Colchester City Council Local Plan Review – Regulation 19 Consultation

Representation concerning Draft Policy PP37: Land north of Park Lane, Langham

Legal Compliance Statement for Langham Parish Council (Report LR1)

Respondent: Langham Parish Council **Date:** 12th October 2026

Plan documents to which this representation relates:

- Allocation Policy PP37 - Land north of Park Lane, Langham (approximately 850 dwellings)
- Allocation Policy PP38 - Land opposite Wick Road, Langham (approximately 10 dwellings)
- Allocation Policy PP26 – Land North of Boxted Straight Road, Boxted Cross (approximately 150 dwellings)
- Policy NZ3 — Wastewater and Water Supply
- Main Supporting evidence: Habitats Regulations Assessment Regulation 19 [Issue 2 Final Report – 10/8/26]; Sustainability Appraisal Report Regulation 19 [Version 2 Final Report – 17/08/26]; Colchester Infrastructure Audit and Delivery Plan Stage 4 Report [V3 Final Report – 17/08/26]; Colchester Water Cycle Study [Version PO5 Final Report – 13/08/26]

Soundness / legal compliance: The Parish Council considers the plan, in respect of the Langham and Boxted allocations and ambiguous drainage policy, to be **not legally compliant** and **not sound**.

Tests engaged:

- Legal compliance — Conservation of Habitats and Species Regulations 2017 (the "Habitats Regulations").
- Soundness — the plan is **not effective**, **not justified**, and **not consistent with national policy** (NPPF tests of soundness).

Modification sought: Deletion of the Langham and Boxted allocations; in the alternative, the modifications set out at Section 7 below.

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1. Summary

The allocation of approximately 1,010 new dwellings at Langham and Boxted (in addition to another 86 existing commitments from the current Local Plan, making a total of 1,096 new dwellings, as confirmed in the Water Cycle Study) cannot be made acceptable in planning terms, because the only foul drainage solutions available to it are both unlawful to rely upon and/or harmful to a protected European site:

1. **Connection to the public sewer** is the option the draft policy prioritises. There are mains foul sewers in the roads surrounding the site on all sides, so a mains connection

is unquestionably feasible, and the developer would enjoy an effectively absolute statutory right to make it. But Langham (Essex) Water Recycling Centre ("the WRC") is already breaching its discharge permit by volume; there is no spare capacity; and the sewerage undertaker has confirmed via the Water Cycle Study that no medium or long term upgrade plans for the period 2025-2050 were included in its current Drainage and Wastewater Management Plan. Additional connections would worsen an existing permit breach.

2. **On-site (non-mains) treatment** is not, in practice, available for this site. The Environment Agency will not normally grant an environmental permit for a private treatment system where a mains connection is feasible — and here, with sewers in every surrounding road, it plainly is. On-site treatment is therefore a regulatory dead end. It is also no escape from the Habitats Regulations: an on-site facility would introduce a new discharge to the same catchment (the Black Brook) and would itself require assessment for effects on the European site.

The WRC discharges to the Black Brook, which is hydrologically connected to the Stour and Orwell Estuaries SPA / Ramsar. Worsening an already-breaching discharge is capable of adversely affecting the integrity of that European site. The same is true of any on-site discharge.

The consequence is that the allocation faces an unavoidable fork: either (a) the capacity and water-quality problem is resolved before any development commences — which there is no realistic prospect of achieving within the plan period — or (b) the Council accepts development that connects to an over-capacity, permit-breaching network and thereby harms the European site. The draft non-mains drainage policy does not resolve this conflict; it conceals it, and defers it to the planning-application and environmental-permitting stages, transferring the burden to the Environment Agency and the sewerage undertaker.

For the reasons below, the allocation is not legally compliant with the Habitats Regulations and is unsound, and should be deleted.

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2. The factual position

2.1 Mains foul sewers are located in the roads surrounding the site [on all sides]. A mains connection is therefore plainly feasible: the distance and physical-barrier tests that govern feasibility are met without difficulty.

2.2 Langham WRC is currently in breach of its environmental permit by volume. There is no headroom in the receiving network or treatment works to accommodate the foul load from approximately 1,096 additional dwellings.

