



**Committee name:** Cabinet

**Committee date:** 14/12/2022

**Report title: Nutrient Neutrality: Interim policy led approach towards allocation of potential mitigation headroom**

**Portfolio:** Councillor Harris, Deputy leader and cabinet member for social housing and Councillor Stonard, cabinet member for inclusive and sustainable growth

**Report from:** Executive director of development and city services

**Wards:** All

**OPEN PUBLIC ITEM**

**KEY DECISION**

### **Purpose**

For Cabinet to consider how the range of options for which the mitigation secured through fitting more water efficient fittings into Council owned properties should be used and for Cabinet to consider an interim policy led approach for the apportionment of the mitigation.

### **Recommendation:**

That Cabinet agrees to pursue option 7 and to endorse an interim policy led approach for the apportionment of any nutrient neutrality mitigation credits secured through fitting more water efficient fittings into Council owned properties, and to delegate authority to the Executive Director of Development and City Services, in consultation with both the cabinet member for social housing and the cabinet member for sustainable and inclusive growth to finalise such an interim approach subject to being satisfied as to the further technical work (including an Appropriate Assessment which is necessary to establish the robustness of the proposed approach) together with engagement with Natural England.

To note the indicative cost of the nutrient neutrality mitigation credits and to delegate authority to the Executive Director of Development and City Services, in consultation with both the cabinet member for social housing and the cabinet member for sustainable and inclusive growth, to determine the final cost at which nutrient neutrality mitigation credits shall be sold.

To agree the provisional list of sites set out in rows 1-10 of Appendix A as the priority sites for the credits to be offered and to delegate authority to the Executive Director of Development and City Services to award credits (having regard to the preferred priority sites) and to enter into legal agreements allocating credits to these sites subject to them securing planning permission.

To delegate authority to the Executive Director of Development and City Services, in consultation with both the cabinet member for social housing and the cabinet member for sustainable and inclusive growth to allocate credits to further sites provided the headroom exists to do so, subject to legal agreements and the site securing planning permission.

### **Policy framework**

The council has five corporate priorities, which are that:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report meets the “Norwich has the infrastructure and housing it needs to be a successful city” as well as “The city has an inclusive economy in which residents have equal opportunity to flourish corporate aims” priorities.

This report addresses the corporate priority 3 that Norwich has the infrastructure and housing it needs to be a successful city. In particular:

- to develop and regenerate strategic areas such as East Norwich and Anglia Square;
- to provide and encourage others to provide new homes, open spaces and infrastructure for residents;
- to make the best use of our Housing Revenue Account assets and resources, maximizing our income and spending wisely to provide easy to access, high quality services and support for our tenants and leaseholders; and
- to actively manage and invest in our Housing Revenue Account Homes so that they are safe, well maintained and energy efficient.

This report helps to meet the housing, regeneration and development objective of the COVID-19 Recovery Plan.

## Report details

### Background

1. The Dutch Nitrogen Case<sup>1</sup> ('Dutch-N'), heard in the Court of Justice of the European Union (CJEU), ruled that where an internationally important site (i.e., Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar Sites) is failing to achieve a favourable condition due to nutrient pollution, the potential for a new development to add to the nutrient load is "necessarily limited". The Dutch-N case has informed the way in which regulation 63 of the Habitats Regulation 2017 should apply to pollution related incidents. This has resulted in greater scrutiny of proposed developments that are likely to increase nutrient loads to internationally important sites where a reason for their unfavourable condition is an excess of a specific pollutant.
2. As a result, on the 16 March 2022 Natural England issued new guidance to a second tranche of local planning authorities concerning nutrient enrichment and the role local authorities must play in preventing further adverse impacts to protected wetland habitats. The importance of achieving nutrient neutrality stems from evidence that large quantities of nitrogen and phosphate nutrients entering water systems cause excessive growth of algae, a process called 'eutrophication.' This reduces the oxygen content of water which increases the difficulty of survival for aquatic species; subsequently removing a food source for protected species.
3. All eight Norfolk Authorities are affected to some degree with catchments identified in the Upper Wensum SAC and the Broads SAC. The entirety of Norwich's administrative area is included in the Broads catchment, with a small part in the north-west also covered by the Wensum catchment.
4. The sources of nutrients generally include sewage treatment works, septic tanks, livestock, arable farming and industrial processes. Where sites are already in unfavourable (poor) condition, extra wastewater from new developments can make matters worse.
5. Local Planning Authorities are now required to consider the impact of nutrient enrichment before planning permission can be granted and therefore all planning applications for certain types of developments<sup>2</sup> in the affected catchments have been put on hold until it can be demonstrated how they will mitigate any additional nutrients arising from them.
6. Developers will have to mitigate for any adverse phosphate or nitrate deposits as part of any planning application for additional accommodation within the Wensum Special Area of Conservation (SAC) and Broads SAC and take account of the Habitats Regulations.
7. In April 2022 the Norfolk Authorities agreed to work together to address this issue as all the Norfolk Authorities, and the Broads Authority area are affected. Royal

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<sup>1</sup> *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*

<sup>2</sup> *It covers all types of overnight accommodation including new homes, student accommodation, care homes, tourism attractions and tourist accommodation and permitted development (which gives rise to new overnight accommodation) under the Town and Country Planning (General Permitted Development) (England) Order 2015.*

Haskoning were commissioned to assist with developing a mitigation strategy for Norfolk.

