Havant
BOROUGH COUNCIL

Position Statement and Mitigation Plan for Nutrient Neutral Development

April 2023

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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".

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'.

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 either there is no likelihood of a significant effect on any European designated nature conservation site or, if such an effect is found, it can be mitigated so as to avoid an adverse effect on the integrity of the conservation site[1].

1.6 A likely 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 have an effect on protected sites, an appropriate assessment is carried out. Appropriate assessments will be carried out for reserved matters applications unless all aspects of the development were considered at outline stage and there are no new or different effects that have not been previously considered. Natural England must be consulted on the findings of an appropriate assessment and there is a duty to have regard to 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 carrying out an appropriate assessment, authorities must apply the 'precautionary principle', an established principle under law. An appropriate assessment must enable the local planning authority to apply the

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

1.9 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 protected site and where no reasonable scientific doubt about the effect of the development and the proposed mitigation remains.

1.10 The need for appropriate 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 ranger patrols along the coast. This is an established part of the development process at the Solent.

The Dutch Case

1.11 The European Court of Justice determined a case related to the effect of water quality in appropriate assessments in late 2018. This is generally referred to as The Dutch Case[2].

1.12 The judgement in this case expanded the definition of plans and projects to include significantly more operations within the definition, most notably runoff from agriculture.

1.13 As a result, the only way that a new housing scheme could prevent this effect is for there to be no increase in nutrients into the harbour as a result of the development, i.e., for it to be ‘nutrient neutral’.

The purpose of this Position Statement

1.14 This Position Statement sets out the Council’s approach to new development which is likely to have a significant effect on 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’.

1.15 The statement also includes a ‘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, which will be required from the proposed development.

Water Quality and the European Designated Nature Conservation Sites

1.16 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.

1.17 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

[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

have a negative impact on the marine environment and the conservation objectives of the European designated nature conservation sites.

1.18 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.

1.19 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.

1.20 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.

1.21 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 recovering[3]. 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 within the meaning of the Habitats Regulations.

1.22 As such, it has been confirmed that development draining to Budds Farm Wastewater Treatment Works and Thornham Wastewater 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 SPA
- Solent and Southampton Water SPA
- Solent and Southampton Water Ramsar
- Portsmouth Harbour SPA
- Portsmouth Harbour Ramsar
- Solent and Isle of Wight Lagoons SAC

1.23 Natural England has produced guidance for developers and mitigation providers. This can be found on the Council's nutrient neutrality webpage[4].

[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

[4] https://www.havant.gov.uk/nutrient-neutrality-what-developers-need-know

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 are other likely significant effects arising from the proposed development. It has already been noted that a large amount of development in the Borough, if not mitigated, would have an adverse effect on the integrity of the European Sites due to the increase in recreational disturbance. This is generally addressed through the Bird Aware Solent Mitigation Scheme. However, 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 This matter needs to be addressed by all applications for overnight accommodation including new homes, student accommodation, care homes, tourism attractions and tourist accommodation. This includes any development permitted through the General Permitted Development Order that gives rise to new overnight accommodation.

2.6 Many outline applications do not include detail regarding the scale and mix of the proposed development – this is addressed during the reserved matters stage. In such cases, a legal agreement which secures an avoidance and mitigation package based on the nutrient budget will need to be submitted at outline stage. In addition, the developer will be required to submit a revised nutrient budget based on the final form of development at reserved matters stage. This is needed to address any material change in circumstances and will ensure that a full avoidance and mitigation package for the final form of development is in place prior to the commencement of the development.

2.7 For reserved matters planning applications, and applications for grants of prior approval and/or certificates of lawfulness for a proposed use or operation the matter must also be addressed.

2.8 Section 73 applications need to address nutrient neutrality as they effectively result in the grant of a new planning permission. This would need to be done using the most up to date methodology. Section 96A applications are non-material amendments, and do not result in a new planning permission and therefore do not need to address nutrient neutrality.

2.9 It is the Council's advice to the Planning Inspectorate[5] that any planning appeals for applicable uses should include an avoidance and mitigation package to remove any risk of the development having an adverse effect on the integrity of protected sites.

2.10 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.

2.11 The Council has produced process notes for the types of applications affected by nutrients. These can be found on the Council's website[6].

