



Report to the Partnership for South Hampshire Joint Committee

Date: 27 July 2021
Report of: Simon Kennedy, PfSH Strategic Environmental Planning Officer
Subject: NITRATE MITIGATION, RECOMMENDATIONS OF THE STRATEGIC ENVIRONMENTAL PLANNING OFFICER – NUTRIENT NEUTRALITY IN THE SOLENT

SUMMARY

This update report identifies the key findings of the work of the Strategic Environmental Planning Officer (SEPO) and provides the following recommendations.

RECOMMENDATION

It is RECOMMENDED that the Joint Committee:-

- a) NOTE the content of this report; and
- b) ENDORSE the recommendations to member local planning authorities that:-
 - i. PfSH local planning authorities consider the purchase of nitrogen mitigation credits from mitigation suppliers specifically to meet the needs of minor development based on an individual Authority's assessment of need.
 - ii. PfSH local planning authorities that wish to purchase credits are recommended to do so on a combined catchment basis to ensure best market value is achieved.
 - iii. PfSH local planning authorities use a standard suite of template legal agreements to reduce the legal costs to developers and to make the determination of application process more efficient.

Background

1. The water environment around the Solent area is recognised as one of the most important for wildlife in the UK. Sites within the Solent are protected by water environment, conservation of habitats and species regulations, as SPA, SAC and Ramsar. The quality of the water, and therefore, impacts from wastewater outfalls, are therefore a potential impact/concern for the condition of these sites and the wildlife they support.
2. The impact of new build development on protected sites must be recognised in all proposals that are subject to a Habitats Regulations Assessment. Details relating to the impact of effluent from new development on the protected sites in the Solent, and the need for a nutrient neutral approach for future development has been reported to the Partnership for South Hampshire (PfSH) previously¹.
3. Advice available from Natural England² provides information on both the conservation status of the protected sites and the nutrient neutral approach. Natural England have also developed a nutrient calculator which enables a quantifiable assessment of the likely significant effect from development to be made, as well as the ability for different forms of land use change to mitigate that effect. The advice of Natural England has recently been considered fit for purpose by the High Court with appropriate application of the precautionary principle^{3,4}.
4. The Natural England nutrient calculator provides outputs expressed in kilograms of total nitrogen per year. The term total nitrogen (TN) is the sum of nitrate-nitrogen (NO₃-N), nitrite-nitrogen (NO₂-N), ammonia-nitrogen (NH₃-N) and organically bonded nitrogen. One kilogram of total nitrogen per year (kg/TN/yr) is commonly referred to as one 'mitigation credit'.
5. In light of the advice from Natural England, and associated case law, our aim is to develop a PfSH-wide strategic approach to mitigation in order to achieve nutrient neutral development – and assist in the delivery of planned housing development compliant with the Habitats Regulations.

Work Undertaken by Strategic Environmental Planning Officer

6. Recognising that the issue of total nitrogen, and its impact on protected sites and development, crossed local planning authority (LPA) administrative boundaries, the Partnership for South Hampshire appointed a Strategic Environmental Planning Officer (SEPO) who commenced his role in late December 2020. The primary purpose of the SEPO is to assess options to allow sustainable development to be undertaken in regard to its total nitrogen impact on protected sites.
7. In addition to the member authorities of the Partnership for South Hampshire, the SEPO post is also part funded by South Downs National Park Authority,

¹ [PfSH Joint Committee Meeting Page - Nutrient Neutrality Updates from 2019 - 2021](#)

² [Natural-England's-latest-guidance-on-achieving-nutrient-neutrality-for-new-housing-development-June-2020.pdf \(push.gov.uk\)](#)

³ [Save Warsash and the Western Wards, R. \(On the Application of\) v Fareham Borough Council \[2021\] EWHC 1435 \(Admin\) \(28 May 2021\) \(bailii.org\)](#)

⁴ [Wyatt, R. \(On the Application of\) v Fareham Borough Council \[2021\] EWHC 1434 \(Admin\) \(28 May 2021\) \(bailii.org\)](#)

Basingstoke and Deane Borough Council and Chichester District Council all of which are also within the impacted catchment areas of the Solent.

8. In order to inform the work of the SEPO the first work undertaken was substantive stakeholder engagement. In the initial round of stakeholder engagement over 40 substantive stakeholder engagement meetings took place, these included:
 - Meetings with LPAs
 - Meetings with government agencies such as DEFRA, EA and NE
 - Meetings with possible providers of mitigation land, agents and developers
 - Meetings with water and drainage providers
 - Attending webinars to raise awareness and generate mitigation leads.
9. The stakeholder engagement process is ongoing and iterative. However, the findings of the SEPO with regard to key themes has been verified by the same results arising from the stakeholder engagement programme undertaken by the DEFRA Solent Trading Platform Team. The main findings from this work were:
 - The availability of mitigation options to allow sustainable development is insufficient to meet the need for new housing
 - There exists significant uncertainty (cost and time) relating to the legal framework to secure mitigation through the planning process.
 - There is a disproportionate impact on SMEs and deliverers of minor development due to the administrative and legal costs associated with delivering mitigation through the planning process
10. The SEPO is on one of the working groups for the DEFRA Solent Trading Platform and this forms a key stakeholder engagement activity. The work of the SEPO and the DEFRA Solent Trading Platform are closely managed to ensure a joined-up approach to the issue of enabling sustainable development in the short, medium and long term. More information on the DEFRA trading platform can be found at **Appendix 1**.
11. The stakeholder engagement process has informed the further work undertaken by the SEPO shown in the following sections.

Availability of Credits

12. In 2020 PfSH successfully bid for a £2m loan from the Solent Local Enterprise Partnership (LEP) from the Government's Getting Building Fund to be used to secure off site mitigation land in order to assist in unlocking the delivery of housing which has been on hold due to the nutrient neutrality issue. The Solent LEP advised that the Hampshire and Isle of Wight Wildlife Trust would act as its preferred strategic partner to oversee a land use change mitigation scheme funded with the proceeds of PfSH's bid.
13. Along with schemes brought forward by the Hampshire and Isle of Wight Wildlife Trust, there are also several other schemes available to mitigate the impact of nutrients for development
14. In order to ascertain whether availability of credits remains a key issue within the Solent region, a full assessment of supply and demand for nitrogen mitigation was undertaken. The situation is complicated by the fact that development in some parts of South Hampshire can be off-set in several different catchments in

accordance with Natural England's advice note (June 2020). However, the overall supply and demand assessment found that within the East Hampshire catchment there is sufficient supply of mitigation to meet the needs of development in the medium to long term (over 5 years of supply). Within the Chichester and Test and Itchen catchments there is sufficient supply of mitigation to meet the immediate need (backlog) and the short to medium term need (1-5 years of supply). The New Forest catchment is the only catchment that does not have sufficient mitigation to meet the immediate need for development (backlog).

15. As well as supply of mitigation already available in the market as described in paragraph 4.3, there are also a number of emerging schemes that are likely to provide further mitigation to satisfy the need for the New Forest catchment. A full analysis of the supply and demand position for each catchment can be found at **Appendix 2**.

Impact on Minor Development

16. The stakeholder engagement highlighted a disproportionate impact on the cost of delivering nitrogen mitigation in through the current open market mechanism.
17. Further investigation has found that there is a disproportionate financial cost to smaller development in the current open market system. The disproportionate impact is due to legal and arrangement costs involved with securing mitigation, the extra arrangement cost is not considered sufficient to make any significant difference in viability. The impact of the disproportionate financial burden on minor development and small and medium enterprises (SMEs) can be found in **Appendix 3**.
18. Additionally to the direct financial costs to developers, smaller-scale developers can face difficulties in accessing mitigation credits for two reasons. Firstly, they tend to lack the in-house skills and resources required to deal in complex legal agreements (see section 6) and secondly, private mitigation suppliers tend to prefer to sell credits to larger developers where there is less administration time spent proportionately to the size of the purchase.
19. A reduction in legal costs through a strategic approach to the legal framework by local authorities may reduce the proportionate impact on smaller development and SMEs. However, without intervention by LPAs a disproportionate impact will remain.
20. The potential consequences of a disproportionate impact could include detrimental repercussions relating to:
 - Planning Implications
 - Meeting national and local planning objectives, including the NPPF (2019) requirement for 10% of all planned development to be on sites of less than 1 hectare.
 - Impact on brownfield, windfall and regeneration development
 - Reduced ability to ensure the right houses are built in the right places (housing supply and housing need)
 - Wider Implications
 - Jobs

- Local economy
- Skills

Legal Framework to Support Mitigation

21. The stakeholder consultation process highlighted that the complex legal agreements required to support third party mitigation land through the planning process is currently both expensive and time consuming. Currently, securing available mitigation through the planning system involves complex, often multi-partite agreements, made under Section 106 of the 1990 Town & Country Planning Act (s.106), for each individual permission providing new overnight accommodation.
22. When considered in the context of the current and future supply of credits, a standardised approach to managing the risk of enforcement action for privately owned mitigation sites is a key factor in stimulating uptake of mitigation and delivery of sustainable development.
23. By dealing with the management and monitoring considerations up-front, to secure effective mitigation in perpetuity, it is likely that the backlog of development can be permitted more efficiently and in less time. It may also provide greater certainty to mitigation providers and facilitate further mitigation schemes coming forward. The need to deal with securing the management and monitoring upfront has been backed up by the results from the stakeholder engagement referenced in section 2.
24. Fareham Borough Council have developed an approach to the satisfaction of the LPA, NE, the mitigation provider and the development industry. The approach covers the majority of the required legal work up-front with mitigation providers and allows a much simpler approach to legal agreements on an individual application basis, particularly by transferring enforcement powers for mitigation sites outside of the administrative area of the permitting LPA. It is intended to use this approach to provide a framework of legal template agreements to substantially reduce both the cost and time related to securing mitigation through the planning process. The legal approach developed by Fareham Borough Council was not one of the grounds for the recent Judicial Reviews that dealt with nutrient neutrality. Although the draft legal template will require further consideration by individual LPAs, a copy of the draft template can be found at **Appendix 4**.

