

REPORT TITLE: NUTRIENT (NITRATE) NEUTRALITY UPDATE

21 JULY 2021

REPORT OF CABINET MEMBER: Cllr Russell Gordon-Smith

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WARD(S): ALL

PURPOSE

Cabinet received a report in January 2020 about 'Nutrient Neutrality' (CAB3219) and the issues this was causing in terms of permitting housing developments throughout the district and across the wider south/mid Hampshire area. A position statement was agreed which has enabled the council to continue to grant permission subject to conditions but, before schemes can be occupied, the mitigation needed must be secured.

In July last year an up-date report was considered by Cabinet (CAB3250) where it was agreed that the council could start to collect financial payments from developers up to a maximum of £3,500 per Kg/TN/yr, towards nitrate mitigation solutions off-site which would be delivered either by the council or in partnership with another agency. However, the council can only collect contributions when it is clear how they will be used to mitigate the impacts of development.

This report therefore recommends that the council purchases a limited number of credits from landowners providing mitigation schemes to support housing delivery by small developers to meet the short-term needs of the housing market in certain parts of the district (recommendation 1) and where prevailing market conditions make this an appropriate and necessary option. It is further recommended that the council explores the option of a joint purchase of credits with neighbouring local planning authorities through Partnership for South Hampshire (recommendation 3).

A second approach has also been identified which involves developers acquiring nitrate credits directly from landowners providing mitigation schemes. A list of recognised mitigation schemes located in all three catchments of the district will be maintained by the council and is covered in recommendation 4.

RECOMMENDATIONS:

That the Cabinet:

- 1) Authorises the s151 Officer to:
 - a) Purchase credits if required to meet immediate demand from smaller developers, subject to being able to agree suitable acquisition terms and prevailing market conditions making the purchase by the Council necessary; and subject to a maximum financial exposure of £250,000 at any time.
 - b) Price and sell credits to suitable purchasers in accordance with market conditions at the time of sale subject to being able to agree suitable terms; and set an administration fee to recover reasonable costs.
- 2) Authorise the Service Lead Legal to enter into suitable legal arrangements for the council to undertake the monitoring and enforcement of mitigation sites (or delegate the function to the mitigation land authority) to ensure the land is managed so that mitigation is delivered in perpetuity; subject to the Corporate Head of Regulatory agreeing suitable terms with mitigation landowners for application sites located within the council's area as local planning authority, including a commuted sum to cover the resourcing of this activity,
- 3) Approve the Corporate Head of Regulatory to pursue the option of a joint purchase of Test/Itchen catchment nitrate credits with neighbouring local planning authorities through Partnership for South Hampshire, subject to suitable terms being agreed with mitigation landowners and prevailing market conditions making the purchase of such credits appropriate and necessary.
- 4) Approve the schemes listed in table A as being able to provide suitable mitigation for residential development schemes in the three catchment areas of the district, subject to consultation with Natural England as required and satisfactory monitoring and enforcement arrangements being in place to ensure mitigation is delivered in perpetuity, and delegate to the Corporate Head of Regulatory authority to amend the list by removing or adding schemes to the list as appropriate.

IMPLICATIONS:

1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District
- 1.2 Whilst nitrate mitigation schemes are being developed by landowners primarily to enable residential development to proceed, they provide opportunities for biodiversity enhancements, public access improvements in the countryside and other wider benefits.
- 1.3 Homes for all
- 1.4 It is important to ensure that developers are able to build the residential schemes needed to help meet local housing need in the district and providing nitrate mitigation supports this.
- 1.5 Vibrant Local Economy
- 1.6 Securing nitrate mitigation is often challenging for builders of any scale, but is particularly difficult for Small and Medium size enterprises, as landowner's delivering mitigation schemes may not be willing to sell the small quantities of credits they require. Assisting with unlocking access to small quantities of credits will support these businesses in delivering new housing.
- 1.7 Living Well
- 1.8 Nitrate mitigation schemes can have wider benefits as set out at 1.2 above.
- 1.9 Your Services, Your Voice
- 1.10 Ensuring a supply of housing is important to make sure the Council is able to show that it is delivering new homes in line with the requirements of the Local Plan to meet housing delivery tests and to establish it has a 5 year housing land supply.