Residential (C3) dwellings

2.12 Any residential development proposing a net increase in overnight accommodation would lead to an increase in nitrogen and thus would be likely to cause a significant effect.

2.13 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 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

2.14 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.

2.15 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

2.16 Non-residential development is unlikely to lead to a significant effect as it would not involve a net increase in population in the catchment. For the purposes of business and commercial development it is considered that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.

2.17 However, in some cases commercial or non-residential development could have a significant effect due to the type of operation or facilities proposed. 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.

[5] 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.

[6] https://www.havant.gov.uk/nutrient-neutrality-what-developers-need-know

How applications will be considered and what information is needed to assess the effect of the proposed development

2.18 It is necessary for the Council, as the competent authority under the Habitats Regulations, to undertake an Appropriate Assessment (AA), on any development that it is considered could lead to a likely significant effect on a European Site. This includes reserved matters applications where there has been a material change in circumstances since outline planning permission was granted.

2.19 The Council has undertaken AAs on applications for many years as there has been an acknowledged significant effect from the increase in recreational disturbance since 2014, with new development being required to provide 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.

2.20 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 effects on Solent European Sites will be mitigated through the application:

- A site-specific nutrient budget, using Natural England's methodology and calculator, and the Council's occupancy calculator (where appropriate);
- If the application site's pre-development use is classified as an agricultural use within the calculator, evidence of the farm type for the past 10 years will need to be submitted to support the nutrient budget. This evidence could for example take the form of historic/aerial photographs or deeds of agreement; and
- A European Sites Avoidance and Mitigation Checklist

2.21 The following sections of the Position Statement and Mitigation Plan outline the on-site avoidance measures for C3 Residential development and specialist residential development including elderly care. If a planning application does not fall under the development categories below, the applicant should speak to their case officer in the first instance to ascertain what is required to be submitted.

Residential on-site avoidance measures

2.22 As part of the overall nutrient budget, all new C3 residential 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.

2.23 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. In compliance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, the local planning authority has a duty to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council has also had regard to Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

2. At all times following occupation of the development hereby approved, all measures for water usage within the submitted nutrient budget shall be maintained 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. In compliance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, the local planning authority has a duty to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council has also had regard to Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

2.24 In order to discharge condition 1, a copy of a water efficiency calculator will need to be submitted confirming the fixtures and fittings to be used to the standard of 110 l/p/d. The second condition then requires that standard to be maintained for the lifetime of the development.

2.25 The applicant may submit a water efficiency calculator as part of their application, the following condition may be used:

1. The development hereby permitted shall not be occupied until:

All measures necessary to meet the hereby approved water efficiency calculation demonstrate that no more than 110 litres of water per person per day shall be consumed within the development have been installed. Any variation to these calculators or fixtures and fittings shall first be agreed in writing with the Local Planning Authority.

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

On-site avoidance measures for specialist residential development, including elderly care

2.26 A different approach is needed for residential development which does not involve the development of C3 dwellings. This includes care homes and other specialist residential accommodation. For these kinds of development, fixtures and fittings in non-communal areas need to comply with or be lower than the water efficiency level set out in the table below. This will ensure that the development will use no more than 110 l/p/p/d.

Measure	Rate of flow
WC single flush	4 litres/minute (L/M)
WC dual flush	5/3 L/M
Bathroom taps	4 L/M
Shower	8 L/M
Bath	180 litres

Table 1. Water Efficiency Standard for specialist residential development including elderly care

2.27 The applicant will need to confirm in writing through the planning application documentation that fixtures and fittings will comply with the requirements in table 1.

2.28 The following condition will be applied to any grant of planning permission for applications which are not C3 residential:

1. At all times following occupation of the development hereby approved, all sanitary fixtures and fittings which are installed as part of the development hereby permitted shall comply with the water efficiency standards set out in table 1 of the Position Statement and Mitigation Plan for Nutrient Neutral Development (April 2023). 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. In compliance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017, the local planning authority has a duty to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. In coming to this decision, the Council has also had regard to Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

Occupancy Rate

2.29 The Council has considered the appropriate occupancy rate to use, considering the advice in Natural England’s generic methodology. This sets out that the occupancy figure can be derived from national data as long as it reflects local conditions. The national occupancy data which is derived from the Office of National Statistic provides a national average value for the number of residents per dwelling to be 2.4.

