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CABINET AGENDA

Membership: Councillor Wilson (Chairman)

Councillors Bains, Bowerman, Pike, Turner and Hughes

Meeting: Cabinet

Date: Wednesday 26 June 2019

Time: 2.00 pm

Venue: Hollybank Room, Public Service Plaza, Civic Centre Road,
Havant, Hants PO9 2AX

The business to be transacted is set out below:

Nick Leach
Monitoring Officer

18 June 2019

Contact Officer: Penny Milne 02392446234
Email: penny.milne@havant.gov.uk

Page

PART 1 (Items open for public attendance)

1 Apologies for Absence

To receive and record any apologies for absence.

2 Minutes

1 - 4

To confirm the minutes of the last meeting held on 20 March 2019.

3 Declarations of Interests

To receive and record any declarations of interest.

4 Chairman's Report

5 Cabinet Lead Delegated Decisions, Minutes from Meetings etc. 5 - 6

RECOMMENDED that the following Delegated Decisions and Minutes of Meetings be noted:

(1) Delegated Decision – Traffic Regulation Order, Brockhampton Lane South

(2) Delegated Decision – Traffic Regulation Order, Hillside Avenue

6 Petition Scheme - Recommendations from the Governance, Audit and Finance Scrutiny Board 7 - 18

Leader of the Council

7 Appointments to Outside Organisations 19 - 28

Deputy Leader and Cabinet Lead for Planning Regeneration and Communities

8 Position Statement on Nutrient Neutral Development 29 - 54

9 Havant Park Footway Refurbishment

Please note that this item has been withdrawn from the agenda.

PART 2 (Confidential items - closed to the public)

10 Exclusion of Public and Press

RECOMMENDED that the public be excluded from the meeting during consideration of the item headed and numbered as below because:

- (a) it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information of the descriptions specified in paragraphs of Part 1 of Schedule 12A (as amended) of the Local Government Act 1972 shown against the heading in question; and
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Item 11 – Investment in Additional Car Parking (Paragraph 3)

Cabinet Lead for Neighbourhoods, Safety and Enforcement

11 Investment in Additional Car Parking

Please note that this item has been withdrawn from the agenda.

GENERAL INFORMATION

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Internet

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Havant

BOROUGH COUNCIL

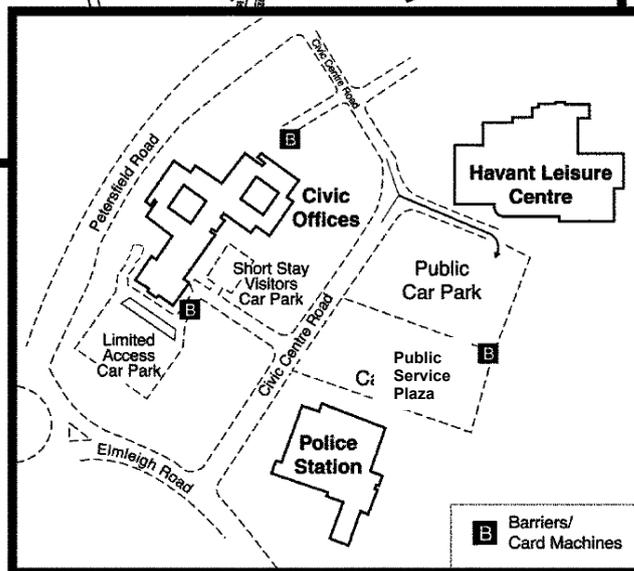
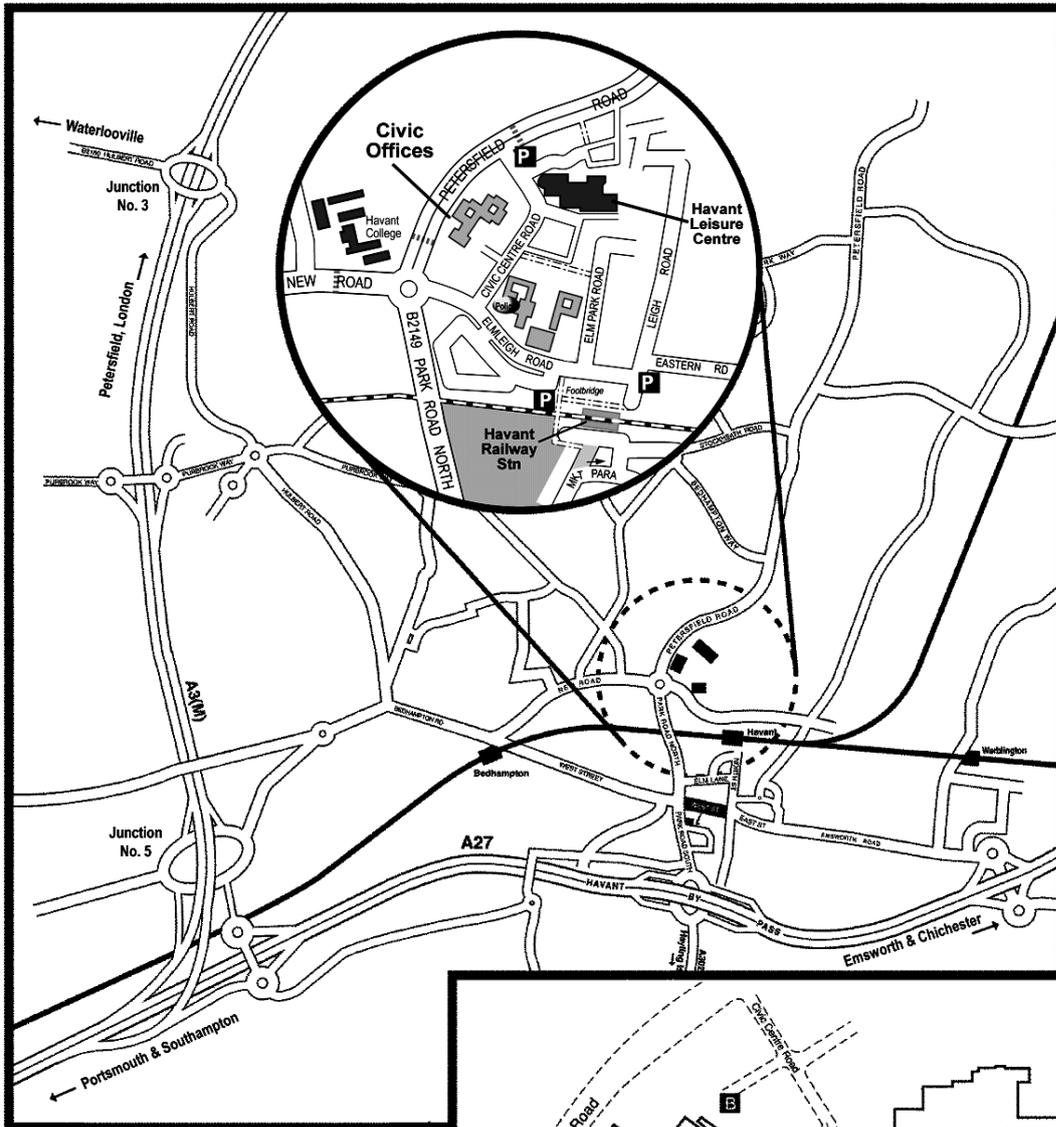
PROTOCOL AT MEETINGS – RULES OF DEBATE

Rules of Debate

- Councillors must always address each other as “Councillor ...” and must always address the meeting through the Chairman;
- A motion must relate to the business included on the agenda or accepted by the meeting as urgent business
- A motion must be proposed and seconded before it is debated until it is either accepted or rejected by a vote;
- An amendment can be proposed to the original motion and this must be seconded before it is debated;
- An amendment cannot be considered if it is inconsistent with an amendment previously adopted or repeats an amendment previously rejected;
- The mover of an original motion may, with the consent of the mover of an amendment, incorporate an amendment into the motion;
- Only one amendment may be moved at a time. No further amendments can be moved until the previous amendment has been dealt with;
- Each amendment must be voted on separately;
- If an amendment is carried, the amended motion becomes the substantive motion to which further amendments may be moved;
- If an amendment is lost, other amendments may be moved to the original motion.
- The mover may withdraw an amendment at any time
- After an amendment has been carried, the Chairman will read out the amended (substantive) motion, before accepting any further amendment, or if there are none, put it to the vote.

Voting

- Voting may be by a show of hands or by a ballot at the discretion of the Chairman;
- Councillors may not vote unless they are present for the full duration of the item;
- Where there is an equality of votes, the Chairman may exercise a second (casting) vote;
- Two Councillors may request, before a vote is taken, that the names of those voting be recorded in the minutes
- A recorded vote will always be taken in respect of approval of the Annual Budget
- Councillors may not vote unless they are in the meeting for the full debate on any particular item
- A Councillor may request that his/her vote be recorded in the minutes



Havant
BOROUGH COUNCIL
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HAVANT BOROUGH COUNCIL

At a meeting of the Cabinet held on 20 March 2019

Present

Councillor Wilson (Chairman)

Councillors Bains, Bowerman, Pike and Hughes

134 Apologies for Absence

Apologies were received from Cllr Turner and apologies for lateness from Cllr Hughes.

135 Minutes

The minutes of the extraordinary meeting held on 30 January 2019 and the meetings held on 6 February 2019 and 13 February 2019 were agreed and signed as correct records.

136 Declarations of Interests

There were no declarations of interest

137 Chairman's Report

The Chairman updated on recent meetings that he had attended on behalf of the Council, including the Hampshire and Isle of Wight Local Government Association Meeting on 1 March, the Solent Leader's Forum on 11 March and the Havant Business Partnership held on 14 March.

He asked Cabinet to note that he had agreed to the consideration of an additional exempt item, Acquisition for Regeneration, as a matter of urgency. The reason being that the Cabinet recommendation to Council and subsequent determination of this item was required to be made prior to the next scheduled Cabinet and Council meetings.

138 Civic Plaza Car Park Redevelopment Project

Councillor Pike presented a report recommending that the high level business case parameters for the project be agreed.

Cllr Hughes joined the meeting.

In response to question, it was confirmed that details around tenure and the lease would form part of the procurement exercise which would be considered by Cabinet at a later date.

Proposed by Councillor Pike and seconded by Councillor Bowerman, it was RESOLVED that:

1. The contents of the high-level business case parameters set out at section 4 of the report be AGREED; and
2. The Director for Regeneration and Place and the Head of Regeneration(S) in consultation with the Cabinet Lead for Finance and Regeneration and managed through the Regeneration Programme governance structure, be instructed to proceed with the procurement of a development partner and the drafting/negotiation of a Development Agreement for the redevelopment of the Civic Plaza car park. The draft Development Agreement be brought back to Cabinet for approval prior to completion.

