style="list-style-type: none"> <li><b>(a) Cabinet approves the proposed change to the planning application validation requirements to require applicants seeking a net increase in homes in the Christchurch area to demonstrate they have secured phosphorous mitigation; and</b></li> <li><b>(b) Cabinet notes that this approach will be reviewed in line with the development of the BCP Local Plan and Royal Assent of revisions to the Levelling Up and Regeneration Bill, and revisions to the approach will be brought back to Cabinet.</b></li> </ul>
Reason for recommendations	The Council as competent authority under the Habitats Regulations needs to be certain that the adverse impact of phosphates from new development upon water quality can be mitigated.

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Corporate Director	Jess Gibbons, Chief Operations Officer
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Wards	Burton & Grange; Christchurch Town; Commons; Highcliffe & Walkford; Mudeford, Stanpit & West Highcliffe;
Classification	For Decision

## Background

1. 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. Nutrient enrichment of water courses can come from different sources, phosphates come predominantly from sewage, agricultural run-off and fisheries.
2. On 16 March 2022, Natural England provided phosphate advice for catchments across the country including the River Avon Special Area of Conservation (SAC). Local Natural England representatives qualified this advice by telling us that:  
*‘Natural England advise that the Council need not consider effects on the River Avon from additional phosphates, as the application falls within the catchment of the Christchurch Sewage Treatment Works which Natural England has advised will need to be the subject of further investigations as part of the new Local Plan’.*
3. Whilst other local authorities stopped granting planning permission including those within the River Avon catchment, we continued to grant planning permissions due to the unusual situation expected with the Christchurch Waste Water Treatment Works (WWTW). The River Avon catchment effected is at Appendix 1.
4. On 20 July 2022, a [Written Ministerial Statement](#) was made by the Secretary of State for the Environment, Farming and Rural Affairs about a package of measures to address nutrient neutrality across England to unlock stalled development. The two main measures announced were:
  - 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; and
  - A nutrient mitigation scheme to be managed by Natural England aimed at delivering nutrient mitigation within the affected catchments.
5. Discussions with Natural England identified the following issues:

- The River Avon is already saturated with phosphates upstream by the time it reaches the Christchurch Waste Water Treatment Works (WWTW), therefore any additional phosphates from Christchurch WWTW cannot worsen the situation; and
  - There is limited means of offsetting any impact as there is very little river between the Christchurch WWTW and the harbour where pollutants are readily dispersed due to the tidal conditions. Any mitigation will involve upgrading the WWTW to strip phosphates, however, at this stage there is little benefit due to the upstream loading being already more than the SAC can cope with.
6. As part of the Local Plan process the Council commissioned consultants to assess the impact of phosphates released from the Christchurch WWTW on the River Avon and the species that qualify the site as a SAC. We published regular updates on the website, including what we were doing with live planning applications, the latest in May 2023 stated:

*The consultants prepared a draft report, which is confidential until this work is finalised. We need to adapt the draft report to consider the implications of the emerging Levelling Up and Regeneration Bill that is currently progressing through the House of Lords and is expected to pass over the responsibility to reduce phosphorous to water treatment companies, removing the burden from developers. The Bill has had several amendments that we need to assess to agree a future position with Natural England and finalise the report. The report will help inform the Draft BCP Local Plan to understand if there will be a significant effect on the River Avon. In the meantime, we continue to grant planning permission for residential development in the Christchurch area. Should we find that new development in Christchurch is contributing to a significant adverse effect upon the River Avon, we will put aside community infrastructure levy to deliver appropriate phosphorus offsetting measures to ensure that nutrient neutrality is secured for any homes granted planning permission.*

### **The findings of our investigation**

7. The findings of our investigation into the impact of phosphate discharge from the Christchurch WWTW upon the River Avon SAC are presented in the River Avon Technical Report at Appendix 2. The Technical Report considers the impact upon the River Avon of the Council granting planning permission in the Christchurch area for 250 homes over the next two years. The brief was agreed jointly with Natural England. The Technical Report found:

*Whilst the small increase in total phosphorus loading could be seen as exacerbating this situation, it is considered unlikely that the reactive phosphorus levels would change as a result. The ecology of the qualifying features also suggests that it will also make little difference to their behaviour and the impact will be de minimis. In summary therefore, given this relatively small increase, the effect on qualifying features of the SAC and other designated sites with supporting features, is unlikely to be significant and in HRA terms the effect is considered to be nugatory [means of no value or importance]. Therefore, the integrity of the SAC will be maintained and no adverse effect of the small increase in TP [total phosphorous] can be anticipated.*

8. We shared the draft report with Natural England and received a letter back in April 2023. This letter can be seen in appendices of the Technical Report. The letter raised several concerns and comments about the findings, with Natural England concluding:

*In our earlier advice to the Council, Natural England drew attention to the issue of nutrient neutrality as well as the complexity of determining that additional inputs would not have a likely significant effect on the SAC in the river below Knapp Mill, which includes river channels where there is a tidal influence.*

*Natural England has previously provided local advice to the Council concerning the need to carry out a full assessment of the impacts of nutrients on the River Avon SAC in relation to the forthcoming Local Plan. This advice was effectively superseded by the national guidance as well as in our response to the recent statutory appeal consultation by the Planning Inspectorate. Both national and local advice is consistent that new development should be nutrient neutral with respect to phosphorus.*

9. The meeting with Natural England took place in May 2023. Natural England reiterated that the aim is to restore the river to favourable conservation status any net dwelling increase would have a significant adverse effect on the River Avon SAC. This effectively means that we do not have the support of Natural England to continue to make a special case for Christchurch WWTW.
10. Rather than carry on with further investigative work to inform the BCP Local Plan, Natural England advised that we should review the findings of the Technical Report to factor in the emerging Levelling Up and Regeneration Bill. The Bill will make it mandatory for wastewater treatment companies to remove phosphorus in major WWTW's by 2030. This will remove most of the financial burden placed on the development industry to offset its phosphate impact.
11. In respect of the Local Plan, there is insufficient time to undertake the investigative work that might or might not provide clarity, with the Publication Draft of the Local Plan due to come to Cabinet this year. Acceptance of Natural England's advice that there is an adverse effect from net additional development in the Christchurch area enables us to move the Local Plan forward as we can now progress with the necessary Habitats Regulations Assessment.
12. The Technical Report was updated following this Natural England advice and concludes:

*The final position of this report is therefore that the opinion of Natural England carries great weight in coming to a conclusion under the Habitats Regulations and the manner in which in-combination effects are considered within the catchment have had a notable bearing on the scope and interpretation of this work over the lifespan of the project. In light of this opinion from Natural England, the initial conclusion from this review that no adverse effect on integrity is anticipated cannot be fully adopted by BCP Council.*

13. We must now refocus and work with Natural England and partners to explore mitigation options. The work at a catchment wide level will contribute to restoring favourable status in the River Avon and help demonstrate how the BCP Local Plan

will deliver a net gain in biodiversity and address its declaration to the climate and ecological emergency.

14. DLUHC announced in August plans to amend the Levelling Up and Regeneration Bill, whilst it was in the House of Lords, by removing the current EU laws on nutrient neutrality, which have led to Natural England guidance on phosphates. However, this amendment was not voted through by the House of Lords and it is too late now for DLUHC to amend the bill again. Government have confirmed that a new Bill will be laid before parliament to reconsider this issue at the earliest opportunity.

## **Mitigation Options**

15. There are mitigation options we can explore, including direct and indirect measures:

- Direct measures include:
  - Package Treatment Plants on major development sites to remove phosphorous from the development at source; and
  - Temporary stripping measures with chemicals to treat phosphorus in WWTWs; and
- Indirect measures such as offsetting to remove an equivalent phosphorous loading elsewhere in the catchment by:
  - Improving septic tanks across rural areas in the catchment;
  - Changing the management of agricultural land to non-phosphorous input;
  - Delivering wetlands within the catchment;
  - Explore water efficiency with publicly owned housing stock; and
  - Discontinuing fish farms within the river.