2 FINANCIAL IMPLICATIONS

- 2.1 Recommendation 1 would involve the Council acquiring a limited number nitrate credits from landowners offering mitigation schemes to support development in certain parts of the district which can then be sold to developers to meet needs in the short term.
- 2.2 Initially there were few mitigation schemes coming to the market but the picture in 2021 is changing quickly and there are now a range of sites which are becoming available. Initially some landowners were only willing to bring forward their schemes if they could be confident the credits produced would be sold; therefore were only looking to implement their project if they could secure commitments to purchase significant numbers of credits "up-front" from large developers and councils at an agreed price. These landowners

were unwilling to deal directly with smaller developers looking to acquire modest numbers of credits which means these builders are at a disadvantage and will find it hard to find mitigation for their developments. Work undertaken by PfSH also shows that the costs for small builders are proportionally higher when based on cost per new home, although the difference is unlikely to affect development viability overall.

- 2.3 The latest information available suggests landowners are now prepared to be more flexible in terms of the sale of minimum number of credits. However, given the uncertainty in this evolving market, it makes sense for the council to have the ability to acquire a limited number of credits which can be onward sold to developers to support housing delivery and reduce administrative cost burdens especially for smaller builders. Holding a small quantity of credits itself provides flexibility for the council to intervene should the need arise to support development in the district.
- 2.4 It should be noted though, that by stepping in as an intermediary in this way, the market pricing risk is transferred from the landowner to the council as set out in following sections of the report. The value of credits acquired by the council may go down and then if it wanted to sell the assets to liquidate them or to assist a small development the council may be forced to sell them at a loss. Such risks can be mitigated to some degree but not eliminated.
- 2.5 Any credits acquired would be held as inventory on the balance sheet (assets purchased for sale). In accordance with the CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom, the credits would be held on the balance sheet at the lower of cost (that paid to acquire them) or net realisable value (the value that can be realised upon sale, minus a reasonable estimate of the costs associated with the sale). As such, if the realisable value of the credits fell below the price paid for them, a loss would be recognised in the year's accounts.
- 2.6 Upon sale, any gain or loss resulting from changes in the market price of the sold credits would be realised. However, the council would only be looking to recover the cost price of the credits (along with a reasonable fee to cover administration); not to make a profit from their sale.
- 2.7 To minimise risk exposure, it is recommended that the council at this point in time only pursues purchase of credits as inventory for sale for the part of the district which lies within the Test/Itchen catchment (where supply of credits is more difficult to access). This would also be subject to agreeing acceptable terms with landowners and the prevailing market conditions requiring this option, where supply is limited. Each potential purchase of credits will need to be carefully assessed to gauge the level of risk against our risk appetite.
- 2.8 To illustrate the scale of investment, if the council were to buy 50kg/TN/yr of credits at between £2,750 and £3,500 per credit, it would cost between £137,500 and £175,000. A 10% drop in the realisable value of these credits would result in a potential loss of between £13,000 and £18,000.

- 2.9 It is further recommended that the option of pursuing, in principle, a joint purchase of credits with neighbouring local planning authorities through PfSH be pursued (recommendation 3) as this may provide opportunity to buy credits at a lower rate due to economies of scale.
- 2.10 In the case of the East Hampshire and Hamble catchments, it is recommended that the council adopts option 4 at this point, which is to list recognised mitigation schemes, which developers can choose to use in order to meet the requirements of their planning permissions in relation to achieving nutrient neutrality by buying these credits directly from landowners. In this case there would need to be adequate safeguards in place to ensure the mitigation is delivered in perpetuity (see section 3 below). There may also be costs involved should it ever prove necessary for the council to enforce the delivery of the mitigation scheme (landowners will be expected to provide a sum to cover the costs of overseeing their mitigation scheme). This could happen if for some reason the landowner was not providing the mitigation required but the risk of this happening is considered to be low. The same would apply to schemes where the council had purchased credits that were then sold to developers.
- 2.11 Whilst supply of credits in the Hamble catchment is limited currently to a scheme being offered by Eastleigh Borough Council, they are willing to sell directly to developers of any size, with planning permission, so a purchase of credits is not being recommended currently. However, in order to achieve the flexibility referred to above at 2.3 above recommendation 1 will allow the council to acquire credits should the need arise.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 Buying credits from landowners, to be sold on to developers, is an option the council can lawfully pursue, should it choose to do so, and such transactions would not be subject to Public Contract Regulations (PCR) as there is no purchase of goods and services.
- 3.2 However, in each individual transaction the council must be satisfied that it is paying a reasonable price for credits as reflected by the market in order to ensure that it is meeting the requirements of best consideration.
- 3.3 The optimum potential solution is to enable developers to achieve nutrient neutrality for their proposed housing scheme providing such mitigation is specific and certain i.e. it is clear where and how the mitigation is being delivered, and in perpetuity.
- 3.4 Potential risks have been identified for the council in acquiring such credits as cited elsewhere in the report which are mitigated to varying degrees, such as:
- a) Acquire credits for onward sale to developers transfers risk in the delivery of the credits from the landowner to the council:

- b) To list recognised mitigation schemes for developers to meet the requirements of their planning permissions in relation to achieving nutrient neutrality, by buying these credits directly from landowners. Risk and necessary safeguards are required to ensure that the mitigation is delivered in perpetuity and enable enforcement should this be required. This risk can be mitigated by the entering into a legal agreement with applicant and mitigation owner.
 - c) Risk that applicants will not be able to implement appropriate mitigation measures and are therefore unable to fulfil the Grampian condition or Section 106 agreement obligations. Enforcement would entail the council taking action in contract or for breach of the planning permission.
 - d) Risk of council accepting financial contributions with no mitigation scheme available to allow expenditure to ensure mitigation is in perpetuity.
- 3.5 State aid advice has been separately sought; it is not considered that there are any potential state aid risks through implementation of a mitigation scheme. State aid could result if the council were to pass on credits at a reduced price to particular developers and not implement the approach in a transparent and consistent manner with no a public subsidy arising. Any shift in policy and in value must also be managed appropriately.
- 3.6 Under option 4 the mitigation is delivered by landowners that sell credits directly to developers. These schemes can be located anywhere within the fluvial catchment they are situated in, so may be both inside and outside the district. Some landowners are willing to take this approach whereas others may only deal with bulk purchases of credits by large developers or local authorities.
- 3.7 Where landowners sell credits to developers of any scale the council would normally expect to be part of or be able to rely on an umbrella legal agreement with the landowner, and most likely the local authority where the scheme is located where outside the district, to ensure the mitigation promised is delivered in perpetuity (normally a minimum of 80 years), with checks, balances and enforcement provisions in place, to deal with any delivery issues. Each individual planning permission where mitigation is required will also be subject to its own legal agreement which will state how mitigation for that housing scheme will be provided (the mitigation scheme).
- 3.8 For schemes within the district the monitoring and enforcement provision would usually rest with the council and other local authorities could also be party to the agreement if developers in their area are using the scheme to mitigate the impact of their developments. This compliance requirement would be carried out by the Natural Environment and Recreation Team and the resource involved in this activity would be funded by the landowner by way of a commuted sum (recommendation 2). With regard to schemes outside the

district, including the South Downs National Park for these purposes, monitoring and enforcement would usually be a function of the authority where that scheme is located.

- 3.9 There are already several instances of local authorities putting in place such arrangements. For example, developers in Fareham Borough can choose to acquire nitrate credits from a scheme provided by the Hampshire and Isle of Wight Wildlife Trust on the Isle of Wight. In this case the monitoring is provided by the Isle of Wight Council which is covered by an agreement they are party to along with the Trust and Fareham Borough Council.

4 WORKFORCE IMPLICATIONS

- 4.1 Most of the legal work involved in terms of umbrella agreements for mitigation schemes, and agreements or undertakings required for each planning permission where mitigation is needed, can be covered using existing resources. The council's costs will be met by the landowners providing mitigation land and developers in cases where their development needs mitigation.
- 4.2 The monitoring of mitigation schemes within the district (outside the South Downs National Park) will be undertaken by the Natural Environment and Recreation Team and funded by a commuted payment secured from the landowner by the umbrella agreement (recommendation 2).

