

Supplementary Information

HAVANT BOROUGH COUNCIL
OPERATIONS AND PLACE SHAPING BOARD
28 January 2020

Dear Councillor

I am now able to enclose, for consideration at meeting of the Operations and Place Shaping Board, to be held on 28 January 2020 the following supplementary information that was unavailable when the agenda was printed.

Agenda No	Item
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5	<u>Nutrient Neutrality Update</u> (Pages 1 - 34)
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In 2007 the Environment Agency, with the support of Natural England, completed a Review of Consents exercise for the Solent European sites. This exercise investigated whether existing environmental permits would need to be modified or revoked to ensure compliance with the Habitats Directive.

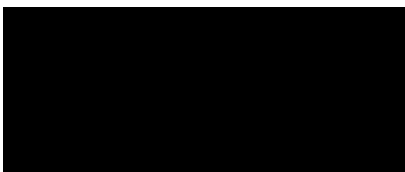
Natural England has recently shared new evidence with the Environment Agency for consideration, as there may be a need to review the permits of specific wastewater treatment works around the Solent. A summary of this additional evidence is enclosed.

Our two organisations will meet in January to agree how we can best work together going forward. This meeting will be an opportunity to consider this new evidence before a decision is made on whether a permit review would be appropriate. Any permit review would require a considerable investment of resources and we would work together to understand the likely timescales. We appreciate that finding an appropriate, suitable way forward is a shared task and we will continue to work closely with PfSH members during this process.

Whilst we recognise and understand the need to resolve the ongoing delays to development, we all share a collective responsibility to protect and enhance our local environment for the benefit of all. The constructive discussions that are happening across all sectors focus on how we can reduce the amount of nutrients entering the Solent, and also contribute to a much larger conversation around the value of the environment and how we can work together to address wider environmental pressures, such as the climate emergency, water usage and a rising population.

Our two organisations are committed to finding long term, sustainable outcomes and we will gladly provide you with further updates as this work progresses.

Yours Sincerely



Graham Horton
Manager: Thames Solent team
Natural England



Catherine Fuller
Environment, Planning &
Engagement Manager
Environment Agency

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New evidence and information that has become available since the EAs review of consents for the Solent European sites.

Summary

Environment Agency in association with NE completed a Review of Consents (RoC) exercise for the Solent European sites in 2007 which included reviewing whether existing EA permits, including discharge consents, could be affirmed or required modification or revocation in order to comply with the requirements of the Habitats Directive. In the twelve years since that review, new data, evidence and understanding of feature sensitivity has developed which indicate that the impacts of nutrients are still preventing the site meeting its conservation objectives. Those changes are as follows:

1. Updates to Conservation Objectives and Condition Assessments have been published since the RoC (on Designated sites system – see links in section 1 below).
2. New data on water quality and macro algal density is available and shows locations within the European sites with elevated nitrogen concentrations and significant macro algal presence that were previously screened out in the RoC.
3. An appropriate spatial scale is needed to assess impacts on the features. We believe that the Water Framework Directive (WFD) waterbody level is too coarse to adequately identify potential impacts under conditions of large within-site variability.
4. Saltmarsh and eelgrass were not considered to be potentially directly impacted by nutrients in the RoC, but research shows direct sensitivity of these habitats to nutrients. In addition the macro algal densities at which prey availability for Special Protection Area (SPA) birds is affected is now better understood and may be lower than was previously considered.
5. Some intermittent discharges, which were previously screened out, are discharging more frequently and the assumptions concerning their relative contribution to water quality in the SAC may need to be revisited.
6. Fair share was used to determine the level of reductions and whether modification of consent was needed. Requirement for reductions from other sectors were included in these assessments but these have not been secured or implemented. There are concerns over the achievability of these reductions and, therefore, whether there is sufficient certainty that the RoC conclusions continue to prevent the 'restore' conservation objectives from being undermined.

1. European site conservation objectives and condition assessments updated since RoC

Conservation objectives and supplementary advice (on Designated site system - <https://designatedsites.naturalengland.org.uk/SiteSearch.aspx>) were updated and published in a new format between 2014 and 2018 for the [Solent Maritime SAC](#), [Solent and Southampton Water SPA](#), [Chichester and Langstone Harbours SPA](#) and [Portsmouth Harbour SPA](#). These detail the suite of attributes relating to the extent, structure and function of each feature and give targets for each attribute at the site level.

A condition assessment for the Solent Maritime SAC was completed in 2018/19 and is available on the [Designated Sites System](#). Marine Protected Area assessments are based on an assessment of a

sub-set of attributes of each European site feature across the site as a whole. The results are given as the proportion of the feature being in a condition category, for example 50% favourable, 50% unfavourable recovering. This differs from current SSSI condition assessment in which the site is divided into units and the combined condition of all features in each unit is reported. In that case, all features must be favourable for the unit to be so. The spatial scale of reporting on features therefore differs between these two assessments, although both use Common Standards Monitoring (CSM) as the standard and WFD assessment information (where it exists) for the relevant interest features.

The Solent Maritime SAC assessment reports the current condition of the estuary, mudflats & sandflats and sandbanks features as all being 100% unfavourable. The reason for this conclusion is that a number of attributes failed to meet the required targets for the following features including:

- nutrient water quality;
- infaunal quality of the intertidal mud and sand features; and
- extent, distribution, rhizome structure and reproduction and biomass of seagrasses, which could also in part be due to impacts from nutrients.

There are other failing attributes that are not related to nutrients impacts such as toxic contaminants and invasive species.

The Solent Maritime Special Area of Conservation (SAC) has a 'restore' objective for nutrients for the following features:

- Estuaries
- Sandbanks which are slightly covered by seawater all the time
- Mudflats and sandflats not covered by seawater at low tide

This includes the intertidal and subtidal seagrasses sub feature of estuaries, due to dramatic historical loss of seagrass since the 1980s and the presence of ongoing anthropogenic pressure to which seagrass beds are sensitive, including nutrient loading.

Currently the European site condition assessment does not include the saltmarsh feature which has not yet been assessed. However preliminary analysis of data supplied by the Environment Agency highlights there was a loss of extent of saltmarsh across the Solent between 2008 and 2016.

Although the cause of this loss it is not known, elevated nutrients can contribute towards the susceptibility of saltmarsh to erosion through effects on plant root growth and the cohesion of mud around the roots (Deegan et al, 2012).

SPA condition assessments have yet to be completed but some of the features of the SAC are also supporting habitats for the SPA and therefore the same standards will apply. WEBS alerts indicates that several of the bird features (and the total waterbird assemblage) are declining with site specific reasons likely to be a contributory factor (Frost et al, 2019). The cause of these declines are unknown but there has been a sharp decline in shelduck (a feature of Chichester and Langstone Harbours SPA); research has found the foraging ability of this species is likely to be affected by algal mats (Soulsby et al, 1982).

2. New evidence and data collected since the RoC

Additional macroalgal and water quality data has been collected by EA since the RoC. These data, as reflected in the underlying SSSI condition assessments available on the [Designated Sites System](#) show locations within the European sites with elevated nitrogen concentrations and significant macro algal presence than were previously screened out in the RoC. These additional locations include Western Yar, Bembridge Harbour (SPA only), Wootton Creek (SPA only) and part of Southampton Water. The RoC for the SAC and SPAs only considered the Hamble, Portsmouth Harbour, Medina Estuary, Newtown Harbour, Chichester Harbour and Langstone Harbour as having significant macro algal impacts and therefore these were the only parts of the site included for nutrient impacts in the Appropriate Assessments (AA) and stage 4 site action plans.

