

STODMARSH OPERATIONAL STATEMENT – MARCH 2022

Parties to this Operational Statement

This Operational Statement has been prepared by Ashford Borough Council, the Environment Agency, Kent County Council and Natural England.

Spatial scope of this Operational Statement

This Operational Statement applies to the Stour catchment area of Ashford borough.

Primary purpose of the Operational Statement

The primary purpose of the Statement is to provide clarity to the market as to how the respective decision makers and key stakeholders are progressing the many aspects and complexities associated with the wider Stodmarsh nutrient issue, with a specific focus on potential future strategic wetlands.

Each party is united in its desire to find a strategic solution in the form of the delivery of a new wetland area and have adopted a partnership approach to realise this desire. However, it needs to be understood that each party has their own framework within which they are working within.

In broad terms, and in the context of this Operational Statement, this is summarised below:

- Ashford Borough Council is the decision maker in relation to determining planning applications within its administrative boundary. As the Local Planning Authority, it also has responsibility for the preparation of a Local Plan for the borough and facilitation of the implementation of that Plan.
- The Environment Agency (EA) are a statutory consultee in the planning process, providing expert advice to Local Planning Authorities, Minerals and Waste authorities, and communities on the production of development plans, and on individual planning proposals. Accordingly, this Statement clearly articulates their in-principle view regarding the issue of progressing a new strategic wetland and in doing so will help shape their advice for relevant planning applications.

In addition, they are responsible for deciding whether to grant environmental permits relating to the water environment, through their permitting regime, which is a separate part of the overall process.

- Natural England (NE) is responsible for promoting nature conservation and protecting biodiversity, including ensuring that the network of habitat sites is appropriately maintained or restored to a favourable condition. In this case, NE is the appropriate nature conservation body and provides advice in relation to the habitat sites which the decision maker must have regard to. This Statement will help shape their advice for future planning applications, so a consistent

message is delivered. NE has also published the relevant advice¹ which should be read in conjunction with this Statement.

- Kent County Council (KCC) are a statutory consultee in the planning process and have played an important role in the emerging strategic wetland solution within the borough. They play a key co-ordination role, helping to ensure that a joined up approach is progressed across the county and provide a strong voice to Government to help ensure that infrastructure comes forward in a sustainable way that will deliver the growth and development aspirations of the County.

Within the context above, the following Key Principles and Key Actions are agreed by Ashford Borough Council and the Environment Agency and are broadly endorsed by Natural England and Kent County Council.

Key Principles

- **Principle 1** - *A co-ordinated and strategic nutrient mitigation solution addressing planned development and associated infrastructure within Ashford borough should be pursued to tackle the issues raised by the Natural England Stodmarsh Advice.*
- **Principle 2** – *A cost-effective land based strategic nutrient mitigation solution shall be delivered which will enable sustainably planned housing development within Ashford borough to achieve nutrient neutrality, so that housing developments can progress swiftly through the appropriate mechanisms.*
- **Principle 3** – *The land based strategic solution will be delivered and maintained in such a way to provide suitable and sustainable environmental responses that prevent further deterioration of the Stodmarsh Lakes from phosphorus and nitrogen associated with the development of overnight accommodation in the Stour catchment.*
- **Principle 4** – *A partnership approach, which is adopted and/or endorsed by the parties in this Operational Statement, will be of paramount importance to deliver Principles 1 – 3 to tackle the issues raised by the Natural England Stodmarsh Advice.*

Key Actions

- **Action 1.** *Ashford Borough Council, with support from NE and EA, will pursue the creation and delivery of publically owned and managed strategic wetland(s) in the Stour Catchment, for the purposes of generating*

¹ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

nitrogen and phosphorus ‘credits’ to release delivery of planned housing development within Ashford borough²,

Action 2. *Continue to raise with Government the need to secure a short, medium and long term solution to the Stodmarsh issue to ensure that sustainable housing delivery in East Kent does not continue to be stalled,*

Action 3. *Continue to work together with other partner agencies, such as the Kent and Medway Economic Partnership (KMEP), the South East Local Enterprise Partnership (SELEP) and Southern Water, as part of a collaborative framework to ensure that all strategies are aligned, produced and implemented as swiftly as possible, and*

Action 4. *The next iterations of the relevant Local Plans will be cognisant of the potential need to identify suitable land, should further land based strategic solutions be required as a means of providing a plan-led response to the Stodmarsh issue and the need for ‘nutrient neutrality’.*

Applicability to planning decisions – Ashford Borough Council Position

The Operational Statement should be read as a whole and, where relevant, will be a matter to be taken into account as a material planning consideration in planning decisions made by Ashford Borough Council.

