

DATED

31st March

2021

(1) THE COUNCIL OF THE BOROUGH OF HAVANT

and

(2) SOUTHERN CO-OPERATIVES PROPERTIES LIMITED

SECTION 106 AGREEMENT

Under Section 106 Town and Country Planning Act 1990

relating to land at the former Dairy Crest Depot, Dunsbury Way, Havant

THIS AGREEMENT is made on

31st March

2021

BETWEEN:

1. **THE COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza Civic Centre Road Havant PO9 2AX (**Council**); and
2. **SOUTHERN CO-OPERATIVES PROPERTIES LIMITED** who is incorporated and registered in England and Wales with company number 05016485 and whose registered office is at Building 1000 Lakeside, Western Road, Portsmouth PO6 3FE (**Owner**).

BACKGROUND

- (A) For the purposes of the Act, the Council is the local planning authority for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the whole of the Land.
- (C) The Application has been submitted on behalf of Owner to the Council for permission to develop the Land in accordance with the Planning Permission.
- (D) The Owner enters into this Agreement in anticipation of the grant of Planning Permission being subject to the Owner entering into this Agreement which makes provision for regulating the Development and securing the matters referred to in this Agreement.
- (E) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title.

The parties agree as follows:

1 DEFINITIONS

From the date of this Agreement unless the context otherwise requires, the following definitions apply.

"the Act"	means the Town and Country Planning Act 1990.
"Affordable Housing"	means Dwellings that: (a) meet the needs of Eligible Persons including availability at a cost low enough for them to afford determined with regard to the local incomes local house prices and local rents, and (b) includes provisions for the housing to remain at an affordable cost for future Eligible Persons.
"Affordable Housing Contribution"	means the sum that may be payable by the Owner to the Council in lieu of the provision of Affordable Housing in accordance with paragraph 1.3 and 1.4 of Schedule 1.
"Agreement"	means this deed of Agreement.

"Application"	means the application submitted on behalf of the Owner to the Council for outline planning permission to carry out the Development and given the Council's reference number APP/18/01109.
"Benchmark Land Value"	means the aggregate of: a) the Existing Use Value Plus as described in the First Viability Appraisal; and b) the implications of abnormal costs; site-specific infrastructure costs; and professional site fees; and such Benchmark Land Value shall be determined in accordance with the PPG Viability.
"Bond"	means a bond issued by a Surety in the form annexed at Appendix 2 to this Agreement (or such other form as the Council shall approve) for the Bond Amount.
"Bond Amount"	means 10% of the open book construction costs for the SuDs as approved in accordance with paragraph 1.4 of Schedule 3.
"Cash Deposit"	means a lump sum payment in cash of a sum being 10% of the open book construction costs for the SuDs as approved in accordance with paragraph 1.4 of Schedule 3.
"Commencement of Development"	means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development is begun other than (for the purposes of this Agreement and for no other purpose) operations consisting of: site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services on the Land and "Commence", "Commencement" and similar expressions shall be construed accordingly.
"Common Parts"	means the parts of the Land which are intended to benefit the Occupiers of the Dwellings as a whole or to enhance their Occupation and shall without prejudice to the generality thereof include any unadopted road, footpath, footway or other means of access to be constructed on the Land, any landscaped areas, amenity spaces, open space land, communal parking areas, street lighting, street furniture, boundary treatments and any unadopted SuDs.
"CPI"	means the Consumer Price Index as published by the Office of National Statistics.
"Developer Profit"	means a profit of 20% of gross development value as assessed in the Viability Appraisal.

"Development"	means the redevelopment of the Land and the construction of up to 74 Dwellings with access off Fulflood Road in accordance with the Planning Permission.
"Disposal"	means in relation to each Dwelling: a) Occupation by anyone permitted or suffered to Occupy the Dwelling whether by: i. a person who has acquired or has contracted to acquire any of the estates further defined in this definition at (b) (c) and (d) below in the Dwelling; or ii. who otherwise occupies the Dwelling; b) the grant and/or assignment of a leasehold interest in respect of the Dwelling; or c) the transfer of a freehold interest in respect of the Dwelling; or d) the creation of a freehold interest in the Dwelling by constituting the Dwelling as commonhold land for the purposes of the Commonhold and Leasehold Reform Act 2002, and/or whichever shall first occur and "Dispose" and "Disposed of" shall be construed accordingly.
"Dwelling"	means a self-contained unit of residential accommodation (and for the avoidance of doubt this definition shall include houses, flats and maisonettes) comprised within the Development and "Dwellings" shall be construed accordingly.
"Expert"	means an independent and suitable person holding appropriate professional qualifications and of at least 10 years' post qualification experience with; (a) expertise of development viability and finance for the purposes of paragraph 1.2 of Schedule 1 and/or (b) expertise relevant to the dispute where appointed in accordance with the provisions of clause 10 to determine a dispute.
"First Viability Appraisal"	means the report titled "Financial Viability Assessment in respect of the proposed development of 224 Dunsbury Way, Havant, PO9 5BQ" prepared by JLL and dated December 2018.
"Health Contribution"	means the sum of £12,480 payable to the Council as a contribution towards increasing the capacity of existing health care facilities in the vicinity of the Development to accommodate the increased demand for such services as a result of the Development.

"Index"	means CPI in respect of all financial contributions payable under this Agreement (except for the SRMS Contribution where RPI shall apply).
"Index Linked"	means increased in accordance with the following formula: Amount payable = the payment specified in this Agreement x (A/B) where: A= the last figure published for the Index that applied immediately preceding the date that payment was due B= the last figure published for the Index that applied immediately prior to the date of this Agreement.
"Interest"	means interest at 4% above the base lending rate of the Barclays Bank PLC from time to time.
"Land"	means the freehold property being land known as the Dairy Crest Depot, Dunsbury Way, Havant registered at the Land Registry with title numbers HP9269, HP9619, HP25370 and HP394045 and shown edged red on the Plan.
"Management Agreement"	means an agreement between the Owner and the Management Company setting out the terms of appointment of the Management Company with respect to the Development, including the Management Company's responsibilities in implementing and performing the obligations as contained within the Management Plan.
"Management Company"	means a company limited by guarantee or by shares and established in accordance with the provisions of paragraph 1.1 of Schedule 2 to be charged with the management and maintenance of the Common Parts and such management and maintenance to accord with the approved Management Plan.
"Management Plan"	means a plan for the maintenance and management of the Common Parts for the lifetime of the Development including details of how the costs of maintenance and management shall be met by owner-occupiers of the Dwellings to be proposed by the Owner and approved by the Council in accordance with the provisions of Schedule 2.
"Monitoring Fee"	means the sum of £2,102 as a contribution towards the costs incurred by the Council in the provision of a suitably qualified and experienced person(s) whose function is to monitor, coordinate and enforce the obligations contained within this Agreement.
"Nutrient Mitigation Contribution"	means subject to paragraph 5.2 of Schedule 5 the sum of £71,159 payable to the Council towards the costs to be incurred by the Council in providing measures to offset the nutrient load of the Development as mitigation against the water quality impacts arising from the Development on the Solent European Protected Sites.

"Nutrient Mitigation Contribution Formula"	means the total nitrogen that is needed to be neutralised for the Development calculated in accordance with the Natural England Methodology (Version 2 dated June 2020) attached as Appendix 3 to this Agreement x £1235.
"Occupation"	means occupation for the purposes permitted by the Planning 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" shall be similarly construed.
"PPG Viability"	means the Planning Practice Guidance on Viability dated 24 July 2018 as amended on 1 September 2019.
"Plan"	means the site location plan annexed at Appendix 1 to this Agreement with drawing number 1100 revision A.
"Planning Permission"	means the conditional planning permission that may be granted in pursuance of the Application.
"Residual Land Value"	means the amount described as such in the Viability Appraisal.
"RPI"	means the Retail Price Index published by the Office of National Statistics.
"Reserved Matters Approval Date"	means the date on which the last of the reserved matters pursuant to the Planning Permission are approved by the Council.
"Solent Recreation Mitigation Partnership"	means the partnership of local planning authorities bordering the Solent formed to develop the Solent Recreation Mitigation Strategy.
"Solent Recreation Mitigation Strategy"	means the framework to mitigate potential impacts on the Solent Special Protection Area from increased visitor pressure arising from housebuilding adopted by the Solent Recreation Mitigation Partnership in December 2017.
"Solent Special Protection Areas"	means the Special Protection Areas (designated under the Wildlife and Countryside Act 1981) in the Solent covered by the Solent Recreation Mitigation Strategy.
"SRMS Contribution"	means the sum calculated in accordance with paragraph 2 of Schedule 4 to this Agreement as a contribution towards measures to mitigate against the impact of the Development to the Solent Special Protection Areas in accordance with the Solent Recreation Mitigation Strategy.
"Surety"	means a bank or financial institution as may be nominated by the Owner and approved by the Council for the Bond.