The new macroalgal data is also relevant to those areas that were previously considered in RoC as the assessment of the significance of macroalgal cover/density and the modelling of the impact of discharges was in many areas based on limited macro algal data, sometimes a single survey

3. Spatial extent of assessment

Water Framework Directive standards relating to good ecological status are used as the generic/default target for water quality attributes in NE conservation advice for coastal and estuarine waters. The adoption of this as a generic standard was based on sensitivity assessments for features and assumes the relevant standards are met in the location of the feature. However, WFD is reported at the waterbody level which depending on the size and within waterbody variability, may not be at a relevant spatial scale for specific locations of site features. As the WFD does not require all areas of a waterbody to meet the target levels, the use of these assessments as a proxy for water quality will not be sufficiently robust in all cases.

In terms of assessing the water quality impacts and any potential changes required to enable the site features to become favourable, it is therefore important to do this at a spatial scale or resolution appropriate for each feature. In RoC, the conclusions (and therefore recommendations for any improvement actions) were drawn from data assessed at the waterbody scale. The modelling for RoC however, provided more detailed data for areas within the waterbodies, which showed significant variability in algal density within the waterbody and that changes to discharges in 4 out of the 5 water bodies assessed for the SAC showed significant spatial variation in the algal density reductions that could be achieved. This additional detail was not subsequently used to inform recommendations for actions. As an example; in Chichester Harbour the upper parts of the estuary are particularly important for roosting and feeding birds and saltmarsh, however averaging macroalgal densities across the whole site in the RoC masked the fact that macroalgal densities are at levels that are likely to impact the features of the site in these locations (the Chichester Harbour Condition review report will be published in early 2020).

Therefore for the features in those areas of the Solent European sites where there is evidence for spatial variability, assessment at the water body scale does not provide adequate resolution to be

confident that they will be sufficiently restored to achieve favourable conservation status as defined by the conservation objectives.

4. New research on nutrient impacts on saltmarsh, seagrasses and invertebrate populations

The RoC considered, that saltmarsh vegetation was not sensitive to changes in nutrient concentrations, the only potential impact examined was via smothering from growth of macro algae on the saltmarsh. Therefore the RoC assessment for nutrient impacts focused on the assessment of macro algal mats and the meeting of macro algal targets. Research as outlined in more detail below shows that there can be direct impacts from nitrogen on saltmarsh features and eelgrass ¹. This will require consideration alongside any further assessment of the effect of macro algae smothering these habitats.

In the UK a comprehensive review of eelgrass is found in the [Life Funded UK Marine SAC project](#). This gives a summary of the impacts of information on eelgrass beds including a review of impacts from nutrient enrichment: stating that nutrient enrichment is “*more often cited as a major cause of decline, or lack of recovery, of Zostera beds*”. The project identifies five mechanisms for nutrient enrichment to impact eelgrass beds:

- Metabolic imbalance by high internal nitrate concentrations (including reduced internal carbon available)
- Increased susceptibility to wasting disease (linked to the reduced phenolic compounds due to lowered internal carbon)
- Increased growth of epiphytic algae (smothering and reduced light)
- Smothering or shading by excessive growth of macroalgae
- Shading by phytoplankton blooms or other turbidity

Eelgrass is not only sensitive at lower concentrations of nitrogen than those that result in excessive opportunistic macroalgae (e.g. <0.5mg/l nitrogen tidally averaged has been shown to result in loss) but also to different forms of nitrogen than are currently used in WFD and RoC assessments. Eelgrass preferentially takes up organic forms of nitrogen over inorganic, though it is vulnerable to both.

The picture for saltmarsh is more complex as the vulnerability to nitrogen impacts changes with other stressors such as coastal processes ie saltmarshes that are subject to multiple synergistic impacts are less resilient to the same input of nitrogen. At the time of the RoC it was considered that saltmarshes were unlikely to be particularly sensitive to changes in water quality due to nutrient enrichment other than possible smothering effects from the growth of macroalgae. The root shoot imbalance caused by nitrogen in such impacted systems leads to the long term loss of saltmarsh (Deegan et al, 2012). . It is unclear from the literature what level of nitrogen is appropriate for saltmarsh in such circumstances nor how this relates to nutrient enrichment and macroalgae. Recent saltmarsh surveys of Chichester harbour (NE in prep, available early 2020) have shown that the saltmarsh is declining in the Solent and they are vulnerable to smothering of macroalgae both

¹ The eelgrass is a typical species (See SAC conservation objective) for both the SAC intertidal feature and the estuaries feature. Eelgrass is also explicitly mentioned on the SAC citation.

from growth on the saltmarsh and also through deposition on the strand line; the latter was not assessed in RoC. In addition there maybe synergistic impacts where high nutrient loading suppresses root growth and leads to plants being more susceptible to erosion from changes in coastal processes.

To take into account the differing nutrient impacts across all features. We advise that all of these different elements need to be taken into account in any assessment rather than being based purely on macroalgal biomass.

With respect to impacts on the SPA features, recent work has also highlighted the importance of considering not just the community changes in benthic invertebrates but also the size of preferred bird species prey items. At macroalage densities above 800 gm² there is evidence for increases in the relative abundance of smaller sized invertebrates this has the effect of reducing the amount of available energy (Thornton, 2016)

5. New evidence on impacts from intermittent discharges

During the RoC all intermittent discharges were ruled out as having no likely significant effect as they were:

- Not considered unsatisfactory in the Asset Management Plan (AMP) process or they were considered they should not be overflowing or extremely infrequently,
- At a distance from the site which, if overflowing infrequently, would not have a significant contribution.

However new experience since the RoC, has indicated that there are intermittent discharges that are overflowing frequently. This would suggest that the assumptions at RoC concerning their relative contribution to water quality in the SAC may need to be revisited.

6. RoC conclusions around using fair share

Recognising that EA is undertaking a more substantial review of the fair share (polluter pays) approach to which NE has been invited to contribute, there are some specific issues to consider in respect of its application to the Solent SAC RoC assessment. There are several interrelated aspects around the use of the concept of 'fair share' which raises questions as to whether there is sufficient certainty that the RoC conclusions continue to prevent the 'restore' conservation objectives from being undermined. Part of this is understanding the latest situation with regards to how much of the background actually comes from wider Solent sources and how take account of the contribution from offshore sources (outside the Solent).

The decisions for RoC were (for most waterbodies in Solent SAC / SPA) based on discharges making a 'fair share' reduction according to the source apportionment data at the time. The RoC recognised that the actions required on the discharges alone will not achieve the required reductions for the site to be restored and that additional action on the other sources will be required to do this. Action on agriculture is recommended but not as yet secured or shown to be achievable. Many of the identified actions on the discharges have now taken place and the actual effects from these may be

captured in the more recent monitoring data, although lags in ecological responses are likely. It is now possible to better understand what actions would be required by the other diffuse sectors, whether these are achievable, and therefore whether taking a fair share approach will actually enable the site to achieve the relevant water quality targets over the long term, or whether further reductions may be needed to discharges to prevent the 'restore' conservation objectives from being undermined.

For the Hamble waterbody the final option that was agreed did not meet the fair share reduction for discharges and there were other options considered that could have further reduced the point source contribution so that it was closer to delivering fair share (but still not meet it). An assessment is needed over any further reductions required from discharges to this part of the site to ensure the 'restore' conservation objectives are not undermined by those discharges.