2.3 Anglian Water has confirmed that it has no current plans to upgrade or increase the capacity of Langham WRC within its current AMP period or the next price review period. Their latest written update received by Langham Parish Council on 22nd September 2026 includes the following statement: “Any further substantive upgrade to support strategic growth would need to be evidenced through the DWMP and then taken forward via the relevant Price Review determination and future Asset Management Periods.”

2.4 Langham WRC discharges to the Black Brook. The Black Brook is hydrologically connected to the Stour and Orwell Estuaries SPA / Ramsar, a European site. Any increase in the volume, or deterioration in the quality, of that discharge is capable of having an effect on that site.

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3. Capacity cannot be controlled by refusing connection — it can only be controlled through the plan and the planning system

3.1 Under section 106 of the Water Industry Act 1991, the owner or occupier of premises has the right to connect to the public sewer. That right is, in substance, absolute. A sewerage undertaker may object only on the narrow grounds in section 106(4) — relating to the mode of construction or condition of the private drain or sewer — and **may not** refuse a connection on the ground that the public sewer lacks capacity.

3.2 This was confirmed by the Supreme Court in *Barratt Homes Ltd v Dŵr Cymru Cyfyngedig (Welsh Water)* [2009] UKSC 13. The undertaker in that case faced precisely the present problem — a connection that would overload an already-constrained system and expose it to criminal liability for an unlawful discharge — and the Court held that it nonetheless could not refuse the connection. Decisively for present purposes, the Court held that the mechanism for controlling the impact of new development on an over-capacity network is **the planning system**: planning permission should not normally be granted until the planning authority is satisfied that drainage can be accommodated, and the authority may use conditions to secure that outcome.

3.3 Two propositions follow, and both are fatal to the draft policy:

(a) Capacity is not, and cannot be, a "feasibility" consideration that bears on the *right to connect*. Where a connection can physically be made, it can be made — irrespective of capacity. This is consistent with national guidance: the Planning Practice Guidance on water supply, wastewater and water quality establishes a presumption in favour of foul drainage to a public sewer, and treats private systems as available only where connection to a public sewer is not feasible taking into account cost and practicability — not capacity.

(b) Because the undertaker cannot refuse on capacity grounds, the *only* actor capable of preventing an over-capacity, permit-breaching outcome is the planning authority — at plan-making stage through the allocation decision, and at application stage through refusal or condition. The Council cannot discharge that responsibility by pointing to the water industry's regulatory regime; *Barratt* establishes that the regime points back at the Council.

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4. The allocations are not legally compliant with the Habitats Regulations

4.1 Under regulation 105 of the Habitats Regulations, before the plan may be given effect the Council must ascertain — in the light of an Appropriate Assessment — that it will not adversely affect the integrity of any European site. The standard is one of certainty: the

authority must be convinced that no reasonable scientific doubt remains as to the absence of adverse effects (*Waddenzee*, C-127/02). Mitigation relied upon to reach that conclusion must itself be established, with the requisite certainty, as effective and capable of delivery.

4.2 **The Council's own evidence identifies the necessary mitigation — and it is not deliverable.** The Council's water evidence base indicates that Langham WRC *could* be upgraded to accommodate the additional flows without harm to water quality. That is significant in two respects. First, it concedes the central point: the additional flows can be accommodated without adverse effect *only if* the WRC is upgraded — so the upgrade is the measure on which any conclusion of "no adverse effect" depends. Second, that upgrade is not programmed — the undertaker has confirmed it has no plans to deliver it within its current or next price-review period — and there is at present no legal mechanism by which the Council or a developer could secure it within the plan period. The one measure that the evidence identifies as capable of avoiding harm is therefore the one measure that cannot be delivered. A mitigation that depends on unplanned, unsecured third-party investment cannot provide the certainty the Habitats Regulations require.

4.3 **The realistic scenario — connection without the upgrade — is harmful, and the breach being "volumetric" is no answer.** Because the upgrade is not in prospect, the realistic scenario is connection to the WRC as it is: already breaching its permit by volume and over capacity. It may be said that a *volumetric* breach raises no water-quality concern because the concentration of the treated effluent is unchanged. That does not withstand scrutiny. (a) The total pollutant load delivered to a nutrient-sensitive estuary is the product of concentration and volume; more volume at a compliant concentration still means a greater absolute load reaching the Stour and Orwell Estuaries SPA. (b) A works and network already hydraulically over capacity will spill more frequently and for longer through storm overflows, discharging screened or untreated sewage to the Black Brook. (c) Loading further flow onto a works already exceeding its permitted volume increases the risk of consequential failures against quality parameters. The effect on the European site cannot be dismissed as "merely" volumetric.