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 As set out in previous Cabinet reports the council's own developments, including the accommodation delivered by our New Homes building programme and major projects, will need to secure nutrient neutrality in the same way as private development schemes. Consequently, access to nitrate credits, whether via those purchased by the council, directly from landowners or from the council's own schemes that generate credits, will support the delivery of these schemes.

6 CONSULTATION AND COMMUNICATION

- 6.1 The council has been working with PfSH, Natural England and neighbouring local authorities, as well as private landowners bringing forward to the market their nitrate mitigation schemes, in order to identify means which will provide options for housing developers to achieve nutrient neutrality for their residential developments.
- 6.2 Officers have also liaised with developers and other parties that have proposed schemes to achieve nutrient neutrality for their residential development to date and, where acceptable, appropriate legal agreements have been put in place to secure that mitigation in perpetuity.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 The purpose of requiring residential schemes to demonstrate that they can achieve nutrient neutrality is a means of ensuring that additional housing development and development that creates an overnight stay (i.e. hotels and student accommodation) is in line with the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) in that such schemes do not add to nutrient burdens within the water environment of Solent which has caused harm to its designated sites. Under Section 63(5) of the Regulations a planning authority can only grant a planning permission after ascertaining that the development will not adversely affect the integrity of a European protected site. These sites are the Solent Maritime Special Area of Conservation, and the Special Protection Areas of the Solent & Southampton Water, Portsmouth Harbour and Chichester and Langstone Harbours.
- 7.2 There may also be wider benefits associated with mitigation schemes in relation to biodiversity enhancements, reductions in carbon emissions and public access improvements in rural areas as schemes often take the form of new wetlands, establishment of forests by tree planting, and re-wilding landscapes that were previously farmed.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None directly associated with either the acquisition of nitrate credits by the council for onward sale to developers, or signposting of such schemes, which developers may rely upon to mitigate the impact of their schemes.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required

10 RISK MANAGEMENT

- 10.1 There are some financial risks associated with the council purchasing credits for onward sale to developers as outlined below (recommendation 1). However it is considered that careful evaluation of any such purchase can reduce this risk to an acceptable level and will also help to reduce risks in other important areas.

Risk	Mitigation	Opportunities
Financial exposure		

Risk	Mitigation	Opportunities
<p><i>Nutrient neutrality can add to the costs of development for the council and private developers.</i></p>	<p>Identify nitrate mitigation schemes that provide options for developers and the council thereby minimising these costs and allow them to be budgeted for in advance as part of overall development cost.</p>	
<p><i>Acquiring nitrate credits to sell to private developers in a relatively new market means the value of credits could fluctuate significantly over time and could mean that credits are worth less than the agreed price. Other legislative changes could also affect future values. Demand for credits from the council could also decrease as supply increases. These factors would affect the market rate and are not easy to predict and risk cannot be eliminated.</i></p>	<p>Carefully assess nitrate credits purchases to reduce risk by minimising the number of credits to those where there is an anticipated need and there are market supply concerns to avoid a situation where the council is overcommitted.</p> <p>Seek to incorporate safeguards to further reduce risk such as the time period for completing the purchase (phasing), and opportunities to review the pricing of the credits where required.</p>	
<p><i>Future failure of the landowner to deliver the mitigation required.</i></p>	<p>Ensure that robust monitoring and enforcement arrangements are in place.</p> <p>Enforcement action could be taken albeit this would involve costs for the council. Costs may be split if other local planning authorities are</p>	

