

# Nutrient Neutrality – Off Site Mitigation Financial Contributions Framework

Report of the Planning Portfolio Holder

## Recommended:

1. That the Council approves a framework for seeking financial contributions to address the adverse effects on the international designated nature conservation sites (SPAs, SACs and Ramsar sites) in and around the Solent from excessive nutrients in the water environment, as set out in the Annex to the report.
2. That the financial contributions be used to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation solutions in order to achieve nutrient neutral development.
3. That the Head of Planning Policy and Economic Development in consultation with the Planning Portfolio Holder be authorised to make changes of a minor nature to improve the presentation of the Annex to the report and to correct typographical errors prior to publication.

## Recommendation to Council.

### SUMMARY:

- The purpose of this report is to seek approval for the Council to seek financial contributions to address the adverse effects on the international designated nature conservation sites (SPAs, SACs and Ramsar sites) in and around the Solent, from excessive nutrients in the water environment. This is in order to provide a mechanism to achieve nutrient neutrality through offsetting the increase in nutrients from wastewater from development.
- The financial contributions would then be used by the Council to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation, in order for development to achieve nutrient neutrality.

## 1 Introduction

- 1.1 Following advice<sup>1</sup> from Natural England (NE), in order to comply with the Conservation of Habitats and Species Regulations 2017 (as amended) (referred to as the Habitats Regulations) new development for housing, overnight accommodation and tourist attractions, should achieve nutrient neutrality to avoid an increase in nutrients from wastewater entering the Solent and having an adverse effect on international designated sites<sup>2</sup>.

<sup>1</sup> Advice on achieving nutrient neutrality for new development in the Solent Region, Natural England, June 2020

<sup>2</sup> Special Protection Areas (SPA) and Special Areas of Conservation (SAC). Some SPA are also Ramsar sites

- 1.2 In light of the NE advice the Council has not permitted any affected planning applications which do not achieve nutrient neutral development since summer 2019. A solution is therefore needed in order to enable such developments to proceed where they are otherwise unable to achieve nutrient neutrality, but are deemed to be acceptable in all other planning respects. The absence of a solution is an impediment to housing delivery.
- 1.3 The purpose of this report is to seek approval for the Council to collect financial contributions (on the basis of a sum per 1 kg of total nitrogen (TN) to be offset) towards off site mitigation provision, to enable nutrient neutral development to be achieved. This would be used by the Council to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation either directly itself, or through working with other landowners and organisations.
- 1.4 Where possible, opportunities to secure other benefits for nature and people could also be sought additionally alongside e.g. Sites for Alternative Natural Greenspace (SANG) from such land and financial contributions collected for these purposes also used alongside mitigation for nutrients.

## **2 Background**

- 2.1 Excessive levels of nutrients (nitrogen and phosphorus) in the water environment are having an adverse effect on international designated nature conservation sites<sup>3</sup> in and around the Solent. These are causing eutrophication, resulting in dense mats of green algae that impact on the protected species and habitats. This must be addressed as required by the Habitats Regulations. This impact of the condition of these sites is relevant in the context of their conservation objectives and achieving favourable conservation status.
- 2.2 Following Court of Justice of the European Union (CJEU) judgements, NE advised in June 2019 that in order to be compliant with the Habitats Regulations, all new residential and overnight accommodation development should be nutrient neutral, due to the uncertainty that new development will not cause further impact and add to existing nutrient loading. This applies to the area of the Borough which falls within the catchments of the River Test and River Itchen and their tributaries, which then flow into the Solent. Essentially this covers the whole Borough, with the exception of a small area around Shipton Bellinger and Cholderton, which falls within the catchment of the River (Hampshire) Avon, which is therefore excluded.