"Viability Appraisal"	means a viability appraisal to be completed at the expense of the Owner to assess the viability of the Development in accordance with the Planning Permission such Viability Appraisal shall be in accordance with the PPG Viability and carried out on the same terms as the First Viability Appraisal.
"Working Day"	means a day other than a Saturday, Sunday or a public holiday in England.

2 INTERPRETATION

- 2.1 The clause headings in this Agreement are for reference only and do not affect its construction or interpretation.
- 2.2 References to clauses and Schedules are to the clauses and Schedules of this Agreement, unless stated otherwise.
- 2.3 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.6 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.
- 2.7 References to the Land include any part of it.
- 2.8 References to any party in this Agreement include the successors in title of that party and any references to the Council include any successor local planning authority exercising planning powers under the Act.
- 2.9 References to "including" mean "including, without limitation".
- 2.10 Any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.11 Where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually.
- 2.12 If any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement shall be unaffected.

3 STATUTORY PROVISIONS

- 3.1 This Agreement is made by deed pursuant to section 106 of the Act, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.

3.2 To the extent that they fall within the terms of section 106 of the Act, the obligations contained in this Agreement are planning obligations for the purposes of that section of the Act and are enforceable by the Council.

3.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

3.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Land or otherwise.

4 COMMENCEMENT

This Agreement shall have effect from the date hereof.

5 OBLIGATIONS OF THE PARTIES

The Owner and the Council covenant with each other to comply, observe and perform the obligations as set out in this Agreement.

6 REGISTRATION

This Agreement shall be registered by the Council as a local land charge.

7 RELEASE

7.1 No party shall be liable for any breach of a covenant, restriction or obligation contained in this Agreement after parting with all of its interest in the Land except in respect of any breach subsisting prior to parting with such interest.

7.2 No planning obligations contained in this Agreement shall be binding on any freehold or leasehold owners or occupiers of individual Dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or on any part of the Land held by any statutory undertakers for their statutory purposes.

8 NOTICES

8.1 The Owner agrees to give the Council immediate written notice of any change in ownership of its interest in the Land occurring before all the obligations under this Agreement have been discharged and such notice shall give details of the transferee's full name and

8.1.1 registered office where the transferee is a company

8.1.2 usual address where the transferee is not a company

together with details of the area of the Land or unit of occupation transferred by reference to a plan

8.2 Any notice, demand or any other communication to be given under or in connection with this Agreement shall be in writing and will be effective only if delivered by hand or sent by recorded delivery to the party due to receive the notice, demand or communication.

8.3 Any notice, demand or any other communication served shall be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party

may notify in writing to the others at any time as its address for service and in the case of service upon the Council shall be marked for the attention of the Head of Legal.

- 8.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:

8.4.1 if delivered by hand, at the time of delivery; or

8.4.2 if sent by recorded delivery, at the time delivery was signed for.

- 8.5 If a notice, demand or any other communication is served after 4.00pm on a Working Day, or on a day that is not a Working Day, it shall be treated as having been served on the next Working Day.

- 8.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

9 COSTS OF THIS AGREEMENT

Upon completion of this Agreement the Owner shall pay to the Council their reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.

10 DETERMINATION OF DISPUTES

- 10.1 Subject to clause 10.6, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other not less than ten Working Days written notice requiring the dispute to be determined under this clause 10. The notice shall propose an appropriate Expert and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

- 10.2 Any dispute over the appointment of the Expert appropriate to resolve the dispute may be referred at the request of either party to the President or next most senior available officer of the Law Society of England and Wales who will have the power, with the right to take such further advice as he may require, to determine the appropriate Expert and to arrange his nomination.

- 10.3 The Expert shall act as an independent expert and:

10.3.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

10.3.2 each party shall have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;

10.3.3 the Expert shall be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

10.3.4 the Expert shall not take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

10.3.5 the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and shall give reasons for his decision; and

10.3.6 the Expert shall use all reasonable endeavours to publish his decision within thirty Working Days of his appointment.

10.4 Responsibility for the costs of referring a dispute to an Expert under this clause 10, including costs connected with the appointment of the Expert and the Expert's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Expert.

10.5 This clause 10 does not apply to disputes touching or concerning the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts.

10.6 The provisions of this clause 10 shall not affect the ability of the Council to apply for and be granted declaratory relief injunction specific performance payment of any sum damages or any other means of enforcing this Agreement and consequential and interim orders and relief.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not made for the benefit of nor shall any of its provisions be enforceable by any person other than the parties to his Agreement and their successors in title.

12 INDEXATION

12.1 All financial contributions payable to the Council shall be Index Linked.

12.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Agreement) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

13 INTEREST

If any financial contribution due under this Agreement is paid late then Interest will be payable from the date payment is due until the date of payment.

14 TERMINATION

14.1 The obligations in this Agreement (with the exception of clause 9) shall cease to have effect if before the Commencement of Development, the Planning Permission:

14.1.1 expires;

14.1.2 is revoked other than at the request of the Owner; or

14.1.3 is quashed following a successful legal challenge.

15 FUTURE PERMISSIONS

15.1 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

15.2 This Agreement shall apply to any planning permission subsequently granted under section 73 or 73A of the Act which permits non-compliance with any of the conditions attached to the Planning Permission or any other planning permission granted under such powers (a

"Subsequent Permission") and the Planning Permission shall be construed to include the development as stated in the Subsequent Permission unless otherwise required by the Council or the circumstances in clause 14.1.2 arise.

16 JURISDICTION

- 16.1 This Agreement shall be governed by and interpreted in accordance with the laws of England.
- 16.2 The Courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

17 MORTGAGEES

- 17.1 The obligations contained in this Agreement shall not be enforceable against any mortgagee or chargee of the whole or any part of the Land from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Land (or any part thereof to which such obligation relates) in which case it will be bound by the obligations as a person deriving title from the Owner.

IN WITNESS of which this Agreement has been duly executed as a deed and delivered on the date stated at the beginning of this Agreement.

SCHEDULE 1

VIABILITY APPRAISAL

The Owner (and the Council where stated) covenants as follows:

1 VIABILITY APPRAISAL

- 1.1 To submit the Viability Appraisal to the Council by no later than the earlier of 3 years from the date of this Agreement or the Reserved Matters Approval Date together with a solicitor's undertaking that the Council's costs reasonably and properly incurred in verifying the Viability Appraisal shall be met in full.
- 1.2 The Council shall submit the Viability Appraisal for independent verification by the Expert following receipt of the undertaking for costs referred to at paragraph 1.1.
- 1.3 If the Viability Appraisal (as independently verified) demonstrates that there is a Developer Profit and that the Residual Land Value exceeds the Benchmark Land Value of the Land on the date of the Viability Appraisal then the Affordable Housing Contribution shall fall due as set out in paragraph 1.4 and shall be an amount equal to the difference between the two said values subject to a maximum sum of £1,275,350.
- 1.4 If the Affordable Housing Contribution becomes payable in accordance with paragraph 1.3 of this Schedule 1 the Owner shall not Dispose of any Dwellings until the Affordable Housing Contribution is paid to the Council.

SCHEDULE 2

MANAGEMENT COMPANY AND MANAGEMENT PLAN

1 MANAGEMENT COMPANY AND MANAGEMENT PLAN

- 1.1 Not later than three months following Commencement of Development until the Council and has approved in writing the Owners' proposal for the formation of the Management Company and such proposal shall include full details of the proposed structure and voting rights of the Management Company.

