



NOTICE OF MEETING

CABINET

FRIDAY, 23 AUGUST 2019 AT 10.00 AM

EXECUTIVE MEETING ROOM - THE GUILDHALL - FLOOR 3

Telephone enquiries to Joanne Wildsmith, Democratic Services Tel 9283 4057
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If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

Membership

Councillor Gerald Vernon-Jackson CBE (Chair)

Councillor Steve Pitt (Vice-Chair)

Councillor Dave Ashmore

Councillor Suzy Horton

Councillor Lee Hunt

Councillor Darren Sanders

Councillor Lynne Stagg

Councillor Matthew Winnington

Councillor Rob Wood

Councillor Tom Wood

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

Please note that Portsmouth City Council's Democracy website will be shut down for essential maintenance during the lead up to this meeting; during this time the Cabinet agenda and papers can be located at www.portsmouth.gov.uk/democracy-temp

Deputations by members of the public may be made on any item where a decision is going to be taken. The request should be made in writing to the contact officer (above) by 12 noon of the working day before the meeting, and must include the purpose of the deputation (for example, for or against the recommendations). Email requests are accepted.

A G E N D A

- 1 Apologies for Absence**
- 2 Declarations of Interests**
- 3 Nitrate Neutrality Mitigation - measures to enable new housing development (Pages 5 - 26)**

Purpose.

1. The purpose of this report is to inform Cabinet of the progress made to address the damage being caused by high levels of water-borne nitrates to ecologically significant sites in the Solent. This has been restricting the

ability of local planning authorities in the Solent area to approve planning applications for new dwellings.

2. A 'nitrate neutrality' mitigation strategy is proposed to enable both PCC and private development proposals. This strategy will help the Council meet the tests of the Habitat Regulations and avert the potential risk of legal challenge.
3. Additionally, the report gives an update on progress made with the Partnership for South Hampshire (PfSH) to develop a sub-regional, long term strategy to address the sources of nitrate pollution in the Solent with central government agencies. With this in mind, the Council is invited to work with neighbouring local authorities to intensify lobbying to resolve the apparent contradictory positions within and between central government departments.

Recommendations

The Cabinet is recommended to:

1. **Note the progress and on-going work set out in the report.**
2. **Note the on-going improvements being undertaken to the Council's assets and particularly the council housing stock that is improving water efficiency and contributing to reducing nitrate emissions**
3. **Note the measures being taken through the Council's management of its open spaces to reduce nitrate application and nutrient emissions**
4. **Note the dialogue between the Council, the University of Portsmouth, and Natural England to support the introduction of environmentally friendly measures to reduce nutrient build-up in the Solent.**
5. **Note the dialogue between water supply and treatment companies, registered social landlords, developers and public bodies to establish a strategic partnership to reduce water consumption and nutrient emissions within the area.**
6. **Note the intention to create and manage a database of contributions to mitigation to offset the potential impact of new development, such creation subject to final Cabinet approval.**
7. **Note an intention to adopt as soon as possible the combination of measures, methodology and evidence set out in the report as the Council's interim strategy for demonstrating 'nitrate neutrality' in the determination of planning applications such adoption subject to final Cabinet approval.**
8. **Continue to work with other local councils through PfSH, the Local Government Association and Members of Parliament to lobby central government to resolve the contradictory positions held by agencies within Defra and between Defra and the Ministry for Housing, Communities and Local Government and to develop a comprehensive, long-term, funded mitigation strategy for the Solent area.**

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Agenda Item 3



Title of meeting:	Cabinet
Date of meeting:	23 rd August 2019
Subject:	Nitrate neutrality mitigation measures to enable new housing development
Report by:	Director of Regeneration Director of Housing, Neighbourhood and Building Services
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1. The purpose of this report is to inform Cabinet of the progress made to address the damage being caused by high levels of water-borne nitrates to ecologically significant sites in the Solent. This has been restricting the ability of local planning authorities in the Solent area to approve planning applications for new dwellings.
- 1.2. A 'nitrate neutrality' mitigation strategy is proposed to enable both PCC and private development proposals. This strategy will help the Council meet the tests of the Habitat Regulations and avert the potential risk of legal challenge.
- 1.3. Additionally, the report gives an update on progress made with the Partnership for South Hampshire (PfSH) to develop a sub-regional, long term strategy to address the sources of nitrate pollution in the Solent with central government agencies. With this in mind, the Council is invited to work with neighbouring local authorities to intensify lobbying to resolve the apparent contradictory positions within and between central government departments.