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<sup>3</sup> This would comprise as a minimum: Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar, Portsmouth Harbour SPA and Ramsar, Solent and Dorset Coast SPA, Solent and Southampton Water SPA and Ramsar, Solent and Isle of Wight Lagoons Special Area of Conservation (SAC), Solent Maritime SAC

- 2.3 NE has advised that there is a likely significant effect on the Solent's international designated sites due to the increase in wastewater from new housing and any new overnight accommodation, such as for tourism, student and care accommodation, and tourist attractions. This applies where the development would discharge into the Solent, whether directly, or indirectly via one of its river catchments. Taking a precautionary approach, there is uncertainty as to whether the increase in such wastewater will have an adverse effect on the Solent's international designated sites and which therefore requires mitigation.
- 2.4 NE therefore recommends that where development will have inevitable wastewater implications, these and all other matters capable of having a significant effect on the Solent designated sites (e.g. recreational disturbance) must be addressed in way required by the Habitats Regulations. It recommends that the wastewater issue is examined within the Habitats Regulations Assessment process and that the existing nutrient and conservation status of the receiving waters be taken into account. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient levels.
- 2.5 Excessive nutrients come from a number of sources including agriculture (animal faeces and fertiliser), waste water from development, and other background sources. The largest source, potentially 70-80% comes from agriculture. It can take decades for nutrients in the upper reaches of river catchments to reach the sea. However, as the Habitats Regulations apply to planning decisions, there is a legal obligation on considering the impact of new development in order to avoid exacerbating an existing issue, notwithstanding that the impact of this is relatively minor overall. Achieving nutrient neutral development will not address an existing problem, but in order to satisfy the Habitats Regulations, it needs to be established that planning decisions will not make it worse. Any increase in nutrients is deemed significant, however small, due to the in-combination impact and therefore small sites cannot be screened out from the requirements to achieve nutrient neutrality.
- 2.6 The latest version of the NE advice (June 2020) sets out the rationale for their advice together with a recommended approach and a methodology for how nutrient neutral development should be determined taking account of both a development's wastewater and land use change. The advice is accompanied by a non technical summary and a nitrogen budget calculator tool, which are all on the Council's website<sup>4</sup>. The methodology will inform whether the development avoids harm to the designated site, or needs to provide mitigation in order to ensure that there is no adverse effect. In light of the result of the calculation of a development's budget using the calculator tool, if the development results in an increase in total nitrogen then this needs to be offset through the provision of mitigation.

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<sup>4</sup> <https://www.testvalley.gov.uk/planning-and-building/guidance/solent-southampton-water-special-protection-area>

- 2.7 For Test Valley, achieving nutrient neutral development without the provision of off site mitigation solutions is particularly challenging in scale as the amount of nutrient in wastewater is assumed to be higher in the absence of wastewater treatment works (WwTW) having a permit limit for nitrogen discharge and therefore no nitrate stripping at the WwTW taking place. Of the WwTW which serve Test Valley only Millbrook WwTW which serves: Chilworth, North Baddesley and Nursling and Rownhams has such a permit limit. There are also rural areas within the Borough which are not served by mains drainage and are therefore reliant on package treatment plants or septic tanks. Collectively this means that other than large scale greenfield development which includes significant open space, developments are unlikely to be able to achieve nutrient neutrality on site.
- 2.8 The issue is affecting a significant number of planning applications for residential and overnight accommodation, which are currently unable to achieve nutrient neutrality without additional mitigation being made available. As at October 2020, there is an estimated backlog of 469 dwelling/units from current planning applications, which are currently expected to receive a favourable officer recommendation of permission, but are not currently expected to achieve nutrient neutrality without additional off site mitigation. Assuming that no other offset is available on site, this backlog equates to an estimated c.1,500kg total nitrogen.
- 2.9 In the absence of practical mitigation solutions being available at present, the focus is on potential land based off-site mitigation in the form of 'nitrate-offsetting' solutions. This concerns taking land out of agricultural production, or significantly reducing the current level of artificial additional nitrogen added to agricultural land from fertiliser and animal waste. This could also include for example creating wildflower meadows, woodland planting and wetland creation. This reduction can then be used as a 'credit' to offset the increased nitrogen from new development so that neutrality is achieved.
- 2.10 The framework for financial contributions (Annex to the report) would be to collect a tariff per kilogram (kg) of total nitrogen from the unmitigated loading from new development. This would be used to secure the use of such off site mitigation land and as such allow nutrient neutral development to be achieved. The NE advice is that for development sites in Test Valley off site mitigation land can be located within the catchments of the River Test, River Itchen or Bartley Water (northern New Forest) taken together. Whilst ideally the mitigation would be located within the Borough, in order to maximise the benefits for both the public and nature, and to make the administration and legal processes easier, mitigation land outside the Borough within these catchments is also suitable in principle, but would be considered on its merits in each case.
- 2.11 Some other affected neighbouring authorities are operating a similar tariff approach to seeking such financial contributions. Winchester City Council has a tariff of £3,500 per kg towards future mitigation, and Eastleigh Borough Council has introduced a tariff of £4,500 per dwelling and £1,800 per room for care homes and tourism development.