Options Assessment

25. In the context of LPAs meeting their policy objectives for housing need⁵ through the plan making and planning decision making processes, there are a range of potential options available to LPAs based on the evidence provided in this report and an individual LPAs approach to risk. This section provides a summary of the main options available to LPAs and informs the recommendations of this report. The conclusions reached have been informed by communication with the SEPO Steering Group (consisting of officers from the constituent LPAs) and individual meetings with LPAs.

No Intervention

⁵ National Parks have no requirement to meet housing need as per footnote 6 – Paragraph 11 of the NPPF

26. Local Authorities have no statutory duty to provide mitigation for future development. However, they do have a legal requirement to consider the availability of mitigation in compliance with the Habitat Regulations, as a competent authority, when plan making or planning decision making.
27. **Appendix 1** shows that there is now sufficient supply in the nutrient mitigation market to supply the immediate need for development across all catchments apart from the New Forest Catchment. Evidence suggests that further mitigation sites will become available to the market across all catchments, including in the New Forest catchment.
28. Although the immediate and short term need are likely to be met, mainly from privately owned commercial mitigation schemes, it is clear that the emerging open market system may have a disproportionate impact on minor development (see Section 4) and the speed at which planning applications can be determined may be limited due to the complex legal frameworks required (see Section 5).

Conclusion of do-nothing scenario

29. If LPAs take no action, and do not use a joined-up approach to the legal agreements to secure mitigation in perpetuity, then it is likely that the residential and overnight accommodation market will be slow to recover. The slowness of recovery would be a result of the length of time it would take to process the backlog of applications, and the expected rush of new applications, under the open market system.
30. It is anticipated that in a do-nothing scenario there could be a detrimental impact on LPAs ability to meet housing delivery test, and 5-year supply, benchmarks in the short term whilst also having a detrimental impact on place making and economic objectives as shown in paragraphs 12-20 of this report. As a minimum LPAs should seek some level of conformity in the approach to a legal framework to support privately owned mitigation sites through the planning process. However, it is fully recognised that the degree of intervention will be a decision for individual planning authorities, having regard to development viability and the profile of planned development in their respective areas.

Strategic Scheme – LPA Led Scheme

31. This option would consist of each LPA providing a contribution that would create a central funding pot. The funds would then be used to purchase the control of land for nitrogen mitigation purposes, through either a long lease or freehold purchase.
32. As no river/groundwater catchments are able to serve all development over the impacted area, advice from Natural England suggests this option would require a minimum of six strategic sites to cover all of the Local Authorities in the Solent impacted by the issue.
33. The considerations when assessing the business case for a strategic, LPA led scheme, vary greatly between catchments and relate to factors such as market saturation, future price of credits and land cost and availability.
34. Although in a LPA led scheme there may be greater ability to ensure added benefits are provided through the control of a site for nitrogen mitigation, as well as some potential to receive a significant return on capital, there are also significant financial risks associated with the delivery of such a scheme. The risks mainly relate to future changes in the way nitrogen mitigation is provided and the future open market cost of credits. A review of the potential changes to the mitigation market

can be found at Appendix 1. A review of the financial considerations to LPAs relating to the purchase or control of mitigation sites can be found in Exempt **Appendix 5**.

Conclusions of LPA Led Strategic Scheme Option

35. It is clear that there is the potential for a return on investment to Local Authorities through the purchase or long lease of land for the purposes of nitrogen mitigation, this option would also provide the simplest and quickest route for developers to obtain their required mitigation as well as provide significant scope to deliver additional benefits on the site such as nature conservation or public access.
36. Notwithstanding the potential advantages of a LPA led scheme there is significant risk associated with the purchase or long-term lease of land to provide LPA led mitigation schemes. The risks relate to:
- uncertainty regarding the future quantum of credits available in the market and the associated impact on the market value of the credit in a competition scenario,
 - potential changes in the need for mitigation or the way mitigation is provided through interventions by stakeholders such as Southern Water or DEFRA and
 - the ongoing management and liability regarding control of the asset.
37. Local Authorities should certainly not be discouraged from developing their own mitigation offer. However, due to the potential financial risks and variances across the catchment areas it is considered, in consultation with LPAs, that a fully strategic approach involving LPA led schemes is not appropriate for all Local Authorities.

Strategic Scheme – LPA Purchase of Credits from Existing Schemes

38. Local Authorities have the option to purchase credits directly from mitigation providers. By purchasing credits under a overarching legal agreement Local Authorities will be able to sell mitigation credits directly to developers seeking planning permission., This approach would substantially reduce the time it takes for permissions to be granted and mitigate the impact on minor development shown in Section 4 of this report.
39. In this scenario individual Local Authorities would buy relatively small amounts of credits in tranches. By purchasing a smaller amount of credits Local Authorities are much better placed to control financial risks associated with option 2 (Appendix 5). Appendix 4 shows that there may be substantial changes to the mitigation market in the future. For example, the DEFRA trading platform may have a significant impact on the market and is currently forecast to begin the roll out of the platform in Spring 2022. Based on potential changes in the market it is considered that LPAs should purchase credits for no more than their individually assessed need up to the summer of 2022. The situation can then be reviewed in 12 months from the publication date of this report and further tranches purchased as required.
40. To further reduce financial risk to the LAs, and to meet the identified need of minor development LPAs have the option to purchase credits to be made available only for minor development or below a threshold determined by an individual LPA. For some LPAs the assessment of need just for minor development up to the summer period of 2022 may be relatively low, in order to obtain best market value when

purchasing credits, it would be advisable that LPAs purchase credits on a catchment wide consortium basis.

41. The business case for the bulk purchase of credits will vary between catchments and by Local Authorities through their individual assessments of need. Further information is available within Exempt Appendix 5 regarding the potential financial implications of this option to authorities.

Conclusion of LPA Purchase of Credits Option

42. The approach of bulk purchasing credits from existing mitigation providers would allow Local Authorities to 'pump prime' the mitigation market. This would allow sustainable development to re-commence whilst protecting Local Authorities from the financial risks associated to future changes in the market. This approach may also facilitate further mitigation sites to come forward or make emerging mitigation sites deliverable.
43. The potential to provide a small return on investment and make the administration of the scheme cost neutral credits must be secured at below the current market rate, this is only possible if a significant amount of credits are being purchased (over 150 credits). As such this scenario is more effective if approached as a consortium of Local Authorities undertaking a purchase for their combined assessed need.
44. It is therefore the recommendation of this report that LPAs consider the purchase of credits from the mitigation market to meet the need of minor development up to autumn 2022.

RECOMMENDATION

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 - iii. PfSH local planning authorities use a standard suite of template legal agreements to reduce the legal costs to developers and to make the determination of application process more efficient.

Appendices

Appendix 1 – Potential future changes to the mitigation market

Appendix 2 – Supply and demand analysis

Appendix 3 – Investigation of disproportionate impact on minor development

Appendix 4 – Draft precedent s106 agreement for nutrient mitigation

Appendix 5 (Exempt) – Financial implications of options available to LPAs

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Recommendations of the Strategic Environmental Planning Officer -Nutrient Neutrality in the Solent

Potential Future Changes to the Mitigation Market

- 1.1 As part of the stakeholder engagement process an assessment has been made of the currently prevalent solutions as well as potential future solutions to deliver nitrogen mitigation.
- 1.2 Currently nitrogen mitigation for development is almost entirely formed of land use change that reduces the nitrogen load onto non-development land and therefor mitigating the impact of development. There are also a number of wetland sites emerging as mitigation, this is still considered land use change but has a much lower land requirement than other land use change mechanisms. Both forms of mitigation are recommended in Natural England advice to planning authorities (June 2020).
- 1.3 The stakeholder engagement identified that there is some concern that large scale land use change is the appropriate mechanism to mitigate the impact of nitrogen from development.