2. Recommendations

Cabinet is recommended to:

- 2.1. Note the progress and on-going work set out in the report.
- 2.2. Note the on-going improvements being undertaken to the Council's assets and particularly the council housing stock that is improving water efficiency and contributing to reducing nitrate emissions.

- 2.3. Note the measures being taken through the Council's management of its open spaces to reduce nitrate application and nutrient emissions.
- 2.4. Note the dialogue between the Council, the University of Portsmouth, and Natural England to support the introduction of environmentally friendly measures to reduce nutrient build-up in the Solent.
- 2.5. Note the dialogue between water supply and treatment companies, registered social landlords, developers and public bodies to establish a strategic partnership to reduce water consumption and nutrient emissions within the area.
- 2.6. Note the intention to create and manage a database of contributions to mitigation to offset the potential impact of new development, such creation subject to final Cabinet approval.
- 2.7. Note an intention to adopt as soon as possible the combination of measures, methodology and evidence set out in the report as the Council's interim strategy for demonstrating 'nitrate neutrality' in the determination of planning applications such adoption subject to final Cabinet approval.
- 2.8. Continue to work with other local councils through PfSH, the Local Government Association and Members of Parliament to lobby central government to resolve the contradictory positions held by agencies within Defra and between Defra and the Ministry for Housing, Communities and Local Government (MHCLG) and to develop a comprehensive, long-term, funded mitigation strategy for the Solent area.

3. Background

- 3.1. High levels of nitrogen draining from the 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. While the Partnership for Urban South Hampshire (PUSH) Water Quality Working Group (WQWG)¹ was in the process of preparing a strategy to address the impacts of anticipated growth in South Hampshire beyond the year 2020, changes in case law resulted in water quality problems becoming an immediate issue for Local Planning Authorities.
- 3.2. A Court of Justice of the European Union (CJEU) decision, known as the 'Dutch Case'²(in combination with the 'Sweetman' judgement³) has implications for the Solent. This is because nitrate levels are high and causing damage to internationally designated sites in the Solent catchment (Special Protections Areas (SPAs), Special Areas of Conservation (SACs), and potential Special Protection Area (pSPA) and Ramsar Sites), and this would be increased through additional sewage output from new housing. The judgement therefore applies to the decisions of Local Planning Authorities within the Solent area.

¹ Comprised of the PUSH LAs, Natural England, Environment Agency and water companies.

² 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.

³ People Over Wind, Peter Sweetman v Coillte Teoranta judgement issued in April 2018 by the CJEU.

- 3.3. Natural England advises 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.
- 3.4. In their Advice to Local Planning Authorities in the Solent region, Natural England acknowledge that there is 'uncertainty as to whether new growth will further deteriorate designated sites'. They propose a series of potential mitigation measures to achieve 'nutrient neutrality' as well as a methodology for calculating how nutrient neutrality can be achieved, based on what they believe to be the best scientific knowledge. It is Natural England's advice to local planning authorities and applicants to be 'as precautionary as possible' when addressing uncertainty and calculating nutrient budgets. The contrast between 'scientific proof' and 'as precautionary as possible' may become significant if decisions by Local Planning Authorities are challenged through the Court.
- 3.5. By contrast, the Technical Guidance Note issued by the Environment Agency for the Solent and South Downs (June 2019) state 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 waste water 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'.
- 3.6. Both Natural England and the Environment Agency are agencies of Department for Environment, Food & Rural Affairs (Defra). Defra is also responsible for Ofwat, Water UK and the regulation of the farming industry. Water quality degradation from nitrates and phosphates largely stems from agricultural practices (80%), which tend to operate within existing consent regimes, with significantly lesser contributions from sewer network overflows, private discharges, industrial discharges and natural sources.
- 3.7. While the nitrate output of new dwellings is relatively minor, the planning system provides a comprehensive regulatory mechanism to address the issue explicitly where new consents for developments could result in additional nitrate outputs. This is in stark contrast to the largely voluntary regimes operated by Defra and its agencies with the farming industry. It is estimated the nitrates leaching through soil and rock formations from previous farming applications amounts to c.80% of the nitrates entering the Solent and that this could continue, at a diminishing rate, for the next 30-40 years. Whilst Defra is confident that measures it has taken over the last 50 years will have dramatically reduced the amount of nitrate leachate, this will take considerable time to impact on Solent water quality.
- 3.8. Following advice from Queen's Counsel, the Council has temporarily ceased granting planning permission for additional dwellings (or an intensification of dwellings), tourism related development and development likely to generate an

overnight stay, unless such applications are able to demonstrate that the development would be 'nitrate neutral'. Other Local Authorities within the Solent catchment have done likewise whilst mitigation strategies are being developed.

