

REPORT TITLE: HOUSING REVENUE ACCOUNT NUTRIENT MITIGATION PROPOSAL

16 JULY 2024

REPORT OF CABINET MEMBER:

Cllr Chris Westwood, Cabinet Member for Housing

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WARD(S): ALL

PURPOSE

In 2019, Natural England issued advice to Winchester City Council that requires all new overnight development (e.g. houses, hotels, care homes) to mitigate for any increase in nutrient pollution arising from development that may harm internationally protected sites (such as the Solent Special Protect Area). Further advice was issued in March 2022 requiring the further mitigation of Phosphorus for new overnight accommodation within the catchment of the River Itchen.

The impact of this has been several new housing schemes are held in abeyance, including council house development schemes.

The council's strategy to enable nutrient mitigation solutions includes generating nutrient credits by upgrading some of its own waste-water treatment works (WwTW)) using Housing Revenue Account (HRA) funding which is the subject of this report.

The strategy also involves working alongside the Partnership for South Hampshire (PfSH) to access the Local Nutrient Mitigation Fund. In addition, the council is supporting third-party mitigation schemes and water efficiency measures in its own stock. These initiatives complement and build upon those outlined in this paper to address the demand for nutrient credits in the district. Further details on the PfSH initiative and other initiatives will be presented to a future Cabinet meeting.

In 2023 the council upgraded two of its own WwTWs (Phase I) one of which has already generated both phosphate and nitrate credits, which have been earmarked to facilitate its own development of council housing under construction and the future pipeline. The approach proposed in this report builds on this success.

The purpose of this report is to seek approval, subject to individual business cases, to upgrade a further 4 of WCC's own WwTWs) (Phase II) in order to generate nutrient credits, approval of a budget envelope and approval of a strategy for use of those credits, including disposal of credits to the external market. Specific Phase II WwTWs will be selected once detailed scientific analysis has been carried out and detailed discussions have been held with Natural England. It is anticipated that some of the WwTWs will be in the area of South Downs National Park which has implications for how the mitigation scheme is set up. Decisions to proceed with each scheme will be subject to the approval of individual business cases.

The upgrades will be funded through the HRA and disposal proceeds will be reinvested into the HRA.

RECOMMENDATIONS:

That Cabinet agrees

1. A capital budget of £400,000 to upgrade 4 waste-water treatment works (WwTW) to be funded from HRA reserves.
2. Works to individual WwTW works to be delivered subject to the Council's Chief Finance Officer and Strategic Director agreeing the business case and granting authority to spend the budget under Financial Procedure Rule 7.4; and, if credits are to be sold in the market, suitable agreements being secured.
3. Delegate to the Strategic Director, S151 Officer and Director – Legal the authority to utilise and/or dispose of (in accordance with market conditions at the time of sale) credits generated from historic and new upgrades in accordance with the following strategy:
 - a) To support the delivery of council housing commissioned by the council.
 - b) To support the delivery of housing where an element of that housing is to be council housing and the approach helps to unlock delivery via credit disposal.
 - c) To dispose of credits to support other council led and enabled activities.
 - d) Disposal of credits to the open market.
4. Delegate to the Strategic Director and Director - Legal authority to agree required monitoring and enforcement mechanisms for such arrangements and to enter into legal agreements to facilitate delivery.
5. Delegate the procurement of any works or services to the Strategic Director and that the Strategic Director be authorised to award contracts and enter into all necessary legal agreements with the preferred bidder(s).

IMPLICATIONS:

1 COUNCIL PLAN OUTCOME

1.1 Tackling the Climate Emergency and Creating a Greener District

The upgrade of WwTWs ensures that water quality discharged from the facilities is improved and operates more efficiently. Associated water efficiency measures may result in reduced water usage.

1.2 Homes for All

Proposals will ensure that council can continue to implement its own new council homes programme to deliver new affordable housing.

The creation of additional nutrient credits will support the delivery of other affordable and market housing across the district.

1.1 Vibrant Local Economy

Proposals allow for development to be achieved, resulting in construction employment and supporting the local economy.

Providing affordable homes for local people helps provide a source of locally based workers and supports local spend.

1.2 Living Well

A council motion was passed on 6 July 2022 to protect our local rivers and waterways by taking account of the cumulative impact of pollution including sewage discharge. Investment for the upgrade of WwTWs with improved and more efficient equipment results in water quality improvements, including in rivers, reducing the amount of pollution from sewage discharge.

