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Position Statement and Mitigation Plan for Nutrient Neutral Development

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1. Introduction

- 1.1 Havant Borough benefits from its position on the Solent coast which is internationally designated for its wildfowl and wading species. This creates a high-quality natural environment highly worthy of protection for both its intrinsic value as well as its value in making Havant Borough an attractive place to live, work and study. The Council also takes seriously the requirement under the National Planning Policy Framework “to support the Government’s objective of significantly boosting the supply of homes”. The Council has an ambitious regeneration agenda and development strategy set out in the Havant Borough Local Plan and Regeneration Strategy.
- 1.2 Nonetheless, the Council is committed to development only taking place if it is sustainable development that includes relevant environmental protections. Part of the consideration of this is whether there would be a detrimental impact on the water quality on any European Designated Nature Conservation Sites.
- 1.3 New development necessitates the provision of connections to the foul water drainage network and can increase surface water run-off. This could increase the amount of nutrients entering Solent European Sites, even if it is a proportionately small contribution.
- 1.4 New housing schemes and other proposals which include a net gain in overnight accommodation or development which has a high volume of water use will need to prevent any increase in nutrients into the harbour in order for them to be ‘nutrient neutral’ if they would otherwise lead to a likely significant impact on a European site.

The Habitats Regulations

- 1.5 Under the Conservation of Habitats and Species Regulations (2017 as amended) (hereafter referred to as the Habitats Regulations), there are significant responsibilities conferred on the Council as a ‘competent authority’. Chiefly, it requires the Council to only approve plans or projects (such as planning applications or a local plan) if there is no likelihood of a significant effect on any European designated nature conservation site.
- 1.6 A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water quality, increase in recreation, light pollution, tall buildings or construction activity.
- 1.7 In order to assess whether planning applications would lead to a ‘likely significant effect’ a Habitats Regulations Assessment (HRA) is carried out. This generally includes an Appropriate Assessment (AA), which is the second more detailed stage¹ of an HRA. Natural England must be consulted on the findings of an HRA and there is a duty to consider their response.
- 1.8 A potential effect would be considered ‘likely’ if it cannot be ruled out based on the information available as opposed to it merely being probable or possible. When then moving to the appropriate assessment stage, an established principle under law is that AAs must use the ‘precautionary principle’. An appropriate assessment must enable the local planning authority to apply the

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

regulation 63(5) “integrity test” on a “precautionary basis”. Authorisation may only be given if the competent authority has made certain there will be no adverse effect on the integrity of the site and where no reasonable scientific doubt remains. It must therefore be shown that there would not be no likelihood of a significant effect in order for the Council to lawfully grant planning permission.

- 1.9 The need for Habitats Regulations Assessments has existed since 2004 when the original regulations came into force. It has been known for many years that new development does lead to an increase in recreation at the coast and that this has an impact on the birds which use the coastal mud flats to feed and roost (this is a ‘likely significant effect’). As a result, mitigation is required from all new development which is then used to fund the Bird Aware Partnership, of which the Council is a member. The partnership implements the mitigation scheme, largely consisting of a ranger patrols along the coast. This is an established part of the development process at the Solent.

The Dutch Case

- 1.10 The European Court of Justice determined a case related to considering water quality in Appropriate Assessments in late 2018. This generally referred to as The Dutch Case².
- 1.11 The judgement in this case refines the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture.
- 1.12 As a result, the only way that a new housing scheme could prevent this likely significant effect is for there to be no increase in nutrients into the harbour, i.e. for it to be ‘nutrient neutral’.

The purpose of this Position Statement

- 1.13 This Position Statement sets out the Council’s approach to new development which is likely to have an adverse effect on the integrity of the Solent European sites. It provides guidance on how the nutrient load of new development should be calculated, and how an increase in nutrients into the harbour should be mitigated in order for development to be ‘nutrient neutral’.
- 1.14 The statement also includes an ‘Mitigation Plan’ which sets out specific measures which will be implemented to mitigate development in Havant borough. It indicates how the scale of mitigation should be calculated. If mitigation is shown to be necessary this Position Statement will also allow applicants to calculate the level of mitigation, in the form of a financial contribution, which will be required from the proposed development.

