Poole Harbour Local Nutrient Mitigation Fund

Appendix 3: Nutrient Neutrality Strategy

In March 2022, Natural England updated its advice on nutrient loading on habitats sites that were in an unfavourable condition across the country. The advice introduced a new approach to calculating nutrient loading from development reflecting the characteristics of the nutrient sensitive catchments. For Poole Harbour, this advice updated the position to include nitrogen and phosphorus as nutrients of concern. The councils within the catchment have worked together to address the need for nutrient neutrality since it was first raised as an issue.

Current approach to nitrogen neutrality

The Council's current approach to achieving nitrogen neutrality is set out in the Nitrogen Reduction in Poole Harbour Supplementary Planning Document (SPD) (April 2017). This SPD was produced and adopted by the legacy councils in the catchment. It is now adopted by both Dorset Council and Bournemouth, Christchurch and Poole Council and is therefore a material consideration in planning decisions.

The SPD is limited to addressing the need for nitrogen neutrality within the Poole Harbour catchment as at the time the evidence indicated that nitrogen was the main source of pollution leading to the Harbour being in an unfavourable condition. It therefore does not deliver phosphorus mitigation.

The SPD establishes a method for calculating nitrogen pollution arising from new development and similarly, a method for determining the mitigation needed to achieve nitrogen neutrality. In calculating these requirements, the SPD uses several assumptions including the use of an average for the performance of wastewater treatment works across the catchment area and average levels of nitrogen pollution linked to different types of land use.

Both councils work together to deliver strategic nutrient mitigation projects on a catchment-wide basis at a rate that keeps pace with the demand from development. The mitigation measures are funded from contributions made by developers as part of the Community Infrastructure Levy (CIL).

The current approach to nitrogen neutrality has successfully delivered large scale mitigation projects across the catchment for both councils. The funding and delivery mechanisms in the SPD have helped to maintain a supply of land for new homes enabling housing delivery in the Poole Harbour catchment.

The need for a refresh of the strategy

Although the existing strategy has worked well to enable development to take place within the catchment without increasing nitrogen loading within the catchment, there is now a need to review and refresh the approach. The review is necessary to respond to the updated advice from Natural England including the new approach to calculating nutrient loading.

Although Natural England's updated advice of March 2022 included the need for phosphorus neutrality alongside the need for nitrogen neutrality, the requirement included in the Levelling Up and Regeneration Act for wastewater treatment works to be upgraded is likely to remove the need for phosphorus mitigation. The Secretary of State will make an announcement on or before 1 April 2024 which will determine whether phosphorus mitigation remains a requirement. However at the time of writing this note, there is a risk that there will continue to be a need for phosphorus

mitigation and therefore the refresh of the strategy gives an opportunity for phosphorus mitigation to be considered if necessary.

During 2023, Dorset Council bid for funds from the Government's Local Nutrient Mitigation Fund and was awarded £4.63m to aid in the delivery of mitigation. This award was made on the basis that the costs of delivering mitigation were recovered and that the recovered funds were reinvested into delivery of further mitigation. The funding approach in the existing strategy does not allow for recovery and reinvestment of funds and therefore cannot be used to recoup the costs of delivering mitigation using the Local Nutrient Mitigation Fund.

In addition, the use of CIL to fund the delivery of mitigation does not enable the full cost of mitigation to be recouped as some types of development (including self-build homes and affordable homes) can be exempt from paying CIL.

Transitional approach to nutrient neutrality

When introducing new policy or approaches, it is often necessary to include a transition period before the new arrangements are implemented fully. This smooths out the transition to the new approach, reducing the shock to the development industry and therefore maintaining the supply of new homes and other developments. The suggested transitional arrangements for introducing the new approach to nutrient mitigation would be time limited and likely to start on 1 April 2024 after the pending announcement by the Secretary of State. This announcement will establish whether there will be a continued need for phosphorus mitigation within the catchment.

The transitional period would put in place new approaches to calculating the necessary mitigation requirement but would look to continue to use CIL to fund the delivery of mitigation. The transitional approach would:

a) Use the latest Natural England calculators to calculate the nutrient loading resulting from development.

   The Levelling up and Regeneration Act requires the upgrade of certain wastewater treatment works in the catchment by the 2030. The use of the Natural England calculators (or their equivalent where produced) enables the new, reduced nutrient loading calculations to be reflected in the provision of mitigation from the date of the announcement from the Secretary of State.

b) Dorset Council continue to assume responsibility for delivering nutrient mitigation within the catchment, using the existing approach within the SPD to calculate mitigation based on the change of use of intensively farmed agricultural land and to fund this through CIL.