2.30 Havant Borough Council has compared the national occupancy figure against the local occupancy figure. The national occupancy figure of 2.4 is more precautionary and therefore should be used within nutrient budget calculations submitted with outline applications.

2.31 The Council has produced a calculator to ascertain the average occupancy of the site by the number of bedroom per dwelling type. This document needs to be submitted alongside the nutrient budget calculator.

2.32 The nutrient budget calculator should include the average occupancy figure derived from the Council's occupancy calculator. Where the development mix is not known at outline stage, an average occupancy of 2.4 persons should be used.

2.33 The use of 2.4 occupancy rate is also the baseline occupancy figure used in calculating other effects on European Sites under the Habitat Regulations, notably the Solent Recreation Mitigation Strategy (Bird Aware) and therefore provides a consistent application of occupancy rates using an approach which is considered robust by Natural England as the statutory consultee for nature conservation and has been used in decision making since 2018.

2.34 Where the proposal would result in an increased occupancy on a per calendar month basis (such as a holiday letting), the nitrogen budget is to be calculated in full. An adjustment should then be made to take account of the proportionate increase on a per calendar month basis, based on the full nitrogen budget. For example, if the full amount of the budget is 1.5kg and the proposal is for an additional 4 month occupancy it would be calculated as follows = 4 divided by 12 x 1.5 = 0.5kg per year would be appropriate for mitigation purposes.

2.35 For applications which do not wish to use the Council's occupancy calculator the applicant would need to justify their bespoke approach to their occupancy figure which they intend to use within Natural England's nutrient budget.

Calculating a nutrient budget

2.36 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.

2.37 To calculate the nutrient load of any development which proposed a net increase in overnight accommodation, Natural England has created a methodology and calculator[7] containing the following four stages which can be summarised as follows:

Stage 1

Calculates the increase in nutrient loading that comes from the development's wastewater. This includes inputting the number of residential units, the daily water usage of the development, occupancy rate per dwelling (see above) and the WwTW that the development will drain to.

The occupancy rate should be calculated using the Council's occupancy calculator. Where the development mix is not known at outline stage, an average occupancy of 2.4 persons should be used.

The figure of 120 l/p/p/d should be inputted as the water usage of development.

For the input labelled 'Include deductible acceptable nutrient load' developments in Havant Borough should select the answer 'yes' as long as the water source for the development is within the Solent Catchment.

[7] https://www.havant.gov.uk/nutrient-neutrality-what-developers-need-know

Stage 2

Calculates the pre-existing nutrient load from the current land use on the development site. This includes inputting the pre-development land use type and area size alongside new scientific information.

Stage 3

Calculates the future nutrient load from land use on the application site post-development. This includes inputting the post-development land use type and the post-development land cover area.

If the land use of the site pre-development is classified as an agricultural use it is important that farm type classification is appropriately precautionary. Therefore, evidence will need to be provided to support the agricultural use for the last 10 years. This evidence would need to be submitted by the applicant.

Stage 4

The final stage of the nutrient budget calculates the net change in nutrient loading form the development site to the Solent Marine sites with the addition of a buffer (it takes the output from stages 1-3). This is the net change in nutrient loading and the buffer as set in the nutrient budget.

Natural England's nutrient budget contains pre-entered values, these pre-entered values should not be edited or changed unless there is sufficient scientific evidence to justify a change of approach.

On the basis of the above calculations 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 Council to be able to grant planning permission, the accompanying appropriate assessment will need to conclude that the development will either not have a likely significant effect on the Solent's European Sites, or where a likely significant effect cannot be ruled out, the mitigation can be secured to ensure that the proposed developments would not have an adverse effect on the integrity of those European sites. As a minimum, developments need to demonstrate that they will 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 methodology[8].

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 open space. It should be noted that a greenfield site is not automatically in use as agriculture. The land use classes used within Natural England's methodology can be seen in the below table.