4.4 **The only securing mechanism — a Grampian condition — is one that national policy says should not be imposed here.** Given that a mains connection is plainly feasible and that the right to make it cannot be refused on capacity grounds (Section 3), the only way to secure the upgrade before development proceeds would be a negative (Grampian) condition preventing commencement until the necessary capacity is provided. But current national policy — the Planning Practice Guidance on the use of planning conditions, carrying forward the position settled after *Merritt v Secretary of State for the Environment, Transport and the Regions* [2000] — states that such conditions *should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission*. The guidance is explicit that this includes the case where the responsible third party has confirmed it has no intention of carrying out the action. That is the position here: the undertaker has confirmed it has no programme to upgrade the WRC within the relevant period. The Council cannot, consistently with national policy, rely at application stage on the very condition that its plan-level HRA needs in order to reach a conclusion of no adverse effect.

4.5 **The plan-level / application-level disconnect.** The Council's HRA assesses the *Local Plan*, not any individual planning application. Yet the only mitigation by which the allocation could avoid an adverse effect — the Grampian condition — can be applied, if at all, only at

the application stage, by a future decision-maker. The plan-level HRA cannot itself impose that condition, cannot guarantee that it will be imposed (national policy indicates it should not be), and cannot guarantee that it will hold if it is. The HRA therefore relies, for its conclusion of no adverse effect, on a mitigation measure that the plan cannot secure and that policy directs against. On that basis the Appropriate Assessment cannot lawfully conclude that the allocation will not adversely affect the integrity of the European site, and the plan is not legally compliant.

4.6 **The "it can still be imposed" answer does not assist the Council.** It may be said, relying on *British Railways Board v Secretary of State for the Environment* [1994], that a negative condition is not unlawful merely because there is no reasonable prospect of fulfilment. That addresses only whether a condition *may lawfully be imposed*; it does not make such a condition the *certain and effective mitigation* the Habitats Regulations require, and it does not displace the *policy* position at paragraph 4.4 that such a condition should not be imposed where there are no prospects at all. A condition with no realistic prospect of discharge cannot give the Council certainty that the European site is protected. Where that certainty cannot be achieved, the correct and safest course is to exclude the site from the plan.

4.7 **The water quality mitigation proposed for Langham WRC in para 5.99 of the Council's Habitat Regulations Assessment is inappropriate and completely ineffective.** It states that:

"The WCS recommends that an 85 l/p/d PCC be imposed for the allocated sites in this catchment given the limited current capacity of the WRC and the likely delivery of the sites early in the Plan period."

To the extent that this strict PCC can be enforced (which is questionable), this will slow down the rate at which the current permit breach grows larger over time, but that is all. It cannot in any way reduce or eliminate the existing risk of environmental harm to the protected European site.

The policy wording also misrepresents the status of the WRC as having limited capacity, when in reality it has breached its volumetric permit limit in 9 of the last 12 years, including 2023, 2024 and 2025.

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5. The allocations are unsound

5.1 **Not effective, and not positively prepared (not deliverable for housing need).** The purpose of allocating sites is to demonstrate that the area's housing need is provided for. Sites can only count towards that need if it is deliverable. The Langham and Boxted allocations can lawfully and acceptably be built out only if the WRC capacity position is resolved first; there is no realistic prospect of that within the plan period; and so the sites cannot be relied upon to deliver the housing attributed to it. Allocations that can only come forward on the discharge of a precondition that is not in prospect does not provide for housing need — it gives the *appearance* of provision while delivering none. Counting it towards the requirement or the five-year supply inflates the apparent supply and masks a shortfall that the plan does not, in substance, meet.