Given developments since RoC in the way fair share methodology is applied, especially in the absence of clear N and P targets for some parts of this site at that time, we suggest that it would be appropriate to review the consistency in its application in this case.

All these factors around the use and application of fair share could influence the STW headroom available for growth and the potential options available to enable growth into the future.

References

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Soulsby, D., Lowthion, M., Houston, M. Effects of macroalgal mats on the ecology of intertidal mudflats. *Marine Pollution Bulletin* 13 (5) p162-166

Thornton, A., 2016. The impact of green macroalgal mats on benthic invertebrates and overwintering wading birds. Doctorate Thesis (Doctorate). Bournemouth University.



Planning and permitting: the respective roles of Natural England and the Environment Agency in managing impacts on habitats sites through the Habitats Regulations, the Water Environment (Water Framework Directive) Regulations, and the Environmental Permitting Regulations

Natural England and the Environment Agency have statutory roles under the planning and permitting regimes. This joint position statement summarises the respective roles of Natural England and the Environment Agency in managing the impacts on habitats sites¹ through those regimes.

1. The legal and policy framework

The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) protect nature through two main mechanisms: the network of habitats sites, which contribute to the conservation of the natural habitat types and species identified in the Annexes of the Habitats Directives; and the protection of specific animal and plant species wherever they occur. As a matter of government policy, Ramsar sites, designated under the Ramsar Convention on wetlands of International importance, are given the same protection as habitats sites.

The Water Environment (Water Framework Directive) Regulations 2017 apply to surface waters (including some coastal waters) and groundwater (water below the surface of the ground) and set out requirements to prevent the deterioration of aquatic ecosystems; protect, enhance and restore water bodies to 'good' status; and achieve compliance with standards and objectives for protected areas (including habitats sites).

The Environmental Permitting Regulations 2016 requires operators to obtain permits for some activities to protect the environment and human health.

2. Natural England and Environment Agency roles in planning and permitting processes

Protecting habitats sites

¹ Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.

Natural England is responsible for promoting nature conservation and protecting biodiversity, including ensuring that the network of habitats sites is appropriately maintained or restored to a favourable condition.

Where a proposed plan or project is likely to have a significant effect on a habitats site (whether that's on or near the site), the Habitats Regulations require the decision maker to carry out an Appropriate Assessment. This maps out and analyses the possible impacts on the site features and includes details of any proposed mitigation measures to avoid harm (for example, securing 'nutrient neutrality', where proposed development may otherwise exacerbate the impact of nitrogen on habitats sites). While the final decision to consent a proposed plan or project rests with the decision maker (e.g. a local planning authority), Natural England is a statutory consultee to the Appropriate Assessment and the decision maker must have regard to Natural England's advice.

The proposed plan or project can only proceed at this stage if (taking account of mitigation as appropriate) there is no reasonable scientific doubt that there will be no adverse effects on the integrity of any relevant habitats site(s).

Natural England are the only statutory consultation body for Appropriate Assessments, whether undertaken for plans or projects. During a public consultation on a planning application, the Environment Agency can exercise its discretion over whether to comment on an accompanying Habitats Regulations assessment (where undertaken).

Defra has provided guidance where there is more than one competent authority and the circumstances where a decision maker can adopt the reasoning of another body: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

Environmental permitting

The Environment Agency is responsible for protecting and improving the environment and fulfils these duties through a range of activities, including deciding whether to grant environmental permits for discharges to the water environment.

Any persons wishing to discharge polluting substances into the environment are required to apply to the Environment Agency for an environmental permit. These permits will set limits on the amount of certain pollutants that can be included in the discharge to ensure impacts on the environment are considered, and that it will comply with relevant legislation.

Allowances for development can be built into permits by including a headroom allowance. For example, new development may be acceptable where it can be accommodated within the current water discharge activity permit limits of individual wastewater treatment works, i.e. where there is capacity to take the extra wastewater flows from the development whilst still treating effluent to the same standard. Local planning authorities must still ensure that the Habitats Regulations have been complied with before authorising the new development.

Regarding planning applications (e.g. housing development), the Environment Agency would expect developers, water companies and relevant local authorities to work to resolve any potential infrastructure capacity issues in a proportionate and expedient way.

Permit reviews are required to check whether permit conditions continue to reflect appropriate standards and remain protective considering experience and new knowledge. Reviews should guard against permits becoming obsolete as treatment technologies develop. The Environment Agency is required to review permit conditions in the light of new information on environmental effects, best available technologies or other relevant issues.

3. Relationship between the Habitats Regulations and the Water Environment (Water Framework Directive) Regulations: understanding impacts at the water body and at the site feature level

Environmental Quality Standards, including those for water quality, have been established for water bodies in general under the Water Framework Directive regime by a UK Technical Advisory Group².

Conservation objectives for habitats sites may be underpinned by water quality targets and are established by the conservation agencies in accordance with common standards for monitoring guidance. This guidance was developed to provide an agreed approach to the assessment of condition on statutory sites (including habitats sites) designated through UK legislation and international agreements.

The Water Environment (Water Framework Directive) Regulations 2017 clarify that where both water body objectives and habitats site objectives apply to a water body, the most stringent objective applies.

In the case of estuaries and coastal waters, water quality targets may often be the same or similar under both regimes. However, the spatial application of these may differ, with the water quality regime being applied at the whole water body scale and the conservation objectives being applied to the designated features wherever they are within the habitats site.

4. Natural England and Environment Agency roles in monitoring

In England, most terrestrial habitats sites are also notified as Sites of Special Scientific Interest (SSSIs). Natural England undertakes monitoring of SSSIs and habitats sites, which informs site management actions. This may also inform off-site actions including for example managing the impact of diffuse water pollution.

In the case of coastal and estuarine sites, monitoring will include data gathered by Natural England as well as water quality data supplied by the Environment Agency.

² The UKTAG (UK Technical Advisory Group) is a working group of experts drawn from environment and conservation agencies. It was formed to provide technical advice to the UK's government administrations on implementing the Water Framework Directive, including development of environmental standards and conditions.

5. Environment Agency intention to consider whether permits for Waste Water Treatment Works remain valid based on new evidence under the Environmental Permitting Regulations

The Environment Agency has a duty to review permits under the Environmental Permitting Regulations 2016. In the granting and onward review of waste water treatment consents, the Environment Agency is a competent authority under the Habitats Regulations. This requires the Environment Agency to assess the effects of such consents on habitats sites.

The Environment Agency will undertake a review of a permit or permits if evidence is received from Natural England which clearly demonstrates that there have been changes which could mean the permit(s) are no longer fit for purpose, for example a change in the condition of a habitats site, informed by site monitoring. For the purposes of undertaking an assessment under the Habitats Regulations, it will be important to take account of the most up-to-date information available in relation to the condition of habitats sites.

Due to the requirement for the Environment Agency and Natural England to follow processes under the different regimes, this may sometimes be interpreted as a disparity in guidance and advice. However, this isn't the case, and statements set out in this paper establish an agreed position which we would expect to be applied as part of locally developed actions and solutions.



Partnership for South Hampshire

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Esther McVey MP
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By email and post
25 October 2019

Dear Minister,

Formal request to the MHCLG to suspend National Planning Policy Framework Housing Delivery Tests for Partnership for South Hampshire local authorities.