There are many complexities and sensitivities associated with delivering new wetlands (see ‘The Key Considerations Associated with Wetland Delivery’ section below), which need to be balanced appropriately to deliver a suitable and long term sustainable solution.

Accordingly, the Council will continue to support new wetlands that mitigate sustainable housing proposals in a way that complements the delivery of the emerging strategic wetland solution. On-site wetlands which are in line with the requirements set out in the Natural England Advice Note and which have the support, when needed, of the Environment Agency will therefore generally be supported. Doing so, is consistent with the Council’s emerging Stodmarsh Mitigation Strategy.

However, the Council will continue to resist ‘standalone’ wetlands or ‘off-site’ wetlands which are being proposed to generate nutrient mitigation that is:

- not clearly attributable to a specific housing proposal, or
- clearly attributable to a specific housing proposal, but that proposal is not seeking to deliver new housing on either a site allocated in the Council’s Local Plan 2030 or that would deliver significant and wider planning benefits (for example, a sustainable brownfield site),

unless it can be clearly and unequivocally demonstrated by the applicant that the creation of such wetlands would not prejudice the ability to deliver the scale and form

² Wider collaboration, outside of the parties of this Operational Statement, which contributes to the delivery of a strategic solution will be welcomed.

of new strategic wetlands necessary to release all development necessary to successfully deliver the development targets set out in the Ashford Local Plan to 2030.

This position is needed at this stage as there is only a finite area of land which may be suitable for the delivery of a strategic wetland solution, one which makes the best use of land - a key requirement of the National Planning Policy Framework.

Accordingly, and given the wider complexities of delivering new strategic wetlands, the Council should not be granting planning permission for new wetlands that may, in any way, prejudice their delivery. Any release of land for new wetlands areas should, at this time, be limited to those proposals which deliver those sites allocated in the Council's Local Plan 2030. These are sites which have been rigorously tested as being 'sound' in planning terms.

Failure to adopt this position would mean that the delivery of 'critical' infrastructure, needed to support new housing growth, would be planned in an ad-hoc and 'first come first served' basis. This clearly needs to be avoided, and is in direct conflict with the underlying principle of the planning system to be, and remain, plan-led.

For the avoidance of doubt, the Council are not suggesting that this stance on standalone, or 'off-site' wetlands will continue for a significant period of time. However, there must be caution applied until such time as any strategic wetland solution is suitably advanced.

Clearly, by working in partnership with Natural England and the Environment Agency, the Council is ensuring that the most optimum solution is delivered as swiftly as possible.

Context

This Operational Statement sits within the progression of a strategic and co-ordinated solution to the nutrient neutrality issue that has arisen as a consequence of the Natural England Advice issued in July 2020 (updated in November 2020 and in March 2022)³.

Ashford Borough Council has published a Cabinet Report in March 2022 which sets out how the strategic wetland solutions fits within the wider response to the Stodmarsh nutrient issue. The March 2022 Cabinet Report⁴ should be read in tandem with this Operational Statement.

Further details about the response to the wider Stodmarsh nutrient neutrality issue, and the Council's response are available on the Council website at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

³ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

⁴ Link to March 2022 Stodmarsh Cabinet Report - [Agenda for Cabinet on Thursday, 31st March, 2022, 7.00 pm - Modern Council \(moderngov.co.uk\)](#)

Stodmarsh Lakes

The Stodmarsh Lakes lie east of Canterbury and is a Special Protection Area (SPA), Ramsar site, Special area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI) and parts are a National Nature Reserve (NNR). It is a site of national and international importance for a range of water dependent habitats and wildlife.

The Stodmarsh Lakes are 'partially' fed by the Great Stour and water entering the watercourses in the Stour catchment. This catchment covers a significant portion of East Kent, including the Local Authorities of Maidstone, Ashford, Folkestone & Hythe, Canterbury and Dover. Map 1 shows the administrative boundaries of Ashford and the extent of the Stour catchment.

As per the Natural England Advice, any development (providing overnight accommodation) within the Stour catchment is impacted by the requirement for nutrient neutrality, and is therefore considered within the scope of the Nutrient Mitigation Framework. In addition to developments within the catchment, those which lie outside of the catchment, but which discharge to a Wastewater Treatment Works (WwTW) in the catchment are also covered by the Advice. Other types of business or commercial development, not involving overnight accommodation, will generally not need to be included in the assessment unless they have other (non-sewerage) water quality implications. It is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.