- 3.9. Given the significance of the legal advice and its potential impact on the availability of homes across the Solent and the impact on the building sector, it is important that the various positions of the Government departments and agencies involved is brought to a swift resolution. This needs to encompass an agreed evidence base, methodology and appropriate co-ordination, management and funding of mitigation measures. Concurrently, the Council and its partners needs to continue to lobby MHCLG to ensure it continues its discussions with Defra to resolve the conflict between the MHCLG imposed penalty regime that requires Local Planning Authorities to 'deliver' new housing and Defra's various approaches and omissions that inhibit this happening.
- 3.10. The nitrates issue has become a material consideration in appeal cases on Portsmouth City Council decisions. In one appeal case the Council's decision to refuse an application for the intensification of use of a dwelling (a C4 to a Sui Gen HMO), was dismissed by the Planning Inspectorate solely due to the adverse impact on the integrity of the SPAs, as a result of additional nitrogen and phosphorous from the additional wastewater generated by the increase in population.
- 3.11. Officers have continued to discuss future challenges and opportunities with partners and experts, including the University of Portsmouth to ensure latest technologies and research can guide future mitigation options.

4. Nitrate Mitigation Options

- 4.1. Because around 80% of Nitrates originate from agricultural practices outside the control of the LPA, and that the majority of applications received for additional dwellings are unlikely to demonstrate 'nitrate neutrality' on their own, for a long term solution the City will be reliant on the wider Solent strategy being developed with PUSH and resolution of inter-government approaches. It can be noted that managing nitrates and nutrients with a partnership approach to management and mitigation is not a new challenge. A partnership of Dorset Authorities⁴ adopted a joint Supplementary Planning Document, 'Nitrogen Reduction in Poole Harbour', in 2017, detailing the specific steps to be taken to achieve nitrogen neutrality in residential and commercial development in the catchment of Poole Harbour.
- 4.2. At the PfSH Joint Committee on 31 July 2019, it was agreed, amongst other things, that there was a need to gain a greater understanding of the nature of the issue, that there was a need to continue lobbying and that there was a need to develop a long-term water quality and mitigation plan, to achieve nutrient neutral development. The deadline for completion of this plan will be at the meeting of the PUSH Joint Committee on 15 October 2019, at which it will be considered for sign off.

⁴ Borough of Poole, Purbeck District Council, North Dorset District Council and West Dorset District Council

- 4.3. The work of the PfSH WQWG will also feed into a review of the PfSH 2018 *Integrated Water Management Strategy* (IWMS) which will assess the sensitivity of the whole catchment and address the anticipated water resource capacity, supply and quality issues. This will include testing some of the assumptions made in the study that fed into the IWMS.
- 4.4. PfSH have also made representations on the Ofwat report proposals (published in June 2019) to impose a penalty on Southern Water for a range of failings in its statutory duties as a sewerage undertaker, including intentional misreporting of permit breaches and spillages and insufficient planning and investment in their infrastructure.
- 4.5. Natural England met with the MHCLG on 19 June 2019 to discuss the need to address the sources of the problem (environmental permitting regimes and insufficient wastewater treatment practices by statutory undertakers) and the impacts on LPAs for housing delivery; MHCLG agreed to organise a cross government/ department meeting. Following the Minister for Housing response to PfSH's letter to Central Government on the matter, MHCLG will be attending the PfSH Planning Officers Group on 20th August to discuss the issues raised. One proposal is that the Environment Agency should be instructed to commence review of the permits of Waste Water Treatment Works (WwTW) earlier and undertake robust Appropriate Assessments on the permits. Ongoing correspondence between the Leader, LGA and Government are attached for reference.
- 4.6. PfSH WQWG, in partnership with the relevant Government bodies, is considering a number of interventions, both to reduce the input of nitrates into the local catchment and to manage the output of nitrates into the sensitive areas of the Solent. Most of these mitigation strategies however will take some time to bring into operation and have a demonstrable impact on the issues identified above.
- 4.7. Natural England, in their advice note to PfSH have described some possible routes to mitigation that the partnership continues to explore. One of the potential aims of developing a PfSH wide strategic approach is to have a consistent approach across the sub-region. The next steps in the development of the strategy will be discussed at the Water Quality Working Group (WQWG) on 7th August. To date PfSH colleagues and PCC Officers have considered a number of further possible sources for mitigation in the medium and long term.