8. Agents and developers are being kept apprised of development of the mitigation strategy through forum meetings and information on each Council's website. Regular briefings are being provided to elected members.
9. Progress to date has been good: the catchment mapping has been refined to provide greater clarity for all parties on areas which are both in and out of the relevant catchments.
10. The Norfolk wide calculator has been produced in collaboration with Natural England. The Norfolk nutrient budget calculator is a catchment specific tool which has been varied to take into account regional variances from the Natural England calculator and is designed to rapidly calculate the nutrient loading from new residential development in the catchments of the River Wensum SAC and the Broads SAC. The Norfolk calculator utilises the best available scientific evidence and research alongside the latest nutrient neutrality guidance from Natural England (2022). As a result, some of the calculator inputs and assumptions deviate from those advised in the published guidance but there is a detailed guidance report to evidence the assumptions in the calculator. This calculator went live on Norwich's website in November.
11. Natural England has written confirming that it *'note[s] that the approach adopted in the Norfolk calculator is broadly consistent with that which underpins the Natural England nutrient budget calculator'* but with detailed comments on areas where there are differences including occupancy rates, water usage and Waste water Treatment Works (WwTW) discharge rates. In respect of these three areas Natural England advises that the Norfolk Authorities, as competent authorities must be satisfied that the evidence underpinning the assumptions in the Norfolk calculator is sufficiently robust and appropriate and advise that the Norfolk calculator is less precautionary than that of Natural England, but that ultimately *'Natural England do not intend to raise objection to the Norfolk Authorities using the Norfolk calculator to inform their Appropriate Assessments'*. Officers are of the view that the Norfolk calculator is sufficiently robust to justify the grant of planning permission and it therefore opens up the prospect of being able to determine currently stalled planning permissions where developers are able to demonstrate the level of mitigation required by the calculator. Officers are aware that across the affected catchment area several developers are exploring progressing planning applications by delivering on-site mitigation measures delivering the benefits required by the calculator. Whilst this may justify the release of some planning consents across the catchment, large strategic urban schemes are unlikely to be able to provide sufficient mitigation on-site.
12. The next stage is therefore to develop short-, medium-, and long-term mitigation solutions where on-site mitigation is not possible, and identify land where off-site solutions could be implemented to the greatest effect to mitigate nutrient loading from new developments. It is expected that draft reports on this will be commenced shortly, but these will need further consideration as to delivery mechanisms and further reports will likely be needed in Spring. It may be early summer before associated delivery solutions are confirmed and up and running. A joint venture is being considered by the Norfolk authorities and a separate report may be brought to Cabinet in due course. This joint venture will oversee the governance and administration of a catchment wide portfolio of NN mitigation

solutions, working with third parties such as Anglian Water and Water Resources East. Some solutions have been considered at a high level including the fitting of water efficient fittings in residential properties.

13. It is the intention that the above catchment wide solution will supersede the interim policy led approach to the allocation of nutrient neutrality credits that is proposed in this report. If, for any reason, the catchment wide solution does not prove feasible the Council may need to revisit the matter and identify a longer term policy for the application of any credits it may be in control of.

### **Mitigation available through Council owned Housing Stock**

14. The installation of more water efficient fittings in bathrooms and kitchens in residential properties has been identified as a mitigation solution. When retrofitting water saving appliances, the water usage saved from the retrofitted properties will be replaced by the additional water from new dwellings. As a result, the volume of water entering the treatment works will stay the same and providing the treatment works operates to a permit limit, the effluent discharge concentration remains the same.
15. This solution is not applicable across the entire catchment area as it cannot be applied to wastewater treatment works (WwTWs) without a permit limit. For it to be effective WwTWs need to be operating at close to capacity with little headroom, which is not the case in all the treatment works in the catchment. However, the Whitlingham treatment works, to which almost all properties in Norwich discharge, typically does operate close to its permit limit and water efficiency measures fitted within its catchment would be effective at mitigating nutrients. Older houses generally have higher water usages per person and therefore have a greater potential for reducing nutrient loading.
16. This solution is only applicable to existing dwellings where an organisation, such as the Council, has control over properties, fittings, and any upgrade works. There may also be the possibility of Registered Providers and care providers also being able to retrofit their properties to generate credits.
17. Wastewater reductions from new water efficient appliances could be achieved during planned refurbishment and responsive repairs of such properties. The greater water saving is typically achieved through upgrades to bathrooms as opposed to kitchens, with improvements to toilets and showers providing the greatest reductions. Officers are confident that this solution could be executed in the Council's housing stock.
18. The Council owns approximately 14,500 Council houses and operates a rolling program of improvements to its Council housing, including upgrades to bathrooms and kitchens, both of which present an opportunity for more efficient fittings to be installed. The current 5yr programme has funding for the first 2 years during which some 763 properties are proposed for improvement, including works to bathrooms and kitchens. Additionally, the Council also installs new fittings as responsive repairs which are in addition to the Council's planned improvements program. Using the average over the last three years, it can be assumed that 493 dwellings would need some responsive repairs each year.
19. An average volume of water usage of around 150 l/person/day has been assumed for existing dwellings in the catchment. The WRc water efficiency

