

This briefing gives Parish and Town Councils an update on a key planning issue regarding Phosphates.

Many of you will have heard, and read information about the phosphate issue, following a letter South Somerset District Council received from Natural England. I understand there is a lot of misunderstanding and confusion about the official position regarding this. Therefore we have developed some information, outlined below, to bring you up to speed on this issue.

### **Somerset Levels & Moors Overview**

The Somerset Levels and Moors are designated as a Special Protection Area (SPA) under the Habitats Regulations 2017<sup>1</sup> and listed as a Ramsar Site under the Ramsar Convention. The Ramsar Site consists of a number of Sites of Special Scientific Interest (SSSIs) within what is the largest area of lowland wet grassland and wetland habitat remaining in Britain, within the flood plains of the Rivers Axe, Brue, Parrett, Tone and their tributaries. The site attracts internationally important numbers of wildlife, including wildfowl, aquatic invertebrates, and is an important site for breeding waders.

### **Natural England Advice**

The Council received a letter from Natural England to inform us of the high levels of phosphates in the Somerset Levels and Moors that are causing the interest features of the Ramsar Site to be unfavourable, or at risk, from the effects of these high levels. The same letter has also been sent to the other Local Planning Authorities in Somerset. This is as a result of a Court Judgement known as the *Dutch N* case, which has seen a greater scrutiny of plans or projects by Natural England, regarding increased nutrient loads that may have a significant effect on sites designated under the Habitats Regulations 2017 (including Ramsar Sites). The letter from Natural England provides updated advice to guide the approach to future development within the Ramsar Site catchment.

As can be seen on the map below, a significant area of South Somerset falls within the catchment.

It is considered by Natural England that although improvements to the Sewage Treatment Works, along with more minor measures to tackle agricultural pollution, have been secured these will not reduce phosphate levels sufficiently to restore the condition of the Ramsar Site. **Therefore, the scope for permitting further development that would increase phosphates either directly or indirectly to the site is limited.** This means that before determining certain planning application/submissions that may give rise to additional phosphates within the catchment, competent authorities (i.e. the local planning authority) should undertake a Habitats Regulations Assessment (HRA), proceeding to an Appropriate Assessment

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<sup>1</sup> The Conservation of Habitats and Species Regulations 2017 (as amended)

(AA) where a likely significant effect cannot be ruled out. **It is not acceptable to impose a condition on a planning permission; this has to be addressed prior to determination.**

Certain types of development will therefore require an AA, this includes those that will result in a net increase in population served by a wastewater system, or increased nutrient loading from agriculture. Existing detailed planning consents are not affected by this situation and can be built out subject to suitable discharge of pre-commencement and other relevant conditions.

The following bullet points set out the development proposals that are impacted and will likely need to undertake an Appropriate Assessment before they can proceed to a decision. **This impacts upon all live applications that have not been determined.** We are taking legal advice to clarify further the situation with reserved matters and S.73 applications.

The types of development proposals caught by this situation are as follows:

- **New residential units** – all applications for dwellings, including tourist accommodation, gypsy sites /pitches. This will even apply to single dwelling units and possible annexes.
- **Commercial developments** – new commercial floorspace that results in an increase in employees and/or to a use that would impact on wastewater – and tourism attractions.
- **Agricultural Development** – additional barns, slurry stores etc. where it is likely to lead to an increase in livestock.
- **Prior Notifications** of agricultural development where, as a result of the development, it will lead to an increase in livestock. Also, prior notifications for change of use of office to dwellings and agricultural buildings to dwellings
- **Anaerobic Digesters** that are reliant on farmyard manure and arable crops which are significant contributors to elevated phosphate levels in the catchment – particularly the production of maize.
- **Possibly tourism attractions/developments** that attract people to the district and generates additional wastewater.

Wessex Water's approach to phosphorus reduction in the Somerset catchments is set out in their Business Plan 2020-2025, specifically advocating a Catchment Nutrient Balancing Approach within the Tone, Axe/Brue and Parrett sub catchments. This approach has been accepted by the Environment Agency and Natural England. More details can be found here: <https://www.wessexwater.co.uk/corporate/strategy-and-reports/business-plan-2020>.

Natural England has advised that the AA should consider the improvements to Wessex Water's sewage treatment works. Once up and running these improvements will significantly reduce (although not remove) the offsetting requirements for new

residential development in perpetuity. However, additional and temporary measures may be required to take account of the increased nutrient loads in the interim period.

Wessex Water has confirmed a planned investment of £150M in the Tone, Parrett, and Brue/Axe catchments including a number of initiatives to impact this positively as soon as possible.

### **Immediate Impacts**

You may already be aware that decisions on certain planning applications have been delayed due to the need for ecological advice as a result of the development being likely to give rise to an appreciable effect on this issue.

It is inevitable that such delays will arise over the coming months whilst the Somerset Ecology Service deals with an increasing and more demanding work load to undertake HRAs for residential applications (and other affected development) on behalf of the Somerset Local Planning Authorities and receive further guidance from Natural England. We are working with the Somerset Ecology Service to find a solution as quickly as possible.