Medium/Long Term options for mitigation

- i) Ongoing discussion with Southern Water, as the operator of the relevant WwTW to secure agreements to maintain an increase in nitrogen removal at the WwTW either voluntarily 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 those WwTW which do not currently have such a permit and therefore where no nitrogen stripping is taking place.

- (ii) 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 mini-farm interceptor wetlands or Catchment Sensitive Farming methods over relevant land.
- (iii) Provide 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.
- (iv) 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). It can also be noted that many offsetting projects may have wider environmental and recreation benefits for communities and wildlife including, for example, carbon capture from woodland planting.
- (v) The provision of active capture measures such as oyster beds or other interventions designed to reduce nitrates. It has been noted that 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. Consequently encouraging oyster farming in our harbours could therefore mean that excesses in nitrogen from wastewater treatment plants, farm fertilizers and other human sources can be decreased.
- (vi) A further review of the use and quantity of fertilisers on PCCs Parks, open spaces, playing pitches and other green space within our Control. While recent reviews of fertiliser use have already seen a reduction in use, engagement with an industry specialist may provide more informed analysis over the use and quantity of fertiliser applied (should funding be made available). Management of fertiliser use to reduce nitrate leeching will however need to be balanced in its consideration to ensure continuation of the quality of our open spaces and the impacts on grass playing surfaces.
- (vii) Ongoing work to explore other means of providing additional water efficiency measures throughout residential accommodation in the Portsmouth area, including exploring retro fitting measures and partnership arrangements with for example, Portsmouth Water, 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. Portsmouth Water have confirmed that the installation of water meters (by the provider) does help to raise awareness of water use. Such measures could potentially form part of a separate strategy in the near future, subject to an agreement with Portsmouth Water, and quantification of the potential water savings. Anecdotally, metered supplies lead to savings of up to 20% (volume) per household.

- 4.8 Officers will continue to investigate the range of mitigation options available together with improvements to PCC's water supply infrastructure, with 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.

5.0 Short Term options for mitigation

- 5.1 While the longer term partnership work is intended to create a sustainable mitigation strategy to allow growth in the region, because the city faces real housing needs and because the cessation of planning permission could have a catastrophic effect on the local building sector, it is important that interim measures are put in place to enable appropriate development to continue. The Council has been exploring a number of interim mitigation options in order to help to resume the determination of both public and private sector proposals for dwellings in accordance with the Councils corporate priorities and strategies.
- 5.2 All applications must be considered on their merits and on a case-by-case basis. The Council is working with developers on the Appropriate Assessments (AA's) of their proposals, in consultation with Natural England. In some instances the previous use (water output) of the application site, or of other sites within the applicant's control (within the same catchment), may be taken into account and enable the development to proceed due to no net detrimental impact.

Nitrate Mitigation proposals for Portsmouth City Council developments

- 5.3 In reviewing the planning authority's assessment, Natural England expects any mitigation measures to be 'in perpetuity' if they are to be counted against the creation of new dwellings. It will accept decisions made by a public body about changes to its own assets to qualify, but not those of the private sector (this may yet get tested in the courts). Where the Council acts as a developer, using its influence to make permanent changes to its existing property holding and by trading existing nitrate credits within its own portfolio, gives it flexibility to consider other mitigation options.
- 5.4 Natural England's updated methodology for determining the nitrogen load of proposed development is calculated from the proposed scale of water use. If less (or equal) water is sent to wastewater treatment works (WwTWs) for processing, there is less (or at least no net increase) in treated wastewater being released from WwTWs under their respective permitting concentration

limits for nitrogen, which are measured in milligrams per litre. The following mitigation options, based around water savings, have the strongest potential for immediate implementation:

- i. The repurposing of existing nitrate credits in vacant buildings.
- ii. Water efficiency measures applied to existing dwellings.

'Nitrate credit' from vacant Portsmouth City Council assets

5.5 There are a number of PCC buildings that are currently vacant pending redevelopment. An initial assessment has identified over 270 units that are likely to be vacant for a number of years as planning permission, demolition and redevelopment occurs. Water savings from these vacant PCC owned assets could be 'banked' as 'nitrate credit' to front load the nitrate bank and enable new PCC and other development.

5.6 For example, it is proposed that the construction of 13 supported living flats at the former Longdean Lodge is offset against the vacant PCC care home at Edinburgh House which has the ability to be occupied by 32 residents. In addition to the lower occupation, there is evidence that water consumption in the older facility was significantly above that expected for typical residential accommodation and significantly above the Local Authority average of 150 litres per person per day (lpppd). The Appropriate Assessment accompanying the former Longdean Lodge proposal has been accepted in principle by Natural England, on the basis of a number of key agreements by the Council in order to secure off-setting in perpetuity and meet the required tests under the Habitat Regulations. The Council may wish to consider such vacant building offsets more holistically, through a broader 'bank', rather than applying them directly to individual projects, but this will be discussed with Natural England and resolved on a case by case basis through the planning process.