- 1.2 The Council each covenant that it will notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.1 of this Schedule 2 (or any resubmission) within two months of receipt. If notification of a refusal is received by the Owner from the Council within the aforementioned time period, the Owner shall continue to comply with the obligation at paragraph 1.1 of this Schedule 2 and submit a further proposal or proposals until such time as the Council approves the Owners' proposals for the Management Company.
- 1.3 In the event that either the Council fails to notify the Owner in accordance with paragraph 1.2 of this Schedule 2, the proposal for the formation of the Management Company as submitted in accordance with paragraph 1.1 of this Schedule 2 (or as resubmitted) will be deemed approved by the Council for the purposes of paragraph 1.1.
- 1.4 Not later than three months following Commencement of Development to submit to the Council the Management Plan.
- 1.5 The Council covenants to notify the Owner that it either approves or rejects the proposal referred to in paragraph 1.4 of this Schedule 2 (or any resubmission) within two months of receipt. If notification of a refusal is received by the Owner from the Council within the aforementioned time period, the Owner shall revise the Management Plan and submit such revisions until such time as the Council approves the Management Plan.
- 1.6 In the event that the Council fails to notify the Owner in accordance with paragraph 1.5 of this Schedule 2, the Management Plan as submitted in accordance with paragraph 1.4 of this Schedule 2 (or as resubmitted) will be deemed approved by the Council for the purposes of paragraph 1.8.2.
- 1.7 Following approval of the Management Plan in accordance with this Schedule 2 the Owner shall within six months of such approval take all necessary steps to secure the formation and registration of the Management Company at Companies House (taking into account any modifications reasonably required by the Council) and to notify the Council accordingly within fourteen days of the completion of the registration of the Management Company.
- 1.8 Not to allow or permit Occupation of any Dwelling until:
- 1.8.1 the Management Company has been formed in accordance with the approved proposals; and
- 1.8.2 the Management Plan has been approved in writing by the Council.
- 1.9 To secure the proper maintenance of the Common Parts to the reasonable satisfaction of the Council until such time as:
- 1.9.1 the Management Company is registered and the Management Plan has been approved; and
- 1.9.2 in respect of the Common Parts (other than the SuDs):
- (a) the maintenance arrangements in accordance with the Management Plan have been implemented; and
- (b) the transfer or the granting of a long leasehold interest of the Common Parts to the Management Company is completed; and
- 1.9.3 in respect of the SuDs, such SuDs are transferred to the Management Company or adopted by a statutory undertaker.
- 1.10 That if the Management Company ceases to exist as a company or if the Management Company at any time defaults in the performance of any of its covenants or obligations on its part as contained in the Management Plan and/or Management Agreement then the Owner shall (without prejudice to any other right or remedy of the Owner against the Management

Company or any other person) perform the said covenants and obligations until the appointment by the Owner of a successor to the Management Company.

SCHEDULE 3

SUSTAINABLE DRAINAGE SYSTEM

The Owner covenants as follows:

1 PROVISION OF SUDS

- 1.1 Not less than two months prior to Commencement of Development to submit to the Council for its approval a bill of quantities detailing the open book construction costs for the SuDs.
- 1.2 The Council covenants that it shall within ten Working Days notify the Owner that it either approves the open book construction costs as submitted or proposes such reasonable amendments as are considered necessary.
- 1.3 Where reasonable amendments to the bill of quantities are proposed by the Council, the Owner shall not more than ten Working Days after receiving the Council's proposed amendments revise the bill of quantities in accordance with the proposed amendments.
- 1.4 On or before Commencement of Development to:
 - 1.4.1 provide to the Council a Bond for the Bond Amount, or
 - 1.4.2 pay the Cash Deposit.
- 1.5 The Bond shall endure, or the Cash Deposit shall be retained by the Council until the earlier of:
 - 1.5.1 the SuDS is adopted by a statutory undertaker, or
 - 1.5.2 the date of completion of construction of the SuDS to the reasonable satisfaction of the Council.
- 4.6 If the Owner:
 - 4.6.1 fails to construct the SuDs in accordance with the details as approved by the Council in writing; or
 - 4.6.2 prior to completion of the SuDs the Owner is adjudicated bankrupt or goes into liquidation voluntarily or otherwise; or
 - 4.6.3 has executed a deed of assignment for the benefit of or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)the Council may (without prejudice to the Council's other rights remedies and powers against the Owner):
 - 4.6.4 by written notice require the Surety to pay for; or
 - 4.6.5 the Cash Deposit may be applied to:any expenditure (including legal costs) which the Council may incur in carrying out the construction of the SuDs to its own design or the Owner's design to return the Land to the level of hydrological response as existed before the Commencement of Development.

SCHEDULE 4

SOLENT RECREATION MITIGATION STRATEGY CONTRIBUTION

The Owner covenants as follows:

1 SRMS CONTRIBUTION

- 1.1. Upon all Reserved Matters Applications relating to the Development being submitted to the Council, the Council shall calculate the SRMS Contribution in accordance with the formula set out at paragraph 2.1 of this Schedule 4 and shall notify the Owners in writing of the SRMS Contribution.
- 1.2. Not to Commence or permit Commencement of the Development until the SRMS Contribution has been paid to the Council.

2 SRMS CALCULATION

- 2.1 The SRMS Contribution for the Development shall be calculated using the following formula and matrix:

SMRS Contribution = the sum of the values of A to E (Index Linked) in Column 3 below.

Where the value of A to E in Column 3 are calculated as follows:

X (the value in Column 1) multiplied by Y (the rate applied in Column 2)

SRMS Contribution Rates (Index Linked)		
Column 1 X	Column 2 Y (Applicable bedroom rate)	Column 3 (SRMS Contribution for corresponding bedroom number) (£)
Number of Dwellings with 1 bedroom	£356	A
Number of Dwellings with 2 bedrooms	£514	B
Number of Dwellings with 3 bedrooms	£671	C
Number of Dwellings with 4 bedrooms	£789	D
Number of Dwellings with 5+ bedrooms	£927	E

A worked example is as follows:

A development with 4 dwellings comprising 2 dwellings with 2 bedrooms and 2 dwellings with 3 bedrooms dwellings have a contribution of:

	Column X	Column Y (Applicable bedroom rate)	Column 3 (SRMS Contribution for corresponding bedroom number) (£) (X multiplied by Y)	
Number of Dwellings with 1 bedroom	0	0	0	A
Number of Dwellings with 2 bedrooms	2	514	1028	B
Number of Dwellings with 3 bedrooms	2	671	1342	C
Number of Dwellings with 4 bedrooms	0	0	0	D
Number of Dwellings with 5+ bedrooms	0	0	0	E
Total SRMS Contribution equals the sum of the values of A - E			£2370	

SCHEDULE 5

CONTRIBUTIONS AND OTHER COVENANTS

The Owner covenant as follows:

1 COMMENCEMENT OF DEVELOPMENT

To give to the Council not less than ten Working Days written notice of their intention to Commence Development.

2 SUBMISSION OF DOCUMENTS

To provide when submitting documents or details to the Council pursuant to the Schedules of this Agreement a reference to the relevant Planning Permission, the date and parties to this Agreement, and the paragraph and Schedule under which approval is sought, together with a statement of the date by which a decision must be given by the Council.

3 MONITORING FEE

Not to Commence or permit Commencement of the Development until the Monitoring Fee has been paid to the Council.

4 HEALTH CONTRIBUTION

Not to Dispose or permit Disposal of any Dwelling until the Health Contribution has been paid to the Council.

5 NUTRIENT MITIGATION CONTRIBUTION

5.1 Not to Dispose or permit Disposal of any Dwelling until the Nutrient Mitigation Contribution has been paid to the Council.

5.2 In the event that on the Reserved Matters Approval Date the total number of Dwellings permitted is less than 74 Dwellings then the Nutrient Mitigation Contribution shall be recalculated in accordance with the Nutrient Mitigation Contribution Formula.