calculator (WRc, 2021) has been used to approximate the water usage per appliance / fitting for usage of 150 l/person/day. The findings are presented in **Table 1** below.

*Table 1: Baseline (150 l/person/day) maximum water consumption values for fittings*

<b>Fitting</b>	<b>Maximum Consumption</b>
Toilet	8 litres
Shower	12 l/min
Bath	200 litres maximum capacity
Basin Taps	9 l/min
Sink Taps	10.5 l/min

20. The Council's program of improvements currently installs fittings with a water usage of approximately 125 l/person/day. This represents a saving of approximately 25 l/person/day from the baseline. The maximum consumptions per fitting are presented in **Table 2**.

*Table 2: Current (125 l/person/day) maximum water consumption values for fittings*

<b>Fitting</b>	<b>Maximum Consumption</b>
Toilet	6 / 4 litres (dual flush)
Shower	9 l/min
Bath	200 litres maximum capacity
Basin Taps	8 l/min
Sink Taps	10.5 l/min

21. In order to maximise the nutrient mitigation potential of the retrofitting program, the Council will install more water efficient fittings going forward. These are expected to reduce the water usage to 106 l/person/day, representing a saving of approximately 45 l/person/day. The maximum consumptions to achieve this efficiency are presented in **Table 3**.

*Table 3: Future (106 l/person/day) maximum water consumption values for fittings*

<b>Fitting</b>	<b>Maximum Consumption</b>
Toilet	4 / 2.6 litres (dual flush)
Shower	8 l/min
Bath	170 litres maximum capacity
Basin Taps	5 l/min
Sink Taps	7 l/min

22. Requirement G2 and Regulations 36 and 37 of the Building Regulations (2015) introduce a minimum water efficiency standard for new homes of no more than 125 l/person/day. The Government also introduced an optional requirement of 110 l/person/day for new residential developments (excluding properties owned by local authorities and Registered Providers), which should be implemented through local policy where there is a clear evidence need. The City Council does apply conditions to planning permissions granted requiring new development to meet a water efficiency standard of 110l/person/day. However, this is not applicable to the fitting of water efficiency measures in existing housing stock as this is not subject to planning control.

23. Table 4 provides an approximate estimate for installing new fittings that will meet a water efficiency of 106l/person/day.

*Table 4: Cost estimation for installing fittings to meet a water efficiency of 106 l/person/day*

<b>Fitting / Appliance</b>	<b>Approximate cost</b>	<b>Source</b>
Toilet	£200 - £300 for a new dual flush toilet including labour. Retrofitting a traditional toilet with a dual flush mechanism may cost as little as £15.	<a href="https://www.thegreenage.co.uk/tech/water-saving-toilet/">https://www.thegreenage.co.uk/tech/water-saving-toilet/</a>
Shower	£25 - £50	<a href="http://www.how-to-save-water.co.uk/Water-Efficient-Showers-How-To-Save-Water">Water Efficient Showers   How To Save Water (how-to-save-water.co.uk)</a>
Bath	£250	<a href="https://www.checkatrade.com/bathroom-removal-repairs/how-much-does-a-bathroom-removal-cost-in-2021/">How Much Does a Bathroom Renovation Cost in 2021?   Checkatrade</a>
Basin Taps	£100	<a href="https://www.checkatrade.com/bathroom-removal-repairs/how-much-does-a-bathroom-removal-cost-in-2021/">How Much Does a Bathroom Renovation Cost in 2021?   Checkatrade</a>
Sink Taps	£100	<a href="https://www.checkatrade.com/bathroom-removal-repairs/how-much-does-a-bathroom-removal-cost-in-2021/">How Much Does a Bathroom Renovation Cost in 2021?   Checkatrade</a>
Dishwasher	£300	<a href="https://www.bbc.com/goodfood/food-features/best-dishwashers-to-buy-2021">Best dishwashers to buy 2021 - BBC Good Food</a>
Washing Machine	£350	<a href="https://www.appliancecity.co.uk/buying-guides/top-5-energy-efficient-washing-machines">Top 5 Energy Efficient Washing Machines - Appliance City</a>
<b>Total</b>	<b>£1,450 per property</b>	

24. The cost estimates of actual bathroom upgrades and sink tap replacements are currently being obtained from the Council's contractors. Once these are known a more accurate cost of the water efficiency improvement programme will be

known. Although the Council upgrades exclude dishwashers and washing machines, once labour costs are included costs in the same order of £1,450 are expected.

