

## **HIGH PEAK BOROUGH COUNCIL**

### **Economy and Growth Select Committee**

**8 June 2023**

|                              |  |
|------------------------------|--|
| <b>TITLE:</b>                | <b>Nutrient Neutrality - Progress Report</b>   |
| <b>EXECUTIVE COUNCILLOR:</b> | <b>Councillor Godfrey Claff – Portfolio Holder</b>   |
| <b>CONTACT OFFICER:</b>      | <b>Holly Jones – Planning Policy Adviser</b>   |
| <b>WARDS INVOLVED:</b>       | <b>Limestone Peak, Corbar, Barms, Stone Bench, Buxton Central, Cote Heath, Temple, Burbage</b> |

#### **Appendices Attached**

**None**

#### **1. Reason for the Report**

- 1.1 To update Councillors on the progress of the nutrient neutrality strategy and action plan for the Borough which seeks to address this.

#### **2. Recommendation**

- 2.1 To note the progress to date.

#### **3. Executive Summary**

- 3.1 On 16 March 2022, the Council received correspondence from Natural England and the Department for Levelling Up Housing and Communities (DLUHC) to outline that immediate action must be taken to address exceedances of phosphorus in the River Wye which forms the Peak District Dales Special Area of Conservation (SAC).
- 3.2 This letter signalled that the Council cannot grant consent for development unless it can rule out “likely significant effects” on the SAC. This has led to delay in the housing delivery in the catchment which includes Buxton, part of Doves Holes and the surrounding countryside.
- 3.3 The Council has been working with partners within the catchment of the SAC, including the Peak District National Park Authority, Natural England and

landowners / developers to identify and deliver a mitigation strategy to support developments that cannot provide their own solutions on-site. High Peak Borough Council is leading on this piece of work and has commissioned consultants, Royal Haskoning to undertake this bespoke calculator and action plan.

- 3.4 Royal Haskoning have supported other authorities, for example Norfolk and Cornwall, who have also developed locally specific calculators to address and can apply their knowledge to our catchment. The Council is also in contact with other authorities across England who have received nutrient neutrality advice through the Planning Advisory Service's nutrient neutrality catchment network. This has been established to allow impacted authorities to share information and best practice.
- 3.5 We have received a draft nutrient budget calculator and mitigations option report which we have shared with Natural England for their comments and to provide greater confidence in the calculator and approach for decision makers and for developers.
- 3.6 The Department for Levelling Up Housing and Communities has made monies available to help support this work and we have already received the cost of the work completed to date. The Government is also rolling out measures for the water industry and agriculture to play their part in improving water quality.

#### 4. **How this report links to Corporate Priorities**

- 4.1 The Nutrient Neutrality work will have implications for the following aims of the Corporate Plan (2019-2023). Aim 3: Protect and create jobs by supporting economic growth, development and regeneration, Aim 4: Protect and improve the environment including responding to the climate emergency.

#### 5. **Alternative Options**

- 5.1 Whilst the Council is required to take action to address the phosphate exceedance issue, it is for the Council to determine the manner in which it seeks to do so. The Council has previously considered the options to fulfil its obligations as a competent authority under the Conservation of Habitats and Species Regulations 2017.

Neil Roberts  
**Executive Director (Place)**

#### **Web Links and Background Papers**

The Conservation of Habitats and Species Regulations 2017  
<https://www.legislation.gov.uk/uksi/2017/1012/contents/made>

#### **Contact details**

Holly Jones  
holly.jones@highpeak.gov.uk

## 6. Detail

### Background

- 6.1 On 16 March 2022, the Council received correspondence from Natural England and the Department for Levelling Up Housing and Communities (DLUHC) to outline that immediate action must be taken to address exceedances of phosphorus and/or nitrogen polluting protected sites under the Conservation of Habitats and Species Regulations 2017. Natural England state:

*“Natural England advises you, as the Competent Authority under the Habitats Regulations, to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.”*

- 6.2 The Peak District Dales Special Area of Conservation (SAC) which consists of the River Wye and tributaries between Buxton and Bakewell is identified as exceeding phosphorus levels. The maximum phosphorus concentration for the River Wye is set at 15ug/l. Over double this amount has been recorded at monitoring locations in the River Wye. Excessive levels of nutrients can cause the rapid growth of certain plants through the process of eutrophication. This leads to a loss of biodiversity leading to protected sites being in an “unfavourable condition”. The SAC itself also includes protected species.
- 6.3 Since 16<sup>th</sup> March 2022, planning authorities cannot grant consent for development unless they are certain that the proposal will not have a significant effect on the SAC. A Habitats Regulations Assessment (HRA) will be required when the plan or project creates a source of water pollution or has an impact on water quality and when it is within the catchment of the SAC. Initially, a screening assessment will be required to consider if “likely significant effects” (alone or in-combination) on the SAC can be ruled out. If not, this will be followed by an “Appropriate Assessment” where the impact of the plan or project is considered in detail. If the Appropriate Assessment cannot rule out damage due to nutrient pollution, the plan or project cannot be approved unless mitigation to reduce or eliminate the impact can be put in place. Measures to ensure nutrient neutrality include:
- On-site measures such as SuDS (can also be retro-fitted to existing development)
  - Agricultural land use change (e.g intensive agriculture to woodland)
  - Treatment wetlands (waste water treater works)
  - Interceptor wetlands (agricultural run-off)
  - Replacement of inefficient septic tanks
- 6.4 When development cannot be mitigated on-site, off-site mitigation should be co-ordinated through the development of a mitigation strategy for the catchment by the LPAs with stakeholders. Measures could then be funded

through developer contributions or by purchasing nutrient credits via a nutrient trading scheme where other landowners in the catchment have taken action to reduce their nutrient load.

