



Minutes of the Partnership for South Hampshire (PfSH) Joint Committee

*Minutes of a meeting held on 31 July 2019
in the Council Chamber, Civic Offices, Fareham*

Members:

Councillors:

Seán Woodward (Chairman)
Judith Grajewski
Neil Cutler
Nick Adams-King
Stephen Philpott
Michael Wilson
Derek Pretty
Christopher Hammond (Vice-Chairman)
Ken Moon

Authority Represented:

Fareham BC
Hampshire CC
Winchester CC
Test Valley BC
Gosport BC
Havant BC
Eastleigh BC
Southampton CC
East Hants DC

Officers:

Peter Grimwood
Roger Tetstall
Laura Taylor
Stuart Jarvis
Claire Upton-Brown
David Hayward
Nick Tustian
David Williams

Authority Represented:

Fareham BC
Test Valley BC
Winchester CC
Hampshire CC
New Forest DC
Havant BC & East Hampshire DC
Eastleigh BC
Portsmouth CC & Gosport BC

Co-opted Members:

Paddy May
Colette Heggie
Richard Jones

Organisation represented:

PfSH
Environment Agency
Solent LEP

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1. APOLOGIES FOR ABSENCE AND CHANGES IN JOINT COMMITTEE MEMBERSHIP

Apologies for absence were received from:

Councillor Keith House (Eastleigh Borough Council) with Councillor Derek Pretty deputising; Councillor Edward Heron (New Forest District Council); Stuart Baker (Solent Local Enterprise Partnership); James Humphrys (Environment Agency) with Colette Heggie deputising; Bruce Voss (Homes England); Bob Jackson (New Forest District Council) with Claire Upton-Brown deputising; Sandy Hopkins (Southampton City Council) and Gill Kneller (East Hants and Havant Borough Council) with David Hayward deputising; Gary Jefferies (Solent LEP) with Richard Jones deputising; and Councillor Gerald Vernon-Jackson (Portsmouth City Council).

Changes to Joint Committee Membership:

Councillor Neil Cutler has been formally appointed as the representative for Winchester City Council.

2. MINUTES

RESOLVED that the minutes of the PfSH Joint Committee meeting held on 04 June 2019 be confirmed and signed as a correct record.

3. CHAIRMAN'S ANNOUNCEMENTS

The Chairman reminded Members that at the last Joint Committee meeting, it had been agreed to invite the New Forest National Park to join the Partnership for South Hampshire. The Chairman was pleased to announce that the New Forest National Park, which is a Planning Authority that now sits wholly in the PfSH area, will, subject to ratification at the National Park Authority meeting on the 29 August, be joining PfSH.

The Chairman announced that following agreement at last meeting where the Chairman undertook to write to the Secretary for State for DEFRA and the Ministry for Housing, Communities and Local Government (MHCLG), he has received no acknowledgement from DEFRA but had received a letter from Kit Malthouse (previous Housing Minister) and officials from the Ministry of Housing, Communities and Local Government have agreed to meet all of the PfSH Planning Officers on the 20th August to discuss the ongoing nitrate neutrality issue.

4. DECLARATIONS OF INTEREST

A non-pecuniary interest was received from Councillor J Grajewski on Minute item 6, part A – Statement of Common Ground - as Councillor Grajewski in her role as Councillor for Eastleigh Borough Council, has voted against their Draft Local Plan for the last seven years. If discussion takes place on this item, Councillor Grajewski will not take part in any debate, nor vote.

5. DEPUTATIONS

There were no deputations made at this meeting.

6. PFSH MANAGER'S REPORT

The Joint Committee received a report by the PFSH co-ordinator, Paddy May, that covered issues which are significant, but do not justify a full report to be brought to the attention of the Joint Committee for decision or for information.

A non-pecuniary interest was received from Councillor J Grajewski on Minute item 6, part A as Councillor Grajewski in her role as Councillor for Eastleigh Borough Council, has voted against their Draft Local Plan for the past seven years.

RESOLVED that the Joint Committee:

- a) APPROVES the Statements of Common Ground between Eastleigh Borough Council and PFSH, as at Appendix A, and between Havant Borough Council and PFSH as at Appendix B;
- b) APPROVES the Strategic Recreation Mitigation Partnership (SRMP) Annual Report, as at Appendix C; and
- c) NOTES the matters for information outlined in Part B of this report.

7. UPDATE ON STATEMENT OF COMMON GROUND

At the agreement of the Chairman this item was brought forward on the agenda to allow the PFSH Nitrate Neutrality Update to be heard last.

The Joint Committee received a report from Claire Upton-Brown, Chairman of the Partnership for South Hampshire Planning Officers' Group which gave the Committee an update on the progress of work in respect of the drafting of the joint Statement of Common Ground.