5.7 The following would apply to the above and all such proposals seeking to off-set against vacant PCC stock, and would need to be secured through the planning process:

- an agreement by the Council to ensure that vacant/existing site utilised for off-setting are not subsequently brought back into use;
- any future development at the vacant/existing site cannot rely upon its previous use if those 'credits' have since been relied upon to offset the impact of development elsewhere in the city. Any redevelopment of the existing site would therefore itself require nitrate offsetting in the future; and
- the inclusion of planning condition(s) to secure a reduced water consumption (no more than 110 litres per person per day) at the new development, where deemed appropriate by the LPA.

- 5.8 The implementation of the nitrate credit system would shift the potential burden of nitrate mitigation onto existing PCC assets, should they be redeveloped in future. However, by the time the site comes forward, there could be sufficient nitrate credits available in the pooled 'nitrate bank' from other sites within the Council's control, or an agreed nitrate mitigation strategy in place. The loading of potential financial costs (and other possible viability issues) upon existing PCC assets would need to be weighed against the need for new development on a case by case basis. In the instance of the former Longdean Lodge application, the proposed off-setting against the nitrate output of the now vacant Edinburgh House facility is intended to help enable the development of much needed specialist residential accommodation in the city. The longer term development of Edinburgh House remains the intention of the Council but may, itself, require the use of other 'banked credits' at the time of consideration of that planning application.
- 5.9 It is proposed that the 'nitrate credit' from vacated PCC assets would be automatically 'pooled' centrally. Subject to finalising the necessary policy it is also intended that the nitrate credit secured from vacant buildings would be 'paid back' as a priority from other mitigation sources to ensure PCC assets are not unduly burdened by this obligation.
- 5.10 There are currently a number of PCC assets identified as redevelopment opportunities to either increase capacity, renew aging stock, or simply to adapt to the needs of its residents. As a result, there are residential properties within the city that are vacant, or soon to be vacated, to allow for redevelopment, although the delivery programmes in some cases extend to a number of years.
- 5.11 It is recommended that an internal 'Call for Sites' of vacant PCC assets is undertaken to ensure the Council is fully utilising the off-setting potential of its assets. Similarly, 'credit' in terms of reduced water consumption between the proposed and existing assets (as found at the Edinburgh House) will be 'banked' to help enable other new PCC development.
- 5.12 Members are asked to note the intention to recognise and manage 'nitrate credits' from vacant buildings through a bank system, where holding them vacant is compatible with broader corporate priorities and plans. Further work will be undertaken on the governance of such a bank to ensure its management is achieved through a transparent policy and the overall process is capable of being audited to avoid any risk of accidental 'double counting' of credit.

Water efficiency improvements to Portsmouth City Council Assets

- 5.13 Members are also asked to note the intention to recognise the potential to produce 'nitrate credits' from water efficiency improvements within PCC's retained housing stock.

- 5.14 From our detailed records it is known that the improvements made to the Council housing stock lead to an average reduction in water consumption of 48 litres pppd. For an average UK household (2.4 persons) this equates to a saving of 115 litres per day. On this basis, improvements to two (2.29) homes could provide enough wastewater headroom (264 litres) for one new dwelling. Natural England has recommended a precautionary buffer be included within the final methodology. Consequently a buffer of 10% to allow for any uncertainties has been included, which would take this figure up to 2.5 dwellings. Given the quality of the data we hold on water consumption, we may negotiate further with Natural England to reduce this buffer. There is a small amount of net gain from water efficiency improvements recently implemented from 1st January 2019 offset against the dwellings already granted permission in that same period, this will also be utilised to help enable new development.
- 5.15 During the anticipated period for the Interim mitigation strategy (2019-2023), the City Council's retained housing stock will continue to be maintained by installing an estimated average of 600 new over bath showers and a further 715 replacement dual flush WC cisterns per annum. These 'business as usual' interventions will provide enough wastewater headroom for 243 new dwellings per annum including the 10% buffer allowance for uncertainties. Further possible planned interventions, subject to Cabinet Member approval, into 700 void properties per annum could provide a further 275 new dwellings. A combined possible total of 518 new dwellings per annum could therefore be delivered using this approach, through these water efficiency improvements in PCC housing. The acceleration of planned improvements is also being considered to give the council further headroom to grant permissions.
- 5.16 PCC Housing, Neighbourhood and Building Services will explore other means of providing additional water efficiency measures throughout PCC assets, including exploring retro fitting measures and partnership arrangements with for example, Portsmouth Water, to further the promotion of water efficiency for all residents in Portsmouth.
- 5.17 As with the database of 'credit' derived from vacant PCC assets (see 5.12), a live database will also be kept of the contribution to mitigation achieved through water efficiency interventions accumulated from the progressive improvement of the PCC assets updated by Building Services.

