

# Phosphate Credit and Nutrient Neutrality FAQs

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Version	Date	Approved by	Amendments
V 1.0	15/06/2022	Elizabeth Duberley - Service Manager Built and Natural Environment	n/a
V 2.0	17/03/2023	Fran Lancaster - Principal Natural Environment Officer	Removed questions on strategic wetland stages which have now been completed. Removed reference to VAT in credit price. Added questions 12, 13, 14, 15 and clarified the answer to question 22.
V 3.0	09/02/2024	Fran Lancaster - Principal Natural Environment Officer	Additional FAQs added to 'other' relating to the River Teme and Wye, see questions 31, 32, 33, 34, 35.
V4.0	15/2/2024	Fran Lancaster - Principal Natural Environment Officer	To update the answer to question 13 re: holiday let occupancy figures following discussions with Natural England.

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## Phosphate credit and Nutrient Neutrality FAQs

FAQs will be updated as queries are received. If you are unable to find the information you require on our website, supportive packs, guidance, or FAQs then you may email your query to [phosphates@herefordshire.gov.uk](mailto:phosphates@herefordshire.gov.uk).

Please be aware we are unable to answer queries individually.

### Planning

#### **1 Who should I expect to call about progressing credits?**

Planning officers will contact applicants as and when credits become available to mitigate the nutrient budget of their development proposal and will explain the next stage of the process.

#### **2 Will the S106 for the wetlands scheme contain commencement deadlines different to those of the normal statutory timetables?**

No – the normal statutory timescales will apply.

#### **3 What credit scheme will apply to Permitted Development and agricultural change of use applications known as Class Qs? Is there to be a General Development Orders (Regulation 77 within the Habitats Regulations) credit allocation system?**

Yes. Applications will need to be made and the allocation of credits will be made on the basis of the credit allocation policy in place at the time.

#### **4 Can payments be conditioned until closer to the time of scheme implementation? If an applicant turns down the first offer of credits will that mean they can't get credits later?**

The purchase of credits is required prior to issuing the decision notice in order to achieve a positive Habitats Regulations Assessment (HRA). In some circumstances for major applications we may be able to negotiate a phased approach which will be delivered through a separate legal agreement, however this is subject to continued discussions with statutory partners. If a developer turns down the first offer of credits they will then need to re-apply.

## Ecology

### **5 Why has the average occupancy and water usage on the Natural England calculator in Stage one increased in comparison to the Herefordshire Council calculator?**

As set out in [Natural England's Ricardo guidance](#), the default setting for residential dwellings is the national occupancy rate of 2.4 people per dwelling and the average daily water use per person is determined in accordance with water efficiency standards. However, as the Local Planning Authority Herefordshire Council is able to set the appropriate occupancy rate and water use for our authority area, which is 2.3 people per dwelling, and water usage as 110 litres/person/day.

### **6 Who will check my calculation? What happens if there are areas of disagreement/interpretation?**

An officer within the planning service will assess the calculations provided accuracy and to ensure against fraud. Clarification will be sought from applicants in the event that queries arise from that assessment. It is expected that applicants will follow the guidance associated with the calculation tool and provide robust, evidence based justification where the methodology deviates from the standards.

### **7 Why has the council chosen to go with the Natural England calculator?**

Natural England has provided Herefordshire Council with the current version of the phosphate calculator this includes recently updated Farmscoper modelling, which may result in minor changes to outcomes.

### **8 Why does the calculator not recognise the small amount of Phosphate coming from housing compared to other sectors and the existing housing stock?**

The Habitats Directive requires this approach to nutrients where they have the potential to cause harm to the ecology of higher level designated sites. The calculator is developed to assess the nutrient budget of new housing, as a consequence of the Dutch judgement, all development must demonstrate nutrient neutrality.

### **9 Will the first three wetlands reduce enough Phosphate to meet the NMB target?**

Natural England have set targets for restoring river quality. The Integrated Wetlands are funded to support economic growth and create development headroom. Restoration of the river is the responsibility of the present causers of poor water quality, however the council has committed to giving over a small percentage of phosphate reduction to river betterment

## **10 Why aren't other types of development required to show neutrality?**

All development within the Lugg catchment is required to demonstrate nutrient neutrality, the council are currently working with consultants to develop a methodology for agricultural development to assess its nutrient budget.

## **11 If you are purchasing a large number of credits, is there scope to include some sort of metric for the biodiversity net gain?**

Credits cannot count towards Biodiversity Net Gain (BNG) as they cannot be double counted. BNG in the first instance should be delivered on site wherever possible.

## **12 Can package treatment plants which use chemical dosing be used in the Lugg Catchment?**

Yes, you can choose 'package treatment plant user defined' in the Stage 1 Tab in the calculator and enter the phosphate level in the output from the PTP in the next cell.