I write on behalf of all members of the Partnership for South Hampshire (PfSH), and further to my letter of 28 June to the former Secretary of State James Brokenshire. That letter highlighted the issues faced by our twelve local authorities following the introduction of the requirement that all new housing development must demonstrate nutrient neutrality. A copy of my letter, together with the response received from your predecessor Kit Malthouse MP, is attached for ease of reference.

The requirement is currently preventing, and in some cases completely halting, local planning authorities around the Solent from granting permission for new housing. Given the severely reduced number of permissions granted by PfSH local authorities in the financial year 2019/20, it is untenable to expect that the requirements placed upon them in the Housing Delivery Tests will be met - and the consequences of that is a cause of serious concern. The task of finding both short-term and medium/long-term solutions to address the problem is a shared one. This request is a measure agreed across PfSH that will alleviate unnecessary detrimental pressures on local authorities until solutions are found.

In his letter, Kit Malthouse undertook that MHCLG would continue to monitor the impact of the Housing Delivery Test by engaging with local authorities that are facing challenges, and commissioned a meeting between MHCLG officials and PfSH planning officers. That meeting took place on 20 August.

While I understand the meeting has led to cross-government discussions, primarily with DEFRA and its NDPBs (Natural England and Environment Agency), PfSH has received little substantive feedback to date on the progress and possible outcomes of those discussions. However, we do know that the legal text of the European Court of Justice ruling - that imposes the nutrient neutral requirement - is being examined, with the possibility of Natural England guidance being adjusted in-line with fresh interpretation. To date, the issue has been exacerbated by the disparity in the approach of two DEFRA NDPBs to the impact of the ruling - one issuing guidance on achieving nutrient neutrality, the other suggesting that no changes need to be made to waste water treatment works' permit levels. Going forward, it is essential that government advice presents us with a single unified message.

You will appreciate that any short-term measures that PfSH local authorities are undertaking to resume 'business as usual' will need to complement any wider solutions identified by your officials. PfSH has been working closely with MHCLG officials to assist and inform the approach to their discussions, has made clear the scale of the current backlog of consents and has been working closely in its own right with Natural England and Environment Agency to develop short and medium/long-term strategies to alleviate the problem. However, it is clear that the short-term mitigation options available, and that are

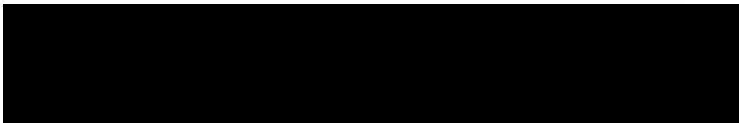
already being implemented, will not sufficiently reduce the backlog of development applications to a level that will allow us to meet the targets set in the Housing Delivery Tests. In addition, in the absence of mitigation options some local authorities are coming under increased scrutiny in terms of which types of permission they can include in their five-year housing land supply statements- particularly in relation to the new definition of what is 'deliverable' in the National Planning Policy Framework.

Granting a suspension of the Housing Delivery Test for PfSH local authorities will:

- be considered an important signal from central government that it recognizes that PfSH authorities are doing all they can to deal with the nutrient issue;
- remove the additional pressure of the penalties that PfSH authorities will face if the Housing Delivery Tests are not met, and which are not of their making;
- afford local authorities the time to focus on working collectively with all interested parties to implement joined-up and focused mitigations.

PfSH asks that you fully consider its request to suspend the Housing Delivery Tests for its members, and I look forward to your response.

Yours sincerely,



Councillor Seán Woodward
Chairman, Partnership for South Hampshire

Enc.



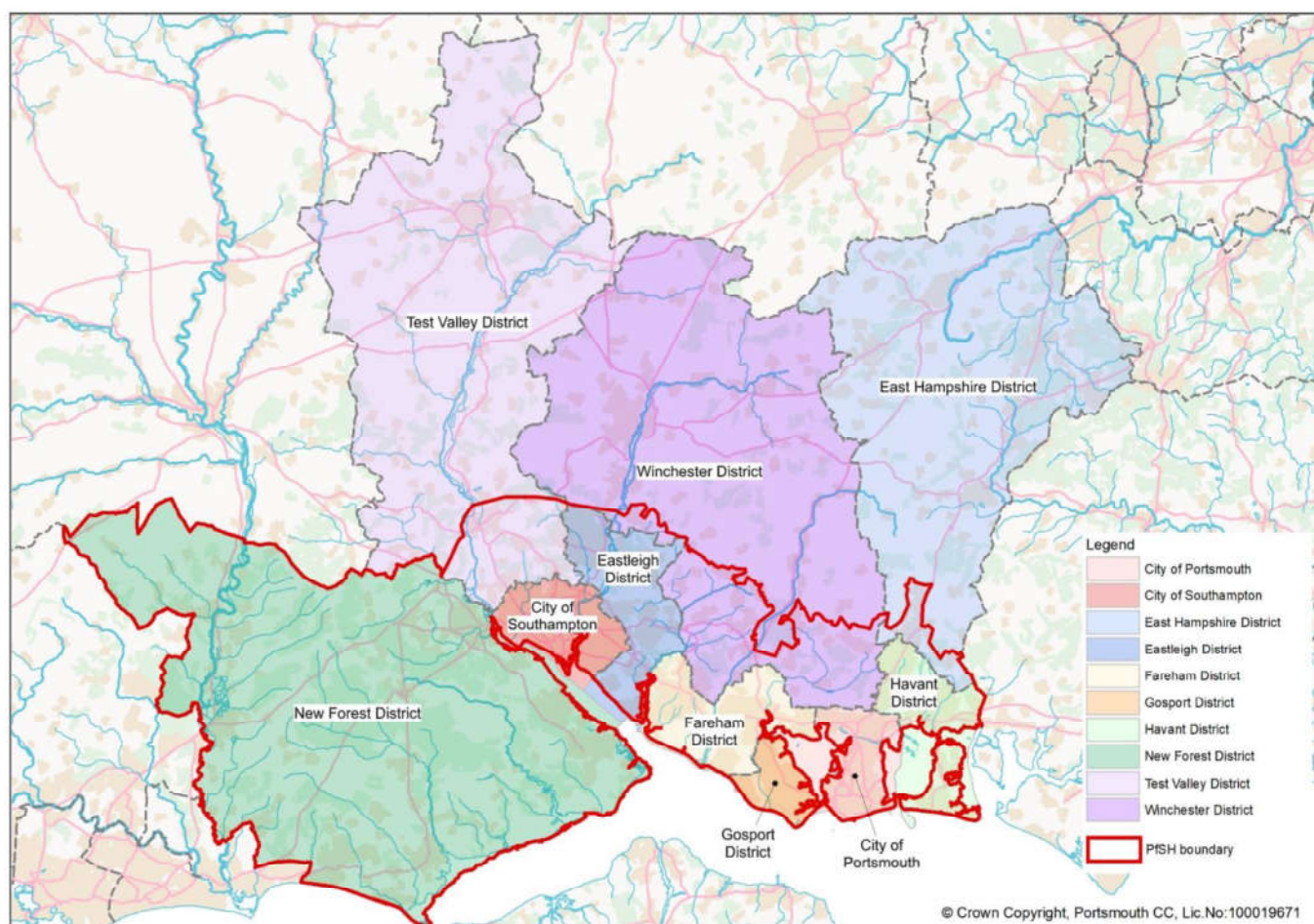
About the Partnership for South Hampshire

The Partnership for *Urban* South Hampshire (PUSH) was formed in 2003 following recognition by the leaders of Eastleigh, Fareham, Gosport, Havant, Portsmouth and Southampton councils (the urban core of South Hampshire) and Hampshire County Council, that South Hampshire was underperforming in economic terms in comparison to the remainder of the south east England.