25. The planned 5yr programme sees 1,793 properties identified for planned upgrades to bathrooms and kitchens as well as 2,460 for responsive repairs. This would release 120.73 kg Total Phosphorus/yr and 3,353.58 kg Total Nitrogen/yr of mitigation, which is equivalent to approximately 1,412 new dwellings to be built. The calculations account for properties already completed since March 2022 to the current water efficiency specification.
26. The Council as landlord is in control of these properties and so can guarantee the perpetuity of the measures being installed, and the Council is also in control of the programme to ensure the mitigation is delivered in a timely manner. Essentially this means that the Council is in control of a form of mitigation which can be used to rapidly unblock some development up to the limit of the mitigation headroom.
27. In terms of nutrient neutrality mitigation this would require around 3 existing council dwellings to be retrofitted with improved water efficiency fittings to release 1 new dwelling (with a water efficiency of 110 l/person/day) draining to Whitlingham.
28. Based on the assumptions in **Table 4**, the mitigation cost per 1 new dwellings is estimated to be around £4,350 (3 x £1450). This figure will be refined once a more accurate cost of the water efficiency improvement programme is known. In practice the Norfolk Budget nutrient budget calculator would be used to determine the precise Total Phosphorus kg/yr (TP) and Total Nitrogen kg/yr (TN) mitigation requirements for a proposed development. The TP and TN headroom created by retrofitting would be apportioned and costed in kg/year units. The budget calculator has been used to calculate the mitigation budget requirements of a typical house and this allows an approximation of new dwelling headroom to be calculated.
29. Whilst not quantified at this stage, there is also likely to be some saving passed on to tenants of such properties as water usage would drop (this may only apply to those properties on water metres).

### **Monitoring**

30. It will be essential for this programme to be monitored to ensure delivery of the mitigation in advance of the occupation of any new dwellings. The Council shall undertake detailed monitoring of the following during the course of this proposed mitigation:
  - the number of upgrades undertaken by the Council every quarter;
  - the drawdown of nitrate credits, both at grant of planning permission and at the point of occupation.



31. 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 periodically.

## Implementation

32. The use of the Council's mitigation credit will require resourcing in order to cover the cost of the works. The Council intends to secure proportionate contributions from developers, to be collected and pooled through section 106 agreements and to secure that no benefitting developments can be occupied until the mitigation credit has been funded. The Council may also enter into direct contracts to award and secure the credits and, as set out within this report, it is recommended the Executive Director of Development and City Services be delegated authority to agree any such awards / contracts. Legal agreements will need to provide for inflationary increases in costs to be met.
33. All developments should also be subject to conditions to secure high water efficiency.

## Options for mitigation

34. There are several possible developments which could be unblocked should the headroom created be allocated to them, and each option is set out below for Members' consideration.
35. A total of 52 development sites in Norwich alone are currently held up in the planning application process which would, if planning permission was granted, release 1623 new dwellings, including the 1100 dwellings at Anglia Square. These figures rise into the thousands when taking the rest of Norfolk into account. The following options have been identified:
36. **Option 1 – To allocate the mitigation on a first come first serve basis (on agreement of the developer to pay the cost associated):** There are some planning applications which could be granted once mitigation for Nutrient Neutrality is addressed. These comprise 24 applications for planning permission which would deliver 132 dwellings. Some of these planning applications may require a decision by Planning Applications Committee whilst others could be determined under delegated powers. Each application would need to enter into a legal agreement prior to the planning permission being issued to pay the cost per new dwelling for the nitrate credit mitigation before permissions could be released. The advantage of this options is that it would utilise the available headroom to the quickest possible timetable. However, the disadvantage is that it runs the risk of strategically significant developments remaining stalled whilst less significant developments are allowed to proceed. It is not favoured for this reason.
37. **Option 2 - Auction the mitigation headroom to the highest bidder – i.e., seek to maximise the financial benefit the HRA gets from an asset it owns:** This option would realise an increased income to the HRA to fund both this programme of works and future works but is not without its risks. The Council may suffer reputational damage and be seen to be profiting from provision of the mitigation and could lead to a bidding war rather than see the best type of

development brought forward. It is not favoured for this reason.

