January 2024

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 International 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, Brighstone, Shorwell & St Lawrence Wastewater Treatment Works (WwTW) outfall into the English Channel (see Appendix 3 for a map showing this) and are therefore **excluded on that basis** and developments that will connect to any of these 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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Combined Sewer Overflows (CSOs)

Whilst Sandown, Brighstone, Shorwell and St Lawrence WwTW discharge into the English Channel and not into the Solent, we are aware that the WwTW network contains Combined Sewer Overflow outfalls (CSOs) which do discharge to designated Solent sites.

As competent authority under the Habitat Regulations we have carefully considered whether or not new development that involves a net increase of residential units (including overnight tourist accommodation) may have the potential to affect water quality via CSO events.

CSO events are unscheduled discharges, primarily comprised of excess surface water in response to periods of high rainfall. Each CSO is subject to permit limits, and the Environment Agency work closely with water companies to ensure that they are monitoring and reporting back on their discharge activity.

Where new development that involves a net increase of residential units (including overnight tourist accommodation) proposes to connect to the foul drainage network, the sewerage provider (Southern Water) will review the capacity of the storage in its sewer network as part of the planning application / request to connect.

If such development would lead to an increase in the base flows to a treatment works, then the Environment Agency would require storage to be increased either in the sewer network, or at the WwTW to ensure the average spills from the CSOs do not increase[1].

Additionally, new development is already required to meet certain surface water management objectives set out through local planning policy and building regulations and these objectives will continue to evolve in a positive manner through the Draft Island Planning Strategy (specifically policies EV13 & EV14) and the forthcoming Sustainable Drainage Systems (SuDS) in New Development Supplementary Planning Document (SPD).

The Council is also aware and fully supportive of measures taken to reduce flooding risk and better manage surface water across the Island and recognises Southern Water's commitment to reducing storm water overflows, in line with the Storm Overflows Discharge Reduction Plan and the Levelling Up and Regeneration Act, the latter which requires WwTW serving more than 2,000 population to meet defined nitrogen pollution standards on or before 1 April 2030.

When assessing whether or not new development that involves a net increase of residential units (including overnight tourist accommodation) poses a risk of harm to designated sites through changes to CSO events, it is our view that insufficient evidence is available to enable a likelihood of risk to be quantified. We recognise that other regulatory permitting regimes are in place to manage

[1] Review of the Need for Nutrient Neutral Development in the Budds Farm Wastewater Treatment Works catchment. June 2020. Ricardo Energy and Environment, on behalf of Havant Borough Council, Portsmouth City Council, East Hampshire District Council, and Winchester City Council (available here)

this issue and in line with paragraph 194 of the NPPF, the focus of planning decisions *'should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively.'*

Given the information set out above, the issue of CSOs will be screened out of any relevant appropriate assessment in relation to nutrient neutrality.

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 overnight tourist accommodation), the IWC requires the applicant to demonstrate that their development would not cause harm to the designated sites in the Solent as a result of wastewater that would see 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, Brighstone, Shorwell or St Lawrence 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, Brighstone, Shorwell or St Lawrence WwTW. If this is the case, then the IWC will impose a planning condition (see Appendix B for example wording) 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, Brighstone, Shorwell or St Lawrence 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 will be required 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.

Natural England nutrient calculator and guidance - Partnership for South Hampshire (push.gov.uk)

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. These credits could be on land within the ownership and control of the applicant, or alternatively on third party land where operators sell 'nitrate credits' on strategic mitigation sites (see Appendix 4).

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To seek views on nitrogen budgets and mitigation solutions, NE can be engaged through their 'Discretionary Advice Service (DAS)', a service offered by Natural England providing pre-application advice in relation to development on land and at sea (https://www.gov.uk/guidance/developers-get-environmental-advice-on-your-planning-proposals). **From 9 March 2022, for schemes of less than 150 units NE have confirmed they will not be able to provide the IWC with specific comments on nitrogen budgets or mitigation schemes without a Habitat Regulations appropriate assessment being undertaken, therefore applicants for such schemes are strongly advised to use the NE DAS service prior to submission to avoid potential delays in the determination process.**

The Environment Agency (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. Where development proposals include use of package treatment plants (PTP), or similar, a separate application to the EA may also be necessary (see Appendix A for more detailed information). 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.

Developments where the only waste management option is to connect to existing or new sealed 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). **In line with the domestic sewage hierarchy set out in Appendix A, please be aware that connection to a sealed system should only be proposed if it can be demonstrated that either connection to the mains sewer or use of a PTP is not possible or practicable.**

The flowchart overleaf 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, significantly delayed during determination or being refused.

