

Isle of Wight Council Position Statement:

Nitrogen neutral housing development



1.0 What is the issue?

Natural England (NE) have raised the issue of a likely significant effect on several internationally designated sites (Special Protection Areas [SPA], Special Areas of Conservation [SAC] and Ramsar sites) due to the increase in wastewater from the new developments coming forward. The Solent has recognised problems from nitrate enrichment; high levels of nitrogen from human activity and agricultural sources in the catchment have caused excessive growth of green algae which is having a detrimental impact upon protected habitats and bird species.

NE's advice to all Planning Authorities within the Solent basin, including the Isle of Wight Council (IWC), is that achieving nutrient neutrality is one way to address the existing uncertainty surrounding the impact of new residential development on designated sites. As a result, development that results in a net increase in housing must demonstrate that it would not result in a net increase in nitrates within the Solent protected sites (i.e. the development would be 'nitrogen neutral') and mitigation measures may be required to achieve this.

NE have also advised the IWC that the nutrient neutrality approach only applies to developments where treated effluent discharges into any Solent International Sites (Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar), or any water body (surface or groundwater) that subsequently discharges into such a site.

Sandown Waste Water Treatment Works (WwTW) outfalls into the English Channel and is therefore **excluded on that basis** and developments that will connect to Sandown WwTW do not have to demonstrate nutrient neutrality. This position will be kept under review and may be subject to change at which point the IWC will update this position statement.

This Position Statement sets out the Council's approach to both new housing development being proposed on the island (Section 2.0) and island land being used to offset mainland development (Section 3.0).

*****Agents, developers and landowners submitting planning applications for new residential development (including tourist accommodation) and large attractions on the Isle of Wight should go to Section 2 for guidance on how this issue may impact their scheme and what additional information may be required as part of a planning application *****

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2.0 How does this impact planning applications on the Isle of Wight?

For all planning applications that involve a net increase of residential units (this includes tourist accommodation), the IWC requires the applicant to demonstrate that their development would not cause harm to the Solent protected sites as a result of drainage that would result in a net increase in nutrients. Developments that introduce large levels of activity to the island (e.g. large attractions) may also need to demonstrate nitrogen neutrality. There are various ways that this can be done, which are described below and shown in the flowchart overleaf:

Option 1: Demonstrate that the scheme would drain to Sandown WwTW

An applicant must confirm as part of their planning application submission whether their development will connect to the public sewer system and if so, gain written confirmation from Southern Water that it would drain to Sandown WwTW. If this is the case, then the IWC will impose a planning condition on any grant of planning permission that secures this in perpetuity.

Option 2: Demonstrate that the scheme will be 'nitrogen neutral'

If the proposed development would not drain to Sandown WwTW, then the applicant will need to provide details of the drainage solution for the development and provide a nitrogen budget alongside any required mitigation in agreement with Natural England. This aims to show that the development would not result in an overall net increase in discharges of nitrogen to the Solent protected sites. The latest Natural England advice can be found using the link below and we would encourage developers to review this at the earliest stage of developing any proposals.

<https://www.push.gov.uk/2020/06/11/natural-england-published-nutrient-calculator-and-updated-guidance-on-achieving-nitrogen-neutral-housing-development/>

One mitigation solution set out within the NE advice above is the use of 'nitrogen credits' where land can be taken out of certain types of agricultural use in perpetuity to offset the increase provided by new housing. NE can be engaged through their 'Discretionary Advice Service (DAS)', a service offered by Natural England providing pre-application and post-consent advice in relation to development on land and at sea (<https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals>).