16. We are working with partners to explore these mitigation measures across the River Avon catchment in Wiltshire, Hampshire and Dorset. Once we have identified projects we can bid for DLUHC funding to set up a mitigation credit scheme. As set out in the Ministerial Statement above the loan would be used to purchase mitigation measures and sell credits to applicants seeking planning permission to offset the impact of the proposed development.
17. For major developments there is the option of direct mitigation measures through the on-site provision of a Package Treatment Plant. For most applicants this option isn't possible or viable. Instead, applicants can purchase offsetting mitigation credits from a nutrient mitigation scheme. In the interim period before we can set up a public led nutrient mitigation scheme, applicants have the option of securing credits from privately run schemes.
18. There are two schemes currently available, both fish farms that are being closed down in the River Avon with the phosphate credits on sale to developers. Whilst these schemes may be attractive mitigation solutions for developers elsewhere in the catchment, this is not the case for the Christchurch area. This is because there is no established Environment Agency phosphorous permit for the Christchurch WWTW. Other WWTWs in the catchment benefit from permits that mean the WWTW already strips a large proportion of the phosphorous from the waste water with permits for 1mg/l phosphorus output into the river.

19. As there is no permit for Christchurch WWTW, the starting point at an assumption of 8mg/l phosphorus output into the river. This makes mitigation for the Christchurch area 8 times more expensive than elsewhere in the catchment. House builders have confirmed that this is currently unaffordable in the Christchurch area.
20. Natural England are exploring what actual phosphorus output is at Christchurch WWTW. Our consultant's report suggests a figure of 3.42mg/l, but this hasn't been accepted by Natural England.
21. The Levelling Up and Regeneration Bill once enacted will place permits on WWTWs of 0.25mg/l phosphorus output into the river from 2030. This is a significant reduction for Christchurch WWTW making it affordable to developers. Once this is in law, we can use cheaper temporary mitigation measures such as paying farmers to plant cover crops for the period up to 2030. After 2030 the amount of mitigation will be greatly reduced and therefore much easier to secure. Whilst the Levelling Up and Regeneration Bill has made good progress it remains unclear when it will come into law.
22. Natural England advise that there are mitigation measures available to us. This provides us confidence that the BCP Local Plan can pass Habitats Regulations Assessment and progress to Publication stage.

### **The implications for planning applications**

23. The establishment of a position that there is an adverse effect upon the River Avon SAC means that the Council will now have to treat planning applications differently. When determining a planning application, the local planning authority undertakes an appropriate assessment of the proposed development as required by the Habitats Regulations. We can now only grant planning permission for new homes where suitable mitigation measures can be secured and demonstrated by the applicant.
24. For the period up to 2030 we will need to change our validation requirements for planning applications in the Christchurch area. This will introduce the up-front requirement for applicants to demonstrate they have secured suitable phosphorous mitigation measures before we register the planning application. Applicants can choose to deliver direct mitigation or offset their impact through the purchase of credits from the market. This will be a decision for the individual applicant depending upon their circumstances.
25. We expect developers will wait for the Levelling Up and Regeneration Bill to come into law as this will immediately make mitigation more affordable. There may be a temporary dip in planning permissions in the Christchurch area during this period of uncertainty.
26. If the recommendation is approved, we will update the validation checklist, update the position statement and publish the Technical Report.

### **Options Appraisal**

27. Option 1 – Change the validation checklist to require applicants for planning permission for new homes to demonstrate they have secured the required amount of mitigation credits from a verified nutrient mitigation scheme:

Pros:

- The responsibility lies with the applicant rather than the Council.

- Where mitigation is secured the Council can grant planning permission with certainty under the Habitats Regulations that the development can be mitigated.
- Applicants may encourage new methods of mitigation to bring to the market.
- Aligns with the approach Councils are taking across the catchment and around the country.
- Contributes towards restoring the River Avon habitat to favourable conservation status.

Cons:

- There are few mitigation schemes currently available on the market, and the price is prohibitive, meaning the homes won't be built in the short term, until affordable mitigation becomes available.
- Risks less homes being granted planning permission in the short term and failure to meet housing needs for all.