**38. Option 3 - Retain the mitigation headroom for the HRA's own development:**

This option would see mitigation released for schemes such as Argyle Street and Mile Cross where important affordable housing is to be provided. It would also enable the longer term pipeline of HRA development to be delivered over time. However, this option would fail to maximise the strategic benefits possible that arise from the Council being in control of a deliverable nitrate mitigation solution at this point in time. Given that a catchment wide mitigation solution is expected to have been established by the summer of 2023 at a broadly similar order of costs per property as the current proposal, this option would fail to maximise the immediate benefits that could be delivered by releasing strategic planning permissions in the shorter term. For this reason it is not favoured.

**39. Option 4 - Allocate the mitigation headroom for specific developments where strategic benefits are considered to best align with corporate priorities (on agreement of the developer to pay the cost associated):**

There are long standing allocated sites of strategic importance across the city and this would enable significant housing numbers to be granted planning permission (subject to all other planning matters being addressed) and realise economic investment and social and environmental benefits to the city. The Corporate Plan refers to two specific regeneration schemes: Anglia Square and East Norwich. A valid planning application for the redevelopment of Anglia Square was received in April 2022 and it is capable of being determined in Spring 2023. East Norwich is generally not as advanced in the planning process with masterplan having been endorsed by Cabinet in 2022. No valid planning application has been received for the Carrow Works site and there is little prospect of determination prior to summer 2023. The Deal Ground and May Gurney sites both have outline planning consent that was issued in 2012, preliminary discussion are underway about future reserved matters applications.

The corporate plan also refers to the activities of the Council's wholly owned housebuilder Norwich Regeneration Ltd (NRL). NRL are active in building out a strategically significant site in Bowthorpe, providing private and affordable homes. They are also seeking to develop a smaller site on Ber Street for homes for private sale. Their proposed business plan is due for consideration at this meeting.

There would clearly be significant benefits if one or more strategically significant development could be released under this option. However, the scale of the headroom available will be insufficient to allow East Norwich to proceed and if it were allocated just to strategically significant developments this risks failure to maximise the development released by the headroom currently available. For this reason it is not favoured although it should be noted that the favoured option would allow some developments mentioned above to proceed.

**40. Option 5 – Add the mitigation headroom created to the Norfolk Joint Venture portfolio of solutions for other authorities to also access.**

This option 5 however, would not allow for an earlier release of strategic planning permissions within Norwich. All planning decisions would need to await the agreement of the catchment wide portfolio of NN mitigation solutions which could

take significant time to resolve and therefore undermine the objectives of the strategy. For this reason it is not favoured.

41. **Option 6 Allocate the headroom to those projects identified under the revolving fund under the Towns Fund project:** These sites are sites which are not necessarily strategic in nature as individual sites, but which collectively would have significant benefits for the City if unlocked. These sites comprise a blight to the urban character of the city and are prime development locations. Ensuring NN could be mitigated would alleviate yet another barrier to their development. However, as things stand the City Council has not been able to acquire any of these sites voluntarily and in view of the time that contested compulsory purchase orders take to pursue there is not considered an immediate benefit from allocation of the headroom created by the known mitigation. Progress on two of these sites is being reported separately to this meeting.

Owing to the likely delays in bringing forward these sites seeking to allocate headroom specifically to these sites is not favoured. However, it should be noted that the favoured option below would allow credits to be apportioned to such sites subject to the planning process.

42. **Option 7 – Apportion the mitigation in accordance with a criteria based interim policy led approach.** The use of a criteria-based policy led approach against which to decide on the apportionment of the mitigation would ensure fairness and transparency.

43. Advantages of the policy approach are two -fold. Firstly, the approach allows, in the circumstances where the amount of proposed development exceeds the mitigation headroom, for criteria to be applied to prioritise schemes. Secondly it allows planning applications to be identified that could benefit from the mitigation, and for applicants to be invited to express an interest in utilising mitigation available through the Norwich City Retrofit scheme. This gives applicants greater certainty regarding the cost of mitigation, the timescale for a planning decision and, where necessary, for progress to be made on site-specific Habitat Regulations Assessment.

44. Such an approach is likely to be established more quickly in relation to the headroom established by the known water efficiency programme than the wider catchment wide series of credits. It therefore has the potential to allow certain developments to be granted planning permission and to proceed quicker to delivery than would otherwise be the case. It is anticipated that any policy would only operate on a temporary basis and any unused headroom could be incorporated into the emerging catchment wide scheme.

### **Proposed Policy Led Approach for apportionment of mitigation**

45. It is recommended to Members that option 7 is utilised until the wider catchment mitigation solution is available. Appendix A includes a list of all current planning applications that propose development requiring nutrient neutrality mitigation. Also included within the list are developments that are known to be in the pipeline and expected to be submitted and ready for determination before summer 2023.

46. The list includes 54 planning applications/sites comprising a total of 1806

dwellings, 513 student beds, 95 hotel beds, 10 care home bed spaces and 3 gypsy and traveller pitches. The amount of development exceeds the available mitigation headroom. As a result, the proposed developments have been assessed against the following criteria, in sequential order:

- Is the development housing-led, delivering general needs C3 dwellings or gypsy and traveller pitches?

