

Title of meeting:	Cabinet Member for Culture and City Development
Date of meeting:	29 th November 2019
Subject:	Interim Nutrient Neutral Mitigation Strategy for New Dwellings
Report by:	Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 The purpose of this report is to update the Cabinet Member on the detail of the Council's *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*, following the report to Cabinet on the outline strategy on 23rd August 2019

2. Recommendations

- 2.1 **To note the details of the *Interim Nutrient Neutral Mitigation Strategy for New Dwellings*' methodology (See Appendix 1) and approve the adoption of the Strategy.**

3. Background

- 3.1. High levels of nitrogen draining from the Solent catchment area have caused excessive growth of green algae (a process called eutrophication) which is having a detrimental impact upon protected habitats and bird species.
- 3.2. Recent Court of Justice of the European Union (CJEU) decisions¹, have confirmed the opinion that increased sewage output from new, increased housing will have a likely adverse effect, in combination with other sources such as agriculture, on the protected habitats, and adequate mitigation for this effect is now needed. Since receiving Counsel advice on the matter, the Council has not determined planning applications for new dwellings, or development that would generate additional overnight stays, unless the proposal can demonstrate that it would be 'nutrient neutral' in terms of its impact upon designated habitat sites.

¹ Joined Cases C-293/17 and C-294/17 Coöperatie Mobilisation for the Environment UA and Others v College van gedeputeerde staten van Limburg and Others issued on 07 November 2018 and Case C-323/17 People Over Wind, Peter Sweetman v Coillte Teoranta judgement issued in April 2018, by the Court of Justice of the European Union (CJEU).

- 3.3. Officers have been working with colleagues at Partnership for South Hampshire (PfSH), engaging in dialogue with the University of Portsmouth, Natural England, Southern Water, Portsmouth Water and major land owners to consider ways 'nutrient neutral' mitigation can be achieved, especially in a long term, sustainable way. Members and Officers have also been lobbying to raise awareness of this matter and find solutions with central Government, the Local Government Association and the relevant environment and water industry regulators.
- 3.4. To address the issue in the short term, Officers across the Council have been progressing an interim mitigation strategy to help enable the Council recommence the grant of relevant planning permissions. The Interim Strategy is based on the principle water savings for the residential stock within the Councils control, either through holding existing facilities (due for redevelopment) vacant, or through retrofitting measures to improve water efficiency. These water savings will allow 'headroom' for the wastewater output of new development (conditioned to a higher than standard water efficiency of 110 litres per person per day), ensuring that no net increase in wastewater is sent from the Council's authority area to the Wastewater Treatment Works (WwTws) at Budds Farm in Havant. The water savings will be monitored and recorded as 'credit', which can be secured by applicants to help mitigate the impact of their proposals. The Council's Cabinet, at their meeting of 23rd August, noted the progress of the work to date, the principle of the overall strategy, and the intention to create a 'nitrate bank' to provide mitigation credit.

4. The Interim Nutrient Neutral Mitigation Strategy for New Dwellings

- 4.1. The Interim Strategy details the three routes currently available to applicants to achieve nutrient neutrality, which are as follows:
- Mitigation Option 1: Offsetting against the existing lawful land use (water use) on an application site, extant permissions or other land controlled by the applicant; and/ or
 - Mitigation Option 2: Other bespoke direct and in-direct mitigation measures, agreed in discussion with the Council and Natural England, such as Sustainable Urban Drainage Systems (SUDS), interception or wetland creation; and/ or
 - Mitigation Route 3: Purchasing of 'mitigation credit' from the control of, and water efficiency improvement works to, the Council's own property assets or other recognised source of 'credit' in perpetuity.
- 4.2. The Strategy provides examples and case studies for the three options. A mix of options can be applied per proposal. It is expected that the potential for mitigation via Options 1 and 2 will be fully explored by applicants before the purchase of the Council's mitigation credit is sought.

- 4.3. While all of the Council's mitigation credit is currently formed of savings from water efficiency measures, there may be scope to add 'credit' from other sources in future subject to further investigation; alternatives are outlined in Section 5 of the Strategy. The development of any further strategies would have a strong preference for those able to deliver wider benefits for the city, particularly in light of the climate emergency declared by the Council in March 2019.
- 4.4. All mitigation proposals will still be considered on a case by case basis by the Council in consultation with Natural England.