139 Regeneration Programme Phase 1

Councillor Pike presented a report recommending approval to progress the three projects which made up Phase 1 of the Council's Regeneration Programme.

Proposed by Councillor Pike and seconded by Councillor Bowerman, it was RESOLVED that the Director for Regeneration and Place and the Head of Regeneration in consultation with the Cabinet Lead for Property, Finance and Regeneration and the Chief Finance Officer be instructed to:

1. achieve best value for Brockhampton West Havant in accordance with the Local Plan Policy C10;
2. seek best value for the Council to enable the development of Southwood Road Car park, Hayling Island in accordance with the Local Plan Policy; and
3. develop a long-term masterplan for the Redevelopment of West Beach, Hayling Island. The completed masterplan would be brought to Cabinet.

140 Civil Parking Enforcement - Revised Agency Agreement

Councillor Bains presented a report recommending approval to enter into a new agency agreement with Hampshire County Council (HCC) for the enforcement of On Street Parking Controls. She put forward an additional recommendation that communications around the new agency agreement, if entered into, be approved in consultation with the Cabinet Lead.

Proposed by Councillor Bains and seconded by Councillor Bowerman, it was RESOLVED that:

1. the details of the proposed Agency Agreement as shown in Appendix 1 be APPROVED and the principle of Havant Borough Council entering into the revised agency agreement with HCC from

April 2020, subject to the Legal team agreeing the final wording be AGREED;

2. The setting up of a new Parking Enforcement agreement with East Hampshire District Council (EHDC) be APPROVED;
3. A zero tolerance approach be ADOPTED to the contravention of parking restrictions;
4. All On Street Parking Permit fees and charges be fully reviewed and the responsibility for this is delegated to the Portfolio Lead; and
5. The responsibility for the approval of communications around the new agency agreement be delegated to the Portfolio Lead.

141 Exclusion of the Press and Public

RESOLVED that the press and public be excluded from the meeting during consideration of the following item as:

- (i) It was likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information as specified in paragraph 3 of Part 1 of Schedule 12A (as amended) to the Local Government Act 1972; and
- (ii) In all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

The report to be considered was exempt under Paragraph 3 – information relation to the financial affairs or business affairs of any particular person (including the Authority holding that information).

142 Urgent Item - Acquisition for Regeneration

(this item was taken in Camera)

Councillor Pike presented the report.

RESOLVED as set out in the Restricted Minute.

The meeting commenced at 2.00 pm and concluded at 3.14 pm

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Chairman

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Havant Borough Council Record of Decision

Non Key Decision

1. **TITLE:** Brockhampton Lane South

2. **PURPOSE OF DECISION**
Proposed TRO to introduce waiting restrictions

3. **DECISION MADE BY:** Cabinet Lead for Neighbourhoods, Safety and Enforcement

4. **DECISION:**
 - (1) officers can proceed with the process of implementing a Traffic Regulation Order (TRO) in Brockhampton Lane and undertake the public consultation regarding the proposed changes; and
 - (2) officers can bring the proposed TRO into force except where:
 - (a) a ward councillor registers a request that the matter be dealt with by Cabinet; or
 - (b) ten or more representations from separate addresses are received (and not withdrawn) which are in objection to the officer recommendation.

5. **DOCUMENT CONSIDERED:** Brockhampton Lane South
Enc. 1 for Brockhampton Lane South

Decision Status	Date of Decision Made	Call In Expiry Date
For Determination	06 June 2019	13 June 2019

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NON EXEMPT

HAVANT BOROUGH COUNCIL

Cabinet

26 June 2019

PETITION SCHEME

Report by Governance, Audit and Finance Board

FOR DECISION

Cabinet Lead: Councillor Bowerman

Key Decision: No

1.0 Purpose of the paper:

- 1.1 This report is submitted to seek approval for a revision to the Council's current petition scheme.
-

2.0 Recommendations

- 2.1 Agree the revised petition scheme as set out in Appendix A of this report
- 2.2 To review the revised threshold figure for full council debate within twelve months of the revisions to the scheme, as set out in 2.1 above being approved by Cabinet.

3.0 Executive Summary

- 3.1 The Board, at the request of the Chairman, reviewed the Council's current petition scheme, which has only been reviewed once since it was adopted by the Council in 2010.
- 3.2 The Board felt that the scheme, in its current form, was not particularly user-friendly and not clear on the process or qualifications for a valid petition scheme. To overcome this issue the Board recommends that the revised scheme set out in Appendix A of this report be adopted.
- 3.3 Under the current scheme, petitions with at least 50 signatures are accepted as valid petitions. If the number of signatures is at least 750 or the petition

requests an officer's progress report, the issue is referred to scrutiny. However, if the petition has at least 1500 signatures, the petition is referred to full council for debate, unless an officer's progress report is requested, where it will be considered by scrutiny.

3.4 The Board also felt that the current threshold for submitting a petition for a Full Council debate (at least 1500 signatures) was too high and penalised those areas of the Borough where there was a longstanding difficulty in motivating the community to sign a petition. The Board noted from the [Benchmarking Exercise](#) that although the current threshold was in line with a majority of the other Councils in terms of the percentage of population (1%), it was below the median average (1000 signatures). The Board therefore considered that a more appropriate threshold would be 1000 signatures. The Board acknowledged that there was a risk that a reduction in the threshold could result in an increase of inappropriate petitions being submitted for a Full Council debate and therefore recommends that the threshold be reviewed after a period of 12 months.

3.5 A change to the threshold figure for a full council debate would require the other thresholds to be amended to as follows:

Type of Petition	Current Threshold (signatures)	Revised Threshold (signatures)
Valid petition	At least 50	At least 50
Petitions Requiring a Scrutiny Review	At least 750	At least 750
Petition Requiring a Full Council Debate	At least 1500	At least 1000

4.0 Options and Reasons for Recommending Relevant Option

Option 1: Do Nothing. This option is the simplest and requires no effort and little resource. However, the complexity of the current scheme would remain making it difficult for a member of the public to understand. The retention of the current threshold for full council debate would leave the Council's threshold above the median average for this threshold for the benchmarked councils.

Option 2: This will provide a revised user - friendly scheme with a threshold for full council debate in line with the majority of neighbouring authorities.

RISK

OPTION	FOR	AGAINST
1	No cost. Easy	Retains a complex and non-user-friendly scheme which increases the risk of complaints from members of the public
2	Reduced risk of challenge and complaints from members of the public over the difficulty of submitting petitions. Increased transparency and possibility for public engagement.	Will require Officer resource to amend the scheme and the constitution. Increase in time spent by officers and councillors attending more full council petition debates.

Quality & Equality Impact Assessment

None. However, a more user-friendly petitions scheme with a lower threshold would benefit all residents of the Borough.

7.0 Resource Implications

7.1 Financial Implications

There is a risk that change to the threshold for a full council debate could lead to more petitions being submitted to Full Council and lead to longer meetings. However, the current evidence suggests that valid petitions that have been submitted in the past do not qualify for a full council debate because they relate to consultations which are dealt with under other procedures and not due to the current threshold figure. Therefore, the risk is considered very low and can be accommodated within the existing budget.

7.2 Human Resource Implications

The proposed changes could result in additional work for democratic services, who administer the scheme.

7.3 Information Governance Implications

Not applicable.

7.4 Other Resource Implications

Members time for full council.

8.0 Legal Implications

There is currently no legislation requiring councils to adopt a petition scheme or to respond to petitions.

9.0 Significant Risks

The do-nothing option risks future complaints.

10.0 Consultation

Not applicable.

11.0 Communication

The revised petition scheme will be republished and included in the constitution in its amended form.

Background Information

<http://havant.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD1571&ID=1571&RPID=501171471&sch=doc&cat=14067&path=14065%2c14067>

Agreed and Signed off by:

Monitoring Officer: 13 June 2019

Section 151 Officer: 13 June 2019

Cabinet Lead: 14 June 2019

Contact: Councillor Richard Kennett

Post: Chairman of Governance, Audit and Finance Board

Telephone: 07780236443

E-Mail: Richard.Kennett@havant.gov.uk

Draft Revised Petitions Scheme

Havant Borough Council

Introduction

The Council welcomes petitions and recognises that they are one of many ways in which people can let the Council know about their concerns and participate in the democratic process. This document sets out how the Council will deal with petitions that meet the criteria set out in the scheme.

The type of petition determines how a petition will be responded to. There are three types of petitions:

- Ordinary petitions requiring at between 50 and 749 signatures
- Petitions Requiring a Scrutiny Review – requiring between 750 and 999 signatories
- Petitions for debate at full Council requiring at least 1,000 signatures

More detail about how the Council will respond to each of these is referred to below.

If something is clearly intended to be a petition but does not meet the requirements set out in this scheme, we will ask the relevant service area to provide a response directly to the petition organiser.

Petitions can be sent:

by post:

Democratic Services Team
Havant Borough Council
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

or emailed to

Democraticservices@havant.gov.uk

If you have created a petition on a third party online site, please send a printed copy, flash drive or cd of the petition or email a copy of the petition to the above addresses.

Please ensure you read the full scheme prior to submitting a petition to the Council.

If after reading the scheme you no longer feel a petition is the most appropriate avenue for your communication, there are a number of other ways in which you can have your say including:

- Writing to the appropriate Cabinet Member or Senior Officer
- Contacting your local Councillor
- Making a suggestion through the Council's website
- Responding to consultation
- Submitting a deputation at meetings of the Council, Development Management Committee, Scrutiny Boards
- Asking questions at Full Council

Please see the Council's website.

What is a petition?

A petition can be defined as a formal collective request to take action. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition. If a petition is in the format that the signatories are 'against' some action the council can influence, we will take this to be an underlying request that the council reconsiders the action they are 'against' - and will seek to confirm this with the petition organiser.

Who can submit a petition?

Anyone who lives, works or studies in the Borough can organise or sign a petition. The Council would also consider a petition from visitors to the Borough on a subject that was connected with one of our visitor attractions.

What should a petition contain?

All petitions must include:

- A clear statement of your concerns and what action you would like the Council to take. If this is not clear we may need to return the petition to you for further clarification. This also should include whether it is an ordinary petition, petition requiring a scrutiny review, or full Council debate.

- The name and contact details of the “petition organiser” or someone to whom you would like any correspondence about the petition to be sent. The petition organiser should not be an MP or Councillor of The Council.
- The name, address and signature of any person supporting the petition. If the details of any person are not clear then these may not be counted towards the total number.