Justification: development which contributes to meeting the council's 5-year housing land requirement or meets the legal duty to provide gypsy and traveller pitches.

- Is the development on an allocated site or one proposed for allocation in the submitted Greater Norwich Local Plan?

Justification: sites that serve a strategic purpose in meeting housing need.

47. The application of these criteria results in a group of 10 sites being identified. These are then assessed against further criteria: whether they deliver affordable housing; whether there is a wider regeneration benefit associated with the development of the site, and finally ranked according to number of dwellings.

48. This criteria-based assessment results in developments on rows 1-10 of the table being identified, in order of priority, for apportionment of mitigation. These 'priority' developments would utilise approximately 1392 of the estimated 1412 new dwelling headroom.

49. It is recommended that applicants of the 'priority' developments should be invited to express an interest in utilising mitigation available through the Norwich City Retrofit scheme. Applicants would be required to provide a calculation of the nutrient budget mitigation requirements of their developments. This would enable verification of the availability of headroom and allow for the cost of the mitigation to be calculated.

50. Details of when any payment would need to be made (commencement or occupation) will be determined as part of the application process and secured in any related S106 agreement.

51. 'Priority' developments include the current Anglia Square planning application (ref: 22/00434/F) which would account for 1100 of the total available headroom figure for new dwellings. This is a significant proportion of the mitigation credit. The application performs strongly against each of the assessment criteria. The proposed 1100 dwellings (including up to 110 affordable homes (10%)) can make a very substantial contribution to housing supply and addressing housing need. The redevelopment of the site is a long held strategic objective of the Council as expressed through development plan policies and associated guidance over the years. Furthermore, the proposal represents the largest development scheme proposed in the city centre since Chapelfield. In the event of planning approval being granted in the first half of 2023, the £280+ million construction project would offer immediate prospects of boosting the city's economy. With demolition commencing late 2023 and construction continuing for the next 8 years. The development is predicted to create substantial job opportunities and result in transformative change in this part of the city. The proposed scheme includes replacement commercial floorspace, a new enlarged public square and public

realm improvements to surrounding streets and under the flyover. These changes along with the new resident population will materially impact the medium and long-term viability and vitality of the wider Anglia Square /Magdalen Street district centre.

52. In addition, the Anglia Square proposal benefits from a Housing Infrastructure Fund (HIF) grant offer awarded by Homes England. The grant arrangement is time limited and unless development starts on site shortly, there is a material risk that this funding will be lost. The HIF grant is scheme specific and cannot be applied to other schemes elsewhere in the city. Anglia Square is a complex site and without the HIF grant the scheme will not deliver a significant number of homes which support the Council's strategic regeneration objectives. It is also possible, in these circumstances, that the scheme would not proceed at all.
53. It is therefore recommended that the mitigation secured through fitting water efficiency measures into Council owned housing stock is offered to the 'Priority' developments. Developments listed in rows 11-47 of the table in Appendix A, provide housing but are not on allocated sites, these have been ranked according to dwelling numbers. Should any of the 'priority' development associated planning applications slip or be refused they would be deemed no longer suitable for allocation of the headroom. Depending on the timescale, mitigation may then be available to these developments.

## **Consultation**

54. A meeting has taken place with Natural England who have advised that the proposed Norwich retrofit NN mitigation scheme will need to be subject to a formal Habitat Regulations Assessment (HRA) and Appropriate Assessment (AA). This will require formal consultation with Natural England. It is anticipated that this will be undertaken within a timescale to enable the scheme to be made available to applicants by March 2023.
55. The Council has sought further legal advice in relation to the requirement for consultation. A verbal update will be given to Cabinet about whether specific consultation is required on the proposed interim policy led approach.

## **Implications**

### **Financial and resources**

56. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan 2022-26 and budget.
57. If accepted the proposals in this report may result in up to £6.142m additional unbudgeted income (based on cost of £4,350 per property and 1,412 headroom created) being received by the Housing Revenue Account through works that it had already committed to funding through its capital programme.
58. The actual amount will depend on the number of dwellings released by each development and the finally agreed 'levy rate'.
59. The implications of this additional income would need to be considered through the HRA business planning process and is not considered further here; including

determining whether the income is of a capital or revenue nature. There would be some monitoring and legal costs which have not been estimated at this stage but are expected to be only a fraction of the potential income.