RESOLVED that the Joint Committee:

- a) NOTES the procurement of a full-time PFSH Project Manager. The post will be supported by the Chairwoman of PFSH Planning Officers Group (POG) and PFSH Planning Co-ordinator - along by officers attending the PFSH POG;
- b) APPROVES that the PFSH evidence work streams identified in this report are undertaken and commissioned by the PFSH Project Manager, who will report progress regularly at future Joint Committees in order to inform production of a PFSH Joint Strategy; and
- c) AGREES that PFSH produces its first Statement of Common Ground in October of this year for Joint Committee to approval, and update regularly at future Joint Committees as evidence work streams progress and when the PFSH Joint Strategy is finalised.

8. SOLENT RECREATION MITIGATION PARTNERSHIP STRATEGY (SRMP)

At the agreement of the Chairman this item was brought forward on the agenda to allow the PFSH Nitrate Neutrality Update to be heard last.

The Joint Committee received a report from Paddy May and Anna Parry in respect of the Solent Recreation Mitigation Partnership Strategy (SRMP). This report sought endorsement from the Joint Committee in respect of the SRMP's proposed allocation of site specific funding for the next three financial years and their proposed schedule for the allocation of funding.

RESOLVED that the Joint Committee:

- a) NOTES and ENDORSES that SRMP's proposed allocation of site specific funding for the next three financial years; and
- b) NOTES and ENDORSES that SRMP's proposed schedule for the allocation of funding being subject to no foreseen disruption to developer contribution levels owing to issues relating to nitrates.

9. PFSH NITRATE NEUTRALITY UPDATE

At the agreement of the Chairman this item was moved to the last item on the Agenda.

The Joint Committee received a report from David Bibby, Principal Planning Officer at Test Valley Borough Council on the work that PFSH is undertaking to address the impact of nitrate neutrality on housing developments across the Region.

Members had been provided with a Technical Guidance Note from the Environment Agency which provided them with information in respect of wastewater treatment capacity for new development in the south area and is appended to these Minutes.

At the beginning of this item, the Chairman asked the Committee to consider two additional recommendations be added to this item, being the Joint Committee:

AUTHORISES that the PFSH Water Quality Working Group consider necessary revisions to the Integrated Water Management Study in the light of updated information on population growth and occupancy rates; and

REQUESTS an increase in Southern Water's allowance towards infrastructure investments and environmental improvement obligations to help address the Solent nitrate issue.

At the invitation of the Chairman, Chris Nelson from Southern Water addressed the Joint Committee.

Chris outlined the reduction of water consumption in new housing and development - up to 125 litres per head, per day and promoting reduction in water consumption which are both positive. Chris explained that Southern water can set its rates, which are auditable by OFWAT (The Water Services Regulation Authority), and low water consumption would be £200 per property but this is reduced to zero if there is low water efficiency. Southern Water are trying to address the amount of water both in the system and that which is getting into Southern Water Treatment Works.

Turning to Sustainable Drainage Systems (SuDS), Chris stated they are aware that Water UK have been charged with producing codes of adoption and a sewerage code has been submitted to OFWAT for consideration and within that is the Waste Water Sewerage Act. The code will become incorporated into the Act and will become mandatory for water companies to look at new developments. The code for adoption does introduce the potential for SuDS to be adopted by water companies. It is expected this will be passed in September and implemented in April 2020. This is to give water companies time to adopt SuDS systems on dwellings. It is felt this will benefit some developers who already have a business model where they ask Southern water to adopt their drainage systems. They would do this to ensure they are fully compliant with their Pillars, one of those being quality treatment which effectively go some way to help the nitrate problem. Technical standards are a series of standards for compliance and there are associated codes for construction. These are short-medium term measures to help address this issue.

Chris turned to the long term, looking at ways of how this problem can be addressed and he stated that developers and interested party enquiries as to which catchments a development would go into are being made and there are requests for detailed information. Southern Water is committed to working with Hampshire County Council and the Environment Agency and have issued a technical guidance and a position statement to try and get information out to developers to show they are working in partnership.

Chris explained that Southern Water is a private company who is highly regulated and not a statutory consultee in the planning process. They do actively engage in the planning process but are reliant on planning authorities making approaches and working in partnership. Chris indicated that other planned work is in its PR19 for the period 2020 – 2025 and stated that all water companies in the UK are subject to PR19.