Subsequently, PUSH invited the leaders of East Hampshire, New Forest, Test Valley and Winchester councils to join in recognition that the natural economic area of South Hampshire included parts of these areas too. PUSH then evolved from an informal meeting of council leaders to a formally constituted Joint Committee with overview and scrutiny arrangements.

As a group of councils, it works together effectively and is committed to encouraging sustainable development and growth across South Hampshire.

In August 2019 the decision was made by the New Forest National Park Authority to join PUSH - following which the word 'urban' was withdrawn from the partnership's title to reflect the wider diversity of membership. The subsequent 'PfSH' sub-region covers the area outlined in the map below.



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Ministry of Housing,
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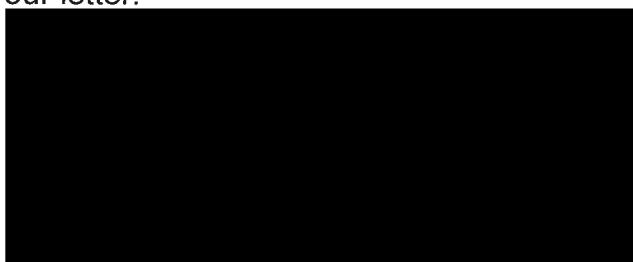
Dear Cllr Woodward,

Thank you for your email of 25 October, on behalf of Partnership for South Hampshire (PfSH), about the Housing Delivery Test.

Officials from both the Ministry of Housing, Communities and Local Government (MHCLG) and Department for Environment, Food and Rural Affairs (DEFRA) are continuing to work actively with Natural England and the Environment Agency to address the issues being posed by nitrates pollution in the Solent. They are also exploring opportunities to support the Partnership for South Hampshire authorities in the technical work to develop strategic solutions that could deliver wider benefits to communities and the environment.

As you will be aware we have now entered the formal pre-election period, and it would not be appropriate for me to commit to any action relating to the Housing Delivery Test at this time.

Thank you again for your letter.



RT HON ESTHER MCVEY

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Theresa Villiers MP
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By email and post
25 October 2019

Dear Secretary of State,

Formal request to DEFRA to commission an Environment Agency review of Waste Water Treatment Works (WwTW) permit levels assigned within the Partnership for South Hampshire catchment area.

I write on behalf of all members of the Partnership for South Hampshire (PfSH) and further to my letter of 28 June to your predecessor The Rt. Hon Michael Gove MP. That letter highlighted the issues faced by our twelve local authorities following the introduction of the requirement that all new housing development must demonstrate nutrient neutrality. A copy of my letter is attached for ease of reference.

Implementation of that requirement is currently preventing, and in some cases completely halting, local planning authorities around the Solent from granting permission for new housing development where sites cannot demonstrate nutrient neutrality. This is because of a risk of challenge (on the back of advice and guidance issued by Natural England) to the granting of planning permissions that are not considered compliant with Habitats Regulations.

Finding solutions to reduce nutrient discharge is a shared task. Collectively, and as individual local authorities, PfSH members are working hard with Natural England, the Environment Agency, Ministry of Housing, Communities and Local Government (MHCLG) officials, water companies and others, to develop both short-term and medium/long-term solutions.

We are strongly of the view that, in relation to development, the most effective long-term solution is a reduction in the permitted levels of nitrate discharge in both treated and untreated sewage effluent. While the sewerage treatment works along the coast operate within relatively tight permit levels, and in actual fact evidence shows that they routinely outperform their permit - some of the inland sewerage treatment works have no permit level for nitrate. This means that the amount of nitrogen that finds its way into the Solent is greater than necessary and un-monitored. A review of permits to levels appropriate to avoid impact on the European Protected Sites would positively affect both the environmental condition of protected sites *and* the ability to facilitate much needed housing growth (and other developments including overnight accommodation, such as hotels). To achieve this reduction we believe that a review of Environment Agency permit levels issued to sewerage treatment works that fall within the catchment area of the European Protected Sites needs to be undertaken in the near term.

Implementation of more stringent permitted nutrient discharge levels will require Southern Water to implement measures that either, cause its works to operate to a higher standard of nutrient removal, or upgrade some or all of its works to enable its ability to do so. We believe that the two arms of your department, Natural England and the Environment Agency, need to work together to address the disparity

of both its advice, and required standards, to meet this challenge. PfSH believes a review is wholly necessary, and should form part of a wider strategy of mitigation measures.

Following an initial meeting with MHCLG officials in August, we have been working with them to provide a collective overview of the scale of the issue, and where it has been possible, outlined the measures individual local authorities have implemented to address the challenges in the short-term. I understand that MHCLG has initiated cross-government discussions with DEFRA, Natural England and the Environment Agency with a view to developing a wider long-term strategy. We await the outcome of those discussions.

You will appreciate that there is an immediate need for PfSH local authorities to grant planning permissions, not least to comply with government requirements around housing need, five year housing land supply and housing delivery test. However, it is clear that the short-term mitigation options available, and that are already being implemented where they meet the legal tests of the Habitats Regulations, will not sufficiently help us reduce the backlog of development applications - which is in turn having a negative impact on the business of local developers and wider growth.

We look forward to the outcome of the ongoing cross-government discussions. On behalf of PfSH I request that you fully consider commissioning the Environment Agency to undertake a review of permit levels issued to sewerage treatment works within the catchment area of the European Protected Sites in the Solent - which we believe will form an important part of the wider long-term strategic solution. I look forward to your response.

Yours sincerely,

A solid black rectangular box used to redact the signature of the councillor.

Councillor Seán Woodward
Chairman, Partnership for South Hampshire

Enc.