5.2 **The mitigation the plan depends on is one that national policy directs against, and is in any event fragile.** The plan can only treat the sites as acceptable by assuming that a Grampian condition securing the WRC upgrade will be imposed, and discharged, at application stage. But current national policy — the Planning Practice Guidance on the use of planning conditions — states that such a condition should not be used where there are no prospects at all of the action being performed within the permission's time-limit, which, on the undertaker's confirmed position, is the situation here (Section 4.4). A plan that depends for its soundness on the future imposition of a condition that national policy says should not be imposed is not consistent with national policy. And even if such a condition were imposed, it would be vulnerable to challenge for failing the tests for planning conditions — in particular reasonableness — precisely because it is not likely ever to be discharged; that vulnerability is acute where mains sewers are immediately available, the developer has a statutory right to connect, and the condition would indefinitely prevent a development otherwise capable of being built and connected. The plan should not be found sound on the assumption that a condition which policy discourages, and which a developer has every incentive and a real prospect of defeating, will nonetheless hold at a future stage over which the plan has no control.

5.3 **Not justified.** A plan must represent an appropriate strategy when considered against the reasonable alternatives. Allocating sites whose foul drainage cannot be lawfully or acceptably resolved — in preference to alternative sites capable of being drained — is not an appropriate strategy. The evidence base does not demonstrate that the Council preferred these sites on a proper appraisal of deliverable alternatives; on the contrary, the drainage constraint is a fundamental and unresolved objection to the sites that the reasonable alternatives do not share.

5.4 **Not consistent with national policy.** The plan must enable sustainable development consistent with the NPPF. The Framework requires plans to make sufficient provision for, among other things, water and wastewater infrastructure [NPPF para 20(b)], and to have regard to the availability and capacity of infrastructure, both existing and proposed [NPPF para 129(c)]. It also requires that development be appropriate for its location having regard to the effects of pollution on the natural environment, including protected sites. Reliance on a Grampian condition contrary to the Planning Practice Guidance on conditions (Section 5.2) is a further inconsistency. An allocation premised on connection to a permit-breaching works discharging to a European site, with no programmed remedy, is inconsistent with each of these requirements.

5.5 **Deliverability is not demonstrated by the viability and infrastructure evidence (secondary point).** National guidance on viability requires plan makers to create realistic, deliverable policies, and envisages site-specific assessment of large sites that provide a significant proportion of planned supply (Planning Practice Guidance, Viability, Reference ID 10-002 and 10-005). The acceptability of the large Langham site depends on a WRC upgrade for which there is no funding, no programme and no securing mechanism. The Council's viability and infrastructure evidence does not demonstrate that the site can be brought forward on the only basis on which it could be acceptable; the necessary infrastructure is neither costed into a deliverable solution nor capable of being secured. This is a further reason the allocation is not shown to be effective. *(This point reinforces, but does not carry, the objection; the central case is the Habitats Regulations and deliverability points above.)*

5.6 **On-site treatment does not rescue the allocation's deliverability.** It may be said in response that the large Langham site does not depend on the WRC upgrade at all, because foul drainage could instead be provided by an on-site (non-mains) treatment system discharging independently of the WRC. That answer fails for three connected reasons. **First**, the Council's own draft policy forbids it: non-mains drainage is permitted only where a mains connection is "not feasible," and a mains connection here is unquestionably feasible (Section 6.4), so the on-site route never opens under the very policy the Council asks the Inspector to find sound. **Second**, it is not permittable: the Environment Agency will not normally grant an environmental permit for a private treatment system where a mains connection is feasible, and on-site treatment for a development of this scale in this location is extremely unlikely to be permitted (Section 6.2). **Third**, it is no escape from the Habitats Regulations: an on-site facility would introduce a new discharge to the same catchment (the Black Brook) and would itself require an Appropriate Assessment of its effects on the European site — an assessment the plan-level HRA has not carried out. The Council cannot have it both ways. If it relies on a mains connection, the allocation founders on the undeliverable WRC upgrade (Sections 4 and 5.1); if it relies on on-site treatment, the allocation founders on the Council's own policy, on the Environment Agency's permitting regime, and on an unassessed effect on a European site. There is no third path. The site is therefore not shown to be deliverable on any basis.

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6. The draft non-mains drainage policy is not a solution — it is the device by which the conflict is concealed

6.1 The policy wording for non-mains drainage [Policy NZ3 – Wastewater and Water Supply] reads:

"Developments are expected to follow the wastewater drainage hierarchy for discharge of wastewater, with presumption in favour of connection to the public sewer in the first instance. Proposed developments should only include non-mains drainage if it can be demonstrated that a mains connection is not feasible, financially or practically, with a priority given in all cases to utilise mains drainage."

