



NOTICE OF MEETING

CABINET MEMBER FOR CULTURE & CITY DEVELOPMENT

FRIDAY, 29 NOVEMBER 2019 AT 3.00 PM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

Telephone enquiries to Anna Martyn Tel 023 9283 4870 or Lisa Gallacher 02392 834056
Email: anna.martyn@portsmouthcc.gov.uk or lisa.gallacher@portsmouthcc.gov.uk

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

CABINET MEMBER FOR CULTURE & CITY DEVELOPMENT

Councillor Steve Pitt (Liberal Democrat)

Group Spokespersons

Councillor Stephen Morgan, Labour
Councillor Linda Symes, Conservative
Councillor Claire Udy, Progressive Portsmouth People Group

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

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AGENDA

- 1 **Apologies for absence**
- 2 **Declarations of interest**
- 3 **Forward Plan Omission - Local Development Scheme**

The Revised Local Development Scheme report by the Assistant Director Planning & Economic Growth, was omitted from the Forward Plan covering December 2019. The Chair of the City Council's Scrutiny Management Panel has been notified and a public notice published, and the Forward Plan has since been updated to reflect this item.

RECOMMENDED that

- (1) the omission to the Forward Plan for December 2019 be noted and
- (2) that publication of the omission notice be noted

4 The Portsmouth Plan Local Development Scheme (Pages 5 - 26)

Purpose of report

To outline the revisions to the Local Plan timetable set out in the Local Development Scheme (LDS).

**RECOMMENDED that the Cabinet Member:
Approve the revised Local Plan timetable set out in the Local Development Scheme (LDS) for progression to a Cabinet decision meeting (4th February 2020).**

5 Houses in multiple occupation - Ensuring mixed and balanced communities - Supplementary Planning Document (Pages 27 - 60)

Purpose of report

To seek approval for the adoption of the revised HMO SPD, following the six week public consultation on the draft document in the summer (29th July to 9th September 2019).

RECOMMENDED that the Cabinet Member approve the proposed changes to the HMO SPD.

6 Portsmouth City Council Interim Nutrient Neutral Mitigation Strategy for New Dwellings (Pages 61 - 94)

Purpose of report

The purpose of this report is to update the Cabinet Member on the detail of the Council's *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*, following the report to Cabinet on the outline strategy on 23rd August 2019

**RECOMMENDED that the Cabinet Member:
Notes the details of the *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*' methodology (See Appendix 1) and approves the adoption of the Strategy.**

7 Outside Body Appointment - PCC representative on the Guildhall Trust Board

Owing to Cllr Pitt standing down as one of the PCC representatives on the Guildhall Trust Board (formerly known as Portsmouth Cultural Trust), Mr Peter Gunn has been nominated as his replacement. The Cabinet Member is asked to consider formally appointing Mr Gunn with effect from 1 January 2020 as one of the PCC representatives on the Trust.

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Title of meeting:	Cabinet Member for Culture and City Development
Date of meeting:	29 th November 2019
Subject:	Revised Local Development Scheme
Report by:	Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration
Wards affected:	All
Key decision:	Yes
Full Council decision:	No

1. Purpose of report

- 1.1. To purpose of this report is to outline the revisions to the Local Plan timetable set out in the Local Development Scheme (LDS).

2. Recommendations

- 2.1 **To approve the revised Local Plan timetable set out in the Local Development Scheme (LDS) for progression to a Cabinet decision meeting (4th February 2020).**

3. Background

- 3.1. The Local Planning Authority is preparing a new Portsmouth Local Plan for the period up until 2036. The Plan will set out details on the level of development which will take place in the city and where it will be located; and identify the infrastructure needed to support this growth. It will contain planning policies that will inform and influence the quality of development delivered in the city. These will be used to guide decision making on planning applications. Critical to this will be evidence to assess the impacts, viability and deliverability of development.
- 3.2. A Local Development Scheme is required under section 15 of the Planning and Compulsory Purchase Act 2004 (as amended)¹. This must specify the development plans, the subject matter of those plans and the geographical areas they cover and the timetable for the production and adoption of the plans. For the Council is this primarily the new Portsmouth Local Plan 2016-2036.
- 3.3. Local planning authorities have an obligation to keep the Local Development Scheme up to date and publish it on their website. Portsmouth's Local

¹ <http://www.legislation.gov.uk/ukpga/2011/20/section/111/enacted>

Development Scheme was last updated on 5th February 2019 following approval by Cabinet².

4. Reasons for recommendations

- 4.1 Following a rigorous review of the work and resources required to prepare a refreshed Local Plan, it is necessary to update the timetable within the Local Development Scheme. Revised timescales are set out in Table 1 below and the full Local Development Scheme can be found in Appendix A. It is worth noting that these timescales may be amended further if external factors beyond the Planning Authority's control impact on them; for example, significant changes to national planning policy or a significant amount of feedback received during public consultation on the Plan.

Table 1. Updated Timetable for production

Timetable for production		
Preparation ('Reg. 18')	Issues and Options consultation	July 2017
	Evidence base consultation ('Local Plan update')	February 2019
	Consultation on a draft Local Plan	June 2020
Publication ('Reg. 19')	Consultation on the proposed Local Plan for submission	November 2020
Submission ('Reg. 22')	Submission of Plan to Secretary of State	March 2021
Examination hearings ('Reg. 24')	Examination of the Plan by an appointed Inspector	Spring/Summer 2021
Inspectors report ('Reg. 25')	Inspectors Report on whether the plan is legally compliant and sound	Summer 2021
Adoption ('Reg. 26')	Formal adoption of the plan by the council	Winter 2021

5. Equality impact assessment

- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionate negative impact on any of the specific protected characteristics as described in the Equality Act 2010. All projects/plans within the Local Development Scheme would be subject to their own EIA if there was a potential positive or negative impact on any of the protected characteristics.

6. Legal implications

- 6.1 Legal comments are contained within the body of this report. The Regulations referred to in Table 1 are the Town and Country Planning (Local Planning) (England) Regulations 2012, which provide the statutory framework for the

² <https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=126&MId=4068&Ver=4>

production of a local plan as envisaged by the Planning and Compulsory Purchase Act 2004.

7. Director of Finance's comments

7.1 The recommendations within this report regarding the updated LDS timetable do not directly have an adverse impact on Council resources. It is anticipated that the costs for any external technical work required to inform the final production of the Local Plan will be met from the existing cash limited budget.

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Signed by:

Appendices: Appendix A: Revised Local Development Scheme

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

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Portsmouth Local Development Scheme

A timetable for the production of Portsmouth's Local Planning Policies

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Portsmouth Local Development Scheme

A timetable for the production of
Portsmouth's Planning Policy Documents

Approved by Cabinet at their meeting of 03 December 2019

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1. Introduction

What is the Local Development Scheme?

- 3.1 This Local Development Scheme (LDS) came into effect on 3rd December 2019.
- 3.2 The Council must¹ produce a 'Local Development Scheme' (LDS) to inform local residents and other stakeholders about the following:
- the development plans that the city council will be preparing over the next three years;
 - the subject matter of those plans and the geographical areas they cover; and
 - the timetable for the production and adoption of development plan documents, primarily the new *Portsmouth Local Plan 2016-2036*.

1.1 The Plan Making System

- 3.3 Planning decisions must be taken in line with the 'development plan' unless material considerations indicate otherwise. The 'development plan' for an area can be made of a number of statutory planning documents, which contain both strategic policies (which address the priorities for an area) and non-strategic policies (which deal with more detailed matters).
- 3.4 In Portsmouth, the Local Plan set out the vision for the future of the city and the strategy for meeting its development needs over a 15-year period. The Local Plan covers the city's housing and infrastructure needs and provides a framework for addressing key economic, social and environmental concerns. Planning applications for development in Portsmouth are guided by the policies in the Local Plan.
- 3.5 The content of the Local Plan is shaped by engagement with communities, local organisations, businesses, infrastructure providers and operators and statutory consultees. The Council also co-operates extensively with neighbouring authorities through the Partnership for South Hampshire (PfSH) on cross-boundary issues, and with other Local Authorities in Hampshire in planning for sustainable mineral resource use and waste management in the county.
- 3.6 The Development Plan can also include location specific documents. Neighbourhood plans developed by communities can help to deliver sustainable development in their locality by influencing local planning decisions. Neighbourhood planning is not a legal requirement but a right which communities in England can choose to use. Any neighbourhood prepared in Portsmouth would form part of the city's development plan, once adopted.
- 3.7 The preparation of new Local Plans involves assessing the future needs and opportunities, exploring and identifying options, and then setting out a preferred approach. This process involves gathering evidence, meaningful engagement and consultation and on-going assessment of proposals through Sustainability Appraisal and Habitat Regulations

¹ Under the *Planning & Compulsory Purchase Act 2004* (as amended)

Assessment. A Sustainability Appraisal² (SA) systematically assesses the extent to which the plans and policies, when judged against reasonable alternatives, will help to achieve key environmental, economic and social objectives. A Habitats Regulations Assessment³ considers if a plan or project is likely to have significant effects on designated habitat sites.

- 3.8 Table 1 on the following page explains the next steps following the preparation of a draft Plan; submission, examination and adoption.
- 3.9 Supplementary planning documents (SPDs) are not part of the development plan but form a material consideration in decision-making. SPDs provide more detailed advice or guidance on adopted Local Plans policies.
- 3.10 The Local Plan is supported by a range of other planning documents adopted by the Council. The Statement of Community Involvement (SCI) sets out how residents and other stakeholders can be involved in putting together plans for the future of the city and in determining planning applications. The Authority Monitoring Report, published annually, assesses the effectiveness of adopted plan policies, and the Council's progress on the production of the new Local Plan against the timetable set out in this document.

² Under S.19 of the Planning and Compulsory Purchase Act (as amended) and as per the Environmental Assessment of Plans and Programmes Regulations 2004

³ As per the *Conservation of Habitats and Species Regulations 2017*.

Table 1: Development Plan Preparation Stages

Preparation	This stage consists of one or more formal opportunities for stakeholders to comment on the content of the plan. This is often referred to as 'regulation 18' consultation ⁴ .
Publication	This is the publication of the plan in a form which the Council believe to be the sound final version which it intends to submit for examination. There then follows at least a six week period for interested parties to comment on the plan. Comments received at this stage must specifically relate to the legal compliance and 'soundness' ⁵ of the plan. This is often referred to as 'regulation 19' or 'pre-submission' consultation.
Submission	This is when the plan is submitted by the council to the Secretary of State. The 'Examination' of the Local Plan starts at this point; this where a planning Inspector will assess whether the local plan has been prepared in line with the relevant legal requirements and whether it meets the tests of 'soundness'.
Hearings	The most crucial time in the Examination is the hearings sessions. The hearings are roundtable discussions where the Inspector explores the issues raised by the plan and the written and verbal representations.
Inspectors report	The Inspector then issues a report on the Examination. This sets out whether the plan is legally compliant and sound. It also sets out any changes the Inspector recommends in order for the plan to be found sound.
Adoption	The final stage in the process is the formal adoption of the plan by the council. Once adopted, on it forms part of the statutory development plan.

⁴ Under *The Town and Country Planning (Local Planning) (England) Regulations 2012* (as amended)

⁵ This relates to the National Planning Policy Framework's (updated Feb 2019) 'tests of soundness' set out in para.35.

2. Portsmouth's Existing Planning Policy Framework

2.1 The development plan for Portsmouth City Council area is comprised of the following adopted documents:

- Portsmouth Plan Core Strategy (2012)
- Portsmouth City Local Plan saved policies (2006)
- Southsea Town Centre Area Action Plan (2007)
- Somerstown and North Southsea Area Action Plan (2012)
- Hampshire Minerals and Waste Plan (2013)

2.2 The development plan documents are supported by Supplementary Planning Documents (SPDs)⁶, which provide greater detail on specific Local Plan policies and help guide their implementation. The following SPDs are currently in force:

- Houses in Multiple Occupation (2018)
- Minerals and Waste Safeguarding in Hampshire (2016)
- Oil and Gas Development in Hampshire (2016)
- Housing Standards (2013) and review briefing note (2015)
- Eastney Beach Habitat Restoration and Management Plan (2014)
- Parking Standards and Transport Assessments (2014)
- Student Halls of Residence (2014)
- Achieving Employment and Skills Plans (2013)
- Portsmouth City Centre Masterplan (2013)
- Tall Buildings (2012)
- The Hard (2012)
- The Seafront Masterplan (2010)
- Air Quality and Pollution (2006)
- Reducing Crime through Design (2006)
- Developing Contaminated land (2004)

Other Relevant Documents

2.3 Key supporting documents include:

- Statement of Community Involvement (2017)
- Community Infrastructure Levy Charging Schedule (2012)

2.4 For more information on the above, there is a profile of each document is available in Appendix A and all documents are available from the council's website at:

<https://www.portsmouth.gov.uk/localplan>

⁶ SPDs can be viewed online at: <https://www.portsmouth.gov.uk/ext/development-and-planning/planning/the-portsmouth-plan-adopted-2012>

3. The Future Development Plan

3.1 The Council is preparing the following documents:

<p>Portsmouth Local Plan 2016-2036</p>	<p>Sets the vision and strategic priorities for the future of the city. The Plan will allocate sites for housing, employment and other key land uses and policies to guide development proposals.</p>	<p>The new Local plan will replace the policies in the following:</p> <ul style="list-style-type: none"> - Portsmouth Core Strategy (2012); - Southsea Town Centre (2007) and North Southsea and Somerstown (2012) AAPs; - Portsmouth City Plan (2006) saved policies - Existing SPDs (as necessary⁷)
<p>Hampshire Minerals and Waste Plan Review</p>	<p>A review of the Hampshire Minerals and Waste Plan (2013) would determine whether the existing plan policies remain up-to-date and effective in ensuring a sufficient supply of minerals and efficient management of Hampshire's waste, whilst protecting the environment and communities.</p>	<p>If the next review concludes a full or partial review is to be undertaken, the new policies would replace their equivalents in the Hampshire Minerals and Waste Plan (2013), existing SPDs may be reviewed as necessary.</p>

3.2 Plans will be informed by the gathering of proportionate evidence. Evidence studies will be published alongside draft iterations of the Plan(s)⁸.

3.3 Meaningful engagement and consultation with residents and other key stakeholders is essential for developing a Local Plan for Portsmouth that is able to deliver positive and effective outcomes. While Table 1 set outs the stages in Local Plan preparation and the main opportunities to comments on the Plan, engagement on the Local Plan may take a range of forms and is not strictly limited to formal consultation periods.

⁷ The Local Plan will be accompanied by a schedule setting out which documents to be superseded by the new policies.

⁸ See the full evidence base for the new Portsmouth Local Plan at: <https://www.portsmouth.gov.uk/ext/development-and-planning/planning-policy/new-local-plan-evidence>

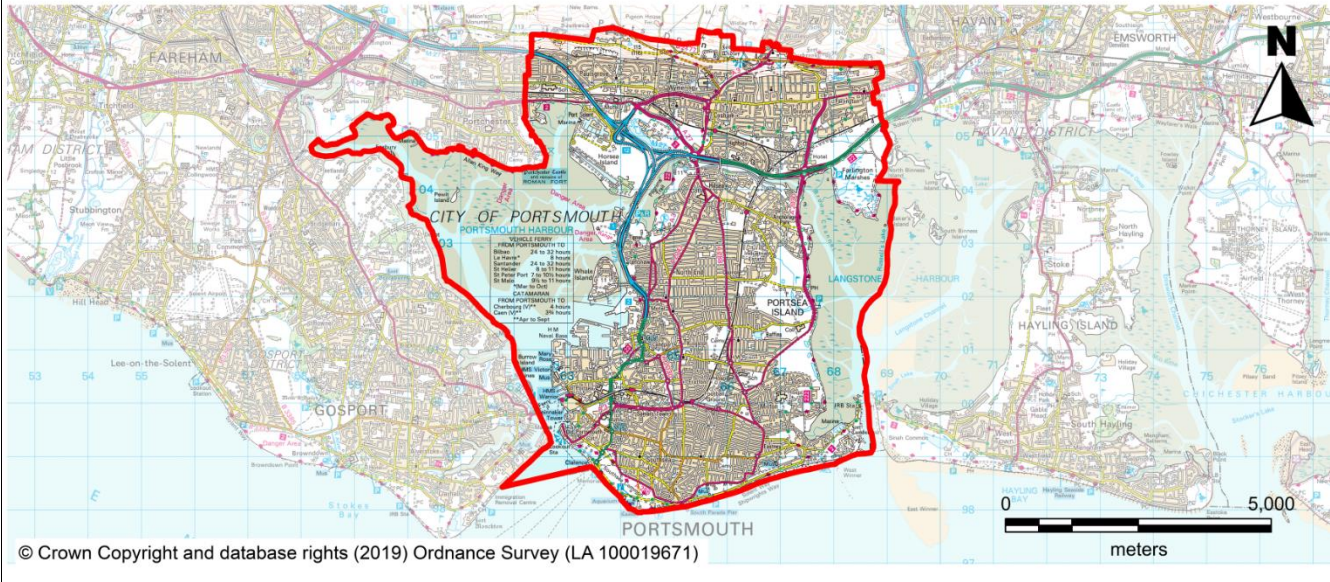
3.1 New Portsmouth Local Plan Timetable

The new Portsmouth Local Plan will set out the strategy for development in the city up to 2036.