Although we have a high number of existing residential commitments that can continue to be built out, we need to ensure that future supply of housing is maintained going forward to meet the needs of our communities. We are working closely with developers to accelerate growth, including on committed sites that have stalled. However, we need to recognise that this issue will impact on all new residential schemes coming forward, from single dwellings to large-scale major sites within the catchment area over the shorter term, whilst actions are undertaken to address mitigation measures.

It is possible that some sites, particularly those that are greenfield and have wider landownership options, may be able to achieve nutrient neutrality if they can demonstrate that sufficient measures have been taken to offset phosphate outputs (e.g. by taking land out of agricultural production for a minimum of 80 years). Natural England, working with the Somerset Ecology Service and local planning authorities, are hoping to develop a framework to enable some short-term/interim solutions particularly for smaller scale developments.

Planning staff across Somerset are meeting regularly to discuss issues and seek further understanding on the phosphate issue. Natural England has indicated that where outline permission has already been granted, the reserved matters application will need to be subject to HRA and AA.

### **Next Steps**

We are working together with the other Councils across Somerset to jointly develop a Somerset-wide Nutrient/Water Quality Strategy. An invitation to tender has been drafted to commission consultants to undertake the strategy on behalf of the local planning authorities and to do this at pace. This strategy is needed to fully understand the water quality issues and baseline phosphorus inputs, establish nutrient budgets for

current and future housing growth, and develop mitigation initiatives to offset phosphate pollution to enable residential and other phosphate emitting development to be determined in a way that is nutrient neutral.

We recognise the significance of this work and the sense of urgency needed to take this forward to be able to unlock growth. For us this is not only important for the timely determination of planning applications, but also to ensure the Local Plan Review preferred site allocations can be taken forward with appropriate policy measures in place.

It is recognised by Natural England that an interim approach needs to include the ability for applicants to provide their own bespoke solutions in the short term. However, not all applicants will be able to undertake their own solutions, and the Nutrient Strategy and nutrient offsetting mechanism/framework needs to be in place as soon as possible to resolve this.

### **Important Note**

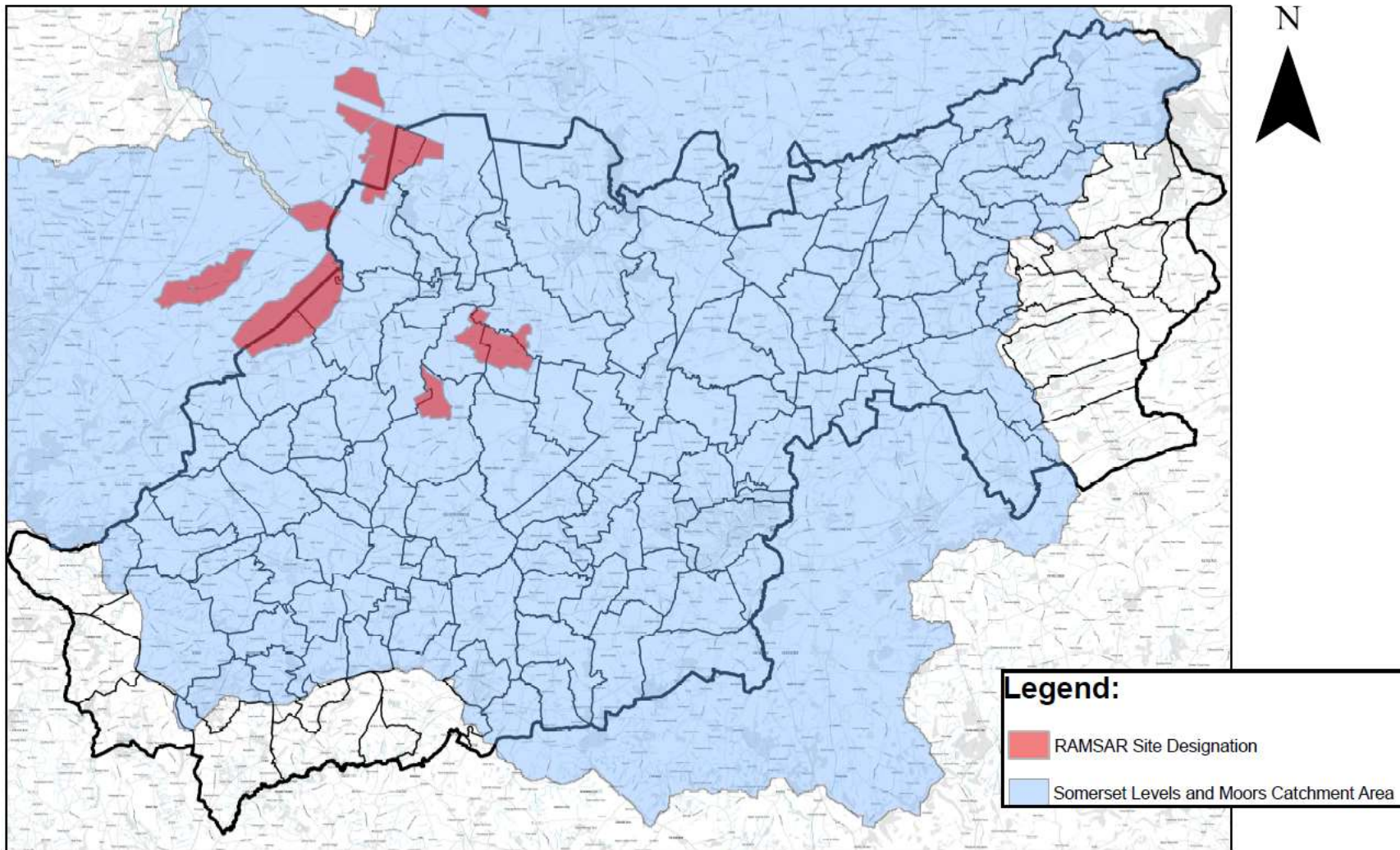
There has recently been contact from some Agents and applicants who believe that SSDC are no longer determining applications. This is not the case. We can, and will, continue to determine applications outside of the affected areas, and those applications where there is no impact.