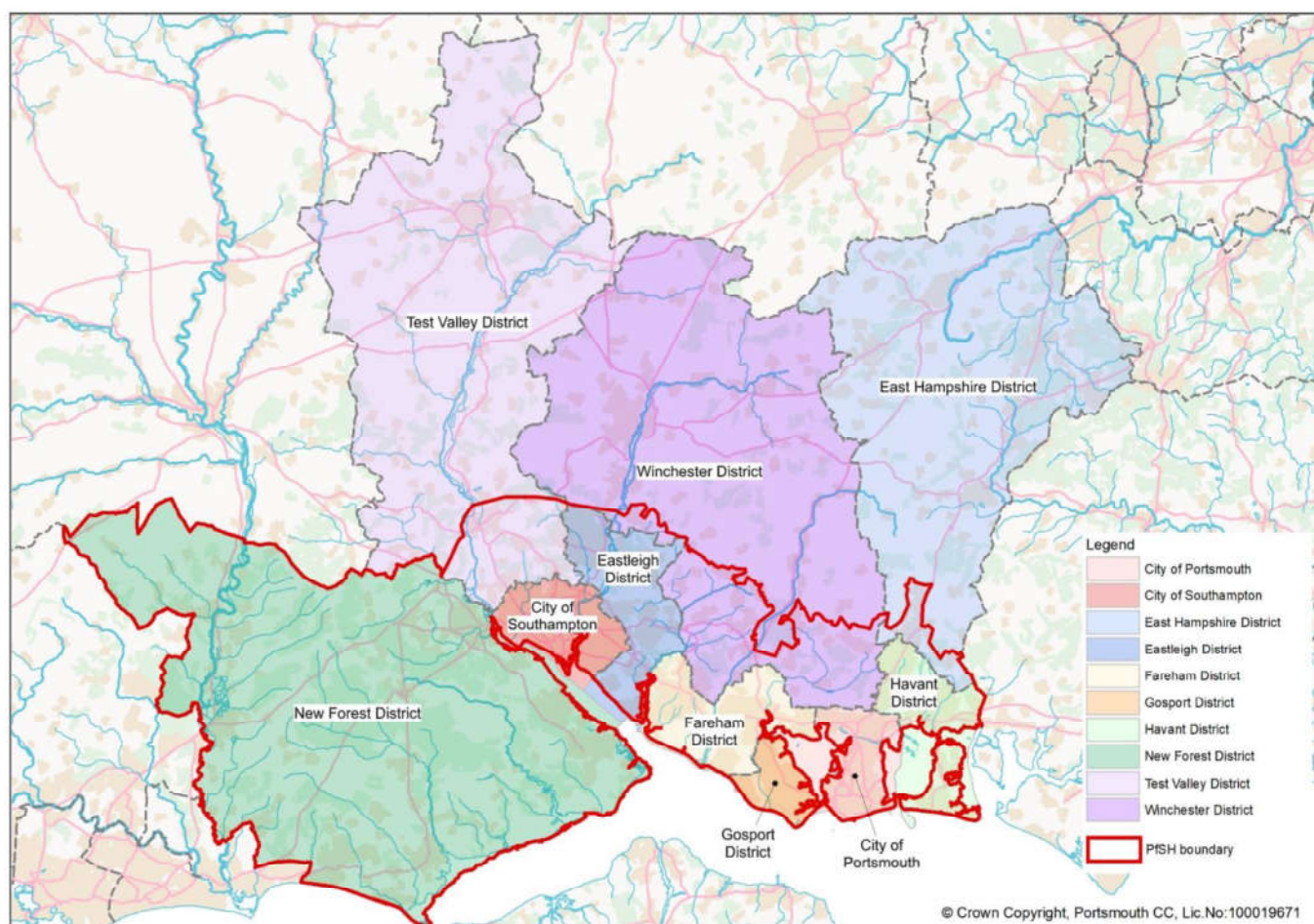
About the Partnership for South Hampshire

The Partnership for *Urban* South Hampshire (PUSH) was formed in 2003 following recognition by the leaders of Eastleigh, Fareham, Gosport, Havant, Portsmouth and Southampton councils (the urban core of South Hampshire) and Hampshire County Council, that South Hampshire was underperforming in economic terms in comparison to the remainder of the south east England.

Subsequently, PUSH invited the leaders of East Hampshire, New Forest, Test Valley and Winchester councils to join in recognition that the natural economic area of South Hampshire included parts of these areas too. PUSH then evolved from an informal meeting of council leaders to a formally constituted Joint Committee with overview and scrutiny arrangements.

As a group of councils, it works together effectively and is committed to encouraging sustainable development and growth across South Hampshire.

In August 2019 the decision was made by the New Forest National Park Authority to join PUSH - following which the word 'urban' was withdrawn from the partnership's title to reflect the wider diversity of membership. The subsequent 'PfSH' sub-region covers the area outlined in the map below.



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Councillor Seán Woodward
Chairman, Partnership for South Hampshire
Civic Offices
Civic Way
Fareham
Hampshire
PO16 7AZ

OFFICE OF THE
EXECUTIVE LEADER

18 NOV 2019

Our ref: TO2019/22396/MP

14 November 2019

Dear Councillor Woodward,

Thank you for your letter of 25 October to the Secretary of State requesting that Defra commissions an Environment Agency review of Waste Water Treatment Works permit levels assigned within the Partnership for South Hampshire catchment area. In the absence of the Minister responsible for this policy area, I am replying on her behalf.

Permit reviews are required to check whether permit conditions continue to reflect appropriate standards and remain adequate considering experience and new knowledge. The Environment Agency is required to review permit conditions in the light of new information on environmental effects, best available techniques or other relevant issues.

Natural England is currently reviewing and synthesising the evidence regarding the condition of protected habitats in the Solent. It is doing this as a matter of urgency and anticipates this evidence will be submitted to the Environment Agency in the next few weeks.

The Environment Agency will consider the need to review relevant permits in view of this evidence. Any such review may determine if permits for Waste Water Treatment Works require limits for substances where none are currently required, and/or lead to a tightening of existing permit conditions. For a complex area like the Solent catchment and its harbours, this is likely to be a considerable undertaking which may include new modelling. Given the Waste Water Treatment Works contribute only a small proportion (approximately 10%) of the nitrate sources that contribute to the problem of nitrate pollution in the Solent and its Harbours compared to other sources, any permit review may not in itself resolve the pollution issues development proposals are currently facing.

In response to stakeholder concerns, I understand that the Environment Agency and Natural England are finalising a joint position statement to clarify their respective roles under the planning and permitting regimes. This will be shared with relevant stakeholders imminently. Defra group officials, working with the Ministry of Housing, Communities & Local Government, remain committed to working with the Partnership for South Hampshire to support local authorities to help them find short- and long-term solutions to address the nitrogen pollution issue, enhance the environment and enable housing delivery.

Thank you once again for taking the time to contact the Secretary of State about this important issue.

Yours sincerely,



Mark Plowright
Ministerial Contact Unit



Partnership for South Hampshire

Councillor Allan Glass, New Forest District Council
Appletree Court, Beaulieu Road, Lyndhurst SO43 7PA
Email: allan.glass@newforest.gov.uk

The Rt. Hon Theresa Villiers MP
Secretary of State
Department for Environment, Food and Rural Affairs (DEFRA)
2 Marsham Street
LONDON SW1P 4DF

By email and post
1 November 2019

Dear Secretary of State,

Use of 'developer contributions' (s106/CIL funding) to fund nutrient nitrate mitigation measures to facilitate new housing development across the Partnership for South Hampshire.

I write as Chair of the Overview and Scrutiny Committee of the Partnership for South Hampshire (PfSH). You will be aware that following a European Court of Justice ruling, a requirement has been placed upon local authorities to issue consent only for new housing development that can demonstrate that it will not cause an increase in nutrient discharge. This requirement is of particular relevance to PfSH local authorities given the areas of environmental significance around the Solent.

I am writing to express our concern that, in order to fund the necessary mitigation measures needed to offset much needed new housing development across the sub-region, s106 developer contributions may be diverted from their intended use (to secure, among other things, affordable housing and providing infrastructure for new development). It is not right that local authorities may be presented with a situation in which they have no choice but to access these funds for nutrient mitigations - which we believe would be unnecessarily inappropriate, nor in principle or spirit of their intended use.

Implementation of the nutrient neutrality requirement is currently preventing, and in some cases completely halting, local planning authorities around the Solent from granting permission for new housing development. This is because of a risk of challenge (on the back of advice and guidance issued by Natural England) to the granting of planning permissions that are not considered compliant with Habitats Regulations. The burden of developing solutions to reduce nutrient discharge is a shared one. It should *not* necessitate recourse to funds set aside to implement the social and infrastructure requirements that facilitate appropriate housing growth.