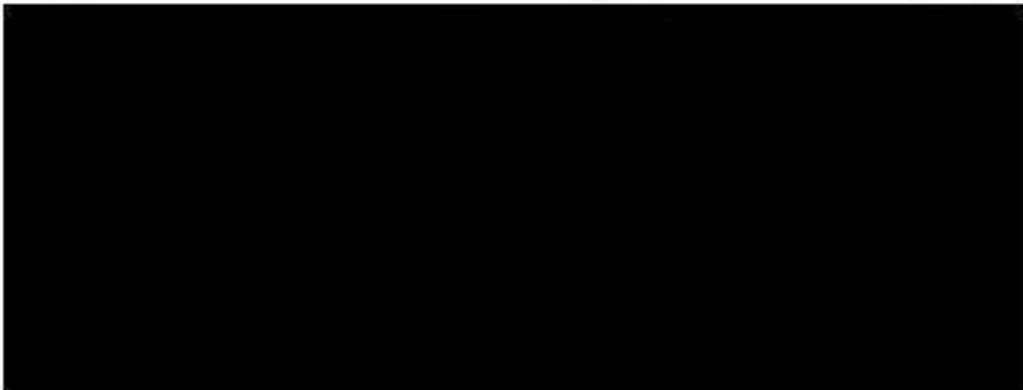
EXECUTED as a DEED by affixing
THE COMMON SEAL of the COUNCIL OF THE
BOROUGH OF HAVANT
in the presence of:



13172

Authorised Signatory

EXECUTED as a DEED by
SOUTHERN CO-OPERATIVES PROPERTIES LIMITED
acting by a Director in the
presence of:



APPENDIX 1

Plan

APPENDIX 2

Form of Bond

This Bond is made as a deed **between** the following parties whose names and addresses are set out in the **Schedule to this Bond** (the '**Schedule**):-

- (1) The 'Contractor' as principal
- (2) The 'Guarantor' as guarantor, and
- (3) The 'Employer'

Whereas

- (1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out.
- (2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Bond subject to the limitation set out in clause 2.

Now this deed witnesses as follows:-

- 1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Bond satisfy and discharge any damages sustained by the Employer ("the Damages") which relate to the obligation to carry out the Works.
- 2 The maximum aggregate liability of the Guarantor and the Contractor under this Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount').
- 3 Unless the Employer expressly agrees, the Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Bond.
- 4 Whether or not this Bond shall be returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely upon the Expiry Date (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach and stating that the amount being demanded has been established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and takes into account all sums due or to become due to the Contractor has been made upon and received by the Guarantor before the Expiry Date.
- 5 The Contractor having requested the execution of this Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

APPENDIX 3

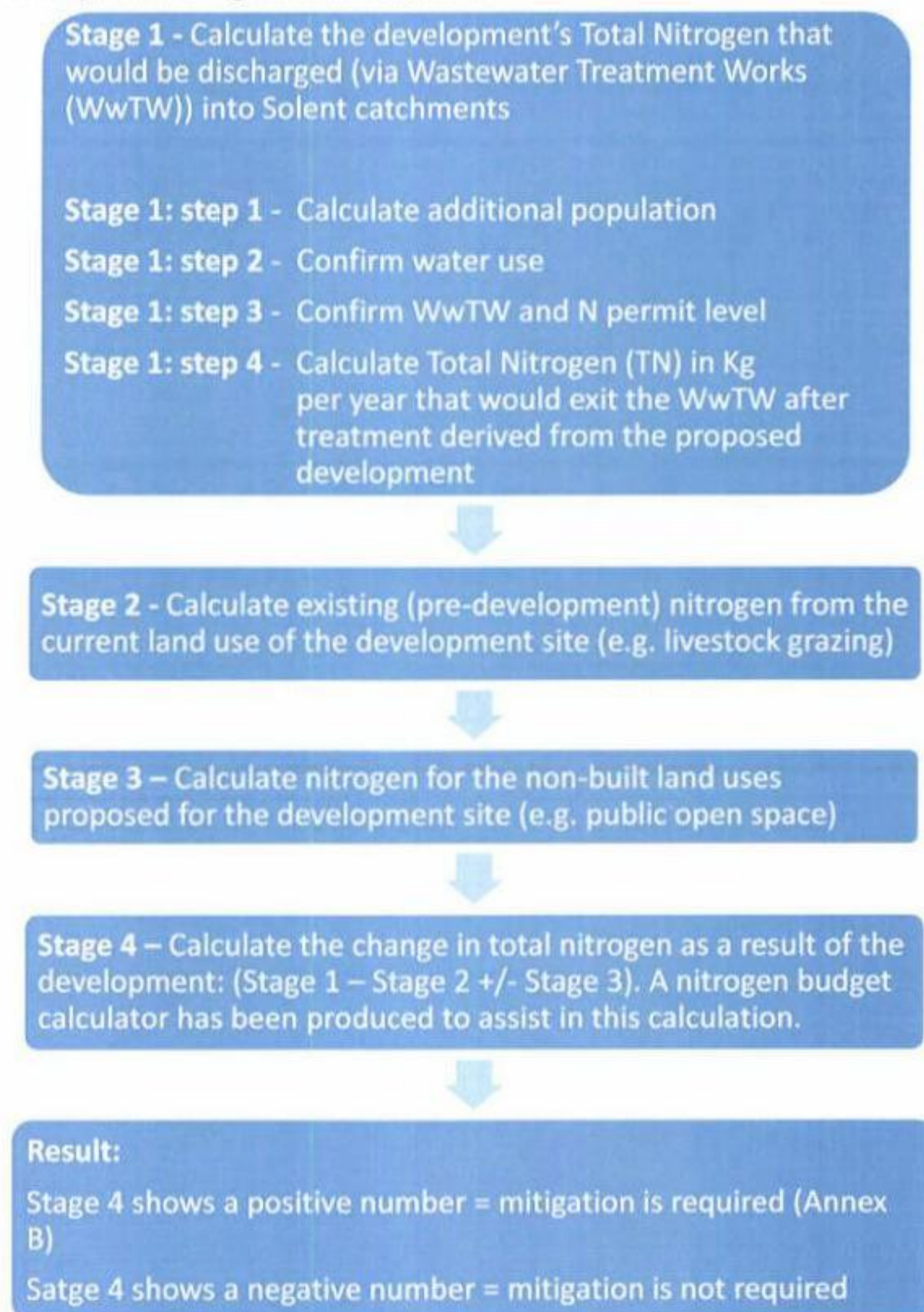
Nutrient Mitigation Contribution Formula

SUMMARY ADVICE ON ACHIEVING NUTRIENT NEUTRALITY FOR NEW DEVELOPMENT IN THE SOLENT REGION

SECTION 1 INTRODUCTION

- 1.1 The water environment within the Solent region is one of the most important for wildlife in the United Kingdom. There are high levels of nitrogen and phosphorus ([FAQ7](#)) input to this water environment with sound evidence that these nutrients are polluting protected sites.
- 1.2 Through their wastewater effluent, future developments have the potential to make these impacts worse. Nutrient neutrality is one way of ensuring that development does not add to the existing nutrient load and this provides the certainty needed to meet the legal framework ([FAQ1](#)).
- 1.3 This summary report sets out how to calculate nutrient neutrality for developments within Solent catchments. It is accompanied by a Frequently Asked Questions (Annex A) and links to these questions are included throughout this report.
- 1.4 The type and location of each development will confirm whether nutrient neutrality is needed ([FAQ2](#)). If nutrient neutrality is required, a 4 stage process can be completed, as summarised below in Figure 1. This approach focusses on developments that drain to the mains network. If the development drains to non-mains systems e.g. Package Treatment Plants (PTP) then a bespoke calculation for Stage 1 is required ([FAQ3](#)).
- 1.5 This methodology is based on best available scientific knowledge, and will be subject to revision as further evidence is obtained. It has been developed as a pragmatic tool however for each aspect there is a degree of uncertainty. It is our advice to local planning authorities to take a precautionary approach in line with existing legislation and case-law when addressing uncertainty and calculating nutrient budgets.
- 1.6 The full methodology - *Advice on achieving nutrient neutrality for new development in the Solent region* – and a digital tool to help calculate the budget is available from the Partnership for South Hampshire (PfSH) website.

Figure 1: A flow chart to show how to calculate nutrient budget for development draining to the mains network.



SECTION 2 METHODOLOGY

- 2.1 Each of the four stages of the methodology is briefly summarised below and a worked example is included in [Annex B](#).

Stage 1: Calculate the development's Total Nitrogen that would be discharged (via Wastewater Treatment Works) into Solent catchments.