[8] https://cdn.havant.gov.uk/public/documents/Natural%20England%20Nutrient%20Neutrality%20Generic%20Methodology.pdf

Land use types used in the calculator tool	Description
Cereals	Agricultural areas on which cereals, combinable crops and set aside are farmed.
General	Agricultural areas on which arable crops (including field scale vegetables) are farmed.
Horticulture	Agricultural areas on which fruit (including vineyards), hardy nursery stock, glasshouse flowers and vegetables, market garden scale vegetables, outdoor bulbs and flowers, and mushrooms are farmed.
Pig	Agricultural areas on which pigs farmed.
Poultry	Agricultural areas on which poultry are farmed.
Dairy	Agricultural areas on which dairy cows are farmed.
LFA	Agricultural areas on which cattle, sheep and other grazing livestock are farmed in locations where agricultural production is difficult. An area is classified as a Less Favoured Area (LFA) holding if 50 per cent or more of its total area is classed as LFA.
Lowland	Agricultural areas on which cattle, sheep and other grazing livestock are farmed. A holding is classified as lowland if less than 50 per cent of its total area is classed as a lowland grazing area.
Mixed	Agricultural areas in which none of the above categories are farmed or where it is too difficult to select a single category to describe the farm type.
Greenspace	Natural and semi-natural outdoor spaces provided for recreational use where fertilisers will not be applied and dog waste is managed, e.g. semi-natural parks. This does not include green infrastructure within the built urban environment, such as sports fields, gardens, or grass verges, as these are included in the residential urban land category.
Woodland	Natural and semi-natural outdoor wooded areas.
Shrub	Natural and semi-natural outdoor shrubland area.
Water	Areas of surface water, including rivers, ponds and lakes.
Residential urban land	Areas of houses and associated infrastructure. This is inclusive of roads, driveways, grass verges and gardens.
Commercial/industrial urban land	Areas that are used for industry. These are businesses that typically manufacture, process or otherwise generate products. Included in the definition of industrial land are factories and storage facilities as well as mining and shipping operations.
Open urban land	Area of land in urban areas used for various purposes, e.g. leisure and recreation - may include open land, e.g. sports fields, playgrounds, public squares or built facilities such as sports centres.
Community food growing	Areas that are used for local food production, such as allotments.

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 Appropriate Assessment that will be required on such an application.

Off-Site Mitigation Options

3.7 The market for private sector mitigation has now flourished to the point where there is sufficient supply for the East Hampshire catchment for at least five years. Larger new developments in Havant Borough will therefore be expected to use third party mitigation schemes to ensure their

development is nutrient neutral. Details of these schemes are published on the Partnership for South Hampshire (PfSH)'s website[9].

3.8 Applicants may also wish to propose their own mitigation scheme. In such cases, applicants are encouraged to enter into early discussions with Natural England through the Discretionary Advice Service[10]. It will also be necessary to discuss the proposals with the Council as the competent authority.

3.9 In all cases it will need to be established that there is a clear scientific link between the proposed development and the mitigation scheme to ensure the development in question is nutrient neutral. Any third-party mitigation scheme would also be required to provide supporting evidence to the Council as the competent authority for the proposed development to conclude that the mitigation principles set out in Natural England's guidance have been met. This will need to constitute robust information bespoke to the scheme in question which can be assessed as part of the AA for the planning application in question.

3.10 Third-party mitigation may be bespoke to that development and the mitigation scheme in question. The mitigation provider would normally be expected to provide Natural England and the Council with the necessary information to prove the scientific link between the mitigation site and the catchment in which the development is located. In some cases, it may 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.

3.11 Given the geographical nature of Havant Borough, most third party mitigation schemes are located outside of the Borough. In such cases, the developer will be required to enter into a form of contract or agreement with the mitigation provider to secure the required capacity to mitigate their development. This may be in the form of an upfront payment (similar to how the Council's mitigation scheme is secured at Warblington), or an agreement which effectively reserves the required capacity until planning permission has been granted. In the case of the latter, the local planning authority may need to impose a Grampian condition that requires evidence that the nitrogen mitigation has been secured prior to the commencement of development. The applicant will be required to provide proof of payment or other evidence that the credits have been secured in order to discharge the condition.

3.12 As set out above, the exact scale of the full avoidance and mitigation package may not be known until reserved matters stage. In such cases, the Council will secure an avoidance and mitigation package based on the nutrient budget submitted at outline stage. This will be secured via a legal agreement, together with an obligation to submit a revised nutrient budget based on the final form of development for approval at reserved matters. This will ensure that mitigation is place prior to the commencement of the development. In such cases, the planning authority for the mitigation land owner 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.