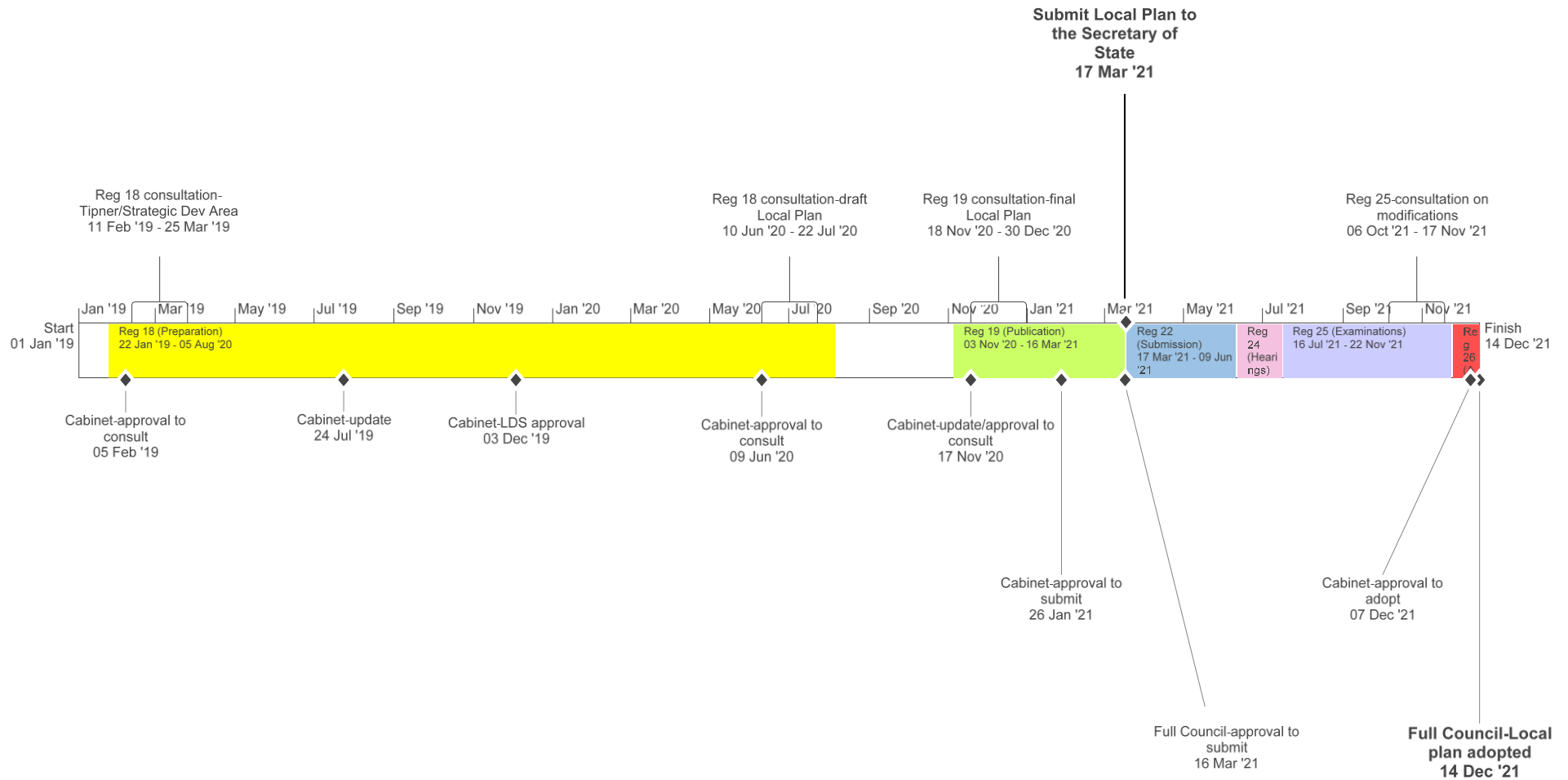
Joint production?	No
Chain of conformity	
National policy	National Planning Policy Framework
Regional policy	The South Hampshire Position Statement (non statutory)
Local policy	The Portsmouth Local Plan
Timetable for production	

Preparation ('Reg. 18')	Issues and Options consultation	July 2017
	Evidence base consultation ('Local Plan update')	February 2019
	Consultation on a draft Local Plan	June 2020
Publication ('Reg. 19')	Consultation on the proposed Local Plan for submission	November 2020
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Inspectors report ('Reg. 25')	Inspectors Report on whether the plan is legally compliant and sound	Summer 2021
Adoption ('Reg. 26')	Formal adoption of the plan by the council	Winter 2021

Geographical coverage



Local Plan Project Timetable



3.2 Hampshire Minerals and Waste Plan Timetable

The existing Hampshire Minerals and Waste Local Plan (2013) seeks to ensure the Plan area maintains a reliable and timely supply of minerals and efficient management of Hampshire's waste up to 2030.

An initial review of the Hampshire Minerals and Waste Plan was undertaken in 2018, five years' since the date of adoption. The report's recommendation, that the HMWLP does not require review at this time, was approved by Full Council on 19th March 2019⁹. It is instead proposed to review the HMWP again in 2020, to determine whether policies and site allocations still remain effective, and whether a full or partial review of the Plan is needed. In the interim period, a clearer understanding may emerge around the key issues expected to impact capacity and demand.

Joint production?	Yes - the plan will be prepared collectively by Portsmouth City Council, Hampshire County Council and Southampton City Council together with the New Forest and the South Downs National Park Authorities.
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Chain of conformity

National policy	National Planning Policy Framework
Regional policy	n/a
Local policy	The above authorities' Local Plans

Timetable for production

The Hampshire Authorities have agreed to undertake a further review of the existing plan in **2020**, to determine whether a full review of the Plan is needed. A Stakeholder Workshop took place on 25th September 2019 to investigate the issues raised within the initial 2018 Review, and how the trends within minerals supply and sustainable waste management provision are developing.

A more detailed timetable will be published in due course on Hampshire County Council's website¹⁰, and will be reflected in future revisions to this document.

Geographical coverage



⁹ Meeting details available from:

<https://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=146&Mid=3739&Ver=4>

¹⁰ <https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/hampshire-minerals-waste-plan>

4. Monitoring and Review

- 4.1 The Authority Monitoring Report (AMR), published annually, will assess the Council's progress in preparing development plan documents against the programme in this LDS, and identify any changes required.
- 4.2 Any proposed changes to the LDS programme would need to be agreed by Council, and reflected in an update to this document. This includes the need for an additional development plan documents, which are not currently in the LDS, or any amendments required due to substantial regulatory changes.
- 4.3 Development plan documents should be reviewed to ensure that policies remain up-to-date and effective. A review must be undertaken within five years of adoption date of a plan¹¹. The Council should undertake an initial review to determine whether:
- policies do not need updating, and publish the reasons for this decision; or
 - that one or more policies do need updating, and update their Local Development Scheme to set out the timetable for this revision.
- 4.4 Statements of Community Involvement must also be reviewed at least every 5 years. It is important that Statements of Community Involvement are kept up-to-date to ensure effective engagement at all stages of the planning process

¹¹ *The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017, S.10a.*

Appendix A: Portsmouth's existing Planning Policy Framework

Title:	Portsmouth Plan Core Strategy and polices map
Adoption date:	January 2012
Website:	http://www.portsmouth.gov.uk/living/planning
Description:	<p>The other planning policy documents are in compliance with the Portsmouth Plan. The Portsmouth Plan sets out the overall vision and objectives for the city.</p> <p>The plan contains policies for the development of strategic sites in the city including Tipner, Port Solent, Horsea Island, the city centre, Lakeside Business Park, Somerstown and North Southsea and Fratton Park as well as the city's district centres and seafront. There are also core policies seeking sustainable, high quality development together with a suite of development management policies. Each policy section sets out the mechanisms through which the proposals will be implemented as well as a monitoring framework. The policies map sets out all of the adopted local planning policies geographically.</p>

Title:	Portsmouth City Local Plan saved policies
Adoption date:	July 2006
Website:	https://www.portsmouth.gov.uk/ext/development-and-planning/planning/the-portsmouth-plan-adopted-2012.aspx
Description:	<p>The Local Plan covers the whole city and contains strategic policies, policies for determining planning applications and specific allocations for individual sites. Most of the plan has been replaced by the Portsmouth Plan but some development management and site allocation policies still apply.</p>

Title:	Hampshire Minerals and Waste Plan
Adoption date:	October 2013
Website:	https://www.hants.gov.uk/landplanningandenvironment/strategic-planning/hampshire-minerals-waste-plan
Description:	Portsmouth City Council, as a minerals and waste planning authority, has a statutory duty to prepare a Local Plan to guide the need for, and locations of, minerals and waste management development. The Council works jointly on minerals and waste matters with Hampshire County Council, Southampton City Council, New Forest National Park Authority and the South Downs National Park Authority ('the Hampshire authorities'). The Hampshire Minerals and Waste Plan sets out a spatial vision for future minerals and waste planning in Hampshire and includes site allocations. This has been supplemented by two SPDs on Oil and Gas Development and Minerals and Waste Safeguarding which provide additional guidance on the implementation of the of the HMWP relating to these issues.

Title:	Southsea Town Centre Area Action Plan
Adoption date:	July 2007
Website:	https://www.portsmouth.gov.uk/ext/documents-external/pln-area-action-plan-southsea-town-centre-jul07.pdf
Description:	This AAP covers Southsea town centre and redefines the centre in anticipation of development in the town centre. It contains policies on retail and town centre uses, traffic and access, design and heritage, the public realm and opportunity sites. It was adopted in 2007 as a ten year plan for the centre but is to be reviewed as part of a new Portsmouth Local Plan.

Title:	Somerstown and North Southsea Area Action Plan
Adoption date:	July 2012
Website:	https://www.portsmouth.gov.uk/ext/documents-external/pln-area-action-plan-somerstown-nsouthsea-jul12.pdf
Description:	This AAP covers the Somerstown and North Southsea part of the city and contains a vision and planning policies to support the regeneration of this area. It is to be reviewed as part of a new Portsmouth Local Plan.

Other Documents:

Title:	Statement of Community Involvement
Adoption date:	June 2017
Website:	https://www.portsmouth.gov.uk/ext/documents-external/pln-sci-2017-final.pdf
Description:	The Statement of Community Involvement (SCI) sets out how residents and other stakeholders can be involved in putting together plans for the future of the city and in determining planning applications.

Title:	Community Infrastructure Levy Charging Schedule
Adoption date:	January 2012
Website:	https://www.portsmouth.gov.uk/ext/documents-external/pln-cil-charging-schedule.pdf
Description:	The CIL Charging Schedule sets a locally based infrastructure tariff giving developers more certainty over what they will have to contribute to support infrastructure development. It spreads the cost of providing infrastructure over a wide range of developments and provides a fund to put in the place essential infrastructure to support development. It replaces the Section 106 mechanisms in many cases, although the S106 regime continues for site specific infrastructure and affordable housing. A list of infrastructure which will be or may be provided through CIL is set out in the Regulation 123 list.

Planning Policy
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Title of meeting:	Cabinet Member for Culture and City Development
Date of meeting:	29 th November 2019
Subject:	Revised Houses in Multiple Occupation (HMO) - Ensuring mixed and balanced communities SPD
Report by:	Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1. To seek approval for the adoption of the revised HMO SPD, following the six week public consultation on the draft document in the summer (29th July to 9th September 2019).

2. Recommendations

- 2.1. **To approve the proposed changes to the HMO SPD.**

3. Background

- 3.1. The Supplementary Planning Document (SPD) sets out how Policies PCS20 'Houses in multiple occupation: Ensuring mixed and balanced communities' and PCS23 'Design and Conservation' of the Portsmouth Plan will be implemented.
- 3.2. The document amends the previous SPD adopted in November 2017, and previously modified in July 2018. It details how the City Council will apply this policy to all planning applications for HMO (C4) and for large HMOs (Sui Generis). The SPD will be accorded significant weight as a material planning consideration in the determination of such applications. It is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and the impacts on local communities of high concentrations of HMOs, and evidence of harm caused by HMO properties.
- 3.3. This SPD is intended to inform planning applications and planning decisions. Further guidance on licensing requirements for HMOs has been published by the Council's Private Sector Housing Team and should be read in conjunction with this SPD.

4. Review of the HMO SPD

- 4.1. The changes to the HMO SPD were made in response to the consultation carried out between 29th July and 9th September 2019.

The following were the main areas of change:

- A section has been added providing additional guidance for waste disposal / storage.
- An additional appendix (Appendix 5 of the SPD) has been added to the document demonstrating the harm caused by HMO's.
- The SPD places further emphasis on the 50m measure and amenity criteria being a starting point to use as part of a balanced judgement on an application, not a tick box exercise.
- The room size requirements have been changed to be in line with PCC Licensing guidance, and national guidance.
- Further references / links to the licensing guidance have been added to the document to aid users.

5. Equality Impact Assessment

- 5.1. The HMO SPD update does not require EIA is because it is not changing Council Policy, as the SPD is supporting guidance. The proposed changes to the SPD were consulted on between July and September 2019 and no issues around equality groups were raised.

6. Legal Implications

- 6.1. The proposed amended policy reflects the review of the SPD and the current amendments indicate that the Authority has engaged reasonably in considering the consultation and has acted accordingly. The benefit of this process is that it will inform decisions that are merely easily understood and consistently applied thereby minimising the potentiality of challenge.

7. Director of Finance's Comments

- 7.1. There are no direct financial implications to the City as a result of approving the recommendations within this report.

Signed by:

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Appendices:

Appendix A - Revised Houses in Multiple Occupation (HMO) SPD

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

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Houses in multiple occupation (HMOs) - Ensuring mixed and balanced communities



Supplementary Planning Document (SPD)

October 2019

Document

House in Multiple Occupation (HMOs) - Ensuring mixed and balanced communities
Supplementary Planning Document (SPD) (as amended in July 2018 and October 2019)

Revisions proposed for consultation July 2019

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Foreword

It is essential that we work towards maintaining mixed and balanced communities in Portsmouth. Part of creating those communities is ensuring we have the right housing mix in order to both meet the demand for certain types of accommodation as well as ensuring we do not have a saturation of any one type of accommodation in one location or community.

Houses in Multiple Occupation (HMO) are an important type of accommodation for Portsmouth residents. However, the geographic constraints of Portsmouth streets consisting of densely built Victorian terraced housing mean that the conversion of these terraces to HMOs can create problems for a community's cohesion and sustainability. Furthermore, the increase in HMOs in the city has led to lower availability of much needed family housing in the city.

This SPD seeks to prevent an over saturation of HMOs in Portsmouth's communities by setting guidance for applications for change of use class to C4 and/or Sui Generis use as well as ensure those living in HMOs are doing so under good standards of living by setting space standards for bedroom areas and communal living areas.

Councillor Steve Pitt

Cabinet Member for Culture and City Development & Deputy Leader

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1 Purpose and scope of the SPD

- 1.1 This Supplementary Planning Document (SPD) sets out how Policies PCS20 'Houses in multiple occupation: Ensuring mixed and balanced communities' and PCS23 'Design and Conservation' of the Portsmouth Plan¹ will be implemented.
- 1.2 The document amends the previous SPD adopted in November 2017. It details how the City Council will apply this policy to all planning applications for HMO (C4) and for large HMOs (*Sui Generis*). The SPD will be accorded significant weight as a material planning consideration in the determination of such applications. It is supported by an assessment of the need for, and supply of, shared housing in Portsmouth and the impacts on local communities of high concentrations of HMOs², and evidence of harm caused by HMO properties (appendix 5).
- 1.3 This SPD is intended to inform planning applications and planning decisions. [Further guidance](#) on licensing requirements for HMOs has been published by the Council's Private Sector Housing Team and should be read in conjunction with this SPD.
- 1.4 This document is to be read alongside other documents such as the [Local Plan](#) and [Parking Standards and Transport Assessments SPD](#).

What is a house in multiple occupation (HMO)?

- 1.5 Government Circular 08/2010³ identifies that the C4¹ (HMO) use class covers: small shared houses or flats occupied by between three and six unrelated people who share basic amenities such as a toilet, personal washing facilities or cooking facilities.

¹ Portsmouth City Council (2012) *The Portsmouth Plan: Portsmouth's Core Strategy*. Portsmouth: PCC <https://www.portsmouth.gov.uk/ext/documents-external/pln-portsmouth-plan-post-adoption.pdf>

² Portsmouth City Council (2012) Shared housing in Portsmouth – an assessment of demand, supply and community impacts. Portsmouth: PCC <https://www.portsmouth.gov.uk/ext/documents-external/pln-hmo-research-report.pdf>

³ The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010. www.legislation.gov.uk/ukxi/2010/653/pdfs/ukxi_20100653_en.pdf

Further guidance can be found in Circular 08/2010 - Changes to Planning Regulations for Dwellinghouses and Houses in multiple occupation

www.communities.gov.uk/documents/planningandbuilding/pdf/1759707.pdf

⁴ The Housing Act 2004 www.legislation.gov.uk/ukpga/2004/34/contents

1.1.51.6 For the purposes of Class C4, a 'house in multiple occupation' has the same meaning as in section 254 of the Housing Act 2004, with the exception of section 257 which applies to converted block of flats (and those buildings listed in schedule 14 of the Act). Further explanation is set out in Appendix 1

- 1.6 Where there are more than six unrelated individuals sharing amenities, this is termed an HMO in *Sui Generis* use.
- 1.7 Where there is to be a material change of use to either type of HMO (small Class C4 or *Sui Generis*), planning permission will be required.
- 1.8 In the city of Portsmouth planning permission is needed for change of use from a Class C3 (dwelling house) to a Class C4 HMO as a citywide Article 4 Direction is in force which removes permitted development rights for such changes².