Electronic petitions can be accepted from all websites provided they meet the above requirements. However, officers will consider them in line with the validation of signatures criteria – so far as the petition format offers easy to check validation (addresses) that the petition organiser. The Council may ask for additional evidence, where required, to validate that the signatures have come. Online petitions must be closed on the external website on submitting your petition so that the final number of valid signatures can be counted.

Before using a third party online petition site, please check to ensure that the petition generated by this site meets the above requirements.

Where a petition complies with the above requirements and the petition relates to a function of the Council it will be classified as an **‘active petition’**. Any petition submitted which does not include the above requirements will be rejected.

What can a petition be about?

Petitions should relate to a matter which is relevant to the functions of the Council or where the Council has influence.

If your petition is about something over which the council has no direct control (for example the drainage or hospital) we will consider making representations on behalf of the community to the relevant body. The council works with a large number of local partners and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with council policy), then we will set out the reasons for this to you. You can find more information on the services for which the council is responsible on the Councils web site.

If your petition is about something that a different council is responsible for we will give consideration to what the best method is for responding to it. This might consist of simply forwarding the petition to the other council, but could involve other steps. In any event we will always notify you of the action we have taken.

Exceptions to the Petitions Scheme

The majority of petitions we receive will be accepted but there are some circumstances where we will not be able to deal with your petition under this scheme. Petitions that fall outside of this scheme include:

- Any matter that the Council is not directly responsible for or has no influence over. We will return the petition to you and where possible direct you to the correct organisation.
- Any matter relating to a planning decision. For further information about making representations about planning decisions, please contact planning.development@havant.gov.uk
- Any matter relating to a licensing application. For further information about making representations please contact licensing@havant.gov.uk
- A statutory petition (for example a petition for a directly elected Mayor)
- Any matter where there is already an existing right of appeal or a separate complaints process, such as council tax banding and nondomestic rates.
- Any specific issue that the Council is carrying out a formal consultation on. Please see below for further information regarding how we will deal with your petition in this circumstance.
- A petition where we have received another petition on the same issue within the previous two years. In these circumstances, we will write to the petition organiser and include a copy of the response to the first petition received.
- Any petition we consider to be vexatious, abusive or otherwise inappropriate. You should not include confidential information or potentially libellous, false or defamatory statements or statements which cause personal offence, distress or loss.
- Any petition that is asking the Council to do anything unlawful or relating to the subject of any legal action taken by the Council or individual.

How the Council will respond to Petitions

How we deal with your petition depends on which type of petition you submit:

Ordinary Petitions

To be considered valid, a petition should contain between 50 and 749 signatures. If your petition contains less than 50 signatures but you are able to demonstrate that, in relation to a particularly local issue of concern, it was simply not possible to obtain 50 signatures, the Council may still consider your petition under this scheme.

If your petition is accepted as an 'ordinary petition' you will receive an acknowledgement within 10 working days of receipt and be advised of the action being taken with regards to your petition.

In most circumstances an ordinary petition will be submitted to the appropriate Cabinet Member and senior officer for consideration. You will receive a response to your petition from the relevant officer or Cabinet Member within four weeks of receipt. If more time is required, the petitioner will be contacted with a new deadline for response and the reasons why.

Petitions Requiring a Scrutiny Review

A petition will be referred to a Scrutiny Board if it

- (a) contains between 750 and 999 valid signatories the issue raised in the petition; or
- (b) contains over 750 signatories and asks for a senior officer to give evidence at a public meeting. For example, the petition may ask a senior council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision.

If a petition asks for a senior council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job, the relevant senior officer will give evidence at meeting of the Scrutiny Board.

You should be aware that the Board may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition— for instance if the named officer has changed jobs. The Board may also decide to call the relevant councillor to attend the meeting. Board members will ask the questions at this meeting. The petition organiser will be given an opportunity to make a deputation at this meeting and to suggest questions to be asked at the Board by contacting the Democratic Services Team up to three working days before the meeting.

Petitions For Debate At Full Council

If a petition contains 1,000 valid entries the petitioner it will be debated by full Council unless it is a petition asking for a senior council officer to give evidence at a public meeting (see above). This means that the issue raised in the petition will be discussed at a meeting where all councillors can attend.

If your petition is accepted as a 'petition for debate at full Council' you will be contacted within 10 working days of submission and will be advised of the process to be taken at the Council meeting.

The Council will aim to consider the petition at its next ordinary meeting, although on some occasions this may not be possible, and consideration will then take place at the following meeting. Petition debates will not take place at the Council's budget setting or annual meetings.

Petition organisers are welcome to present their petition at full Council up to a maximum of five minutes. Councillors will then debate the petition subject to a maximum of 15 minutes.

The Council will decide how to respond to the petition at the meeting. It may decide to take the action the petition requests, take no further action or to request further investigation into the matter. If the issue is one that requires the Executive to make the final decision, the Council will decide whether to make recommendations to inform that decision.

The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

How will the Council deal with petitions relating to ongoing consultations?

If the Council receives a petition about an issue that it is already consulting with residents about, the petitions scheme will not apply. All petitions received that relate to the subject of a formal consultation will automatically be incorporated into the formal consultation process at the earliest stage possible. Petition organisers will be informed of this course of action within 10 working days.

Sometimes we receive petitions after the consultation deadline has passed but before a final decision has been taken. In these circumstances the decision maker will be asked to take your petition into consideration when they make the decision.

All petitions received after a decision has been taken on a matter that the Council has previously consulted residents on will not be considered under the scheme but will be passed to the relevant senior officer to respond.

What happens after the petition is submitted?

The Council will send an acknowledgement letter within 10 working days of receipt to the petition organiser. This acknowledgement will also say as much as we can at that stage of about what we have done or plan to do. If your petition meets the requirements for a debate at a Scrutiny Board or Full Council you will also be informed of the process for this.

Other reasons your petition may be rejected

The specific criteria for the petitions scheme are set out earlier in this scheme. If a petition does not meet the criteria it will not be considered under the scheme. If we are unable to consider your petition using the scheme we will send an acknowledgement letter within 10 working days of receipt to the petition organiser setting out the reasons why and what action we can take, if any, in response to your submission.

Outside the general exceptions there are several reasons why a petition may be rejected, including but not exclusively:

- the petition statement is not clear
- the subject matter of the petition is not within the remit of the Council
- the entries contain incomplete or invalid information such as no full address

What can I do if I feel my petition has not been dealt with properly?

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request that a Scrutiny Board review the steps of the Council has taken in response to your petition. The request should be accompanied by a short explanation of the reasons why the Council's response is not considered to be adequate.

The appropriate Board will endeavour to consider your request at the next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Board determine that we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, or making recommendations to the Council's Cabinet.

Once an appeal has been considered the petition organiser will be informed of the results within 5 working days. The results of the review will also be published on the council's website.

Will the Council check each signature?

The Council reserves the right to seek to verify each signature appended to a petition. This can be significant when establishing whether a petition has obtained the requisite number of signatures to trigger a specific process.

Privacy Policy

The details you provide when signing a paper or e-petition are needed to validate your support. For paper petitions no personal details will be included on the website, for e-petitions only your name will be listed. The Council may contact you in relation to any petitions you have signed, unless you have requested not to be contacted when signing the petition.

The Council is the data controller for personal information collected in respect of both the Council's E-petition facility and for paper petitions.

Your personal information will not be shared outside of the Council, unless otherwise required to by law.

Paper petitions will be stored securely and will be deleted after 12 months unless subject to further appeal or other action.

HAVANT BOROUGH COUNCIL

CABINET

26 June 2019

APPOINTMENTS TO OUTSIDE ORGANISATIONS

Report by the Deputy Democratic Services Team Leader

Key Decision: No

1.0 Purpose of Report

1.1 To appoint members to represent the Council on the governing bodies of various outside organisations for the 2019/20 municipal year.

2.0 Recommendation

That

2.1 The Cabinet appoints members to represent the Council on those outside organisations set out in Appendix A; attendance at meetings of the organisations concerned to qualify as an Approved Duty and all appointments to have effect until the first meeting of the Cabinet in the 2020/21 municipal year.

3.0 Summary

3.1 Appendix A to this report sets out the detail of those appointments that now fall to be made by the Cabinet, together with an indication of any special requirements where these are applicable. All such appointments, when made, will have effect until the first meeting of the Cabinet in the 2020/21 municipal year.

4.0 Implications

4.1 Resources:

As an approved duty, if members choose to claim subsistence allowance for attendance at meetings, this will be a charge against the Council's budget for which funding is available.

4.2 Legal:

None arising directly from this report.

4.3 Strategy:

It is essential that the Council has an input into the running of those organisations that either provide services to the Borough or use Council resources in order to function.

4.4 **Risks:**

Having no involvement in the way these organisations are run may have an adverse effect on the Council should criticism arise.

Increasing the amount of meetings that members attend may draw their time and resources away from other work.

4.5 **Communications:**

None arising directly from this report.

4.6 **For the Community:**

Sound management of these organisations must be achieved and the Council should ensure that such organisations are carrying out their duties in the best interests of their customers.

5.0 **Consultation**

Not Applicable.

Appendices:

Appendix A – Appointments to Outside Organisations to be made in 2019/20

Background Papers:

Nil

Contact Officer: Penny Milne
Job Title: Democratic Services Team Leader
Telephone: 023 9244 6234
E-Mail: penny.milne@havant.gov.uk

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
1	Armed Forces Covenant Representative	One	Cllr G Hughes	Cllr G Hughes	None
2	Bedhampton Social Hall Association	One	Cllr K Smith	Cllr K Smith	None
3	Chichester Harbour Conservancy*	Three	Cllr K Smith Vacancy Cllr M Inkster (D) Cllr J Thain-Smith (D)	*Appointed by Council	None
4	Community First Wessex	One	Cllr B Francis	Cllr B Francis	None
5	Cowplain Activity Centre Association	One	Cllr N Bains	Cllr N Bains	Ward Councillor
6	District Councils Network	One	Cllr M Wilson	Cllr M Wilson	Must be the Leader of the Council

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
7	Emsworth Maritime Historical Trust	One	Cllr R Cresswell	Cllr J Thain-Smith	Clause in Lease states that the Council may appoint one representative to serve on the governing body of the Trust (which is the body concerned with the day to day management of the Trust and its premises)
8	Hampshire (South East) Road Safety	One	Cllr P Crellin	Cllr P Crellin	None
9	Hampshire and Isle of Wight Local Government Association	Two	Cllr M Wilson Cllr T Pike	Cllr M Wilson Cllr T Pike	Must be members of the Executive
10	Hampshire Buildings Preservation Trust	One	Cllr D Guest	Cllr M Wilson	None