## **Legal**

60. A Habitats Regulations Assessment (HRA) refers to the several distinct stages of Assessment which must be undertaken in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended). This is a legal duty on planning authorities.
61. All plans and projects (including planning applications) which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the plan or project is likely to have significant effects on that site. This consideration – typically referred to as the ‘Habitats Regulations Assessment screening’ – should consider the potential effects both of the plan/project itself and in combination with other plans or projects. 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 of the site’s conservation objectives.
62. As stated in the background to this report, the Dutch-N case has informed the way in which regulation 63 of the Habitats Regulation 2017 should apply to pollution related incidents. This has resulted in greater scrutiny of proposed developments that are likely to increase nutrient loads to internationally important sites where a reason for unfavourable condition is an excess of a specific pollutant.
63. Local Planning Authorities are now required to consider the impact of nutrient enrichment before planning permission can be granted. The assessment of appropriate mitigation through the Habitats Regulations Assessment and Appropriate Assessment can only be undertaken when such mitigation is identified and secured.
64. There are additional potential legal risks around the Council seeking to adopt the proposed interim policy to guide the approach to the apportionment of the headroom. In drafting of this report the Council has obtained independent legal advice to seek to minimise these risks.

## **Summary of Independent Legal Advice**

65. The legal advisors have highlighted that the Council’s approach here is novel, in that aspects of this approach are untested, and therefore somewhat at risk of legal challenge.
66. The legal advice has considered the options appraised as above, and this draft report. It has highlighted that the Council’s approach seeks to take a fair and equitable apportionment of initial mitigation credits whilst developing a longer term policy approach (as outlined in paragraphs 12 and 13 above). The interim policy led approach should provide sufficient scope to provide for allocation outside of the initial identified sites; there is still scope within the proposal for smaller allocations, and as highlighted in paragraph 53, if initial sites do not come forward there would be the ability to allocate to alternative sites.

67. The advice has further highlighted the potential that sites may still be given permission without necessary mitigation measures in respect of a negative habitat risk assessment where there are “imperative reasons of overriding public interest”. Whilst this may be applied in very limited circumstances this could still present an option in the most critical of situations where mitigation is not otherwise available.
68. The advice has also addressed the potential that this proposal falls under the scope of the subsidy control regime. Again, this is an untested area of law that does not come into full effect until January. In the meantime, the Council considers that this is a non-economic activity in that it falls under the scope of the Council’s functions to allocate mitigation in considering nutrient neutrality and therefore outside the scope of the subsidy control regime. It should be noted that option 2 above could fall under the scope of subsidy control if that route was preferred.
69. Finally, the legal advice explores the need to secure developer contributions for mitigation payments. As highlighted in paragraph 50, this will be secured through the planning and s.106 process.

### Statutory considerations

<b>Consideration</b>	<b>Details of any implications and proposed measures to address:</b>
Equality and diversity	There are no implications with regard to equality and diversity and therefore no measures proposed. An EqIA is not required
Health, social and economic impact	There may be a small reduction in water bills for residents of Council owned housing stock as a result of the works done to reduce water flows from fittings.
Crime and disorder	There are no implications with regard to crime and disorder and therefore no measures proposed.
Children and adults safeguarding	There are no implications with regard to safeguarding and therefore no measures proposed.
Environmental impact	The use of more water efficient fittings in Council owned residential properties will provide wider benefits for both tenants in terms of reducing water bills but also the environment. Pollution of waterways has been highlighted as an issue and addressing nutrient pollution from development will have a positive impact on waterways more generally but particularly the identified important sites.

## Risk management

Risk	Consequence	Controls required
Failure to address the requirement to address NN mitigation.	Development plans for the site may stall if a solution to NN cannot be found.  Homes England may withdraw the £15m HIF funding secured.	Introduction of the policy led approach proposed
Reputational risk	The Council may be seen to be favoring one development over another	This report sets out several options which are open to members in terms of ring-fencing this mitigation source. This decision is not a decision on any planning application. That will be determined by officers or Planning Applications Committee in due course. The policy led approach to determining allocation of headroom will not be considered to be material to the planning determination.
Legal risk	The Council may be subject to a legal challenge over its proposed approach	The Council's approach has been subject to specific and specialist legal advice as set out above

### Other options considered

70. Alternatives to the recommendation have been set out in the report.

### Reasons for the decision/recommendation

71. As set out above.

### Background papers: None

**Appendices: Appendix A – Application of suggested policy approach to current and emerging planning proposals**

**Contact officers: Graham Nelson, Executive Director, Development and City Services**

**Telephone number: 01603 989204**

**Email address: [grahamnelson@norwich.gov.uk](mailto:grahamnelson@norwich.gov.uk)**



**David Parkin, Area Development Manager**

**Telephone number: 01603 989517**

**Email address: [davidparkin@norwich.gov.uk](mailto:davidparkin@norwich.gov.uk)**



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## Appendix A – Application of suggested policy approach to current and emerging planning proposals

Sites listed include pending valid applications and other known proposals considered likely to be determinable before late summer 2023. Inclusion on the list should not be taken to give any indication as to how any application will be determined. Whether or not the site meets the policy will not be considered material in relation to how any application is determined.