Amenity Impact of HMO's on residents

- 1.9 Across the city there are a much higher proportion of complaints related to licenced houses of multiple occupation (HMO's) than non HMO properties. Complaints were received relating to 9% of all licenced HMO properties compared to complaints received relating to 1% of non HMO properties. For those categories of complaint that have the most potential amenity impact (mess, neighbour, waste and HMO) the proportion of complaints received are significantly higher for HMO properties than non HMO properties (12x). Detailed breakdown of the amenity impact of HMO's across the city can be found in Appendix 5 to this report.

The need to ensure mixed and balanced communities

- 1.10 The contribution of HMOs to meeting Portsmouth's current and future housing need is recognised, particularly as a source of accommodation for people on low incomes and benefit payments, young professionals, students and the growing number of one-person households. The negative impacts of high concentrations of HMOs on local communities must also, however, be considered (see appendix 5).
- 1.11 Policy PCS19 (Housing mix, size and the provision of affordable homes) of the Portsmouth Plan¹ identifies a need for a variety of housing types throughout the city in order to deliver a choice of homes and to create inclusive and mixed communities. This includes a need for family housing (of three or more bedrooms), the opportunities for which are limited in a densely developed city such as Portsmouth.
- 1.12 The Portsmouth Plan notes a predicted increase in the number of people who will require larger, family sized properties in the future as well as a growth in the number of one person households for which HMOs may provide a suitable housing choice. Policy PCS20 seeks to ensure that the future supply of family housing is not jeopardised by its unchecked conversion to shared accommodation and that communities are not negatively impacted by HMO development.

² For more information about this Article 4 Direction see <https://www.portsmouth.gov.uk/ext/documents-external/pln-hmo-article4direction-plan-nov10.pdf>

- 1.13 In order to avoid high concentrations of HMOs in the city, and to ensure the future provision of mixed and balanced communities in accordance with national planning policy⁶, Policy PCS20 of the Portsmouth Plan will be the key local planning policy against which applications for HMO use will be assessed (see below).

**PCS20 Houses in Multiple Occupation (HMOs):
Ensuring mixed and balanced communities***

In order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated throughout the city, applications for changes of use to a House in Multiple Occupation (HMO) will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance.

For the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in *Sui Generis* use will be considered to be HMOs.

* See Appendix 2 to this SPD for full text contained in the Portsmouth Plan.

Implementation of Policy PCS20

- 1.14 Policy PCS20 of the Portsmouth Plan¹ (see above) will be used to determine applications for:
- Class C4 HMOs (between three and six unrelated individuals sharing amenities);
 - mixed C3/C4 use (this type of permission allows a property to be used in either way, overcoming the need for a new planning permission each time a change of use from Class C3 to C4 is required), it should be noted that 10 years from the permission the flexibility ceases and the use at that time becomes the lawful use.
 - HMOs in *Sui Generis* use (seven or more unrelated individuals sharing amenities).

Other policies set out in the Portsmouth Plan will also form material considerations in respect of such applications.

⁶ See National Planning Policy Framework:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

2 How will planning applications for HMO use be determined?

2.1 In accordance with policy PCS20, the City Council will only support planning applications for HMO uses (Class C4, HMOs in *Sui Generis* use and mixed C3/C4 use) a community is not already 'imbalanced' by existing HMO uses or where granting the application would create an 'imbalance'. As noted above there is a robust correlation between amenity complaints and the number of HMOs in a community.

2.2 A community will be considered to be 'imbalanced' where

- more than 10% of residential properties within a 50m radius of the area surrounding the application property are already in HMO use

The 'development' (proposed HMO use) that is the subject of the planning application will create an imbalance where granting the application would 'tip' the ratio of HMOs to Class C3 residential uses within the area surrounding the application property over the 10% threshold

2.3 Where planning permission is sought to change the use of a Class C4 or mixed C3/C4 use to a HMO in *Sui Generis* use, in areas where concentrations of HMOs exceed the 10% threshold the Council will consider the potential harm to amenity caused by an increase in the number of bedrooms in an already unbalanced community.

Living conditions / quality of living environment

2.4 In order to secure a good standard of living accommodation within HMOs (C4 and *Sui Generis* HMOs), and in accordance with Policy PCS23, the City Council will ensure applications for HMO development will protect the amenity of, and the provision of a good standard of living environment for future occupiers.

2.5 In addition to obtaining a planning permission the Council also requires HMO landlords to obtain a license for their property. Details of how to obtain an HMO license can be found on the [City Council's web page](#). From 1 October 2018 mandatory HMO licensing changed and mandatory licensing is no longer limited to HMOs that are three or more storeys high occupied by 5 or more people sharing an amenity, but now also includes buildings with one or two storeys. This new legislation now applies to landlords across the UK.

2.6 All planning applications must be supported by a full set of floor plans that include details of the bathroom sanitary ware and kitchen fitments and white goods; clearly identify whether rooms are intended to be single or double; and show the internal measurements for each room, including areas of reduced ceiling height. The guidance below is set in line with the Council's Standards for [Houses in Multiple Occupation Guidance \(September 2018\)](#). This document contains detailed guidance on the requirements a landlord must meet in order to be given an HMO license. The broad headline requirements are set out below, however the Guidance should be the document referred to for more detailed requirements.

Bedroom space standards

- 2.7 Single bedrooms must have a minimum Gross Internal Floor area (GIA) of 6.51m² (10m² in certain circumstances³).
- 2.8 Double bedroom or twin bedrooms must have a minimum GIA of at least 11m² (14m² in certain circumstances⁴).

Amenity Space

Room	Metric ³
Dining Room (3 to 5 persons)	11m ²
Dining Room (6 or more persons)	14m ²
Living Room (3 to 5 persons)	11m ²
Living Room (6 or more persons)	14m ²
Kitchen (3 to 5 persons)	7m ²
Kitchen (6 or more persons)	11m ²
Combined living space (3 to 5 persons) ¹	24m ²
Combined living space (6 or more persons) ¹	34m ²
Bathroom ²	3.74m ²
1-4 persons	At least 1 bathroom and 1 WC (can be combined)
5 persons	1 bathroom; and 1 separate WC with WHB (WC could be contained in second bathroom)
6-10 persons	2 separate bathrooms; and 2 separate WCs with WHB (one of WCs can be contained with one bathroom)
11-15 persons	3 bathrooms; and 3 separate WCs and WHB (two of WCs can be contained within 2 bathrooms)

NOTE: 1: Combined living space is defined as a single, typically open plan space, usually containing a kitchen, dining area and living area, laundry and utility space.

2: A pod bathroom which complies with the current Building Regulation will be accepted.

³ Where no separate living space is provided in the dwelling see page 4 of [Houses in Multiple Occupation Guidance \(September 2018\)](#).

⁴ Where no separate living space is provided in the dwelling see page 4 of [Houses in Multiple Occupation Guidance \(September 2018\)](#).

Waste Storage

- 2.9 HMOs should provide adequate facilities for the storage of waste within their curtilage in line with the Council's [HMO licensing guidance for landlords](#). All licences issued after 1 October 2018 will include a condition requiring compliance with the council's storage and waste disposal scheme. The scheme for Portsmouth City Council is that rubbish and recycling bins/boxes/bags must be presented at the front boundary by 7.00am on the day of collection (and not before 7.00pm the day before) and bins/ boxes taken back inside the property boundary on the same day. If a licence holder does not comply with this scheme it will be a breach of the licence and is a criminal offence.
- 2.10 Landlords or managers should abide by certain standards applicable to HMOs. For example, a manager has a duty to ensure the property is maintained in a good condition, that the water, gas and electricity supplies are maintained, the common areas are kept clean and in good repair, the living accommodation is maintained and arrangements are made for the storage of refuse. Residents are also required not to hamper or frustrate the manager from carrying out these responsibilities.

Amenity of neighbours and local occupiers

- 2.11 The National Planning Policy Framework (NPPF) notes that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The Framework goes on to say that planning policies and decisions should ensure that developments "will function well and add to the overall quality of the area" and "create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users."
- 2.12 The Portsmouth Plan seeks the delivery of a range of housing types and tenures to meet the varying needs of the community. Whilst it is acknowledged that HMOs meet the housing needs of many in the city, it is important that the amenity and standard of living environment of neighbours and local occupiers is protected.

PCS23 design and conservation (extract)*

All new development must be well designed and, in particular, respect the character of the city.

The following will be sought in new development:

- Protection of amenity and the provision of a good standard of living environment for neighbouring and local occupiers as well as future residents and users of the development

* See Appendix 2a to this SPD for full text contained in the Portsmouth Plan.

Implementation of Policy PCS23

- 2.13 In order to consider whether an application accords with Policy PCS23, once an application is received the location of the application property will be checked against a database holding all existing HMOs. This will determine if the proposed HMO would impact upon the amenity and/or standard of living environment of neighbouring and local occupiers.
- 2.14 Applications will be required to include a full set of floor plans that include details of the bathroom sanitary ware and kitchen fitments and white goods; clearly identify whether rooms are intended to be single or double; and show the internal measurements for each room, including areas of reduced ceiling height. This will enable the application to be assessed against the PCS23 requirement for new development to protect amenity and provide good standards of living environment for future residents and users of the development.
- 2.15 Analysis of public sector housing complaints data for the City has shown that HMO properties in the City have a significant proportion more complaints than non HMO properties (see appendix 5) especially around amenity issues such as Mess and Waste.
- 2.16 In accordance with Policy PCS23, the City Council will ensure applications for HMO development will protect the amenity, and the provision of a good standard of living environment, for neighbouring and local occupiers. For the purpose of assessing applications for the change of use to C4 HMOs and *Sui Generis* HMOs, planning permission will only be granted where the proposal would not result in an over intensive use of the property.
- 2.17 It will be taken as an indication that an application for HMO development would be likely to fail to protect the amenity, and the provision of a good standard of living environment, for neighbouring and local occupiers where:
- There is a concentration or proliferation of HMOs within the local area (see Appendix 6); and
 - it would cause material harm to the proposed, existing and / or adjacent users, residents, occupiers or where it is liable to be detrimental to human health. Matters to be considered include changes in overlooking, privacy, daylight, sunlight, disturbance and outlook.

Disturbance includes factors such as volume and type of traffic, noise, artificial lighting, smell and other pollution, and flooding.

The amenity impacts above are not exhaustive and a judgement should be made on the individual merits of proposed schemes.

2.18 When considering the impact of proposals under policy PCS23 in respect of HMOs, the Council will take into consideration the impact of the proposal in the context of the concentration of HMOs already in the neighbourhood as defined using the 50m radius as set out in this SPD. Relevant factors include -

- The existing proportion of properties which are in HMO use within a 50m radius, and the extent to which it exceeds the 10% threshold;
- The increase in the number of bedrooms sought by the proposal; and
- Impact the proposed intensification of the use will have upon the residential character of the area in the context of a mixed balanced community. (as discussed in Appendix 5)

Please refer to Appendix 4 for worked examples.

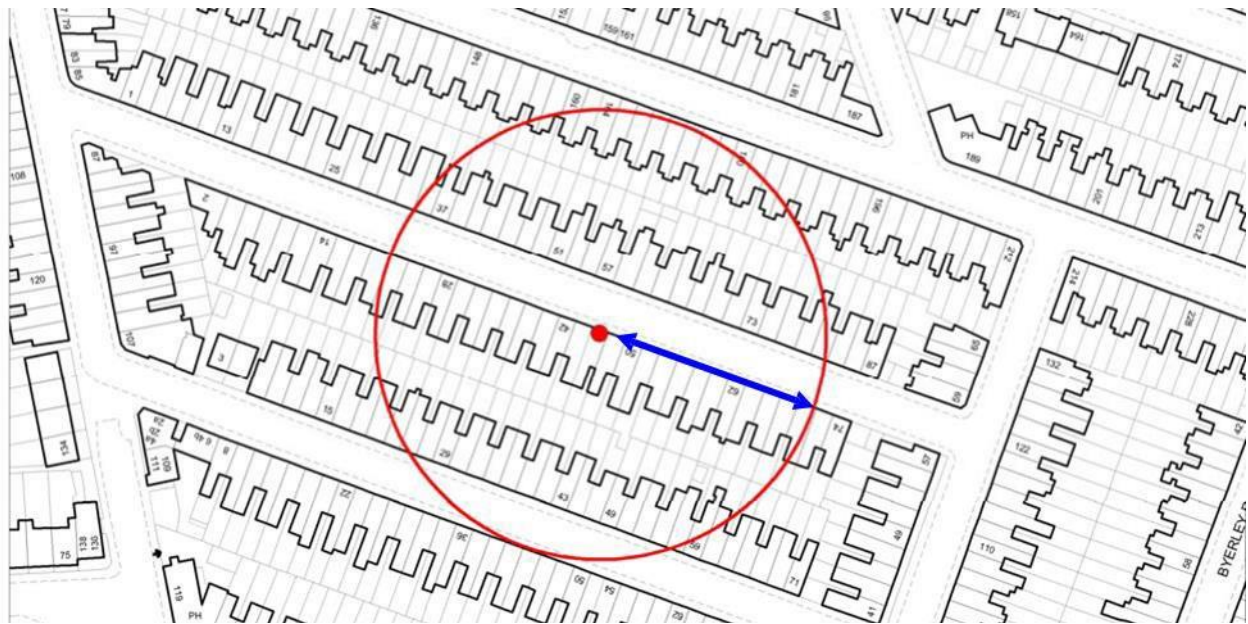
Identifying 'the area surrounding the application property'

2.19 This section is intended as a starting point for determining the proposed impacts of HMO's on the surrounding community. Decisions on the potential amenity impact individual schemes will need to take account of the merits of the particular application.

2.20 Points i) to viii) below and Figures 1 and 2 set out the method that the City Council will use when it is calculating the percentage of dwellings in HMO use in the area surrounding the application property (see also the worked example contained in Appendix 4).

- i) Where the application property is a house - an area with a radius of 50 metres will be identified from the mid-point of the application property's frontage (see ii and Figure 1).
- ii) A property's frontage comprises the width of that building as it faces directly onto the street and generally includes the entrance to the property. A 'street' is defined here as any highway (including footpath) or public area which contains a property's frontage.
- iii) Where the application property is a flat - an area with a radius of 50 metres will be identified from the mid-point of the main entrance door to the flat (see Figure 2).

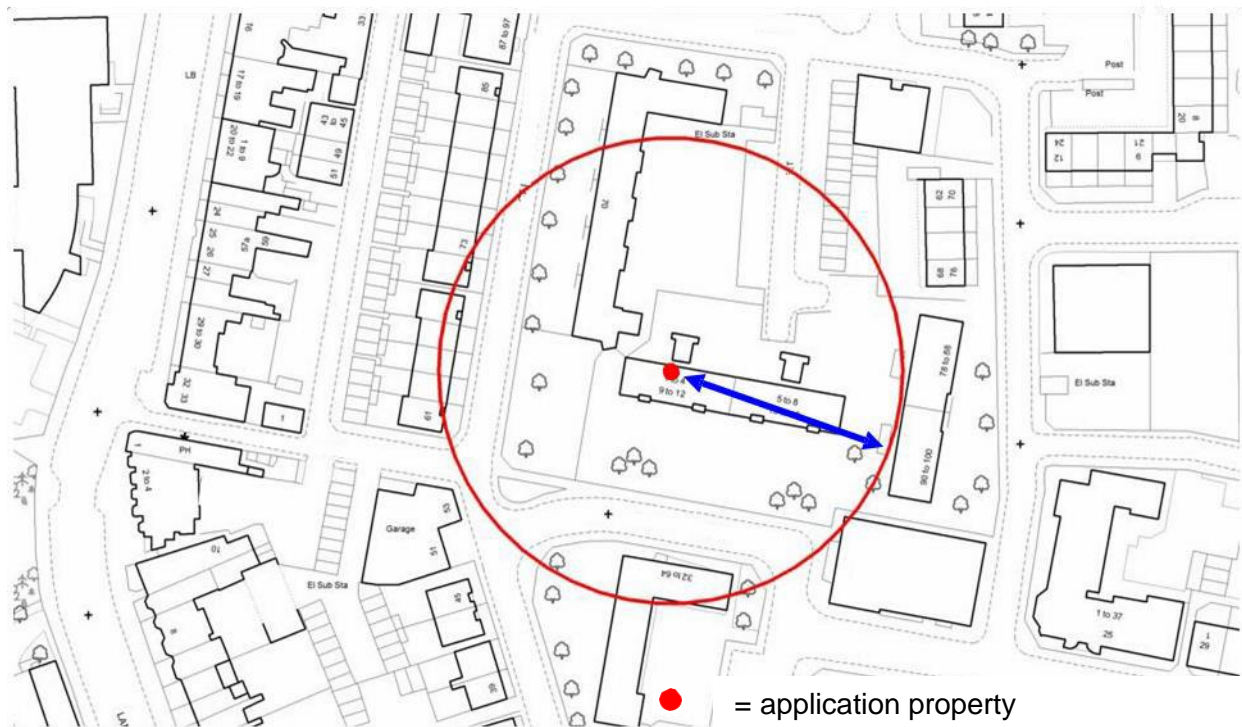
Figure 1: Houses - identifying 'the area surrounding the application property'



Map not to scale

- = application property
- ↔ = 50 metre radius
- = area surrounding application property

Figure 2: Flats- identifying 'the area surrounding the application property'



Map not to scale

- = application property
- ↔ = 50 metre radius
- = area surrounding application property

- iv) For the purposes of implementing Policy PCS20, this area with a radius of 50 metres will be known as ‘the area surrounding the application property’.
- v) A ‘count’ will be made of residential properties that fall within the area surrounding the application property⁸ and their addresses will be checked against the council’s ‘HMO database’ in order to identify which, if any, are in HMO use (see paragraphs 2.21 – 2.24) and worked example using a 10% threshold in Appendix 4, p24).
- vi) Only residential properties will be counted (i.e. the count will exclude properties in, for example, retail or commercial uses).
- vii) Where any part of the curtilage of a residential property (house), including the property boundary falls within the area surrounding the application property, this property will be included in the ‘count’ (see Figure 1 and worked example in Appendix 4, p24).
- viii) Where the 50m radius captures any part of a building containing residential flats, the City Council will endeavour to establish the number of flats that fall, in part or whole, within the 50m radius, if this proves impossible then all properties inside of this building will be included in the ‘count’.