On site-mitigation

- 1.4 On-site mitigation is considered the most appropriate mechanism for mitigation by a number of stakeholders, this view is supported by best practice in dealing with pollution under the 'Source – Pathway – Receptor' model.
- 1.5 The most viable solution for onsite mitigation is effective SuDS and bio-retention schemes, work is currently being undertaken by a number of stakeholders to establish the scientific principles to support SuDS and bio-retention schemes as effective nitrogen mitigation. However, as SuDS can only address surface run off and potentially grey water, it will be unable to mitigate the impact from effluent from development and is unable to provide a complete solution.
- 1.6 On-site measures are unlikely to available to all development. However, it is considered likely that over time increased uptake of onsite measures will reduce the required quantum of off-site land use change mitigation.
- 1.7 There is also some potential for engineering solutions with some stakeholders looking at innovative solutions to provide a primary treatment process to effluent on site.

DEFRA Trading Platform

- 1.8 Investment of £3.9m in development of an online trading platform to link mitigation providers with developers and administer the delivery mitigation to the development industry.
- 1.9 The Solent online trading platform is currently in development with the platform currently anticipated to come online start coming online in Spring 2022.
- 1.10 Although the outcomes of the trading platform are yet to be fully determined, the resources being employed to develop the system may result in bringing further land use change mitigation forward and providing more efficient and cost-effective mitigation.
- 1.11 The trading platform may also be able to include future environmental benefits and associated mitigation such as bio-diversity net gain. The ability to 'stack' environmental mitigation land for a number of purposes is a consideration within the work currently being undertaken by DEFRA.

Sewerage Undertaker Improvements

- 1.12 It is clear that the operation and investment plans of sewerage undertakers, and the permits applied to their works, has a considerable impact on the need for mitigation arising from development. The current variations in total nitrogen permit limits between Waste Water Treatment Works creates significant variation in the mitigation needs across the Solent.
- 1.13 The Environment Agency (EA) has confirmed that a review of Waste Water Treatment Works (WwTW) Nitrate (N) permits will take place. However, no timescales have been provided for this work. The permit review is a key element in enabling appropriate investment by Southern Water in improvement to WwTWs.
- 1.14 As sewerage undertakers are responsible, and have a statutory requirement, for the treatment of effluent prior to release directly to protected sites, it is the strong view of the Local Authorities that sewerage undertakers have a responsibility to mitigate the impact on any protected site from nutrients when planning for improvements to their infrastructure.
- 1.15 Southern Water, as the main sewerage undertaker in the impacted area, is currently formulating its Drainage and Waste Water Management Plan. The deadline for this work is currently 31st December 2022 and should inform the capital investment programme from 2026. This work will be subject to a Habitats Regulation Assessment.

Conclusions of Horizon Scanning

- 1.16 There are a number of potential solutions emerging that may improve the way that mitigation is delivered for development in the Solent. However, the emerging solutions are yet to be at a stage where they can be compared to current land use change solutions and confirmed as appropriate to provide mitigation to satisfy the needs of LPAs and development. The emerging solutions are not at a stage that they can be assured of dealing with the short-term issues.
- 1.17 Due to the potential of future solutions providing more effective solutions relating to mitigation of total nitrogen arising from development, it is considered that Local Authorities should deliver a short term solution that is replicable should none of the future solutions deliver improved benefits. Local Authorities should, at this stage, not seek to secure credits for development into the medium and long term as the way mitigation is delivered may change over that time scale and place any capital investment at considerable risk.

ENDS

Supply and Demand Analysis

- 1.1 The supply and demand shown within the tables in this appendix are all shown as Kilograms of Total Nitrogen Per Year (KG/TN/Yr), with one KG/TN/Yr amounting to one mitigation 'credit'.
- 1.2 The data relating to supply of mitigation credits is based on extensive market engagement and represents sites that have the ability to mitigate the impact of nutrients on the Solent's protected sites. The sites listed as contributing to current supply are all at advanced stages of consultation with Natural England, or have agreement from Natural England with regard to the quantum of credits available from each scheme, and are actively marketing their scheme to developments in multiple local planning authorities (LPAs).
- 1.3 The demand for credits is based on an assessment of individual LPAs housing need assessment and is calculated using the standard method calculation for the LPA and the main waste water treatment works that development in that LPA drains to. The calculation includes an assessment of the waste water treatment works as variations in technology at waste water treatment works means that the amount of mitigation required to mitigate the impact of one dwelling is different depending on the waste water treatment work that the dwelling drains to. The demand figures provided in this report do not include tourist accommodation.
- 1.4 It is fully acknowledged that the supply and demand figures will not be an exact representation of supply and demand over time. In part the variance is due to complexities in fluvial catchment areas and waste water treatment works for individual LPAs and developments, however, it is considered that this appendices provides an evidence based assessment of the supply and demand position for each catchment with minor variances having unlikely to have any significant impact on the overall position shown. The existing and emerging mitigation sites shown in this appendices are in no particular order and are used to show the potential total mitigation only.
- 1.5 For the purposes of this appendix immediate need is considered to be the backlog of live applications awaiting mitigation, short term need is considered to be between one and four years of supply, whilst medium term need is considered to be five to seven years of supply.

Chichester Catchment

1.6 The current supply and demand position for the Chichester catchment can be seen in figure 1. Figure 1 shows the total need for mitigation from both minor and major development to provide an overall view of supply and demand.

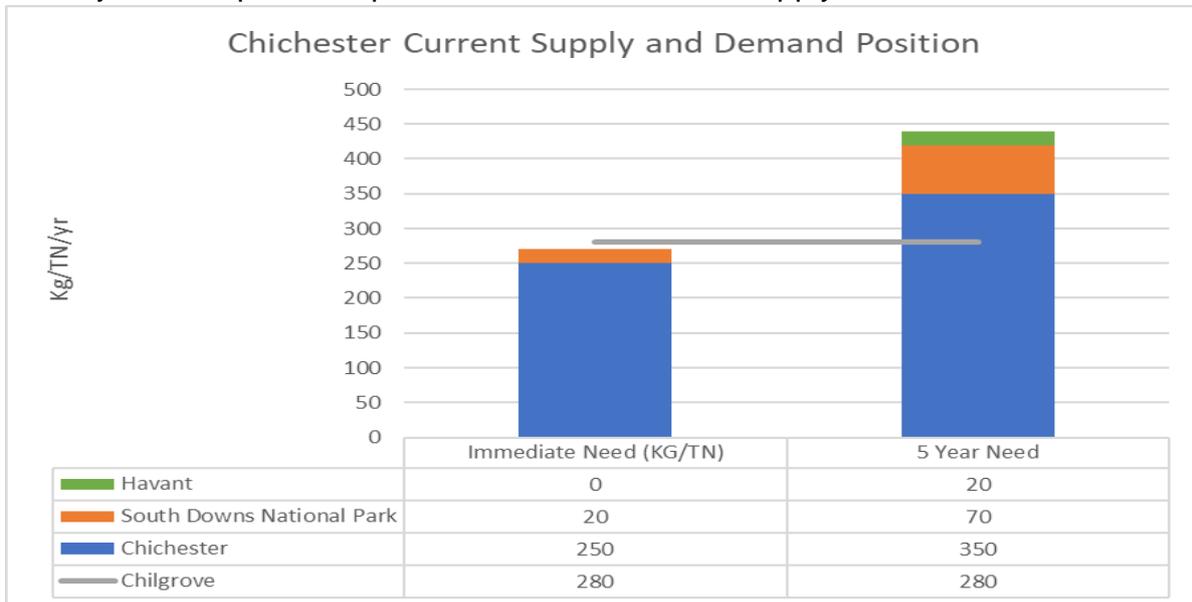


Figure 1 – Chichester - Current supply and demand position shown as stacked columns (need) and stacked lines (supply)

1.7 In the Chichester catchment there are also a number of emerging schemes for nitrogen mitigation, these schemes are yet to have Natural England sign off or be available to the development market. However, there is a high likelihood of these schemes coming forward should supply fail to meet demand and are shown in figure 2.