The chemicals used in phosphate stripping in package treatment plants have the potential to impact upon the aquatic environment particularly where those plants are not managed correctly or are inappropriate sited. The council is working with Natural England to establish the advice relating to chemical dosing in the Lugg catchment but it is already clear that the most toxic chemicals, including aluminium salts, should generally be avoided. Additionally management and maintenance will need to be carried out by an experienced, professional company and this professional management secured for the lifetime of the development. This is in order to ensure that potentially toxic dosing chemicals are carefully controlled, used by experienced personnel and that under or over dosing does not occur.

There are additional costs associated with dosing units and with the requirement for them to be professionally managed and maintained and developers should ensure that the development can bear those costs before proceeding.

The Council will expect developers to provide: technical specifications for any dosing units proposed as part of budget calculations, the certificate associated with the proposed package treatment plant which shows the total phosphate in the treated effluent, details of the mix of chemicals proposed for use in dosing on the site and agreement that the package treatment plant will be managed and maintained by a British Water Accredited Service Technician, or other suitably qualified professional. Management and maintenance will need to be secured in perpetuity by an appropriate mechanism linked to the planning application. This information is required as part of the Habitats Regulations Assessment process and in order to ensure certainty around the impacts of the scheme.

### **13 How is occupancy rate for self-catering holiday let accommodation set in Herefordshire for use in budget calculations?**

The council will expect holiday let accommodation to assume 2.3 person occupancy (to match local evidence on dwelling occupancy) and to assume that the let will be occupied 80% of the time in most circumstances. The calculation should use 120l of water use per person per day.

Where a single very large holiday let is proposed (4 plus double bedrooms for large groups) the council will require a bespoke occupancy level to be determined.

For shepherds huts (or similar) it may be appropriate to reduce the occupancy down to 2 people per unit.

Generally 80% occupancy should be assumed. Only where use can genuinely be said to be seasonal, e.g. shepherds huts or glamping which are not suitable for winter use, may a reduced occupancy period be used to reflect the 'closed' season (60% occupancy would then be assumed). This will be secured by planning condition.

### **14 In the Council's Package Treatment Plants and Small Scale Impacts in the Lugg and Clun Catchment Herefordshire Council - Interim Guidance (January 2023) Herefordshire Council provided local clarification around Natural England's criteria for small scale impacts which have now been withdrawn. Why?**

The council continues to work with Natural England on developing its guidance and approach. In this instance the council undertook to address some additional elements of impact in respect of the high soil phosphate legacy which occurs specifically in Herefordshire, Natural England have since shared further evidence associated with the small scale impact criteria and have assured the Council that the criteria are already sufficiently precautionary for interactions between phosphates from drainage features and phosphates in the agricultural fields in which those features might be located to have been taken into account.

### **15 The NE budget calculator uses an urban runoff coefficient which assumes that 80% of the site will be hard standing. Can this figure be amended if it does not accurately represent the site?**

Yes. The Natural England Nutrient Neutrality Generic Methodology (February 2022) covers the urban runoff coefficient in Appendix 2 and provides a methodology for amending those coefficients. Applicants may wish to seek advice from an experienced professional if seeking to amend the urban runoff coefficient since the remainder of the calculation then has to be done outside the standard budget calculation spreadsheet. It should be noted that the calculation can only be amended where there is some detail of layout included in the application and that the minimum percentage of hard standing which the model can accept is 30%, so sites resulting in less than 30% hard standing must use that 30% figure.

## **Other**

### **16 When will more credits become available?**

Credits are now available. Planning officers will contact applicants in tranches when they are eligible to apply. In the meantime applicants can check the website for guidance and updates.

### **17 Who is the supplier of credits? Are there multiple suppliers?**

Under this scheme Herefordshire Council will be the sole provider of credits. However, planning applicants can develop their own mitigation to offset the phosphate load of their development proposal. Further information can be found on the Council's website at [Nutrient management - guidance for developers – Herefordshire Council](#)

### **18 Which type of developments can apply for credits in Herefordshire Council's wetland scheme?**

Under this scheme only housing developments have access to credits. However other types of development proposals are still able to provide their own mitigation to demonstrate nutrient neutrality.

### **19 How have the wetlands been funded? How will the grants from the New Homes Bonus and LEP be used?**

The grants have been invested to develop the wetlands schemes and funds recouped through credits will be reinvested into the development of further wetlands schemes across the county.

### **20 What are the costs of credits? Will there be changes to costs in the future?**

The price of a credit includes the whole life cost of design, build and maintenance for at least 80 years. Prices for new credits will be reviewed every year to ensure the whole life cost is recovered and the council does not make a profit. Currently credits are priced at £14,000 per kilogram.

### **21 How are credits allocated?**

Currently, credits are allocated in date order.