6.2 The policy purports to keep open an on-site treatment "fallback." That fallback is illusory:

(a) The Environment Agency will not normally grant an environmental permit for a private sewage treatment system where the reason mains connection is said to be unattractive is the lack of capacity in the public sewer; its published guidance is explicit that capacity is not a basis for a private permit, and that the proper course is for the necessary network improvements to be agreed and put in place before occupation. On-site treatment for a development of this scale, in this location, is extremely unlikely to be permitted.

(b) Even if it were pursued, an on-site facility would introduce a new discharge to the same catchment (the Black Brook) and would itself require assessment for effects on the same European site. It is no escape from the Habitats Regulations and resolves nothing.

6.3 With the on-site fallback removed as a genuine option, the policy collapses back to a single instruction: prioritise connection to the mains sewer. Because the developer cannot be refused that connection on capacity grounds (Section 3), the practical effect of the policy is to

authorise connection to an over-capacity, permit-breaching network — the very outcome the Habitats Regulations forbid.

6.4 The proximity of the sewers makes the policy worse, not better. Because a mains connection here is unquestionably feasible — there are foul sewers in every surrounding road, and the distance and physical-barrier tests are satisfied without argument — the policy's own logic *mandates* a mains connection for this site. The non-mains "fallback" can never legitimately be triggered, because the gateway to it (a mains connection being "not feasible") will never be reached. Applied honestly to this site, the policy therefore compels the single outcome that is unlawful: connection to a permit-breaching works discharging to a European site.

6.5 The "financially" limb of the feasibility test neither changes this nor belongs in the policy. It cannot render an obviously feasible connection "infeasible." Its only apparent function is to imply that the financial cost of upgrading the undertaker's infrastructure might bear on feasibility — but (a) there is at present no legal mechanism by which a developer could be required to fund, or could otherwise secure, the necessary upgrade to the WRC within the plan period, so the implication leads nowhere; and (b) importing cost into a test that should turn on distance and physical barriers simply widens the Council's discretion at the very point where the law allows it none.

6.6 The retreat from the Regulation 18 position is stark. At Regulation 18 the Council's own draft required that the developer:

"demonstrate they have confirmed with Anglian Water Services that treatment capacity at the Water Recycling Centre (WRC) is available to serve the development at the point of anticipated connection and where appropriate phasing triggers to support development to be agreed";

and the PP37 site-specific policy required the developer to:

"Demonstrate adequate capacity for managing wastewater including proposed phasing requirements or alternative solutions to the satisfaction of the Council and Anglian Water".

Those provisions placed the burden where it belongs — on positively demonstrating *available capacity* before development could proceed. The Regulation 19 draft abandons that requirement, replacing a positive obligation to demonstrate capacity with a bare "presumption in favour of connection" and a feasibility-gated on-site fallback that, for the large Langham site, cannot lawfully be reached. No reasoned justification is offered for removing the capacity requirement, and none is apparent on the evidence: the underlying constraint has not changed. The change is a material weakening of the very protection the Council itself previously considered necessary.

6.7 The result is that the plan does not grapple with the drainage constraint; it allocates the site and passes the unresolved conflict downstream — to the Environment Agency, which will be pressed to permit what it should not, and to the sewerage undertaker, which cannot lawfully refuse to connect. That is not a sound approach to plan-making. It is the allocation itself that establishes the principle that the development is acceptable; retaining it, in the knowledge that the constraint cannot be resolved within the plan period, is evidence that the Council does not treat sewerage capacity as going to the acceptability of the site at all.

6.8 This unsound trajectory is already moving forwards in respect of the proposed PP26 Boxted allocation of 150 dwellings. An outline planning application was submitted on 27th July 2026, in which the applicant asserts their absolute legal right to connect to the adjacent mains sewer, despite receiving this formal written advice from Anglian Water:

"Anglian Water has determined that the site is unsustainable due to the associated environmental risk and the increased discharge rates, which could lead to a deterioration in water quality and an unacceptable risk of breaching environmental legislation at Langham (Essex) WRC. Considering these concerns, we recommend that planning permission be refused on the grounds of insufficient infrastructure capacity and to prevent environmental harm."

