

## CABINET

MONDAY 29 MARCH 2021

### NITRATES CREDITS CHARGING POLICY

Report of the Corporate Director – Chief Financial Officer

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#### Recommendation(s)

**It is recommended that Cabinet approve a charge of £3,000 plus VAT per nitrate credit to developers with immediate effect, secured by S106 Agreement.**

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#### Summary

In March 2020 Cabinet agreed an initial charging policy for nitrate credits offered by the Borough to developers as a mechanism to mitigate any increase in nitrates arising from development.

The Council has successfully acquired 194 acres of land with the primary purpose of offsetting the nitrate impact of development.

As information develops on the impact of nitrates and mitigation methodologies it is appropriate to review charges.

This report sets out the current position of the Council and proposes a move to charge £3,000 per nitrate credit (1 credit equates to 1 kilogramme of nitrate per year), rather than a charge per dwelling as per the previous approval.

#### Statutory Powers

Habitats Directive (transposed by the Conservation of Habitats and Species Regulations 2017 (as amended))

Town and Country Planning Act 1990

#### Strategic Implications

1. The decision in this report supports the Housing Development objectives in the Corporate Plan 2015-2025. It is also key to the Climate Change and Environmental Emergency action plan and will have a significant positive impact on the environment.

#### Introduction

2. There is evidence of high levels of nitrogen and phosphorus in the Solent water catchment environment, including evidence of eutrophication (term for

the process by which a body of water becomes progressively enriched with minerals and nutrients) within this internationally designated site. The Solent water environment is internationally important for its wildlife and is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations (2017) As amended. The high levels of nitrogen and phosphorus must be considered as required by the Habitats Regulations and a development must demonstrate that it would achieve nutrient neutrality i.e. avoid nitrogen loading by ensuring there is no net increase in nitrates leaving the site as a result of the development.

3. In June 2019 the Council agreed an interim strategy with Natural England to offset an increase in nitrogen levels generated from a development site by removing Council-owned land from an agricultural use. (Certain types of agricultural use have an effect of additional nutrients to the water environment.)
4. Since June 2019 the Council has been offsetting nitrate impact from 3<sup>rd</sup> party developments in the Borough against land at Horton Heath. This approach was acknowledged as an “interim” strategy and that a more permanent solution would be needed, ideally in line with emergence of a sub-regional solution.
5. Supporting this interim offsetting strategy, as landowner the Council felt it reasonable to charge a developer if they chose to offset against Council owned land. A policy was approved by Cabinet in March 2020 which introduced a charge per dwelling of £4,500 with the agreement that this would be kept under review as the situation developed including further discussions with Natural England.
6. The interim charge to developers approved in March 2020 based on 1.5 credits per property at £3,000 per credit (1 credit equates to 1 kilogramme of nitrate per year).

### **Land acquisition to date**

7. In April 2020 Cabinet approved the purchase of parcels of strategic land which would offset the nitrate burden. This approach has been supported by Natural England (NE) as this offsetting solution will be in perpetuity.
8. To date the Council has completed land purchases for 78.5 hectares (194 acres) to enable the offsetting of nitrates from new development. The specific number of credits is currently being agreed with Natural England however this is currently calculated at 3,388 credits.
9. These credits will be used to permanently offset requirements of the developments temporarily offset against the Horton Heath site, (for comparison approximately 2.1 credits per dwelling), and also be offered to developers and other local authorities across the region who may wish to use the Council’s land to mitigate the impact of their schemes.

10. The number of credits available from this first land purchase will enable the Council to secure its own development pipeline (excluding One Horton Heath), but the majority of these credits will be offered to 3<sup>rd</sup> parties for a charge. This income offsets the cost of the recent land purchases and was included in the purchase business case.

### **Nitrate Credit Scheme**

11. By January 2021 45 different developments had expressed interest in offsetting their nitrate load against Council land, with an overall requirement of 777 credits. Whilst some of these planning applications are yet to be determined it demonstrates the option for developers to choose to offset against Council land is strong.
12. Currently, and understandably, Natural England adopt a generic approach to their calculations. The Council is working with Natural England to agree the methodology for calculating nitrate levels on offset land. This will enable the number of credits on our offset land to be confirmed based on historic farming practices rather than regional averages, and in turn which the Council can offer up for nitrate mitigation.
13. The Assets Team are developing a process to log the allocation of credits to schemes, in perpetuity, to ensure that this is fully auditable by Natural England. Credits will only be offered to developers against specific schemes and therefore cannot be “banked” in advance of a scheme being identified.
14. Any agreement to use Borough Council mitigation land will be accompanied by a legal agreement, often within a Section 106 agreement. This will ensure that all parties are aware of obligations, including the Borough Council where mitigation agreed to provided must be held in perpetuity (for a minimum of 80 years).
15. Where developers outside the Borough are interested in purchasing nitrate credits from Eastleigh, this will be considered as long as it can be demonstrated that the relevant Local Planning Authority has received a valid planning application and ultimately that mitigation is secure in an appropriate Planning Agreement. This is to prevent the “banking” of credits.
16. Currently, the Council charge per dwelling for nitrate mitigation does not take in to account any on-site efforts made by the developer to reduce a development’s nitrate output. Also, the arrangement does not provide any incentive to a developer to attempt to offset the nitrate level as the cost per dwelling remains the same irrespective of the total level of nitrate generated by the development.
17. The current charging schedule results in the Council assuming risk on the actual number of credits required per dwelling.
18. By changing the offsetting charging mechanism to reflect the total nitrate levels needing to be mitigated on a project-by-project basis, as calculated

using the Natural England methodology, the credit charge is transparent and proportionate to the development.

19. The recommendation is to adopt a charge of £3,000 plus VAT per credit in line with the business case approved by Cabinet in April 2020. The charge is calculated based on the land purchase business case which includes an annual cost of managing the land in perpetuity.
20. The approach to nitrate offsetting by neighbouring Authorities is still emerging but similar charges are known to be sought by other Councils in the region.
  - (a) Winchester City Council are charging £3,500 per credit secured by S106 but as yet have no schemes to apply the financial contributions to.
  - (b) The Hampshire & Isle of Wight Wildlife Trust have 1 offset land scheme on the IOW which offer credits for £2,500 each.

### **Financial Implications**

21. Initially the nitrate credit charging scheme will be cost neutral as the income will be held against costs of land holdings already in the Council's control. The income will be ring fenced for the purposes of nitrate mitigation and could be used for future land purchases and ongoing maintenance.

### **Risk Assessment**

22. There is no initial risk with using land already in the Council's control. The risk of not introducing this scheme is that housing delivery could stall within the borough as planning application decisions will not be issued. Longer term risks could arise if the supply of land is exhausted however it is hoped that the regional approach to this issue will address this.

### **Equality and Diversity Implications**

23. The Equality Act is not relevant to the decision in this report.

### **Climate Change and Environmental Implications**

24. The proposals contained within this report will have a positive impact on the environment by setting aside land in perpetuity to address nitrate issues within the region.

### **Conclusion**

25. It is recommended that Cabinet approve the introduction of a charge of £3,000 plus VAT per credit which can be offered to developers or other local authorities within the region with immediate effect.

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Appendices Attached: nil

**LOCAL GOVERNMENT ACT 1972 - SECTION 100D**

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

None.

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