3.13 The Strategic Environmental Planning Officer for PfSH has assessed the supply and demand for nutrient mitigation in the East Hampshire Catchment and concluded that the East Hampshire catchment provides sufficient mitigation to meet the needs of sustainable development in both the short and medium term. It is also likely that the East Hampshire catchment will provide sufficient

[9] https://www.push.gov.uk/work/mitigation-schemes-available-to-developers/
[10] https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals

mitigation to satisfy development into the long term. For development which drains the Chichester catchment, there is currently enough nitrogen credits within the mitigation market to meet immediate need. It is also likely that there will be enough nitrogen credits available on the open market to meet the short term need for mitigation.

Off-Site Mitigation Options– Warblington Farm Mitigation Scheme

3.14 The Warblington Farm scheme is fully funded by the development industry, with no financial support from the Council. The scheme involves changing the use of the site in a phased manner from a dairy farm to a nature reserve. The Council commissioned Ricardo to undertake a review of Warblington Farm Mitigation Scheme against Natural England's new guidance published in early 2022. The addendum[16] confirms that Warblington Farm Mitigation Scheme is still suitable and 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. 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.

3.15 Only planning applications for 15 dwellings or less (net) (C3) or are regeneration projects within the regeneration areas (as defined at Appendix 1) granted on or after 18 November 2022 will be able to use Warblington Farm.

3.16 If the application propose a non-C3 use but provides overnight accommodation, the Council will assess whether the scheme can use Warblington Farm on a case by case basis. The most common uses this would apply to would be care homes and other forms of housing for older people, hotels, holiday accommodation and certain employment uses.

3.17 Where development does not meet the above criteria, it will not be possible for applicants to use the Council's mitigation scheme. This is because Warblington Farm has a finite capacity and is needed to mitigate the development planned for through the Council's Regeneration and Economy Strategy 2022-2036[11].

3.18 The Council has undertaken a review of the Warblington Farm scheme against the new guidance submitted by Natural England, this confirms that the mitigation scheme is an acceptable mitigation option under the latest guidance. Both the Warblington Farm Mitigation Option for Nutrient Neutral Development in Havant Borough Report[12] and the Addendum[14] can be found on the Council's website.

3.19 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 sites 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;
- The Environment Act 2021 means there will 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.

[11] Havant Borough Regeneration and Economy Strategy 2022-2036
[12] Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough

3.20 In terms of development achieving nutrient neutrality, the Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development in the Havant Borough report[13] confirms that there is a scientific link between effect from 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.

3.21 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.

Per kilo contribution/ Catchment	Total nitrogen discharged (kg N per year)	Cost per kilo contribution from 1 April 2023
Per kilo contribution	1	£3,300

3.22 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 Guide[17].

3.23 The revised mitigation charge is calculated on the basis of restricting the scheme to 15 dwellings or less and to development within the regeneration areas (as defined at Appendix 1), the 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.

3.24 As the land at Warblington is being phased out of agricultural use, mitigation will be made available on a phased basis. The Council carefully monitors the capacity of the land at Warblington to ensure that there continues to be sufficient mitigation available for development coming forward. Further phases of the scheme may become available in due course to enable development to continue to come forward in compliance with the Habitats Regulations.

3.25 Warblington Farm is 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.

3.26 The first phase of Warblington Farm provides approximately 25ha of mitigation land which will be available for development coming forward. The first phase has been converted into grassland and then cut as necessary by the tenant farmer. If the activity on the land were to change this would have to be agreed by Natural England and Havant Borough Council.

3.27 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.

3.28 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.