This Operational Statement relates to the area of the Stour Catchment that falls within the administrative area of Ashford.

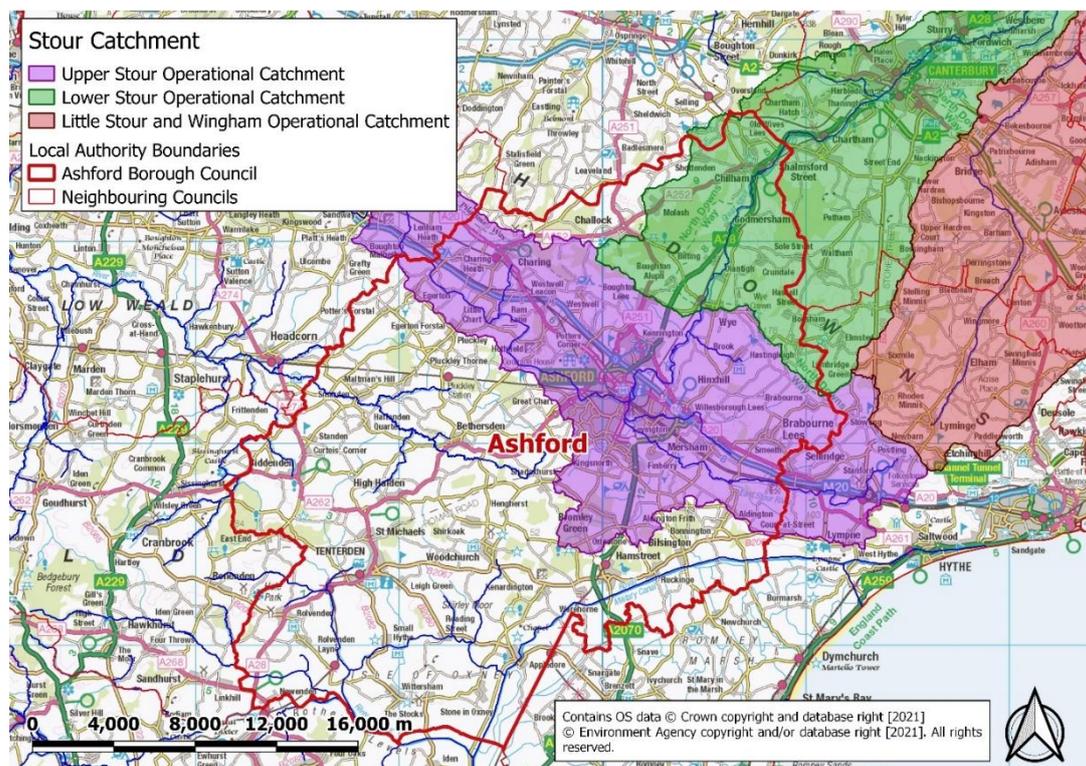


Figure 1: Stour catchment

On-site mitigation

All parties recognise that it is possible in some cases for development of new overnight accommodation to achieve nutrient neutrality via on-site solutions. On-site mitigation measures include, but are not limited to, increasing open space provisions within developments, built-in water efficiency measures, Sustainable Drainage Systems (SuDS) schemes extensively based on wetlands (rather than ponds or detention basins), and garden and pet waste management.

This Operational Statement is cognisant of this context, and focuses largely on the issue of delivering off-site wetlands to achieve nutrient neutrality for development proposals which are unable to provide on-site mitigation.

The key considerations associated with strategic wetland delivery

For the purposes of this Operational Statement, the term ‘Wetland’ means one which relies on the abstraction or transfer of water from the River Stour and its tributaries.

Strategic wetland(s) might be in the form of one large wetland, or a series of carefully planned wetlands.

Wetlands are an efficient nature-based mechanism for removing nutrients from surface water runoff and rivers. Wetlands which rely on the abstraction and transfer of water from watercourses to provide a source of incoming nutrients, or rely on the re-routing of a watercourse through a proposed wetland, are most effective at nutrient mitigation and provide the highest degree of certainty.

Whatever land based solution is delivered, it needs to make sure that it makes the most efficient use of land – a key requirement of the National Planning Policy Framework (NPPF). It also needs to balance all the wider requirements as listed in this paper. Failure to adopt such a strategic approach could prejudice the delivery of a strategic solution and that cannot be risked at this stage.

All parties agree that the following are the key considerations associated with strategic wetland delivery and why a balanced and co-ordinated approach is necessary.