6 Next Steps

- 6.1 Cabinet is requested to acknowledge the approach detailed in this report towards an Interim Mitigation Strategy, noting the further work to set up and administer a 'nitrate bank' of credits as the basis upon which the Council, as Local Planning Authority, can robustly determine residential planning applications.

- 6.2 Members are also asked to note the further work, including that undertaken in open spaces and with our wider partners under the PfSH WQWG to create and adopt a longer term mitigation strategy for Portsmouth and the wider catchment
- 6.3 Whilst all of the above efforts will enable much needed housing to be provided in the city, its impact on the natural environment will be wasted if the Water industry and their various regulators continue to fail to perform their roles adequately. Similarly, the vast majority of pollutant is stemming from the agricultural sector and its regulators need to act to address the cause of this issue. For these reasons continued political pressure and lobbying to the LEP; PfSH, the LGA, Local MPs, and other stakeholders needs to be applied to central government, particularly DEFRA, in order to address the root cause of this problem; the planning system might be a convenient pressure point for Natural England but it is not the cause and nor was it intended for this purpose

7 Equality impact assessment

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

8. Legal implications

- 8.1 The body of the report notes the relative novelty of the situation the Council is in due to developing case law and the need to consider innovative, practical and scientific resolutions.
- 8.2 Natural England expects any nitrate mitigation measures to be secured in perpetuity in order to be acceptable. Vacant building and water efficiency credits will require long-term monitoring and safeguards to ensure that there is no 'double-counting'. It is proposed that the Council's nitrate database is publicly available and therefore accountable in that respect to Natural England, other statutory consultees for planning matters, central government and the wider public.
- 8.3 The Council will continue to take advice from appropriate external counsel on the nitrate issue as required.

9 Director of Finance's comments

- 9.1 The main body of the report talks about the wider economic impact on the regional economy, there is also an internal impact on the Council in terms of the amount of planning fees that currently contribute towards the costs of the planning department and how they are affected by this issue. A long embargo on the granting planning permissions could result in the Council having to reduce the number of people employed in the planning department as these costs could not be supported by planning fees if the planning process halts.

- 9.2 To date all work relating to formulating the strategy has been met from existing cash limits. The majority of this cost has been in the form of officer time.
- 9.3 The Nitrate neutrality mitigation strategy list a number of initiatives none of which require the Council to incur expenditure outside of what they would have incurred during the normal course of business, including measures relating to the management of their own Housing stock.
- 9.4 The strategy talks about the measures we could put in place to reduce the amount of fertilisers used on the Council parks and open spaces there may be a small cost for an industry specialist to advise on this issue, the cost of which is not yet known but is unlikely to be significant.
- 9.5 The report states that officers are continuing to identify other measures that could help further reduce nitrates, as each of these measures are identified they will be separately financially appraised so that a source of finance can be identified that could meet the cost should there be any.
- 9.6 The full costs to the Council for maintaining a database of mitigation sites that could provide Nitrate credits for future development is not yet fully known. The Council may need to seek to recover any additional costs through developer contributions.
- 9.7 There may be some additional costs for future Council developments to ensure they include measures that control water consumption but these are unlikely to be significant enough to affect a development site's financial viability.

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Signed by: **Tristan Samuels - Director Regeneration**

Appendices:

- Letter from the Leader of the Council to the Chairman of the Local Government Association dated 4th July 2019
- Letter from Minister of State for Housing to Chair of PfSH dated 23 July 2019
- Letter to Leader of the Council from Chairman of the Local Government Association dated 25 July 2019

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
Environment Agency Technical Guidance Note, Solent and South Downs (June 2019): Wastewater treatment capacity for new development in the Solent Area	On Request
Natural England (V2 June 2019) Advice on Achieving Nutrient Neutrality for New Development in the Solent Region. Advice for Local Planning Authorities	On Request
Notice of Ofwat's proposal to impose a penalty on Southern Water Services Limited	https://www.ofwat.gov.uk/publication/notice-of-ofwats-proposal-to-impose-a-penalty-on-southern-water-services-limited/
PUSH (June 2018) <i>Integrated Water Management Study</i> prepared by Amec Foster Wheeler Environment & Infrastructure UK Ltd	Summary report to PUSH available from: https://www.push.gov.uk/wp-content/uploads/2018/07/Item-10-Integrated-Water-Management-Study-Cover-Report.pdf