Water Quality and the European Designated Nature Conservation Sites

- 1.15 Eutrophication is increased plant growth which reduces the oxygen content in water and occurs when an excessive amount of nutrients within a water body are present. This process makes it difficult for aquatic insects or fish to survive, in turn removing a food source from the food cycle.
- 1.16 Addressing the sources of eutrophication reduces the input of nutrients into the internationally designated marine environment. However, if the issue of eutrophication is not addressed, it could have a negative impact on the marine environment and the conservation objectives of the European designated nature conservation sites (see below).

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

- 1.17 Water quality can be measured by chemically testing water samples. Chemical testing can test for parameters such as nitrogen and phosphates which are indicators of poor water quality.
- 1.18 Nutrients from wastewater treatment works represent one source of excess nutrients in the marine environment. However, it is not the only source, nor is it generally the highest. Agriculture in particular typically represents a higher level of input of nutrients into the marine environment than wastewater treatment works.
- 1.19 There are two wastewater treatment works that serve Havant Borough: Emsworth drains to Thornham, the rest of the Borough drains to Budds Farm. Development on the boundary of the catchment areas will need to seek confirmation from Southern Water as to which wastewater treatment works it would be served by as this will depend on the network in that area.
- 1.20 Whether an effect would be significant depends on whether it would threaten the specific features and conditions of the protected sites concerned by the plan or project. In the case of water quality and the Solent's European Sites, the condition varies site by site. However none are fully favourable and many are not recovering³. As such, any further deterioration of water quality at those sites, no matter how small, can be considered likely to cause a significant effect on those sites in terms of the application of the Habitats Regulations.
- 1.21 As such, it has been confirmed that development draining to Budds Farm Wastewater Treatment Works and Thornham Waste Water Treatment Works would be likely to lead to a significant effect on the following European Sites:
- Chichester & Langstone Harbours Special Protection Area (SPA)
 - Chichester & Langstone Harbours Ramsar site
 - Solent Maritime Special Area of Conservation (SAC)
 - Solent and Dorset Coast Special Protection Area (SPA)
 - Solent and Southampton Water SPA
 - Solent and Southampton Water Ramsar
 - Portsmouth Harbour SPA
 - Portsmouth Harbour Ramsar
 - Solent and Isle of Wight Lagoons SAC

³ More information regarding this is contained in *Review of the Need for Nutrient Neutral Development in the Budds Farm Wastewater Treatment Works* catchment available at www.havant.gov.uk/localplan/evidence-base

2. Development Management Process

Development schemes that could be affected

- 2.1 A large number of schemes are likely to result in a significant effect on the European Sites. The key test is whether there would be an increase in nitrogen emissions into one or more European Sites once the development is occupied compared to if it was not built.
- 2.2 The advice below is general in nature and does not remove the necessity to discuss this matter through a pre-application enquiry at an early point in the development process.
- 2.3 It is also possible that there is another likely significant effect from the proposed development. It has already been noted that a large amount of development in the Borough, if not mitigated, would be likely to cause a significant effect due to recreational disturbance. This is generally addressed through the Bird Aware Solent Mitigation Scheme and a separate mitigation package. However, as set out above, there are many less common reasons why a significant effect may be caused and it is incumbent upon applicants to familiarise themselves with the issues involved.
- 2.4 All of Havant Borough is within the catchment of a Wastewater Treatment Works that drains into a Solent European site. As such, all of the Borough is affected.