- ***The spatial restrictions:*** Any strategic wetland solution will need to be delivered within the Stour catchment, ideally proximal to the River Stour and its tributaries, to deliver the necessary nutrient offsetting. It has been identified that there are particular areas within the catchment which are most suitable for the creation of wetlands due to various technical constraints. These constraints include, but are not limited to, topography, geology, ecological sensitivity, and variations in flow level and nutrient level in waterbodies within the catchment area. Consequently, there is a limited area of land within the catchment which satisfies all of the technical constraints and can be relied on for the successful implementation of wetlands.
- ***Implications on The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017:*** It is necessary for all wetland schemes to comply with the Water Environment Regulations Framework

Directive objectives for the connected and surrounding water bodies. The purpose of the wetland will be to improve the physio-chemical conditions of the relevant waterbody, and ultimately the Great Stour River at Stodmarsh Lakes, by reducing the concentration of phosphorus and nitrogen nutrients within the water. There is, however, the potential for a wetland scheme to affect other Water Environment Regulations 'quality elements', of which the most relevant are biological and hydro-morphological.

- **Water Stress:** The Stour Catchment is located in a Water Stress area and as such any abstraction of water will require a permit from the Environment Agency. It is anticipated that abstraction of water from the River Stour and/or its tributaries will be required to serve the strategic wetlands.
- **Technical requirements:** As previously stated there are a number of technical constraints affecting the suitable location of wetlands within the catchment. Therefore careful consideration is required to ensure that the wetlands are suitably designed to provide sufficient nutrient mitigation, make efficient use of the land and meet the requirements set out in the Natural England Stodmarsh Advice⁵.

Any wetland creation will require planning permission. In addition a range of permits may be required from the Environment Agency, relating to wastewater discharge, water abstraction, waste management and surface water management.

- **Flood risk:** As wetlands are constructed largely in the floodplain they must also be designed to ensure no adverse effect in terms of flood risk
- **Multi-functionality:** Delivering wetlands on a strategic scale has the potential to deliver ecological benefits, such as new habitat creation and increased biodiversity. Although it is recognised that wetlands will be designed with nutrient removal as the primary objective, a partnership approach will allow any proposed wetland scheme or schemes to maximise any co-benefits relating to flood risk alleviation, biodiversity gain / habitat creation, carbon sequestration, tree planting, river channel restoration works as well as education and public amenity.
- **The need to work in partnership with all parties:** It is recognised that for a public body partnership to deliver a wetland scheme it will require approval from both the Environment Agency and Natural England through the planning process and Environmental Permitting Regulations. It is therefore paramount that the delivery of strategic wetlands is based on a partnership approach, with endorsement from both the Environment Agency and Natural England. This is to address and resolve any potential issues at an early stage regarding

⁵ Natural England Advice available to view at: <https://www.ashford.gov.uk/nutrient-neutrality-developer-information>

permitting and/or certainty relating to the Habitat Regulations, to enable timely delivery of strategic wetlands.

- ***The need to be flexible:*** The delivery of wetlands of the required scale may not be possible on a single site or in a single construction window within a single borough/district. It may be suitable to deliver a series of smaller wetlands forming a strategic wetland network or phase the wetland creation. It is considered that wetland delivery on any reasonable scale should be pursued by the public body partnership, in the first instance, to begin to release development as soon as possible.

Future Issues and Actions

This Operational Statement aims to confirm the immediate actions that are needed in relation to nutrient neutrality, but there are also a number of issues that have a longer time horizon. These issues include (but are not limited to):

- Ensuring consistency of approach and advice (including advice given to developers and land agents);
- Maintaining collaborative approach towards the preparation and publication of the Nutrient Mitigation Framework components;
- Complexities associated with the delivery of strategic wetlands, including planning permission, permitting/environmental licences, construction and maintenance;
- Involvement of other relevant bodies to ensure the primary objective can be delivered and managed in perpetuity.

Future amendments to this Operational Statement, or additional standalone Operational Statements, may be required to set out in detail how the parties intend to address these (and other) strategic issues.

Operational Statement agreed by:

<p>On behalf of Ashford Borough Council</p> <p>Signed:</p>  <p>Cllr Neil Bell Portfolio Holder for Planning and Development</p>	<p>On behalf of Environment Agency</p> <p>Signed:</p>  <p>Richard Penn Environment Planning and Engagement Manager</p>
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Operational Statement broadly endorsed by:

<p>On behalf of Natural England</p> <p>Signed:</p>  <p>James Seymour Area Manager Kent and Sussex</p>	<p>On behalf of Kent County Council</p> <p>Signed:</p>  <p>Simon Jones Corporate Director, Growth, Environment & Transport</p>
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