

# 1. Nutrient Neutrality in Herefordshire

## 1.1 Introduction

- 1.1.1 A meeting was held on 8 July 2021 between Natural England and Herefordshire Council and its consultants to discuss representations made by Natural England to the Publication Draft Minerals and Waste Local Plan (January 2021, the MWLP).
- 1.1.2 During the meeting, solutions were found and agreed to resolve the issues raised by Natural England in its representations, albeit that Natural England has yet to see the written content of either modifications to the MWLP or amendment to the Habitats Regulations Assessment (HRA) undertaken of it.
- 1.1.3 However, a new issue became apparent through the discussion: whether the ability to require development proposals to demonstrate nutrient neutrality could be applied across all mineral and waste sites located in the catchment of the River Wye SAC, or whether it could only be limited to those site located within the River Lugg catchment of the SAC.
- 1.1.4 This paper presents a short background to the issue, the current approach presented in the MWLP and the justification for that.
- 1.1.5 It was agreed that this would be discussed within Natural England due to the potential implications of this approach for Natural England's wider approach to nutrient neutrality in a number of affected catchments around England, and for the NE advisor to confirm whether or not they would support Herefordshire Council's approach.

## 1.2 Background

### The River Wye SAC NMP and its updates

- 1.2.1 The River Wye and River Lugg are areas of special importance for nature conservation, with both rivers being designated as Sites of Specific Scientific Interest (SSSI) and the lower stretches of the River Lugg, along with the River Wye, are also a part of the River Wye Special Area of Conservation (SAC) designated under the European Habitats Directive.
- 1.2.2 The River Wye SAC Nutrient Management Plan (NMP) was published in May 2014 in order to reduce current phosphate concentrations in the river to comply with conservation objectives. Whilst led by the Environment Agency, its production was a joint initiative with Natural England and was also intended to support Herefordshire Council to develop a framework for determining planning applications that are constrained by the Habitats Assessment process and to inform preparation of the Core Strategy (which was adopted in October 2015).
- 1.2.3 Work to inform the River Wye SAC NMP divided the designation into three reaches, focussing on the upper River Wye and River Lugg catchments:
  - the upper River Wye sub-catchment (the River Wye upstream of the confluence with the River Lugg);
  - the River Lugg sub-catchment (upstream of its confluence with the River Wye); and
  - the lower River Wye sub-catchment (downstream of the confluence with the River Lugg).

- 1.2.4 In November 2018, judgement was handed down from the Court of Justice of the European Union in the case of Cooperatie Mobilisation (Joined Cases C-293/17 and C-294/17, the Dutch Case).
- 1.2.5 The Dutch Case concluded that where a site is failing in its water quality objectives, and is therefore classed as being in an unfavourable condition, there is limited scope for the approval of additional damaging effects and that the future benefit of mitigation measures cannot be relied upon at Appropriate Assessment, where those benefits are uncertain at the time of the assessment.
- 1.2.6 In response to this judgement, and discussion with Natural England, the council concluded that the measures set out in the River Wye SAC NMP could no longer be relied upon and issued separate guidance, including the latest Position Statement (April 2021); all the documents have been made available on the council's website:  
[https://www.herefordshire.gov.uk/downloads/download/2039/development\\_in\\_the\\_river\\_lugg\\_catchment](https://www.herefordshire.gov.uk/downloads/download/2039/development_in_the_river_lugg_catchment).
- 1.2.7 The River Wye SAC NMP is currently (July 2021) under review, with an update being drafted that all key stakeholders have fed into, outlining measures being developed independently to improve phosphate reduction. This is now being refined by the statutory bodies: Natural England (NE); Natural Resources Wales (NRW); and the Environment Agency (EA). The purpose of the review is to provide an increased level of certainty around Phosphate reduction and timescales.
- 1.2.8 Following the update on the River Wye published by NRW in December 2020<sup>1</sup>, the review of the NMP now takes into consideration the failing wider River Wye catchment in Wales only, as well as the River Lugg catchment area in Herefordshire.
- 1.2.9 Whilst the River Wye SAC NMP is under review, it is clear that the initial findings of the evidence base to that document remain largely unchanged:
- conservation targets in the River Lugg catchment are being failed; and
  - phosphate levels in the upper River Wye catchment are currently compliant but are near to the phosphate conservation target.
- 1.2.10 Natural England's current advice, as reported in the Position Statement (April 2021) is that there remains potential for a positive appropriate assessment, where it can be demonstrated that development is nutrient neutral or would lead to betterment to enable development to proceed. Proposals will need to provide appropriate evidence of avoidance/mitigation measures.