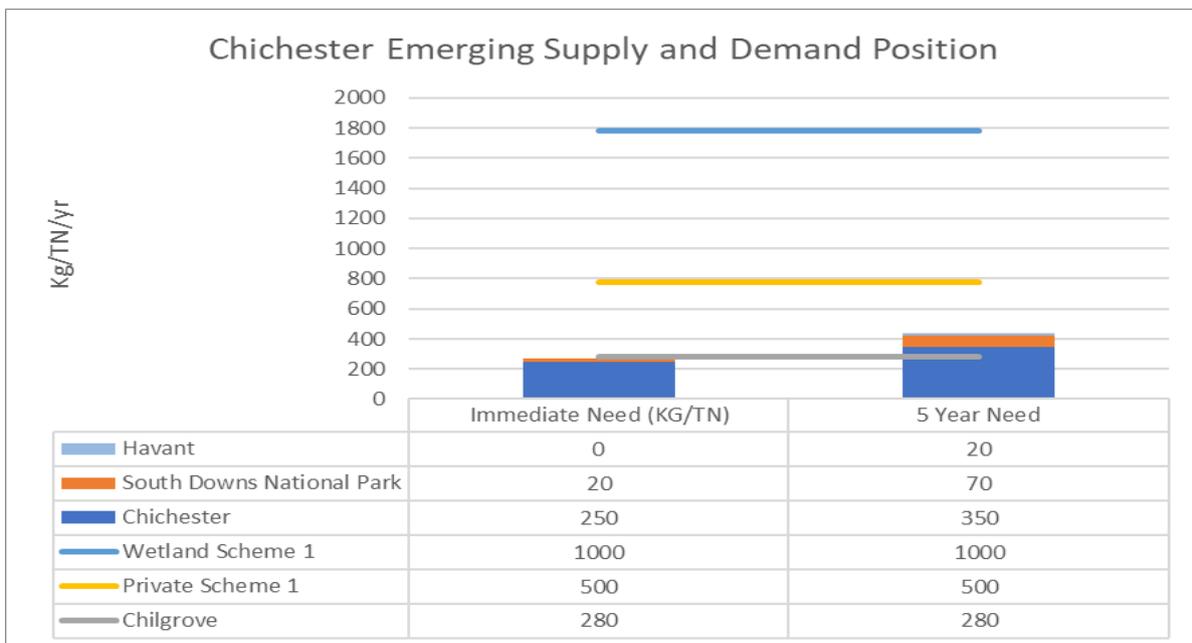


Figure 2 – Chichester - Emerging supply and demand position shown as stacked columns (need) and stacked lines (supply)

- 1.8 It is acknowledged that a small amount of development in Havant may drain to a Waste Water Treatment Works (WWTW) in Chichester, and as such have an effect on Chichester Harbour as is indicated within figures 1 and 2. However, development in the area of Havant which drains to Chichester WWTWs also includes large strategic allocations that are not included in figure 1 or 2. Initial indications show that these larger developments are likely to either be able to mitigate nutrients on-site, or that they will be processed by Budds Farm WWTWs and therefore will require mitigation from the East Hampshire Catchment and not the Chichester catchment.

Conclusions from Chichester Supply and Demand Analysis

- 1.9 Uncertainty over future housing provision makes it difficult to assess the future supply and demand relationship. 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 in the open market to meet the short term need for mitigation. There is some possibility that sufficient mitigation may come forward to satisfy the medium to long term need.

East Hampshire Catchment

- 1.10 The East Hampshire catchment contains a number of authorities that have delivered their own short term nitrogen mitigation schemes including water saving measures retrofitted to existing housing stock and provision of land use change mitigation. These schemes have allowed some sustainable development to continue in the areas where a scheme has been available.
- 1.11 The current supply and demand position for the East Hampshire Catchment can be seen in figure 3. Where a supply of credits is indicated in figure 3 this relates to sites that are actively marketing credits to the development sector and have received confirmation from Natural England that the mitigation site is suitable in principle.
- 1.12 It should be noted that development in the New Forest District Council waterside area drains to WWTW's that outfall in an area that can be mitigated within the East Hampshire Catchment and have been included in the East Hampshire Catchment analysis as such.

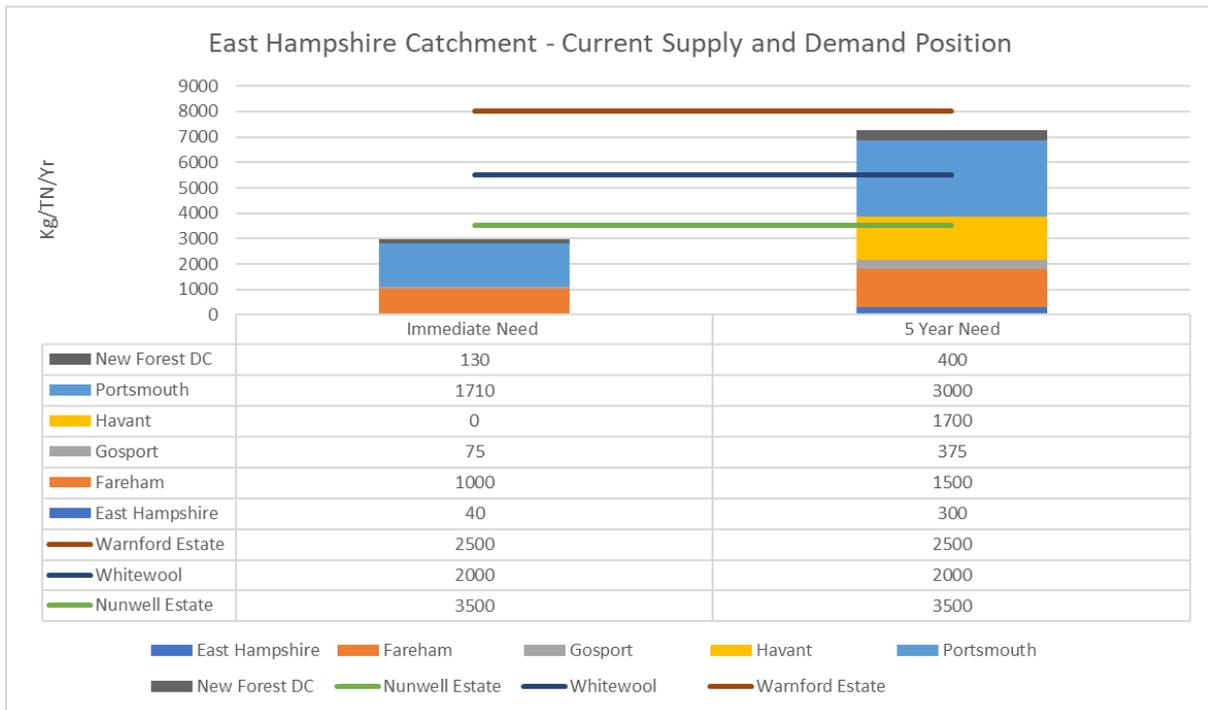


Figure 3 - East Hampshire – Current supply and demand position shown as stacked columns (need) and stacked lines (supply)

1.13 There are also a number of emerging mitigation schemes in the East Hampshire catchment. Figure 4 shows the impact on supply and demand when accounting for an emerging wetland scheme with a very high likelihood of coming forward.

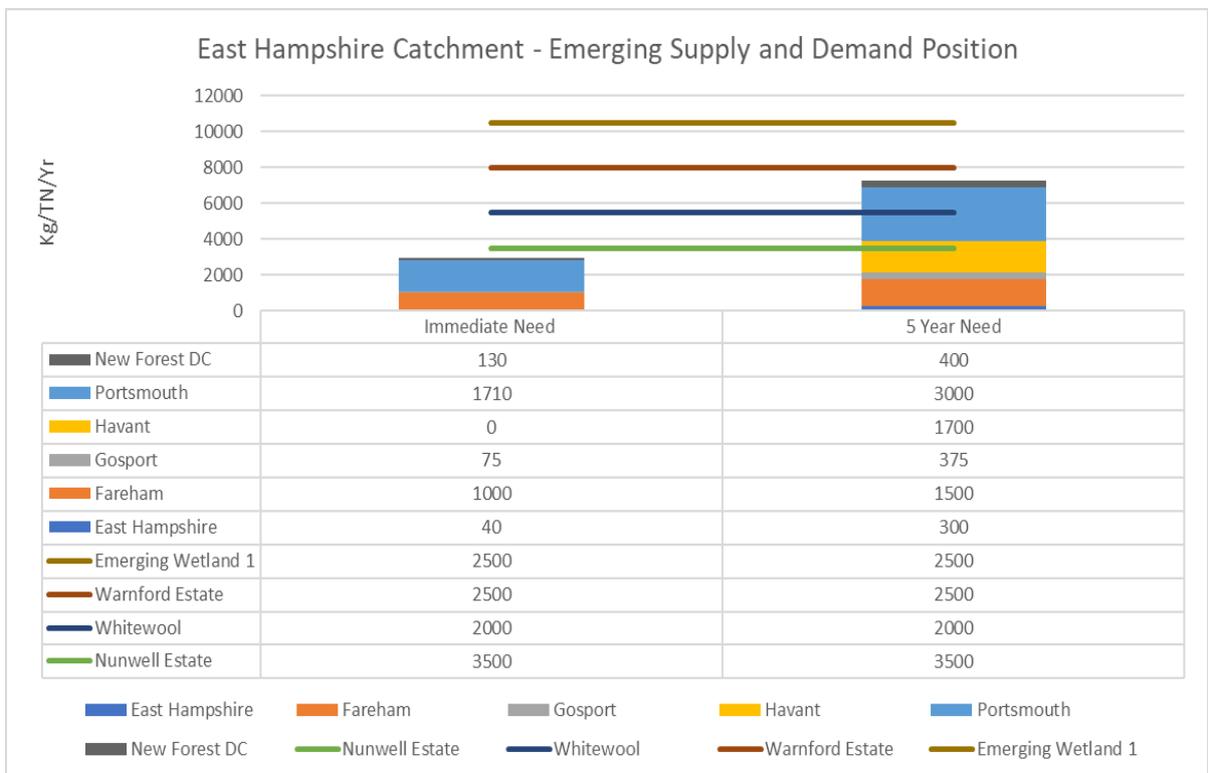


Figure 4 - East Hampshire - Emerging supply and demand position shown as stacked columns (need) and stacked lines (supply)

Conclusions from East Hampshire Supply and Demand Analysis

1.14 The East Hampshire catchment provides sufficient mitigation to meet the needs of sustainable development in both the short and medium term. It is likely that the East Hampshire catchment will provide sufficient mitigation to satisfy development into the long term.