28. Option 2 – The Council delivers the mitigation by spending CIL on offsetting projects:

Pros:

- Homes continue to be granted planning permission and built.
- Simple, with no additional burden or cost to the developer.

Cons:

- Would use a significant portion of Council CIL in the short term until longer term mitigation cost effective solutions can be found.
- Significant risk of not delivering mitigation ahead of occupation in the short term with consequence of legal challenge or Natural England objecting to planning applications.

29. Option 1 is recommended. Whilst the expectation is that there may be a temporary reduction in the delivery of homes, the market can be expected to bring forward new forms of mitigation at a more affordable price. The Council will avoid the significant financial cost of providing the mitigation and the risk of legal challenge if mitigation cannot be secured. Option 1 would align with other local authority approaches in the catchment and across the country.

### **Summary of financial implications**

30. Any reduction in homes being built will have a direct impact on Council Tax raised, new homes bonus and to the local construction trade.
31. We have a significant number of families in temporary accommodation and without new homes coming onto the market the increasing cost of the private rented sector and house prices will impact on our ability to support these families into long term accommodation, increasing the financial cost of meeting our housing duty.

### **Summary of legal implications**

32. When determining planning applications, the Council must undertake an Appropriate Assessment of the proposal under the Habitats Regulations. The Regulations require the Council to be certain that the planning application will not have a

significant adverse effect upon the River Avon SAC and Ramsar. Natural England advise that all new housing (including a single new home) will increase the loading of phosphorous in the River Avon to the detriment of the SAC. Appropriate Assessment can only be passed and planning permission granted if the development can be mitigated.

33. If planning permission is granted without the certainty over the delivery of mitigation, the decision can be challenged through judicial review and potentially overturned in the courts, quashing the permission.
34. We must balance this duty against our housing duty and finding accommodation for people most vulnerable in society. We therefore need to work to find mitigation solutions to enable us to continue meeting our housing duty in the Christchurch area.

### **Summary of human resources implications**

35. Officer time will be needed to (i) check that the applicant can demonstrate mitigation measures are in place at validation; and (ii) work with partners to identify mitigation measures in the catchment.

### **Summary of sustainability impact**

36. The Council has declared an ecological emergency as well as a climate change emergency. The continuing fragmentation and loss of habitat and species is expected to lead to mass extinction and needs addressing to ensure our ecosystems are restored to help regulate and help with resilience towards climate change.
37. Wastewater from homes contains phosphorous. The Christchurch Water Treatment works does not have phosphate stripping installed and so the phosphorous is discharged into the River Avon. Natural England advise that this phosphorous loading is preventing restoration of the River Avon SAC to favourable conservation status. Whilst housing only provides a small portion of the impact, a mitigation strategy to offset or remove phosphorous from new development across the River Avon catchment will help improve water quality in the river.

### **Summary of public health implications**

38. As highlighted in the consultant's report the current condition of the river is poor and polluted with phosphorous. Whilst this doesn't directly have health implications for the public, there will be public health benefits of bringing the habitat of the river back to favourable status.

### **Summary of equality implications**

39. There are no equality implications. An assessment is not needed as this proposal affects everyone who needs housing in the Christchurch area and is therefore not discriminatory.

### **Summary of risk assessment**

40. The main risks of this proposal are:
  - A delay to planning decisions while mitigation projects are secured;



- Applicants being prevented from having a planning application registered until they can demonstrate delivery of mitigation;
- A slow down in the delivery of homes in Christchurch area until more affordable mitigation becomes available; and
- Reputational damage of holding up development, although this is a national issue and not the Council's fault, with thousands of homes stuck in the planning system whilst government agencies scramble to deliver mitigation schemes.

### **Background papers**

41. 16 March 2022 – Letter from Natural England alerting local authorities to phosphate issues.
42. 20 July 2022 [Written Ministerial Statement](#) from the Secretary of State for the Environment, Farming and Rural Affairs about a package of measures to address nutrient neutrality across England.

### **Appendices**

- Appendix 1: Catchment of Christchurch Water Treatment Works  
Appendix 2: WSP River Avon Phosphates Technical