- 2.12 In addition to the proposed framework for seeking financial contributions towards off-site mitigation, the Council is also working to explore the potential for strategic solutions, undertaking this jointly with other affected local authorities and partners through the Partnership for South Hampshire (PfSH) and engaging with Government agencies and ministers. Such joint working includes the provision of a temporary Strategic Environmental Planning Officer to take forward a pilot mitigation scheme, which could lead to a strategic sub-regional mitigation solution. Government funding has also recently been secured to support the delivery of mitigation: following a PfSH bid an anticipated £2m loan (from the Getting Building Fund to be channelled through the Solent Local Economic Partnership (LEP) is expected subject to formal approvals and quality assurance processes, to be used for the purchase of land on the Isle of Wight, a loan from DEFRA to the Hampshire and Isle of Wight Wildlife Trust (HIWWT) towards mitigation land purchase, and £3.9m DEFRA funding to set up a pilot online nutrient trading platform.
- 2.13 We are also seeking a review of the nitrogen permit limits which apply to Wastewater Treatment Works (WwTW) and the introduction of these where they are not currently in place on river discharging works, including Fullerton WwTW and Romsey WwTW. The outcome of discussion between NE and the Environment Agency regarding when such a permit review will be instigated is awaited. Voluntary monitoring of nitrogen discharge levels is currently being undertaken by Southern Water at these WwTW and the initial results should be available in spring 2021.

### **3 Corporate Objectives and Priorities**

- 3.1 Whilst the key driver in addressing the nutrient neutrality issue is enabling new development to satisfy the requirements of the Habitats Regulations, the protection of the environment generally and maintaining a high quality of environmental assets and quality of life are key priorities. The provision of mitigation to achieve nutrient neutrality will enable the conservation status of the international designated nature conservation sites to be protected from the adverse effects of excessive nutrients. The provision of mitigation could also potentially deliver wider complementary conservation benefits which could also be sought; for nature such as biodiversity net gain, carbon offsetting etc, and for people through public access e.g. Sites for Alternative Natural Greenspace (SANG).
- 3.2 Meeting local housing need is also a key priority and the absence of mitigation being in place is a barrier to housing delivery. Residential development as part of the town centre masterplans will also require off-site mitigation. Achieving nutrient neutral development through the provision of mitigation is in line with the Council's Corporate Plan priorities of both People in meeting their housing need, and of protecting The Local Environment.

### **4 Consultations/Communications**

- 4.1 The Council has been working on an ongoing basis with the other affected neighbouring authorities through the Partnership for South Hampshire (PfSH), in seeking to address the nutrient neutrality issue and seek strategic mitigation solutions. Engagement has also taken place with NE, the Environment Agency and Southern Water.

- 4.2 The Council will work with landowners and relevant organisations on the delivery of mitigation measures for which the financial contributions made under the framework which would be used to secure nutrient neutral development.

