

Planning Committee

10 November 2023

Agenda item number 12

Nutrient Neutrality, Biodiversity Net Gain and GI RAMS update

Report by Planning Policy Officer

Summary

The report provides details and updates on three key areas of work: Nutrient Neutrality, Biodiversity Net Gain and GI RAMS.

Recommendation

That Members note the report.

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1. Introduction

- 1.1. This report provides Members with an update on three key areas of work: Nutrient Neutrality, Biodiversity Net Gain and Green Infrastructure and Recreational impacts Avoidance and Mitigation Strategy (GI RAMS). This report is not intended to provide a high level of detail of the three work areas or schemes.

2. Nutrient Neutrality

The issues

- 2.1. Nutrient pollution is a big environmental issue for many of our most important places for nature in England. In freshwater habitats and estuaries, increased levels of nutrients (especially nitrogen and phosphorus) can speed up the growth of certain plants, disrupting natural processes and impacting wildlife. This process, called ‘eutrophication’, damages water dependent sites and harms the plants and wildlife that are meant to be there. Where these sites are the subject of designation, it can result in them being classified as in ‘unfavourable condition’ and there is then a statutory requirement to address this status. The sources of the excess nutrients can be very wide and will include discharges from sewage treatment works and septic tanks, run-off from livestock and arable farming and industrial processes. At individual site level, the issues can be very site specific.
- 2.2. The Conservation of Species and Habitats Regulations 2017 (the ‘Habitats Regulations’), require local planning authorities (LPAs) to ensure that new development does not cause adverse impacts to the integrity of protected habitats, such as the Broads, prior to granting planning permission.
- 2.3. Natural England has identified 31 designated sites across England that are in ‘unfavourable condition’ as a result of excess nitrogen and/or phosphorus, where any

further damage to their habitats and the wildlife that depends on them must be prevented. Consequently, unless and until a solution to the problem of additional nutrient load has been found, any proposed development, plans or projects which affect these sites could not be approved as it would likely fail an assessment under the Habitats Regulations.

What this means

2.4. All LPAs in Norfolk, including the Broads Authority, received a letter dated 16 March 2022 from Natural England concerning nutrient pollution in the protected habitats of both the River Wensum Special Area of Conservation and the Broads Special Area of Conservation and Ramsar site. The letter advised that new development which would create new overnight accommodation within the catchment of these protected habitats has the potential to cause adverse impacts with regard to nutrient pollution. The letter advised that such development included, but is not limited to:

- new homes,
- student accommodation,
- care homes,
- tourism attractions,
- tourist accommodation,
- permitted development (which gives rise to new overnight accommodation) under the Town and Country Planning (General Permitted Development) (England) Order 2015, and
- Any development not involving overnight accommodation, but which may have non-sewerage water quality implications.

2.5. At present there are no identified mitigation solutions available locally to resolve the issues. Until mitigation schemes are in place, the Authority cannot lawfully conclude that development within the catchment of relevant protected sites will not have an adverse impact. Therefore, until these matters are resolved the Authority will not be able to grant planning permission for developments which include overnight accommodation within the affected catchments.

2.6. The Norfolk LPAs affected by this issue have been working together to find a solution locally. 'Nutrient Neutrality' is a strategic approach to mitigation, designed to enable LPAs to grant planning permissions for development that can take place without harming protected sites. This is a short-term solution that has been developed to identify possible options for mitigation which address the fundamental causes of nutrient overload (which includes sewage treatment works, septic tanks, livestock, arable farming and industrial processes).

Work completed to date

2.7. Working through the established Norfolk Strategic Planning Officers Group, the Norfolk LPAs affected by Nutrient Neutrality have worked together to fully understand the issue and work towards mitigation provision. Funding was available from Government and consultants were engaged to help Norfolk LPAs. Drawing on the experience of

addressing nitrogen pollution in the Solent catchment, where Nutrient Neutrality has been in place for around 4 or 5 years, the following work has been completed in the last 18 months by Royal Haskoning:

- 2.7.1. [Wensum and Broads Nutrient Neutrality Catchment Map](#) – Improved interactive mapping to clearly show the catchments of the Water Recycling Centres and showing which ones are in scope for Nutrient Neutrality.
- 2.7.2. [River Wensum SAC and Broads SAC Nutrient Budget Calculator \(XLSX\)](#) – This calculator is based on the Natural England calculator, but some parts have been updated to reflect Norfolk-specific factors. There is an accompanying technical report (see below) that provides more information.
- 2.7.3. [Norfolk Nutrient Budget Calculator Technical Report \(PDF\)](#) – The Norfolk nutrient budget calculator is a regional specific tool designed to rapidly calculate the nutrient loading from new residential development in the catchments of the River Wensum SAC and the Broads SAC. This report presents the methods, principles and key assumptions on which the calculator is based. Natural England have responded to the potential to use this Norfolk Calculator and the response is below.
- 2.7.4. [Natural England Norfolk Nutrient Calculator Response \(PDF\)](#) – Natural England provided this response to the production of the River Wensum SAC and Broads SAC Nutrient Budget Calculator (XLSX).
- 2.7.5. [Report: Small scale discharges of phosphorous: Low risk mapping \(PDF\)](#) – The guidance relates to small discharges from Package Treatment Plants (PTPs) and Septic Tanks (STs) and it states that where all of the requirements of pre-defined conditions are met, a PTP / ST will not have a likely significant effect on the designated site from phosphorus.
- 2.7.6. [Royal Haskoning Final Norfolk Nutrient Strategy Nutrient Mitigation Solutions Report](#) – This report sets out suitable short, medium, and long-term mitigation options that could potentially be used to offset the additional nutrient load from a new development within the catchment of the River Wensum SAC and/or The Broads SAC, including potential strategic options to manage nutrient inputs and allow further residential development to proceed.

Norfolk Environmental Credits

- 2.8. The Royal Haskoning work on the calculation of nutrient loads, sources and potential mitigation options has been valuable, but has identified that there will be a need to offer options for mitigation. Again, following examples from schemes already in place elsewhere in the country, it became obvious that there was a need for complementary work, involving creating a market and incentivising landowners and farmers to create mitigation schemes.
- 2.9. [Norfolk Environmental Credits](#) has been set up by Broadland, South Norfolk, North Norfolk and Breckland Councils. It is a not-for-profit organisation. The company is controlled by a Board of Directors and is registered at Companies House.

- 2.10. Norfolk Environmental Credits will invest in environmental schemes which provide nutrient neutrality mitigation. This will enable them to create units of credits which can be sold to developers. They are sourcing mitigation from across Norfolk, including nature-based solutions and improvements to the wastewater system. They will sell nutrient neutrality credits in 0.1 kg units of phosphorous or nitrogen.
- 2.11. At the time of writing, Norfolk Environmental Credits is set to release its first set of credits. These credits are specifically created to offset nutrients resulting from new projects in the Yare catchment area. Given the demand, they will allocate credits selectively at first. The decision on which developments get priority will hinge on the information provided by developers and promoters, via the Norfolk Environmental Credits website. In general, Norfolk Environmental Credits will prioritise sites with the lowest phosphate needs that have faced the most extended delays due to nutrient neutrality.
- 2.12. Whilst the Broads Authority is not a partner in the Norfolk Environmental Credits company, developers in the Broads area will be able to use Norfolk Environmental Credits as required in recognition that for part of the districts that run the scheme, the Broads Authority is the LPA.

Natural England Mitigation Scheme

- 2.13. In July 2022, the [Government announced](#) that Natural England will provide a Nutrient Mitigation Scheme to enable developers to mitigate the impact of their development. The first scheme went live in March 2023 in the Tees Catchment. The credit scheme provides a simple mechanism for developers to purchase nutrient credits to discharge their obligations under the Habitats Regulations. In the Tees catchment, where land is being purchased/leased to facilitate the delivery of permanent credits, the cost for one credit in the first round has been set at £1,825 per unit.
- 2.14. Natural England is working with partners to identify suitable sites for mitigation in other areas, focusing first on the catchments with the highest housing needs. They are working proactively with land managers, developing feasibility studies in the River Wensum, the Broads and the Stodmarsh catchments to determine how suitable the land is for delivering mitigation. The outcome of these studies will inform the pipeline of sites that Natural England will invest in to generate the next nutrient credit rounds.

The future of Nutrient Neutrality

- 2.15. In September 2023, the government announced that it would amend the Habitats Regulations which underpin 'Nutrient Neutrality' through the Levelling Up and Regeneration Bill 2022–23. More details can be found in the [Government Announcement](#) made on 1 September 2023. This amendment was proposed to replace Schedule 13 to state that certain local authorities/bodies, including LPAs, must assume that nutrients in wastewater from proposed developments will not adversely affect the natural environment. The proposed amendments were rejected by the House of Lords on 13 September 2023.

- 2.16. Until any additional legislation is in place to direct LPAs to change the current approach, LPAs must continue to require applicants to assess the impact of their scheme using the Natural England calculator and then secure appropriate mitigation.