Chris stated there does need to be some perspective as to Southern Water's involvement and he understands run off from agricultural land is biggest source of nitrates and there is potential that nitrates could be associated with some treatment works for which there are both Southern Water and private treatment works that discharge into the Solent. Whilst there are other causes to be addressed, and other sources of nitrates, Southern Water don't want to minimise this and acknowledge that Southern Water must be part of the solution and are happy to work in partnership with both the Environment Agency and Natural England.

At the invitation of the Chairman, Allison Potts from Natural England addressed the Committee.

Allison explained to the Committee that Natural England and Environment Agency work to different legislative drivers and policies and so they are not currently in agreement about the potential for new development to adversely affect the designated sites. She recognised that whilst is not helpful to Local Planning Authorities (LPAs), it is also frustrating for Natural England and Environment Agency especially as, at the moment, short-term positions cannot be brought closer together. Allison went onto explain the difference stems from Natural England's role to provide advice under the Habitats Regulations and the recent

Judgement underlines two of the important principals that run through that legislation; one being the precautionary principals which is built in by law, so a precautionary approach must be taken; and the other underlines what you do in the face of uncertainty. Allison stated that if there is uncertainty, because you don't have a full evidence base, then the compliant approach is one that recognises the uncertainty and enables competent authorities to make decisions on a precautionary basis. Natural England is obliged to provide its advice on the basis of the best available evidence, and to ensure that the advice takes accounts of the relevant legislation and case law.

Allison stated that whilst Natural England and Environment Agency have not been able to reach an aligned position in the short-term, the letter sent by PfSH to the MHCLG has been helpful in starting a national conversation which it is hoped will address some of the differences.

In terms of the water quality problem in the Solent, there is a need to work together to address this and that was the basis for the Water Quality Working Group, particularly how steps are taken to understand the scale of the issue, what measures need to be taken and to plan beyond 2020. Allison stated that Natural England want a long term strategic solution, regret that dealing with the short term issue has diverted resource, but are hopeful that the experiences gained by working through shorter term options will enable the Water Quality Working Group to agree a better long term programme.

Allison gave the Committee an update on Natural England's work since the Committee met last. Natural England have prioritised the actions they are taking to support LPAs, looking at delivering sustainable development with the initial focus on making the nutrient neutral methodology available. Discussing this with LPA officers to understand what it means in a local context has helped to identify a list of potential measures to enable neutrality. Natural England has produced a summary of potential measures and suggested which of those could be helpful in the short term, which might come into effect for the medium term and which need development now for the longer term. Feedback from discussions have been positive on these documents and people are finding them helpful in terms of giving a way to work through the options and actions that could be put in place to minimise the risk when granting permissions in the future. Natural England have also been commenting on Cabinet papers, draft strategies, press releases as well as planning consultations, and they met with all LPA's where requested to do so. Allison stated that Natural England remain willing to help and support Local Planning Authorities to get short term solutions in place quickly as possible.

At the invitation of the Chairman, Hannah Hyland from the Environment Agency (EA) addressed the Committee.

Hannah explained that the technical guidance note was circulated because of the enquiries which the EA has received in relation to this issue and it was their view that they needed to get their message out which is their position based on their role as regulator and granting environmental permits for discharges into the water environment.

Hannah stated that from the EA point of view, the permits which operate around the Solent are still considered to be environmentally protective and they have assessed those up to the finite amount on their permit and that impact and in their

view, there was no adverse effect on the Solent as a result of that which is why the EA position stands that if the development can be accommodated within those permits, that is deemed ok.

Hannah explained that longer term there will be some challenges for delivering waste water treatment beyond the permitted headroom's. Several of the works that discharge directly into the harbours are operating at what's considered to be best available technology for nitrogen at this time, but technology may change in the future. Hannah stated that, at this moment in time, the consideration is you cannot heighten the standards much more so that doesn't enable additional flow headroom going into those works.

Hannah stated that the Environment Agency understands the position of Natural England's precautionary approach, but the Environment Agency have no intent to review the consents around the Solent. At a national level, discussions are happening to consider the impact of European judgments for the EA across the board and predominantly that's around our new authorisations or any new permits coming through. Existing permits are deemed fine as those assessments have been done and that is the Environment Agency's position at this time as regulator and in terms of permits.

During questions being asked to Natural England, Southern Water and the Environment Agency, responses included:

The Environment Agency confirming that when the Habitats Regulations came into place, there was a sector-wide review of consents which included all discharges into the Solent. At that time, significant investment went in to a lot of waste water treatments works owned by Southern Water and some permits were abandoned as they were deemed inappropriate and the results of that investment is now coming through the environment. This review included private treatment plants of which the Environment Agency hold a record of permitted private treatment plants.