Collectively, and as individual local authorities, PfSH members are working closely with Natural England, the Environment Agency, Ministry of Housing, Communities and Local Government (MHCLG) officials, and others, to develop both short-term and medium/long-term solutions.

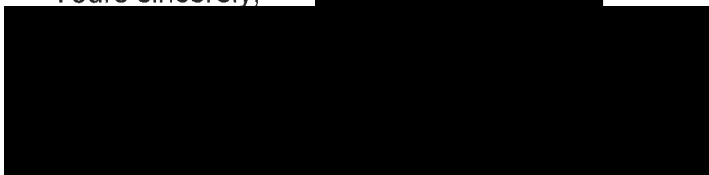
PfSH has advised MHCLG of the scale of the issue, and where it has been possible, outlined the measures that individual local authorities have implemented to address the challenges in the short-term. I understand that MHCLG has initiated cross-government discussions with your department, Natural England and the Environment Agency with a view to developing a wider long-term strategy. We await the outcome of those discussions.

In August, PfSH responded to Ofwat's consultation '*Notice of a Proposal to Impose a Penalty on Southern Water*'. It advocated an environmental remediation fund be set up with the proceeds of the fine, which could been used to facilitate significant and tangible benefits for local communities and sustainable growth. We were disappointed to learn from Ofwat that this proposal was not included in its decision about how to apportion the proceeds.

In the meantime, PfSH is exploring other available sources of funding for mitigation measures to address the nutrient neutrality requirement on behalf of its members. In particular, an intention to submit a bid to the Solent Local Enterprise Partnership's Prosperity Fund. In the event of a successful bid, we are uncertain whether any award will sufficiently cover the cost of the necessary.

I urge you to consider how your department can support PfSH local authorities to implement mitigations that offset the impact of housing development growth on levels nutrient discharge. I look forward to your reply.

Yours sincerely,



Councillor Allan Glass
Chairman, Partnership for South Hampshire Overview and Scrutiny Committee



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Cllr Allan Glass
Chairman, Partnership for South Hampshire
Overview and Scrutiny Committee
New Forest District Council
Appletree Court, Beaulieu Road
Lyndhurst
SO43 7PA

Our ref: TO2019/22945

26 November 2019

Dear Cllr Glass,

Thank you for your letter of 1 November to the Secretary of State requesting support to implement mitigation measures that offset the impact of housing development growth on levels of nitrate discharge. I have been asked to reply.

Defra has been working closely with the Ministry of Housing, Communities and Local Government (MHCLG), the Environment Agency (EA) and Natural England (NE) to support the individual local authorities and members within the Partnership for South Hampshire (PfSH) to develop short and medium to long term solutions to this issue. As part of this work, NE and EA have recently issued a joint position statement clarifying the agencies' respective roles in managing impacts on sensitive sites through the planning and permitting regime. This was shared with the PfSH secretariat for distribution to members on 18 November.

In addition, Defra is working with MHCLG, the EA and NE to ensure that action is appropriately coordinated. This includes: reviewing the scope for adjustments to NE's nutrient neutral methodology; confirming the evidence base to trigger a review of discharge consents affecting the Solent and its harbours (NE will be submitting evidence to EA within the next few weeks); and considering how we can assist stakeholders in the development of a strategic mitigation approach to addressing nitrate pollution issues. We are also exploring opportunities to minimise the costs of mitigation for developers, for example by delivering this as part of environmental improvements already required by national or local planning policy, such as securing biodiversity net gain and sustainable drainage.

We will continue to liaise with the PfSH local authorities and members as we progress this work, including at the upcoming PfSH Water Quality Working Group.

Thank you once again for taking the time to contact the Secretary of State about this important issue.

Yours sincerely,

Maria Klavsén
Ministerial Contact Unit

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By Email to:

Robert Jenrick MP

(Secretary of State for Housing, Communities and Local Government)

Theresa Villiers MP

(Secretary of State for the Department of Environment, Food and Rural Affairs)

Enquires to: David Hayward

Email: david.hayward@havant.gov.uk

Date: 14 Jan 2020

Dear Robert and Theresa

RE: Nutrient neutrality and the impact on housebuilding and five year supply

As you know recent case law, most notably *The Dutch Case* is making it impossible to grant planning permission for all but a handful of planning applications for new housing in Havant Borough and parts of East Hampshire district. This issue extends to our Partnership for South Hampshire colleagues and a number of other areas of the country. Left unchecked will render it impossible for these parts of the country to meaningfully contribute to Government's target of providing 300,000 new homes a year.

This issue is not of our making as Local authorities, but as a result of it we are having to put significant resources and funding into finding a solution to it as swiftly as possible. As such, we are writing with three specific asks of Government at this point.

We are grateful for the attention that ministers and your officers have already shown to this issue. However more action is needed. Thus far, no substantive action has taken place from Government or its agencies to address this important issue – simply discussion and high level commitments. The response to my colleague Cllr Woodward¹, highlights that Natural England are in the process of providing the necessary information to the Environment Agency to enable it to determine if a review of consents of waste water treatment works is required. This is welcomed, however, it should have taken place prior to Natural England issuing advice regarding the grant of planning permission to new development in the Solent. It is crucial that demonstrable actions are taken by Government immediately as set out below

First and foremost, it should be noted that our ability to contribute to the national drive to boost housebuilding will be significantly affected by this issue. The 2019 NPPF requires a boost to housebuilding at a national and local level to meet housing need. Particularly compared to the 2012 NPPF, it introduces a new requirement to make the most efficient use of land that is possible. This is significantly affected by the implications of *The Dutch Case*. The outcome of this case will be lower density development (due to the need to include mitigation land) and larger houses which do not meet our local needs. Both of these will significantly curtail the development potential of our areas and lead to poorer quality development. Put simply, we would need a reduction in the current

¹ Letter from Mark Plowright (Ministerial Contact Unit – Defra) to Cllr Seán Woodward dated 14 November 2019.

requirement for housing numbers that the two areas will be able to provide through emerging Local Plans.

Clarity on the regulatory process

It is necessary to clarify first and foremost the legal position that local authorities are in. It has been said on more than one occasion that none of MHCLG, DEFRA or Natural England are preventing Local Planning Authorities from issuing planning permissions. The joint statement issued by Natural England and the Environment Agency reinforces what is already present in the Habitats Regulations, namely (bold is our emphasis) “*While the final decision to consent a proposed plan or project rests with the decision maker (e.g. a local planning authority), **Natural England is a statutory consultee to the Appropriate Assessment and the decision maker must have regard to Natural England’s advice.***”

*The proposed plan or project can only proceed at this stage if (taking account of mitigation as appropriate) **there is no reasonable scientific doubt** that there will be no adverse effects on the integrity of any relevant habitats site(s).*” Our legal interpretation of the applicable regulations is that in a situation where the statutory consultee on Appropriate Assessments has issued advice that a development must be nutrient neutral and there is no information to the contrary, the LPA would not be duly having regard to Natural England’s advice. As such, any planning permission would be unlawful. If MHCLG or DEFRA have a definitive legal view that is different to the analysis above, it should be shared with affected Local Planning Authorities immediately.