Test and Itchen Catchment

1.15 The need for mitigation land in the Test and Itchen catchments is severely impacted by the number of WWTW in the catchment without TN permit levels. The number of credits required to mitigate one dwelling in some areas of the Test and Itchen catchment could require over three times the amount of mitigation than those developments draining to WWTW in other parts of the impacted area that employ better technology with tighter TN limits in place.

1.16 The uptake of private mitigation schemes to market has also been slower in the Test and Itchen catchments than other catchments. The variation of mitigation offers in this catchment when compared against the East Hampshire catchment is due to the differing models of land ownership between the two catchments.

1.17 The current supply and demand position for the Test and Itchen Catchment is shown in Figure 5. The emerging supply and demand position is shown in Figure 6.

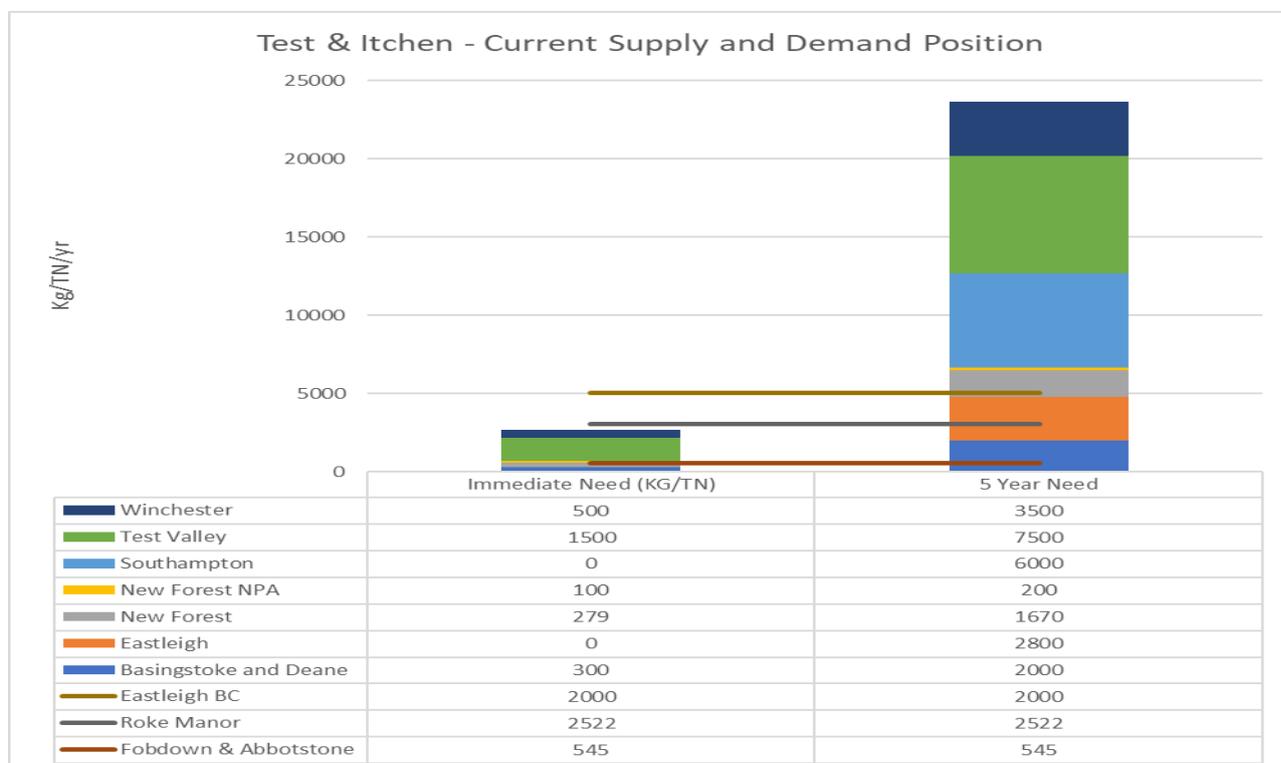


Figure 5 - Test and Itchen Catchment - Current supply and demand position shown as stacked columns (need) and stacked lines (supply)

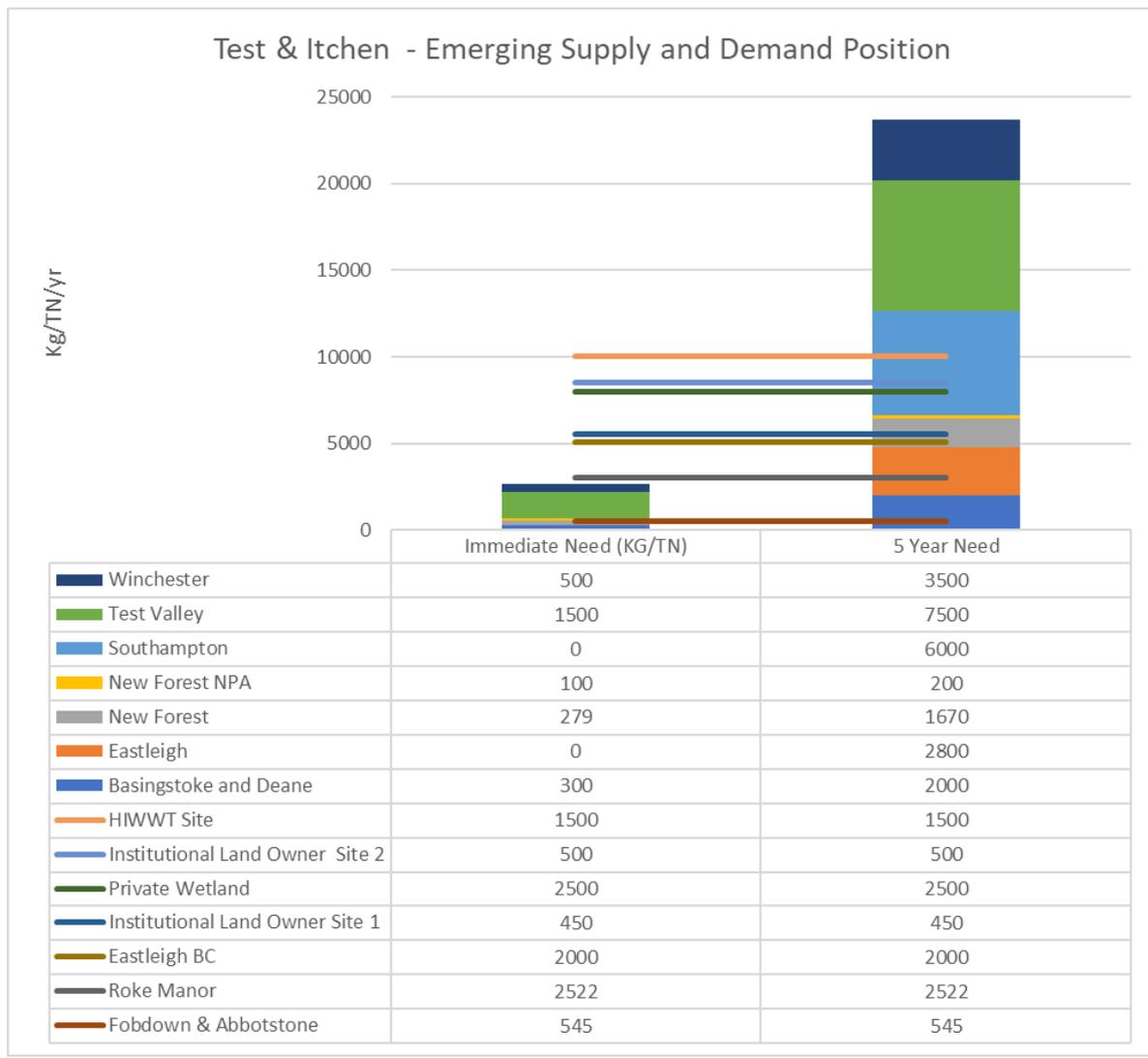


Figure 6 - Test and Itchen Catchment - Emerging supply and demand position shown as stacked columns (need) and stacked lines (supply)

Conclusions from Test and Itchen Supply and Demand Analysis

- 1.18 Within the Test and Itchen catchment there is currently enough supply to meet the immediate need for mitigation. However, it is anticipated that the current supply is unlikely to meet demand for more than two years based on the assumption there is unreported un-met need (as many developers may have chosen to wait until mitigation is available prior to submitting applications). The emerging mitigation position would ensure a steady supply of mitigation for up to four years dependant on the amount of allocated sites that may be able to provide mitigation on-site.
- 1.19 Any changes in the total nitrogen discharging from un-permitted WWTW, as a result of a targeted permit review by the Environment Agency, may significantly change the supply and demand position in this catchment. However, although it is clear that there is enough mitigation to meet immediate to short term need there is a clear requirement for further mitigation to come forward in the medium term in order to confirm that future development will be able to access mitigation.