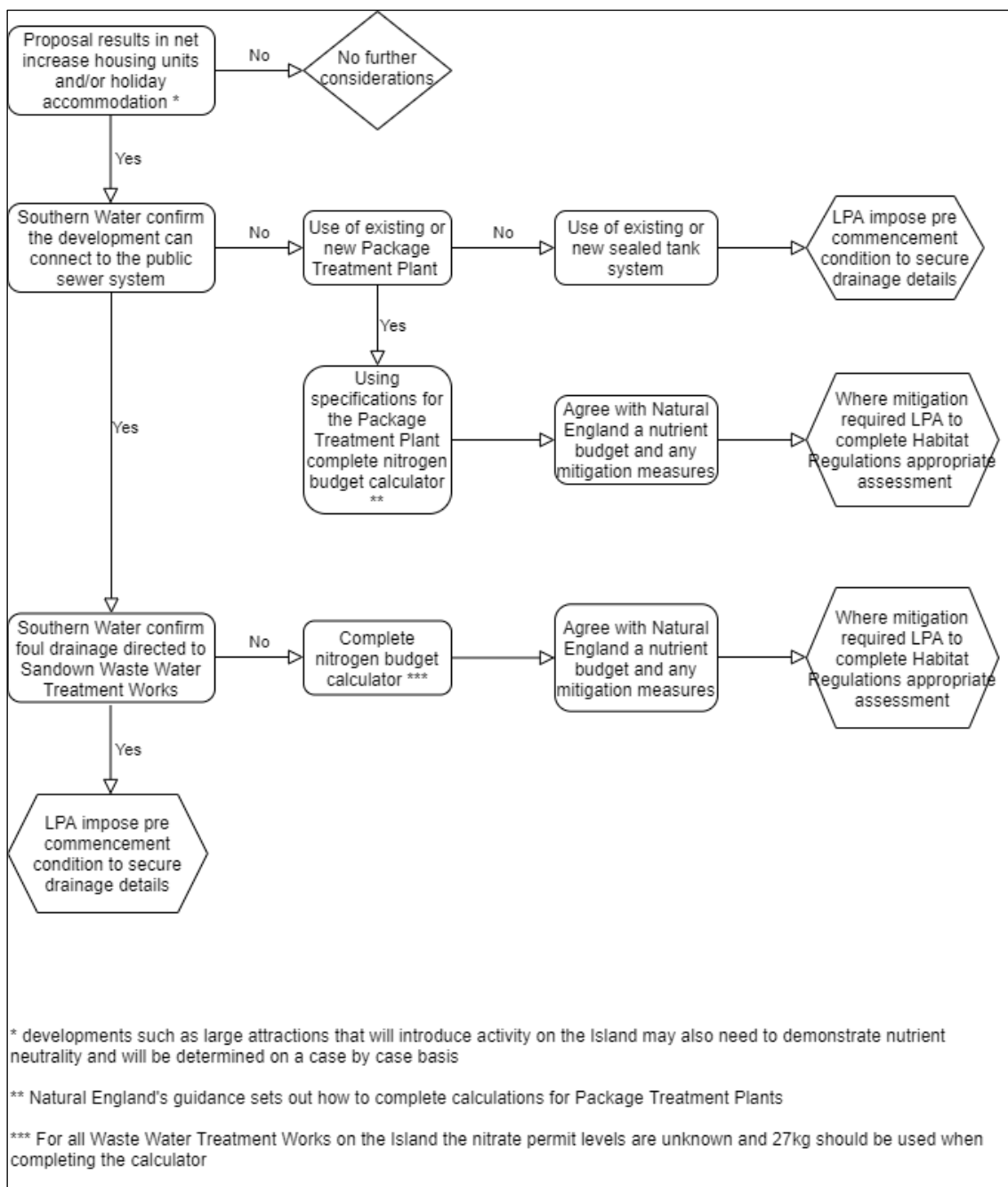
Where development proposals include use of package treatment plants (PTP), or similar, a separate application to the Environment Agency (EA) may also be necessary. The EA have a presumption against private sewage treatment works in sewered areas and will always seek connection to the mains sewer where possible and practicable. Any such planning application using a PTP will need to include a nitrate budget calculation and include product specifications of the PTP used. Appropriate mitigation may need to be included as part of the proposed development. If Natural England agree the nitrate budget demonstrates a negative nitrate load, then mitigation is not required, and the project can also be screened out of HRA.

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Developments where the only waste management option is to connect to existing or new cess pits will not need to demonstrate nutrient neutrality. Southern Water have confirmed that the Sandown treatment plant is the only site on the Island accepting this type of waste and therefore does not need to be subject to any Habitat Regulations Assessment (HRA).

The flowchart below sets out the process that an applicant must go through PRIOR to submission to inform themselves whether a proposal will require engagement with Southern Water and/or Natural England. Failure to provide sufficient information in this regard as part of the planning application submission may result in applications being INVALID or determination being delayed.



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Permitted development

It is important to note that any increase in residential dwellings that takes place as a result of permitted development must also undertake a separate HRA through Regulations 75 and 77 of the Habitats Regulations. Such assessments will need to therefore consider water quality in the same way as development requiring planning permission and mitigation packages may be needed on the same basis.

What is the role of IWC in the process?

If a nitrogen budget and mitigation package is required, then an Appropriate Assessment will be required to support any decision made by the IWC. The IWC will only undertake an Appropriate Assessment on nitrogen budget and mitigation packages that have been agreed in writing by Natural England.

The IWC is willing to provide a monitoring role for any potential nitrogen credit land agreed as appropriate mitigation with Natural England.

Biodiversity Net Gain

The IWC would also encourage all landowners and developers who require nitrogen credit land to also consider the potential biodiversity net gain (BNG) that could be secured through additional habitat creation and enhancement measures.

We would strongly suggest that nitrogen credit land is subject of a BNG assessment using the Defra metric calculator (<http://publications.naturalengland.org.uk/publication/5850908674228224>) and that BNG over and above that delivered by the nitrogen credit scheme is considered within a proposal, and if relevant explicitly referenced and captured within any planning application.

A main principle of BNG is that it cannot be claimed for meeting existing legal requirements or commitments, to avoid any double counting. [Defra's guide for biodiversity offsetting](#) outlines that habitat creation/enhancement measures '*should not be used to deliver biodiversity conservation that would have happened anyway*'. Clear demonstration will be required of any BNG outcomes that are additional to those delivered as requirements of any agreed nitrogen credit scheme.