Stage1 Step 1: *Calculate additional population*

- 2.2 New housing and overnight accommodation can increase the population as well as the housing stock within the catchment. This can cause an increase in nitrogen discharges. To calculate the additional population from the new development, Natural England recommends that the average national occupancy rate of 2.4 per dwelling is used ([FAQ4](#)).

Stage 1 Step 2: *Confirm water use*

- 2.3 The nitrogen load is calculated from the scale of water use used by the development. It is recommended that the maximum water use rate of 110 litres per person per day is used in the calculation and that this water use rate is secured by condition with any planning permission ([FAQ5](#) [FAQ6](#)).

Stage 1 Step 3: *Confirm WwTW and permit level*

- 2.4 The wastewater treatment works (WwTW) that the development will drain to should be identified and whether it has a Total Nitrogen (TN) permit ([FAQ8](#)). The digital tool lists the most common WwTWs and includes the relevant TN permit, where applicable.
- 2.5 Where there is a permit limit for TN, the load calculation will use a worst case scenario that the WwTW operates at 90% of its permitted limit. This level is the closest the water company can reasonably operate the works without risk of breaching the consent limit.
- 2.6 For developments that discharge to WwTWs with no TN permit level, best available evidence must be used for the calculation. In the first instance, Southern Water or other wastewater provider should be contacted for details of the nitrogen effluent levels for the specific WwTW. However, if this data is not available, an average figure of 27mg/l can be used.

Stage 1 Step 4: *Calculate Total Nitrogen (TN) in Kg per annum that would exit the WwTW after treatment derived from the proposed development*

- 2.7 The TN load is calculated by multiplying the water use of the proposed development by the appropriate concentration of TN after treatment at the WwTW. This concentration is determined by the TN permit, or average figure, with a deduction of

2 mg/l. It has been determined that 2mg/l is an acceptable level of nitrogen in river and groundwater ([FAQ9](#)).

Stage 2: Calculate existing (pre-development) nitrogen from the current land use of the development site (e.g. livestock grazing).

- 2.8 This next stage is to calculate the existing nitrogen losses from the current land use within the redline boundary of the scheme. If the site is currently in agricultural use, new development will discontinue this use and the application of agricultural fertilisers or farm animal waste will stop. This will decrease the nutrient inputs at the site and this can be taken into account in the nitrogen budget.
- 2.9 The farm type rates that can be used in the calculation are shown in Figure 2. An average figure has also been included if the farm type covers several unfixed farm types. The average figure would also be appropriate for allotments. For maize farms, it is recommended that the general cropping rate is used. Evidence should be provided by the applicant to support the farm type used in the calculation ([FAQ10](#)).

Figure 2: Nutrient losses from different farm types in the Solent catchments.

AVERAGE NITRATE-NITROGEN LOSS PER FARM TYPE IN THE SOLENT CATCHMENT AREA (kg/ha/yr)	
Cereals	31.2
Dairy	36.2
General Cropping	25.4
Horticulture	29.2
Pig	70.4
Lowland Grazing	13.0
Mixed	28.3
Poultry	70.7
Average for catchment area	26.9

- 2.10 Some greenfield sites may not currently be in agricultural use. As there is no nitrogen input, a baseline rate of 5 kg/ha/yr should be used. Where development sites include wildlife areas, woodlands, hedgerows, ponds and lakes that are to be retained, these areas can be included with the same nitrogen rate (5 kg/ha/yr) in stage 2 and 3.
- 2.11 A similar approach can also be taken for the redevelopment of urban land as the nitrogen leaching rate would be 14.3 kg/ha/yr in stage 2 and 14.3 kg/ha/yr in stage 3.

Stage 3: Calculate nitrogen for the future land uses proposed for the development site (e.g. urban land, open space, allotments).

- 2.12 The next stage is for the calculation to include the nitrogen inputs from the new land use, e.g. urban development, open space or green infrastructure, nature reserve etc. within the redline boundary. This is separate to the nitrogen within the wastewater generated by the development.

Urban development

- 2.13 The nitrogen load from the new urban development results from sewer overflows and from drainage that picks up nitrogen sources on the urban land. Urban development includes the built form, gardens, road verges and small areas of open space within the urban fabric. These nitrogen sources include atmospheric deposition, pet waste, fertilisation of lawns and gardens and inputs to surface water sewers. The nitrogen leaching from urban land equates to 14.3 kg/ha/yr.

Open Space and Green Infrastructure

- 2.14 Nitrogen loss draining from new designated open space or Suitable Alternative Natural Greenspace (SANG) should also be included. The nitrogen leaching from this land is likely to equate to 5 kg/ha/yr.
- 2.15 Small areas of open space within the urban fabric, such as road verges, gardens, children's play areas and other small amenity areas, should not be included within this category. The urban development figure is appropriate for these land uses.

Community food growing provision

- 2.16 For any areas of the site that are proposed for community food growing provision such as allotments, it is recommended that the average farm type rate is used (26.9 kg/ha/yr).

Stage 4: Calculate the change in total nitrogen as a result of the development: (Stage 1 – Stage 2 +/- Stage 3).

- 2.17 The last stage is to calculate the net change in the TN load to the Solent catchment resulting from the proposed development. This is worked out by calculating the difference between the TN load calculated for the proposed development (wastewater and future land uses e.g. urban area, open space etc.) and that for the existing land uses (e.g. agricultural use).
- 2.18 The calculation includes a 20% precautionary buffer ([FAQ11](#)). Whilst all the figures used in the calculation are based on best available evidence, a precautionary buffer is used to recognise the uncertainty with these figures. It is Natural England's view that by adopting this approach, there is reasonable certainty that there will be no adverse effect on the integrity of the Solent designated sites.

SECTION 3 MITIGATION

Introduction

- 3.1 If having undertaken the Nitrogen Budget Calculation there is a positive figure (Nitrogen surplus), then mitigation is required to achieve nitrogen neutrality. If the calculation identifies a negative figure (deficit) or zero, no mitigation is required.
- 3.2 The purpose of the mitigation measures is to avoid impacts to the designated sites, rather than compensating for the impacts once they have occurred. Avoiding impacts is achieved by neutralising the additional nutrient burden that will arise from the proposed development, achieving a net zero change at the designated sites in a timely manner.
- 3.3 To ensure it is effective mitigation, any scheme for offsetting nitrogen must meet the basic tests of certainty of delivery, enforceability and the need for securing the adopted measures for perpetuity, generally 80-125 years, or for the duration over which the development is causing the effects.

Strategic options available

- 3.4 It is recognised that achieving nutrient neutrality may be difficult for smaller developments, developments on brownfield land, or developments that are well-progressed in the planning system. Natural England is working closely with local planning authorities to progress Borough / District / City / Authority wide and more strategic options. A number of options are coming forward and discussions with the relevant local planning authorities are recommended.
- 3.5 The Hampshire and Isle of Wight Wildlife Trust ([HIWWT](#)) has developed a strategic-scale mitigation option that is available to developers. Direct contact should be made with HIWWT for further information.
- 3.6 Further information on other options will be available on the [Partnership for South Hampshire website](#) in due course.

Bespoke options

- 3.7 Applicants can also progress bespoke mitigation options and the following on-site and offsite options can be considered.

Conversion of agricultural land for community and wildlife benefits

- 3.8 Permanent land use change by converting agricultural land to alternative uses for local communities or wildlife is one way of offsetting nutrient burdens from development. However, it is important to retain the best and most versatile agricultural land in food production.

On-site options

- 3.9 One option is to increase the size of the open space provision for the development (assuming the site is currently agricultural land or existing urban development). This can be secured as designated open space or by other legal mechanisms.

Off-site options

- 3.10 Another option is to acquire, or support others in acquiring, agricultural land elsewhere within an appropriate river catchment area and permanently change the land use to woodland, heathland, saltmarsh, wetland or conservation grassland.
- 3.11 Mitigation land should be appropriately secured to ensure that it is certain that the benefits will be delivered in the long term. Natural England advises that this can be achieved through an appropriate change of ownership to a local planning authority or non-government organisation. However, other legal mechanisms may be available.
- 3.12 Small scale developments are encouraged to consider opportunities for providing local small scale options e.g. the creation of local ponds, wetlands, local nature reserves, community orchards (without nitrogen inputs), or copse. Another example is to turn a strip (in excess of 10m width) of agricultural land immediately adjacent to a public footpath into a greenway. This could be marked by hedges or woodland planting.