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
11	Havant Citizens Advice	One	Cllr M Wilson	Cllr M Wilson	None
12	Havant Thicket Reservoir Stakeholder Group	One	Cllr D Guest	Cllr L Turner	None
13	Hayling Island Community Centre Association	One	Cllr L Turner	Cllr L Turner	None
14	Langstone Harbour Board*	Six plus two deputies	Cllr J Branson Cllr R Raines Cllr I Scott Cllr J Thomas Cllr M Inkster Cllr J Thain-Smith Cllr P Crellin (D) Cllr M Wilson (D)	*Appointed by Council	None
15	Local Government Association (Assembly)	One	Cllr M Wilson	Cllr M Wilson	None
16	Local Government Association Coastal Issues Special Interest Group	One	Cllr D Guest	Cllr L Turner	None
17	Making Space	One	Cllr A Rennie	Cllr A Rennie	None

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
18	Norse South East – Director	One	Cllr G Hughes Dawn Adey	*Appointed by Council	One Councillor Director and One Officer Director to be appointed by full Council as and when a vacancy arises
19	Norse South East – Strategic Liaison Board	One		TBC	Must be member of the Executive (can be the same as Director)
20	Off The Record	One	Cllr Y Weeks	Cllr Y Weeks	None
21	Parking Patrol Adjudication Panel and Traffic Regulations Outside London Adjudication Joint Committee (PATROL)	One	Cllr G Robinson	Cllr G Robinson	None
22	Police and Crime Panel*	One Plus Deputy	Cllr G Hughes S. Deputy – Cllr L Turner	Cllr M Wilson Cllr G Hughes (D)	None
23	Portchester Crematorium Joint Committee	Two	Cllr D Guest 1 vacancy	Cllr T Pike Cllr L Turner	Must be members of the Executive
24	Portsmouth City Council Health Overview and Scrutiny Panel	One	Cllr R Raines	Cllr R Raines	None

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
25	Project Integra Strategic Board	One plus non-voting Standing Deputy	Cllr G Hughes S. Deputy – Cllr N Bains	Cllr G Hughes S. Deputy – Cllr N Bains	Must be an Executive Member
26	PUSH Joint Management Committee	One	Cllr M Wilson Cllr T Pike (either may attend, dependent upon circumstances)	Cllr M Wilson Cllr T Pike (either may attend, dependent upon circumstances)	Normally but not necessarily the Leader of the Council
27	PUSH Overview and Scrutiny Committee	One	Cllr P Buckley	Cllr D Lloyd	Both to be non-Executive members
28	Solent Forum	One	Cllr D Guest	Cllr L Turner	None
29	South East Employers	One	Cllr K Smith	Cllr K Smith	None
30	South East of England Councils	One	Cllr M Wilson	Cllr M Wilson	None
31	Southern and South East England Tourist Board	One	Cllr I Scott	Cllr L Turner	None

APPENDIX A
Appointments to Outside Organisations 2019/20

	ORGANISATION	No. Appointments to be made	Appointments 2018/19	Appointments 2019/20	SPECIAL REQUIREMENTS
32	Spring Arts and Heritage Centre	One	Cllr J Branson	Cllr J Branson	None
33	Springwood Centre	One	Cllr D Patrick	Cllr D Patrick	None
34	Standing Conference on Problems Associated with the Coastline (SCOPAC)	One	Cllr D Guest Cllr K Smith (S. Deputy)	Cllr L Turner Cllr K Smith (D)	None
35	Staunton Country Park Management Committee	One	Cllr Y Weeks	Cllr Y Weeks	None
36	Sussex Downs and Coastal Plain Local Action Group	One	Cllr L Turner S. Deputy – Cllr R Raines	Cllr L Turner S. Deputy – Cllr R Raines	None
37	Waterlooville Area Community Association	One	Cllr M Sceal	Cllr M Sceal	None
38	We Big Local	One	Cllr Prad Bains	Cllr Prad Bains	None
39	Wecock Community Centre Association	One	Cllr G Shimbart	Cllr D Jenner	None
40	West of Waterlooville Forum	Four plus 2 Standing Deps	Cllr S Milne Cllr A Christie Cllr G Shimbart Cllr P Wade	Cllr S Milne Cllr P Wade Cllr H Patel Cllr Gwen Robinson	Must not be members of DMC
41	Westbrook Hall	One	Cllr D Keast	Cllr D Keast	None

APPENDIX A
Appointments to Outside Organisations 2019/20

SPECIAL REQUIREMENTS	Appointments 2019/20	Appointments 2018/19	No. Appointments to be made	ORGANISATION	
				Association	

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HAVANT BOROUGH COUNCIL

CABINET

26th JUNE 2019

POSITION STATEMENT ON NUTRIENT NEUTRAL DEVELOPMENT

DAVID HAYWARD (PLANNING POLICY MANAGER)

FOR DECISION

Cabinet Lead (HBC): Cabinet Lead for Planning, Regeneration and Communities

Key Decision: Yes

1.0 Purpose of Report

- 1.1 To set out the change in approach regarding the Habitats Regulations Assessment of planning applications due to recent case law, the local impact this is having and the proposed approach towards mitigation.

2.0 Recommendations

2.1 That the Cabinet:

- a) Notes the Council's responsibilities under the Habitats Regulations¹, particularly in light of recent case law;
- b) Continue to make representations through the Council Leader to the Government's Ministry of Housing, Communities and Local Government (MHCLG) together with the Department for the Environment, Food and Rural Affairs (DEFRA), relevant Government agencies (including Natural England) and other bodies to provide an efficient, central solution to the need to ensure nutrient neutral development takes place;
- c) Continue to work collaboratively with neighbouring authorities, including through the Partnership for Urban South Hampshire (PUSH), relevant Government agencies (including Natural England) and other relevant bodies to ensure nutrient neutral development takes place;
- d) Approves the Position statement on nutrient Neutral development (Appendix 1);

¹ References to 'the Habitats Regulations' or 'The Regulations' in this report should be read as referring to the Conservation of Habitats and Species Regulations (2017 as amended), available at www.legislation.gov.uk/uksi/2017/1012/contents/made.

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- e) Delegates authority to the Planning Policy Manager², in consultation with the Cabinet Lead for Planning, Regeneration and Communities², to prepare and publish a Nutrient Neutrality Implementation Plan which will specify the detail of the proposed short term water quality mitigation solutions and the costs for new development;
- f) Delegates authority to the Planning Policy Manager², in consultation with the Cabinet Lead for Planning, Regeneration and Communities², to make any necessary amendments to the Position Statement on Nutrient Neutral Development and Nutrient Neutrality Implementation Plan prior to or after publication. These shall include any necessary factual updates, corrections of minor errors, typographical errors. These shall also include any necessary changes to reflect emerging best practice, standing advice, policy or case law.

3.0 Summary

- 3.1 The Council has a significant development and regeneration agenda. This has been already subject to debate and approval through the unanimous approvals at Full Council of both the Havant Borough Regeneration Strategy and the Havant Borough Local Plan 2036.
- 3.2 The Council takes seriously its responsibility to provide for sustainable development in Havant Borough. Sustainable Development is that which respects equally the three pillars of sustainability: economy, environment and social. This is a key element of the National Planning Policy Framework.
- 3.3 The Council is committed through the Havant Borough Local Plan 2036 to new development only taking place if it is sustainable development that includes the relevant environmental protections and would create a net gain for biodiversity. Part of the consideration of this is whether there would be a detrimental impact on the water quality of the nearby European designated nature conservation sites in the Solent.

Context and legal framework

- 3.4 The Conservation of Habitats and Species Regulations (2017 as amended) are the UK's transposition of European Union Directive 92/43/EEC on the 'Conservation of natural habitats and of wild fauna and flora' (the Habitats Directive).
- 3.5 Under the Habitats Regulations, there are significant responsibilities conferred on the Council as a 'competent authority'. Chiefly, it requires the Council to only approve plans or projects (such as planning applications or a Local Plan) if there is no likelihood of a significant effect on the internationally protected ecological sites along the Solent coast. This could include many potential impacts, including the deposition of nitrogen into the marine environment through waste water from new development.
- 3.6 It is also important to note that this is a legal requirement as opposed to a material planning consideration. It must be shown that there would not be a likely significant effect in order for the Council to lawfully grant planning permission or approve a local plan. If the Council chose to disregard its obligations or not fulfil under the Habitats

² Or successor in similar or equivalent role

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Regulations or did not discharge them correctly, there would be a risk of judicial review of the decision made.

Recent case law

- 3.7 The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments³.
- 3.8 The judgement in this case refines the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture.
- 3.9 As a result, using this changed approach, it can only be concluded that new development, particularly that of a residential nature, could increase nitrogen deposition into the protected harbours above consented levels. This results in increased nutrients in the harbour which cause a dense growth in certain plants. This in turn leads to harm to the species which use them. This is the likely significant effect.
- 3.10 As a result, the only way that a new housing scheme could prevent this likely significant effect is for there to be no increase in nutrients into the harbour, ie for it to be 'nutrient neutral'.

The impact of the case law at the local level

- 3.11 The impact of the case law is that any development which could result in a decrease in water quality would cause a likely significant effect on the Solent's European sites.
- 3.12 The impact comes from population increase and the resultant increase in effluent. As a result, any development which increases population could be affected by this issue. Proposed developments for new housing are principally what will be affected by the issue as a result. However there are other development which could be considered to increases population such as hotels and care homes.
- 3.13 Some developments are already nutrient neutral. Using land for agriculture emits nitrogen into the environment. As such, development on agricultural land can often be nutrient neutral in its own right.
- 3.14 However for development schemes on non-agricultural (particularly brownfield) land, it is generally not possible to provide mitigation as part of the proposed development. As a result, applicants are completely dependent on the Council to provide a strategic solution. This threatens the ability to provide development in the most sustainable places, including the sites identified in the Council's Regeneration Strategy.
- 3.15 Up until this point, there has not been a solution. As such, the Council has been able to permit only a very small number of new residential dwellings in exceptional circumstances since 1st April.
- 3.16 This is an issue that affects all of Havant Borough. However it also extends far beyond the Borough Boundary. Other local authorities are also assessing the impacts to their

³ Full reference is Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>

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area and what solutions can be put in place⁴. Further engagement and collaboration is needed, particularly through the Partnership for Urban South Hampshire.