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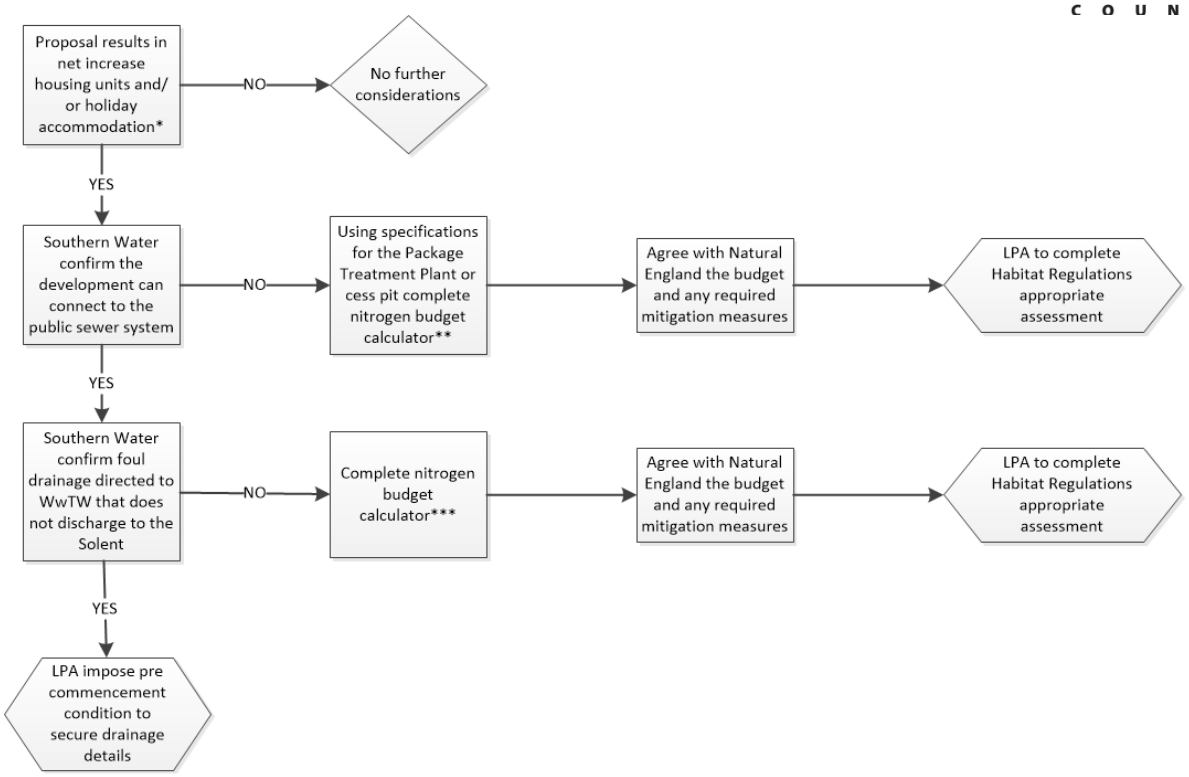

*Developments such as large attractions that will introduce activity to the Island may also need to demonstrate nutrient neutrality and will be determined on a case by case basis

**Natural England's guidance sets out how to complete calculations for Package Treatment Plants

***For all Waste Water Treatment Plants on the Island the nitrate permit levels are unknown and a value of 27kg should be used when using the calculator

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 and would secure this through a planning obligation.

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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 (Calculate biodiversity using the biodiversity metric - GOV.UK (www.gov.uk)) 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. 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. More information can be found at 'Understanding biodiversity net gain - GOV.UK (www.gov.uk)

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

As demonstrated by the 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.

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;

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. Adminstration 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:

Russell Chick, Planning Team Leader – Development Management russell.chick@iow.gov.uk
James Brewer, Planning Team Leader – Policy & Delivery james.brewer@iow.gov.uk

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Appendix A – Information from the Environment Agency (EA)

Hierarchy for discharging domestic sewage

The EA expects developments discharging domestic sewage to connect to the public foul sewer where it is reasonable to do so. In deciding what is reasonable we will take into account cost, practicality and environmental considerations. This is because discharges from wastewater treatment plants owned and operated by sewerage undertakers are significantly less likely to cause pollution than discharges from private plants treating domestic sewage or trade effluent. Private sewage treatment works do not perform as well as public ones as a result of problems including poor design, inadequate maintenance, difficulties funding upgrading or replacement and susceptibility to shock loads. Private systems are therefore more likely to fail to comply with their environmental permit and cause pollution.