Woodland planting

- 3.13 Woodland planting on agricultural land is a means of securing permanent land use change without necessitating land purchase. It can be evidenced easily by aerial photography and site visits. The level of woodland planting required to achieve nutrient neutrality is 20% canopy cover at maturity. In very broad terms, this equates to 100 trees per hectare. It is our preference that native broadleaf species are selected where possible, to secure wider biodiversity gains. A nitrogen leaching rate from woodland planting is likely to equate to 5 kg/ha/yr.

Wetlands

- 3.14 Wetlands receiving nitrogen-rich water can remove a proportion of this nitrogen through processes such as denitrification and sedimentation. Wetlands can be designed as part of a sustainable urban drainage system (SuDS), taking urban runoff/storm water; alternatively discharges from WwTWs can be routed through wetlands; or the flow, or part of the flow, of existing streams or rivers can be diverted through wetlands.

Wastewater Treatment Work Upgrades

- 3.15 Offsetting options at WwTWs include the agreement with the wastewater treatment provider that will maintain an increase in nitrogen removal at the WwTW. This may include either upgrades to infrastructure (long term), or where the existing WwTW infrastructure has capacity an agreement to operate the WwTW at a higher standard than required by the discharge consent. Natural England, Environment Agency, Local Planning Authorities and water companies are working together to explore these options.

Location of mitigation

- 3.16 The location of the offsetting site for each development is an important consideration. It firstly depends on the catchment of the development and location of the WwTWs outfall. Consideration then needs to be given to site specific factors such as geology, hydrology and topography.
- 3.17 It is Natural England's view that mitigation land within the same catchment as the development location is appropriate. The following principles can also be applied. For further information, please see the full advice.

River catchments

- 3.18 For WwTWs that drain into the rivers, it is appropriate for the mitigation land to be within the same river catchment as the outfall location. This is the preferred solution in all cases.
- 3.19 If this is not possible, mitigation in close alternative catchments would be appropriate in the following cases, as shown in Figure 3.

Figure 3: River WwTWs

Location of WwTW outfall	Appropriate alternative catchments for mitigation
River Test	River Itchen
River Itchen	River Test
Bartley Water catchment (New Forest)	River Test or River Itchen
New Forest rivers that outfall to the south coast	River Beaulieu, River Lymington, Danes Stream, Dark Water, Sowley Stream and the coastal areas
River Meon	River Hamble and Portsmouth Harbour

- 3.20 Please note for development that drains to ground within the River Hamble catchment or to a WwTWs that drains to the River Hamble, e.g. Bishops Waltham WwTW, mitigation land is limited to within the River Hamble catchment.
- 3.21 Similarly, for development that drains to ground within the catchment of or direct to the each of the Isle of Wight rivers e.g. Eastern Yar, mitigation land is limited to within the same river catchment.

- 3.22 For the WwTWs that drains to each harbour (Portsmouth Harbour, Langstone Harbour and Chichester Harbour), priority locations for mitigation are the same river catchment as the WwTW outfall.

Coastal WwTWs

- 3.23 For WwTWs that drain into the Coastal WwTWs, further information on the location of mitigation areas is included in Figure 4.

Figure 4: Coastal WwTWs

Location of WwTW outfall	Appropriate alternative catchments for mitigation
Coastal WwTW (Portsmouth WwTW, Woolston WwTW, Millbrook WwTW) within the northern part of Southampton Water	River Test, River Itchen, Bartley Water
Other coastal WwTWs in Southampton Water e.g. Ashlett Creek WwTW	River Test, River Itchen, River Meon, River Hamble, eastern catchments of the New Forest
Peel Common WwTW	River Meon, Portsmouth Harbour, Medina Estuary, Wootton Creek, Newtown Harbour, Langstone Harbour
Budds Farm WwTW	River Meon, Portsmouth Harbour, Langstone Harbour, Chichester Harbour, Wootton Creek, Medina Estuary
Pennington WwTW	South coast of New Forest, Western Yar, Newtown Harbour

Drain to ground

- 3.24 For developments that drain to ground via a package treatment plant (PTP) or mains WwTWs, it is appropriate for mitigation land to be within the same catchment as the outfall location of the PTP or WwTW.
- 3.25 Within chalk geology where the nitrogen discharge is to ground and away from watercourses there is likely to be a considerable delay (it may take up to 1 year for ground water discharges to percolate through a meter of chalk) before the nitrogen discharged reaches the international designated sites. In such circumstances mitigation measures that take effect quickly may not need to be implemented immediately. Please discuss with the relevant local planning authority or authorities and Natural England in these cases.
- 3.26 Natural England can provide further advice on the methodology and mitigation options through our [chargeable services](#) (DAS).

ANNEX A – FREQUENTLY ASKED QUESTIONS

Question 1: What is the legal framework requiring nutrient neutrality?

The key piece of legislation is the [Conservation of Habitats and Species Regulations 2017 \(as amended\)](#).

All plans and projects (including planning applications) which are not directly connected with, or necessary for, the conservation management of a site, require consideration of whether the plan or project is likely to have significant effects on the designated sites. The Habitats Regulations Assessment (HRA) refers to the several distinct stages of Assessment which must be undertaken in accordance with this legislation. Where the potential for likely significant effects cannot be excluded, a [competent authority](#) must make an appropriate assessment of the implications of the plan or project for that site, in view the site's conservation objectives.

Nutrient neutrality is a means of ensuring that development does not add to the existing nutrient load. This provides certainty that the whole of the scheme is deliverable in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended).

Question 2: How do I know if this applies to my development?

This depends on the type of development being proposed and its location.

Type of development

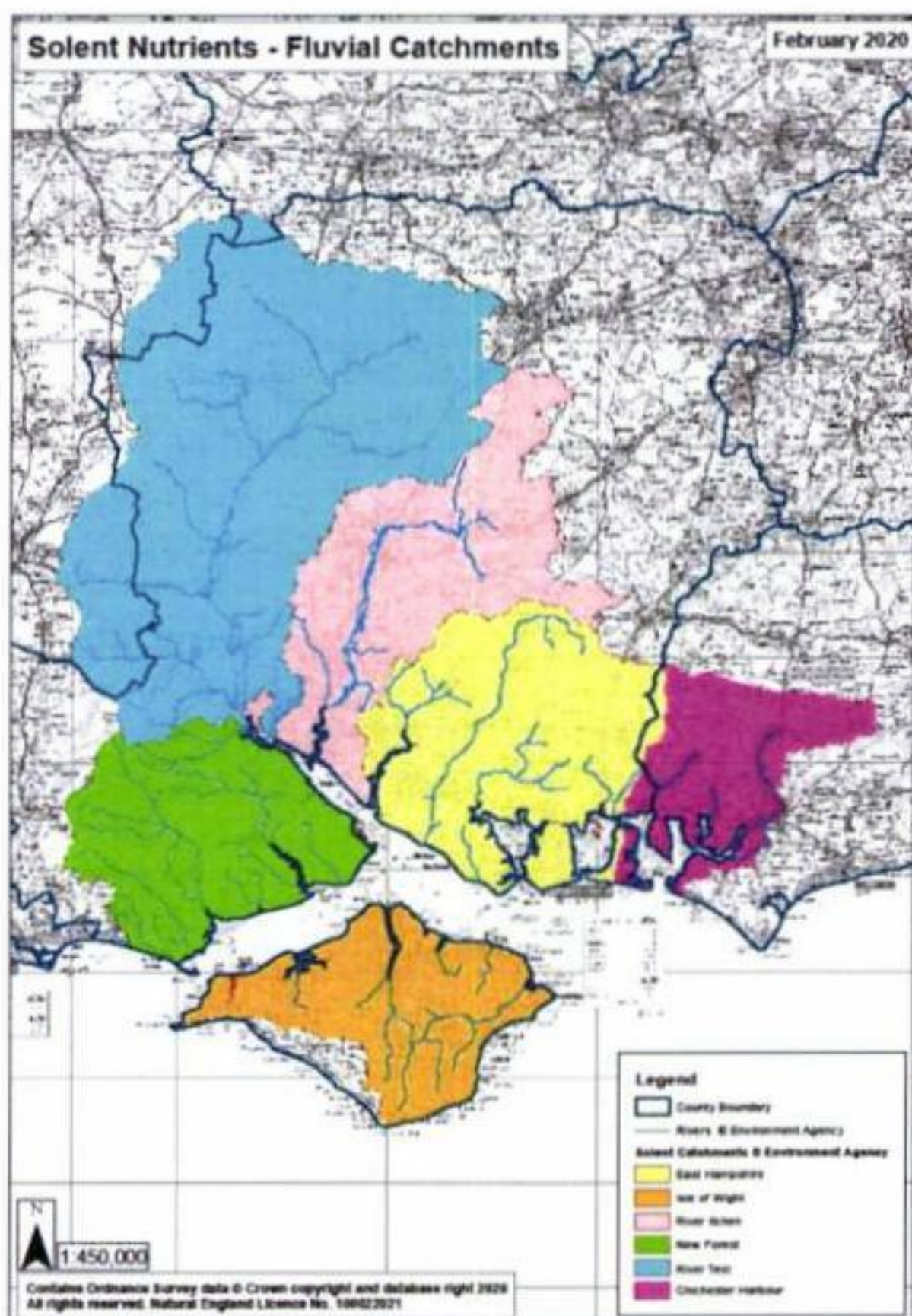
This methodology is for all types of development that would result in a net increase in population served by a wastewater system, including new homes, student accommodation, and tourist accommodation. This development will have inevitable wastewater implications. Other applications will be considered on their individual merits, for example new cruise ship facilities and tourism attractions etc.

