



Report to the Partnership for South Hampshire Joint Committee

Date: 05 July 2022
Report of: Simon Kennedy, PfSH Strategic Environmental Planning Officer
Subject: UPDATE ON NUTRIENT NEUTRALITY IN THE SOLENT

Summary

This report provides an update on nutrient neutrality for PfSH authorities. The update focuses on the impact of updated advice from Natural England and the work being undertaken to ensure that sustainable growth can continue in the sub-region.

Recommendations

It is RECOMMENDED that Joint Committee:-

- a) NOTES the contents of this report and provide any comments;
- b) AGREES that the available nutrient funding received from the Department of Levelling Up Housing and Communities (DLUHC) will be spent on additional nutrient mitigation staffing capacity, with some funds set aside for required consultancy work; and
- c) AGREES that subject to Joint Committee agreement of recommendation b, that the PfSH Planning Officers Group should have the authority to manage the details relating to the recruitment of further staff as appropriate.

1. New National Guidance for Nutrient Neutrality

- 3.1 In March of this year, Natural England released updated guidance to local planning authorities with existing advice on nutrient neutrality. At the same time Natural England also released new advice to circa 42 other local planning authorities around the country advising, for the first time, that nutrient neutrality would be required for new development in their respective areas.
- 3.2 Table 1 shows the PfSH authorities impacted by revised guidance on existing advice. Table 2 shows the PfSH authorities impacted by new advice related specifically to phosphate neutrality in the River Itchen catchment.

Table 1 - PfSH Local Planning Authorities Impacted by updated advice from Natural England (All Authorities)

East Hampshire	Havant
Portsmouth	Gosport
Fareham	Eastleigh
Winchester	Southampton
Test Valley	New Forest
New Forest DC	

Table 2 - PfSH Local Planning Authorities Impacted by New Advice on Phosphate Neutrality for the River Itchen

Winchester	Eastleigh
Test Valley (part)	East Hampshire (part)

2. Impact on PfSH Authorities from Updated Guidance on Nitrogen Neutrality

- 4.1 All PfSH authorities have been impacted by the release of updated guidance from Natural England. The guidance was accompanied by a 'nutrient calculator' - the means by which local authorities, developers and members of the public are able to work out how much nitrogen must be off-set, on any given development, by way of the purchase of nutrient credits or other method of mitigation. Unfortunately, the initial version of the nutrient calculator, issued with the updated guidance in March, was retracted due to errors in some of its calculations. This resulted in a short period where local planning authorities were unable to rely on either the old or the updated guidance. There was subsequently a short period when no new permissions could be granted across the PfSH sub-region.
- 4.2 The calculator has now been updated, and for those authorities not listed in table 2, local authorities are able to resume issuing permissions. Due to the changes in guidance, the remaining credits in the strategic mitigation (land use change)

sites need to be recalculated. In the case of strategic mitigation sites, subject to further checks on the new calculations, it is likely that an increased supply of available credits will be able to be offered. However, as a result of the new calculator, in most cases a higher provision of nutrient credits will be required of developers to offset any given development.

- 4.2 In the short term, for those authorities not listed in table 2, the revised guidance is unlikely to have a substantial impact on sustainable growth. In the medium and longer term, substantive work is required to assess the impact on supply and demand. This work is currently being undertaken by the PfSH Strategic Environmental Planning Officer and will be presented at the next scheduled PfSH Joint Committee Meeting.

3. Impact on PfSH Authorities from New Guidance on Phosphate Neutrality

- 5.1 For those authorities in the Itchen catchment receiving new advice on phosphate neutrality (see table 2), Natural England have released a phosphate calculator to assist in assessing the required level of mitigation. However, due to the nature of phosphate mitigation options, and the lack of forewarning with regard to a requirement for phosphate neutrality, it is anticipated that it will take a minimum of 18 months to develop appropriate mitigation for sustainable development to continue in the Itchen catchment.
- 5.2 Although PfSH planning officers have a good understanding of how phosphate mitigation could be provided, the spatial relationship between development and the River Itchen Special Area of Conservation means that the area available for strategic mitigation is considerably constrained. As a result, there is the potential for a strategic solution to take considerably longer than 18 months to achieve. Finding a solution for phosphate neutrality in the Itchen catchment is currently a key focus of work for the Strategic Environmental Planning Officer. However, there will be a clear impact, particularly in Eastleigh and Winchester, on new housing delivery.