Risk	Mitigation	Opportunities
	party to the legal agreement covering the mitigation scheme.	
<p>Exposure to challenge</p> <p><i>Developments given permission could be subject to legal challenge on the grounds that the mitigation relied upon does not meet statutory requirements of the Habitat Regulations</i></p>	<p>Use Natural England methodology for calculating nitrate credit requirement for each development and ensure that adequate controls are in place so that mitigation schemes deliver their mitigation in perpetuity.</p>	
<p>Reputation</p> <p><i>Failure to help resolve nitrates issues will impact on housing delivery and will attract criticism from developers, agents and other parties involved in the building industry</i></p>	<p>Identify mitigation schemes that developers can use to achieve nutrient neutrality.</p>	
Achievement of outcome		
<p>Property</p> <p><i>Housing schemes brought forward by the Council will need to achieve nutrient neutrality.</i></p>	<p>The HRA would be able to purchase its own credits directly from mitigation landowners or access credits purchased and held by the general fund.</p>	<p>The HRA's use of credits held by the general fund reduces the exposure of the council to the risk that it cannot sell credits it has acquired.</p>
Community Support N/A		
<p>Timescales</p> <p><i>While planning consents are still being issued, many developments are not being built out or occupied until available mitigation schemes are identified.</i></p>	<p>This report identifies options to achieve nitrate neutrality</p>	<p>Some mitigation measures may have wider benefits for nature conservation, recreation and health</p>
Project capacity		

Risk	Mitigation	Opportunities
<i>Insufficient staff resources to deliver mitigation schemes.</i>	As set out above there is sufficient capacity available to support mitigation schemes and legal costs and costs associated with monitoring mitigation sites will be recovered.	
Other <i>Housing Land Supply/Delivery test – delays to residential schemes may start to impact on the council’s land supply and Housing Delivery Test results, possibly leading to pressure for un-planned development, Government intervention, and fewer new homes available</i>	Identify mitigation schemes that developers can use to achieve nutrient neutrality	

11 SUPPORTING INFORMATION:

- 11.1 The situation regarding the constraints imposed on new residential development in southern/mid Hampshire relating to the resultant impact of additional nitrate discharges on the quality of the Solent maritime environment has been set out in some detail in CAB3219 and CAB3250 so it is not proposed to repeat the information here.
- 11.2 In order to continue to grant planning permission for residential development in the district the council has used Grampian conditions in line with its adopted Position Statement on nitrates. However, whilst consent can therefore be given for these developments, the condition requires nitrate mitigation to be secured in perpetuity before development can be occupied. This usually involves the completion of planning obligations (s106s) which identify how each the development will achieve nutrient neutrality. This will often not be feasible within the site of the development itself so, to do this, the developer will need to identify a mitigation scheme elsewhere.
- 11.3 In the district there are three fluvial catchments for the purposes of nutrient neutrality and, in most cases, the mitigation scheme should be in the same

catchment as the development. Mitigation schemes which can support development the council gives permission for can be located within and outside the district as long as they lie within the appropriate catchment. This means that schemes in the district can be used to mitigate the effects of development in neighbouring authority areas and vice-versa. The council will usually need to be party to a legal agreement with the landowner and neighbouring local authority, where applicable, to ensure the mitigation to be provided is delivered in perpetuity.

- 11.4 In some cases, the landowner providing the mitigation will allow developers of any scale to buy the mitigation they need for their developments (nitrate credits defined in kg/TN/yr) regardless of the quantity. Others set a minimum number of credits and will not deal directly with developers that only need to acquire small amounts. The number of credits required per dwelling varies significantly and is determined by a range of factors including location, current land use and the nature of the accommodation being proposed. It is calculated using the methodology developed by Natural England. The amount of mitigation can be less than 1kg/TN/yr per unit of accommodation and as high as 3kg/TN/yr or more.
- 11.5 The uncertainty caused by the need to source nitrate mitigation before residential accommodation can be brought into use means that development is being delayed. It is estimated that as of the end of May this year 85 planning applications for 561 units, with a total nitrate requirement in the region of 674kg/TN/yr, existed within the district outside the South Downs National Park. The nitrate demand across the three catchments is estimated to be Test/Itchen, 383kg/TN/yr; Hamble, 218kg/TN/yr; and East Hampshire, 73kg/TN/yr.
- 11.6 The council needs to be as proactive and flexible as possible to help developers access the nitrate credits they need to enable them to build the schemes they have permission for, to maintain housing supply in line with the adopted Local Plan.
- 11.7 Officers have been working since last year therefore to identify suitable schemes that are capable of providing the mitigation (nitrate credits) needed to meet the demand within the district and have been in discussions with a number of landowners bringing forward mitigation schemes in all three catchments; Partnership for South Hampshire (PfSH), neighbouring authorities, Natural England, and developers.
- 11.8 There are several options covered by the recommendations above which the council can best use to provide opportunities for developers to achieve nutrient neutrality. The first is that the council acquires from landowners a limited number nitrate credits to sell on to small scale developers in the Test/Itchen catchment (recommendation 1) which is consistent with the approach agreed in CAB3250. This is considered a sensible option to support SMEs in particular, albeit not without risk (see section 10 above). An initial, small acquisition of credits is recommended with the option to buy more