- 6.5 Natural England has provided a “nutrient neutrality” calculator and methodology to enable LPAs to assess if certain types of development will result in an increase in nutrients. This applies only when the development in question would result in an overnight stay (e.g. new homes, student accommodation, care homes, tourism attractions and tourist accommodation) and permitted development which gives rise to new overnight accommodation. This advice also applies to planning applications at the reserved matters approval stage of the planning application process, and to applications for grants of prior approval and/or certificates of lawfulness for a proposed use or operation.
- 6.6 The nutrient neutrality catchment covers the vast majority of the Buxton Sub-Area, where the development of 1,136 -1,526 homes are planned at Buxton over the adopted Local Plan period. The catchment within the High Peak Local Plan are also includes a small area of the Central Sub-Area in the vicinity of Dove Holes which is defined as a Larger Village in the Local Plan.
- 6.6 In recognition of the complex and special water related issues in the Buxton area, the Borough Council adopted the Water in Buxton Supplementary Planning Document (SPD) in December 2021. The Local Plan (adopted 2016) and Water in Buxton SPD both identify concerns regarding phosphates in the River Wye as known at the time. They propose that enhanced water efficiency standards are applied to development to minimise the flow of waste water to the Buxton Waste Water Treatment Works to help address the issue. This reflected the advice of Natural England during the preparation of the Local Plan. It is clear that a more ambitious and comprehensive response to mitigate impacts of development is required.
- 6.7 The requirements for nutrient neutrality have direct implications for development sites in the catchment that did not have the benefit of full planning consent by 16<sup>th</sup> March 2022. This includes the following housing allocations in the adopted Local Plan (specified housing numbers are approximate):
- Land at Hogshaw – 124 homes
  - Market Street depot – 24 homes
  - Land West off Tongue Lane – 139 homes
  - Land off Dukes Drive – 338 homes
- TOTAL – 625

### **Current position**

- 6.8 The Council has started its review of the Local Plan and has recently completed an early engagement consultation as the start of that process. The Nutrient Neutrality Strategy and Action Plan will inform this process in terms of the capacity of the catchment to accommodate nutrient neutral housing growth beyond that set out in the adopted Local Plan as well as identifying a strategy

and action plan to ensure that additional growth in a future Local Plan can be mitigated effectively.

- 6.9 High Peak Borough Council is leading on the work with the Peak District National Park Authority and Derbyshire County Council as the majority of planned housing growth lies within its planning area. Consultants, Royal Haskoning, were appointed to undertake the work. Their scope of works was as follows:

To provide a robust strategy to enable development within the catchment to demonstrate nutrient neutrality. This will:

- Review and confirm the sources of phosphorus pollution and pathways to the Peak District Dales SAC
- Identify the most appropriate short, medium and long term solutions that can be implemented to enable nutrient neutrality in the catchment either on-site or off-site. This should support the implementation of current Local Plans as far as possible and shape emerging Local Plan reviews.
- Provide estimated costs for recommended mitigation measures
- Review options and recommend appropriate funding and delivery mechanisms for the implementation of mitigation measures. This should include consideration of the introduction of a credits scheme and use of S106 agreements.

- 6.10 Linked to the strategy, an Action Plan will identify specific steps that the authorities and partners should take to implement the strategy and achieve nutrient neutrality in the catchment as quickly and efficiently as possible in order to enable housing development.

- 6.11 The work outlined above is to be presented with the following outputs;

- Regional-specific nutrient calculator
- Catchment and opportunity mapping
- Solutions report and action plan

The strategy and action plan is informed by a review of scheduled and potential initiatives to be taken forward by partner organisations that will contribute towards minimising phosphorus levels in the River Wye.

- 6.12 Since the outset of the project, there have been fortnightly update meetings with the consultants and latterly regional Natural England officers have been in attendance. This has been extremely useful in the early identification of potential concerns in the development of the locally based calculator and strategy.

- 6.13 Royal Haskoning have adapted the Natural England (NE) nutrient calculator to make it as regionally specific as possible using robust data. Inputs include occupancy rates, water usage, discharge concentrations, agricultural and

urban runoff coefficients. The detail of this has been shared with Natural England to ensure that they are supportive of any adjustments.