Identifying properties in HMO use

2.21 When identifying the number of HMOs in the area surrounding the application property, the City Council will include:

- All properties continuously in HMO use since 1 November 2011.
- All properties with Class C4 HMO planning permission.
- All properties with *Sui Generis* HMO planning permission.
- All properties with planning permission for mixed C3/C4 use (regardless of whether they are in C3 or C4 use at the time of the application).
- All Section 257 Houses in Multiple Occupation properties.

2.22 A list of all addresses that have been identified as being in the area surrounding the application property, which will also highlight those that the council considers to be in HMO use, will be made publicly available during the determination period of the planning application.

⁸ In some instances, a complex street pattern or arrangement of buildings may require the City Council to use judgement in determining which properties are captured by the 50 metre radius, based on the guidance set out in paragraph 1.17

- 2.23 In order to identify properties in HMO use, the council will use data held on its 'HMO database'⁹ at the time of the planning application. The database is made up of records of properties with planning permission for Class C4 use, *Sui Generis* HMO use and mixed C3/C4 use, records of Class C4 HMOs submitted to the council by property owners, HMOs that have been issued a licence by the council and council tax records. A list of addresses held on this database will be published on the City Council's website and updated on a regular basis. However the City Council acknowledges that it may not have captured all of the HMOs in an area and therefore will consult Ward Members and local residents to capture further local knowledge about the way properties are being occupied in their neighbourhood.
- 2.24 Those wishing to confirm the existing lawful use of a property should not rely on the database as evidence but should seek to establish whether planning permission for HMO use has been granted or where appropriate, to secure evidence that the property was in Class C4 use prior to the 1st November 2011 when the Article 4 Direction came into force (see paragraph 1.8, p6) and has been in continuous use since then. An application could also be made to the City Council for a Certificate of Lawful Use. A fee is required for making this type of application together with supporting evidence to support the application.

⁹ A copy of addresses held on the City Council's HMO database can be found at:
<https://www.portsmouth.gov.uk/ext/development-and-planning/planning/planning-houses-in-multiple-occupation>

3 Making a planning application for HMO use

Many new and existing HMOs require licencing in addition to planning permission and applicants should ensure they are fully compliant with both planning and licencing regimes (see Section 5 below)

Forms and fee

- 3.1 Detailed guidance about making a planning application for change of use, including relevant application fees and information required as part of the application, can be found on the City Council's [website](#)

Alternatively, applicants can visit the Planning Portal directly at www.planningportal.gov.uk to make an application online.

- 3.2 The City Council has made an Article 4 Direction removing permitted development rights which would otherwise allow changes of use from Class C3 to Class C4.
- 3.3 An application fee will be payable for:
- change of use from any other use class other than Class C3 to a Class C4 or mixed C3/C4 use, and
 - change of use from any use class to an HMO in *Sui Generis* use (to accommodate seven or more unrelated people sharing amenities).
 - change of use from Class C3 (dwellinghouse) to Class C4 (HMO), or
 - change of use from Class C3 or C4 to a mixed Class C3/C4 use.

Parking and the storage of refuse and recyclables

- 3.4 Planning applications for HMO use must meet the parking standards set out in the City Council's Parking Standards and Transport Assessments Supplementary Planning Document (SPD 2014) and any subsequent update¹⁰.
- 3.5 Planning applications for HMO use will also be expected to demonstrate that adequate storage for refuse and recyclables will be provided at the property.

¹⁰ Portsmouth City Council (2014) Parking Standards and Transport Assessment Supplementary Planning Document (SPD). Portsmouth: PCC <https://www.portsmouth.gov.uk/ext/documents-external/pln-parking-standards-transport-assessments-spd.pdf>. See also map showing public transport accessibility throughout the city <https://www.portsmouth.gov.uk/ext/documents-external/trv-74.185-public-transport-map-aug-2017-web-final.pdf>

4 Monitoring and review

- 4.1 The monitoring and review of Policy PCS20 will be carried out as part of the city's Authority Monitoring Report which it is required to produce as part of its Local Plan. The indicators that will be used to monitor this policy are contained in the full policy wording attached as Appendix 2.

5 Other issues to consider

- 5.1 In addition to the need for planning permission, those wishing to establish an HMO should consider if they need an HMO licence in accordance with the Housing Act (2004) and are also encouraged to join the City Council's Landlord Accreditation Scheme (LAS); Rent it Right.

Licensing under the Housing Act (2004)

- 5.2 Landlords and property managing agents who intend to let large houses in multiple occupation (HMOs) may need to apply to the City Council for an HMO licence. An HMO licence will be required if the property:
- will be used to accommodate five or more tenants belonging to two or more households.
- 5.3 In these circumstances, it is a criminal offence not to have an HMO licence and an unlimited fine could be issued upon successful proceeding, or Portsmouth City Council could issue a civil Penalty up to £30,000.
- 5.4 For more information about licensing, please visit the City Council's website <https://www.portsmouth.gov.uk/ext/housing/shared-houses---mandatory-licensing-of-houses-in-multiple-occupation>

You can also contact the Housing Standards team on (023) 9284 1659.

Portsmouth City Council Landlord Accreditation Scheme

- 5.5 The City Council's Landlord Accreditation Scheme aims to improve both the physical and management standards of the private rented sector within Portsmouth. Whilst it is a voluntary scheme, all private landlords who own and rent out properties in the city are encouraged to join the LAS. For more information, and to join the scheme, visit <https://www.rentitright.co.uk>

Appendix 1. – Definition of Class C4 HMO (Housing Act 2004)

- A1.1 The Government's Circular 08/2010³ notes that the C4 use class covers small shared houses or flats occupied by between three and six unrelated people who share basic amenities (see A1.4 below).
- A1.2 For the purposes of Class C4, a 'House in Multiple Occupation' does not include a converted block of flats (to which section 257 of the Housing Act 2004 applies) but otherwise has the same meaning as in section 254 of the Housing Act 2004.
- A1.3 An HMO is defined by the Housing Act 2004 as a building or part of a building (i.e. a flat) which:
- is occupied by persons who do not form a single household, and
 - is occupied as the only or main residence, and where
 - rents are payable or other consideration is provided in respect of at least one of those occupying the property, and where
 - more than two households share one or more basic amenities (or lack such amenities).
- A1.4 The meaning of basic amenities as defined by the Housing Act 2004 is:
- a toilet,
 - personal washing facilities, and/or
 - cooking facilities.
- A1.5 Schedule 14 of the Housing Act 2004 lists buildings (or parts of buildings) which are not defined as HMOs and includes those that are:
- controlled or managed by a registered social landlord or local authority;
 - controlled or managed by a fire and rescue authority, police authority or health service body;
 - occupied by students and controlled and managed by an education establishment i.e. halls of residence;
 - occupied for the purposes of a religious community whose main occupation is prayer, contemplation, education or the relief of suffering;
 - occupied solely by one or more persons who are owners (with either freehold or leasehold interest granted for more than 21 years);
 - occupied by two persons who form two households.
- A1.6 The Government's Circular 08/2010³ may also provide helpful guidance on what does and does not constitute a Class C4 use (in accordance with the Housing Act 2004). It highlights that:
- small bedsits will be classified as C4 use;
 - students, migrants and asylum seekers who do not occupy the property all year will be considered as occupying the property as their main residence;
 - properties containing the owner and up to two lodgers will be in Class C3, and
 - to be classified as a house in multiple occupation a property does not need to be converted or adapted in any way.

³ [The Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Order 2010. www.legislation.gov.uk/ukxi/2010/653/pdfs/ukxi_20100653_en.pdf](http://www.legislation.gov.uk/ukxi/2010/653/pdfs/ukxi_20100653_en.pdf)

Appendix 2. – Policy PCS20 of the Portsmouth Plan

Houses in Multiple Occupation (HMOs): ensuring mixed and balanced communities

- A2.1 National planning policy guidance (PPS1 and PPS3) provides the context for local planning policy to ensure that mixed and balanced communities are developed in the future and to avoid situations where existing communities become unbalanced by the narrowing of household types towards domination by a particular type, such as shared housing (HMOs).

The Portsmouth Plan approach to Houses in Multiple Occupation

- A2.2 PPS1 encourages development that ‘supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities’ (p.3). It also requires that development plans ‘ensure that the impact of development on the social fabric of communities is considered and taken into account’ (p.7). PPS3 supports the role of development plans in promoting mixed communities and ensuring that a wide range of household needs are catered for.
- A2.3 While the contribution of HMOs to meeting the city’s accommodation needs is recognised, particularly as a source of housing for people on low incomes, those on benefit payments and those starting off in the economy as young professionals, the potential negative social, environmental and economic impacts of high concentrations of HMOs on communities have been widely discussed.
- A2.4 The City Council’s private sector house conditions survey (2008) notes that HMOs occur at a significant rate in Portsmouth, driven by the student population and residents on low incomes. In 2007/8, it was estimated that 5.1% of dwellings in the city were HMOs compared to 2.5% nationally. It is likely however, given recent economic challenges and the continuing growth of the city’s university that numbers of HMO properties in the city have increased in the past two years.
- A2.5 In order to continue to accommodate the need and demand for houses in multiple occupations, while ensuring the future balance of established communities, policy PCS20 provides guidance for developers and prospective landlords with regard to the appropriateness of future HMO schemes in the city.

PCS20 houses in multiple occupation (HMOs):
Ensuring mixed and balanced communities

In order to support mixed and balanced communities, and to ensure that a range of household needs continue to be accommodated throughout the city, applications for changes of use to a House in Multiple Occupation (HMO) will only be permitted where the community is not already imbalanced by a concentration of such uses or where the development would not create an imbalance.

For the purposes of this policy, dwellings in use as Class C4, mixed C3/C4 use and HMOs in *Sui Generis* use will be considered to be HMOs.

- A2.6 This policy will be implemented through planning decisions taken in the development management process. Once an application is received, the location will be checked against a database holding all existing HMOs in order to determine if the proposed location would fall within an area of concentration. The City Council will produce an SPD setting out in greater detail how this policy will be applied. In the meantime, further advice to applicants is available on the planning pages of the City Council’s website.
- A2.7 The City Council will continue to work with the University of Portsmouth to promote appropriate development of purpose built student accommodation.

monitoring framework for PCS20 houses in multiple occupation (HMOs):
ensuring mixed and balanced communities

Policy Outcomes	Key Indicators
<ul style="list-style-type: none"> • To avoid concentrations of HMOs within the city 	<ul style="list-style-type: none"> • Change in number of homeless (particularly the 25 - 34 year old age group who will be affected by changes to the Local Housing Allowance which will mean they can no longer afford to rent whole properties and will increasingly turn to HMOs) • Changes in the concentration of HMOs across the city • Number of planning applications received for HMOs and whether approved or refused • Any appeal decision relating to HMOs

Where else to look

- Article 4 Direction: Houses in Multiple Occupation
<https://www.portsmouth.gov.uk/ext/development-and-planning/planning-applications/planning-houses-in-multiple-occupation>

Appendix 3. – Policy PCS23 of the Portsmouth Plan

Design and Conservation

A3.1 Portsmouth has been shaped and characterised by its maritime history and defence role. However, recent development in the city, such as Gunwharf Quays, has begun a new chapter in the life of Portsmouth as a desirable place to live which epitomises contemporary waterfront living.

The Portsmouth Plan approach to design and conservation

A3.2 Portsmouth should continue to develop in this way but new development must also recognise the unique historic maritime characteristics of the city. To this end, only the highest standards of architectural quality will be sought in new development. Furthermore, the city council will work proactively to ensure the valuable elements of the city's history are preserved and enhanced.

PCS23 design and conservation

All new development must be well designed, and in particular, respect the character of the city.

The following will be sought in new development:

- Excellent architectural quality in new buildings and changes to existing buildings
- Delight and innovation
- Public and private spaces that are clearly defined, as well as being safe, vibrant and attractive
- Development that relates well to the geography and history of Portsmouth, particularly the city's conservation areas, listed buildings, locally listed buildings and scheduled ancient monuments
- Protection and enhancement of the city's historic townscape and its cultural and natural heritage, in particular its links to the sea
- Appropriate scale, density, layout, appearance and materials in relation to the particular context
- Protection and enhancement of the city's views important views and settings of key buildings across the sea, harbours and from Portsdown Hill
- Creation of new views and juxtapositions that add to the variety and texture of a setting
- Flexibility to responds to future changes in use, lifestyle and demography
- Promotion and encouragement of public art
- Car parking and cycle storage should be secure, well designed, integral to the scheme and convenient to the users
- Active street frontages in town centre uses
- Consideration of how to reduce crime through design
- Accessibility to all users
- Protection of amenity and the provision of a good standards of living environment for neighbouring and local occupiers as well as future residents and users of the development.

Implementation, delivery and monitoring

- A3.3 The design and conservation policy will be implemented through decisions made during the development management process.
- A3.4 It is acknowledged that it will not be possible to fulfil all of the criteria in the policy in every development. Applicants are therefore encouraged to engage in pre-application discussions with the planning authority in order to address any potential issues before an application is made. This will result in a smoother and timelier planning process.
- A3.5 The planning authority has produced an Urban Characterisation Study which provides information on the different areas of the city and will help to ensure new development respects the character of its surroundings. A web-based design guide will be produced which will collate the latest national design guides and locally distinctive design characteristics for ease of reference.
- A3.6 The “Reducing crime through design” SPD should be used to ensure new development reduces opportunities for crime, as well as the fear of crime.
- A3.7 The documents listed above are valuable tools for producing well designed buildings in Portsmouth. Applicants should take note of the guidance and advice available and, where design and access statements are required, should show how they have taken them into account in the design process.
- A3.8 Good design is extremely important for development on prominent sites in the city. As part of the design process for these sites, applicants should consider staging a design competition to produce locally distinctive buildings and/or public art to complement the development.
- A3.9 The city council will continue to seek advice from design review panels on applications for sites likely to have a significant impact on the locality. Generally these will be major development applications and those of citywide importance. This advice will be a consideration in the determination of the relevant planning application.
- A3.10 The council will continue to encourage new development to be built to Building for Life standards.

Monitoring framework for PCS23 design and conservation

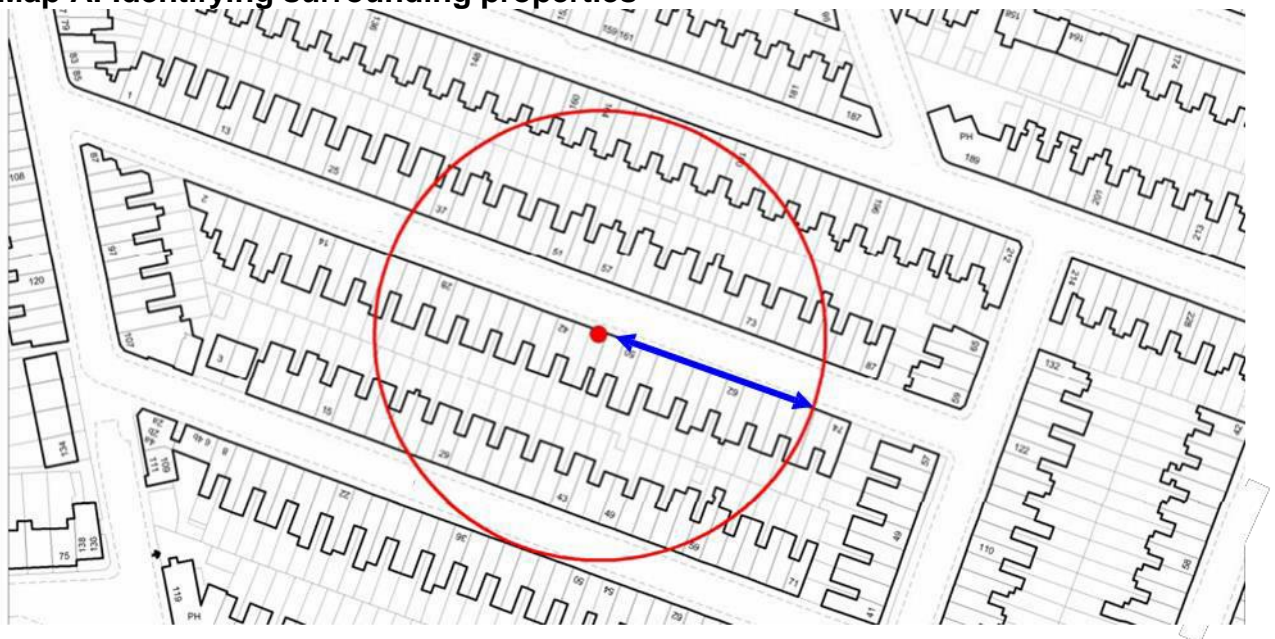
- | | |
|--|--|
| <ul style="list-style-type: none"> • To create an attractive living environment • To achieve the highest quality of design standards and development across the city • Protecting and enhancing the city's conservation areas, listed buildings and other heritage assets | <ul style="list-style-type: none"> • Percentage of people satisfied with their local area as a place to live • Improvements in design quality of development • New developments meeting Buildings for Life standards • Area of the city designated as conservation areas |
|--|--|

Appendix 4. - The 10% threshold - worked example

Worked example

- A4.1 A planning application is received for the change of use of a dwelling house from Class C3 to Class C4. In order to assess whether the area surrounding the application property is currently 'imbalanced' by HMO uses, or whether granting the application would create an 'imbalance', the council will first calculate how many residential properties (in total) fall within this area. (See 2.20 p12 for full details of the method that will be used.)
- A4.2 Map A shows that, in this instance, the total number of properties in the area surrounding the application property is 93.