[13] Available at https://www.havant.gov.uk/nitrogen

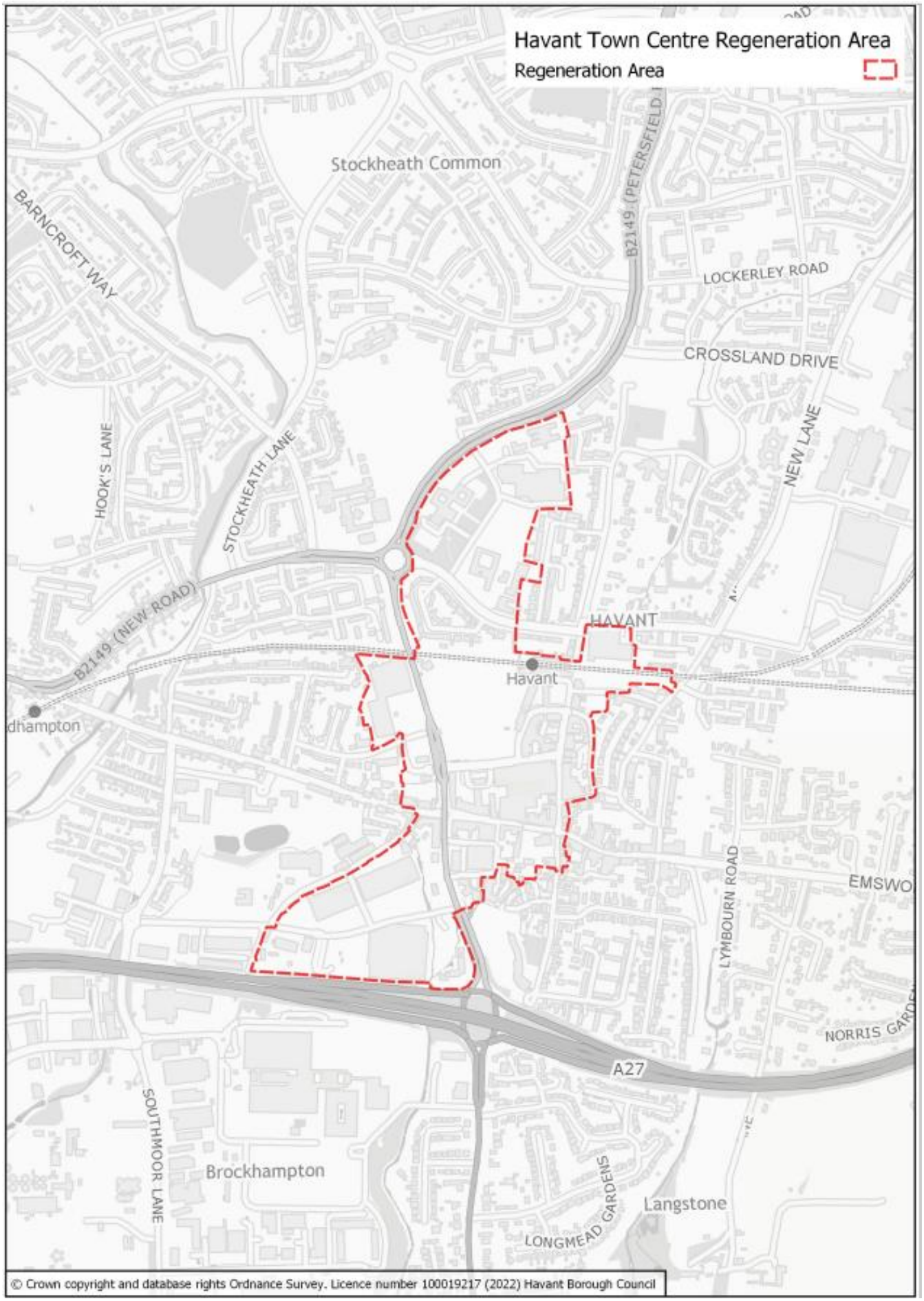
4. Review of this Position Statement

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 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).

4.3 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.