New Forest Catchment

- 1.20 The New Forest catchment is particularly complex due to the number of small WWTWs that serve development in this area as well as differences in the way that WWTWs in the catchment discharge into protected waters.
- 1.21 In instances where development drains into Pennington WWTW mitigation is available from sites within the New Forest Rivers catchment and from mitigation sites in parts of the Isle of Wight. In instances where development drains to a WWTW that discharges into the New Forest Rivers catchment, Natural England's published advice (Version 5, June 2020) is that only mitigation within the New Forest Rivers catchment will be effective.
- 1.22 There is a current immediate need for mitigation draining to Pennington WWTW of approximately 130 credits with a 5-year need of around 530 credits. The need for mitigation relating to development that drains to WWTW that discharge into the New Forest Rivers Catchment is mainly made up of minor development, windfall development and a limited number of smaller site allocations in the National Park area and as such is harder to quantify. However, it can be assumed that there is an immediate need of at least 100 credits and a 5 year need of around 200 credits. The absence of TN permit limits for development in the more rural areas of the NFNP results in any development having a greater impact than development served by the Pennington WWTW.
- 1.23 At this time there is no mitigation scheme available for either development draining to Pennington WWTW or for development draining to WWTW which discharge into the New Forest Rivers Catchment.
- 1.24 There are currently two emerging schemes that may serve the New Forest catchment. Scheme 1 is a land use change scheme on the Isle of Wight estimated to produce up to 1000 credits, although when considered against Natural England's current advice, this scheme would only serve development draining to Pennington WWTW. Scheme two is a land use change scheme currently being negotiated by the land owner and HIWWT, this scheme would serve development draining to both Pennington WWTW and WWTWs that discharge into the New Forest Rivers catchment.

Conclusions for New Forest Catchment Supply and Demand Analysis

- 1.25 The New Forest Catchment is at high risk of not being able to deliver sustainable development in the short term. Should the coastal land use change currently being explored by the HIWWT not come forward then it is unlikely that sustainable development will be achievable for any overnight accommodation for much of the New Forest National Park and some parts of New Forest District Council Local Plan area. Should the Isle of Wight site also fail to come forward then sustainable development will not be achievable across the whole catchment.

Investigation of Impact on Delivery of Minor Development

1.1 The worked example below shows that legal fees and administration fees require to secure mitigation from providers and through the planning process create a proportionally higher cost for minor development.

Example of disproportionate impact (Example A)

1. Conversion of derelict A1 use into 4 dwellings (East Hampshire Catchment) 0.7 credits needed per house
 - 2.8 credits required at a cost of £2500 a credit = £7000
 - Admin and legal fees to mitigation provider = £5000
 - Legal fees to LPA = £2500
 - Total cost of mitigation = £14,500
 - Total cost of mitigation per dwelling = **£3625**
2. Construction of 100 dwellings without on-site mitigation (East Hampshire Catchment) 0.7 credits needed per house
 - 70 credits required at a cost of £2500 a credit = £175,000
 - Admin and legal fees to mitigation provider = £5000
 - Legal fees to LPA = £2500
 - Total cost of mitigation = £182,500
 - Total cost of mitigation per dwelling = **£1825**

This example shows a 66% relative increase in the cost of delivering mitigation per house for minor development.

Example of disproportionate impact (Example B)

1. Conversion of derelict A1 use into 4 dwellings (Test and Itchen catchment draining to waste water treatment works with no TN permit). Each dwelling requires 3 credits.
 - 12 credits required at a value of £3000 a credit = £36,000
 - Admin and legal fees to mitigation provider = £5000
 - Legal fees to LPA = £2500
 - Total cost of mitigation = £43,500
 - Total cost of mitigation per dwelling = **£10,875**

2. Construction of 100 dwellings in town centre location (Test and Itchen catchment draining to waste water treatment works with no TN permit). Each dwelling requires 3 credits.
 - 300 credits required at a value of £900,000
 - Admin and legal fees to mitigation provider = £5000
 - Legal fees to LPA = £2500
 - Total cost of mitigation = £907,500
 - Total cost of mitigation per dwelling = **£9075**

Example shows 18% relative increase in cost of delivering mitigation for minor development

- 1.2 The above examples are based on a number of assumptions that may vary between catchment and Local Authority in terms of relative disproportionate impact on providing mitigation. However, the principle relating to increased costs for smaller development through apportionment of legal and administrative costs stays the same for all catchments and authorities where the open market system is being used.
- 1.3 Although there is no formal definition related to an SME developer it is generally considered that each SME developer will contribute between 1 and 100 units a year to housing supply across their operating area. The vast majority of minor development across the Solent area is delivered by small and medium enterprises (SME) developers.
- 1.4 Government policy seeks to promote diversification in the housebuilding market through support to SME development, particularly in light of the Covid pandemic limiting the ability of these companies to deliver new homes. This is also reflected in the NPPF (2019), which acknowledges that small and medium sized sites make an important contribution to meeting the housing requirement of an area; and requires local planning authorities to promote the development of a good mix of housing sites (paragraph 68).

Conclusions of Disproportionate Impact on Minor Development and SMEs

- 1.5 Although it is clear that due to apportionment of legal and administrative costs there is a disproportionate impact on smaller development this can vary greatly dependant on the relative scale of developments and the receiving WWTW.

ENDS

Draft Precedent s106 Agreement for Nutrient Mitigation

- 1.1 This appendix provides a draft precedent s106 agreement to enable privately owned mitigation to support development through the planning application process. There remains a number of points that must be resolved in order for this document to form the basis of agreements across all LPAs in the impacted area. LPAs have been issued with the draft agreement supplied below as well as associated advice and suggested approaches to overcome outstanding matters. This work remains ongoing at this time and aims to produce an agreed legal template that can then be adapted where necessary by constituent local planning authorities in the impacted area.

Dated:

20

[MITIGATION LAND LPA]

and

[MITIGATION LAND OWNER]

AGREEMENT

pursuant to Section 106 of the Town and Country
Planning Act 1990 and other powers relating to
land at []

THIS DEED is made on

20

BETWEEN:

- (1) [] of [] (“the Mitigation Land Authority”); and
(2) [] of [] (“the Mitigation Land Owner”)

RECITALS

- A The Mitigation Land Authority is the local planning authority for the purposes of the Act for the area in which the Mitigation Land is situated.
- B The Mitigation Land Owner is the freehold owner of the Mitigation Land registered with title absolute at the Land Registry under Title Number(s) [].
- C In accordance with the Habitats Regulations local planning authorities may only grant planning permission where they are satisfied that there will not be adverse effect on the European Designated Sites as a result of the proposed development.
- D High levels of nitrates in the European Designated Sites means that local planning authorities in the Catchment Area cannot be satisfied that additional residential and other overnight accommodation will not have an adverse effect as a result of increased levels of nitrogen being discharged via wastewater treatment works.