4. DLUHC Funding

- 6.1 Timed to coincide with the release of the new guidance from Natural England, DLUHC have also made funds available to local planning authorities in order to “ensure dedicated resource is committed to respond to the stalling of housing as a result of nutrients pollution”. Further background and details relating to the funding can be found at **Appendix 1**, however, the total funding available to the PfSH sub-region and its catchment areas amounts to £200k.
- 6.2 PfSH Planning Officers have made an assessment of the most appropriate use for the DLUHC funding to respond for the need for nutrient neutrality, both in terms of nitrogen and phosphorous. In brief the main options are set out below.

Option 1

Return funds to relevant authorities to assist in recovery of spend to date of tackling nutrient neutrality. Distribute the money received to constituent LPAs (Itchen catchment LPAs would then need to progress their own phosphate solutions).

Option 2

Increase strategic environmental planning capacity (catchment based). Add staff capacity – separate officers for each nutrient catchment.

Option 3

Increase strategic environmental planning capacity (skills based). Add staff capacity – a team working to the SEPO, suggested to include a senior officer dedicated to the phosphate issue and a junior/GIS technician.

Option 4

Nutrient capital pot for outsourced work. Use the funding for targeted consultancy projects to support SEPO.

- 6.3 In order to effectively manage the current strategic solutions to nutrient neutrality, and to support delivery of timely and effective solutions to phosphate neutrality, PfSH planning officers are proposing to Joint Committee that the funding be spent on a combination of additional staffing at a strategic level and targeted consultancy work (a combination of options 3 and 4).
- 6.4 In-line with recommendation b of this report, it is proposed that, subject to Joint Committee approval, an officer group determine the details of the additional staffing, and consultancy budget, with PfSH Planning Officers Group having the authority to agree the detail and recruit additional staff accordingly. This approach was endorsed by PfSH Chief Executive's at a recent meeting in June.
- 6.5 All non-PfSH authorities contributing to the cost of the PfSH nutrient mitigation work, as well as Natural England and the Environment Agency, have been provided with an options paper (as outlined in paragraph 6.2) and recommendations on how these funds might be apportioned. The non-PfSH authorities were invited to sit on the proposed officer working group and have shown general support for the proposals with no objections raised.

5. Summary and next steps

- 5.1. Although the updated guidance on nitrogen mitigation has caused a number of issues, both for local planning authorities and mitigation providers, there are still schemes coming forward to provide nitrogen mitigation. It is anticipated that for the majority of authorities there will continue to be a supply of strategic nitrogen mitigation to support sustainable development.

- 5.2. Due to the significant impact of the new advice relating to phosphate neutrality the majority of current work being undertaken by the PfSH SEPO is to investigate and deliver solutions for phosphate neutrality. Using the DLUHC money to, at least in part, recruit a dedicated officer to consider the phosphate mitigation issue will be of great benefit to those impacted authorities.
- 5.3. In addition to work on phosphate solutions, a review of supply and demand for both nitrogen and phosphorus mitigation across the sub-region will be prepared in the context of the new guidance.

Recommendations

It is RECOMMENDED that Joint Committee:-

- a) NOTES the contents of this report and provide any comments;
- b) AGREES that the available nutrient funding received from the Department of Levelling Up Housing and Communities (DLUHC) will be spent on additional nutrient mitigation staffing capacity, with some funds set aside for required consultancy work; and
- c) AGREES that subject to Joint Committee agreement of recommendation b, that the PfSH Planning Officers Group should have the authority to manage the details relating to the recruitment of further staff as appropriate.

