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| DECISION-MAKER: | CABINET |
| SUBJECT: | Nitrogen Mitigation Position Statement |
| DATE OF DECISION: | 14 June 2022 |
| REPORT OF: | COUNCILLOR BOGLE CABINET MEMBER FOR ECONOMIC DEVELOPMENT |

| <u>CONTACT DETAILS</u> | | | |
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| STATEMENT OF CONFIDENTIALITY |
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| Not Applicable |
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| BRIEF SUMMARY |
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In-order to comply with the Habitat Regulations and to ensure no adverse effect on the internationally protected Solent, the Council needs to ensure that new residential and hotel development achieves 'nitrogen neutrality'. This will enable the Council as local planning authority to continue to support the growth of the city and a greener city, in accordance with the Council's Corporate Plan. The two main approaches to achieving nitrogen neutrality are for developers to purchase nitrogen credits from landowners who are implementing measures to reduce nitrogen discharges on their land or to fund water efficiency measures within the Council's housing stock.

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| RECOMMENDATIONS: |
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| | (i) | To note the Nitrogen Mitigation Position Statement for use in the determination of planning applications. |
| | (ii) | To delegate authority to the Director of Legal & Business Services, in consultation with the Head of Planning and Economic Development, to sign 'section 33' legal agreements with nearby Councils and mitigation providers in-order to implement the Position Statement in accordance with the Habitat Regulations. |
| | (iii) | To delegate authority to the Head of Planning and Economic Development following consultation with the Cabinet Member for Economic Development to make future changes to the specifics of the Position Statement provided this does not affect the overall approach. |

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| | (iv) | To delegate authority to the Head of Planning and Economic Development to make future changes to the technical detail of the approach (e.g. commencement date, data updates, detailed methodology changes, etc) provided that this does not affect the overall approach. |
| REASONS FOR REPORT RECOMMENDATIONS | | |
| 1. | | To ensure new development is permitted in accordance with the Habitat Regulations. |
| 2. | | To delegate authority to the appropriate levels to ensure the necessary legal mechanisms are put in place and the specifics / detail of the Position Statement can be updated as required. |
| ALTERNATIVE OPTIONS CONSIDERED AND REJECTED | | |
| 3. | | The alternative is not to put in place a Position Statement. However, the local planning authority must comply with the Habitat Regulations when granting planning permission. Planning permissions issued by the Council could be challenged if no further action is taken. |
| DETAIL (Including consultation carried out) | | |
| 4. | | Nitrogen discharges from new development and from agricultural production in South Hampshire are having a likely significant effect on the internationally protected Solent habitat designations. Therefore, in accordance with the Conservation of Habitats and Species Regulations 2017, mitigation measures need to be put in place to ensure no adverse effect on the integrity of these sites. |
| 5. | | It is understood that sensitive farming programmes are being implemented to address discharges from this sector, which account for most of the overall discharges. |
| 6. | | However, given the high nitrogen levels / poor conditions in the Solent, and the 'in combination' effects from all new development, new residential and hotel development must achieve 'nitrogen neutrality' in order to comply with the Habitat Regulations. |
| 7. | | The Position Statement sets out how this can be achieved within Southampton, complementing work undertaken by the Partnership for South Hampshire (PfSH) and its constituent Councils, Defra, Natural England, Southern Water and others. This will also support the review of the Council's 'Green City Charter' and the PfSH 'Greenprint for South Hampshire'. |
| 8. | | The proposed Position Statement has been placed in the members' room and is also available on request from the report author. |

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| 9. | <p>The approach is based on calculating the nitrogen budget for the development and then mitigating the effects of this to achieve nitrogen neutrality. It is based on the latest advice and calculator issued by Natural England (March 2022). The key aspects of Southampton's specific approach as set out in the Position Statement have also been discussed and agreed with Natural England.</p> |
| 10. | <p>The calculator establishes the nitrogen discharges from the development arising from:</p> <ul style="list-style-type: none"> • Waste water (based on the number of dwellings / people, water use, and standard of treatment at the waste water treatment works); and • Surface water run-off (based on the type of land use). |
| 11. | <p>Natural England's latest advice continues to use, as a starting point, a 'flat rate' occupancy rate of 2.4 people per dwelling. However, it does now support a 'sliding scale' to reflect variations for smaller / larger dwellings (for planning applications) where there is robust data. The proposed approach for Southampton is to use a 'sliding scale', based on Census data for 1 to 5 bed dwellings. As most development in Southampton is for 1 and 2 bed dwellings which both have an occupancy rate lower than 2.4 people, this will better reflect the lower level of nitrogen discharge and corresponding mitigation required from within the city.</p> |
| 12. | <p>The calculator is based on a precautionary approach, in accordance with case law associated with the Habitat Regulations.</p> |
| 13. | <p>A range of measures can be put in place to achieve nitrogen neutrality. The key measures at present are:</p> <ol style="list-style-type: none"> 1. On-site measures within the development. The effects of these are built into the calculator. Whilst they are often needed to meet other requirements as well, they should also be secured as mitigation. They include: <ul style="list-style-type: none"> • Water efficiency measures within the new development. • Land use measures, such as appropriately maintained open space. 2. Off-site measures. These are the measures required to mitigate the remaining nitrogen discharges from the development. They include: <ul style="list-style-type: none"> • Measures to reduce nitrogen discharges from farmland – this approach will be required for most development in the city. Nitrogen credits are secured from landowners who implement measures to reduce nitrogen discharges in the wider River Itchen or Test catchment areas (e.g. by ceasing agricultural production, woodland planting or wetland creation). |