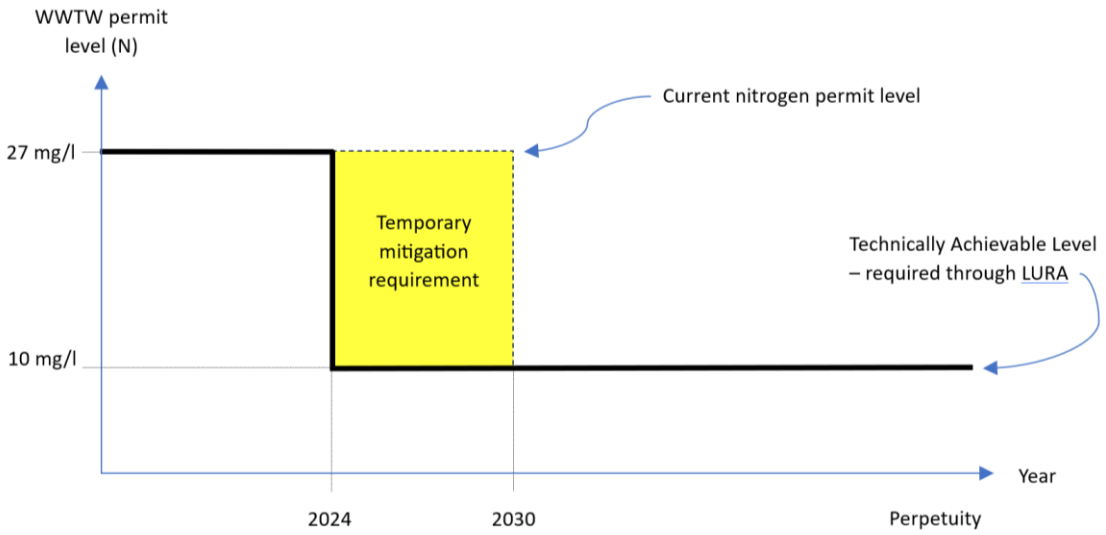
   The use of the existing approach within the SPD to deliver nutrient mitigation enables the costs to development to be maintained and delivered through CIL contributions thereby not creating a significant financial shock for development.

The Levelling Up and Regeneration Act places a duty on water companies to upgrade certain wastewater treatment works within the nutrient sensitive catchments to the technically achievable limit by 2030. These are, in most cases, significantly lower than the current permit levels and therefore the nutrient burden on development will be reduced in the longer term.

However, in the short to medium term, there will be a need to provide temporary mitigation to offset the full nutrient burden arising from the development over the period to 2030. Over this period, the mitigation requirement will be at the current rate but will reduce once the upgrade date is reached

(i.e.2030) and the stricter permitting requirements take effect. This creates a need for temporary mitigation to bridge the period from the date of the planning consent being issued to the upgrade date. The amount of temporary mitigation needed will be calculated using the Natural England calculators with the temporary mitigation being secured through developer contributions.

Figure 1: The need for temporary mitigation



The long-term nutrient neutrality strategy

During the time limited transition period, it will be important that arrangements for the longer-term strategy for delivering nutrient mitigation within the Poole Harbour catchment are made. The longer-term strategy will look to move away from using CIL to fund mitigation; instead moving to an arrangement where S106 legal agreements are used. The longer-term approach would:

a) Use the latest Natural England calculators to calculate the nutrient loading resulting from development.

   The Natural England calculators (or their equivalent where produced) enable the nutrient loading of a development proposal to be calculated, reflecting the variation across the catchment.

b) To shift the responsibility back to a developer for the provision of nutrient mitigation, ensuring that all developments bear the cost of offsetting their nutrient loading. The Natural England calculators and other available information will be used to calculate the credits arising from available mitigation. Where necessary, financial contributions will be secured through a S106 legal agreement.

   The implementation of a credit-based approach to nutrient mitigation enables three potential routes for delivering mitigation to offset the loading from development: a developer could deliver their own nutrient mitigation, a developer could purchase credits from Dorset Council, or a developer could purchase credits from a third party.

The new approach would support the creation of a nutrient mitigation market where both Dorset Council (using Local Nutrient Mitigation Fund) and third parties, would make nutrient mitigation credits available for developers to purchase. Applicants could also develop and deliver their own

mitigation measures either on or off site as part of their development proposals and where there is a surplus, these could be used to offset the nutrient loading from other developments.

The new approach will allow the council to recoup the expenditure from the Local Nutrient Mitigation Fund through the sale of credits. This will allow the return from this sale to be reinvested in further mitigation projects.

For the new approach to be implemented, it will be important to ensure that the cost of nutrient credits do not make development unviable. It is likely that the mitigation requirement will be reduced as a result of the upgrade of wastewater treatment works as required by the Levelling Up and Regeneration Act and therefore the costs of nutrient neutrality are likely to fall from their current levels. However, currently, mitigation is provided through CIL which is a non-negotiable standard charge placed on development for the purpose of delivering community infrastructure. This standard charge will remain in place and therefore the delivery of nutrient mitigation through S106 legal agreements will be an additional cost for qualifying developments.