Monitoring

- 4.5. It is anticipated, based on the four year average of PCC upgrade and void property works and minus a precautionary buffer recommended by Natural England, that water efficiency measures could create enough 'mitigation credit' for **518 new dwellings per annum**. The offsetting from PCC vacant assets that are pending redevelopment also provides additional credit to 'front load' the mitigation credit bank; an initial assessment (minus the precautionary buffer) suggests this source could **offset an initial 342 dwellings**.
- 4.6. The following will be recorded to monitor to the trajectory (the anticipated supply and demand) of the mitigation credit for the lifetime of the Interim Strategy:
- The number of upgrades undertaken by PCC Building Services, quarterly.
 - The drawdown of nitrate credit by applicants, both at the grant of planning permission (in principle use) and at the point of occupation of the proposal (credit implementation).
- 4.7. If monitoring indicates a need, it may be possible to accelerate the Council's planned water efficiency improvements in order to generate further wastewater headroom. Monitoring information will be published on the Council's website and updated regularly.

Implementation and Developer Contributions

- 4.8. Use of the Council's mitigation credit will require resourcing in order to cover both the cost of the works and the 'in perpetuity' costs of maintenance over life of the development (the duration of the impact). The intention is to resource this through a proportionate contribution from developers, collected and pooled through S.106 agreements, secured prior to occupation (the point of impact requiring mitigation).
- 4.9. The costs of the scheme are set out in Table 1. These costs will be applicable to major development proposals (10 units and above) only but will be subject to negotiation based on individual scheme viability. This will ensure the costs of mitigation will not prejudice the delivery of proposals with Affordable Housing provision for instance.

- 4.10. For minor and other development schemes, it is not proposed to seek to recover the full costs of the works, as not to disproportionately affect small and medium enterprise builders. Instead the securing of mitigation credit, in perpetuity, for minor development proposals would be subject to a £200 per unit administration and monitoring fee.

**Table 1: Mitigation Credit Bank Charging Schedule
 (Cost Recovery in Perpetuity) for Major Development**

Water efficiency intervention	Savings (litre per household* per day)	Cost per unit	Maintenance contribution per unit
Over Shower Bath	96	£1,200	£500
Dual Flush Cistern upgrade	19.2	£200	£0
Total Efficiency intervention	115.2	£1,900	
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Average cost for efficiency upgrades to allow one new overnight stay (54.8 L/bedspace/day ²)		£903.82	
Average cost for efficiency upgrades to allow one new dwelling (2.4 occupants x 110l pppd = 264 l/d)		£4,345.17	

*a dwelling/household is considered to consist of 2.4 occupants

- 4.11. All proposals would be subject to standard conditions to both require higher levels of water efficiency and to prevent occupation until such time as the 'Nutrient Neutral' mitigation credit has been funded through the s.106 obligation.

Internal Governance

- 4.12. The Mitigation Credit Bank will be administered and monitored by the department's Planning Obligations monitoring resource, and updated and published quarterly for transparency.
- 4.13. Where Council intends to utilise vacant Council assets (residential institutions and significant residential blocks) to offset new development, the internal agreement regarding these assets is likely to take the form of a resolution from the Council's Cabinet or the relevant Portfolio Members. If these assets were to be sold in future, consideration has been given to how such agreements would be transferred e.g. s.111 agreements could be entered into with a prospective purchaser, appending a form of s.106 obligation to be entered into upon transfer.

² Source: <https://www.gov.uk/government/publications/energy-and-carbon-implications-of-rainwater-harvesting-and-greywater-recycling>. Source and end use split: CIRIA (2006) C657. Note: Guest room use split by WC, washing and basin tap use for residential. Locker room/public toilet use split by WC, urinal and 'washing' use for offices.