Appendix 1: Regeneration Areas


Havant Town Centre Regeneration Area
Regeneration Area
Stockheath Common
BARNCROFT WAY
B2149 (PETERSFIELD
LOCKERLEY ROAD
CROSSLAND DRIVE
NEW LANE
HOOK'S LANE
STOCKHEATH LANE
B2149 (NEW ROAD)
HAVANT
Havant
dhampton
LYMBOURN ROAD
EMSWO
NORRIS GARD
A27
SOUTHMOOR LANE
Brockhampton
LONGMEAD GARDENS
Langstone
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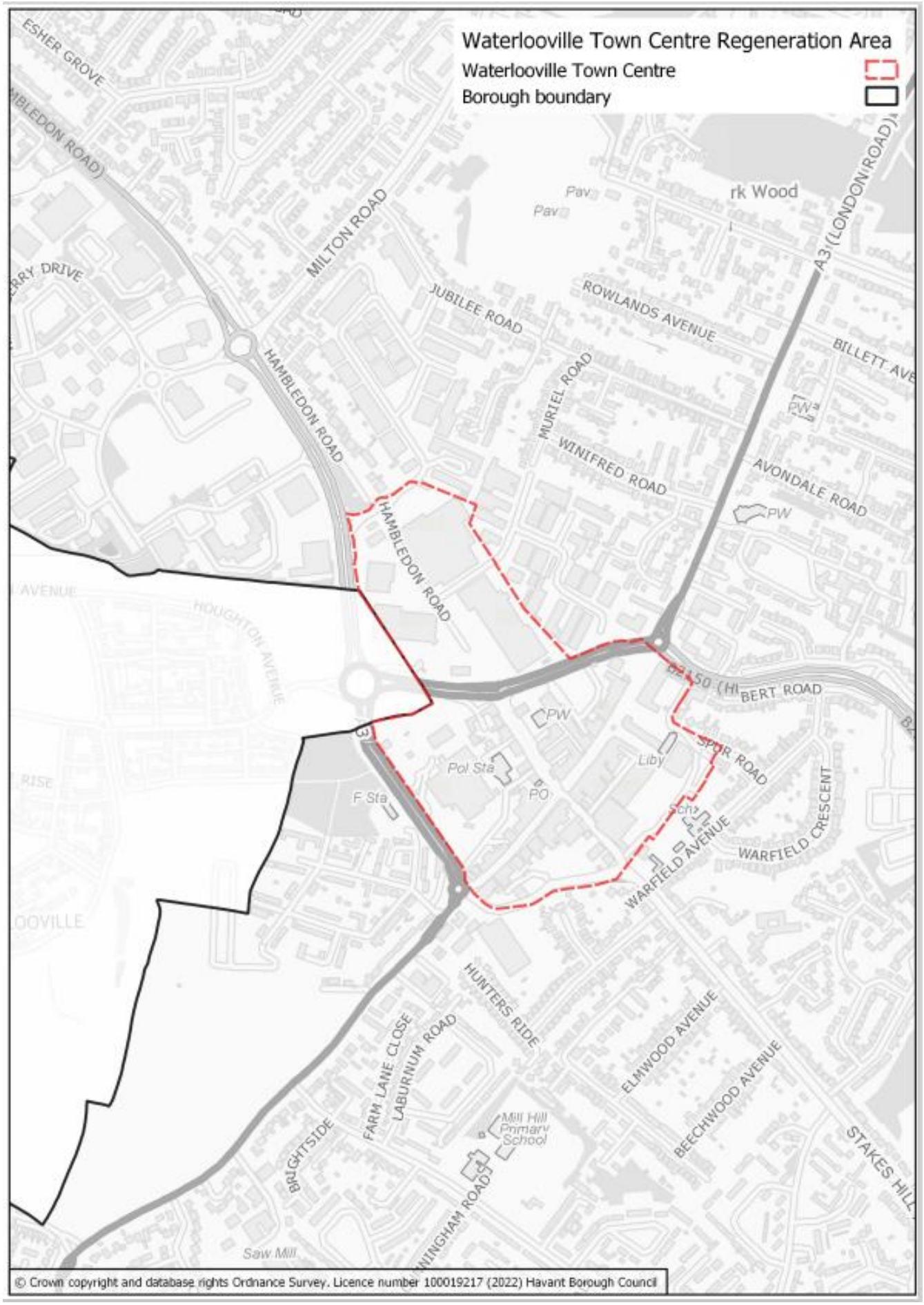
Waterlooville Town Centre Regeneration Area
Waterlooville Town Centre
Borough boundary
ESHER GROVE
MILTON ROAD
HAMBLEDON ROAD
JUBILEE ROAD
ROWLANDS AVENUE
MURIEL ROAD
WINIFRED ROAD
AVONDALE ROAD
A3 (LONDON ROAD)
HOUGHTON AVENUE
Pol Sta
PO
F Sta
Liby
WARFIELD AVENUE
WARFIELD CRESCENT
HUNTERS RIDE
ELMWOOD AVENUE
BEECHWOOD AVENUE
FARM LANE CLOSE
LABURNUM ROAD
Mill Hill Primary School
Saw Mill
PW
Pav
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