Types of applications that will be affected

- 2.5 Full and outline planning applications for applicable uses are affected and so an avoidance and mitigation package will be needed.
- 2.6 It is the Council's advice to the Planning Inspectorate⁴ that any planning appeals for applicable uses should include an avoidance and mitigation package to remove any likelihood of a significant effect.
- 2.7 Any increase in residential dwellings that takes place as permitted development must undertake a separate HRA through Regulations 75 and 77 of the Habitats Regulations. Such assessments will need to consider water quality. Mitigation packages for such development will be needed on the same basis as those for dwellings that require planning permission.

Residential (C3) dwellings

- 2.8 Any residential development would lead to an increase in nitrogen and thus would be likely to cause a significant effect.
- 2.9 In this context, 'dwelling' also includes net new dwellings created through the sub-division of existing dwellings, second homes, dwellings to be used as holiday accommodation, houses in multiple occupation, self-contained student accommodation, and new dwellings created as a result of approval granted under the General Permitted Development Order e.g. change of use from office to residential (including houses and flats). It includes permanent accommodation for gypsies and

⁴ In a scenario where an applicant has appealed to the Secretary of State (in practice the Planning Inspectorate) against a refusal of planning permission, the Planning Inspectorate become the Competent Authority under Regulation 63 of the Habitats Regulations. As part of this, they will need to undertake an assessment under that regulation.

travellers. Temporary/transit pitches will be assessed on a case-by-case basis by the local planning authority in consultation with Natural England.

Other forms of development providing overnight accommodation

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

Commercial and other non-residential development

- 2.12 Non-residential development is unlikely to lead to a significant effect as it would not involve a net increase in population in the catchment.
- 2.13 However in some cases there would be a significant effect due to the type of operation. In particular, high water use developments would be likely to cause a significant effect. Such schemes would be considered on a case by case basis. It is recommended that any high-water use developments engage with Natural England's Discretionary Advice Service prior to preparing a nutrient budget for submission as part of a pre-application enquiry to the Council.

How applications will be considered and what information is needed to assess the 'likely significant effect'

- 2.14 It is necessary for the Council, as the competent authority under The Regulations, to undertake a Habitats Regulations Assessment, including Appropriate Assessment (AA), on any development that it is considered could lead to a likely significant effect on a European Site.
- 2.15 The Council has undertaken HRAs on applications for many years as there has been an acknowledged significant effect from recreation since 2014, with new development providing mitigation packages. For the avoidance of doubt, a mitigation package will be needed for water quality and recreation for the vast majority of residential developments.
- 2.16 It is incumbent on the applicant to provide all of the information necessary to undertake that assessment. When submitting planning applications, applicants will need to submit the following information to set out how any likely significant effects on Solent European Sites will be mitigated through the application:
- A site-specific nutrient budget, using Natural England's methodology
 - A European Sites Mitigation Checklist (see Appendix A of this Position Statement)
- 2.17 As part of the overall nutrient budget, development will be expected to achieve a maximum water use standard of 110 litres per person per day (l/p/p/d) which will be secured via two conditions. The planning conditions used are as follows:
1. The development hereby permitted shall not be occupied until:
 - (a) A water efficiency calculation in accordance with the Government's National Calculation Methodology for assessing water efficiency in new dwellings has been undertaken which demonstrates that no more than 110 litres of water per person per day shall be consumed within the development, and this calculation has been submitted to, and approved in writing by, the Local Planning Authority; and

(b) All measures necessary to meet the approved water efficiency calculation have been installed.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan.

2. At all times following occupation of the development hereby approved, all measures necessary to meet the approved water efficiency calculation shall be maintained so as to ensure that no more than 110 litres per person per day shall be consumed in the development in perpetuity.