- 3.17 As such, left unresolved, this issue would have a significant impact at the local level. First and foremost, it makes the delivery of the Council's development and regeneration agendas impossible. Linked to this, Government have a national target of building 300,000 new homes per year⁵. The Council's ability to meaningfully contribute to this target, indeed the ability for the Solent area as a whole to do so, would be extremely limited.
- 3.18 If left unresolved, the issue would have far reaching economic consequences. A large number of small building firms rely on the continuous movement of small development sites through the planning system and operate on shorter turnaround times than larger development sites operated by the national housebuilders. These smaller schemes have been particularly affected by this issue and this begins to threaten the viability of such businesses and the income of builders in the area.
- 3.19 The Council prides itself on its open for business reputation and its approach towards development, economic growth and boosting the prosperity of residents. Being in a position where it is impossible to grant most residential planning applications will threaten that reputation.
- 3.20 The Council is also assessed on various measures related to its development management performance. The fact that planning permissions for residential development could generally not be granted will, if left unresolved, threaten the ability to meet these targets. In time, this could result in the Council being placed in special measures. It would also render it impossible for the Borough to have a five year supply of housing land or be able to meet the requirements of the Housing Delivery Test.
- 3.21 Finally and perhaps most significantly, a sharp downturn in new housebuilding, particularly if it takes place across the Solent region, would start to further hurt the affordability of housing in the area. There are currently 1,671 families on the Council's waiting list for affordable housing⁶, waiting between 10 months and 5.5 years for a suitable property to become available through Hampshire Home Choice⁷. A sharp decrease in new affordable housing products coming to market will only increase these measures, having a tangible impact on families across the Borough who are in housing need.

Proposed approach to mitigation

- 3.22 An initial nitrogen budget for the Havant Borough Local Plan 2036 has been prepared. This concludes that the impact arising from all development planned within the Borough to 2036 can be quantified as 2,924 kg/nitrogen/year.
- 3.23 It is suggested that the most appropriate solution to the situation would be for Government to intervene and address the issue holistically. This could be achieved through a national review of consents of wastewater treatment works to increase the

⁴ See report to Portsmouth City Council's Cabinet on 11th June 2019 at <https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?ClId=126&MId=4256>.

⁵ See Autumn 2017 budget at www.gov.uk/government/publications/autumn-budget-2017-documents

⁶ As at 7 June 2019.

⁷ Average taken for the period 1 April 2018 to 31 March 2019

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standard for nitrogen emissions. Government could also provide ‘mitigation banking’ whilst a centrally considered review of the most appropriate mitigation takes place.

- 3.24 As such, the Leader of the Council and the Chief Executive wrote to Government on 28th May to request intervention to address the current issue strategically. A copy of the letter is at Appendix B. It is recommended that the lobbying of Government and relevant agencies and other bodies continues in order to find the most sensible solution to enable development to take place across the Solent area without causing a decrease in water quality.
- 3.25 Nonetheless, in the short term at least, it is necessary for a pragmatic solution to be found which ensures that the Council can meet its obligations in terms of both housebuilding and the environment.
- 3.26 To provide mitigation for this issue will require, in all likelihood, a number of measures to be enacted. These could include a mix of some of the following:
- Taking land out of agricultural production
 - Implementation of the Havant Thicket Reservoir
 - Implementation of proposed Brent Goose and Wader refuges
 - Limits on the water efficiency of new developments
 - On-site measures, particularly through sustainable drainage systems
 - Improvements to the Budds Farm and Thornham Wastewater Treatment Works
 - Introduction of habitat management of river corridors
- 3.27 These will need to be enacted in several ways and require discussions with third parties. However nitrogen budgeting for the Havant Borough Local Plan 2036 has shown that it is possible to mitigate the plan through several combinations of mitigation measures, thus providing certainty that an appropriate solution can be found.
- 3.28 A position statement is proposed that acknowledges the Council’s responsibilities and the need for mitigation, the kinds of mitigation that are needed and the approach towards securing this through Grampian Conditions⁸ on planning permissions. The proposed Position Statement can be found at Appendix A.
- 3.29 However an implementation plan will also be necessary in order to clarify precisely what package of mitigation measures will be enacted in the short term. This will also need to calculate the resultant cost for development schemes of providing the mitigation and ensuring that it is suitably maintained for at least 80 years⁹.

Engagement with Natural England

- 3.30 Natural England’s role in this matter (as set out in The Habitats Regulations) is to provide advice to the Council in its role as competent authority. In this matter, Natural England are not a decision making body.
- 3.31 The Council already engages extensively with Natural England on matters related to the Habitats Regulations. This takes place through the Bird Aware Partnership but also through constant informal engagement. Constant discussion with Natural England has

⁸ Grampian conditions prohibit development authorised by the planning permission or other aspects linked to the planning permission (in this case it will be the occupation of new homes) until a specified action has taken place (in this case it will be the agreement of a mitigation strategy in line with the proposed Implementation Plan and the provision to the Local Planning Authority of the mitigation package).

⁹ Under the Regulations, it is necessary for mitigation to be provided in perpetuity, acknowledged as being at least 80 years.

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taken place recently regarding nutrient neutral development following the recent case law.

- 3.32 The Council benefits from a successful working relationship with Natural England, which has helped in bringing forward this Position Statement for consideration swiftly and making sure that its content is robust and reflects the most up-to-date position.
- 3.33 Moving forwards, it is proposed to continue to engage with Natural England. The Council is not obligated to take on board any advice provided by Natural England. However it is prudent to engage with the Government's statutory advisor on nature conservation regarding this matter, to move forward collaboratively with Natural England and consider any advice received.

Minimising the risks associated with the proposed approach and additional budgetary implications

- 3.34 Doing nothing brings with it significant risks, as set out above. Nonetheless the proposed Position Statement is not without a degree of risk to the Council.
- 3.35 It is an approach that is considered an interim solution to addressing the issue. Such approaches are considered a pragmatic solution to addressing the need for Habitats Regulations mitigation when the issue arises. Indeed such an approach was enacted to address recreational disturbance at the Solent with an interim strategy used from 2014 until the definitive Solent Recreation Mitigation Strategy was approved in 2018.
- 3.36 The issue is also still evolving. As it has arisen due to case law, the interpretation of that case law is not fully formed and it could be subject to further case law before it is. As such, Counsel Opinion has been sought on the proposed approach which has confirmed its validity. Nonetheless, it is likely that advice, policy and best practice regarding the matter will evolve moving forwards. As such, it is necessary to maintain a flexible approach and so a recommendation has been included to allow the Position Statement to be updated should there be a change in case law, policy, best practice or standing advice.
- 3.37 The mitigation measures that will be necessary are known but not yet in place. As such, the final costs for developments are not yet known. The Council should look to ensure that costs that are passed to housebuilders are cost-effective and do not hamper the ability for, particularly small scale brownfield sites, to come forward.
- 3.38 As a result, there are no additional budgetary implications at this point. However it may be necessary to explore mitigation banking. This would involve the Council implementing mitigation schemes but not passing all of the costs associated with that on to housebuilders. This may particularly be necessary for mitigation to be provided from first occupation of homes permitted shortly after the Position Statement comes into effect. However this would only be implemented as a final resort and, if it were to be, Government funding would be sought to cover any associated costs.

Moving towards a definitive mitigation strategy

- 3.39 The proposed Position Statement would enable the Council to return to granting planning permission to proposals for sustainable development.

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3.40 The Council has been engaged in discussions with surrounding authorities through the Partnership for Urban South Hampshire (PUSH) on this issue. An Integrated Water Management Strategy was approved in 2018 which assessed the capacity of wastewater treatment works serving the PUSH area. Following that, a Water Quality Working Group was set up to look in more detail at the issue of nutrient neutrality and discussion has taken place at the PUSH Joint Committee.

3.41 It is necessary for a comprehensive and definitive mitigation strategy to be agreed which will enable nutrient neutral development to take place into the future. This would ideally be facilitated by Government. However failing that, a PUSH strategy addressing the issue should be prepared in collaboration with Natural England. This would seek to mitigate in full the new PUSH Spatial Position Statement¹⁰.

4.0 Conclusions

4.1 The issue addressed through this report has arisen due to recent case law. It is proposed that the Council to adopt a flexible and responsive approach in order to fulfil its obligations regarding development, regeneration and the natural environment.

4.2 It is proposed that the recommended approach achieves these aims. Moving forward, a more comprehensive approach will be needed, ideally through Government or on a PUSH wide basis.

5.0 Implications

5.1 **Financial implications:** please see main body of the report. In addition, staff resources to address this issue have had to be made available at short notice from across various teams in the Council including Planning (Development Management), Planning (Planning Policy), Property and Legal. This has extended the timescales for the delivery of other projects.

5.2 Moving forward, the matter will continue to require extensive staff resources to address as the Council puts together the proposed Implementation Plan and puts it into action. This will require input from all the officer teams noted above and a particular necessity to engage with the Council's Finance Team. Any emerging budgetary implications will be brought back to Members in due course if necessary.

5.3 The level of resource input that is necessary is considered to constitute a 'new burden', for which Government can, and should, provide additional funding to cover the costs of¹¹. This has been done in the past for work required as a result of the Habitats Regulations.

5.4 **Legal:** please see main body of the report.

5.5 **Strategy:** The Council has an ambitious regeneration and development agenda moving forward. Ensuring that these can be implemented in a nutrient neutral manner is essential to their delivery.

5.6 **Risks:** please see main body of the report.

¹⁰ A review of the PUSH Spatial Position Statement was agreed by the Joint Committee on 4 December 2018 - www.push.gov.uk/wp-content/uploads/2018/12/SWI-181204-PUSH-JC-Minutes-NEW.pdf.

¹¹ See HM Land Registry for more information at www.gov.uk/government/publications/hm-land-registry-local-land-charges-programme/new-burdens-information#local-authority-funding.

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5.7 **Communications:** please see the main body of the report.

5.8 **For the Community:** please see the main body of the report.

5.9 **Consultation:** no public consultation has taken place. Extensive engagement with Natural England, nearby local authorities and other stakeholders has taken place and should continue to do.

5.7 An Integrated Impact Assessment has been prepared.

Appendix A: Position statement on nutrient neutral development

Appendix B: Letter from the Leader and Chief Executive to ministers regarding nutrient neutrality and the impact on housebuilding in Havant Borough and across South Hampshire

Background Papers: Counsel advice has been sought regarding this matter and is available to Cabinet members on request.

Agreed and signed off by:

For Head of Legal Services: Sara Bryan - 11 June 2019

For Head of Finance: Andrew Clarke - 17 June 2019

Director of Regeneration and Place Making: Simon Jenkins - 11 June 2019

Cabinet Lead for Planning, Regeneration and Communities: Cllr Tim Pike - 10 June 2019

Contact Officer: David Hayward

Job Title: Planning Policy Manager

Telephone: 023 9244 6174

E-Mail: david.hayward@havant.gov.uk

Appendix A: Position statement on nutrient neutral development

Introduction

1. Havant Borough benefits from its position on the Solent coast which is internationally designated for its wildfowl and wading species. This creates a high quality natural environment highly worthy of protection for both its intrinsic value as well as its value in making Havant Borough an attractive place to live, work and study. The Council also takes seriously the requirement under the National Planning Policy Framework “*to support the Government’s objective of significantly boosting the supply of homes*”. The Council is in the process of updating its Local Plan with a view to not only meeting but exceeding the Government’s identified housing need for the authority, in large part through an ambitious regeneration agenda.
2. In looking to marry together these two agendas, an issue has arisen out of recent case law. This relates specifically to the impact from development on the natural environment due to a decrease in water quality.
3. The Council is already committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the water quality on any European Designated Nature Conservation Sites. However, it should be noted the contribution from urban areas to this is relatively small and from new development extremely small. The majority of nitrogen deposition into the harbour is from agricultural practices or background deposition, the source of which is not known.

