

Annex to Cabinet Report 13 January 2021 Solent Region SPAs, SACs and Ramsar sites- Nutrient Neutrality Test Valley Off-Site Mitigation Framework

1. Following Court of Justice of the European Union (CJEU) judgements, Natural England has provided advice on the impacts of nutrients from new development on the group of Special Protection Areas (SPA)¹ and Special Areas of Conservation (SAC) and Ramsar site designations^{2 3}, within and around the Solent. There are high levels of nitrogen and phosphorous entering the water environment and these excessive levels of nutrients are causing eutrophication, resulting in dense mats of green algae impacting on the protected habitats and species.
2. Due to the uncertainty that certain new developments will not cause further impact, and in order to be precautionary, the recommended approach is for certain new development to achieve nutrient neutrality, which is a means of ensuring that new development does not add to existing nutrient loading. Therefore in order to be compliant with the Habitats Regulations⁴, all new residential and overnight accommodation (including care, student and tourist accommodation) and tourism attractions development should be nutrient neutral, due to the uncertainty that new development will not cause further impact and add to existing nutrient loading. The Council is the 'competent authority' under the Habitats Regulations and will undertake an Appropriate Assessment prior to making a planning decision on relevant development.
3. The advice from Natural England applies to relevant development within 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, with the exclusion of a small area around the settlements of Shipton Bellinger and Cholderton, which falls within the catchment of the River (Hampshire) Avon.
4. A relevant development scheme's nutrient budget should be calculated in line with the methodology provide by Natural England, taking account of both wastewater and land use change. This will inform whether the development avoids harm to the protected designations, or needs to provide mitigation to ensure that there is no adverse effect.
5. Natural England's current advice, including a methodology⁵ to calculate a development's nutrient budget is available on the Council's website. The latest advice (June 2020) has updated and revised the previous versions, which have

¹ Some SPA are also designated as Ramsar sites

² 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

³ Local Plan Policy E5 Biodiversity establishes that development likely to result in a significant effect on such a designation would need to satisfy the Habitats Regulations. This legislation establishes a process for assessing likely significant effects on certain designations including SPAs, SACs and Ramsar sites.

⁴ Conservation of Habitats and Species Regulations 2017 (as amended)

⁵ <https://www.testvalley.gov.uk/assets/attach/9113/Solent%20Nutrients%20V5%20June2020.pdf>

been superseded. The advice is accompanied by a non-technical summary⁶ and a nitrogen budget calculator tool⁷.

6. This framework on achieving nutrient neutrality through off-site mitigation, relates to the approach for planning applications, although proposals for net gains in residential and overnight accommodation, through the prior approval process and as permitted development, will also need to have comply with the requirements of the above legislation and the Natural England advice on achieving nutrient neutrality, as relevant.
7. If additional off-site mitigation is needed for developments in Test Valley in order for them to achieve nutrient neutrality, then this needs to be located within the catchments of the River Test, River Itchen or Bartley Water, taken together. The Council's preference is for off-site mitigation to be located within the administrative area of Test Valley, although it will consider proposals for mitigation within the area of other local planning authorities within these catchments.
8. Where a net gain in residential and overnight accommodation (including care, student and tourist accommodation) and tourism attractions is proposed within the catchment of the River Test, having calculated the development's nutrient budget, one of the below options would need to be used, which would need to be agreed with the Council and be subject to an Appropriate Assessment:
 - a) Evidence through the calculation that the development would not lead to an increase in nutrient loading and would achieve nutrient neutrality on-site.
 - b) Provide and secure in perpetuity a bespoke off-site mitigation package for the development which would enable it to achieve nutrient neutrality.
 - c) Provide a financial contribution of £3,000⁸ per kg of total nitrogen, plus an £100 administration fee, to secure the use of land to provide off-site mitigation measures for the development, which would enable it to achieve nutrient neutrality.
9. The option of providing a financial contributions under option c) is intended as a default option for developers who are unable to achieve nutrient neutrality by their own means. This option will 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 option for any off-site residual mitigation required to achieve nutrient neutrality.

⁶ <https://www.testvalley.gov.uk/assets/attach/10069/SolentNutrientAdvice%20-%20Non-Technical%20Summary%20v2.pdf>

⁷ <https://www.testvalley.gov.uk/assets/attach/10070/Nitrogen%20Budget%20Calculator%20-%20v2.xlsx>

⁸ The amount of the financial contribution and the methodology will be kept under review and subject to indexation.

10. Financial contributions under option c) will be used to secure the use of land to provide off-site mitigation solutions in order to achieve nutrient neutral development. This will be in the form of the purchase of land and/or credits derived from the reduced nitrogen load resulting from changes from existing land use from identified sites, for example through the ceasing of agricultural use and the creation of woodland or wetland. This will be used to offset equivalent increased load from the relevant development.
11. In the case of a bespoke off-site mitigation package under option b) the Council would need to agree the proposed approach to mitigation, including the arrangements for long term management and monitoring arrangements. A contribution towards monitoring would be required (payable upon occupation).
12. Section 106 agreements would be the preferred method of securing financial contributions and/or bespoke off-site mitigation provided by the development. Unilateral undertakings can also be used where appropriate. The mechanism would need to be agreed with the Council. The Council does not consider that mitigation measures provided in order to comply with the Habitats Regulations falls within the scope of infrastructure and these are therefore considered separately to the Community Infrastructure Levy (CIL).
13. Contributions towards the mitigation package are to be paid on commencement or occupation of development. This is to enable mitigation measures to be in place in time for occupation (whereupon wastewater effluent will be generated by the development). Any provisions should be provided so as to be available in time for the first occupation of the site. There may be some scope for phasing of mitigation in line with occupation rates for larger sites, this would be considered on a site by site basis.
14. As mitigation measures need to be secured in perpetuity (for at least 80 years) (as required by the legislation), not all of the contributions may be spent in the short term. Therefore, it would not be appropriate for the application of any clawback provisions for contributions.

January 2021