### **Herefordshire Minerals and Waste Local Plan**

- 1.2.11 The Herefordshire Minerals and Waste Local Plan (MWLP) commenced production in 2016. It is a strategic land use plan that is focussed on matters relevant to minerals and waste. It is one element of the Herefordshire development plan and must be read alongside the adopted Core Strategy (and any other development plans adopted by the council).

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<sup>1</sup> Compliance Assessment of the River Wye SAC Against Phosphorus Targets, December 2020.  
<https://naturalresources.wales/evidence-and-data/research-and-reports/water-reports/river-wye-compliance-report/?lang=en>

- 1.2.12 Preparation of the MWLP and its HRA has drawn upon the River Wye SAC NMP and later Herefordshire Council Position Statements, in addition to advice from Natural England, in order to address the potential for minerals and waste development to contribute to the issue of phosphates in the River Wye SAC.
- 1.2.13 Unusually for a land use plan, the MWLP includes policy relevant to the management of both natural and non-natural agricultural wastes. This policy direction is the direct result of Herefordshire being a strongly agricultural county, and that this sector is identified in the River Wye SAC NMP as a key contributor to the high levels of phosphate found in the River Wye SAC.

### **1.3 Approach to nutrient neutrality in the MWLP**

- 1.3.1 The MWLP is a strategic planning document, drafted to promote the appropriate development of mineral working and waste management projects, but also to provide a policy framework for other sector developments that would impact on minerals and waste; for example promoting the use of secondary aggregates in major projects to minimise the use of primary mineral.
- 1.3.2 This approach has been (unusually for a MWLP) extended to the agricultural sector, to provide a policy framework for the sustainable management of natural and non-natural wastes that are produced on-farm.
- 1.3.3 Consequently, the MWLP is relevant to development across Herefordshire, including allocated sites that are located within the catchment of the River Wye SAC both within and beyond the River Lugg catchment.
- 1.3.4 The approach within the MWLP has been to require nutrient neutrality from development proposals within the River Wye SAC generally; it is not limited to the River Lugg catchment.
- 1.3.5 This approach has been followed for a number of reasons:
- recognition that the achievement (or not) of conservation targets can change over time and that the MWLP is intended to have a lifespan up to 2041;
  - recognition that the upper River Wye is already close to failing its conservation targets;
  - recognition that some agricultural units may be only partially located in the River Lugg catchment and there would be a lack of clarity about whether the policy would apply; and
  - seeking to apply best practice across the county, reducing the level of phosphates released into the environment generally.
- 1.3.6 Already there is a moratorium on new housing across the County unless improvements are made at the relevant waste water treatment works that will enable additional discharges to be made and the conservations targets remain to be met. There is an ongoing, careful, balancing act implemented to maintain the limited headroom available in the environment of the River Wye.
- 1.3.7 Herefordshire Council is monitoring housing completions for the upper Wye catchment area, which remain well below the anticipated completion rate as set out in appendix 5 of the Core Strategy. In addition, Dwr Cymru Welsh Water (DCWW) has confirmed that its AMP7 programme includes phosphate stripping at the Hereford WWTWs which will provide headroom to enable delivery of the current housing target.

- 1.3.8 Within Herefordshire Council there is a strong political focus to improve the environment across the authority, directly addressing phosphate levels within the River Wye SAC. There is political support for the approach currently set out in the MWLP.

#### **1.4 Confirmation of the approach going forward**

- 1.4.1 As discussed at the meeting on 8 July 2021, currently, Natural England's advice is that nutrient neutrality can *only* be required where the conservation target is being failed to be achieved. This advice is based on the Dutch Case judgement. With respect to the MWLP and the River Wye SAC in Herefordshire, this would therefore mean that only minerals and waste development proposals that would discharge to (or contribute to WWTW discharges to) the River Lugg catchment of the River Wye SAC should be required to achieve nutrient neutrality.
- 1.4.2 Herefordshire Council recognises the extent of the Dutch Case judgement, but is content that within this administration an approach that seeks nutrient neutrality for the whole River Wye catchment within Herefordshire is appropriate. Natural England is consequently asked to confirm whether their position is fixed, such that they would raise a new objection to the MWLP, or whether it concurs the approach set out in the MWLP is appropriate for Herefordshire.