- E In order to ensure that there is no such adverse effect, it is proposed to offset the increase in nitrogen arising from the Occupation of a Development by inter alia imposing appropriate and counter-balancing restrictions on proportionate parts of the Mitigation Land.
- F The Mitigation Land Authority and the Mitigation Land Owner have agreed to enter into this Deed in order to regulate the use of the Mitigation Land in contemplation of applications for planning permission in respect of future development comprising residential and other overnight accommodation in the Catchment Area.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 1.1 In addition to the definitions set out below, a series of specific definitions are included in the Schedule to this Deed giving further defined terms and expressions to facilitate interpretation and unless stated to the contrary the specific definitions in the Schedule shall apply throughout this Deed where the relevant terms and expressions are used.
- 1.2 1.2 In this Deed the following expressions shall have the meanings indicated:

“Act”	The Town and Country Planning Act 1990 (as amended)
“Activation Date”	The date of service of the first Notice of Purchase
“Agriculture”	(a) use for horticulture, fruit growing, seed growing (including the growing of cereal crops); (b) use for dairy farming; (c) use for the breeding and keeping of livestock (any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land); (d) use of the land as grazing land; and (e) use as market gardens or nursery grounds, and ‘Agricultural’ shall be construed accordingly
“Application”	Any planning application for residential development or development comprising other overnight accommodation in the Catchment Area submitted to and validated by the appropriate local planning authority

“Catchment Area”	The area(s) in which Development drains to [<i>list suitable WWTW eg the Southern Water Peel Common Waste Water Treatment Works</i>]
“Commence”	The carrying out of a “material operation” (as defined in section 56(4) of the Act) in connection with a Development (and “Commencement” and “Commenced” shall be construed accordingly)
“Conditional Contract”	A contract for the purchase of Credits entered into by the Mitigation Land Owner and any person wishing to purchase Credits that is conditional upon the grant of a Permission
“Credits”	Credits sold by the Mitigation Land Owner to a developer that correspond to the Credits Linked Land where one Credit equates to 1 Kg per annum of total nitrogen reduction (as against historic discharges on the Mitigation Land) in discharges from the relevant Credits Linked Land each year
“Credits Linked Land”	Such part of the Mitigation Land identified in the Notice of Purchase and which area corresponds to the number of Credits purchased in order to off-set anticipated additional nitrates from a particular development, and which for the avoidance of doubt shall not correspond to more than one specified development
“Deed”	This agreement made by deed
“Development”	The development of Development Land in accordance with a Permission
“Development Land”	The land which is the subject of an Application
“Enabling Powers”	Section 106 of the Act, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 22 of the Cities and Local Government Devolution Act 2016 and Section 1 of the Localism Act 2011
“End Date”	The date 125 years from the date of this Deed
“European Designated Sites”	Collectively the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, the Solent Maritime Special Area of Conservation and the Solent and Dorset Coast SPA

“Habitats Regulations”	The Conservation of Habitats and Species Regulations 2017
“Index”	The All in Tender Price Index published by the Building Costs Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or index
“Index Linked”	For the purposes of any payment or financial contribution expressed to be Index Linked means adjusted in accordance with the Index by multiplying in each case the payment due by a fraction whose denominator shall be the last Index monthly figure published before the date of this Deed and whose numerator shall be the last published Index monthly figure available before the date on which payment is due but which for the avoidance of doubt shall not fall below the original payment figure
“Initial Verification Contribution”	The sum of [£xxxxx] [(<i>amount in words</i>)] Index Linked to cover the Mitigation Land Authority’s costs of monitoring compliance with this agreement until the Twenty Year Date calculated based on [xx] visits at a cost of [£xxx] per visit.
“Interest”	interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment)
“Legal Costs”	The Mitigation Land Authority’s reasonable legal costs incurred in the preparation, negotiation and execution of this Deed
“Mitigation Land”	The land known as [] shown for identification purposes only edged with a red line on Plan 1
“Nitrate Mitigation Proposals Pack”	A written notification of the completion of a Conditional Contract and which shall include the following information: <ul style="list-style-type: none"> • Name of developer entering into the Conditional Contract; • Details of the Development to benefit from the Credits proposed to be purchased pursuant to the Conditional Contract, to include application number, description and location; • Number of Credits to be purchased pursuant to the Conditional Contract;

	<ul style="list-style-type: none"> • Nitrogen budget for the proposed Credits Linked Land; • Details of the proposed Credits Linked Land to include a plan with the proposed Credits Linked Land clearly identifiable and specifying the size of the proposed Credits Linked Land in hectares.
“Notice of Purchase”	<p>A written notification (from the Mitigation Land Owner to the Mitigation Land Authority, a copy of which is to be provided to the purchaser) of the purchase of Credits to include the following information:</p> <ul style="list-style-type: none"> • Name of developer purchasing the Credits; • Details of the Development to benefit from the Credits, to include application number, description and location; • Number of Credits purchased; • Nitrogen budget for the Credits Linked Land; • Details of the Credits Linked Land to include a plan with the Credits Linked Land clearly identifiable and specifying the size of the Credits Linked Land in hectares.
“Occupation”	<p>Occupation for the purposes permitted by a Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” and “Occupied” shall be construed accordingly</p>
“Plan 1”	<p>The plan annexed hereto and marked “Plan 1” showing the Mitigation Land edged red</p>
“Permission”	<p>A full or outline planning permission subject to conditions to be granted by a local planning authority pursuant to an Application (and for the avoidance of doubt shall include any modifications of such planning permission and variations of conditions attaching to such planning permission, and any minor or non-material amendments to such planning permission provided such modifications, variations or amendments do not increase the number of Credits required for the Development and is first approved in writing by the Local Planning Authority in which the Development Land is located)</p>
“Twenty Year Date”	<p>The date twenty years from the Activation Date</p>

"Verification Contribution"	The sum of [£xxx] [(<i>amount in words</i>)] Index Linked to cover the Mitigation Land Authority's costs of monitoring compliance with this agreement for years 21-125 ([£xxx] every [xx] years and a visit in year 125)
"Woodland Planting Scheme"	a scheme for the planting of trees on the Mitigation Land (or part of the Mitigation Land, but so that it must always include such part as becomes Credits Linked Land on the Activation Date and on service of any subsequent Notice of Purchase), to include details of number and species of trees and timing of planting, and measures for maintaining and encouraging the successful growth of the trees for a minimum of ten years after planting, and which shall be designed so as to ensure that there will be a minimum of 20% canopy cover across the Mitigation Land at maturity.
"Working Day"	Monday to Friday inclusive, excluding any bank or public holidays

1.3

2 INTERPRETATION

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all words shall be construed interchangeable in that manner.
- 2.3 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Deed shall, to the full extent permitted by law, include the successors in title to that party and to any person deriving title through or under that party and in the case of the Mitigation Land Authority the successors to their respective statutory functions.

- 2.6 References to "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

3 STATUTORY AUTHORITY

- 3.1 This Deed is made pursuant to Section 106 of the Act and the Enabling Powers. The covenants, restrictions and requirements imposed upon the Mitigation Land Owner under this Deed create covenants pursuant to Section 106 of the Act and are enforceable by the Mitigation Land Authority against the Mitigation Land Owner, their successors in title and any person deriving title in the Mitigation Land or any part of it from the Mitigation Land Owner.

4 EFFECT OF THE AGREEMENT

- 4.1 Subject to clause 4.2 this Deed shall take effect on the day and year first before written.
- 4.2 The covenants contained in Paragraph 1 of the Schedule to this Deed shall only take effect in respect of each area of Credits Linked Land on the date of service of the Notice of Purchase in respect of that Credits Linked Land.
- 4.3 On service by the Mitigation Land Owner on the Mitigation Land Authority of a Notice of Purchase the land identified within that notice shall become Credits Linked Land.

5 MITIGATION LAND OWNER'S COVENANTS

- 5.1 The Mitigation Land Owner hereby covenants with the Mitigation Land Authority pursuant to section 106 of the Act that it will observe and perform the covenants contained in the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

6 MITIGATION LAND AUTHORITY'S COVENANTS

6.1 The Mitigation Land Authority hereby covenants with the Mitigation Land Owner that it will observe and perform the covenants contained in paragraph 4 of the Schedule to this Deed subject to the operation of clauses 4.2 and 7.2 of this Deed.

7 RELEASE AND LAPSE

7.1 It is hereby agreed that the Mitigation Land Owner shall not be liable for a breach of any of its obligations under this Deed (save for antecedent breaches) after it shall have parted with all of its interests in the Mitigation Land.

7.2 Where any Permission expires without having been Commenced or where any Permission is quashed following a successful legal challenge the Credits Linked Land relating to that Permission (via a Notice of Purchase) shall be released automatically on such expiry or quashing of such Permission from the covenants contained in the Schedule to this Deed so that the Mitigation Land Owner shall then be entitled to serve a fresh Notice of Purchase in relation to that Credits Linked Land.

7.3 Subject to clause 7.2 the Mitigation Land Owner covenants with the Mitigation Land Authority that it will not allocate any part of the Mitigation Land such that it becomes Credits Linked Land for more than one Development.

8 LAND CHARGES

8.1 This Deed is a local land charge and shall be registered as such by the Mitigation Land Authority.

8.2 Upon the full satisfaction of all the terms of this Deed the Mitigation Land Owner may request that the Mitigation Land Authority procure that all entries in the register of local land charges relating to it other than those obligations which are of continuing effect be removed as soon as reasonably practicable.

9 DUTY TO ACT REASONABLY

9.1 All parties to this Deed acknowledge that they are under a duty to act reasonably and (without prejudice to generality) if any deed consent approval or expression of satisfaction is due from one party to another under the terms of this Deed the same shall not be unreasonably withheld or delayed.

10 NO FETTER ON DISCRETION OR WAIVER

10.1 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Mitigation Land Authority under all statutes by-laws statutory instruments orders and regulations in the exercise of their respective functions as a local authority.

10.2 No waiver (whether expressed or implied) by the Mitigation Land Authority of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Mitigation Land Authority from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

11 COVENANT AS TO TITLE

11.1 The Mitigation Land Owner hereby covenants with the Mitigation Land Authority that no person other than the parties to this Deed has any interest in the Mitigation Land.