**22 On sites that already have PTPs how will credits be allocated? Can a new PTP unit be installed?**

Where a PTP is in existence already, there is the opportunity to replace this with a more environmentally sound model which will reduce the phosphate load that will be required to be mitigated.

It should be noted that the assumed baseline will always be a legally compliant system. For sites using septic tanks the legal baseline includes a septic tank discharging to ground (and not a septic tank discharging directly to watercourse as per the General Binding Rules which set a deadline of 1 January 2020 for upgrade works to be completed). Older waste water treatment systems which require upgrading in order to meet current regulations (i.e. which are not currently legally compliant) cannot be used to achieve betterment.

**23 Why were wetlands chosen as a form of mitigation by Hereford Council? Were any other schemes considered?**

All options were considered by our consultants as part of stage 2 of our Interim Phosphate Delivery Plan which is published on our website. They confirmed that integrated wetlands were the most efficient way of taking phosphate out of the river. This has been independently verified by a number of experts. However this does not preclude developers from considering other options for mitigation for the phosphate budget of their development.

**24 Do we have enough credits to meet the requirement of Core Strategy or emerging local plan?**

The estimated mid-yield of our first 3 wetlands sites including Luston is 348 kg, with the expectation that more will be released in time.

**25 How long until credits can be used to release approvals? Can approvals be granted ASAP on the basis that occupation will be 12-24 months away?**

The first tranche of credits is now available, a condition will be attached to the permission which sets out that wetlands must be in operation prior to first occupation.

**26 What is the scale of each of the schemes identified as coming forward? How many credits will be available?**

Wetlands are scaled according to the size of the waste water treatment works (WWTW) and the level of phosphate the effluent contains, that come from the works and can be taken up by the wetlands, therefore the number of credits available will vary from site to site.



## **27 Why is mitigation needed?**

To deliver nutrient neutral development, see [Natural England's letter dated July 2019](#).

## **28 Is mitigation a way to solve the nutrient issues in Herefordshire? How are they related to the Nutrient Management Plan?**

Mitigation is a means of facilitating economic growth, The council has committed to giving 20% phosphate uptake towards river betterment, The long term solution is a strategic one developed through the nutrient management plan which tackles all sources of nutrients.

## **29 Why are private mitigation projects not being sought and supported?**

Herefordshire council welcomes applicants seeking to engage in the pre-application process to discuss how developers can mitigate their Phosphate load. Guidance on progressing private schemes is available on our website ([Nutrient management - guidance for developers – Herefordshire Council](#)) and the council is developing a multi-agency advisory service to support with the development of individual projects.

## **30 Are credits a form of fine for the housing industry?**

Credits are a form of mitigation to facilitate economic growth in the county, the credits enable developers to mitigate their phosphate load and receive a positive Habitat Regulations Assessment.

## **31 Why is the Council asking for information relating to drainage (foul and surface flows) in the River Teme catchment?**

The Council has been advised by Natural England that the River Teme SSSI is in failing condition. The SSSI has 6 units Natural England's latest condition assessment shows one unit as Unfavourable – Declining and the other five units as Unfavourable – No Change<sup>1</sup>. Natural England have listed 'siltation', 'freshwater pollution' and 'discharge' as adverse condition reasons across the SSSI units. Natural England's Impact Risk Zones for the River Teme SSSI (via Magic Maps) include discharges to ground and to surface water up to 3km from the SSSI. Natural England, in their responses to a number of recent developments in the River Teme SSSI have been clear that discharges of foul and surface water associated with new development must not contribute to further declines in condition within the SSSI or make the restoration of the SSSI more difficult or less achievable.

On this basis the Council is seeking to understand the impact of development within the River Teme catchment upon the SSSI. This relates to both impacts of surface water flows which can carry silt, sediment, fuels and oils into the SSSI and to foul flows which contribute nutrients to the SSSI. To understand these impacts the Council must ask for information which might previously have conditioned (such as details of surface water

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<sup>1</sup> Natural England SSSI Unit Condition Assessment for the River Teme SSSI at [Site feature condition \(naturalengland.org.uk\)](http://naturalengland.org.uk)

systems and information about packaged treatment plants and drainage fields/direct discharges to local watercourses).

The Council will seek to ensure that best available technology and best environmental options are applied to applications which have the potential to impact upon the River Teme SSSI. This might include asking developers to consider installing packaged treatment plants of a biological nature which achieve lower levels of phosphate in the effluent, asking whether secondary treatment of effluent could be achieved on site where a direct discharge is proposed (i.e. can a reedbed, absorptive media or other technology be utilised) and seeking silt traps and other technology to treat surface water being discharged to watercourses.

If these measures are not feasible or viable developers will be asked to explain why they have been ruled out.