Context

The Habitats Regulations

4. The Conservation of Habitats and Species Regulations (2017 as amended), hereafter referred to as the Habitats Regulations are the UK’s transposition of European Union Directive 92/43/EEC on the ‘Conservation of natural habitats and of wild fauna and flora’ (the Habitats Directive). There are significant responsibilities conferred on the Council as a ‘competent authority’ under The Habitats Regulations. Chiefly, it requires the Council to only approve plans or projects (such as planning applications or a local plan) if there is no likelihood of a significant effect on any European designated nature conservation site.

5. A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water pollution, increase in recreation, light pollution, tall buildings or construction activity.
6. In order to assess whether there is a 'likely significant effect' a Habitats Regulations Assessment (HRA) is carried out. This generally includes an Appropriate Assessment (AA), which is the second more detailed stage¹ of an HRA. Natural England must be consulted on the findings of an HRA and there is a duty to consider their response.
7. An HRA is necessary for any local plan produced for the Borough as well as a proportion of planning applications. An HRA aims to assess the potential effects of a land use plan or policy against the conservation objectives of any European sites designated for their nature conservation importance under the Habitats Directive and Birds Directive (Directive 2009/147/EC on the 'conservation of wild birds'). Such sites are known collectively as the Natura 2000 network of European sites.
8. An established principle under law is that appropriate assessments must use the 'precautionary principle'. An appropriate assessment must enable the local planning authority to apply the regulation 63(5) "integrity test" on a "precautionary basis". Authorisation may only be given if the competent authority have made certain there will be no adverse effect on the integrity of the site and where no reasonable scientific doubt remains. Conversely, that means where doubt remains as to the absence of an adverse effect on the integrity of the site linked to the plan or project being considered, the competent authority would have to refuse authorisation. It is also necessary to consider not only the impact of a single plan or project in isolation but where there is any likelihood of a significant effect in combination with other plans and projects as well.
9. The need for Habitats Regulations Assessments has existed since 2004 when the original regulations came into force. It has been known for many years that new development does lead to an increase in recreation at the coast and that this has an impact on the birds which use the coastal mud flats to feed and roost (this is a 'likely significant effect'). As a result, mitigation is required from all new development which is then used to fund the Bird Aware Partnership, of which the Council is a member. The partnership implements the mitigation scheme, largely consisting of a ranger patrols along the coast. This is an established part of the development process at the Solent.

Pressures

10. New development necessitates the provision of connections to the foul water drainage network. This could increase nutrient load at the Solent European Sites. Nutrient enrichment, can arise from wastewater treatment required in support of new development, even if it is a proportionately small contribution.
11. An increase in nutrients in the marine environment can cause a process called eutrophication. Increases in nutrients cause this process which are found in effluent, fertilisers used in arable agriculture and faeces from animals.

¹ This is set out in Regulation 63 of The Regulations.

Eutrophication

12. Eutrophication occurs when an excessive amount of nutrients within a water body are present. It causes increased plant growth which reduces the oxygen content in water. This process makes it difficult for aquatic insects or fish to survive, in turn removing a food source from the food cycle.
13. Addressing the sources of eutrophication reduces the input of nutrients into the internationally designated marine environment. However if the issue of eutrophication is not addressed, it could have a negative impact on the marine environment and the conservation objectives of the European designated nature conservation sites (see below).
14. Water quality can be measured by chemically testing water samples. Chemical testing can test for parameters such as nitrogen and phosphates which are indicators of poor water quality.

Recent case law

15. The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments. This generally referred to as The Dutch Case².
16. The judgement in this case refines the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture.
17. As a result, using this changed approach, it can only be concluded that new development could increase nitrogen and phosphate deposition into the protected harbours above consented levels. This results in increased nutrients in the harbour which cause a dense growth in certain plants. This harbours which in turn leads to harm to the species which use them. This is the likely significant effect.
18. As a result, the only way that a new housing scheme could prevent this likely significant effect is for there to be no increase in nutrients into the harbour, i.e. for it to be 'nutrient neutral'.

European designated nature conservation sites which are affected

19. The Natura 2000 network of European designated nature conservation sites provides ecological infrastructure for the protection of rare, endangered or vulnerable natural habitats and species of exceptional importance within the European Union. These sites consist of Special Areas of Conservation (SACs, designated under the Habitats Directive) and Special Protection Areas (SPAs, classified under the Birds Directive). Additionally, UK Government policy (section 118 of The National Planning Policy Framework and Circular 06/05) recommends that Ramsar sites listed under the Convention on Wetlands of International Importance (UNESCO, 1971), are treated as if they are fully-designated European sites for the purposes of considering development proposals that may affect them.
20. The European Designated nature conservation sites that are relevant to this Position Statement are those where wastewater from Havant Borough would drain (via a wastewater treatment works):

² Full reference is Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>.

- Chichester and Langstone Harbour Special Protection Area (SPA)
- Chichester and Langstone Harbour Ramsar Site
- Solent Maritime Special Area of Conservation (SAC)
- Solent and Dorset Coast Potential Special Protection Area (pSPA)

21. These are hereafter referred to the Solent's European Sites.

The impact of development on the Solent's water quality

Natural England's position regarding the impact of development on water quality at the Solent

22. 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.
23. Natural England advise that there is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. The Partnership for Urban South Hampshire (PUSH)³, Natural England (NE), and Environment Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment. A Water Quality Working Group has been set up to identify and analyse the existing evidence gaps and evaluate the need for strategic mitigation measures. However, there is currently uncertainty as to whether there is sufficient capacity to accommodate the new housing growth.
24. Natural England recommend that any new proposals which include overnight accommodation have inevitable waste water implications. These implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Habitats Regulations.
25. Natural England recommends that the waste water issue is examined within the appropriate assessment 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 burdens. Natural England has prepared a methodology setting out how this can be achieved, which is available on request from Natural England. It is appreciated that nutrient neutrality may be difficult to achieve for smaller developments or on brownfield land.
26. Natural England advises Havant Borough Council to set up an interim approach that developments can contribute to, thereby ensuring that this uncertainty is fully addressed by all applications and will continue to work closely with Havant Borough Council in addressing this issue.

³ Which includes Havant Borough Council.

27. Natural England can also provide further advice to applicants through their Discretionary Advice Service⁴.

Havant Borough Council's position regarding the impact of development on water quality at the Solent

28. The Council is already committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the Solent's water quality, given the presence of the Solent's European Sites, the conservation objectives of which are sensitive to eutrophication.

29. There has been no change to the level of nitrogen that is proposed to be emitted from new development. Nitrogen emitted from urban areas is relatively small and from new development extremely small.

30. However there has been a change in terms of how this is assessed under the Habitats Regulations and whether this level of nitrogen is considered a significant effect. The Council considers that under this new approach, the development of new overnight accommodation would be likely to cause a significant effect on several European Sites.

31. The Council considers that, due to the cause of the issue being recent case law, that the issue itself should be addressed through any one or a combination of the following:

- A national review of the nitrogen discharge consents of wastewater treatment works to include increases in nitrogen as a result of new development.
- Government provided 'mitigation banking', potentially through a delivery arm such as Homes England.

32. Failing a central solution, there should be a PUSH-wide solution to enable development to come forward comprehensively across the Solent area. However, neither of these potential solutions can be enacted in the short term to enable planning permissions to be granted for much needed new housing.

33. As such, the Council accepts that it will be necessary to provide short term mitigation to enable development to continue to come forward in the Borough. The Council also accepts that it will be necessary to ensure that a nitrogen neutral Local Plan is prepared for submission and longer term mitigation options are explored.

Havant Borough Local Plan 2036 – Initial Nutrient Budget

34. A nitrogen budget, prepared in line with the methodology and supplementary advice from Natural England and Southern Water, using the best scientific evidence available, has been produced by Havant Borough Council (The Nitrogen Budget). The Nitrogen Budget considers all development currently proposed as part of the Havant Borough Local Plan 2036. The number of dwellings used includes all residential applications proposed in the Pre-submission

⁴ Further detail is available at <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>.

Draft Havant Borough Council Local Plan⁵, including the published allowance for windfall development⁶. Nitrogen is a chemical parameter for water quality. In this situation, it is used as the measure for the impact that proposed development could have on the Solent's European Sites through eutrophication.

35. This Nitrogen Budget result is derived from calculating the total increase in nitrogen that would arise from foul drainage and be processed through the Budds Farm Wastewater Treatment Works (6751 Kilograms (Kg) / Total Nitrogen (TN) / year (yr)⁷). The Nitrogen Budget also includes development within the Borough that will be processed through Thornham Waste Water Treatments Works (575 Kg/TN/yr). This leads to a total deposition of 7,326 Kg/TN/yr. By separating out planned development in this way, it ensures that a precautionary approach to the budgeting has been used.
36. Additionally, a calculation is made to assess the nitrogen load of existing agricultural land that is planned to be developed (7284 Kg/TN/yr), and the nitrogen load associated with the new uses on the developed site (2900 Kg/TN/yr).
37. By comparing the nitrogen load of the current agricultural uses against the future planned use a figure of 4,384 Kg/TN/yr establishes the nutrient reduction that will occur through planned changes in land use for development. This is due to the fact that using land for agriculture is often more nitrogen intensive than using it for residential development, depending on the density of the proposed residential development scheme.
38. The Nitrogen Budget result subtracts the reduction in nitrogen load arising from changes in land use from the nitrogen load arising from increased foul drainage. **This confirms that the impact arising from all development planned within the Borough to 2036 can be quantified as 2,942 kg/TN/yr. This is the figure that will need to be mitigated to allow occupation of all proposed development within the Borough until 2036.**
39. Moving forwards, it will be necessary for further research to be undertaken regarding the role of nitrogen and phosphorous in the water environment, the sources of nitrogen and phosphorous in the Solent's European Sites and the effectiveness of potential measures to mitigate this. Decisions regarding the effect of recreation on European Sites and measures to avoid and mitigate that impact were based on extensive research and it is logical that the same is true of water quality. Long term decisions on the effect of development on water quality should be taken with the most robust and up-to-date scientific information possible.