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

.....
Signed by: **Councillor Gerald Vernon - Jackson, Leader of the Council**



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Our Ref: GVJOUT088

Date: 4th July 2019

Dear James,

Re: Nitrate Neutrality and the impact upon housing development in Portsmouth

Congratulations on your appointment as LGA Chair. I look forward to working with you, and outline below an issue where LGA leverage is required

At a time when the lack of housing delivery is recognised to be a national crisis, Portsmouth and other Solent Authorities are being prevented from determining housing applications by Natural England's new stance. This is a major issue that is now preventing housing development in Portsmouth and the surrounding areas and requires Government to clarify its priorities and intervene in order to provide a strategic solution. We would really appreciate assistance from the LGA in helping to get the Government to recognise and address this issue.

Natural England have advised local authorities in the Solent region of the need for Appropriate Assessments and mitigation to ensure that there are no additional nitrates depositing in the Solent and contributing to eutrophication. This includes the potential impact of development on the water quality of the Special Protection Area in the Solent and the Solent Maritime Special Area of Conservation and RAMSAR sites. Essentially, there is a requirement for all new development proposals to demonstrate that they are "nitrate neutral". This advice follows recent European Case Law (the "Dutch" case).

In light of the case law, Natural England's advice to local planning authorities is that new developments need to demonstrate that they will be "nitrate neutral". However, this is more than just "advice". Local Planning Authorities are duty bound to consider the advice of Natural England in determining planning applications. There is a risk of legal challenge to any decision by way of Judicial Review if such advice is not given due consideration. The JR would not necessarily come from Natural England but could come from other interested parties.

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A consequence of Natural England's advice is that Portsmouth is unable to permit residential development proposals. This has a significant impact upon meeting nationally imposed housing delivery targets and local housing needs, including affordable housing. It also places at risk a number of construction businesses in the local area with the consequent risk to jobs.

Whilst there remains much uncertainty about the verification and methodology for calculating nitrate levels, it is clear that residential development only accounts for around 20% of nitrates discharged into the Solent. The bulk of nitrate discharge (circa 80%) to the Solent is from agricultural practices and background nitrogen.

The City Council is committed to sustainable development and wants to see appropriate mitigations in place to preserve and enhance the quality of the environment and biodiversity. However, it is clear that this situation cannot continue. The City Council is working to establish appropriate mitigation (both alone and with PUSH partners) so that it can start to issue planning consents for housing development again. We have concerns about how long these strategic solutions will take to deliver, how the cost for these solutions will be met, and the interplay between government agencies demanding housing delivery on the one-hand and restricting development on the other.

I am calling for Government intervention in this matter to clarify the position and to enable us to issue planning permission for much needed housing in Portsmouth. There are a number of interventions Government could make:

- Government could provide clear and definitive guidance to local authorities and the development industry on this matter in terms of the legal position and in practical mitigation solutions in both the short and long-term.
- Government could facilitate appropriate regional level mitigation. This could take the form of "land banking" and Government could work with Homes England and other agencies to implement such a solution with local planning authorities.
- Through the licensing regime (and with possible funding) Government could require Southern Water to improve its treatment plants such that zero-nitrates are discharged into the Solent catchment from development. With the recent fine imposed on Southern Water by OFWAT, because of their significant compliance issues, it might be that this would be an appropriate use of this money.
- Government could recognise that housing development only contributes to 20% of the nitrates problem. This would entail a longer-term strategy to change agricultural practices and encourage farmers to reduce the nitrogen fertilization and greater control on slurry. This can be achieved via regulation and enforcement.
- Until Government resolves this conflict between conservation and development, it should exempt the affected local planning authorities from the punitive penalties on housing delivery targets.

The City Council is working hard and committing significant resources with its neighbours to resolve this unsatisfactory position. We are engaging with One Public Estate to secure collective pressure. Given the LGA role with OPE, any assistance you could provide would be useful.

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I consider that Government intervention is necessary to facilitate resolution of this matter. Given this, Portsmouth City Council is willing to meet with Government to both set out our concerns on this matter in detail and to work to provide solutions. Any help from the LGA to help facilitate this would be appreciated.