In taking this approach the Council is not requiring development to achieve nutrient neutrality but is seeking high quality developments which minimise impacts upon designated sites as far as reasonably practical. The Council considers that, through this process, Natural England are more likely to be supportive of individual schemes when they are formally consulted.

### **32 Is Nutrient Neutrality being applied by the Council in the River Teme catchment?**

No. Nutrient Neutrality does not apply in the River Teme SSSI catchment. The Council is seeking high quality applications where best available technology and best environmental solutions have been applied in order to ensure that impacts upon the SSSI are kept to a minimum. This approach responds to the SSSI condition assessment, the Impact Risk Zones for the SSSI and advice which Natural England have provided to the Council relating to specific developments in the catchment.

### **33 Why is the Council seeking information from applications to support Habitats Regulations Assessments for the River Clun SAC when development in Herefordshire is downstream of this SAC?**

Natural England has advised the Council that some elements of development in the River Teme SSSI catchment which is downstream of, but hydrologically connected to, the River Clun SAC have the potential to impact upon the integrity of the SAC. These impacts relate to elements of development (both construction and operational) which have the potential to impact upon fish species which are integral to the life cycle of the freshwater pearl mussel for which the SAC is designated.

The Council will seek appropriate levels of information relating to silt, sediment, pollution and nutrient impacts to support the Habitats Regulations Assessment process even where development is downstream of (but hydrologically connected to) the River Clun SAC.

### **34 Why has the Council started seeking drainage information (relating to foul and surface flows) in the Middle and Lower Wye catchments?**

In 2023 Natural England reassessed the status of the River Wye SSSI<sup>2</sup> to Unfavourable Declining<sup>3</sup> and amended the Impact Risk Zones for the River Wye SSSI on Magic Maps to include any discharges of water or liquid waste including to mains sewer. The result of this change is that areas of the Middle and Lower Wye catchments where the Council previously was not carrying out Habitats Regulations Assessment now require this assessment and a formal consultation with Natural England.

On this basis the Council is seeking to understand the impacts of developments within the Middle and Lower Wye catchments. This relates to both impacts of surface water flows which can carry silt, sediment, fuels and oils into the river and to foul flows which contribute nutrients. To understand these impacts the Council must ask for information which might previously have been conditioned (such as details of surface water systems and information about packaged treatment plants and drainage fields/direct discharges to local watercourses).

The Council will seek, in the Middle and Lower Wye, to ensure that best available technology and best environmental practice is applied to applications to minimise impact upon the River Wye SSSI and SAC. This might include asking developers to consider installing packaged treatment plants which achieve low levels of phosphate in the effluent (with the preference being for biological systems especially for smaller developments), asking in certain locations whether secondary treatment of effluent could be achieved on site where a direct discharge is proposed (i.e. can a reedbed, absorptive media or other technology be utilised) and seeking silt traps and other technology to treat surface water being discharged to watercourses.

If these measures are not feasible or viable developers will be asked to explain why they have been ruled out.

The requirements depend upon the scale of the development, whether waste water can infiltrate to ground or must be discharged to local watercourses, and where the development sits within the catchment.

The following information will be sought (and the Council welcomes this information being included within applications at the outset):

- A detailed foul and surface water management strategy
- Soil testing to support proposed use of soakways and drainage fields or to demonstrate why these options are not feasible
- Details of any on site waste water treatment including make and model of the proposed PTP. The phosphate certificate from the manufacturer should also be provided along with details of any chemical dosing proposed
- Sizing and location of drainage fields and soakaways

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<sup>2</sup> Natural England Blog at [Assessing the health of the River Wye and its catchment - Natural England \(blog.gov.uk\)](https://www.naturalengland.org.uk/blog/2023/07/assessing-the-health-of-the-river-wye-and-its-catchment)

<sup>3</sup> Natural England SSSI Condition Assessment for River Wye SSSI at [Site feature condition \(naturalengland.org.uk\)](https://www.naturalengland.org.uk/site-features/river-wye-sssi)

- Location and design of any direct discharges to watercourses

Additional information may be sought especially where direct discharges into, or in close proximity to the SSSI/SAC are proposed.

In taking this approach the Council is not requiring development to achieve nutrient neutrality but is seeking high quality developments utilising environmental best practice to minimise impacts upon designated sites as far as reasonably practical. The River Wye is in unfavourable declining condition and avoiding a further decline into failing status is a priority.

Seeking this information allows the Council to complete the Habitats Regulations Assessment of these developments which Natural England have advised is necessary.

### **35 Is the Council applying Nutrient Neutrality in the middle and lower Wye catchments?**

No. Nutrient Neutrality does not apply in the Lower and Middle Wye catchments. The Council is seeking high quality applications where best available technology and best environmental practice has been applied in order to ensure that impacts upon the River Wye SSSI are kept to a minimum and in the hope that a decline to failing status can be avoided. This approach follows advice provided to the Council by Natural England.