The Council's position regarding avoidance and mitigation measures to ensure nitrogen neutrality

40. Based on the results of the Havant Borough Local Plan 2036 Nitrogen Budget the Council confirms that appropriate strategic mitigation options are available within the Borough that would mitigate all development planned within the Borough until 2036. The availability of mitigations options within the Borough include, but are not limited to, the following:

⁵ <https://www.havant.gov.uk/sites/default/files/documents/Pre-Submission%20HBLP2036%20for%20Full%20Council%20-%20FINAL%20POST%20COUNCIL%20%28clean%20for%20use%29%20-%20Copy.pdf>

⁶ <https://www.havant.gov.uk/sites/default/files/documents/RE-ISSUE%20-%20Windfall%20Unidentified%20Housing%20Development%20%28Final%20-%20Word%20Document%29.pdf>

⁷ Figures used are rounded to the nearest kilogram. Rounding has always been up in line with the precautionary principle.

- Apply the optional water efficiency standard of 110 litres per person per day (l/pp/d) to all new development – this mitigation option has already been included within The Nitrogen Budget. As such all residential development will be expected to meet this standard
- Taking land out of agricultural use and converting it to a use that does not artificially increase the nitrogen load of the land
- Create wetland environments that act as a nitrogen sink and remove nitrogen from rivers and streams (catchment management solutions)
- Increase the requirement for open space/SANGS for development on agricultural land
- Agreement with Southern Water that they will increase the nitrogen removal rate at the receiving Waste Water Treatment Works beyond consented levels
- Contribute to taking land out of agricultural use and catchment management solutions within the river catchment area for the impacted protected site
- Development of the Havant Thicket Reservoir
- Implementation of Brent Goose and Wader refuges

41. Havant Borough Council has ownership of land that would be suitable for various mitigation options and therefore has some certainty that strategic mitigation options can be delivered. The Council also intends to provide a mitigation package from the available options that provides a net nitrogen deficit against planned development. This will allow the Council to accommodate unforeseen windfall development and the implications of commercial development within defined limits.

42. The precise nature of the mitigation scheme will be set out through an 'Implementation Plan' associated with this Position Statement. This will set out which mitigation measures will be specifically implemented to mitigate the planned development in Havant Borough. It will then calculate the proportionate scale of mitigation to be provided, in the form of a financial contribution, from proposed development.

43. It is considered that any significant effect as a result of development generally takes place at the point that it is occupied rather than when it commences.

Development schemes that are could be affected

44. A large number of schemes are likely to result in a significant effect on the European Sites as a result of an increase in nitrogen load. Whilst there will inevitably be significant overlap with the Bird Aware Solent mitigation package, different schemes in different places in different ways will need to contribute to addressing water quality.

45. The key test is whether there would be an increase in nitrogen emissions into one or more European Sites once the development is occupied compared to if it was not built. The advice below is general in nature and does not remove the necessity to discuss this matter through a pre-application enquiry at an early point in the development process. It should also not be considered advice as to whether there would be a likely significant effect from other causes. It has already been noted that a large amount of development in the Borough, if not mitigated, would be likely to cause a significant effect due to recreational disturbance. However, as set out above, there are many less common reasons why a significant effect may be caused and it is incumbent upon applicants to familiarise themselves with the issues involved.

Area which is affected

46. All of Havant Borough is within the catchment of a Wastewater Treatment Works that drains into a Solent European site. As such, all of the Borough is affected.

Types of applications that will be affected

47. Full and outline planning applications for applicable uses are affected and so an avoidance and mitigation package will be needed. This applies to any applications determined after the adoption of this Position Statement.
48. It is the Council's advice to the Planning Inspectorate⁸ that any planning appeals for applicable uses should include an avoidance and mitigation package to remove any likelihood of a significant effect.
49. Any increase in residential dwellings that takes place as permitted development must undertake a separate HRA through Regulations 75 and 77 of the Habitats Regulations. Such assessments will need to consider water quality. Mitigation packages for such development will be needed on the same basis as those for dwellings that require planning permission.
50. Other types of application, including reserved matters, those made under Section 73 of the Town and Country Planning Act and re-submitted applications will be considered by the Council as competent authority on a case by case basis.

Residential (C3) dwellings

51. Any residential development would lead to an increase in nitrogen and thus would be likely to cause a significant effect.
52. In this context, 'dwelling' includes net new dwellings created through the sub-division of existing dwellings, second homes, dwellings to be used as holiday accommodation, self-contained student accommodation, and new dwellings created as a result of approval granted under the General Permitted Development Order e.g. change of use from office to residential (including houses and flats). It includes permanent accommodation for gypsies and travellers; temporary/transit pitches will be assessed on a case-by-case basis by the local planning authority in consultation with Natural England.

Other forms of development providing overnight accommodation

53. There is a range of development other than C3 dwellings which provides overnight accommodation. Most commonly, this includes care homes and other forms of housing for older people and hotels.
54. Such development would be considered to increase nitrogen and thus would be likely to cause a significant effect. This is due to such development housing people who otherwise would not have been in the catchment of a wastewater treatment works which drains to a Solent European Site.

⁸ In a scenario where an applicant has appealed to the Secretary of State (in practice the Planning Inspectorate) against a refusal of planning permission, the Planning Inspectorate become the Competent Authority under Regulation 63 of the Habitats Regulations. As part of this, they will need to undertake an assessment under that regulation.

Commercial and other non-residential development

55. Non-residential development is considered to potentially increase the nitrogen load through the foul drainage network and result in a potential significant effect on a protected site. Due to the large number of different uses within non-residential development these cases will have to be considered on a case specific basis. This should be explored with the Council through a pre-application enquiry.
56. Generally, applications to convert or change the use of one commercial use to another commercial use would not be considered likely to cause a significant effect.

How this position Statement will be implemented through development management decisions

57. It is necessary for the Council, as the competent authority under The Regulations, to undertake a Habitats Regulations Assessment, including Appropriate Assessment, on any development that it is considered could lead to a likely significant effect on a European Site. It is incumbent on the applicant to provide all of the information necessary to undertake that assessment.
58. The Council already undertakes Appropriate Assessment on a large number of planning applications as there is an acknowledged likely significant effect from residential development in almost all of the Borough in terms of recreational disturbance. Avoidance and mitigation packages are collected from such developments in the form of a contribution towards the Bird Aware Solent Partnership and its Solent Recreation Mitigation Strategy.
59. When submitting planning applications, applicants will need to include a 'European Sites Mitigation Checklist' (please see appendix A of this Position Statement) to set out how any likely significant effects on European Sites will be mitigated through the application.
60. For any schemes which would lead to a decrease in water quality, that AA will inevitably conclude that there would be a likely significant effect. If applicants consider there to be site specific circumstances which mean that there is no likelihood of a significant effect, it is recommended that they engage in a pre-application enquiry with the Council. As part of that enquiry, a supporting statement should be provided setting out precisely why the applicant concludes that there would not be a decrease in water quality at a European Site as a result of the proposal. It should be noted that an argument of a de minimus impact would not be considered valid.
61. As such, an avoidance and mitigation package will be necessary for almost all proposals.
62. Proposals which include development on agricultural land will need to prepare a site-specific nitrogen budget, using Natural England's methodology. This will inform a site-specific Appropriate Assessment. It is envisaged that on-site measures will be used in order to achieve nitrogen neutrality. This would generally include:
 - Application of the optional water efficiency standard of at least 110 l/pp/d
 - Management of on-site open space in a low nitrogen manner
 - Create wetland environments in SUDS systems that act as a nitrogen sink and remove nitrogen from surface water

63. However, it is envisaged that development on non-agricultural land will not be able to provide mitigation on-site. As such, in order to maintain confidence in the development market and enable the continued growth of Havant Borough, whilst meeting its environmental obligations, the Council will use Grampian Conditions. This will ensure the provision of an avoidance and mitigation scheme prior to the occupation of the residential unit.
64. A Grampian Condition prohibits development authorised by the planning permission or other aspects linked to the planning permission (in this case occupation of the development) until a specified action has been taken (in this case the provision of an avoidance and mitigation package). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission⁹, which is not envisaged in this case. However, it will require applicants to take on an unknown cost and risk when implementing planning permissions relying on an avoidance and mitigation package provided under this Position Statement.
65. The specific condition wording that will be used by the Council will be:

The development hereby permitted shall not be occupied until:

- a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority;*
- b) A mitigation package addressing the additional nutrient input arising from the development has been submitted to, and approved in writing by, the Local Planning Authority; and*
- c) All measures forming part of that mitigation package have been provided to the Local Planning Authority.*

Reason: *There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation for is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011 and Policy E14 of the Pre-Submission Havant Borough Local Plan 2036.*

66. For sites on agricultural land that are nitrogen neutral on-site or in other unusual circumstances, variations or different conditions may be necessary in order to conclude that there would not be any likelihood of a significant effect.

⁹ <https://www.gov.uk/guidance/use-of-planning-conditions> Paragraph: 009 Reference ID: 21a-009-20140306

67. It is anticipated that there will be a requirement for developers to make a financial contribution to facilitate the delivery of a strategic mitigation package. It is possible that at the point of decision the extent of financial contribution will not be known. However, the Council is fully aware of the need for development to be viable and, if necessary, will part fund delivery of the Havant Borough Local Plan 2036 Nitrogen Mitigation Strategy to facilitate occupation of approved dwellings. If this is necessary, the Council will engage with external funding providers, including Homes England, in order to spread the cost of such provision.

Ongoing monitoring and next steps

68. It is considered that this position statement sets out a mechanism through which some certainty can be provided to developers, whilst fully protecting the Solent's European Sites from the significant effect that would otherwise arise through development. This position statement has been prepared using the best and most up-to-date scientific knowledge available and has applied the precautionary principle where appropriate.

69. The Council will monitor permissions that are granted under this position statement and the nitrogen load that they would create. This will make sure that as mitigation comes forward this 'banked' nitrogen can be addressed as the first priority. The Council will ensure that an appropriate scale of mitigation is in place prior to occupation of any permitted schemes. The use of Grampian Conditions gives the Council a tool which can be used definitively in this effect, albeit the Council will use all tools available to ensure that effectively completed homes are not stood empty whilst mitigation is finalised.

70. Monitoring will also take place of schemes which are able to achieve nitrogen neutrality or a deficit on-site. This will feed into continued nitrogen budgeting to inform the definitive mitigation strategy and the Havant Borough Local Plan 2036.

71. Moving forwards, the Council will continue to work towards a more definitive mitigation strategy. This should ideally be on a PUSH wider (or larger) basis. The Council will continue to positively and proactively work with its partner authorities, through PUSH, together with Natural England, the Environment Agency, Southern Water, Homes England and any other stakeholder in order to address this issue appropriately.