## **5 Options**

- 5.1 The consideration is whether or not the Council should implement a framework for financial contributions towards off setting mitigation solutions to achieve nutrient neutral development. These contributions would be used to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation to achieve nutrient neutral development.

## **6 Option Appraisal**

- 6.1 The implementation of the framework for seeking financial contributions would provide a mechanism for developments to secure nutrient neutrality through the provision of off-site mitigation, in the absence of alternatives being proposed. In line with NE advice nutrient neutral development is necessary in order to ensure compliance with the requirements of the Habitats Regulations. When a development site cannot achieve nutrient neutrality on site and a developer does not have their own off-site mitigation solution it would enable development to proceed, which is currently not possible. The option of providing a financial contribution is therefore intended as a default option for those who are unable to achieve nutrient neutrality by their own means. Other alternatives for mitigation would remain available, if they can be found.
- 6.2 The option of financial contributions would only be available for the outstanding nutrient budget which cannot be mitigated on site. It will therefore need to be demonstrated that the potential opportunities for on site mitigation have been utilised first, before the Council will consider this for any residual off-site mitigation required to achieve nutrient neutrality. This is considered a sustainable and environmentally sound approach and takes account of the scale of the issue to be addressed. The use of some on site offsetting through change in land use and for non-main drainage where the treatment process would lead to some reduction in the nitrogen discharged, will reduce the scale of off site mitigation needed.

- 6.3 The financial contributions would be in the form of credits purchased (1kg total nitrogen = 1 credit) which would be used to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation solutions. A figure of £3,000 per 1kg total nitrogen is proposed based upon the amount considered likely to be necessary and appropriate to deliver off-site land based mitigation, and set at a level which it is deemed that the market and development viability will find acceptable. This figure and the methodology will be monitored and kept under review, and be subject to indexation, plus an administration fee of £100, which will also be kept under review. The Council would work with landowners and relevant organisations seeking to bring such land for mitigation forward. Such mitigation would need to be put in place prior to the occupation of the development. There would need to be consideration of the nature of the mitigation scheme, what mitigation it would provide, where it is located, and when it will be delivered to ensure that it complies with the Habitats Regulations and taking account of NE advice. The provision of contributions and the securing of credits will require careful timing. The approach of seeking financial contributions would therefore only be used with the necessary off site mitigation being in place, or agreement in place with the landowner. Opportunities to secure additional environmental and recreation benefits will also be taken into account.
- 6.4 The recommended approach is to proceed with the implementation of a framework for seeking financial contributions as this would provide a default scheme open to all for where nutrient neutral development cannot otherwise be achieved.
- 6.5 The alternative of not to proceed with a framework for seeking such contributions would mean that achieving nutrient neutrality continues to be very difficult, particularly for brownfield sites and for those development which discharge their wastewater to WwTW without a permit limit, or which are reliant upon non-mains drainage. The absence of necessary mitigation has implications for housing delivery and the deliverability of future housing to be provided for in the next Local Plan.

## **7 Risk Management**

- 7.1 A risk management assessment has been completed in accordance with the Council's risk management process and the risk controls seek to minimise the risks.
- 7.2 Failure to agree and implement up to date strategic and local planning documents (including the Local Plan) is recorded as a risk in the Council's Corporate Risk Register. A risk factor is the ability to deliver the housing to be proposed in the next Local Plan, which will require nutrient neutral development. There is also the risk to housing delivery more generally, including the current backlog of applications which are affected by their current inability to achieve nutrient neutral development. There is no readily identifiable alternative mitigation option available at scale, to achieve nutrient neutral development in compliance with the requirements of Habitats Regulations and NE advice. Approval of a framework to seek financial contributions to secure land to provide off site mitigation to enable nutrient neutral development would mitigate this risk, if the land needed to provide the necessary off site mitigation is secured.