3. Biodiversity Net Gain

About Biodiversity Net Gain

- 3.1. Biodiversity net gain (BNG) is a strategy to ensure that development contributes to the recovery of nature. It is a way of making sure the habitat for wildlife is in a better state than it was before development.
- 3.2. Under the [Environment Act 2021](#), BNG requires that all planning permissions granted in England (with a few exemptions) will have to deliver at least 10% biodiversity net gain as part of the development. It will apply to all schemes for major development from January 2024 and for small sites from April 2024. BNG will be measured using Defra's biodiversity metric and habitats will need to be secured for at least 30 years.
- 3.3. A developer must first look to deliver the mandatory BNG either on-site or off-site. If this is not possible, then they may buy a statutory biodiversity credit.
- 3.4. BNG had been proposed to come into effect from 1 November 2023, however the implementation date has recently been put back. No secondary legislation or guidance has been released to date, but the Regulations are expected in November.

The Metric

- 3.5. Demonstrating BNG requires an approach to measuring biodiversity. The [Biodiversity Metric](#) is a habitat-based approach which gives a proxy biodiversity value to all types of habitat, with the proxy value depending on factors such as rarity, quality and size. It has been developed by Natural England. The Biodiversity Metric is designed to provide ecologists, developers, planners, and other interested parties with a means of assessing changes in biodiversity value (losses or gains) brought about by development or changes in land management.
- 3.6. Mandatory BNG will require use of the latest version of the Biodiversity Metric. The current version is [Biodiversity Metric 4.0](#), which was published in March 2023. Government anticipate that this will form the basis of the statutory metric, which is scheduled to be laid before Parliament in November 2023.

BNG for marine habitats

- 3.7. The approach and metric for marine habitats and environments is not as developed as the terrestrial version. Defra published its [consultation on the Principles of Marine Net Gain](#) in June 2022.

Small sites

- 3.8. There will be a less onerous process for applying BNG to small sites, including use of the [Small Sites Biodiversity Metric](#). Small sites are defined for the purpose of the BNG exemption as:

(i) For residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares.

(ii) For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.

3.7 It should be noted that there are indications that the Small Sites Biodiversity Metric may not be suitable for sites close to designated areas, but further information on this is to be provided.

The National Biodiversity Credits Scheme

3.9. The Environment Act makes provision for the Secretary of State to set up a system of statutory biodiversity credits that will be invested in habitat creation. The biodiversity credits scheme allows the UK government to sell biodiversity credits to developers if the required BNG cannot be achieved on-site or through the off-site market. The price of Government biodiversity credits will be set higher than prices for equivalent biodiversity gain on the off-site market and Defra published [indicative credit prices](#) on 27 July 2023. Natural England will sell statutory biodiversity credits on behalf of the Secretary of State. A digital sales platform is currently being developed and tested.

Exemptions

3.10. Section 3.1 of the [Government's 2023 consultation response](#) sets out exemptions from mandatory BNG, which will be implemented via secondary legislation. These are:

- development impacting habitat of an area below a 'de minimis' threshold of 25 metres squared, or 5m for linear habitats such as hedgerows and watercourses [NOTE Defra have confirmed (9 August 2023) that this is 25 squared metres (5m x 5m = 25 m²)];
- householder applications;
- biodiversity gain sites (where habitats are being enhanced for wildlife); and
- small scale self-build and custom housebuilding.

3.11. The 'de minimis' threshold applies to the area or length of habitat within a development, not the total development footprint, and the same exemption will apply for small sites. If a development contains less than 25m² of non-priority habitat but 5m or more of linear habitat, or vice-versa, then the exemption will not apply, and all habitats would be subject to BNG. If the exemption does apply, then there is no requirement to deliver BNG on that site.

Delivery on site first

3.12. Biodiversity Metric 4.0 incentivises habitat delivery on or close to the development site through a 'Spatial Risk Multiplier', which reduces the biodiversity value of habitats delivered further away from the development.

- 3.13. Where a project cannot achieve the required net gain in biodiversity units on-site, then off-site units can be used. All off-site data should be entered into the off-site sheets of the metric.
- 3.14. The spatial risk multiplier reflects the relationship between the location of on-site biodiversity loss and the location of off-site habitat compensation. It affects the number of biodiversity units provided to a project by penalising proposals where off-site habitat is located at distance from the impact site.

Deliberate habitat degradation

- 3.15. Within Schedule 14 of the Environment Act, which sets out the biodiversity gain condition for development, measures are included that allow LPAs to take account of any habitat degradation that has taken place since 30 January 2020 and to take the earlier habitat state as the baseline for the purposes of BNG. The purpose of this is to discourage deliberate habitat damage. In order to ascertain the habitats present and their condition on 30 January 2020, aerial imagery or data sets from that time could be used. The date of 30 January 2020 was the day the Bill entered Parliament.