Other commercial development not involving overnight accommodation will generally not be included. It is assumed that anyone living in the catchment also works and uses facilities in the catchment, and therefore wastewater generated by that person can be calculated using the population increase from new homes and other accommodation. This removes the potential for double counting of human wastewater arising from different planning uses.

Location

The nutrient neutrality approach only applies to developments where the treated effluent discharges into any Solent international site (Solent Maritime Special Area of Conservation (SAC), Solent and Southampton Water Special Protection Area (SPA) and Ramsar, Portsmouth Harbour SPA and Ramsar, Chichester and Langstone Harbours SPA and Ramsar, Solent and Dorset Coast SPA and Solent and Isle of Wight Lagoon SAC), or any water body (surface or groundwater) that subsequently discharges into such a site. The catchment area is shown on Figure A1 below.

Figure A1: Solent fluvial catchments



Question 3: How do I calculate Stage 1 if the development drains to a non-mains system – e.g. package treatment plan (PTP)

If the development drains to a PTP rather than the mains network, an alternative approach for Stage 1 is required. Once the TN load from the revised Stage 1 has been determined, the calculation can then follow Stages 2, 3 and 4 in the same way as development draining to the mains network.

The Environment Agency has a presumption against private sewage treatment works in sewered areas and will always seek connection to the mains sewer where possible and

practicable. A principle concern relates to the failure rates of PTPs. There will be site specific factors (e.g. in proximity to watercourses, soil saturation levels, etc.) that would need to be considered when evaluating this risk.

Further advice from the Environmental Agency on the use of PTP may be found at - <https://www.gov.uk/guidance/discharges-to-surface-water-and-groundwater-environmental-permits>. Additional guidance may also be available via local planning authorities. For example, Chichester District Council has adopted a supplementary planning document for surface and foul drainage - <https://www.chichester.gov.uk/article/29757/Supplementary-planning-documents-and-policy-guidance>.

Where developments are proposing to use package treatment works, or similar, it is recommended that the TN level is calculated on a per person basis. On average each person produces sewage containing 3.5 kg of nitrogen per year. The TN prior to treatment = number of additional people x 3.5 kg = kg/TN/yr.

The percentage reduction of TN that may be applied as a result of treatment will depend on the efficiency of the treatment processes employed and must be assessed on a case by case basis.

Figure A2 sets out a worked example for Stage 1 for PTPs is on page 13. The same methodology as developments that drain to the mains network can be applied for Stages 2, 3 and 4. Please note the 20 % precautionary buffer is added at Stage 4.

Question 4: Why is an occupancy rate of 2.4 people per dwelling used in the calculation?

To determine the additional population that could arise from the proposed development for the lifetime of the development, it is necessary that sufficiently evidenced occupancy rates are used. Natural England recommends that, as a starting point, local planning authorities should consider using the average national occupancy rate of 2.4, as calculated by the Office for National Statistics (ONS), as this can be consistently applied across all affected areas.

However competent authorities may choose to adopt bespoke calculations tailored to the area or scheme, rather than using national population or occupancy assumptions, where they are satisfied that there is sufficient evidence to support this approach. Conclusions that inform the use of a bespoke calculation need to be capable of removing all reasonable scientific doubt as to the effect of the proposed development on the international sites concerned, based on complete, precise and definitive findings. The competent authority will need to explain clearly why the approach taken is considered to be appropriate. Calculations for occupancy rates will need to be consistent with others used in relation to the scheme (e.g. for calculating open space requirements), unless there is a clear justification for them to differ.

Question 5: Why does the methodology use the amount of water used by the development?

The water use figure is a proxy for the amount of wastewater that is generated by a household.

Figure A2: Alternative Stage 1 methodology for package treatment works (PTPs)

STAGE 1 - TOTAL NITROGEN (TN) LOAD FROM DEVELOPMENT WASTEWATER WITH AN ONSITE PTP (prior to treatment)				
Step	Measurement	Value	Unit	Explanation
Development proposal	Development types that would increase the population served by a wastewater system	100	Residential dwellings	
Step 1	Additional population	240	Persons	Based on average household size of 2.4
Step 2	TN prior to treatment Based on 3.5 Kg TN per person per year	840	Kg TN /yr	240 (step 1) x 3.5 Kg TN per person per yr
Step 3	Receiving PTP TN reduction efficiency	70	%	Efficiency of PTP used must be evidenced.
Step 4	TN discharged after PTP treatment	252	Kg TN /yr	30% of 840
Step 5	Acceptable N loading in waste water Based on 110 l per day per person	52,800	mg TN /day	Total waste water from development (110l x 240 persons) x Acceptable N loading of 2 mg/l
Step 6	Convert acceptable TN loading in waste water to TN Kg / Yr	19.3	Kg TN / Yr	Divide by 1000000 x by 365 days
Step 7	TN discharged - acceptable N loading (@ 2 mg/l)	232.7	Kg TN / Yr	252 (step 4) – 19.3 (step 6)
PTP TN load	232.7 Kg TN / Yr			

Question 6: Why do I need to use the 110 litres per person per day rate when the development is being built to tighter restrictions?

New residential development may be able to achieve tighter water use figures, with or without grey water recycling systems, and this approach is supported from a water resource perspective (for example in support of Southern Water's Target 100 litres per person per day). However, the key measurement is the amount of wastewater generated by the development that flows to the wastewater treatment works.

If tighter water use restrictions are used in the nutrient calculation – with or without grey water recycling systems – these restrictions should reflect the wastewater expected to be generated over the lifetime of the development. There is a risk that when kitchen and bathroom fittings are changed by occupants over the years, less water-efficient models could be installed. It is Natural England's view that it would be difficult to evidence and secure

delivery of tighter restrictions at this time. However, if sound evidence can be provided, this will be considered on a case-by-case basis.

It is Natural England's view that while new developments should be required to meet the 100 litres per person a day standard, the risk of standards slipping over time and the uncertainty inherent in the relationship between water use and sewage volume should be addressed by the use in the calculation of 110 litres per person per day figure.

Question 7: Should I consider the potential impacts of both phosphorous and nitrogen?

There is evidence that inputs of both phosphorus and nitrogen influence eutrophication of the water environment. However, the principal nutrient that tends to drive eutrophication in the marine environment is nitrogen and this is supported by modelling and evidence. Please see Annex 2 of the full guidance for further details.

The best available evidence is for focus in the Solent harbours to be on nitrogen reduction, and reduction in both nitrogen and phosphorus in the Medina catchment. However, this approach may be refined if greater understanding of the eutrophication issue is gained by thorough new research or updated modelling.