Map A: Identifying surrounding properties



Map not to scale

- = application property
- ↔ = 50 metre radius
- = area surrounding application property

- A4.3 The City Council will then check its 'HMO database' in order to identify which of these properties it considers to be in HMO use. Map B shows that, in this instance, there are four HMOs in the area surrounding the application property.

Map B: Identifying properties in HMO use



Map not to scale

● = application property
 🏠 = properties in HMO use

A4.4 The number of HMOs as a percentage of all properties in the area surrounding the application property will then be calculated:

$$(4 \div 93) \times 100 = 4.3\%$$

So in this case, the percentage of HMOs in the area surrounding the application property is 4.3%.

A4.5 In accordance with Policy PCS20, applications for HMO use will only be allowed if the number of HMOs (as a percentage of all properties in the area surrounding the application property) is calculated to be less than 10% and wouldn't go above 10% if the application were to be granted.

Appendix 5. Evidence of harm

Introduction

A 5.1 This appendix explores the correlation between houses of multiple occupation in Portsmouth and the harm caused to the amenity of residents in their proximity. In order to do this complaints records received by the Council for both HMO and Non HMO properties have been compared. The City has 1,202 licenced HMO's compared to 94,128 non HMO's. Taking into account student HMO's and non-licenced HMO's the cities HMO stock is higher at around 4,300 in total. The impact of HMO's in the city is therefore expected to be higher than can be demonstrated by records relating to licenced HMO's only.

Sources of information

- A 5.2 A number of sources of data controlled by the City Council have been interrogated including:
- HMO licensing Public Register
 - Council tax records
 - Planning database
 - Complaint records from Public Sector Housing database

Table 1 breakdown of HMO and non HMO complaints by Ward

WARD	Licensable HMOs	complaints	Percentage of total Licensable HMOs	Non HMOs	Number of complaints	Percentage of total Non HMOs
Baffins	1	0	0.0	5947	27	0.5
Central Southsea	469	35	7.5	6064	123	2.0
Charles Dickens	56	3	5.4	5616	117	2.1
Copnor	6	2	33.3	6712	32	0.5
Cosham	4	0	0.0	5409	26	0.5
Drayton & Farlington	1	1	100.0	6307	18	0.3
Eastney & Craneswater	63	12	19.0	6771	72	1.1
Fratton	73	3	4.1	10291	111	1.1
Hilsea	8	1	12.5	6924	43	0.6
Milton	46	1	2.2	6524	61	0.9
Nelson	18	6	33.3	6417	107	1.7
Paulsgrove	3	2	66.7	6689	31	0.5
St Jude	140	26	18.6	8247	95	1.2
St Thomas	314	16	5.1	6210	73	1.2
Total	1202	108	9.0	94128	950	1.0

A 5.3 As shown in table 1 the total number of complaints relating to private sector housing is higher overall than those related to HMO's. When looked at as a proportion of the cities total housing however there are much more likely to be issues leading to complaints for a licenced HMO than a non HMO property.

A 5.4 Across the city as a whole there is a much higher proportion of complaints related to licenced HMO's. Complaints were received relating to 9% of all Licenced HMO properties compared to complaints received relating to 1% of non HMO properties in the City.

A 5.5 This is reflected in all wards with a significant proportion of HMO's ranging from 2x the number of complaints relating to HMO's compared to the non HMO stock in Milton Ward, up to 17x in Eastney and Craneswater.

Complaints about specific amenity impact issues

A 5.6 The Public Sector Housing complaints database categorised complaints received into a number of categories:

- Accumulation
- Damp
- HMO
- Licenced
- Mess
- Mould

- Neighbour
- Pest
- Student
- Waste

A 5.7 Looking at categories of complaint which most closely relate to the amenity impact of properties on neighbouring residents (table 2) it can be seen that for those categories of complaint (mess, neighbour, waste and HMO) the proportion of complaints received is higher for HMO properties than non HMO properties (12x). Other categories of complaint (such as damp /mould) are likely to be raised by residents of properties and not have an amenity impact of neighbours, so haven't been considered here.

Table 2: Summary of types of main areas of complaint with neighbouring amenity impact

	Licensed HMO	Percentage of total Licensable HMOs	Non HMOs	Percentage of total Non HMOs
Mess	2	0.17	38	0.04
Neighbour	2	0.17	45	0.05
Waste	13	1.08	84	0.09
HMO	21	1.75	70	0.07
Total	38	3.16	237	0.25

Appendix 6 - Identifying local impacts- Indications of concentration or proliferation of HMOs in a local area

- A6.1 The worked examples below detail how the specific proximity of HMOs to adjacent dwellings may give rise to a particular risk of harm to amenity and disturbance.
- A6.2 It should be noted that the circumstances described will be considered less likely to result in demonstrable harm where the properties are separated by an intersecting road or where properties have a back to back relationship where properties have their primary access in different streets. Subdivided units will be considered on a case by case basis.
- A6.3 In all cases, permission will not be recommended where the community is already imbalanced, or the proposal would lead to it being imbalanced in accordance with the adopted policy.

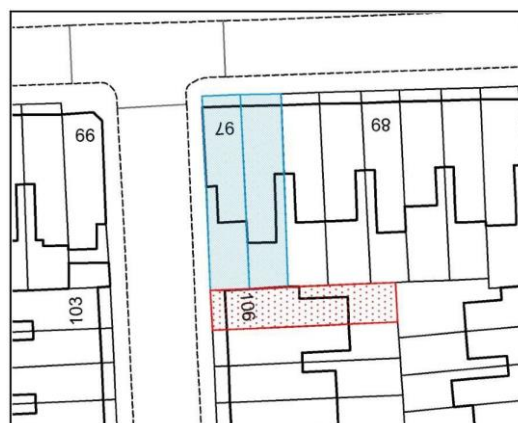
Worked example 1: Risk of 3 adjacent HMOs

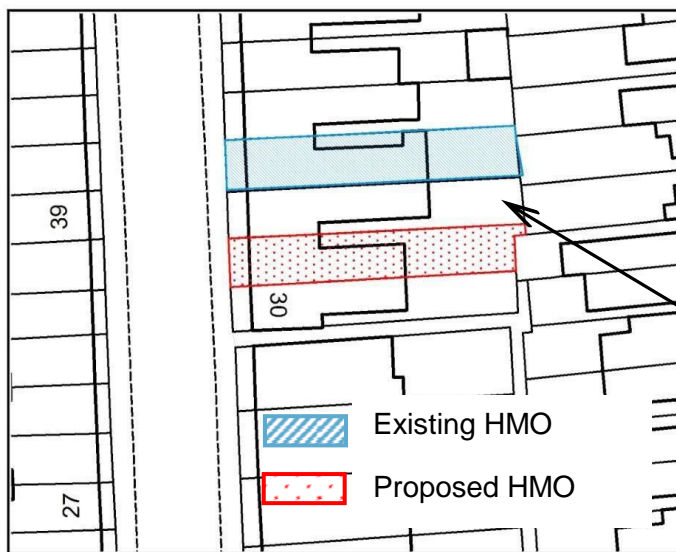


Due to the increased likelihood of disturbance and harm to amenity particular regard will be had to applications with the effect of causing 3 adjacent HMOs with access in the same street

Worked example 2: 3 adjacent HMOs with primary accesses in different streets

Where less than 10% of residential properties within a 50m radius of the area surrounding the application property are already in HMO use, it is considered that there is a reduced likelihood of adverse impact if a HMO application results in 3 adjacent HMOs as long as the primary access for the application property is located in a different street from the existing adjacent HMOs



Worked example 3: Property at risk of 'sandwiching'

Particular regard will be had to the potential adverse implications to amenity arising from proposal that would result in the 'sandwiching' of property between existing and proposed HMO.

Property at risk of being 'sandwiched'

End of document

Title of meeting:	Cabinet Member for Culture and City Development
Date of meeting:	29 th November 2019
Subject:	Interim Nutrient Neutral Mitigation Strategy for New Dwellings
Report by:	Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 The purpose of this report is to update the Cabinet Member on the detail of the Council's *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*, following the report to Cabinet on the outline strategy on 23rd August 2019

2. Recommendations

- 2.1 **To note the details of the *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*' methodology (See Appendix 1) and approve the adoption of the Strategy.**

3. Background

- 3.1. High levels of nitrogen draining from the Solent catchment area have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats and bird species.
- 3.2. Recent Court of Justice of the European Union (CJEU) decisions¹, have confirmed the opinion that increased sewage output from new, increased housing will have a likely adverse effect, in combination with other sources such as agriculture, on the protected habitats, and adequate mitigation for this effect is now needed. Since receiving Counsel advice on the matter, the Council has not determined planning applications for new dwellings, or development that would generate additional overnight stays, unless the proposal can demonstrate that it would be 'nutrient neutral' in terms of its impact upon designated habitat sites.

¹ Joined Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others* issued on 07 November 2018 and Case C-323/17 *People Over Wind, Peter Sweetman v Coillte Teoranta* judgement issued in April 2018, by the Court of Justice of the European Union (CJEU).

- 3.3. Officers have been working with colleagues at Partnership for South Hampshire (PfSH), engaging in dialogue with the University of Portsmouth, Natural England, Southern Water, Portsmouth Water and major land owners to consider ways 'nutrient neutral' mitigation can be achieved, especially in a long term, sustainable way. Members and Officers have also been lobbying to raise awareness of this matter and find solutions with central Government, the Local Government Association and the relevant environment and water industry regulators.
- 3.4. To address the issue in the short term, Officers across the Council have been progressing an interim mitigation strategy to help enable the Council recommence the grant of relevant planning permissions. The Interim Strategy is based on the principle water savings for the residential stock within the Councils control, either through holding existing facilities (due for redevelopment) vacant, or through retrofitting measures to improve water efficiency. These water savings will allow 'headroom' for the wastewater output of new development (conditioned to a higher than standard water efficiency of 110 litres per person per day), ensuring that no net increase in wastewater is sent from the Council's authority area to the Wastewater Treatment Works (WWTws) at Budds Farm in Havant. The water savings will be monitored and recorded as 'credit', which can be secured by applicants to help mitigate the impact of their proposals. The Council's Cabinet, at their meeting of 23rd August, noted the progress of the work to date, the principle of the overall strategy, and the intention to create a 'nitrate bank' to provide mitigation credit.

4. The Interim Nutrient Neutral Mitigation Strategy for New Dwellings

- 4.1. The Interim Strategy details the three routes currently available to applicants to achieve nutrient neutrality, which are as follows:
- Mitigation Option 1: Offsetting against the existing lawful land use (water use) on an application site, extant permissions or other land controlled by the applicant; and/ or
 - Mitigation Option 2: Other bespoke direct and in-direct mitigation measures, agreed in discussion with the Council and Natural England, such as Sustainable Urban Drainage Systems (SUDS), interception or wetland creation; and/ or
 - Mitigation Route 3: Purchasing of 'mitigation credit' from the control of, and water efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity.
- 4.2. The Strategy provides examples and case studies for the three options. A mix of options can be applied per proposal. It is expected that the potential for mitigation via Options 1 and 2 will be fully explored by applicants before the purchase of the Council's mitigation credit is sought.

- 4.3. While all of the Council's mitigation credit is currently formed of savings from water efficiency measures, there may be scope to add 'credit' from other sources in future subject to further investigation; alternatives are outlined in Section 5 of the Strategy. The development of any further strategies would have a strong preference for those able to deliver wider benefits for the city, particularly in light of the climate emergency declared by the Council in March 2019.
- 4.4. All mitigation proposals will still be considered on a case by case basis by the Council in consultation with Natural England.

Monitoring

- 4.5. It is anticipated, based on the four year average of PCC upgrade and void property works and minus a precautionary buffer recommended by Natural England, that water efficiency measures could create enough 'mitigation credit' for **518 new dwellings per annum**. The offsetting from PCC vacant assets that are pending redevelopment also provides additional credit to 'front load' the mitigation credit bank; an initial assessment (minus the precautionary buffer) suggests this source could **offset an initial 342 dwellings**.
- 4.6. The following will be recorded to monitor to the trajectory (the anticipated supply and demand) of the mitigation credit for the lifetime of the Interim Strategy:
- The number of upgrades undertaken by PCC Building Services, quarterly.
 - The drawdown of nitrate credit by applicants, both at the grant of planning permission (in principle use) and at the point of occupation of the proposal (credit implementation).
- 4.7. If monitoring indicates a need, it may be possible to accelerate the Council's planned water efficiency improvements in order to generate further wastewater headroom. Monitoring information will be published on the Council's website and updated regularly.

Implementation and Developer Contributions

- 4.8. Use of the Council's mitigation credit will require resourcing in order to cover both the cost of the works and the 'in perpetuity' costs of maintenance over life of the development (the duration of the impact). The intention is to resource this through a proportionate contribution from developers, collected and pooled through S.106 agreements, secured prior to occupation (the point of impact requiring mitigation).
- 4.9. The costs of the scheme are set out in Table 1. These costs will be applicable to major development proposals (10 units and above) only but will be subject to negotiation based on individual scheme viability. This will ensure the costs of mitigation will not prejudice the delivery of proposals with Affordable Housing provision for instance.

- 4.10. For minor and other development schemes, it is not proposed to seek to recover the full costs of the works, as not to disproportionately affect small and medium enterprise builders. Instead the securing of mitigation credit, in perpetuity, for minor development proposals would be subject to a £200 per unit administration and monitoring fee.

**Table 1: Mitigation Credit Bank Charging Schedule
(Cost Recovery in Perpetuity) for Major Development**

Water efficiency intervention	Savings (litre per household* per day)	Cost per unit	Maintenance contribution per unit
Over Shower Bath	96	£1,200	£500
Dual Flush Cistern upgrade	19.2	£200	£0
Total Efficiency intervention	115.2	£1,900	
<hr/>			
Average cost for efficiency upgrades to allow one new overnight stay (54.8 L/bedspace/day ²)		£903.82	
Average cost for efficiency upgrades to allow one new dwelling (2.4 occupants x 110l pppd = 264 l/d)		£4,345.17	

*a dwelling/household is considered to consist of 2.4 occupants

- 4.11. All proposals would be subject to standard conditions to both require higher levels of water efficiency and to prevent occupation until such time as the 'Nutrient Neutral' mitigation credit has been funded through the s.106 obligation.

Internal Governance

- 4.12. The Mitigation Credit Bank will be administered and monitored by the department's Planning Obligations monitoring resource, and updated and published quarterly for transparency.
- 4.13. Where Council intends to utilise vacant Council assets (residential institutions and significant residential blocks) to offset new development, the internal agreement regarding these assets is likely to take the form of a resolution from the Council's Cabinet or the relevant Portfolio Members. If these assets were to be sold in future, consideration has been given to how such agreements would be transferred e.g. s.111 agreements could be entered into with a prospective purchaser, appending a form of s.106 obligation to be entered into upon transfer.

² Source: <https://www.gov.uk/government/publications/energy-and-carbon-implications-of-rainwater-harvesting-and-greywater-recycling>. Source and end use split: CIRIA (2006) C657. Note: Guest room use split by WC, washing and basin tap use for residential. Locker room/public toilet use split by WC, urinal and 'washing' use for offices.

Next Steps

- 4.14. Natural England has no significant objections to the approach of the Interim Strategy, subject to feedback from their own legal team in due course. Some further technical discussions will be necessary to explore matters including the expectation for a Water Consumption Monitoring Strategy and to further discuss the degree off-setting can reasonably be provided by existing, vacated PCC assets (in terms of water usage data); any changes to the possible level of 'credit' utilised from this source (Mitigation Route 3, B) can be captured through the Strategy's monitoring trajectory (Appendix 3 of the Strategy) in due course. Natural England will continue to be consulted on all individual planning applications which are required to be 'nitrate neutral' and their proposed mitigation schemes.
- 4.15. Officers will continue discussions with developers to identify what steps they intend to take independently to achieve nitrate neutrality within their proposals, including opportunities to work with third party landowners. Following such discussions, the anticipated adoption of the Interim Strategy by the Council would enable the recommencement of determining affected planning applications which are stalled by the nitrates issue alone.
- 4.16. The next Planning Applications Committee date is scheduled for 4th December, plus a potential additional Planning Committee before the end of the year on 18th December.