should the need arise. This quantity of credits is based on estimated need for SMEs in the short term within the catchment and the proposed transaction is subject to reaching agreeable terms with the mitigation land owner and prevailing market conditions indicating that this option is required. It should be noted that in CAB3250 it was indicated that the cost per credit would be limited to £3,500. However, the nitrates market is still evolving so the cost of buying credits can fluctuate over time. The price charged by the council to developers per credit will reflect market conditions and therefore the cost to the council of acquiring the credits from mitigation landowners in the first place (plus recovery of reasonable administrative costs). This figure may therefore be above or below £3,500 per credit.

- 11.9 Furthermore, option 3 recommends that the council also explores the joint purchase of credits with neighbouring local planning authorities through PfSH. This adds a level of complexity, as each authority would provide funds to collectively secure a purchase of credits to be used in their respective areas, and this could take time to progress albeit it may mean that credits could be secured at a lower price. This could be a good option for the future in addition to, or instead of, the council continuing to buy credits itself.
- 11.10 The current state of the nitrate credits market varies across the catchments within the district in relation to supply and demand. As can be seen in Table A there are a number of schemes in the East Hampshire catchment where developers can buy small numbers of credits directly. However, the market in the Hamble and Itchen/Test catchments are not yet as developed, with fewer schemes available, which means developers that need small numbers of credits may find it hard to acquire them using signposted or other schemes.
- 11.11 Supply of credits in the Hamble catchment is limited currently to a scheme being developed by Eastleigh Borough Council. As they are willing to sell directly to developers of any size, with planning permission in Winchester district, a purchase of credits is not being recommended currently but recommendation 1 allows flexibility to buy credits in any catchment should the need arise.

Table A – Current Existing and Potential Mitigation schemes

Site	Catchment	Capacity kg/TN/yr	NE agreed nitrate budget Y/N	Signpost/Potential Purchase scheme	Available Y/N
Knowle (Albion Water)	East Hampshire	3000 plus	N	Signpost	N
Grange Estate	Itchen	c545	Y	Potential Purchase/signpost	N
Whitewool Farm Warnford	East Hampshire	2,000 plus	Y	Signpost	Y
Roke Manor Farm	Itchen	2,522	Y	Potential Purchase/signpost	Y

Romsey					
Warnford Park Estate	East Hampshire	3,000	Y	Signpost	Y
Eastleigh BC – Bishopstoke & Botley	Test/Itchen	2,000	Y	Signpost	Y
	Hamble	1,500			
HIOWWT IOW Nunwell	East Hampshire	3,300	TBC	Signpost	N

The situation will be kept under review to see if credit purchases are needed in one or both of these catchments where supply is most limited (recommendations 1 above).

11.12 Whilst recommendation 1 would authorise the purchase of credits in principle, there are unavoidable risks associated with this type of transaction (see section 10 above). Possible fluctuations in the market will affect the value of credits and could mean that they are worth less than the price at which they were purchased from the landowner. It is considered that this can be managed to reduce the risk to an acceptable level by:

- a) agreeing a price for the council that takes account of open market value;
- b) anticipating some variations over time as far as possible;
- c) minimising the number of credits being acquired (existing and predicted supply and demand to avoid a situation where the council is overcommitted);
- d) exploring options to acquire credits in phases over a period of time;
- e) and retaining the opportunity to review the pricing of the credits if acquiring them over a longer time period (although this is not currently being recommended).

11.13 However, it should be noted that the landowner would have to agree to these terms and they may also change their approach to selling credits over time making them available to smaller developers for example. The price charged per credit could also change and may be impacted by more mitigation schemes being brought forward or by changes in the regulatory framework around nutrient neutrality. The council will only proceed with a purchase if acceptable terms and conditions can be agreed with the landowner to reduce risk to a level that aligns with our risk appetite and prevailing market condition support this approach.