Question 8: What do I do if my WwTW provider is not confirmed or it is a new WwTW is being built?

For most planning applications, the WwTW provider is not confirmed until after planning permission is granted. The nutrient calculation should be based on the permit levels of the most likely WwTW. In any cases where the WwTW changes, a reassessment of the nutrient calculation will be required to ensure the development is nutrient neutral.

If a new WwTW is proposed, obtain a determination from the Environment Agency on the permit limit for Total Nitrogen that would apply to the works and when they are likely to be built.

If the WwTW will have a tightened permit concentration limit for Total Nitrogen under the company's Water Industry Asset Management Plan by 2024 then use this tightened value.

Question 9: How has it been determined that 2 mg/l is an acceptable level of nitrogen in river and groundwater?

The figure of 2 mg/l as an acceptable level of nitrogen in river and ground water is based on a review of available scientific literature and research.

Peer review research indicates that the mean natural river concentration would have been below 0.45 mg/l nitrate-nitrogen. Evidence also suggests that a nitrate concentration in rivers of 2 mg/l equates to the average concentrations in rivers before the 1960s, prior to the dramatic increase in N concentrations during the subsequent decades. This nitrate concentrations corresponds well with emerging evidence from the Poole Harbour catchment

where it is considered that restoration to a favourable conservation status would require a nitrogen load below 1000 tonnes of TN per year landward input. To achieve this, average TN levels in river water in the Poole Harbour catchment would need to be <2.75 mg/l TN.

The total annual nitrogen load reductions necessary to achieve a favourable conservation status for the international sites within the greater Solent area have yet to be determined. However, for the purpose of the methodology, a river and groundwater TN concentration of 2 mg/l is considered at this stage to be likely to meet the restoration objectives for the Solent international sites. We therefore recommend that a discounted figure of 2 mg/l is used to reflect the amount of N that would otherwise be present in river and groundwater.

Question 10: How much evidence is needed to support the existing farm use?

It is important that farm type classification is appropriately precautionary. It is recommended that evidence is provided of the farm type for the last 10 years and professional judgement is used as to what the land would revert to in the absence of a planning application. Examples of evidence could include land sale agreements, aerial photographs, basic farm payment information etc.

In many cases, the local planning authority, as competent authority, will have appropriate knowledge of existing land uses to help inform this process.

Question 11: Why do we need a precautionary buffer?

The nutrient neutrality calculation includes key inputs and assumptions which are based on the best-available scientific evidence and research. It has been developed as a pragmatic tool however for each aspect there is a degree of uncertainty. It is our advice to local planning authorities to take a precautionary approach in line with existing legislation and case-law when addressing uncertainty and calculating nutrient budgets.

For this reason the nutrient neutrality calculation includes a precautionary buffer. With the precautionary buffer, the competent authority may be satisfied that, while margins of error will inevitably vary for each development, this approach will ensure that new development in combination will avoid significant increases of nitrogen load to enter the internationally designated sites.

Question 12: Where can I find out more about the different roles of Natural England and the Environment Agency?

A [joint position statement](#) has been prepared by the Environment Agency and Natural England to clarify their respective roles in managing impacts on habitats sites through the Habitats Regulations, the Water Environment (Water Framework Directive) Regulations, and the Environmental Permitting Regulations.

Question 13: Where can I get help with the nutrient calculation?

If you have further questions on the methodology, these may be answered by reviewing the full methodology - *Advice on achieving nutrient neutrality for new development in the Solent region*. A digital tool has been created to help calculate the budget and is available [here](#). Both of these tools are available on the Partnership for South Hampshire (PFSH) website. This also includes a page of website addresses for local planning authorities.

For enquires to Natural England, please use enquiries@naturalengland.org.uk

Natural England can also provide further advice on the methodology and mitigation options through our [chargeable services](#) (DAS).

For enquires to the Environment Agency, please use enquiries@environment-agency.gov.uk

For enquires to Southern Water, please use this link - <https://www.southernwater.co.uk/help-advice/contact-us>

Please see [here](#) for further information about the Hampshire and Isle of Wight Wildlife Trust scheme.

Further information will also be included on the [Partnership for South Hampshire](#) website.

ANNEX B

- B.1 The following worked example calculates the Total Nitrogen load of a development of 1000 dwellings based on a WwTW with a consent limit for Total Nitrogen of 9 mg/l.
- B.2 The 40 ha site is currently in agricultural use and covers several farm types. The average figure has been used in this example. The future development will comprise 38 ha of urban development and 2 ha of designated open space.

STAGE 1 - CALCULATE TOTAL NITROGEN LOAD FROM DEVELOPMENT WASTEWATER				
Step	Measurement	Value	Unit	Explanation
Development proposal	Development types that would increase the population served by a wastewater system	1000	Residential dwellings	
Step 1	Additional population	2400	Persons	Uses an average household size of 2.4 x 1000 dwgs (greenfield site).
Step 2	Wastewater volume generated by development	264,000	litres/day	2400 persons (step 1) x 110 litres.
Step 3	Receiving WwTW environmental TN permit limit. Assume discharge to be at 90% of consent limit.	8.1	mg/l TN	90% of the consent limit = 8.1 mg/l TN.
Step 4	Deduct acceptable TN loading in waste water (@ 2 mg/l TN)	6.1	mg/l TN	8.1 (step 3) – 2 mg/l TN
Step 5	TN discharged after WwTW treatment	1,610,400	mg/TN/day	264000 (step 2) x 6.1 (step 4) = 1,610,400
Step 6	Convert mg/TN to kg/TN per day	1.6104	Kg/TN/day	Divide by 1,000,000
Step 7	Convert kg/TN per day to kg/TN per year	587.8	Kg/TN/yr	1.6104 x 365 days
Wastewater TN load	587.8 kg/TN/yr			

STAGE 2 - CALCULATE NITROGEN LOAD FROM CURRENT LAND USE				
Step	Measurement	Value	Unit	Explanation
1	Total area of existing agricultural land	40	Hectares	This is the area of agricultural land that will be lost due to development
2	Identify farm type and confirm nitrate loss.	26.9	Kg/ha/yr	The developable area covers several farm types therefore an average has been used.
3	Multiply area by nitrate loss	1,076	Kg/TN/yr	40 ha x 26.9 kg/N/yr
N load from current land use		1,076 Kg/TN/yr		

STAGE 3 - CALCULATE NITROGEN LOAD FROM FUTURE LAND USES				
Step	Measurement	Value	Unit	Explanation
1	New urban area	38	Hectares	Area of development that will change from agricultural land to urban land use
2	Nitrogen Load from future urban area	543.4	Kg/N/yr	38 ha x 14.3 Kg/N/yr
3	New SANG / open space	2	Hectares	Area of development that will change from agricultural land to SANG / open space
4	Nitrogen load from SANG / open space	10	Kg/N/yr	2 ha x 5.0 Kg/N/yr
5	Combine Nitrogen load from future land uses	553.4	Kg/N/yr	543.4 Kg/N/yr + 10 Kg/N/yr
N load from future land uses		553.4 Kg/TN/yr		

STAGE 4 - CALCULATE THE NET CHANGE IN NITROGEN LOAD FROM THE DEVELOPMENT				
Step	Measurement	Value	Unit	Explanation
1	Identify Nitrogen load from wastewater (stage 1)	587.8	Kg/TN/yr	See Table 1
2	Calculate the net change in Nitrogen from land use change - subtract existing land uses Nitrogen load (stage 2) from future land uses Nitrogen load (stage 3)	-522.6	Kg/TN/yr	553.4 (stage 3) - 1076 (stage 2) = -522.6 Kg/TN/yr
3	Determine Nitrogen Budget – the TN wastewater load for the proposed development plus the change in N load from land use change (the latter figure may be positive i.e. the change in land use will generate more nitrogen, or negative i.e. the change in land use will generate less N)	65.2	Kg/TN/yr	587.4 (step 1) + -522.6 (step 2) = 65.2 Kg/TN/yr
4	Where TN budget is positive add 20% precautionary buffer	78.24	Kg/TN /yr	64.8 + 20% = 77.8,
TN needing neutralising		78.24 Kg/TN /yr		