4. Reasons for recommendations

- 4.1 The Portfolio holder is requested to note details of the Interim Nutrient Neutral Mitigation Strategy for New Dwellings' methodology summarised in this report and detailed in Appendix 1, and approve the adoption of the Strategy.
- 4.2 The Interim Strategy provides a potential framework for planning applications submitted within the Portsmouth authority area to achieve Nutrient Neutrality, and thereby providing the means to address the uncertainty relating to the impact of development (from additional wastewater outputs) on the water environment within protected habitat sites, as required under the Habitats Regulations.
- 4.3 The Strategy's proposed methodology for implementation, resourcing (developer contributions) and monitoring provide a legally robust framework for applicants to secure 'nutrient neutrality' for development proposals in perpetuity.
- 4.4 Any changes to the scheme deemed necessary, following further discussions with Natural England, could be captured by the on-going monitoring of the Strategy. Mitigation for all applications will continue to be assessed on a case by case basis.

5. Equality impact assessment

- 5.1 The recommendations of this report have no impact on the protected equalities groups.

6. Legal implications

- 6.1 The Interim Nutrient Neutral Mitigation Strategy for New Dwellings provides an alternative way for developers to satisfy the appropriate assessment requirements under the Conservation of Habitats and Species Regulations. Natural England, as statutory consultee for the natural environment, has indicated that it can support such an approach in principle. As identified in the body of this report, there are further steps required to establish and manage the 'nutrient bank'.
- 6.2 The collection of monies and inclusion of other related obligations through s.106 agreements or unilateral undertakings in accordance with the Interim Nutrient Neutral Mitigation Strategy for New Dwellings appears capable of meeting the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010, which require that any s.106 obligations constituting a reason for granting planning permission are:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

This is because the Interim Nutrient Neutral Mitigation Strategy for New Dwellings addresses a pressing planning issue, requires other avenues to securing nutrient neutrality to be explored, and ensures any s.106 obligations will be considered in the particular circumstances of an application with scope for appropriate flexibility.

7. Director of Finance's comments

- 7.1 The Interim Nutrient Neutral Mitigation Strategy for New Dwellings is key to the economic prosperity of the City Council. It is vital that the Council are able to be able to approve both its own and other developments through the planning process.
- 7.2 The City Council rely on planning fees to be able to fund the planning service without these fees the Council would have to reduce its planning function until such time as a permanent solution to Nitrate Neutrality was found, this would be both costly and inefficient for the Council.
- 7.3 The Charges set out in table one are designed to ensure that any costs associated with measures that the Council is putting into its Social Housing are recovered, and this money will be remitted to the Housing revenue Account.

.....
Signed by:

Appendices:

Appendix 1 - Interim Nutrient Neutral Mitigation Strategy for New Dwellings
(Appendix 1, 2 and 3 to the Strategy are provided as a background paper on request due to the document / file size)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Appendix 1a - NE Advice on Achieving Nutrient neutrality for New Development in the Solent Region	Available on the planning W: Drive and on request.
Appendix 1b - Nutrient Budget Workbook	Available on the planning W: Drive and on request.
Appendix 2 PCC Water Efficiency Data Workbook	Available on the planning W: Drive and on request.
Appendix 3 PCC Nitrate Credit Monitoring Trajectory	Available on the planning W: Drive and on request.

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

Portsmouth City Council

Interim Nutrient Neutral Mitigation Strategy for New Dwellings

for the 2019 - 2023/ 24 period

November 2019

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i. Executive Summary

To add

1. Introduction

- 1.1 High levels of nitrogen draining from the Solent catchment area have caused excessive growth of green algae (a process called eutrophication), which is having a recognised, detrimental impact upon the region's internationally protected habitats.
- 1.2 Following changes in European Case law, Natural England (the government's advisor for the natural environment) has advised Local Planning Authorities (LPAs) that all new development involving, or generating additional, overnight stays should be 'nutrient neutral', as one means of ensuring that development does not add to the existing nutrient burdens. Impacts from additional wastewater generated by new development on water quality must be appropriately addressed in order for the Appropriate Assessments¹ of proposals to conclude that there are no adverse effects on habitat sites (and for the Council's decisions to be legally compliant).
- 1.3 Mitigation measures to become 'nutrient neutral'² are therefore required for additional dwellings (inc. the intensification of dwellings), tourism related development and any other development likely to generate an overnight stay, due to the additional wastewater generated.
- 1.4 Where applicants are unable to provide their own mitigation, the provisions of the Strategy will enable applicants to make a monetary developer contribution for the Council's 'nutrient neutral' mitigation package. Developers are still encouraged to put forward own mitigation proposals, for either part or all of the impact of the proposal where possible. However, it is acknowledged that as the majority of proposals in the city are small scale and/ or within tightly constrained brownfield sites, a contribution under the Interim Strategy may be more practicable.
- 1.5 The aim of this Interim Strategy is to help the Council meet the tests of the Habitat Regulations in perpetuity, avert the potential risk of legal challenge and to provide certainty for applicants. All applications, and the associated nitrate neutral mitigation proposals, will still be determined on a case by case basis in consultation with Natural England and other key consultees.
- 1.6 The Interim Strategy is intended to provide a mitigation solution for the short term (three to four years) to enable house building to continue in Portsmouth. The Council, together with the *Partnership for South Hampshire* (PFSH) authorities, will continue to develop a comprehensive, longer term strategic solution and lobby the Government to address the main sources of water pollution.
- 1.7 This Strategy does not deal with any other impacts from new dwellings on the Solent habitat sites (such as loss of habitat or increased noise) or the potential impact of other types of development (such as new employment sites). Separate mitigation may be required to address these additional impacts on the SPAs that arise from new development. The impact of in-combination recreational visits

¹ An assessment required by the Habitats Directive (transposed by the *Conservation of Habitats and Species Regulations 2017* (as amended)) to determine whether a plan or project is likely to have a significant impact on a Natura 2000 site.

² 'Nutrient neutrality' would be achieved where the wastewater output of a development (calculated by water use in litres per person per day) sent to Wastewater Treatment Works can be offset by other measures.

arising from housing is still addressed separately by the Solent SPAs by the *Solent Recreation Mitigation Strategy* (known as 'Bird Aware').³

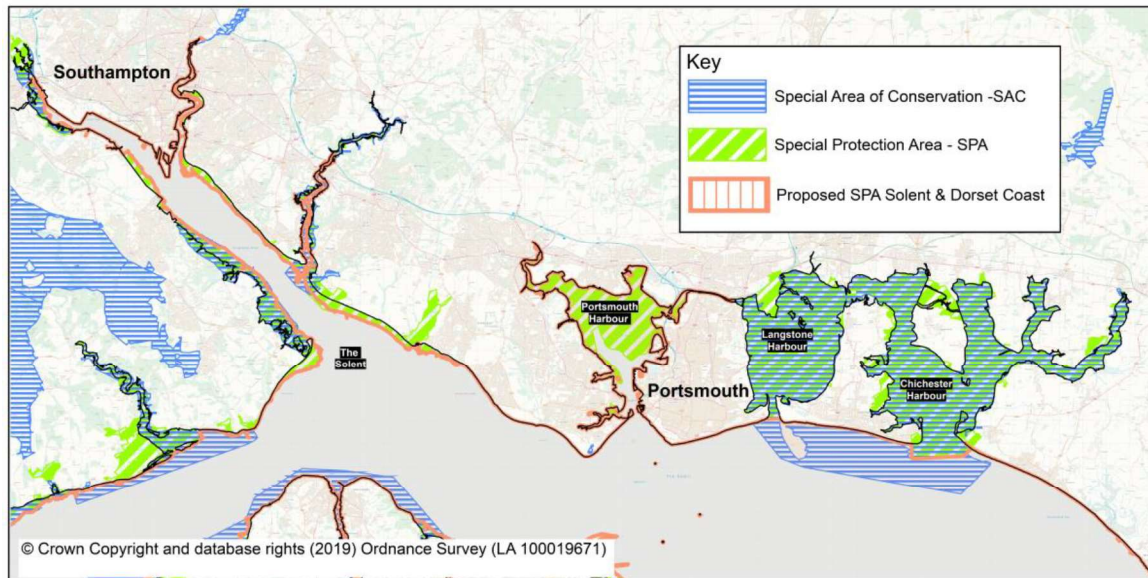
- 1.8 This document sets out the background to the water quality issue affecting the Solent; the roles of different agencies; what types of development require mitigation; mitigation options, a schedule for developer contributions and the expected arrangements for implementation, monitoring and review of the Strategy.

2. Background

2.1. Why is Mitigation Needed?

- 2.1.1 The Solent's water environment is protected under the *Water Environment Regulations*⁴ and the *Conservation of Habitats and Species Regulations*⁵ and has national protection for parts of the coastline and seas⁶.
- 2.1.2 The best available up-to-date evidence identified that some areas of the internationally designated Solent habitat sites (Special Protection Areas (SPAs), Special Areas of Conservation (SACs), and potential Special Protection Areas (pSPAs) are in an 'unfavourable' condition due to existing levels of nutrients (causing eutrophication) and therefore have an **unfavourable conservation status** under the Habitats Regulations⁷. Eutrophication also restricts the growth, distribution and variety of food available for wading birds also protected under the Habitat regulations.

Figure 1: Map of the Solent's Internationally Designated Habitat Sites



³ Solent Recreation Mitigation Partnership (December 2017) *Solent Recreation Mitigation Strategy*. See <https://www.birdaware.org/>

⁴ *The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017*

⁵ *Conservation of Habitats and Species Regulations (England and Wales) Regulations 2017 (as amended)*

⁶ Including *Wildlife and Countryside Act 1981* (as amended), *Countryside and Rights of Way Act 2000*, *Marine and Coastal Access Act 2009* and *Natural Environment and Rural Communities Act 2006*.

⁷ Natural England's Condition Assessments of the Solent habitat sites were undertaken in the summer of 2018 summarised in Natural England (June 2019) *Advice to LPAs: Advice On Achieving Nutrient Neutrality For New Development In The Solent Region*

- 2.1.3 While the PFSH *Water Quality Working Group* was in the process of preparing a long term strategy to address the impacts of anticipated growth in south Hampshire on the water environment beyond the year 2020, changes in European case law resulted in nutrient enrichment becoming an immediate planning issue for Local Authorities. A Court of Justice of the European Union (CJEU) decision, known as the 'Dutch Case'⁸ (in combination with the 'Sweetman' judgement⁹) has implications for areas where the conservation status of a habitat type is already known to be "unfavourable" (as in the case in the Solent) and the authorisation of activities (i.e. new housing) which would add further nitrogen loading to that habitat (through additional sewage output). The judgement therefore applies to the decisions of LPAs within the Solent area.
- 2.1.4 Natural England advise that the uncertainty about the impact of new development on designated sites therefore now needs to be recognised for all proposals that are subject to new planning permissions and have inevitable wastewater implications from additional overnight stays. Any increase is deemed significant, however small (e.g. one additional dwelling), due to the in-combination impacts.
- 2.1.5 Natural England's stance is that the achievement of **nutrient neutrality**, with a calculated nitrogen budget, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient burdens and will enable Appropriate Assessments to conclude no adverse effects on international sites.

2.2. Sources of Nutrient Enrichment

- 2.2.1 Nutrient cycles are natural processes. However, these systems have been overloaded in a relatively short span of time (post-industrialisation), and this has been particularly attributed to application of synthetic fertilisers in agricultural practices.
- 2.2.2 An excessive richness of nutrients (including Nitrogen and Phosphorous) can cause a dense growth of plant life and algae (a process known as Eutrophication); this depletes the oxygen in the water body, which can result in reduced biodiversity. Reduced oxygen in drinking water can also be harmful to people¹⁰. Nutrient pollution can also damage terrestrial habitats by altering plant growth rates, changing plant communities and disrupting the food chain for wildlife.
- 2.2.3 Nitrogen is converted into its multiple forms as it circulates among the atmospheric, terrestrial and marine ecosystems. There are two main forms of nitrogen - organic and inorganic. Within certain levels, nitrogen is beneficial to animals, plants and the wider environment, but if highly concentrated (in oxidised form as nitrates (stable compound) or nitrites (unstable compound))

⁸ Joined CJEU Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others* issued on 07 November 2018.

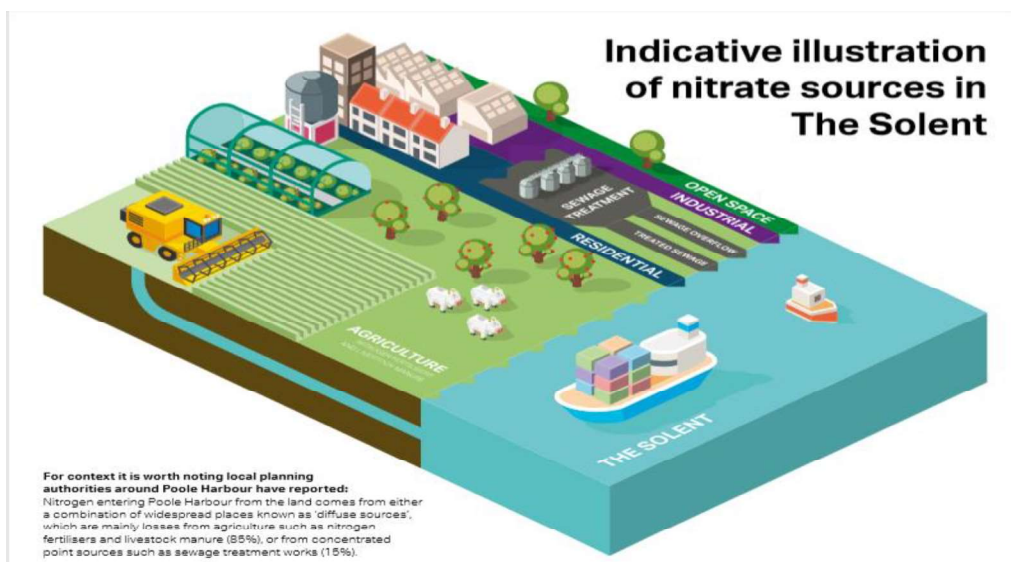
⁹ CJEU Case C-323/17 *People Over Wind, Peter Sweetman v Coillte Teoranta* judgement issued in April 2018

¹⁰ *Water Supply (Water Quality) Regulations 2000* impose stringent standards for over 50 different parameters that are used to assess the quality of drinking water; 50 mg/l (milligrams per litre) of nitrate are allowed in drinking water. Portsmouth Water have install blending arrangements to meet these limits. For more information see: <https://www.portsmouthwater.co.uk/about-us/water-quality/>

can have a damaging impact on ecosystems and the organisms that depend on them.

- 2.2.4 Phosphorous is an essential nutrient for plant growth'; in fertiliser it helps plants convert other nutrients into usable building blocks for growth. Phosphorous is not part of the nitrogen cycle but has similarities with nitrates as a pollutant; run-off from agriculture use and sewage output can cause eutrophication and ecological deterioration of surface waters. Generally, phosphorous is considered to be more of a pollutant in rivers than other water bodies and groundwater sources, though this depends upon the local geology.
- 2.2.5 Water quality is affected by a combination of different pollutants, including nitrogen and phosphorous. It is considered that the cycle of both nutrients, and their interaction with each other, need to be understood to improve the ecological status of water sources¹¹.
- 2.2.6 Notwithstanding the above, there is evidence that the principal nutrient that tends to drive eutrophication in the marine environment is nitrogen, and this is supported by modelling and research undertaken by the Environment Agency within the Solent estuaries. **The best available evidence at this time therefore indicates that the focus within the Solent catchment should be on nitrogen reduction.**
- 2.2.7 Overall it is thought that around 75% of nitrogen pollution arises from agriculture land uses and 25% from urban land uses. See Figure 2 and Table 1 for more information on the sources of excess nitrogen and its impacts. Nitrate enrichment is not an issue exclusive to the Solent catchment; about 58% of land in England was within a 'Nitrate Vulnerable Zone' (NVZ) in 2017, designated as at 'risk from agricultural nitrate'¹².

Figure 2: Sources of Nutrients



¹¹ House of Commons Environmental Audit Committee: UK Progress on Reducing Nitrate Pollution, Eleventh Report of Session 2017–19

¹² NVZ land is comprised of rivers breaching the 50 mg/l nitrate limit (47%); groundwater breaches the 50 mg/l limit (25%) and eutrophication in estuaries and lakes/reservoirs (6% (13 estuaries and 68 lakes/ reservoirs)).