"Anglian Water collaborates with local planning authorities across the region to identify sustainable locations for future development, taking into account infrastructure capacity as part of the development plan processes. We also work closely with our regulators to identify opportunities for future growth investment. At present, no funding has been allocated at this Water Recycling Centre (WRC) for AMP8 (2025-2030). However, we may seek to promote investment through our future business plans."

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7. Modifications sought

7.1 **Primary modification:** delete the Langham and Boxted allocations (Policies PP37, PP38 and PP26) and reallocate the corresponding housing requirement to deliverable sites whose foul drainage can be resolved within the plan period. This is the only modification that makes the plan both legally compliant and sound, because the constraint cannot be resolved within the plan period by any mechanism available to the Council.

7.2 **Alternative modifications,** if the allocation is retained:

(a) Reinstate, in strengthened form, the Regulation 18 requirement. The non-mains drainage policy (and the site-specific policy) should expressly provide that development is unacceptable unless it is demonstrated, to the satisfaction of the Council and Anglian Water, that treatment capacity at the receiving WRC is available — or firmly programmed for delivery within the plan period — to serve the development at the point of connection, together with agreed phasing triggers. **Capacity must be an express requirement of the test, not an assumption.** As drafted, neither the "feasibility" test nor the "presumption in favour of connection" requires capacity to exist at all; that is the central defect, and adding an express capacity requirement is what makes the policy tighter than both the previous Regulation 18 wording and the current Regulation 19 wording.

(b) Delete "financially" from the feasibility test. It cannot make a plainly feasible connection infeasible, it implies a developer-funded WRC upgrade for which no legal mechanism currently exists, and it serves only to widen the Council's discretion where the law allows none (Section 6.5).

(c) Make explicit that, for any site where mains connection is feasible but capacity is absent and not programmed, and where on-site treatment is not permittable, the development is not

acceptable and is not to be permitted. This closes the loop the current drafting leaves open, under which an unlawful mains connection is the policy's default outcome.

References

- Water Industry Act 1991, s.106 (right to connect to public sewer).
- *Barratt Homes Ltd v Dŵr Cymru Cyfyngedig (Welsh Water)* [2009] UKSC 13.
- *British Railways Board v Secretary of State for the Environment* [1994] (a negative condition is not unlawful merely because there is no reasonable prospect of fulfilment).
- *Merritt v Secretary of State for the Environment, Transport and the Regions* [2000] (negative conditions should not be imposed where there are no prospects at all of the action being performed).
- Conservation of Habitats and Species Regulations 2017, reg. 105 (assessment of land use plans).
- *Waddenzee* (Case C-127/02) (standard of certainty in appropriate assessment); see also *People Over Wind* (Case C-323/17) (mitigation may be considered only at the appropriate assessment stage).
- MHCLG, Planning Practice Guidance, "Water supply, wastewater and water quality": https://www.gov.uk/guidance/water-supply-wastewater-and-water-quality
- Environment Agency, "Discharges to surface water and groundwater: environmental permits" (capacity not a basis for a private-treatment permit; network improvements to precede occupation): https://www.gov.uk/guidance/discharges-to-surface-water-and-groundwater-environmental-permits
- MHCLG, Planning Practice Guidance, "Use of planning conditions" (Grampian conditions "should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission"): https://www.gov.uk/guidance/use-of-planning-conditions
- MHCLG, Planning Practice Guidance, "Viability" (realistic, deliverable policies; viability of strategic sites — Reference ID 10-002, 10-005): https://www.gov.uk/guidance/viability
- National Planning Policy Framework (December 2024) — tests of soundness; infrastructure provision and capacity policies [insert paragraph numbers applicable to the version under which the plan is examined].
- Colchester City Council Regulation 19 Local Plan Habitat Regulations Assessment Issue 2 – Final Report 10/8/26
- Colchester City Council Colchester Water Cycle Study Revision P05 Final 13/08/26
- Colchester City Council Colchester Infrastructure Audit and Delivery Plan Stage 4 Report V3 Final Report 17/8/26
- Colchester City Council Sustainability Appraisal Report (Regulation 19) Version 2 Final Report 17/8/26