We will only agree to the use of private sewage disposal facilities within publicly sewered areas and issue an environmental permit if the applicant can demonstrate that –

- they have explored the possibility of the sewerage undertaker, or a sewerage undertaker appointed under a NAV, adopting the sewerage system serving their development. This avoids the additional environmental risk that would arise if a private system was installed as it provides certainty on future management and maintenance of the works and on funding that would be required where it is necessary to improve the works to e.g. increase treatment capacity or meet new environmental standards and either:
- the additional cost of connecting to sewer would be unreasonable;
- connection is not practically feasible; or
- the proposed private sewerage system would provide additional environmental benefits that would outweigh the potential environmental risks for example the effluent may be treated on site for re-use in a production process or a grey-water system; to support re-charge of an aquifer or to augment flows in a watercourse; or to a significantly higher standard than is achieved by discharging via the public sewer.

Nutrient neutrality and PTP permits

Whether appropriate mitigation can be secured for developments required to demonstrate nutrient neutrality **is not part of the decision making process** on what a reasonable connection type is. Mitigation must be developed for the most suitable connection before the development is occupied; difficulty with securing appropriate mitigation is not a reason for justifying a private sewerage option where an option higher up the hierarchy would otherwise be reasonable.

PTPs are not designed specifically to reduce the level of nutrients discharged from them. However, emerging technologies / innovative solutions such as SuDS and wetlands can reduce the level of nutrients, although quantifying this to the degree required to secure compliance is not mature. Such treatment types also require maintenance and can take up more land than conventional treatment.

Appendix B – Template conditions for schemes connecting to Sandown, Brighstone, Shorwell or St Lawrence WwTW

Foul and surface water

No development shall take place until a scheme for the drainage and disposal of surface and foul water from the development hereby permitted, has been submitted to and approved in writing by the Local Planning Authority. Foul drainage shall be connected to the public sewer and shall be served by the Southern Water Wastewater Treatment Works (WWTW) at Sandown/Brighstone/Shorwell/St Lawrence. Development shall be carried out in accordance with the approved scheme, which shall be completed prior to the occupation of the dwelling(s) hereby permitted and be retained thereafter.

Reason: To ensure that the site is suitably drained, to protect ground water and watercourses from pollution, to prevent harmful impacts on the Solent and Southampton Water SPA and Ramsar site and to comply with policies SP5 (Environment), DM2 (Design Quality for New Development), DM12 (Landscape, Seascape, Biodiversity and Geodiversity) and DM14 (Flood Risk) of the Island Plan Core Strategy.

Foul drainage only

Foul drainage from this development shall be connected to the public sewer and shall be served by the Southern Water Wastewater Treatment Works (WWTW) at Sandown/Brighstone/Shorwell/St Lawrence.

Reason: To ensure that the site is suitably drained, to protect ground water and watercourses from pollution, to prevent harmful impacts on the Solent and Southampton Water SPA and Ramsar site and to comply with policies SP5 (Environment), DM2 (Design Quality for New Development), DM12 (Landscape, Seascape, Biodiversity and Geodiversity) and DM14 (Flood Risk) of the Island Plan Core Strategy.