Reason: There is existing evidence of high levels of nitrogen and phosphorus in the water environment with evidence of eutrophication at some European designated nature conservation sites in the Solent catchment. The PUSH Integrated Water Management Strategy has identified that there is uncertainty as to whether new housing development can be accommodated without having a detrimental impact on the designated sites within the Solent. Further detail regarding this can be found in the appropriate assessment that was carried out regarding this planning application. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council have had regard to Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011, and Policy E14, EX1 and E12 of the Pre-Submission Havant Borough Local Plan”

Calculating a nutrient budget

- 2.18 All development which results in a net-increase of overnight accommodation or a development which has a high water use will be required to submit a nutrient budget as part of their application.
- 2.19 To calculate the nutrient load of any development Natural England has created a methodology⁵ containing the following stages which can be summarised as follows and contains examples for each stage:

Stage 1

Calculates the total nitrogen in kilograms per annum which is derived from development that would exist the Wastewater Treatment Works after treatment. For any housing developments on brownfield sites, stage one and stage 4 are the only stages that will need completing in order to establish the scale of mitigation that will need to be provided.

⁵ Available at <https://www.push.gov.uk/2020/03/18/natural-englands-latest-guidance-on-achieving-nutrient-neutrality-for-new-housing-development/>

STAGE 1 - WORKED EXAMPLE TO CALCULATE TOTAL NITROGEN (TN) LOAD FROM DEVELOPMENT WASTEWATER				
Step	Measurement	Value	Unit	Explanation
Development proposal	Development types that would increase the population served by a wastewater system	1000	Residential dwellings	
Step 1	Additional population	2400	Persons	Uses an average household size of 2.4 x 1000 dwgs (greenfield site).
Step 2	Wastewater volume generated by development	264,000	litres/day	2400 persons (step 1) x 110 litres. Where relevant, deduct wastewater volume of population displaced by the proposed development.
Step 3	Receiving WwTW environmental TN permit limit. Assume discharge to be at 90% of consent limit.	8.1	mg/l TN	90% of the consent limit = 8.1 mg/l TN.
Step 4	Deduct acceptable TN loading (@ 2 mg/l TN) (as defined in paragraph 4.40)	6.1	mg/l TN	8.1 (step 3) – 2 mg/l TN
Step 5	TN discharged after WwTW treatment	1,610,400	mg/TN/day	264000 (step 2) x 6.1 (step 4) = 1,610,400
Step 6	Convert mg/TN to kg/TN per day	1.6104	Kg/TN/day	Divide by 1,000,000
Step 7	Convert kg/TN per day to kg/TN per year	587.8	Kg/TN/yr	1.6104 x 365 days
Wastewater total nitrogen load	587.8 kg/TN/yr			

Stage 2

Calculates the existing nitrogen load from the current land use of the development site.

STAGE 2 - WORKED EXAMPLE TO CALCULATE NITROGEN LOAD FROM CURRENT LAND USE				
Step	Measurement	Value	Unit	Explanation
1	Total area of existing agricultural land	40	Hectares	This is the area of agricultural land that will be lost due to development
2	Identify farm type and confirm nitrate loss.	26.9	Kg/ha/yr	The developable area covers several farm types therefore an average has been used. Reference Appendix 1 and Table 2
3	Multiply area by nitrate loss	1,076	Kg/N/yr	40 ha x 26.9 kg/N/yr
Nitrogen load from current land use		1,076 Kg/N/yr		

Stage 3

This calculates the nitrogen load from the proposed land uses for the development site.

STAGE 3 - WORKED EXAMPLE TO CALCULATE NITROGEN LOAD FROM FUTURE LAND USES				
Step	Measurement	Value	Unit	Explanation
1	New urban area	38	Hectares	Area of development that will change from agricultural land to urban land use
2	Nitrogen load from future urban area	543.4	Kg/N/yr	38 ha x 14.3 Kg/N/yr
3	New SANG / open space	2	Hectares	Area of development that will change from agricultural land to SANG / open space
4	Nitrogen load from SANG / open space	10	Kg/N/yr	2 ha x 5.0 Kg/N/yr
5	Combine nitrogen load from future land uses	553.4	Kg/N/yr	543.4 Kg/N/yr + 10 Kg/N/yr
Nitrogen load - future land uses		553.4 Kg/N/yr		

Stage 4

This takes all the above stages and calculates the net nitrogen load that would result from development.