Reiteration was given that it is for competent authorities to consider whether there is likely to be a significant effect on sites and that the Dutch case states it is where a designated site is failing to meet its objectives, so it is not in good condition because of the impact of a particular pollution, for example nitrates, that the potential to add additional pollution to that site must be limited. It was explained that the idea behind nutrient neutrality is a pragmatic attempt to give planning authorities a way to demonstrate that new development is not adding to the existing burden on the designated sites and, in that situation, despite the uncertainties that exist, the advice from Natural England is you can be content that those new developments will not have a significant effect on the sites alone or in combination. When asked to define significant, Allison from Natural England stated there is a low bar in the Habitats Regulations particularly when considered in combination with the Dutch case. Allison confirmed their interpretation is that if you already have a problem, you cannot add anything to it without it being considered significant. The site should be considered through Appropriate Assessment at the first stage where the consideration is whether there is likely to be a significant effect, through to the second stage test where the consideration is whether there is likely to be an adverse impact on the integrity of the site. Whether the significant effect will generate and adverse effect on integrity is where the uncertainty lies. Allison stated that is for the decision makers to decide the level of risk they are comfortable with. Natural England's advice is there is a way

to avoid that risk and be certain that your permissions will not have an impact on the environment and that is by adopting nitrate neutrality.

Hannah from the Environment Agency confirmed that technical guidance note referred to the direct discharges into the harbour. In setting the EA's permits, the Environment Agency look at a range of environmental legislation which includes the water framework directive and the urban waste water treatment directive which is done by considering the location of the discharge and the impact, and that was done in consultation with Natural England and will determine whether a permit needs a nitrogen limit on it. Hannah stated that at this point in time, the EA's view is that all of the permits are okay - they are environmentally protective and would not cause an adverse effect on the designated sites and they are not looking for further investment at this point in time.

The Environment Agency stated approaches have been made to Government to ask how there could be resolution to the differences between Natural England's precautionary approach and their reference to legislation, and the Environment Agency's risk-based approach and they recognise that at this time, LPAs' decisions are erring towards Natural England's more precautionary approach.

In response to a question about burden of proof and the relation between scientific evidence and the precautionary approach, Natural England stated that where LPAs do not have complete scientific evidence, there exists uncertainty and when there is uncertainty in the Habitats Regulations, a precautionary approach must be assumed as a matter of law. Natural England's view is that if there is uncertainty in calculations, to account for that, the Nutrient methodology suggests a 10% buffer, although it is within the gift of LPA's to apply a different figure.

With the agreement of the additional two recommendations as proposed by the Chairman, it was RESOLVED that the Joint Committee:

- 1) NOTES the responsibilities conferred on PfSH authorities under the Habitats Regulations, particularly in the light of recent case law, and NOTES the implication of the nutrient issue on development in the PfSH region;
- 2) AUTHORISES continuing work to undertake a desktop review of existing information and evidence to clarify the scale and scope of the issue as it affects development, and to explore potential options for strategic avoidance and mitigation solutions;
- 3) Continues to MAKE REPRESENTATIONS through the Chairman of PfSH to the Ministry of Housing, Communities and Local Government (MHCLG) and the Department for Environment, Food and Rural Affairs (DEFRA), relevant government agencies (including Natural England) and other bodies to provide an efficient, central solution to the need to ensure nutrient neutral development takes place;
- 4) SEEKS a meeting with Government (MHCLG and DEFRA) to achieve a 'one public estate' approach to delivery of strategic mitigation in the PfSH area, and FACILITATES the identification of land for strategic mitigation across the PfSH area amongst all public organisations with an allocation mechanism that supports the PfSH Spatial Strategy for development;

- 5) SEEKS to meet with OFWAT and the Environment Agency to discuss the Southern Water licensing and permit regime following their 'under reporting' of discharges and to explore new and reduced nitrate permit limits as part of their future business plan and licensing regime;
- 6) AUTHORISES the development of a long-term water quality and mitigation plan, to achieve nutrient neutral development;
- 7) AUTHORISES the investigation of potential sources of funding to support the provision of short and long-term mitigation options;
- 8) REQUIRES a further report to be brought to the October meeting of the Joint Committee to provide an update of progress of recommendations 2-8 in developing potential mitigation options and preparing a PfSH wide strategic approach to mitigation;
- 9) AUTHORISES that the PfSH Water Quality Working Group consider necessary revisions to the Integrated Water Management Study in the light of updated information on population growth and occupancy rates; and
- 10) REQUESTS an increase in Southern Water's allowance towards infrastructure investments and environmental improvement obligations to help address the Solent nitrate issue.

(The meeting started at 6:00pm and ended at 7:40pm).

(NB: The next meeting of the Partnership for South Hampshire (PfSH) Joint Committee will be held on Monday 14 October 2019).