

An Appropriate Assessment regarding the likely impact of potential significant adverse effects on internationally designated nature conservation sites of increased NITRATE LEVELS.

Background

- i. Under the requirements of the Habitats Regulations ¹ the Council has a duty to ensure that proposed development would not have a significant adverse impact on the integrity of internationally designated nature conservation sites.
- ii. The application site lies within the catchment area of the Wastewater Treatment Plant at Pennington.
- iii. The Council as Competent Authority is unable to rule out potential significant adverse effects on the following internationally designated nature conservation sites:

• Solent and Southampton Water SPA and RAMSAR site,
• Solent & Isle of Wight Lagoons SAC,
• Solent Maritime SAC

collectively described as the Solent Coastal European Sites, from additional drainage and wastewater discharge in the catchment area arising from residential and visitor accommodation development.

- iv. Drainage and wastewater discharge from residential and visitor accommodation development is contributing, in combination with other sources, to elevated levels of nitrogen in Solent Coastal European Sites. It cannot be ruled out that nutrient enriched water discharge is contributing to the growth of weed mats that can smother estuarine wading bird habitats and restrict the growth, distribution and variety of food available for wading birds.
- v. The following Appropriate Assessment concerns the likely significant effect of the additional overnight accommodation on the water quality of the Solent, and in particular, on levels of nitrates.
- vi. On 7 November 2018 The European Court of Justice determined a case relating to considering water quality in Appropriate Assessments. This is generally referred to as the Dutch Case ².
- vii. 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. Because of this changed approach, it can only be concluded that new

development could increase nitrogen levels in Solent Coastal European Sites.

- viii. The Dutch Case also clarified the requirement that mitigation is to be secured at the time of carrying out an Appropriate Assessment for the competent authority to conclude with certainty that any mitigation proposed would sufficiently mitigate any adverse effects arising from the plan or project in question.

In July 2020, the Council adopted the Local Plan 2016-2036 Part One: Planning Strategy. The Local Plan recognises that the Planning Authorities in the Solent Catchment will work together to identify suitable mitigation in terms of offsetting measures to enable development to achieve nitrate neutrality, and this work is ongoing.

- ix. The principle of requiring all new development including new overnight residential accommodation to contribute to mitigation measures in proportion to its likely impact on the European sites is set out in policies of the Local Plan 2016-2036 Part 1: Planning Strategy, namely Policies ENV1, ENV3 and ENV4.

¹ The Conservation of Habitats and Species Regulations 2017. SI2017/2012

² Case 293/17 Court of Justice of the European Union (Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen))

The Assessment

This document provides an **Appropriate Assessment** to check and confirm that avoidance and mitigation measures can be secured to prevent adverse effects of the proposed development (a) on the integrity of the European sites identified below (b).

a) The Planning proposal

LPA Ref	21/10938
Site Address	Former POLICE STATION, SOUTHAMPTON ROAD, LYMINGTON SO41 9GH
Proposal	Demolition of existing building and redevelopment of the site to form 32no. Retirement apartments including communal facilities, access, car parking and landscaping

b) The European sites affected

One or more of:

• Solent and Southampton Water SPA and RAMSAR site,
• Solent & Isle of Wight Lagoons SAC,
• Solent Maritime SAC

c) The qualifying features and conservation objectives of the European sites affected

The qualifying features and conservation objectives of the identified European sites can be found through this link

[Natural England Designated Sites](#)

d) Identification of the 'Competent Authority'

The "Competent Authority" for the purposes of the Habitat Regulations is New Forest District Council.³

e) Natural England response

Natural England is aware that NFDC are working on a New Forest Nutrient Mitigation Strategy and that until the strategy is adopted an interim approach has been decided that requires applicants to either produce a site-specific mitigation scheme that achieves nutrient neutrality or better, or the use of a Grampian condition to ensure the provision of an avoidance and mitigation scheme prior to occupation of the development. Provided that the development achieves nutrient neutrality through an agreed site-specific nutrient mitigation scheme or through a mitigation package outlined by the Grampian condition, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of

the European sites.

3 The Conservation of Habitats and Species Regulations 2017, Part 1, Article 7 (3)(e)(i)

Consideration of whether the plan or project, either alone or in combination with other plans or projects will adversely affect the integrity of the European site, having regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposed that the consent, permission or other authorisation should be given.

1. Natural England has produced guidance on how to calculate nitrogen budgets for developments. The calculations compare the existing land use to the proposed land use in terms of nitrate loading and use assumptions on water use and occupancy rates to help planning applicants determine whether nitrogen will come from the site (either through run off or via the sewage system) if permission was granted. Natural England has advised that achieving nitrate neutrality on smaller sites and brownfield developments is likely to require off-site mitigation.
2. The Council has considered the issues in its Position Statement to Cabinet on 4th September 2019. It is exploring a suite of measures to deliver nitrate neutrality in the Plan Area which could include a mix of: acquiring and retiring agricultural land, woodland planting, Stewardship Woodland Creation Grant, Installation of Waste Water Treatment Works filter wetlands, wetland efficiency, SUDs and urban drainage, New Forest National Park Authority Land Advice Service Grants, EN Trade, Water efficiency measures in existing Council housing stock, review of use and quality of fertilizers on NFDC/Town and Parish Council land, measures to provide additional water efficiency measures throughout residential accommodation in the District and the role of current open space and Alternative Natural Green Space (ANRGS) provision. These measures are set out in more detail in the Report to Cabinet dated 4th September 2019.
3. More work is required with third parties to advance many of these options, but work suggests that a combination of measures would be enough to provide a solution for housing development going forward. This information would be developed in a New Forest Nutrient Mitigation Strategy that would set out mitigation measures sufficient to avoid or offset the scale of development, both for several current planning applications and for the District Council and National Park Authority Local Plans.
4. Natural England have produced "Advice on Achieving Nutrient Neutrality for New Development in the Solent Region" dated June 2019 (Version 2) for Local Planning Authorities. ⁴ This advice has been followed and New Forest District has produced a preliminary Nitrogen Budget for the period 2018 to 2036. The Budget Table produced by this District concludes that there will be a nitrogen surplus generated over this period and that mitigation will be required (a copy of this Nitrogen Budget is attached as **Appendix A**). As mentioned above, mitigation options are currently being considered by the Council.
5. The Council proposes to impose a Grampian condition that prevents the occupation of any new overnight accommodation until appropriate mitigation is in place.
6. As the Competent Authority, NFDC considered that there needs to be a mitigation project to provide this development with a nitrate budget. For this reason, a Grampian Condition has been imposed and a further Appropriate Assessment will be carried out on discharge of this condition.

22 September 2021

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<https://www.newforest.gov.uk/article/1206/Nutrient-neutral-development#h24>

APPENDIX A please see separate document listed on our website