Yours sincerely

Cllr Gerald Vernon-Jackson CBE
Leader of the Council



Ministry of Housing,
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26 JUL 2019

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Our Ref: 4317816

23 July 2019

Dear Sean,

Thank you for your letter of 28 June to the Rt Hon James Brokenshire MP on behalf all members of the Partnership for South Hampshire (PUSH) about delays to housing development due to the impact of nutrient deposition on designated environmental sites. I am responding as the Minister of State for Housing.

This is an important issue and I am aware of the concern that it is causing across the South Hampshire area. I understand that nutrient deposition affecting the Solent has been an issue for many years, but that the current situation follows recent European Court of Justice cases that have effectively 'raised the bar' for new development in terms of showing it will not cause additional harm. As a result, Natural England have been advising a cautionary approach to granting permission for new housing so that this case law can be complied with, in effect meaning that new development has to show that it will be 'nutrient neutral'. I can see the practical difficulties that this must be posing, especially for small builders.

My officials have had, and will continue to have urgent discussions with Natural England. I was pleased to hear that they issued an updated version of their methodology to local planning authorities and developers on 24 June. Their method for demonstrating 'nutrient neutrality', coupled with the work being undertaken locally on strategic habitat enhancement and the use of 'Grampian conditions' to allow building to start even where full offsetting is still being secured, provide important tools to allow development to continue.

I appreciate the considerable effort that your own councils are putting into this work, but agree that we need to find effective medium-term solutions. I also agree that new development appears to be suffering a disproportionate impact as a result of this problem, so we need to take a wider approach to solving it. We will continue to monitor the impact of the Housing Delivery Test by engaging with those local authorities that are facing challenges, as it is vital that homes are built with the support of communities as part of a plan-led system.

A strategic solution is needed on two fronts – one on the point source of nitrates from housing development via waste water and the other on tackling diffuse sources of pollution, such as from agricultural practices, which as you say, contributes by far the greatest amount of nitrate input into the Solent. Natural England will continue to work with the agricultural sector to reduce loss of nutrients through their Catchment Sensitive Farming programme and my officials will have further discussions with both Natural England and the Department for Environment, Food and Rural Affairs. There are also potential synergies with the Government's work on a new system of

environmental land management and the promotion of biodiversity net gain, so we must look at this in the round.

I am aware that there have been similar environments in England affected by nutrient deposits where mitigation has been put in place to allow development to proceed. I am confident that with Natural England's support, local authorities will be able to find a pragmatic way forward in the short term, while we work on wider solutions. In the meantime, my officials would be happy to meet with members of PUSH to discuss the issues raised in your letter.

Thank you again for your letter.

KIT MALTHOUSE MP

From the Chairman of the Association
Cllr James Jamieson

25 July 2019

Cllr Gerald Vernon-Jackson CBE
Leader of Portsmouth City Council
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Dear Gerald

Re: Nitrate Neutrality and the impact upon housing development in Portsmouth

Thank you for your letter of 4 July, relating to Natural England's new advice that new developments will need to demonstrate they are 'nitrate neutral', and the impact that this is having upon housing development in Portsmouth and other parts of Hampshire.

We are aware of the issue and officers in the policy team here at the LGA are in touch with government departments to seek urgent clarification on the position. This includes raising concerns with the Ministry of Housing, Communities and Local Government (MHCLG) about the impact on granting of planning permissions, housing delivery and the risk that councils will be unfairly penalised through the Housing Delivery Test. MHCLG is aware of the concerns and is having urgent discussions with both the Department for Environment, Food and Rural Affairs (DEFRA) and Natural England colleagues. We understand that Natural England's area team is also engaging with local authorities in the South Hampshire area to try and find a strategic solution.

In addition, in case you are not already aware, the joint 'Nitrogen Reduction in Poole Harbour' [Supplementary Planning Document](#) might be of interest. This provides detailed guidance to ensure that development does not lead to an increase in the level of nitrates in Poole Harbour. It has been adopted by North Dorset, Purbeck, West Dorset (now Dorset Council) and Poole Council. Nick Perrins (nick.perrins@bcpcouncil.gov.uk), from Bournemouth, Christchurch and Poole Council has agreed to speak to the Solent local authorities about this and provide advice as required. I hope that this proves helpful.

We will continue to keep an eye on this issue and I will flag in my upcoming Ministerial meetings. We would also be happy to help facilitate meetings between the affected councils and government departments as necessary. The relevant policy contact at the LGA is jo.allchurch@local.gov.uk.

Yours sincerely,

Cllr James Jamieson
Chairman

