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Date: 11th August 2022

BY EMAIL ONLY

Dear Tom,

Re. Impact on Stodmarsh Lakes from development served by Dambridge WwTW – updated hydrological study.

We write in response to your letter of 11 April 2022 and subsequent meeting which was held on 19th May in which it was clarified what additional information would be required to consider the significance of the impact on Stodmarsh Lakes from development in Dover District.

Further modelling has therefore been carried out to determine the total annual nutrient load of phosphorus (P) and nitrogen (N) reaching Stodmarsh Lakes from the Dambridge WwTW. The conclusions from the modelling are set out in the attached report, within Appendix 2. The modelling uses assumptions provided by Dover District Council as set out in the Annex A to this letter.

The report sets out the total nutrient loading in 2022 and 2040. From this information it is possible to calculate the impact of proposed development in the District between 2022 and 2040.

Table 1 sets out the annual nutrient load for P and N reaching the location of the sluice gate from Dambridge WwTW in various development scenarios and compares this to the contribution from 1 dwelling upstream.

	Population	Annual average load at sluice gate	
		kg TP/yr	kg TN/yr
Total 2022 population served by Dambridge WwTW	14,318	0.00004	0.00054
Total 2040 population served by Dambridge WwTW	20523.4	0.00001	0.0008
Growth 2022-2040 served by Dambridge WwTW	6205.4	0.000003	0.00024
1 dwelling	2.3	1.11193E-09	8.89548E-08
1 person	1	4.8345E-10	3.8676E-08
1 dwelling upstream (Ashford)		0.05	2.84
Growth 2022-2040 as a proportion of 1 dwelling upstream		0.00006	0.00008

The contribution of full local plan growth (2,698 dwellings) between 2022 and 2040 for P is 0.00006, and for N is 0.00008, of the contribution of 1 dwelling upstream.

In addition, you asked us to consider the impact taking account of the total potential contribution from development proposed in the upstream catchment. The current headline figures for Ashford (based upon adopted Local Plan to 2030) and Canterbury (based upon upstream developments in adopted Local Plan and draft allocations to 2045), total 2,300kgTP/yr and 62,000kgTN/year.

Consideration of any additional loading from change in land use

The modelling considers the impact of discharges from the Dambridge WwTW. The NE Nutrient Neutrality advice sets out that additional N and P load may be entering the Little Stour and Wingham Catchment as a result of changes in land use proposed by new development. Any nutrients doing so would enter further downstream than the point of entry used within the modelling. It can therefore be assumed that no more than the same proportion of nutrients entering the river by this source would reach Stodmarsh. This change in load, because of change in land use, significantly varies dependant upon the existing land use and the nutrient. Taking a worst case scenario into consideration, even if the total amount of P entering the river was twice the amount that is entering from the wastewater, the contribution would still be extremely small and unmeasurable.

Consideration of potential mitigation

The amount of potential mitigation to mitigate the identified level of nutrients reaching Stodmarsh from Dambridge WwTW would be negligible and undeliverable. For example, using wetland provision with an average performance of 12kg/annum of P removal would require 0.03sqm to mitigate growth to 2040. This is such a negligible amount that it would render the delivery of the mitigation impractical.

Impact of Tidal Lake

With regard to the Tidal Lake, the modelling has confirmed that there is no connection between Dambridge WwTW and the tidal lake, with no trace of nutrients from Dambridge WwTW at the point of entry to the Lake.

Consideration of significance

The above results demonstrate that the levels of nutrients are so low that they would not amount to a likely 'significant' effect on the designated sites. In the *Sweetman* case (C-258/11), Advocate General Sharpston explained that not all effects will be 'significant' (see, para 48) (underlining added):

"The requirement that the effect in question be 'significant' exists in order to lay down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill."

The modelling demonstrates that there would be 'no appreciable effect' on site integrity from the discharge from nutrients from Dambridge WwTW. There would be no ecological implications, either alone or in combination with other plans and projects.

The way forward

The Council would invite you to reconsider the contents of your 17 January 2022 and 11 April 2022 letters in light of this letter and attached documents. If, having done so, you agree with the Council that the Report provides sufficient evidence to conclude that there is no 'likely significant effect' on either the Stodmarsh SAC or SPA as a result of nutrient discharge, then the Council would invite you to enter into a statement of common ground which reflects this, and to remove the Dambridge WwTW from the Advice Note, which you

have previously advised would be your intention if it can be agreed there is no 'likely significant effect'.

If, however, you do not agree with the analysis set out above, then you are invited to clearly set out the reasons for disagreeing with the above analysis and the evidential basis for doing so. If you consider that there is a risk of adverse effects on site integrity, the Council would expect to see 'credible evidence that there was a real, rather than a hypothetical, risk' (*R (Boggis) v Natural England* [2010] PRSR 725, at para 27). Any identified risk must be backed up with 'reasonable objective evidence' (*R (Hart DC) v Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin), at para 81).

In light of the timeframes associated with the local development plan process, and the importance of the matters raised, the Council would request a response to this matter by no later than Wednesday 24th August 2022.

Yours sincerely

Ashley Taylor (Planning Policy and Projects Manager)