STAGE 4 - WORKED EXAMPLE TO CALCULATE THE NET CHANGE IN NITROGEN LOAD FROM THE DEVELOPMENT				
Step	Measurement	Value	Unit	Explanation
1	Identify nitrogen load from wastewater (stage 1)	587.8	Kg/TN/yr	See Table 1
2	Calculate the net change in nitrogen from land use change - subtract existing land uses nitrogen load (stage 2) from future land uses nitrogen load (stage 3)	-522.6	Kg/TN/yr	553.4 (stage 3) - 1076 (stage 2) = -522.6 Kg/TN/yr
3	Determine nitrogen budget – the Total Nitrogen wastewater load for the proposed development plus the change in nitrogen load from land use change (the latter figure may be positive i.e. the change in land use will generate more nitrogen, or negative i.e. the change in land use will generate less Nitrogen)	65.2	Kg/TN/yr	587.8 (step 1) + -522.6 (step 2) = 65.2 Kg/TN/yr
4	Where TN budget is positive add 20% precautionary buffer	78.24	Kg/TN /yr	64.8 + 20% = 78.24
Total Nitrogen that needs to be neutralised		78.24 Kg/TN /yr		

2.20 On the basis of the following calculation stages if the final figure in stage 4 is positive then mitigation is required for the development, if the final figure is negative no mitigation is required.

3. Options for mitigation

- 3.1 For the HRA accompanying the planning application to conclude that there is no likelihood of a significant effect on the Solent's European Sites, the proposed development would need to be nutrient neutral.
- 3.2 Avoidance and mitigation measures to achieve nutrient neutrality should be provided on site, in line with the Habitats Regulations, wherever possible. However, for the vast majority of developments in Havant Borough, particularly brownfield development and regeneration schemes, it is acknowledged that this is not possible.

On-site Mitigation Options

- 3.3 Some development will be able to use on-site measures in order to achieve nutrient neutrality or reduce the scale of off-site mitigation required to achieve nutrient neutrality. Wherever possible, on site measures should be used to avoid an impact before relying on off-site mitigation. Examples of the type of on-site measures that may be used can be found in Natural England's methodology⁶.
- 3.4 In some cases, on site mitigation could include taking land out of agricultural use and using the land for an alternative use, notably development and open space⁷. It should be noted that a greenfield site is not automatically in use as agriculture. The following uses are classed as agricultural within Natural England's methodology:

AVERAGE NITRATE-NITROGEN LOSS PER FARM TYPE IN THE SOLENT CATCHMENT AREA (kg/ha)	
Cereals	31.2
Dairy	36.2
General Cropping	25.4
Horticulture	29.2
Pig	70.4
Lowland Grazing	13.0
Mixed	28.3
Poultry	70.7
Average for catchment area	26.9

- 3.5 In the event a nutrient budget and a proposed onsite avoidance and mitigation package shows the proposed development will be nutrient neutral, there will need to be the necessary certainty that any mitigation measures will reduce the nutrient load of the land. In such circumstances the Council will secure the requisite mitigation via a legal agreement to ensure that it is maintained in perpetuity
- 3.6 For some developments, a bespoke on-site mitigation solution will be a viable option, particularly where watercourses can be found on site. The applicant will be expected to fund the project level Habitats Regulations Assessment that will be required on such an application.

⁶ <https://www.push.gov.uk/wp-content/uploads/2020/03/Advice-on-Achieving-Nutrient-Neutrality-for-New-Development-in-the-Solent-Region-March-2020.pdf>

⁷ To be taken into account the open space must be 0.5 ha or above.