Table 1: Source of Nitrogen Pollution and Impact Pathways¹³

Source of Nutrients	Pathway/ Impact
Agricultural practices	Manufactured fertiliser (containing urea, ammonium and nitrate) increases agricultural production by replacing naturally occurring nitrogen in soil, but excess can run off and leach from crops and grasslands into water systems causing pollution. Animal wastes can also result in nitrate and phosphorous leaching into water systems if poorly managed.
Sewage	Nutrient enrichment from treated and untreated domestic and industrial wastewater outputs. This can occur from permitted discharges from Wastewater Treatment Works (WWTs), unpermitted spills and other wastewater infrastructure failures (including urban runoff and overflows).
Urban Runoff	Leaching of pollutants (e.g. atmospheric deposition, lawn fertiliser, pet waste) from urban areas carried by rain and stormwater from roads and other impermeable surfaces into sewers and watercourses.
Atmospheric Deposition	The emission of pollutants from the energy (inc household heating), transport, agriculture and industrial sectors also form part of the wider nitrogen cycle. This includes nitrogen oxides ¹⁴ , as well as ammonia and particulate matter (PM10 and PM2.5) which can mix with other pollutants such as ozone and sulphur dioxide. Such emissions can lead to negative impacts on human health and ecosystems; for instance when nitrogen oxides dissolve in water and decompose, they forms nitric or nitrous acids which can lead to acidity and eutrophication.
Natural Sources	The build-up and/ or run off of algal growth, organic decay and faecal matter.
Past Agricultural and Industrial practices	The gradual leaching of nitrates into groundwater sources from high historic use, despite current controls and decreases in use over the last 35 years, due to the geology in some parts of the UK (particularly in chalk and thick saturated zones). It is estimated that pollution from such sources may not peak for another 60-100 years. ¹⁵
Potential Future Sources/ Increases	<ul style="list-style-type: none"> - Increased effluent from population growth. - Increased land pressures from increasing demand for food from population growth and the UK's potential departure from the EU. - Changes to the stability of nitrate in soils from climate change increasing the frequency and intensity of rainfall and drought.

¹³ Table adapted from Annex 1 of the House of Commons Environmental Audit Committee UK Progress on Reducing Nitrate Pollution Eleventh Report of Session 2017–19.

¹⁴ Nitrogen oxides are the generic name for a range of gases, including nitrous oxide, nitrogen dioxide, nitric oxide and nitrous oxide.

¹⁵ House of Commons Environmental Audit Committee UK Progress on Reducing Nitrate Pollution Eleventh Report of Session 2017–19, para. 35.

2.3. Regulatory Regimes and Government Agency's Positions

2.3.1 The regulation of the water industry and the agricultural sector are matters for the Government and its agencies and, as indicated in the previous section, the nitrogen output of new dwellings is relatively minor compared with other sources. Nevertheless, the planning system provides the comprehensive regulatory mechanism to address such impacts explicitly for each new consent. This is in contrast to the other contributing sources of nitrate pollution, which tend to operate within existing consent regimes or through voluntary agreements.

2.3.2 The roles of the relevant bodies are as follows:

The **Department for Environment Food and Rural Affairs (Defra)** issues guidance relating to the natural environment and the food and farming industries, and sets the overall water and sewerage policy framework in England. This includes limits on the maximum average amount of manufactured fertiliser and organic manure that can be applied to most crops in NVZs, and the conditions in which this can be done. Defra's Catchment Sensitive Farming (CSF) programme works with farmers to take voluntary actions to reduce diffuse water pollution fertiliser and slurry run-off. Natural England and the Environment Agency are executive non-departmental public bodies of Defra.

The **Environment Agency** is the water industry's environmental regulator and defines the environmental permits that water companies are required to meet. These permits set limits on the amount of certain pollutants that can be released. The EA works with water companies, including Southern Water, to develop the Water Industry National Environment Programme (WINEP) which includes schemes and investigations that protect and enhance the environment.

Natural England is the government's adviser on the natural environment with duties for protecting and enhancing biodiversity for the benefit of present and future generations.

Ofwat are the economic regulator of the water and sewerage sectors in England and Wales. They ensure that the water companies properly carry out their functions and protect the interests of consumers.

Southern Water is the relevant statutory undertaker for wastewater services in the PFSH area. It is regulated by a permit system set by the Environment Agency which limits the amounts of nitrates and phosphates which can enter water courses from Southern Water's infrastructure. **Portsmouth Water** are the drinking water supplier to Portsmouth and the surrounding area. As part of Ofwat's 2019 price review (PR19), all water companies must submit a detailed business plan to Ofwat, outlining how they will meet the needs of their customers from 2020 to 2025 and beyond; covering investment proposals, how they will ensure the long-term resilience of their infrastructure and operations and fee proposals.

Ministry of Housing, Communities and Local Government (MHCLG) is the government department with responsibility for increasing the housing supply in England and boosting local economic growth. MHCLG

sets out planning policy guidance for Local Authorities, including the Housing Delivery Test; if a Local Authority falls 5% below its set housing requirement, the government will introduce sanctions depending on the extent of the shortfall.

Local Planning Authorities (LPAs) are responsible for carrying out planning functions (plan-making and the determination of planning applications) for their authority area. As a public body, LPAs also have a duty to conserve and enhance biodiversity under the Natural Environment and Rural Communities Act 2006.

- 2.3.8 At the time of preparing this Strategy, there were contradictory positions on the matter from Central Government, both within Defra and between Defra and Ministry of Housing, Communities and Local Government (MHCLG).
- 2.3.9 As explained in Section 2.1, Natural England has advised that under the requirements of the Habitat Regulations, the existing uncertainty about the deterioration of the water environment must be appropriately addressed in order for the assessment of a proposal to be legally compliant. LPAs are therefore advised to be 'as precautionary as possible' when addressing uncertainty and calculating nutrient budgets.
- 2.3.10 In contrast, a Technical Guidance Note issued by the Environment Agency (June 2019)¹⁶ states that 'Using our evidence we have confirmed that no further investment is needed to treat wastewater to a tighter nitrogen limit for any of the treatment works in the Solent area'. The Environment Agency go on to say that: 'Where new development can be accommodated within the current wastewater discharge activity permit limits of individual Wastewater Treatment Works (i.e. that there is capacity to take the extra wastewater flows from new development whilst still treating effluent to the same standard) then we consider the development would be acceptable'.
- 2.3.11 Another dimension to the issue is whether the current wastewater permit limits issued by the Environment Agency are fit for purpose. A report published by Ofwat, in June 2019¹⁷, identified that Southern Water were responsible for serious failings in its statutory duties as between 2010 and 2017, including significant unpermitted and premature spills of wastewater (amounting to thousands of hours), insufficient planning and investment in their infrastructure and intentional misreporting of permit breaches. Ofwat proposed a financial penalty for these breaches, the majority of which would be a customer rebate. PfSH made representations the Ofwat report, expressing on concern on the scale of the incidences and suggest that financial penalty ought to address the harm caused, potentially in the form of a Remediation Fund¹⁸. It is acknowledged that Southern Water have since started to improve its practices, and are working with the PfSH Local Authorities through the *PfSH Water Quality Working Group*.
- 2.3.12 The Council, through PfSH, has engaged with Government on the need for a joined up approach and the need to develop a comprehensive, long-term, funded

¹⁶ Environment Agency (June 2019) Technical Guidance Note Solent and South Downs: *Wastewater treatment capacity for new development in the Solent Area*. Available from: <https://www.push.gov.uk/wp-content/uploads/2019/08/Environment-Agency-Technical-Guidance-Note-on-Wastewater-Treatment-Capacity-in-the-S...pdf>

¹⁷ Ofwat (June 2019) Notice of Ofwat's proposal to impose a penalty on Southern Water Services Limited

¹⁸ PfSH (31 July 2019) Report to the Partnership for South Hampshire Joint Committee: *Nutrient Neutrality Update*

mitigation strategy for the Solent area, given the clear conflict of these issue with the urgent need to deliver housing and support local economic growth. MHCLG confirmed, in September 2019, it was working closely with colleagues in Natural England, the Environment Agency and DEFRA to understand potential resolutions to this issue. One proposal, promoted by PfSH, is that the Environment Agency should be instructed to commence reviews of the existing wastewater treatment permit levels for nitrogen, with robust Appropriate Assessments.

- 2.3.13 The on-going work of the PfSH *Water Quality Working Group*¹⁹ will include a review of the PfSH 2018 *Integrated Water Management Strategy* (IWMS)²⁰. The review will assess the sensitivity of the whole catchment and address water resource capacity, supply and quality issues as well as testing some of the underlying assumptions in the original 2018 IWMS.

¹⁹ PfSH Water Quality Working Group is comprised of representatives from the South Hampshire Local Authorities (Hampshire County Council; the unitary authorities of Portsmouth Southampton and district authorities of Eastleigh, East Hampshire, Fareham, Gosport, Havant, New Forest, Test Valley and Winchester and New Forest National Park Authority), Chichester District Council, South Downs National Park Authority, Natural England, Environment Agency, Southern Water and Portsmouth Water.

²⁰ PfSH (March 2018) *Integrated Water Management Study* prepared by Amec Foster Wheeler Environment & Infrastructure UK Limited

3. The Interim Mitigation Measures

- 3.1 The mitigation options in this Interim Strategy provide a possible framework for applicants to demonstrate and secure 'nutrient neutrality' in perpetuity for their proposals, whilst a longer term strategy for the Solent is being developed.

3.1 What type of development requires mitigation?

- 3.1.1 Mitigation is required for development that results in a net increase in population, or draw additional visitors from beyond the catchment, due to the inevitable additional wastewater implications. This is expected to apply to planning applications, permissions in principle and prior approvals²¹ for the following:
- New dwellings and residential accommodation, including changes of use (e.g. office to residential)
 - Homes in Multiple Occupation enlargements (Class C4 Use to Sui Generis Use)
 - Student accommodation
 - Dwellings to be used as holiday accommodation (e.g. caravans)
 - Hotels
 - Tourism attractions
- 3.1.2 Mitigation should not be required for wastewater arisings from:
- Household (Class C3 Use) extensions for extra bedrooms, or for conversions from a dwelling (Class C3 Use) to a House in Multiple Occupation (HMO) (C4 Use). This is because there is no upper limit on household (Class C3 Use) occupation within a single family and therefore such applications do not necessarily result in a net increase in population.
 - Other uses that do not involve overnight accommodation or generate overnight stays. E.g. Commercial development, employment uses or community facilities. This is because it is assumed, to avoid double counting of wastewater arisings, that anyone living in the catchment also works and uses facilities within the catchment.
- 3.1.3 The need for mitigation for applications for temporary/ transit pitches and/ or permanent accommodation for gypsies and travellers would be assessed on a case-by-case basis by the Council in consultation with Natural England.
- 3.1.4 Early discussion with the Council on the need for mitigation, determining the impact of the proposal and potential mitigation options is strongly encouraged.

3.2 Mitigation Options

- 3.1.5 To address the uncertainty about the impact of new development on designated habitat sites in the Solent, applications for development requiring mitigation must submit information on how it is proposed to achieve Nutrient

²¹ Under the provisions of Schedule 2 of the *Town and Country Planning (General Permitted Development) Order (England) 2015* (as amended)

Neutrality, including a calculated **Nitrogen Budget of the proposal** and the options explored and discounted as applicable.

3.1.6 For advice on calculating a Nitrogen Budget see Natural England's Methodology for further details and the calculation worksheet provided by the Council (separate Appendix 1).

3.1.7 The following approaches are currently considered to be acceptable, in principle, as means of achieving or contributing to nutrient neutrality:

Mitigation Option 1: Offsetting against the existing lawful land use (water use) on an application site, extant permissions or other land controlled by the applicant; and/ or

Mitigation Option 2: Other bespoke direct and in-direct mitigation measures, agreed in discussion with the Council and Natural England. For instance, Sustainable Urban Drainage Systems (SUDS), interception or wetland creation; and/ or

Mitigation Route 3: Purchasing of 'mitigation credit' from the control of, and water efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity.

3.1.8 A mix of options can be applied and the Council would expect the potential for mitigation via Options 1 and 2 above to be fully explored by applicants before the purchase of the Council's mitigation credit (Option 3) is sought. **All mitigation proposals would be considered on a case by case basis in consultation with Natural England.**

3.1.9 Proposed mitigation measures would need to be delivered prior to first occupation, which is when the harm would occur in this instance. A phasing of delivery and mitigation is possible for larger developments.

3.1.10 It is worth noting that the practicable mitigation options for the majority of proposals in Portsmouth (small scale brownfield development plots) are likely to be related to the water output of the proposed development. The estimated scale of water use is also the starting point for Natural England's methodology (see Appendix 1) for determining the nitrogen load of a proposed development.

Mitigation Option 1: Off-Setting Solutions

3.1.11 In some instances the existing lawful use (water output) or application history of a development site could be taken into account for the Nitrogen Budget of the proposal to help reduce or negate the impact of the proposed use. The following examples could be discussed as potential off-setting measures:

- Redevelopment to a lower or equal occupancy.
- Dwellings numbers/ estimated water use²² from extant planning permissions.
- Changes of use on other land which drains into the same catchment and is controlled by the applicant (either directly or by agreement) in perpetuity. For example, the ceasing of a relevant wastewater

²² Best available evidence.

generating use, or a change of use to land with a lower nitrogen loss (e.g. agricultural land to open space). Any changes of land use would need to be enforceable in perpetuity.

- Other significant water savings which can be sufficiently evidenced (e.g. ultra high water efficiencies).

3.1.12 All proposals will be expected to implement higher standards of water efficiency (no more than 110 litres per person per day), to be secured by condition.

Case Study of Mitigation from Direct Off-setting

Site: Longdean Lodge, Hilsea

Developer: Portsmouth City Council

Proposal: Development of 13 supported living flats

Mitigation: The site previously contained 48 bedspaces in a care home occupied with poor water efficiency, creating 7,584 litres of waste water per day. However this use was ceased and the building demolished more than three years ago such that the previous wastewater impacts cannot be 'credited' against the new development. The developer (Portsmouth City Council) has accepted a condition on the development of the site for 13 supported living flats, requiring higher water efficiency of 110 litres per person per day. This therefore requires direct mitigation for 1,430 litre of wastewater per day from the proposed new units. Edinburgh House previously contained 32 units/ bedspaces, meaning its permanent vacancy results in a wastewater reduction of 4,653 litres per day*, an improvement adequate to mitigate the development of Longdean (an estimated output of 3432 / 1430 lpppd), with the excess 'credit' being added to the Council's 'Nutrient Neutral' Mitigation Credit bank.

A resolution from Cabinet/ the relevant portfolio Member(s) will ensure that Edinburgh House is not to be occupied or disposed of without securing its own nutrient mitigation measures in accordance with this strategy. The resolution would be noted with the property and GIS reports; if Edinburgh House was to be sold in future, a s.111 agreement could be entered into with a prospective purchaser, appending a form of s.106 obligation to be entered into upon transfer

*Calculated at the average water consumption rate for Portsmouth of 145.4 lpppd.

Mitigation Option 2: Bespoke Mitigation Solutions

3.1.13 If direct off-setting is insufficient to result in nitrate neutrality other bespoke mitigation options should be explored to be incorporate in the design or delivery of the proposed relevant development. Examples of options supported in principle by Natural England include the following:

- Measures that will remove nitrogen draining directly from individual development sites, such as incorporating on-site wetland or reed beds designed as part of a sustainable urban drainage (SUDs) system. Wetlands receiving nitrogen-rich water can remove a proportion of this nitrogen through processes such as denitrification and sedimentation.
- The creation of wetlands, SANG, woodlands, nature reserves and other Green Infrastructure (GI) from agricultural land, leading to a change in land use to a lower level of nitrogen input within the same catchment and securing this in perpetuity.
- The creation of agreements, either within the authorities and Southern Water or with third parties to provide and maintain an increase in nitrogen offsetting from catchment management measures. This could include interceptor wetlands or woodland planting schemes on a farm in the catchment.

Case Study of Mitigation from Bespoke Solutions

Site: St James Hospital

Developer: Homes England and partners

Proposal: Development of 107 dwellings

Mitigation: To secure nitrate neutrality Homes England have offered to secure the change of use of an area of agricultural land within the relevant catchment to a use with significantly less nitrogen deposition. Using the standard methodology (summarised below), the reduction in total nitrogen has been identified as sufficient to mitigate the increased nitrate production from the redevelopment of land at St James Hospital, and further sites in Portsmouth as well as sites in the wider catchment outside of Portsmouth.