There are strong links between high quality housing and health and wellbeing outcomes. Proposals support the provision of high-quality affordable housing.

1.3 Your Services, Your Voice

Proposals will support the delivery of affordable housing, which has been identified as an important community priority.

2 FINANCIAL IMPLICATIONS

2.1 In addition to providing the necessary credits for the council's own schemes, initial high-level estimates indicate that there is potential for a significant surplus to be generated from the sale of surplus credits subject to the risks detailed in section 10 of this report.

- 2.2 The income generated from surplus credits will defray the cost of the capital investment and any income in excess of that will be recycled into the HRA.
- 2.3 Individual decisions to upgrade WwTWs will be subject to a satisfactory business case agreed by Strategic Director Services and Chief Financial Officer. Business cases will include consideration of the quantity of credits that can be generated, the benefits of those credits (e.g. utility to the council or income from disposal) and of any monitoring or maintenance cost implications.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The procurement of feasibility works and of each upgrade will comply with the council's and legal procurement requirements.
- 3.2 The proposals are principally intended to upgrade the WwTWs and to generate credits to support the delivery of council led initiatives. Disposal of surplus credits will be incidental to that primary purpose with powers to do so granted by the General Power of Competence under section 1 of the Localism Act 2011. Commissioning of any external supplier to manage credit disposals and any monitoring or other requirements will comply with the council's and legal procurement requirements.
- 3.3 In order to set up a scheme to generate credits, whether for use for new council housing schemes or for sale to third party developers, a legal mechanism is required to ensure that mitigation sites are monitored and maintained in perpetuity (125 years) and, where applicable, to ensure that enforcement action can be taken if they are not being maintained correctly. This usually involves the owner of the mitigation scheme, entering into an agreement under s106 of the Town and Country Planning Act 1990 with the relevant local planning authority (LPA) to secure the mitigation scheme. The s106 option is unlikely to be appropriate for schemes where the council is both the site owner and the LPA.
- 3.4 There are a number of other solutions to be considered, the suitability of which will depend on whether the sites are located in the area for which the council is the LPA or whether the sites are in the area for which the South Downs National Park Authority is the LPA.
- 3.5 It is suggested that all options to secure the mitigation schemes to the satisfaction of the relevant LPA and Natural England, are explored with Strategic Director and Director-Legal, given delegated authority to agree on the most suitable available option and enter into necessary arrangements, including any legal agreements required.

4 WORKFORCE IMPLICATIONS

- 4.1 The initial two WwTWs upgrades are completed. The monitoring regime is established as a delegated duty of the Service Lead – Engineering and this would not change as a result of selling surplus credits to third parties.

- 4.2 The administration of credit sales (processing customer enquiries, recording available capacity, receiving credit payments and preparation of monitoring reports) is to be absorbed into Service Lead – New Homes duties as a continuation of the HRA investment in the project.
- 4.3 A form of legal agreement will also be required to which each purchaser who buys credits will be party. These will be processed by Director-Legal.
- 4.4 The initial investigations and commissioning of reports for Phase II works has been absorbed by the Corporate Head of Planning and Regulatory and Service Lead – New Homes. The on-going procurement and commissioning of works will continue to be absorbed within existing resource.
- 4.5 The procurement and commissioning of works will be absorbed within existing resource, as this was already in the HRA maintenance workplan.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 All sites are owned and operated by the council. The works result in improved efficiency of the facilities and replaces infrastructure to improve water efficiency.

6 CONSULTATION AND COMMUNICATION

- 6.1 Careful evaluation is being made of the scale of work necessary for the WwTWs that will be upgraded, which serve both HRA and private properties.
- 6.2 Ward members will be briefed on the works to be undertaken and a clear communication plan for local residents will be put in place before works commence.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 A council motion was passed on 6 July 2022 to protect our local rivers and waterways by taking account of the cumulative impact of pollution including sewage discharge. Investment in the upgrade of WwTWs with improved and more efficient equipment results in water quality improvements, including in rivers, reducing the amount of pollution from sewage discharge.

8 PUBLIC SECTOR EQUALITY DUTY

- 8.1 None directly associated with the proposals.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required.