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3.0 Use of land on the Isle of Wight to provide 'nitrogen credits' for mainland housing development

As demonstrated by the recent purchase of Little Duxmore Farm by the Hampshire & Isle of Wight Wildlife Trust (HIWWT), land on the Isle of Wight can be used to provide nitrogen credits for housing development on the mainland.

In order for such mitigation land to be effective, it is necessary for any land to be subject to positive management for a defined period, which is generally between 80-125 years, together with appropriate levels of monitoring.

After that period there is an expectation that the function of the mitigation land is upheld. It will be for the local planning authority determining the planning application, Natural England and the mitigation landowner to agree on appropriate legal clauses to ensure this expectation is met.

What is the role of the IWC in this process?

The IWC, in its role as Local Planning Authority (LPA), is willing to engage with landowners and mainland local planning authorities over providing a monitoring role that cannot logistically be performed by mainland local planning authorities.

Our role will be to monitor the nitrogen credit site on behalf of the mainland local planning authority, as set out in any legal agreement. This will usually involve receiving a report from the landowner on the condition of and work carried out on the land, which will be assessed by Officers and include a site visit. A factual monitoring report will then be sent to the mainland local planning authority.

Will the IWC be paid for this work?

Yes - the IWC as LPA will, as set out in the guidelines below, be paid a ring-fenced sum for undertaking monitoring work that will be based on hours needed, costs incurred and an appropriate administration fee. The IWC would also expect an undertaking to be provided to cover any legal costs incurred in preparing and entering into a Section 106 agreement.

IWC Guidelines for the monitoring of mitigation land

The IWC will consider being engaged purely in a monitoring role on behalf of other mainland local planning authorities and will consider entering into over-arching Section 106 agreements with those parties to undertake that role. The IWC will not enter into development specific agreements unless these use the entirety of the credit land. As part of this engagement, the IWC will consider the current use of the land being proposed as well as the ability of that land to provide nitrogen credits for future development on the island itself.

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In that respect, IWC (as LPA) would advise landowners and local planning authorities of the following 'terms of engagement' that will be used to guide IWC involvement:

1. The IWC will not enter into a Section 106 agreement for the monitoring of nitrogen credit land that involves the loss of Grade 1, 2, or 3a agricultural land;
2. The IWC (as LPA) will require all landowners and local planning authorities to demonstrate the following in writing at the first point of engagement:
 - a. State which Isle of Wight catchment area the nitrogen credit land is within;
 - b. Provide evidence that the proposed nitrogen credit land is in an appropriate catchment to the development outfall, either by reference to NE's Solent Nutrient advice note or additional evidence agreed by the LPA in consultation with NE as required;
 - c. Where relevant, the LPA determining any development proposal have confirmed through consideration of the planning application that the proposed nitrogen credit land provides sufficient credits to offset at least the whole of the proposed development;
 - d. NE and the LPA determining any application have agreed that long-term management of the mitigation is secured (funded) for the lifetime of the development; and
 - e. Any management plan agreed for the mitigation land must address landscape character and demonstrate that however the land is used going forward, it would not have a detrimental impact on landscape character and aligns with the principles of IWC Core Strategy Policy DM12.
3. The IWC will expect, for a period of up to four weeks from the date of first engagement (which includes confirmation of the specific Isle of Wight catchment), to consider whether it wishes to discuss the purchase of credits from the scheme being presented to offset future island development in the same catchment;
 - a. If the IWC wishes to discuss a purchase of credits to offset known island development, a proposal will be made in writing to the landowner/mainland local planning authority setting out the quantum of credits required;
 - b. If the IWC does not wish to purchase credits, this will be communicated in writing to the landowner/mainland local planning authority as soon as possible after the date of first engagement;

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4. The IWC (as LPA) will calculate the monitoring and administration fees for each agreement on an individual basis and, as a minimum, will use the parameters below:
 - a. 1 x site monitoring visit = 3 hours of Ecology Officer plus 2 hours of Team Leader time using hourly pay rates (including on-costs) at the point of engagement;
 - b. Administration fee of 10% of the total value of all the monitoring visits required and agreed with Natural England within the legal agreement;
5. The IWC (as LPA) will only report monitoring results as required by the terms of the Section 106 agreement to the mainland planning authority. Any future enforcement action and costs associated with this shall remain solely the responsibility of the mainland local planning authority granting the planning permission.
6. The IWC will expect an undertaking to be provided to cover any reasonable legal costs incurred by IWC associated with entering into a Section 106 agreement.

The IWC will review this statement and its position on nitrogen neutral mitigation land every 6 months and where necessary, provide an updated statement. These reviews will take place on 1st January and 1st July each year.

Should you have any queries relating to this position statement or wish to engage IWC formally in a proposal, please contact:

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