Methodology:

Total area of land to be used for mitigation = 4.13 ha
Current Nitrogen deposition from the land = 128.856 kg/
Proposed Nitrogen deposition from the land = 20.650 kg/ yr

(A) **Net Nitrogen reduction** = 108.206kg /yr

Proposed dwellings at St James Hospital = 107
Nitrogen production per dwelling (with water efficiency) = 1.0009kg/ yr

(B) **Total Nitrogen production** = 108.013kg/ yr

Net Nitrogen introduced to catchment (A-B) = -0.193 kg/ yr

Mitigation Route 3: The Council's 'Nutrient Neutral' Mitigation Credit

- 3.1.14 Once a developer has fully considered and evidenced the opportunities for offsetting the proposed development's Nitrogen Budget by maximising any potential opportunities under Options 1 & 2 (i.e. offsetting against relevant previous on-site uses and potential alternative uses on other land that can be bought into the developers control, and design and delivery opportunities to mitigate any remaining excess nitrogen); then support from the Council's 'Nutrient Neutral' mitigation credit bank can be sought.
- 3.1.15 The Council is able to use its influence [as landowner] to make permanent changes and decisions regarding its existing property holdings, and has the flexibility to consider other mitigation options. Accumulated water efficiency improvements, and other water savings from the control of the Council's own assets, can be used to provide wastewater 'headroom' (or 'credit') for new development. These savings, in combination with securing higher water efficiency standards for new development by condition, should ensure that there is no net increase in wastewater from the city area to its Wastewater Treatment Works²³ (WwTW). If less water is sent to the WwTW for processing, less treated wastewater can be released in the Solent under its permitted concentration limit for nitrogen which is measured in milligrams per litre.
- 3.1.16 These savings will be quantified and accrued in a live database for the Council to monitor and release as 'credit' that can be purchased to offset the potential impact of new development. These mitigation credits will be non-transferable, and may only be used to mitigate development within the administrative area of Portsmouth City Council, unless specifically agreed in writing by the Council as part of an agreed Duty to Co-operate arrangement.
- 3.1.17 As Natural England expects any mitigation measures to be secured 'in perpetuity', it will accept such water saving measures (in principle) made by a public body about changes to its own assets to qualify. In general, Natural England do not accept such measures within the private sector at this time, due to uncertainties in whether such improvements can be secured over the long term.
- 3.1.18 The Council is currently able to accumulate 'mitigation credit' to help offset new development from the following:
- a. Water efficiency improvements to the Council's housing stock**
- 3.1.19 It is known that annual improvement works to the Council's housing stock by PCC Housing, Neighbourhood and Building Services lead to an average reduction in water consumption of 48 litres per person per day (lpppd)²⁴. For an average UK household (2.4 persons) this equates to a saving of 115 litres per day. On this basis, improvement works to two (2.29) homes could provide enough wastewater headroom (264 litres), in the form of 'mitigation credit', for one new dwelling. The addition of a precautionary buffer²⁵ to account for any uncertainties, as recommended by Natural England's methodology, would bring the estimate up to one new dwelling for every 2.5 dwellings upgraded.

²³ The Budds Farm WwTWs located in Havant.

²⁴Based on four years of monitoring data by PCC Housing, Neighbourhood and Building Services, as set out in the separate Appendix B: PCC Water Efficiency Measures Data.

²⁵ PCC have added a 10% precautionary buffer.

- 3.1.20 Portsmouth City Council owns and manages nearly 15,000 homes in Portsmouth and Havant, which are entirely in the relevant catchment zone. Currently water efficiency upgrades are undertaken in response to tenant requests throughout the year throughout this stock holding. These expected reactive upgrades to the Council's housing stock will also be supplemented by proactive annual improvement works to void properties as they arise. There is also a small amount of (net) credit which has been gained from retrospective water efficiency improvements carried out during the strategy period (from January 2019) minus the estimated wastewater output from the dwellings granting permission during this time (from 1st January and 24th April 2019).
- 3.1.21 The reactive upgrades over the last four years have seen the installation of an estimated annual average of 600 new over bath showers and 715 replacement dual flush WC cisterns each year. As noted above this will be supplemented with a comprehensive upgrade of an additional 700 void properties, again based on a past average of the number of voids that become available within Portsmouth City Council stock. This will allow enough 'credit' for 243.2 and 274.9 dwellings respectively including the 10% precautionary buffer; an intended total of **518 new dwellings per annum**.

b. Vacant Council assets due for redevelopment

- 3.1.22 There are a number of PCC residential institutions²⁶ that are currently vacant pending full redevelopment of the building (as opposed to temporary vacancies between occupancies). An initial assessment, as of October 2019, has identified over 300 units that are likely to be vacant for a number of years as planning permission, demolition and redevelopment occurs (the assets are detailed in the trajectory in Appendix 3).. The Council, as part of its role as a housing authority, has detailed records of the current water consumption with its stock and this demonstrates that the water consumption in such older PCC facilities are above that expected for typical residential accommodation. The reduction in waste water created by vacating these units, and holding them vacant, allows the direct water savings to be utilised as offsetting for new development.
- 3.1.23 The wastewater savings from the above, minus a precautionary buffer to account for any uncertainties as recommended by Natural England's methodology, will offset **an initial 342 dwellings**. PCC assets that become vacant during the life of the Interim Strategy will also be added as 'credit' to the live database.
- 3.1.24 An **appropriate internal agreement** will be created to recognise that the water saving, and associated 'credit', has been made available to offset new development. This will be maintained as per the monitoring of the 'nitrate bank' (see Section 4),
- 3.1.25 The future redevelopment of sites which have been utilised for offsetting will need to identify further mitigation at the relevant time to satisfy the likely outcome

²⁶ This excludes the Council's general housing stock which are utilised for part 3a of this strategy, with the exception of Horatia House & Leamington House, where a significant number of units (274) are being held vacant following the evacuation of the building (completed in spring 2019), ahead of the anticipated demolition of the buildings.

of an Appropriate Assessment. However, if monitoring of the cumulative 'nitrate bank' (as described as part of approach in 'a' above) indicates that there is sufficient 'credit' for the estimated date of occupation and intended scale of redevelopment this may be utilised. This matter will of course be the subject of assessment on its own merits at the time of future determination of a relevant planning application.

Mitigation Credit Bank

- 3.1.26 Currently all of the Council's mitigation credit is formed of savings from water efficiency measures. There may be scope to add 'credit' from other sources in future, see *Section 5: Other Mitigation Schemes* for examples, subject to further investigation of these options and discussion with Natural England.
- 3.1.27 Table 2 below shows the expected credit to be accrued from annual improvement works to PCC housing stock alone (Mitigation Route 3, part a) for the anticipated Interim Strategy period (2019-2023).
- 3.1.28 The current projections for life of the strategy, factoring in the expected credit supply minus the currently anticipated demand, are shown in the *Appendix 3: PCC Mitigation Credit Bank and Trajectory* (separate document), which will be made available on the Council's website and regularly updated. See Section 4 for further details on monitoring.

Table 2: 'Mitigation Credits' from Expected Water Efficiency Improvement Works to PCC Housing Stock for the Interim Strategy Period

Mitigation Credit Forecast (based on the past 4 year average)					
Period	Expected Property Upgrades		Additional Void Property Upgrades		Total
	Average Annual	Average Monthly	Average Annual	Average Monthly	
Aug 2019 - Jul 2020	243.2	20.3	274.9	22.9	518.1
Aug 2020 - Jul 2021	243.2	20.3	274.9	22.9	518.1
Aug 2021 - Jul 2022	243.2	20.3	274.9	22.9	518.1
Aug 2022 - Jul 2023	243.2	20.3	274.9	22.9	518.1
Aug 2023 - Jul 2024	243.2	20.3	274.9	22.9	518.1
Totals:	1215.8		1374.5		2590.4

4. Developer Contributions, Implementation and Monitoring

- 4.1 Implementation of Mitigation Route 3, the Council's 'Nutrient Neutral' mitigation credit, set out in the preceding section, will require resourcing. Cost recovery will be secured through a proportionate contribution from developers as appropriate, collected and pooled through S.106 agreements.
- 4.2 This Strategy mitigates the impact of additional wastewater for an interim period, potential up to 2023/ 24, but the mitigation measures will need to be in place for the duration of the impact. The payment therefore includes an appropriate amount to ensure the Council is capable of maintaining the water efficiency improvements 'in-perpetuity'
- 4.3 From the detailed work undertaken by the Council, a charging (cost recovery) schedule has been established covering the direct costs of water efficiency and on-going maintenance. This enables a proportionate cost of creating sufficient 'credit' (the water savings to enable the headroom for overnight stays) to be calculated and the relevant amount will then be secured by planning obligation.

Table 3: Mitigation Credit Bank Charging Schedule (Cost Recovery in Perpetuity) for Major Development

Water efficiency intervention	Savings (litre per household* per day)	Cost per unit	Maintenance contribution per unit
Over Shower Bath	96	£1,200	£500
Dual Flush Cistern upgrade	19.2	£200	£0
Total Efficiency intervention	115.2	£1,900	
Average cost for efficiency upgrades to allow one new overnight stay (54.8 L/ bedspace/ day ²⁷)	£903.82		
Average cost for efficiency upgrades to allow one new dwelling (2.4 occupants x 110 pppd = 264 l/d)	£4,345.17		

*a dwelling/household is considered to consist of 2.4 occupants

- 4.4 To ensure the cost recovery of the Council's work to improve water efficiency in its housing stock does not have a disproportionate impact on development viability and cash flow direct, **full cost recovery will only be sought from Major development schemes** (10 units and above). The payment for Major development schemes can be individually negotiated having due regard the

²⁷ Source: <https://www.gov.uk/government/publications/energy-and-carbon-implications-of-rainwater-harvesting-and-greywater-recycling>. Source and end use split: CIRIA (2006) C657. Note: Guest room use split by WC, washing and basin tap use for residential. Locker room/public toilet use split by WC, urinal and 'washing' use for offices. Applicants submit alternative water usage data for consideration where this can be evidenced.

individual scheme viability and to ensure the cost of securing of mitigation will not prejudice the delivery of development with Affordable Housing provision. In such circumstances, on an individual basis the Council may choose to offer, and preserve in perpetuity, its mitigation credit at a level that does not fully recover the costs of delivery and maintenance.

- 4.3 **For smaller (Minor and Other) development schemes** the Council does not intend to attempt to recover the full costs of installing and maintaining the mitigation work, in order to prevent disadvantaging small and medium sized enterprise builders. For smaller development proposals that are seeking to utilise the mitigation credit, the Council will instead offer such credit in perpetuity for a £200 per unit administration and monitoring fee, rather than seeking the full costs recover detailed in Table 3 above.

Contributions received would be transferred to the Council's Housing Revenue Account (HRA) to offset the costs of the strategy.

S106 Agreement and Planning Conditions

Contribution for the Council's nitrate neutral mitigation credit will need to be **secured through s106 planning obligations prior to occupation of the development.**

- 4.4 **In addition to the payment required, new development will be granted with standard conditions to require higher levels of water efficiency (110 lpppd) and to prevent occupation until such time as the 'Nutrient Neutral' mitigation credit has been funded through the s.106 obligation.** A template s.106 agreement will be developed and Standardised wording for the appropriate conditions can be found in Appendix 4.

Any such agreement will recognise that mitigation credits are non-transferable, and may only be used to mitigate development within the administrative area of Portsmouth City Council, unless explicitly authorised in writing by Portsmouth City Council as part of a formal Duty to Co-operate agreement.

4.1 Monitoring and Reporting

Monitoring the 'Mitigation Credit Bank'

- 4.5 The current trajectory for the availability of the cumulated 'nutrient neutral' mitigation credit is detailed in Appendix 3 (separate document). It is anticipated, on the assumption that alternative off-setting measures (Option 1) and other bespoke mitigation solutions (Option 2) will be fully explored by applicants, that there will be sufficient 'credit' for the number of units likely to be permitted and occupied within the Strategy period (up to 2023/ 24).

Monitoring of the Interim Strategy will be essential to determine the actual availability, demand and use of the mitigation credit, and to inform the on-going projected trajectory for the lifetime of the Strategy. The following will be monitored and published on a quarterly basis:

- The number of water efficiency upgrades undertaken on the PCC housing stock.

- Dual monitoring of the actual and anticipated uptake of nitrate credit by applicants, both at the grant of planning permission (in principle use) and at the point of occupation of the proposal (credit implementation) for the strategy period
- Whether any further PCC controlled residential institutions, due for redevelopment, become available to be held vacant (by agreement) to be added to the mitigation credit bank.

4.6 Natural England has recommended that the monitoring of the Interim Strategy is also accompanied by a Water Consumption Monitoring Strategy to indicate whether the predicted water saving efficiencies from works to PCC stock are being realised, with provisions for adaptive management as necessary. This will be explored in conjunction with Natural England in due course.

Internal Governance

The Mitigation Credit Bank will be administered and monitored by the Planning Obligations Lead Officer. The Council's Mitigation Credit for individual applications will be allocated as appropriate through discussions with the relevant Case Officer. For any initial 'backlog' of applications, applications will be prioritised by date of validation, assuming there are no other issues outstanding. Final decisions on the use of the mitigation credit for individual applications are at the discretion of the Head of Development Management and the Assistant Director of Planning and Economic Growth, in agreement with the relevant Directorate Director and Cabinet Member(s) where PCC assets are concerned as necessary.

Part b. of Mitigation Route 3, holding Council properties (residential institutions and significant residential blocks) due for redevelopment vacant, will require an appropriate internal agreement for transparency, to avoid any unintentional 'double counting' of credit and to formally recognise the that:

- sites utilised for off-setting are will not subsequently be brought back into use (occupied, redeveloped or disposed of); but
- any future redevelopment at the vacant/ previous site cannot rely upon its extant use for offsetting, would therefore need to secure its own nutrient neutral mitigation measures in accordance with this strategy.

Such as agreement is likely to be in the form of resolution from the Council's Cabinet or the relevant Portfolio Members, as appropriate. The resolution would be noted with the property and GIS reports; if the assets was to the sold a s.111 agreement could be entered into with a prospective purchaser, appending a form of s.106 obligation to be entered into upon transfer.

While there may be sufficient mitigation credit available to help enable redevelopment, accumulated from Mitigation Route 3, Part A works, development proposals by PCC Housing, Neighbourhood and Building Services directorate would not incur a fee since this would entail 'charging itself' for cost recovery for works carried out by its own department. Instead credit would be reserved and utilised by internal monitoring procedures and agreed by cabinet/ portfolio resolution.

Review of the Strategy

- 4.7 **If the quarterly monitoring of the Interim Strategy indicates that demand for 'nitrate credit' mitigation appears to be outstripping the anticipated supply, necessary revisions or additions to the Strategy may be considered. For instance, it may be possible to accelerate the Council's planned water efficiency improvements in order to generate further wastewater 'headroom' for new development. A new charging schedule may need to accompany such changes.**
- 4.8 The Council remains committed to developing and securing a wider, long term solution for 'nutrient neutral' development, beyond the life of this interim solution, in conjunction with the relevant government agencies, utilities providers and other LPAs within the Solent catchment.

5. Exploring Further Mitigation Options

5.1	The council, together the other Local Authorities within the Solent catchment, will continue to investigate a range of possible mitigation options, with a strong preference for schemes that will deliver wider benefits for the city, particularly in light of the climate emergency declared by the Council in March 2019. Where savings can be evidenced and monitored, and subsequently agreed in principle by Natural England quantified savings could be added to the Mitigation Credit Bank.
	1. PCC Housing, Neighbourhood and Building Services will continue to explore other means of providing additional water efficiency measures throughout PCC assets, including exploring retro fitting measures and partnership arrangements (with Portsmouth Water for example) to further the promotion of water efficiency for all residents in Portsmouth. This could include encouraging the installation of water meters in private sector housing stock to effect behavioural change by raising awareness of water use.
	2. The provision of active capture measures such as oyster beds or other interventions designed to reduce nitrates. Shellfish have been found to be effective at reducing excess nutrients in estuaries in some situations. Oysters filter feed on the harmful algae and remove the nitrogen from the water by storing it in their shells and tissues, and also through their faeces which get broken down by microbes. However, there have been declines in native oysters in the Solent in recent years, the causes for which are unclear; there is research project underway by the University of Portsmouth and the Environment Agency to investigate the topic. This work combined with other research and evidence may help to inform levels of nitrogen removal and effectiveness from these measures on the long term.
	3. A further review of the use and quantity of fertilisers on the Council's parks, open spaces, playing pitches and other green space under the Council's management. The review would need to balance the need to ensure continuation of the quality of the Council's outdoor spaces. To be an effective mitigation options, reductions in nitrogen would need to be measurable and enforceable in perpetuity,
5.2	The following options will be further explored together with the PFSH authorities and statutory agencies/ undertakers:
	4. Continued testing and challenging of Natural England's position to ensure a robust case exists to justify the requirements for mitigation (nitrate neutrality) and to ensure any interim or future mitigation strategy is fit for purpose.
	5. Ongoing discussion with Southern Water to secure agreements to maintain an increase in nitrogen removal at the WwTW either by agreement or through an imposed reduction in the permit limit for nitrogen, where there is a current limit in place, or through agreement with the EA and OFWAT to introduce permit level limits for nitrogen on

	<p>those WwTW which do not currently have such a permit and therefore where no nitrogen stripping is taking place.</p>
	<p>6. Securing offsetting through the change of use of additional land, from uses with higher rates of nitrate deposition; such as agricultural land (which loads around 26.9 kg of nitrogen per hectare per year), to uses with lower rates; such as open space (5 kg of nitrogen per hectare per year) or urban development (14.3 kg of nitrogen per hectare per year). This approach requires changing the land use in perpetuity (ideally to woodland, heathland, saltmarsh, wetland or conservation grassland) to remove more nitrogen loss from this source and/or, if conditions are suitable, provide measures that will remove nitrogen on drainage pathways from land higher up the catchment (e.g. interception wetland). Such changes of use would prioritise offsetting projects with wider environmental and recreation benefits for communities and wildlife such as carbon capture from woodland planting.</p>

Appendices

Appendix 1: Natural England's guidance (1A) and PCC excel Nitrogen Budget (1B) (separate documents)

Appendix 2: PCC Water Efficiency Data (separate document)

Appendix 3: PCC Mitigation Credit Bank and Trajectory (separate document)

Appendix 4: Water Efficiency standardised condition (below)

Draft condition:

The development hereby permitted shall not be occupied until a scheme for the mitigation of increased nitrogen and phosphorus levels resulting from the development has been (a) submitted to, and approved in writing by, the Local Planning Authority, and (b) implemented in accordance with the approved scheme.