#### Draft Budget Calculator

- 6.14 The Peak District Nutrient Budget Calculator has been received for checking and has been shared with the other authorities in the catchment and also with regional specific tool to help us calculate the phosphate loading from new development in the catchment. Some of the inputs to the calculator deviate from the national calculator, the rationale for which is evidenced within the report. At all times the calculator has been based on the best and most relevant data with professional judgement applied. A precautionary approach has been applied which accords with national legislation and recent case law. This precautionary approach provides reasonable certainty that this will not give rise to increases in phosphate loading.
- 6.15 The calculator includes a flowchart which can be used, by applicants and development management officers, to determine whether proposed development is likely to trigger an increase in phosphate loading, and, if so, what the change in phosphate loading would be.
- 6.16 To arrive at a more regionally specific calculator a number of the inputs which vary from the national calculator have been applied. These are set out as follows.
- 6.17 Natural England derive average household occupancy rates by considering the total population within a catchment against the total number of dwellings and then this rate is applied to all new developments. This approach assumes that that all new development will increase phosphate levels and also does not take into account that some of the new development will be occupied by people already living within the catchment. In the locally specific calculator, to calculate the actual population change from new development, estimates of population change and net additional dwellings between 2002-2020 were compared and averaged across Derbyshire. This approach is consistent with other authorities, such as Norfolk and Cornwall in their budget calculators.
- 6.18 The higher Building Regulations standard for water use of 110 litres per person per day has been included within the calculator. The national calculator then adds a further 10 litres per person per day to take account of potential changes to water fitting efficiencies in the future. This has not been applied in the local calculator as evidence suggests that it is not necessarily the case that water usage increases over time. Furthermore the Water in Buxton SPD includes detail on the requirement for 110 litres standard.
- 6.19 To calculate the phosphorus contribution from wastewater, an estimate is made for the concentrations in treated wastewater arising from new development. Some waste water treatment works (WwTW) have a phosphorus removal process which will accord with permitted levels, whilst others do not. There is usually headroom within this and Natural England assumes, in their national calculator, that WwTW discharge at 90%. The local calculator incorporates these, but will take on lower permit limits once the

(national) obligation for Severn Trent to implement upgrades by 2030 have taken place.

- 6.20 The rainfall data used within the regional specific calculator uses the Standard Average Annual Rainfall (SAAR) for 2001-2021 which is more up to date than the Natural England calculator and one which the agency readily accept.
- 6.21 The agricultural runoff coefficients have been adapted from Natural England's nutrient neutrality calculator and includes default values for constructed wetlands.
- 6.22 Urban land runoff coefficients have been based on Natural England's guidance and incorporates different densities for different types of location, eg, low density for rural developments.
- 6.23 The net change in the phosphorus loading from proposed new development can be calculated using this local nutrient budget calculator by adding the additional phosphorus in the wastewater and the difference in load for the future and current land uses. This provides nutrient loading and a further precautionary buffer is applied at this stage. Whilst it may appear that this seems unnecessarily cautious, it follows a strong recommendation from Natural England who advised that they would not be able to support the calculator without this in place.

#### Peak District Phosphate Mitigation Options

- 6.24 The draft Mitigations Options report sets out a standard evaluation of the different types of mitigation, their cost, delivery and lifespan. This is not specific to the Peak District, but has enabled officers and colleagues from Natural England to consider the types of mitigation which might be best suited for the Peak catchment.
- 6.25 The expected excess phosphorus loading has been calculated as 13.17 kilograms for the years 2023-2025. Beyond this it falls to 2.97 kilograms per year, a total of 78.16 kilograms to 2038. In the period 2023-2025. The reason for the high earlier years is to mitigate the development that has been held up because of the phosphate issue.
- 6.26 As the run off rates for the Peak catchment are not particularly high, run off mitigation is not considered to be a suitable response. SUDs is expected to be incorporated into all developments as part of their on site works.
- 6.27 Nature based solutions and waste water management are likely to be the most favourable solutions in the catchment, though this needs further refinement in the final document.

#### Next steps

- 6.28 The calculator and mitigations report is still subject to (informal) consultation with Natural England to provide greater confidence in the calculator and approach for decision makers and for developers.

- 6.29 For the backlog of planned development, there will be some schemes where the mitigation may be possible on site, this is likely to be on larger developments. For the smaller/medium sized developments, where it is not possible to deliver mitigation on site or cannot source alternative land, then developers will be looking for the option to pay into mitigation schemes where financial contributions will be pooled.
- 6.30 Alongside this work, the Council is developing a Plan for Nature which is looking at the potential for biodiversity net gain across the district. This work is being supported by Derbyshire Wildlife Trust and all Council owned land is being reviewed, with a call for sites planned to help provide further opportunities to identify potential solutions. This work is planned to complete in early summer so that the work can be reviewed alongside each other.
- 6.31 It is recommended that this work be pulled together in a mapping based workshop with the appropriate partners to determine which sites should be brought forward early for mitigation and work done to support the Plan for Nature in devising the credits scheme and its management to take this forward. The intention would be to then invest in schemes/implement council owned schemes, to receive credits and then reinvest this to create further mitigations solutions which developers can buy into. This will be particularly relevant for smaller sites where on site mitigation is not possible.