The second and preferred approach is to identify a list of schemes which are recognised as providing mitigation in each catchment where the landowner is prepared to sell credits to developers and, in some cases, regardless of the number needed (signposted schemes – recommendation 4 above). PfSH is already adopting this type of approach by publishing a list of mitigation schemes which can be accessed by developers.

- 11.14 As explained at 11.4 there are some landowners that are content with such an approach and this only requires the council to ensure that suitable legal arrangements are in place to deliver the mitigation proposed in perpetuity. A list of existing and potential signposted schemes, and the catchment area they support, along with the number of credits potentially available, is included in Table A above. Whilst the council is identifying a list of mitigation schemes that could be used by developers, they would be under no obligation to choose to mitigate the impacts of their developments by acquiring credits from these schemes.
- 11.15 As the nature of the nitrates market is still emerging with new schemes coming forward all the time, it is recommended that the Corporate Head of Regulatory be authorised to add mitigation schemes to the list, or remove them, where problems are identified in relation to delivery or the total number of credits provided by a site have been allocated to developments. This will usually be undertaken in consultation with Natural England and other relevant parties, such as landowners, and neighbouring local authorities where schemes are outside the district.

12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 Do not purchase credits.
- 12.2 The council is under no obligation to provide mitigation to help developers achieve nutrient neutrality whether by buying and selling credits or signposting schemes. However, taking no action will make it hard for some developers to proceed with their schemes as outlined above. Consequently, the council has already agreed to take contributions from developers to provide nitrate mitigation for residential development (CAB3250 refers) and so it is considered appropriate for a limited number of credits to be purchased where market supply is limited and market conditions support such an approach.
- 12.3 Identifying sites where developers can purchase credits will make it more straight forward for builders of any scale to achieve nutrient neutrality and easier for the council, when determining planning applications and discharging Grampian conditions relating to nitrate mitigation, as these schemes have already been recognised as delivering suitable mitigation in perpetuity so would not require further investigation to ensure they are acceptable.
- 12.4 The council purchases land to be used for nitrate mitigation.
- 12.5 The council, like other neighbouring authorities including Eastleigh Borough Council, could itself acquire land to provide nitrate credits to sell to developers and to support its own residential schemes. This remains an option for the longer term. However, it is not an easy or quick solution and work by PfSH also suggests there are significant risks as private landowners, using their own land to bring forward mitigation schemes like wetlands, could reduce the

market rate for credits thereby under-cutting the council. Whilst the benefit of purchasing land for this purpose would be that the council retains an asset, even if the demand/value of nitrate credits changes over time, there is a real risk that private schemes have more flexibility and can offer credits for less than the council. Consequently a land purchase option is not being recommended at this point in time.

- 12.6 The council is also considering the viability of using land and assets it already owns, such as the Littleton triangle and sewage treatment plants associated with our current housing stock, to produce nitrate credits which can support our own new homes building programme, and major projects, as well as the wider market potentially. However, these options are being addressed separately and are not therefore covered by this report. In addition, they are unlikely to produce large numbers of credits thereby limiting the scope to sell to private developers, at least in the short term.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3219 - NITRATE NEUTRALITY – January 2020.

CAB3250 – NITATE NEUTRALITY UP-DATE July 2020.

Other Background Documents:-

Natural England – Advice on achieving nutrient neutrality for new development in the Solent Region. June 2020.

[file:///itss.local/DFS_WC/userdata/sfinch/Downloads/Solent%20Nutrients%20V5%20June2020%20\(4\).pdf](file:///itss.local/DFS_WC/userdata/sfinch/Downloads/Solent%20Nutrients%20V5%20June2020%20(4).pdf)

Winchester City Council - Position statement on nitrate neutral development – February 2020.

[file:///itss.local/DFS_WC/userdata/sfinch/Downloads/WCC%20Position%20Statement%20-%20FINAL%20-%20Feb%202020%20\(1\).pdf](file:///itss.local/DFS_WC/userdata/sfinch/Downloads/WCC%20Position%20Statement%20-%20FINAL%20-%20Feb%202020%20(1).pdf)

APPENDICES:

None.