Off-Site Mitigation Options– Warblington Farm Mitigation Scheme

- 3.7 Development on non-agricultural land will not be able to provide mitigation on site. In such cases, developments will need to contribute towards an off-site scheme. The Council has set up a cost effective and simple scheme which can be used by applicants at Warblington Farm.
- 3.8 The Council actively encourages applicants to use Warblington Farm as mitigation where the principle of the development is accepted by the Council as Local Planning Authority. In any instances where the Council does not accept the principle of development, it will not be possible for applicants to use the Council's mitigation scheme. This is because Warblington Farm is needed to mitigate the development planned for through the Havant Borough Local Plan and Regeneration Strategy. The Local Plan HRA confirms that Warblington Farm is an acceptable mitigation option. This has been confirmed by the Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough report.
- 3.9 The Warblington Farm scheme will be fully funded by the development industry, with no financial support from the Council. The scheme will involve changing the use of the site in a phased manner from a dairy farm to a nature reserve. In the longer term, the Council aims to make Warblington Farm a key site in Havant's ecological network, increasing biodiversity and helping residents to enjoy and understand the intrinsic value of the natural environment.
- 3.10 In addition to providing cost effective mitigation for nutrient neutrality, land at Warblington Farm also has the potential to deliver the following benefits:
- A permanent refuge for Solent Waders and Brent Geese - a number of emerging allocations in Havant Borough Local Plan will need to provide mitigation by means of a financial contribution towards the enhancement of habitats, particularly those on secondary support areas or low use sites;
 - A replacement habitat for Curlew which currently use land at Campdown, this is one of the largest allocations in the Council's emerging Local Plan;
 - The Environment Bill means there is likely to be a requirement for all new development to achieve a net gain in biodiversity. For development unable to make the necessary improvements on site, development contributions could be made to create and enhance habitats at Warblington Farm; and
 - The potential to provide additional nutrient mitigation subject to further feasibility and analysis.
- 3.11 In terms of development achieving nutrient neutrality, the Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough report⁸ confirms that there is a scientific link between the likely significant effect from the development and the mitigation at Warblington, as required by the Habitats Regulations. The mitigation is suitable for development draining to Budds Farm and Thornham Wastewater Treatment Works and is therefore suitable for mitigating the impact of any development in Havant borough.
- 3.12 A financial contribution will be sought based on the calculation of the load provided by the nutrient budget associated with the planning application in question. The following table summarises the rates which are payable on a cost per kilogram basis according to the catchment which the new dwellings connect to which will be updated on annual basis.

⁸ Available at <https://www.havant.gov.uk/nitrogen>

Per kilo contribution/ Catchment	Total nitrogen discharged (kg N per year)	Cost per kilo contribution
Per kilo contribution	1	£1,235.00

- 3.13 In addition to the above an administrative fee of £23 per legal agreement is payable. The financial cost of per kilogram of nitrogen will be increased annually in accordance with the Cost Price Index at the start of each financial year. Further information for applicants, together with live costs, can be found in the Council's Developer Contributions Guide⁹. The following examples set out how costs would be calculated in the Thornham and Budds Farm catchments respectively:

Thornham catchment (Emsworth)

- 3.14 For development which drains to Thornham Wastewater Treatment Works it will be calculated as follows:

Development of 4 dwellings on a brownfield site draining to Thornham Wastewater Treatment Works	
Amount of mitigation required kg/N	3.2 kg/N
Cost of mitigation	£3952.00
Administration Fee	£23.00
Total avoidance and mitigation package for nutrient neutrality	£3975.00

Budds Farm catchment (Rest of Havant Borough)

- 3.15 For development which drains to Budds Farm Wastewater Treatment Works it will be calculated as follows:

Development of 4 dwellings on a brownfield site draining to Budds Farm Wastewater Treatment Works	
Amount of mitigation required kg/N	3.1 kg/N
Cost of mitigation	£3828.50
Administration Fee	£23
Total avoidance and mitigation package for nutrient neutrality	£3851.50

- 3.16 The mitigation charge has been calculated on the basis of costs and fees associated with the management of the site, the value of the asset as well as the details of costs, fees and taxes.

⁹ Available at www.havant.gov.uk/community-infrastructure-levy

Further phases of the scheme will become available in due course to enable development to continue in compliance with the Habitats Regulations.