- 7.3 There is also a legal risk that the approach of seeking financial contributions towards off site mitigation under the Habitats Regulations and NE advice may be subject to legal challenge, as may the overall approach to achieving nutrient neutral development. There is a potential risk of challenge against the Council for adopting the approach without a confirmed mitigation project being in place due to the level of certainty that the Habitats Regulations require. The Council will therefore continue to work with landowners and relevant organisations on the delivery of mitigation measures for which the financial contributions made under the framework which would be used. The approach of seeking financial contributions would therefore only be used with the necessary off site mitigation being in place, or agreement in place with the landowner.

## **8 Resource Implications**

- 8.1 Implementation of framework for seeking financial contributions towards off-site mitigation to achieve nutrient neutral development will have an impact on the necessary financial, legal and administrative resources as required to secure it from planning permissions and to off-site mitigation. It is expected that much of these can be covered by an administrative charge for the use of the framework and any charges for drawing up the required legal agreements, as per existing practice.

## **9 Legal Implications**

- 9.1 The proposed approach would assist the Council in satisfying its obligations under the Habitats Regulations. The Council is required to comply with the Habitats Regulations through its role as competent authority in taking a decision through the determination of a planning application. The proposed framework for financial contributions approach would provide for the securing of off-site mitigation land to enable nutrient neutral development to be achieved and the requirements of the Habitats Regulations complied with, which would not otherwise be the case, in the absence of alternative solutions.
- 9.2 Legal mechanism will be put in place to appropriately secure any financial contributions made under the framework and to secure off-site mitigation.

## **10 Equality Issues**

- 10.1 The EQIA initial screening has been undertaken and has not identified any potential for discrimination or adverse impacts and all opportunities to promote equality have been taken.
- 10.2 The provisions proposed in this report would apply to anyone seeking to secure permission for relevant development within the area of the Borough that falls within the catchment area, in line with the terms set out in the Annex.

## **11 Other Issues**

- 11.1 Community Safety – N/A

- 11.2 Environmental Health Issues – N/A
- 11.3 Sustainability and Addressing a Changing Climate – Sustainability is a fundamental element of the planning system and is incorporated within any future planning decision. The need to achieve nutrient neutral development is key to protecting the integrity and conservation status of the international designated sites in and around the Solent which are adversely affected by excessive nutrients, together with ensuring the development takes place in a manner which minimises its environmental impacts. Financial contributions towards off-set mitigation solutions will enable this to be achieved. The securing of land to provide for off-site mitigation may also deliver wider environmental benefits.
- 11.4 Property Issues – Applies to Council owned land within the affected area. Relevant development on this land would need to achieve nutrient neutrality and could also potentially be used as off-site mitigation land.
- 11.5 Wards/Communities Affected – All. Small area of the Borough around Shipton Bellinger and Cholderton, which falls within the catchment of the River (Hampshire) Avon is excluded, as this catchment does not drain into the Solent.

## **12 Conclusion and reasons for recommendation**

- 12.1 The report seeks the approval for the Council to seek financial contributions towards off setting mitigation solutions to achieve nutrient neutral development. The financial contributions would then be used by the Council to secure the use of land, including through the purchase of land and/or credits, to provide off site mitigation, in order for development to achieve nutrient neutrality. The approach of seeking financial contributions would only be used with the necessary off-site mitigation being in place, or agreement in place with the landowner.
- 12.2 In light of the NE advice that new development for housing, overnight accommodation and tourist attractions, should achieve nutrient neutrality, the Council has not permitted any affected planning applications which do not achieve nutrient neutral development since late spring 2019. A solution is therefore needed in order to enable such developments to proceed where they are otherwise unable to achieve nutrient neutrality, but are deemed to be acceptable in all other planning respects. The absence of a solution is a current impediment to housing delivery. The framework to seek financial contributions would provide a means support the provision of mitigation solutions, where these can be secured.

Background Papers (Local Government Act 1972 Section 100D)

Advice on achieving nutrient neutrality for new development, Natural England, June 2020

Summary advice on achieving nutrient neutrality for new development, Natural England, June 2020

Nitrogen Budget Calculator, Natural England, June 2020

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:

1

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Report to:

Cabinet

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