Appendices – Appendix 1 - DLUHC funding to support the LPA response to requirements for nutrient neutrality

Enquiries:

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DLUHC funding to support the LPA response to requirements for nutrient neutrality

On 15 March 2022 the Planning Advisory Service (PAS) approached the PfSH Strategic Environmental Planning Officer (SEPO) to advise that DLUHC had funding available to local planning authorities (LPAs). The funding is for those authorities that have existing advice from Natural England regarding a need for nutrient neutrality. The funding amounted to £100,000 to be shared amongst LPAs in the wider Solent catchment. To receive the funding, LPAs in the wider Solent catchment were required to agree a lead authority to receive the funds, the lead authority was also required to sign a memorandum of understanding regarding how the funds would be spent and the reporting requirements attached to the funds. This had to be agreed by LPAs within 7 days to be able to obtain the funding.

During the application process for the funds the SEPO pointed out to PAS that the area defined by DLUHC for the Solent catchment was considerably larger and more complex than other catchments nationally that had also received an offer for £100,000. It was also made clear to DLUHC that we are also in receipt of new advice for phosphates specifically related to the Itchen river catchment. Although DLUHC had indicated that funds would be made available for LPAs impacted by new advice on nutrients next year, there was a clear desire to receive funds earlier to help respond to this new advice.

Ultimately, and due to the hard work and co-operative working between all impacted LPAs, Fareham Borough Council was agreed as the lead authority and has now received two separate payments from DLUHC of £100,000 each at a total of £200,000. The first £100,000 is for the wider Solent catchment authorities as identified in table 1. The second £100,000 is specifically for those authorities impacted by phosphate neutrality in the Itchen as identified in table 2.

Wider Solent Catchment - Authorities identified as beneficiaries of funding (£100k)

PfSH Authorities	Non PfSH authorities funding the SEPO work	Non PfSH authorities funding their own work
East Hampshire	South Downs National Park	Wiltshire County Council
Havant	Chichester District Council	Isle of White Council
Portsmouth	Basingstoke and Deane	
Gosport		
Fareham		
Eastleigh		
Winchester		
Southampton		
Test Valley		
New Forest DC		
New Forest NP		

Itchen river catchment - Authorities identified as beneficiaries of funding (£100k)

PfSH Authorities	Non PfSH authorities funding the SEPO work
Winchester	South Downs National Park (part)
Eastleigh	Basingstoke and Deane (part)
Test Valley	

Funding details, timescales and requirements

On 16 March LPAs received a letter from the Chief Planning Officer in DLUHC. The letter stated that:

“Every catchment is different, and local authorities will be best placed to make decisions on how to support strategic management and mitigation plans in their areas. For this reason, national policy interventions must be supplemented by local action to work in collaboration with Natural England and the Environment Agency. This action would enable the nuances of nutrient pollution in specific catchments to be understood, the required strategies for restoring habitats sites to be formulated, and for mitigation solutions to be identified.”

Additionally the letter stated:

“.....the department will provide a nutrient support fund, with £100,000 available for each Habitats Site catchment. This will enable affected areas to hire catchment nutrients officers to respond to the challenges of nutrient pollution in a partnership approach.”

When applying to DLUHC for the funding the lead authority was required to sign a memorandum of understanding (MOU) with regard to the timescales and requirements associated with receiving the funds. The memorandum of understanding is provided in full on the following pages. However, a summary of the key points are as follows:

- The MOU is not a legally enforceable agreement
- The MOU related to funding from the Nutrients Fund for the period until 31 March 2023. All funding to be committed as spend on activities by 5 April 2022.
- The funding is intended to ensure dedicated resource is committed to respond to the stalling of housing as a result of nutrients pollution. This can be through the hiring of an additional dedicated member of staff or through identifying dedicated resource from within existing teams.
- The funding should be used to Identify where there are potential nutrient mitigation solutions within the catchment, and produce an action plan that sets out how these solutions will be implemented.
- Quarterly progress reports are required on or before the following dates; June 31st 2022, September 30th 2022, December 31st 2022 and March 31st 2023

Although the SEPO has chased DLUHC regarding a MOU for the Itchen funding, this has yet to be provided. However, it is assumed the requirements will be similar to the MOU for the wider Solent.

Nutrient Pollution Mitigation Funding
Memorandum of Understanding

Purpose

1. This Memorandum of Understanding (MOU) is entered into between The Department for Levelling Up, Housing and Communities (DLUHC) and Fareham Borough Council (the Council) as a Local Planning Authority affected by Natural England's (NE) nutrient neutrality advice in the Solent catchment. The MOU provides a framework for Fareham Borough Council and DLUHC to collaborate on the Nutrients Fund and sets out the expectations of all parties.
2. While this is not a legally enforceable agreement, this MOU sets out:
 - Funding arrangements for DLUHC to fund the listed council to deliver the agreed activity and outcomes and
 - The agreed principles for monitoring and evaluating the delivery and outcomes of the project, including the respective responsibilities of the councils and DLUHC.

Duration

3. The MOU related to funding from the Nutrients Fund for the period until 31 March 2023. All funding to be committed as spend on activities by 5 April 2022.

DLUHC will be expected to:

4. Provide £100,000 funding to the listed council via a Section 31 grant, in the expectation that the funding will be used to identify solutions for housing development under nutrient neutrality advice. Payment will be made as one payment in April 2022.
5. Maintain a relationship as grant funder and will;
 - Monitor progress on the delivery of the agreed outputs and outcomes,
 - Provide steer to grant-holding LPAs on potential nutrient neutrality solutions, through workshops provided by the Planning Advisory Service,
 - Work with grant-holding LPAs to facilitate sharing of good practice and collaborative problem solving, through the Planning Advisory Service Nutrients Advisors.

Fareham Borough Council will be expected to:

6. Ensure dedicated resource is committed to respond to the stalling of housing as a result of nutrients pollution. This can be through the hiring of an additional dedicated member of staff or through identifying dedicated resource from within existing teams.
7. Identify where there are potential nutrient mitigation solutions within the catchment, and produce an action plan that sets out how these solutions will be implemented.
8. Work collaboratively with DLUHC to evaluate the programme, in the form of quarterly reports.

Aims

9. The work funded by this project will aim to respond to and remedy the stalling of housing due to nutrients pollution. This will vary between catchments but may include;
 - Understanding the sources of pollution in the catchment,
 - Identifying the most appropriate type of mitigation for the catchment,
 - Determining possible locations for these mitigation projects.
10. These actions can then be brought together in a strategic plan for the catchment, setting out a clear plan for progressing development in the catchment.

Monitoring and Evaluation

11. DLUHC will provide a template for project reports. Grant-holding LPAs will be expected to provide written reports detailing if a nutrients officer has been hired, what mitigation solutions have been identified and if there has been any increase in planning applications approved as a result of this work.
12. Quarterly progress reports should be provided on or before the following dates; June 31st 2022, September 30th 2022, December 31st 2022 and March 31st 2023.

Data Protection

13. Fareham Borough Council will be responsible for ensuring requirements under the General Data Protection Regulation and Data Protection Act 2018.

Procurement

14. Fareham Borough Council will be responsible for ensuring that any third-party partnership arrangements or procurement activities related to delivering projects for this programme comply with Procurement Law and the Council's own procurement procedures.

"Procurement Law" includes, but is not restricted to, the Public Contracts Regulations 2015 (SI No 102/2015), as amended, and the Utilities Contracts Regulations 2006 (SI No 6/2006) as amended.

Due Diligence

15. Fareham Borough Council will be responsible for procedure, contract management and undertaking due diligence processes (including but not limited to the prevention of financial crime), on all organisations in receipt of financial support, which will be used in the delivery of this programme.

Amendment of this Memorandum of Understanding

16. The arrangements under this MOU will be kept under review by DLUHC and Fareham Borough Council and can be amended at any time upon securing written agreement between both parties.