- 3.17 As the land at Warblington will be phased out of agricultural use, mitigation will be made available on a phased basis. The Council will carefully monitor the capacity of the land at Warblington to ensure that there continues to be sufficient mitigation available for development coming forward.
- 3.18 Warblington Farm will be managed in such a way that restricts the future use to operations that prohibit the use and application of any nutrient load on the land, and only carry out management activities which would lead to a net decrease of nitrogen compared to current use.
- 3.19 The first phase of Warblington Farm provides 20ha of mitigation land which will be available for development coming forward. The first phase would be turned into grassland which will then be cut as necessary by the tenant farmer ensuring less than 5kg per hectare per year of nutrients will be produced. If the activity on the land were to change this would have to be agreed by Natural England and Havant Borough Council.
- 3.20 Due to the additional environmental benefits which are available on Warblington Farm a management plan will be produced when all phases of Warblington are available.
- 3.21 The Council has established the costs of the management of the site over an 80-year time period, the value of the asset and returning the control of the leasehold. These outgoings have been factored into a cash flow analysis to provide a per kilogram cost of nitrogen.
- 3.22 In addition to the above, the water efficiency standard of 110 l/p/d will be secured and enforced by planning condition for all new residential developments.

Off-Site Mitigation Options - Alternative mitigation schemes

- 3.23 Third parties are also progressing potential mitigation plans which could provide effective mitigation for development in Havant Borough or applicants may have their own suitable mitigation scheme. In such cases, applicants are encouraged to enter into early discussions with Natural England through the Discretionary Advice Service¹⁰. It will also be necessary to discuss the proposals with the Council as the competent authority.
- 3.24 In such cases, it will need to be established that there is a clear scientific link between the proposed development and the mitigation and that the mitigation package ensures that the development in question is nutrient neutral. The legal agreement put in place will likely need to be bespoke to that development and the mitigation scheme in question. It will need to be signed by the landowner of the mitigation site.
- 3.25 Given the geographical nature of Havant Borough, it is likely that some third party mitigation schemes could be progressed outside of the Borough. In such cases, the planning authority of the mitigation land together with the landowner of the mitigation site would both need to be signatories to the legal agreement. In such scenarios, the planning authority for the mitigation land would either need to be willing to undertake any necessary enforcement action or be willing to delegate that authority to Havant Borough Council. Applicants should be aware that this may well extend the period of time needed to complete legal agreements. If applicants wish to use a third party scheme,

¹⁰ <https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>

it will be necessary for the project level HRA associated with that planning application to be undertaken by a contractor. The cost of this will need to be met by the applicant.

4. Review of this Position Statement

- 4.1 The Council is committed to both complying with the Habitats Regulations and also enabling sustainable new housing development. This Position Statement includes a mitigation plan which will enable development management decisions to be taken on planning applications in compliance with the Habitats Regulations. This position statement has been prepared using the best and most up-to-date scientific knowledge available and has applied the precautionary principle where appropriate.
- 4.2 The Council's emerging Havant Borough Local Plan must also comply with the Habitats Regulations and an HRA has been undertaken at each point in the plan's preparation.
- 4.3 Moving forwards, it will be necessary for further research to be undertaken regarding the role of nitrogen and phosphorous in the water environment, the sources of nitrogen and phosphorous in the Solent's European Sites and the effectiveness of potential measures to mitigate this. This research is already underway in collaboration with partner authorities in the Partnership for South Hampshire (PfSH).
- 4.4 The Council will continue to call for Government to take action to address this issue through a review of the consents of wastewater treatment works at the Solent. However it is acknowledged that many operate at the currently best available technology and such a review would take time in any case.
- 4.5 The Council wishes to work towards a more definitive mitigation strategy. This should ideally be on a PfSH or wider basis. The Council will continue to positively and proactively work with its partner authorities, through PfSH, together with Government, Natural England, the Environment Agency, Southern Water and any other stakeholder in order to address this issue appropriately.