12 SEVERABILITY

12.1 It is agreed that if any part of this Deed shall be declared unlawful or invalid by a court of competent jurisdiction then (to the extent possible) the remainder of this Deed shall continue in full force and effect.

13 LEGAL COSTS

13.1 The Mitigation Land Owner hereby covenants with the Mitigation Land Authority that it will on or before the date of this Deed pay the Legal Costs.

14 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

14.1 notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Deed shall be enforceable by a third party who is not a party to the Deed and for the avoidance of doubt the terms of this Deed may be varied by Deed between the parties without the consent of any such third party.

15 NOTICES

15.1 Any notices required to be served by one party on another under this Deed shall be served by First Class prepaid post or by email in the following manner:

15.1.1 on the Mitigation Land Authority marked "for the attention of []" at the address as detailed above; and

15.1.2 on the Mitigation Land Owner at the address as detailed above or as notified by the Mitigation Land Owner in writing to the Mitigation Land Authority.

15.2 Notices served in accordance with this clause 15 shall be deemed received (a) where sent by first class prepaid post, by 4pm on the second Working Day following posting.

16 INTEREST ON LATE PAYMENTS

16.1 Any amount due from the Mitigation Land Owner under this Deed which is not paid on the due date shall be payable with Interest.

17 NOTIFICATION OF SUCCESSORS IN TITLE

17.1 The Mitigation Land Owner covenants with the Mitigation Land Authority that it will give immediate written notice to the Mitigation Land Authority of any change of ownership of the Mitigation Land if at such time the obligations contained within this Deed have not fully been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Mitigation Land purchased by reference to a plan.

18 JURISDICTION

18.1 This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

19 DELIVERY

19.1 This Deed is for the purposes of the Regulatory Reform (Execution of Deeds and Documents) Order 2005 a deed and for the avoidance of doubt the Deed shall be deemed not delivered despite being executed by the parties until such time as it is dated.

SCHEDULE

THE COVENANTS

The Mitigation Land Owner covenants with the Mitigation Land Authority as follows:

1. COVENANTS REGULATING USE OF THE MITIGATION LAND

1.1 Subject to paragraph 1.2 of this Schedule not to use any parcel of Credits Linked Land for Agriculture or deposit or permit the deposit of any fertiliser on the Credits Linked Land during the lifetime of the Development that is linked to that parcel of Credits Linked Land.

1.2 Notwithstanding the provisions of paragraph 1.1 of this Schedule, the following activities (without limitation) shall for the avoidance of doubt be permitted:

1.2.1 The harvesting and removal of any existing crop in the ground at the Activation Date provided no additional fertiliser inputs are applied;

1.2.2 the planting and management of trees in accordance with the Woodland Planting Scheme;

1.2.3 leaving the Credits Linked Land naturally to regenerate;

1.2.4 planting and maintaining greensward;

1.2.5 creating and maintaining open space;

1.2.6 creating and maintaining forestry rides;

1.2.7 the carrying out and maintenance of any planting scheme or woodland management plan that is first approved by Natural England, the Forestry Commission, or any other authority for the time being with relevant responsibility for land such as the Mitigation Land

provided no further fertiliser inputs are applied.

1.3 By no later than two months after (a) the Activation Date and (b) the date of service of any subsequent Notice of Purchase to submit to the Mitigation Land Authority for its written approval a Woodland Planting Scheme. For the avoidance of doubt a Woodland Planting Scheme submitted under this paragraph must always include within its scope the area of the Mitigation Land that is, by virtue of a served Notice of Purchase, becoming Credits Linked Land, and it may (but need not – the matter being entirely at the Mitigation Land Owner's discretion) include other parts of the Mitigation Land in anticipation of further Notices of Purchase. Where a Woodland Planting Scheme is submitted in relation to land ("Additional Land") that was not at

the relevant time Credits Linked Land and that Scheme is approved by the Mitigation Land Authority, there is no requirement for any further Woodland Planting Scheme to be submitted in relation to that Additional Land when a subsequent Notice of Purchase is served that has the effect of that Additional Land becoming Credits Linked Land in due course unless the Mitigation Land Owner wishes to vary the scheme subsequently.

- 1.4 Following approval of each Woodland Planting Scheme, to implement and thereafter comply with the approved Woodland Planting Scheme:
- (a) in so far as it relates to any parcel of land that becomes Credits Linked Land; and
 - (b) so that any required planting shall take place no later than the next planting season following such parcel of land becoming Credits Linked Land (but may occur earlier).
- 1.5 The parties acknowledge that any Woodland Planting Scheme may need to be varied from time to time. Any such variation may be proposed by the Mitigation Land Owner and then will be subject to approval in line with the process contemplated by paragraph 1.3 of this schedule.

2. NOTIFICATION REQUIREMENTS

- 2.1 Upon the completion of a Conditional Contract, the Mitigation Land Owner shall immediately provide to the proposed purchaser under that Conditional Contract the Nitrate Mitigation Proposals Pack.
- 2.2 Upon completion of any sale of Credits, but only once the Mitigation Land Owner has been paid in full for such sale, the Mitigation Land Owner shall immediately:
- (a) send the relevant Notice of Purchase to the Mitigation Land Authority; and
 - (b) provide a copy of that Notice of Purchase to the purchaser of the Credits.

3. VERIFICATION CONTRIBUTIONS

- 3.1 The Mitigation Land Owner undertakes to the Mitigation Land Authority to pay the Initial Verification Contribution and the Verification Contribution to the Mitigation Land Authority on or before the Activation Date.

THE MITIGATION LAND AUTHORITY OBLIGATIONS

4. ACCESS PROVISIONS

4.1 In connection with the Mitigation Land Authority's accessing the Mitigation Land for the purpose of monitoring compliance with this Deed the following provisions apply:

4.1.1 All access onto the Mitigation Land and any adjoining land belonging to the Mitigation Land Owner shall be entirely at the risk of the Mitigation Land Authority;

4.1.2 Without prejudice to paragraph 4.1.1, the Mitigation Land Authority will give the Mitigation Land Owner no fewer than 7 days' written notice of any inspections (which will set out the expected duration of the inspection and include a list of the equipment that the Mitigation Land Authority will use for the monitoring and verification inspection) and will also give the Mitigation Land Owner or his representative the opportunity to accompany the Mitigation Land Authority's representative on any monitoring or verifying inspection to assist with site safety; and

4.1.3 In gaining access to the Mitigation Land, the Mitigation Land Authority will cause no damage or disturbance to the Mitigation Land nor to any adjoining land of the Mitigation Land Owner nor to any operations carried out thereon by or on behalf of the Mitigation Land Owner.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

THE COMMON SEAL OF)
[MITIGATION LAND AUTHORITY])
was affixed in the presence of:)

Authorised Signatory:

SIGNED as a deed by)
[MITIGATION LAND OWNER])
In the presence of:)

Witness Signature:

Name:

Address:

.....

.....

.....

Occupation

Financial implications to authorities of Local Planning Authority led schemes

1.1 The below example shows both an indication of the potential return on investment and potential financial risks associated with a Local Authority led scheme. The indicative example is based on informed assumptions relating to land value and the open market price of credits. However, the land price, market value of credits and availability of land would need to be considered on a catchment by catchment basis in a fully strategic approach and would vary, potentially significantly, between catchments.

- Land value assumed at equivalent of £25k/acre
 - 100 acres (40.4ha) of general cropping = £2.6m (£2.5m + £100,000 allowance for set up/management)
 - 100 acres of cereal cropping = 1,260 credits
 - 1,260 credits sold at a value of £2,500 per credit (approximate current market rate) = £3.15m
 - 1,260 credits sold at a value of £2,000 per credit = Break even
- Competition scenario - Wetland opportunity in private ownership
 - Minimal land value as usually unproductive land unsuitable for development with limited 'hope' value.
 - Constructed wetland costs (considerable variation in cost depending on topography and soil type) - £750k
 - Wetland credits (dependent on nitrogen flow into the wetland) – 2,500
 - 2,500 credits sold at a value of £2,500 per credit (approximate current market rate) = £6.25m
 - 2,500 credits at a value of £1500 per credit = £3m (profit)
 - 2,500 credits at a value of £300 per credit = Break even

1.2 The below example shows an indication of the potential financial implication for local authorities where they may choose to purchase mitigation credits from existing mitigation providers. The indicative example is based on a need of 75 credits. Local authorities would then have the opportunity to purchase further credits at the same rate or a negotiated rate should the open market price of credits change.

- Open market value of £2,500 per credit used in example is considered appropriate for use in the Chichester and East Hampshire catchments. In the

Test and Itchen catchment an open market value of £3000 and a negotiated value of £2500 should be used in calculations.

- Total cost of 75 credits purchased at negotiated open market value of £2,250 = £168,750
- Legal and set up costs = £10,000
- Total capital needed = £**178,750**
- Total revenue from sale of credits at contracted market rate of £2,500 = £**187,500**
- £8,750 return on investment minus any administration costs

ENDS