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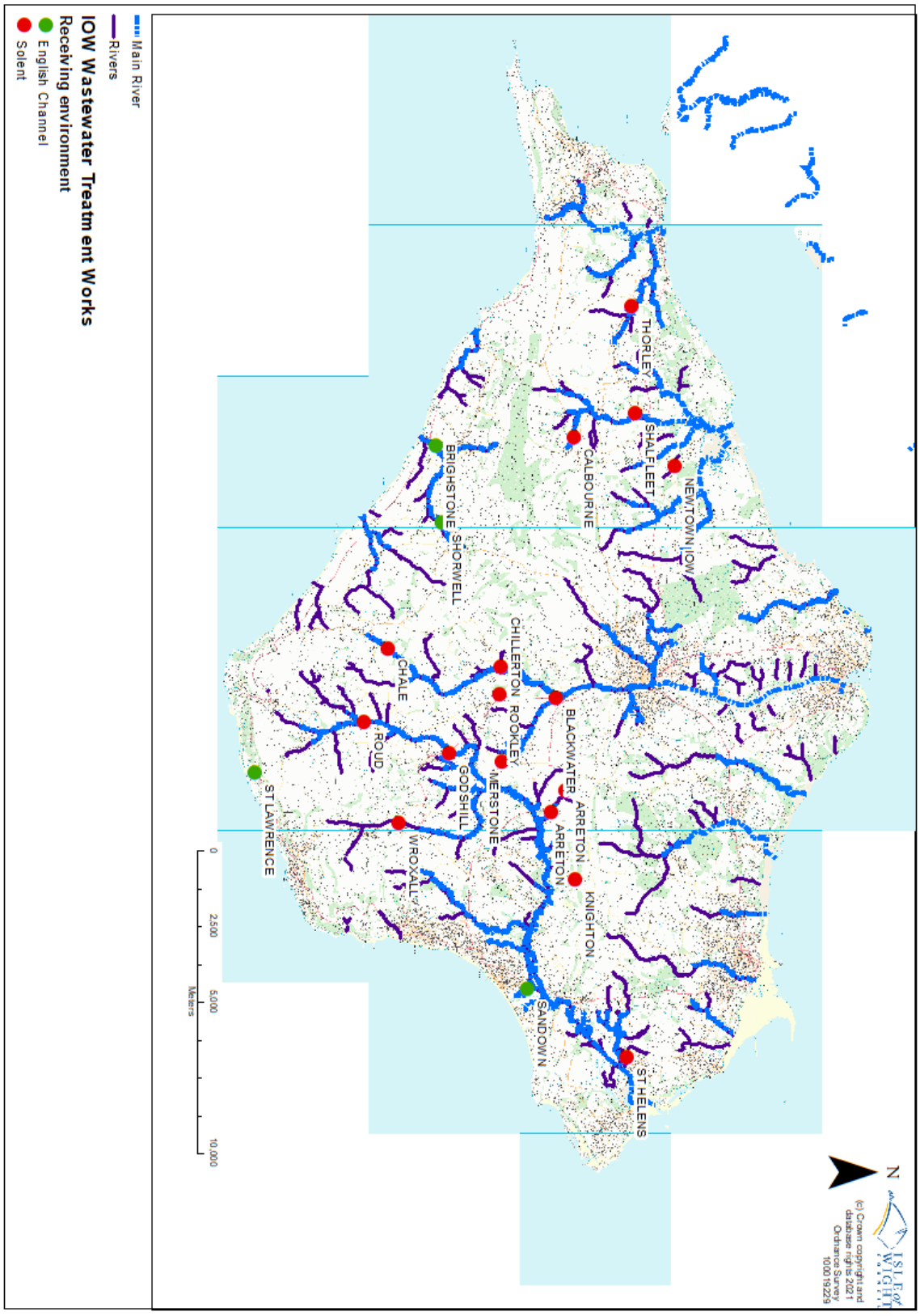
Appendix C – Map showing WwTW on the Isle of Wight and discharge locations



Appendix D: Planning obligation template wording for the purchase of nitrate credits

To demonstrate nitrogen neutrality, one option is for an applicant / developer to purchase 'nitrate credits' from a third party strategic mitigation site. In these instances where credit purchases form part of the nitrate mitigation for a scheme, this credit purchase will need to be secured through a planning obligation (which could be a unilateral undertaking) that forms part of the planning decision.

The IWC is providing some template wording below that applicants may wish to consider utilising as part of any planning obligation presented to the IWC. The **xx figures in red** below would be generated by the nitrate budget calculation forming part of the planning submission and discussions with third party credit providers over the number required from a particular strategic mitigation site, both of which are the responsibility of the applicant to provide.

Standard Unilateral Undertaking Recital 4 amended to read:

The Council has not determined the Planning Application and the Owner enters into the obligation to the intent that any objections by the Council to the grant of planning permission by virtue of the Solent Recreation Mitigation Strategy* and the Council's Supplementary Planning Document on Affordable Housing Contributions (adopted March 2017)** and Nitrogen Neutrality within Solent International Sites are overcome

*(items * and ** may not be relevant to every planning application but are included for demonstration purposes of how a revised recital within a UU may read)*

New definitions

'Nitrate Credit Purchase' – the completion of a purchase of credits from a third party within the same water body catchment as the Planning Application

'Nitrogen Neutrality' - development that results in a net increase in housing demonstrating that it would not result in a net increase in nitrates within the Solent International Sites

'Solent International Sites' – One or more of Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar

New Clause/Schedule

The Owner covenants with the Council:

Prior to the commencement of development to provide written evidence to the Local Planning Authority of Nitrate Credit Purchase, with the Nitrate Credit Purchase totalling **xx credits** to mitigate **xx kg TN/year** (total annual nitrogen produced by the development which is the subject of the Planning Application).