Next Steps

- 4.14. Natural England has no significant objections to the approach of the Interim Strategy, subject to feedback from their own legal team in due course. Some further technical discussions will be necessary to explore matters including the expectation for a Water Consumption Monitoring Strategy and to further discuss the degree off-setting can reasonably be provided by existing, vacated PCC assets (in terms of water usage data); any changes to the possible level of 'credit' utilised from this source (Mitigation Route 3, B) can be captured through the Strategy's monitoring trajectory (Appendix 3 of the Strategy) in due course. Natural England will continue to be consulted on all individual planning applications which are required to be 'nitrate neutral' and their proposed mitigation schemes.
- 4.15. Officers will continue discussions with developers to identify what steps they intend to take independently to achieve nitrate neutrality within their proposals, including opportunities to work with third party landowners. Following such discussions, the anticipated adoption of the Interim Strategy by the Council would enable the recommencement of determining affected planning applications which are stalled by the nitrates issue alone.
- 4.16. The next Planning Applications Committee date is scheduled for 4th December, plus a potential additional Planning Committee before the end of the year on 18th December.

4. Reasons for recommendations

- 4.1 The Portfolio holder is requested to note details of the Interim Nutrient Neutral Mitigation Strategy for New Dwellings' methodology summarised in this report and detailed in Appendix 1, and approve the adoption of the Strategy.
- 4.2 The Interim Strategy provides a potential framework for planning applications submitted within the Portsmouth authority area to achieve Nutrient Neutrality, and thereby providing the means to address the uncertainty relating to the impact of development (from additional wastewater outputs) on the water environment within protected habitat sites, as required under the Habitats Regulations.
- 4.3 The Strategy's proposed methodology for implementation, resourcing (developer contributions) and monitoring provide a legally robust framework for applicants to secure 'nutrient neutrality' for development proposals in perpetuity.
- 4.4 Any changes to the scheme deemed necessary, following further discussions with Natural England, could be captured by the on-going monitoring of the Strategy. Mitigation for all applications will continue to be assessed on a case by case basis.

5. Equality impact assessment

- 5.1 The recommendations of this report have no impact on the protected equalities groups.

6. Legal implications

- 6.1 The Interim Nutrient Neutral Mitigation Strategy for New Dwellings provides an alternative way for developers to satisfy the appropriate assessment requirements under the Conservation of Habitats and Species Regulations. Natural England, as statutory consultee for the natural environment, has indicated that it can support such an approach in principle. As identified in the body of this report, there are further steps required to establish and manage the 'nutrient bank'.
- 6.2 The collection of monies and inclusion of other related obligations through s.106 agreements or unilateral undertakings in accordance with the Interim Nutrient Neutral Mitigation Strategy for New Dwellings appears capable of meeting the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010, which require that any s.106 obligations constituting a reason for granting planning permission are:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

This is because the Interim Nutrient Neutral Mitigation Strategy for New Dwellings addresses a pressing planning issue, requires other avenues to securing nutrient neutrality to be explored, and ensures any s.106 obligations will be considered in the particular circumstances of an application with scope for appropriate flexibility.

7. Director of Finance's comments

- 7.1 The Interim Nutrient Neutral Mitigation Strategy for New Dwellings is key to the economic prosperity of the City Council. It is vital that the Council are able to be able to approve both its own and other developments through the planning process.
- 7.2 The City Council rely on planning fees to be able to fund the planning service without these fees the Council would have to reduce its planning function until such time as a permanent solution to Nitrate Neutrality was found, this would be both costly and inefficient for the Council.
- 7.3 The Charges set out in table one are designed to ensure that any costs associated with measures that the Council is putting into its Social Housing are recovered, and this money will be remitted to the Housing revenue Account.

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Signed by:

Appendices:

Appendix 1 - Interim Nutrient Neutral Mitigation Strategy for New Dwellings
(Appendix 1, 2 and 3 to the Strategy are provided as a background paper on request due to the document / file size)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Appendix 1a - NE Advice on Achieving Nutrient neutrality for New Development in the Solent Region	Available on the planning W: Drive and on request.
Appendix 1b - Nutrient Budget Workbook	Available on the planning W: Drive and on request.
Appendix 2 PCC Water Efficiency Data Workbook	Available on the planning W: Drive and on request.
Appendix 3 PCC Nitrate Credit Monitoring Trajectory	Available on the planning W: Drive and on request.

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:

