

TAKE FIVE

A guide to phosphates
and nitrates for
developers



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A guide to phosphates and nitrates for developers

1. What's the problem with nitrates and phosphates?

Nitrates and phosphates are naturally occurring and also widely found in a host of products including artificial fertilisers, cattle feed and detergents. When they find their way into watercourses and wetlands in high concentration they encourage growth of aquatic algae and plants. A process called eutrophication ensues and aquatic plants, invertebrates and vertebrates can be starved of light and oxygen. Over time, this depletes the resilience of the habitat and can have disastrous effects on biodiversity and the food chain.

By building houses or carrying out other development in the catchment areas of vulnerable (and usually protected) wetland habitats, the concentration of nitrates and phosphates in the local water is almost inevitably going to rise because the amount of phosphate/nitrate generated by household activities will usually outstrip the ability of the local water treatment works to remove it from processed sewage water.

2. Why has this now become a bigger issue?

In an action known as the “Dutch N case” in 2018, the European Court of Justice ruled that where the conservation status of a protected natural habitat is unfavourable, the possibility of an organ of state (such as a local authority) authorising activities which will compromise the possibility of restoring the site to a favourable state should be limited.

The result is a much greater requirement on local planning authorities to scrutinise the effects of granting planning permission for further development where water quality within protected wetland environments is already unfavourable or at risk of becoming unfavourable. In other words - the likelihood of increasing pollution to a protected wetland within the catchment is now a highly relevant factor in whether planning permission can be granted.

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3. What are the rules now?

Natural England, the body that advises the government on the natural environment, is the lead on producing guidance for local authorities. Natural England advises that the impact of contaminants to a protected site should be assessed at the planning application stage and that local planning authorities should only grant permission for developments where “nutrient neutrality” can be achieved.

4. How can nutrient neutrality be achieved?

The most effective way to eliminate contamination is for nitrates and phosphates to never leave the site of development. In practice, this is difficult to achieve by on-site measures alone. So, there are two other options available:

- **Offsetting.** The developer secures land that currently emits phosphates and nitrates and commits to rewilding it, effectively balancing out the contamination caused by the development. That offsetting can be achieved onsite by sterilising part of the potential development area, or by creating an offsite scheme.
- **Purchasing credits.** This is similar to the system of biodiversity net gain credits, in that the developer buys credits which fund mitigation schemes in the catchment area where the development is taking place.

5. What does this mean for developers?

Developers in areas where there is a protected site within the same catchment area will need to be aware of their obligations relating to nitrates and phosphates and take phosphate advice at an early stage from a specialist. Things’ specialist development, planning and environment lawyers are able to work with developers’ phosphate and nitrate specialists to advise on:

- how to secure land needed for on-site and off-site mitigation in the short- and long term;
- how to plan for mitigation within land options and contracts;
- pricing strategies; third party land agreements to secure consents and arrangements.



Would you like to know more?

The team at Things have a broad range of sector experience working for landowners, land developers and promoters on a wide range of commercial and residential schemes. [Find out more here.](#)