10 RISK MANAGEMENT

| Risk | Mitigation | Opportunity |
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| <p>Financial Exposure</p> <p><i>Up-front investment prior to the sale of credits.</i></p> <p><i>Demand for credits may be removed or reduced, costs may increase or values may fall, thus removing or reducing financial benefits.</i></p> <p><i>Increase in competition by other providers/upgrades to other facilities that may reduce demand.</i></p> <p><i>Regulatory changes.</i></p> | <p>Phase I works already paid for from HRA and capital budget – sale of credits is an additional revenue.</p> <p>Phase II works funded by HRA budget subject to individual business case for each project. Projects to proceed based on agreements to purchase.</p> <p>Horizon scan and stress test business cases.</p> | <p>Opportunity to generate additional income for the HRA to support its capital programme.</p> |
| <p>Exposure to challenge</p> <p><i>Challenge from competitor mitigation schemes.</i></p> | <p>Fair credit price set based on other Local Authority schemes.</p> | |
| <p>Innovation</p> <p><i>WwTW are complex systems and project may not deliver as many credits as expected.</i></p> | <p>Hydrogeological reports used to identify the exact amount of credits – to be confirmed by Natural England prior to sale.</p> <p>Experience from Phase I means the council is aware of how to develop the projects on time and within budgets.</p> | |

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| <p>Reputation</p> <p><i>Perceived un-fair distribution of available credits may damage relationships.</i></p> | <p>Selling strategy outlined in recommendation above to ensure transparency.</p> | <p>Environmental improvements and delivery of new housing, including new council housing.</p> |
| <p>Achievement of outcome</p> <p><i>Non - delivery of new council homes, initiatives and generation of income to HRA.</i></p> | <p>Business case for each individual scheme to be in place. Feasibility studies will identify the most appropriate schemes to upgrade.</p> | |
| <p>Property</p> <p><i>Council housing continues to require nutrient mitigation.</i></p> | <p>Projected council housing demand will be subtracted from the credits available for the market.</p> | <p>Development of council housing, providing affordable units for those in need.</p> |
| <p>Community Support</p> | N/A | |
| <p>Timescales</p> <p><i>Upgrades lag behind need.</i></p> | <p>Feasibility works have been commissioned and implementation will take account of council home delivery</p> | |
| <p>Project capacity</p> <p><i>Insufficient resourcing</i></p> | <p>Experience of Phase I works means the council understands the resource required and allocate accordingly.</p> | |
| <p>Other</p> <p><i>Natural England may not agree with using sites as mitigation.</i></p> | <p>Natural England's Discretionary Advice Service will be used proactively throughout the project to understand any potential concerns in the planning stages of the project. Natural England have provided positive</p> | |

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| <p><i>Not being able to agree a legally robust framework to set up and secure the mitigation schemes.</i></p> | <p>responses to Phase I works.</p> <p>The Council will explore all suitable legal mechanisms to secure satisfactory monitoring and enforcement arrangements for the mitigation schemes in cooperation with third party organisations and will enter into necessary arrangements, including any legal agreements.</p> | |
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11 SUPPORTING INFORMATION

11.1 Background

- 11.2 Nitrate Neutrality impacts all parts of the district. In 2019, Natural England issued advice to Winchester City Council that requires all new overnight development (e.g. houses, hotels, care homes) to mitigate for any increase in nutrient pollution arising from development that may harm internationally protected sites (such as the Solent Special Protect Area). Further advice was issued in March 2022 requiring the further mitigation of Phosphorus for new overnight accommodation with the catchment of the River Itchen.
- 11.3 Applicants have not been able to provide nutrient mitigation and therefore the LPA have been unable to undertake an Appropriate Assessment (required by the Habitat Regulations) to make a positive recommendation, these applications have therefore been held in abeyance. Currently, 37 applications are held in abeyance, amounting to 183 units.
- 11.4 The emerging Winchester District Local Plan 2020 – 2040 is scheduled for examination in 2025. The Local Plan has a demand for 6,247 Nitrogen credits and 355 Phosphorus Credits.
- 11.5 It should be noted that 2 sites have significant phosphorus mitigation demands. Alternative mitigation measures are available and Local Planning Authority Officers are working with site promoters to reduce or remove phosphorus mitigation requirements, this will reduce the overall demand figure.
- 11.6 Separate to the project proposed in this paper, the Council is working alongside the Partnership for South Hampshire (PfSH) to upgrade treatment

plants to generate further credits available for the wider market, to mitigate existing applications and those allocated within the Local Plan.