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| | <ul style="list-style-type: none"> • Retrofitting water efficiency measures (e.g. within Council properties) – developers can fund additional water efficiency measures in Council properties, and Natural England supports this approach. The Council also has an established on-going programme for its housing stock. The scale of mitigation provided initially would be relatively limited, and so in the first instance, this should be used as mitigation for the Council’s own new development (e.g. the estates regeneration programme). To date Natural England have not supported counting measures which are already taking place under this established programme. However, these are housing programmes so are not already being counted / pursued under the habitat regulations, and only future measures implemented under these programmes would be counted. The Position Statement explains that the potential to count these measures will be considered further. |
| 14. | <p>The Position Statement also references other potential measures which may be used in the future. As the approach evolves the Council will seek, where possible, to increase the use of mitigation measures which provide wider social or environmental benefits, including within the city. There may be other mitigation solutions proposed by developers to achieve nitrogen neutrality outside the scope of the Position Statement and these will be considered on a ‘case by case’ basis. There will also be discussions with Southern Water to explore how waste water treatment processes can provide long-term mitigation.</p> |
| 15. | <p>The measures must deliver the requisite mitigation to achieve nitrogen neutrality for a development, as demonstrated through an ‘appropriate assessment’ of the planning application. They must also be counted solely for that development, implemented prior to occupation, maintained for the duration of the impact of the development (generally taken to be 80 – 125 years), and be enforceable. This will be achieved:</p> <ul style="list-style-type: none"> • For ‘on site’ measures through planning conditions and/or ‘section 106’ legal agreements; • For farmland measures (e.g. outside of the city) through a ‘section 33’ legal agreement between this Council, the Council within which the land falls and the mitigation provider; and then through a planning condition (or potentially a section 106 legal agreement) on the planning permission for development within the city to ensure the nitrogen credits are purchased by the developer in advance of first occupation; • For the Council’s own programmes (e.g. water efficiency measures) through an audit of the measures implemented for specific developments. |
| 16. | <p>Subject to Cabinet approval, it is intended to seek appropriate mitigation to achieve nitrogen neutrality having regard to the Position Statement as soon as practicable (e.g. once the first ‘section 33’ agreement and supporting</p> |

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| | material is put in place). The Planning pages of the Council's website will be updated to reflect this, and local agents will be informed of the changes. |
| RESOURCE IMPLICATIONS | |
| <u>Capital/Revenue</u> | |
| 17. | There are no direct financial implications on the Council as a result of the Position Statement. The work has been undertaken by existing resources in the Planning team. |
| 18. | Developers will fund the necessary measures to ensure schemes achieve nitrogen neutrality. (The Council could choose to advance purchase credits to sell on to developers and this would be subject to the development of a full business case and separate future decision. It is not a requirement of the recommended approach that the Council does so). |
| <u>Property/Other</u> | |
| 19. | None – other than that residential or hotel development on Council owned land will be subject to the Position Statement. |
| 20. | The introduction of credits adds a further cost to development within the city, which could affect development viability or the availability of contributions for other measures, but is necessary to meet legislation. |
| LEGAL IMPLICATIONS | |
| <u>Statutory power to undertake proposals in the report:</u> | |
| 21. | The Council has a duty as local planning authority and competent authority under the Habitat Regulations to ensure that there is no adverse effect on the integrity of protected sites as a consequence of new development. The Council is empowered to enter into planning and other agreements to facilitate mitigation measures under section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1986, section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011. |
| <u>Other Legal Implications:</u> | |
| 22. | None. The position statement has been developed having regard to existing legislation including the Equality Act 2010 and in particular the Public sector Equality Duty as set out in s.149 of the Act together with all other relevant pervasive legislation. |
| RISK MANAGEMENT IMPLICATIONS | |
| 23. | The Position Statement ensures the council's decision to grant planning permission for residential and hotel development complies with the Habitat Regulations. It places some additional costs on developers, which is likely to affect to some extent viability or the availability of developer contributions for other measures. Any decision to grant planning permission without properly complying with the Habitat Regulations may be at risk of judicial review. |
| POLICY FRAMEWORK IMPLICATIONS | |

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| 24. | The Position Statement is consistent with the Council's policy framework, including the Council's development plan. |
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| KEY DECISION? | Yes |
| WARDS/COMMUNITIES AFFECTED: | All |
| <u>SUPPORTING DOCUMENTATION</u> | |
| Appendices | |
| 1. | Nitrogen Mitigation Position Statement |

Documents In Members' Rooms

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| 1. | None |
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Equality Impact Assessment

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| Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out. | Yes |
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Data Protection Impact Assessment

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| Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out. | No |
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Other Background Documents

Other Background documents available for inspection at:

| Title of Background Paper(s) | Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable) |
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| 1. | None |