# Briefing to Town & Parish Councils

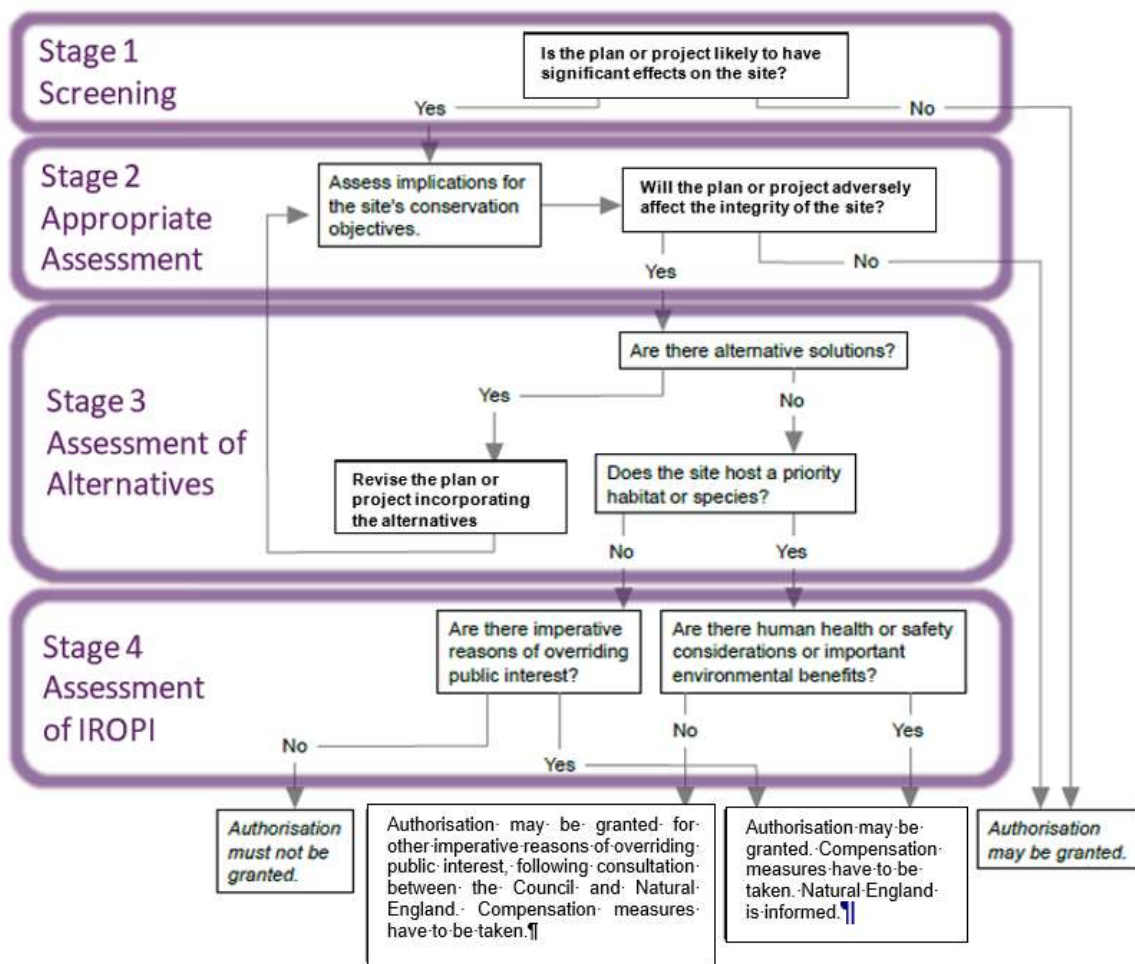
November 2020

## The Somerset Levels and Moors Ramsar Site Catchment Area

This catchment map is indicative only in terms of development requiring Habitats Regulations Assessment



## The Habitats Regulations Assessment Process



The Habitats Directive provides a derogation under article 6(4) which allows such plans or projects to be approved provided three tests are met:

- There are no feasible alternative solutions to the plan or project which are less damaging.
- There are “imperative reasons of overriding public interest” (IROPI) for the plan or project to proceed.
- Compensatory measures are secured to ensure that the overall coherence of the network of European sites is maintained.