- 11.7 The Council operates 28 WwTWs across the district, all of which are capable of generating nitrate credits, 17 of the works are within the Itchen catchment and have the potential to generate nitrate and phosphorus credits.
- 11.8 Funding for these further works is provided by PfSH from the Local Nutrient Mitigation Fund. PfSH have highlighted upgrades to council owned facilities as a project supported by the fund.
- 11.9 Subject to a July 2024 PfSH Joint Committee decision, £200k will be released to undertake preliminary works, including the replacement of a small number of plants, with a further budget of £700k to be released later in the year to roll out a full scheme of mitigation across the facilities. The credits are likely to be sold and managed by PfSH, which is being considered in a future PfSH governance decision.
- 11.10 In addition, further funding is available to retrofit water efficiency measures in council housing to generate further credits. The HRA has already made provision to undertake works to sewage treatment plants where running costs are high so as to mitigate service charge recharges. Any works to WwTW will aim to reduce running costs of plants where possible. The Council is also supporting third-party mitigation providers by establishing standard legal agreements and monitoring fees, to enable the credits generated to also be available in the market.
- 11.11 The works described above are separate to those proposed in this paper, however when combined with the HRA projects they form a nutrient mitigation strategy to address the demand of existing applications and future Local Plan allocations.
- 11.12 HRA Implemented Projects
- 11.13 CAB3387 (9 February 2023) outlined a nutrient mitigation project undertaken by the council's New Homes Delivery team of HRA WwTWs. The project upgraded 2 WwTWs (Phase I) which are owned and operated by the Council. The upgraded WwTWs resulted in a higher amount of nitrates and phosphorus being removed compared to the existing equipment. This excess amount (or 'credit') can then be used to mitigate development and for phosphorous this credit needs to be upstream of the development.
- 11.14 The New Homes Delivery team have used some of the credits to mitigate the council's own developments, delivering affordable council homes. There remain a number of surplus credits which could be used to mitigate other developments, including new council housing.
- 11.15 The costs of the works to upgrade the 2 WwTWs have already been funded using the HRA. This covered the cost of site investigations and replacement of the WwTWs.

11.16 Details of HRA Proposal

- 11.17 As explained above, by upgrading council owned WwTWs there is the potential to create additional nutrient credits to mitigate the impact of development. An initial desktop study has been undertaken and further feasibility work, including hydrogeological studies, is underway. This will identify which WwTWs are best able to generate nutrient credits and the quantity of those credits that can be used as mitigation.
- 11.18 The purpose of this report is to seek approval, subject to individual business cases, to upgrade 4 of WCC's own HRA WwTWs (Phase II) and to set up nutrient mitigation schemes in order to generate nutrient credits, approval of a budget envelope and approval of a strategy for use of those credits, including disposal of credits to the external market.
- 11.19 Specific Phase II WwTWs will be selected once detailed scientific analysis has been carried out and detailed discussions have been held with Natural England.
- 11.20 This HRA led project would complement the strategic approach explained above.
- 11.21 It is proposed that credits generated from historic and new upgrades are used in accordance with the following strategy:
- a) To support the delivery of council housing commissioned by the council.
 - b) To support the delivery of housing where an element of that housing is to be council housing and the approach helps to unlock delivery via credit disposal.
 - c) To dispose of credits to support other council led and enabled activities.
 - d) Disposal of credits to the open market.
- 11.22 The upgrades will be funded through the HRA and disposal proceeds will be reinvested into the HRA. This will supplement the receipts targets already set in the HRA business plan.
- 11.23 Successful implementation of these projects will help to deliver council led activities (including new council homes), generate income for the HRA and improve water quality.

12. OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 Do Nothing. Not carrying out upgrades would reduce the opportunity for the council to develop new build housing due to the requirement to mitigate nutrients. In addition, the potential would be lost for the council to generate income to support the HRA, to facilitate new council and other affordable and market housing and to improve water quality. Each scheme will need to be supported by a specific business case. For this reason, the option is rejected.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3301 Nitrate Neutrality Update (21 July 2021)

CAB3387 Housing Revenue Account (HRA) Budget 2023/24 (9 February 2023)

Other Background Documents:-

None

APPENDICES:-

None