Appendix 1: European Site avoidance and mitigation checklist

This checklist must be completed and provided in order for the Local Planning Authority to validate any planning application for one or more dwellings. It sets out how an avoidance and mitigation package will be provided to remove any likely significant effect on a European Site.

All relevant green boxes should be completed. The form must be signed by the applicant.

Application details	
Site name:	
Site address:	

Recreational disturbance																	
<p>The proposed development would be within 5.6 km of Chichester and Langstone Harbour, which is a Special Protection Area and Ramsar site. As such, mitigation will need to be provided. The Council considers that mitigation provided in line with the Solent Recreation Mitigation Strategy (available at www.birdaware.org/strategy) is appropriate to the applicable planning applications. This would result in a mitigation package based on the table below. It will be necessary for a suitable avoidance and mitigation package to be provided in order for the Council to lawfully grant permission for applicable schemes.</p>																	
<table border="1"> <thead> <tr> <th>Size of units</th> <th>Scale of mitigation per unit</th> </tr> </thead> <tbody> <tr> <td>1 bedroom</td> <td>£346.00</td> </tr> <tr> <td>2 bedroom</td> <td>£500.00</td> </tr> <tr> <td>3 bedroom</td> <td>£653.00</td> </tr> <tr> <td>4 bedroom</td> <td>£768.00</td> </tr> <tr> <td>5 bedroom</td> <td>£902.00</td> </tr> <tr> <td colspan="2">Please note that a monitoring fee is attached, at 5% of mitigation cost.</td> </tr> <tr> <td colspan="2">Please note that an administration fee of £20 per application is applied.</td> </tr> </tbody> </table>		Size of units	Scale of mitigation per unit	1 bedroom	£346.00	2 bedroom	£500.00	3 bedroom	£653.00	4 bedroom	£768.00	5 bedroom	£902.00	Please note that a monitoring fee is attached, at 5% of mitigation cost.		Please note that an administration fee of £20 per application is applied.	
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Please note that a monitoring fee is attached, at 5% of mitigation cost.																	
Please note that an administration fee of £20 per application is applied.																	
Please select one of the following options:																	
I hereby confirm that the proposed development will include an avoidance and mitigation package in line with the Solent Recreation Mitigation Strategy.																	
An alternative approach to avoiding and mitigating the recreational impact arising out of the development is proposed (please set out in more detail in a supporting document appended to this checklist).																	
The site is located more than 5.6km from the Solent Special Protection Areas (this applies to only a small section of the Borough in Cowplain).																	

Water quality

There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some designated sites. As such, there is considered to be a likely significant effect from residential (and similar) developments located anywhere in Havant Borough.

As a result, an avoidance and mitigation package will be needed in order for the Council to lawfully grant any planning permission. The Council has published a Nutrient Neutrality Position Statement which sets out that it is possible to mitigate development in the short term.

The position statement highlights those developments which are expected to provide avoidance and mitigation on-site, thus resulting in a nutrient neutral development. It also sets out that, for any other applicable developments, the exact scale of avoidance and mitigation package (which would take the form of a financial contribution) is not yet known.

As a result, in order for the development to comply with the requirements of the Conservation of Habitats and Species Regulations and for the Council to lawfully be able to grant planning permission, it will be necessary to impose a grampian condition requiring the provision of an avoidance and mitigation package prior to the occupation of the development.

It would be the applicants risk as to whether to proceed with any development that is granted planning permission without the knowledge of the precise scale of the avoidance and mitigation package.

Please select **one** of the following options:

I hereby confirm that the proposed development will include an avoidance and mitigation package, in line with the Nutrient Neutrality Position Statement and confirm that I am content that a grampian condition is used to secure this prior to occupation.	
--	--

The proposed development would be 'nitrogen neutral'. A nitrogen budget is attached to this checklist (this option is particularly applicable to developments proposed on agricultural land)	
--	--

The proposed development is not nitrogen neutral and no avoidance or mitigation package is proposed (please note that planning permission could not lawfully be granted in these circumstances).	
--	--

Signed by applicant:	
Print name:	
Date:	

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By Email to:

The Rt Hon James Brokenshire MP
(Secretary of State for Housing, Communities and Local Government)

Kit Malthouse MP
(Minister of State for Housing)

The Rt Hon Michael Gove MP
(Secretary of State for Environment, Food and Rural Affairs)

Dr Thérèse Coffey MP
(Parliamentary Under Secretary of State for the Environment)

Enquires to: David Hayward

Email: david.hayward@havant.gov.uk

Date: 28th May 2019

Dear Sirs and Madam

RE: Nutrient neutrality and the impact on housebuilding Havant Borough and across South Hampshire

We would like to bring to your attention a matter which has brought a halt to housebuilding in the Solent area and the need for Government to step in to provide a solution. We are writing to you independently so that the matter can be raised in Government swiftly. However this is an issue that affects a far larger area than just our two authorities and so our two Councils are also working collaboratively with our partners, through the Partnership for Urban South Hampshire (PUSH), to understand the issue and provide solutions¹.

Both Councils take extremely seriously the requirement under the National Planning Policy Framework *“to support the Government’s objective of significantly boosting the supply of homes”*. Both Councils are in the process of updating their Local Plan with a view to not only meeting but exceeding the Government’s identified housing need for the authority. However no planning consents have been issued for new housing across Havant Borough Council and the southern three parishes of East Hampshire since 1st April 2019. This will bring an immediate halt to housebuilding in the area².

Both of our Councils are committed to development only taking place if it is sustainable development that includes relevant environmental protections and would create a net gain for biodiversity. Part of the consideration of this is whether there would be a detrimental impact on the water quality of the nearby Special Protection Areas in the Solent and the Solent Maritime Special Area of Conservation. However the contribution from urban areas to this is relatively small and from new development extremely small. The majority of nitrogen deposition into the harbour is from agricultural practices or background nitrogen, the source of which is not known. However it is new housebuilding that is being immediately and disproportionately affected by the issue. It is suggested that different participants should contribute to the solution, proportionately to the extent to which they are causing it. At a time of high housing need, curtailing the ability to build new

¹ Of particular pertinence is the preparation of the PUSH Integrated Water Management Strategy which was produced collaboratively with Natural England, the Environment Agency, Southern Water and Portsmouth Water. Please see the papers for the [PUSH Overview and Scrutiny Committee on 27 June 2018](#).

² This has been reported in the [local media](#).

houses is not the correct response.

The reason for the response however is recent case law³. The European Court of Justice recently determined a case related to how water quality and nutrient loading is considered. The judgement in this case refines the definition of what constitutes a 'plans or project' – on the face of it a relatively simple change. Natural England are now reflecting the relevant case law in their advice to local authorities on planning applications and local plans. However the result is that it is only possible for Councils to conclude that new development would decrease water quality over consented levels⁴. Only 'nutrient neutral' development is permissible, which is an impossible target for all but a handful of schemes. It is essential to consider that neither Council is proposing to change the level of housebuilding or weaken environmental safeguards, there is no new impact on the environment that is proposed.

Natural England have stated that their advice is simply a recommendation and that local authorities can choose to disregard it. In reality under the regulations, this is not the case and local authorities are duty bound to consider Natural England's advice or any planning permission could be judicially reviewed, further delaying housebuilding.

The matter is already having an immediate impact, particularly for small and medium sized builders that operate in the area. With no planning permissions, work for such builders is starting to dry up and threatens the viability of these businesses. The issue also makes it drastically more difficult for either authority to show a five-year supply of housing land or pass the Housing Delivery Test. This could result in unsustainable development being permitted, including development which has a demonstrable impact on biodiversity and the natural environment. This situation cannot continue.

Each local authority in the Solent area is, at this point in time, hurriedly looking for ways to produce a 'mitigation plan' so that we can get back to permitting residential development. This will largely consist of taking land out of agricultural use. This is counter intuitive at a time when we need to consider food security and is not an environmentally holistic approach given the rush to find such land to address an immediate issue rather than considering the matter in the round.

What is needed to solve this issue quickly is one of two things, both of which only Government can provide. A change in regulation could remove the need to consider this issue as per recent case law and revert the UK to considering water as it had been up to November 2018⁵. It will be necessary to ensure that any solution ensures that the UK continues to correctly implement the UK Habitats and Birds Directives. As highlighted above, there is no change in what is proposed in terms of housebuilding or a weakening of environmental safeguards through local plans, simply a change in how this is assessed since November 2018.

Alternatively, Government can step in and provide 'mitigation banking' in the short term, potentially through a delivery arm such as Homes England, with whom both Councils have a successful working relationship already. Such an approach would enable mitigation to be taken from development through legal agreement and allow both Councils to start permitting schemes. Such funds, together with any further Government funding found to be necessary, could then fund improvement to the infrastructure at the relevant Southern Water Wastewater Treatment Works and/or other measures that provide holistic environmental benefits once a more thorough approach

³ Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>.

⁴ Due to the presence of Special Protection Areas and Ramsar sites together with a Special Area of Conservation in the Solent, all proposals for residential development are subject to Appropriate Assessment Under Regulation 63(1) of The Conservation of Habitats and Species Regulations 2017.

⁵ This would likely be achieved through The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which is a draft item of legislation.

has been taken by all the affected local authorities. Government support would provide financial certainty that the issue could be resolved.

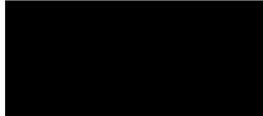
Our two Councils are already putting significant time and resources into addressing this issue. We would be happy to meet with Government in order to highlight our concerns further both in terms of the impact a stroke of the pen in Strasbourg has had on our economy and how, with Government support, we can solve the issue and get back to providing much needed housing.

We hope that you give this urgent attention so that housebuilding can recommence and look forward to hearing shortly how Government wishes to address this matter.

Yours faithfully



**Cllr Michael Wilson
Leader, Havant Borough
Council**



**Cllr Richard Millard
Leader, East Hampshire
District Council**



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

Copied to:

- The Rt Hon Damian Hinds MP
- George Hollingbery MP
- Alan Mak MP
- Emma Howard Boyd (Chair of the Environment Agency)
- Marian Spain (Interim Chief Executive Natural England)
- John Stobart (Planning and Conservation Senior Advisor, Natural England)
- Sir Edward Lister (Chairman of Homes England)
- Paul Flatt (Senior Development Manager – Land, Homes England)
- Cllr Seán Woodward (Chair of the Partnership for Urban South Hampshire)
- Ian McAulay (Chief Executive Officer of Southern Water)
- Philip James (Interim Growth Planning Manager - Southern Water)

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