	Application number	Address	General needs housing/gypsy & traveller led?	Allocated Site?	Affordable housing?	Regeneration of a derelict site	Dwellings	Student beds	G&T pitches	Hotel beds	Care home beds
1	22/00434/F	Anglia Square (including land and buildings to the north and west)	Y	Y	Y	Y	1100				
2		Phase 1 of the site for the former Mile Cross Depot	Y	Y	Y	Y	76				
3	22/00108/MA	120 - 130 Northumberland Street	Y	Y	Y	Y	36				
4	22/00762/F	Land and buildings including 70 - 72 Sussex Street & land north side of 148 Oak Street	Y	Y	Y	Y	34				
5		Three Score Phase 4	Y	Y	Y	N	94				
6	22/00273/F	Land off Argyle Street	Y	Y	Y	N	14				
7	22/00392/F	Land at Swanton Road	Y	Y	Y	N			3		
8	22/00272/F	10 - 14 Ber Street	Y	Y	N	Y	9				
9	22/01471/F	Earl of Leicester (site of), Dereham Road	Y	Y	N	Y	9				
10	20/00998/F	126 - 128 Barrack Street	Y	Y	N	N	17				
11	20/01579/F	The Children's Centre, 40 Upton Road	Y	N	Y		23				
12	22/00933/O	Land west of Eastgate House, 122 Thorpe Road	Y	N	Y		19				
13	21/00182/F	20 Cowgate	Y	N	Y		15				

14	21/00007/F	10 to 12 London Street	Y	N	N		14				
15	21/01655/F	100 Magdalen Street	Y	N	N		13				
16	22/00989/PDR	15 - 17 Haymarket	Y	N	N		13				
17	22/00380/F	85 - 87 Cadge Road	Y	N	N		9				
18	22/00157/F	Land north of 1 Dell Crescent, Dereham Road	Y	N	N		8				
19	22/00937/F	Land to the west of Crome Road	Y	N	N		8				
20	16/01670/F	Former Bethel Hospital, Bethel Street	Y	N	N		5				
21	22/00622/PA	Norfolk Clinic, 38 - 40 Magdalen Road	Y	N	N		5				
22	22/00363/F	Car park and premises between 25 and 27 St Leonards Road	Y	N	N		4				
23	22/00389/F	Richmond House, 244 Queens Road & 1A Bracondale	Y	N	N		4				
24	22/00491/F	74 St Faiths Lane	Y	N	N		3				
25	22/01002/F	Scotts Yard, Ber Street	Y	N	N		3				
26	22/00086/F	155 Waterloo Road	Y	N	N		3				
27	22/00519/PA	90 St Faiths Lane	Y	N	N		2				
28	22/00238/PA	37 Plumstead Road	Y	N	N		2				
29	22/00176/F	8 Redwell Street	Y	N	N		2				
30	22/00778/PA	27 Cattle Market Street	Y	N	N		1				
31	22/00127/F	The Valley, Heathside Road	Y	N	N		1				
32	22/00551/F	9 Cheyham Mount	Y	N	N		1				
33	22/01207/F	15 Willow Lane	Y	N	N		1				
34	22/00870/O	The Bungalow, Eaton Chase	Y	N	N		1				
35	22/00166/U	Wedgewood Guest House, 42 St Stephens Road	Y	N	N		1				
36	22/00058/F	36 Cotman Road	Y	N	N		1				

37	22/01102/F	60 Thorpe Road	Y	N	N		1				
38	21/01379/U	The Windmill, Knox Road	Y	N	N		1				
39	22/00356/F	183A Newmarket Road	Y	N	N		1				
40	22/00587/VC	Annexe at 137A Newmarket Road	Y	N	N		1				
41	22/00764/F	20 Waring Road	Y	N	N		1				
42	22/01010/F	2 Langton Close	Y	N	N		1				
43	22/00646/F	Clarence House, 6 Clarence Road	Y	N	N		1				
44	22/00604/F	44 - 46 Surrey Street	Y	N	N		1				
45	22/01184/U	Cat and Fiddle, 105 Magdalen Street	Y	N	N		1				
46	22/01257/F	Harford Manor House, Harford Manor Close	Y	N	N		1				
47	21/01440/F	549 Earlham Road	Y	N	N		1				
48	22/00243/F	Former Eastern Electricity Board Site, Duke Street	N	Y	N		237	480			
49	22/00545/F	Holmwood Residential Care Home, 11 Harvey Lane	N	N	N						10
50	22/00958/F	2 & 2A Winter Road, Norwich	N	N	N						
51	22/00396/F	Shoemaker Court, Enfield Road	N	N	N			33			
52	21/00942/F	Ailwyn Hall, Lower Clarence Road	N	N	N					94	
53	21/01196/O	Norwich Airport, Amsterdam Way	N	N	N						
54	22/01067/F	The Castle, 1 Spitalfields	N	N	N					1	
	TOTAL						1806	513	3	0	10