Natural England’s current statement, as the Government’s statutory advisor on nature conservation, regarding development in Havant Borough is “*Natural England advises that there is a likely significant effect on the Solent’s European Sites due to the increase in waste water from the new housing as a result of the Havant Borough Local Plan 2036. Natural England also advises that any development proposed through any planning application providing overnight accommodation which would discharge into the Solent would be likely to cause a significant effect as there is uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the Solent’s European Sites.*”

The advice that we have been provided by Natural England is clear and unambiguous. This is helpful in that it allows decision making to take place. However public statements in meetings and to the media from MHCLG and Natural England highlighting that those bodies are not preventing LPAs from issuing planning permissions for development affected by this issue are not true. Doing so leads to inaccurate interpretations of the legal position that all stakeholders find themselves in.

As such, statements from officers or ministers of MHCLG, DEFRA or its agencies should acknowledge that those bodies **are** preventing local authorities from granting planning permissions.

New burdens funding

The need to address water quality through the Habitats Regulations is new. It has arisen out of international case law that is not of the Councils’ making. At this point in time, it is taking significant resources to manage this new area of work. This includes planners, property and estates professionals and solicitors. There are also new direct costs coming out of this judgement related to consultancy and legal advice.

Government have a proven track record of supporting local authorities to respond to new areas of work through new burdens funding. This has been provided in the past to support local authorities in undertaking Habitats Regulations Assessments on Local Plans. More recently it has been

provided to support the setting up of brownfield registers and self-build and custom-build registers.

This issue requires a substantial level of support which will be ongoing for the foreseeable future. As such, we would suggest that initial funding of £30,000 to support this work is essential for three years for any local authority within 10km of a European Site. Until now, it has been advised that this was not possible due to the fact that Government budgets have already been set. However it is considered likely that a new budget will be considered by Parliament. It is our strong recommendation that this issue is addressed through that process.

Five year housing land supply and the Housing Delivery Test

Both local authorities take seriously the need to provide for sufficient housing, at a sufficient rate, to meet the local need for development. Both Councils currently have a five-year housing land supply. Both Councils are in the process of considering applications for substantial levels of housing development. There are now substantial numbers of new homes contained within live planning applications where the **only** reason for the application not to have been determined is the need for it to be nutrient neutral.

However, development proposals can at this point be proposed, on nutrient neutral sites which would run counter to other policies which inform housing supply. As an example, Havant Borough Council has determined a planning application for a site which the Environment Agency is exploring for flood storage. This would be as part of a flood alleviation scheme for the settlement of Emsworth and could protect hundreds of homes, businesses and infrastructure. The site itself is not in a flood zone and so is not protected from development. However, it is nutrient neutral.

This situation is materially different from most five-year supply related considerations. It is not that Councils are not playing their part in bringing forward development – both are bringing forward new Local Plans, considering applications for new housing and working up mitigation plans as swiftly as possible. There is no more that local authorities can do to unblock new housing than is already being done.

There is a significant danger that the NPPF requirements regarding five year supply will lead to poor decision making. If this happens, it makes a mockery of the plan led system that both Councils put considerable resources into. MHCLG have advised that the current implications of *The Dutch Case* does not mean that the application of a national policy, such as the need for a five year supply, should change². This is an illogical conclusion to reach given the facts to hand. MHCLG were also not able to respond to Cllr Woodward's proposal in a recent letter that the transitional arrangements for the Housing Delivery Test be extended for Local Planning Authorities affected by *The Dutch Case* due to pre-election restrictions. As that is no longer the case, an expedient response to his original proposal is now sought.

The nature of this issue having emanated from well outside the local authority's area of jurisdiction and control, ie European case law, ensures that specific consideration is needed. We would propose that Local Planning Authorities that are included in advice from Natural England following the *Dutch Case* are not required to follow paragraph 11 d of the NPPF in relation to any development which would require appropriate assessment. For affected Local Authorities, the transitional arrangements for the Housing Delivery Test should also be extended by a further year.

We would appreciate specific answers to the following questions:

² Communication from Michael Bingham (Head of Planning Policy, MHCLG) to David Hayward (Planning Policy Manager, Havant Borough Council) on 14 October 2019 at 1730

- Will MHCLG issue a directive to all affected Government branches and their agencies to desist from stating that they are not preventing local authorities from issuing planning permissions due to *The Dutch Case*? It is clear that the opposite is in fact true.
- Will MHCLG provide new burdens funding to those local authorities dealing with the fallout from *The Dutch Case*?
- Will MHCLG remove the obligation for those local authorities dealing with the fallout from *The Dutch Case* to comply with Policy 11 d) of the NPPF?
- Will MHCLG extend the transitional arrangements for the Housing Delivery Test for a year for those local authorities dealing with the fallout from *The Dutch Case*?

We hope that you give this urgent attention so that this issue can be dealt with pragmatically with a view to housebuilding recommencing and look forward to hearing shortly how Government wishes to address this matter.

Yours faithfully

Cllr Michael Wilson
Leader, Havant Borough Council

Cllr Ken Moon
Economic Development and Rural Affairs Portfolio Holder, East Hampshire District Council

Gill Kneller
Chief Executive, Havant Borough Council & East Hampshire District Council

Copied to:

- Emma Howard Boyd (Chair of the Environment Agency)
- Hannah Hyland (Environment Agency)
- Marian Spain (Interim Chief Executive Natural England)
- Alison Potts (Planning and Conservation Senior Advisor, Natural England)
- Ian McAulay (Chief Executive Officer of Southern Water)
- Chris Nelson (Growth Planning Manager - Southern Water)
- Cllr Seán Woodward (Chair of the Partnership for Urban South Hampshire)
- Mark Plowright (Ministerial Contact Unit – DEFRA)
- Michael Bingham (Head of Policy – MHCLG)
- Alan Mak (MP for Havant)
- Flick Drummond (MP for Meon Valley)
- Nick Tustian (Chief Executive of Eastleigh Borough Council)



Partnership for South Hampshire

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By email to:

Robert Jenrick MP
Secretary of State, Ministry of Housing, Communities and Local Government

Copied to:

Theresa Villiers MP
Secretary of State, Department of Environment, Food and Rural Affairs

15 January 2020

Dear Secretary of State,

Nutrient neutrality and the impact on housing building

I write on behalf of all members of the Partnership for South Hampshire (PfSH) and further to my letter of 25 October to your colleague Esther McVey MP. A copy of that letter and response received is attached for ease of reference.

I am aware that representations on the issue of nutrient neutrality and the impact on housing and five-year supply have been made in a joint letter dated 14 January from colleagues at East Hampshire and Havant Councils. That letter and my own of 25 October concern, among other things, largely the same issue of the NPPF Housing Delivery Test. Now that the period running up to the general election has passed, I hope that your department will be in a better position to provide a full response, which will be appreciated.

In addition, and in my capacity as Chairman of the PfSH wider membership of twelve local authorities around the Solent, I fully support and endorse the issues raised in East Hampshire and Havant Councils' joint letter of 14 January. That letter fully outlines the issues that all member local authorities are grappling with.

I reiterate the points raised in my previous letter, that finding both short and medium/long-term solutions to the problems is a shared one. It is in all of our interests, including those of central government, that the aims and objections of the NPPF are met. However, the requests made and questions posed in both my own and in East Hampshire and Havant Councils' letters represent the thinking of the wider sub-region - that is all local authorities affected by this issue - and should be considered sensible and measured approaches as we all find solutions to resume house building in the region. In particular we need to ensure that central government works with us to fund the solutions that are needed in both the short-term and the long-term.

I look forward to your reply to this letter and to that of my colleagues at East Hampshire and Havant Councils.

Yours sincerely,

Councillor Seán Woodward
Chairman, Partnership for South Hampshire

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