Resourcing BNG

- 3.16. The Broads Authority has created a part time BNG officer post to ensure the Broads Authority is ready for BNG. The BNG officer will be located in the Planning Team but work closely with the Ecology Team and the Environmental Policy Advisor. The post is funded through the Burdens Payment received from Government in recognition of the resources required to deliver BNG.

LPAs working together

- 3.17. Nationally, the Planning Advisory Service (PAS) are liaising with LPAs and Government Officials as we all prepare for BNG. In the absence of published legislation, guidance or Regulations, there are lots of questions and queries being raised by LPAs about how BNG will work, and PAS are raising these with Government. There is frustration about the absence of details from Government relating to BNG, as well as useful feedback and questions from LPAs.
- 3.18. Locally, Norfolk and Suffolk LPAs have been meeting regularly to talk about BNG and see what can be done together to prepare. In Suffolk, a guide has been produced. [Biodiversity Net Gain Planning Guidance Note for Suffolk \(broads-authority.gov.uk\)](https://broads-authority.gov.uk)

The finer details

- 3.19. Notwithstanding that the secondary legislation and other guidance have not yet been published, the Biodiversity Metric is available, and PAS (and others) have provided training. The material and processes are technical, and this update does not intend to go into those in detail. The Authority, with the help of the new BNG Officer, will ensure we are prepared to address BNG when it comes into effect.

4. Green Infrastructure and Recreation Avoidance Mitigation Strategy (GI RAMS)

The issue

- 4.1. New development, particularly residential development, will increase the population of an area and the new residents will typically want to get out and about in the local countryside. Where there are sites in the local area which are designated for their ecological or biodiversity value, the increased recreational pressures can cause damage. This might include, for example, by trampling or dogs scaring birds or seals and these kinds of effects are classed as recreational impacts. Increased recreation without mitigation can result in the significant features of the sites being degraded, or lost, and internationally important areas at risk of losing species and habitat, and therefore their designations.
- 4.2. The Green Infrastructure and Recreation Avoidance Mitigation Strategy (GI RAMS) is a tariff-based strategy that identifies a detailed programme of mitigation measures aimed at delivering the necessary mitigation to avoid adverse effects on the integrity of the Habitats Sites.

How we are tackling this issue

- 4.3. The Broads is involved with two GI RAMS, one in Norfolk and one in Suffolk. The [Suffolk Coast Recreation Disturbance Avoidance and Mitigation Strategy \(RAMS\)](#) and the [Norfolk Recreation Avoidance and Mitigation Strategy \(RAMS\)](#) aim to reduce the impact of increased levels of recreational use on Habitat Sites (also often called European Sites), due to new residential development in Norfolk and the Suffolk Coast area. They also provide a simple, coordinated way for developers to deliver mitigation for their development.
- 4.4. The GI RAMS is a strategic approach to mitigating the in-combination effects that development has on designated areas and allows mitigation to be delivered across the relevant areas (across Norfolk and across part of Suffolk).
- 4.5. Taking a coordinated approach to mitigation has benefits and efficiencies compared to project-by-project mitigation packages. The RAMS partnership approach has support from Natural England.
- 4.6. The Broads Authority applies the GI RAMS tariffs to development in the Broads since April 2022, and the income generated is transferred to the Norfolk or Suffolk RAMS partnership as relevant.

How it works

- 4.7. Generally, the schemes apply to overnight accommodation. For holiday accommodation, a ratio is applied. For every six beds of holiday accommodation, one RAMS tariff is required.
- 4.8. If a proposal is for overnight accommodation, then the applicant is advised that they need to mitigate the recreation impacts of their development. They are advised that it may be easier to pay the tariff into the relevant RAMS scheme. The funding is pooled

and will be spent strategically to address impacts from recreation. It is important to note that larger schemes, typically of around 50 dwellings or more, are likely to also need to provide open space as mitigation.

- 4.9. The current Norfolk RAMS tariff is: £210.84 per dwelling.
- 4.10. The current Suffolk Coast RAMS tariff is: £321.22 per dwelling.
- 4.11. As much of Norfolk has been affected by Nutrient Neutrality, there have been limited permissions given and therefore 'the pot' is not as large as one could have expected.

Norfolk update

- 4.12. Discussions are ongoing with both Norfolk County Council as well as Norfolk Environment Credits regarding governance arrangements.
- 4.13. Footprint Ecology have been commissioned to review the package of mitigation measures. They have met with various organisations around Norfolk to discuss potential packages of measures. Early work is indicating that education, liaison with visitors as well as on the ground measures like fencing are suitable mitigation measures.

Suffolk update

- 4.14. Work is progressing to put governance arrangements in place to start to spend the tariffs that have been collected.
- 4.15. The Suffolk Coast RAMS partners are at an early stage of scoping the review of the Suffolk Coast RAMS mitigation package schemes.

Author: Natalie Beal

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