

# EnTrade Solent Nutrient Market Pilot

Report of the Planning Portfolio Holder

## Recommended:

**That authority be delegated to the Head of Planning and Building, in consultation with the Heads of Legal and Democratic Services and Finance and Revenues, and the Portfolio Holders for Planning and Finance and Resources, to join the EnTrade Solent Nutrient Market Pilot, and any subsequent extension of the scheme or new Entrade trading platform scheme, subject to legal arrangements which are acceptable to the Council for the delivery and operation of the scheme(s).**

### SUMMARY:

- Members will be familiar with the issue surrounding the nitrogen impact of new residential development upon the water quality of the nationally protected sites in the Solent area which initially seriously constrained the supply of housing in Test Valley and other South Hampshire authority areas.
- In response to the problem the concept of nutrient neutrality was developed whereby the impact of development can be mitigated by schemes which remove nutrients from the environment and so produce credits that can be acquired by developers. These credits effectively off-set the impact of residential development and this enables planning permissions to be given and new homes built and occupied.
- The Council has acquired credits which have been made available primarily to SMEs to support housing delivery across the Borough whilst other developers have identified their own mitigation to enable permission to be given and development built out.
- EnTrade is a project supported by DEFRA to develop a strategic approach to mitigation based upon a nutrient neutrality approach via the introduction of a pilot trading platform. In simple terms the concept is that they will look to match the demand identified for credits by developers with the supply of nitrogen and potentially other credits across the wider Solent area by bringing forward new mitigation schemes.

## 1 Introduction

- 1.1 The focus of this report is to consider the merits of the Council becoming a member of the EnTrade Solent Nutrient Market Pilot (the recommended option).

## 2 Background

- 2.1 The issue of the impact of many forms of new residential development upon the water quality of the nationally protected sites in the Solent area is well documented and has been a consideration in planning decision making for over three years. Initially the need to provide suitable means of mitigation seriously constrained the supply of housing in Test Valley and other South Hampshire authority areas.
- 2.2 This is because, under the requirements of the Habitat Regulations, planning permission could only be granted if the Council was satisfied that it would not have an adverse impact on the environment in terms of nutrients contained in waste water generated by the new development.
- 2.3 In response to the problem, the concept of nutrient neutrality was developed whereby the impact of development can be mitigated by schemes which remove nutrients from the environment and so produce credits that can be acquired by developers. These credits effectively off-set the impact of residential development and this enables planning permissions to be given and new homes built and occupied.
- 2.4 The nutrient credits market is still relatively new but there are now more schemes available which allow developers to acquire credits to mitigate the impact of their housing schemes. In order to support SME developers the Council purchased two tranches of credits from a landowner near Romsey (500 in total). These have all been reserved or allocated and members have recently agreed at Council on 23<sup>rd</sup> February 2023 to acquire additional credits, as required, in order to continue to help facilitate development across the Borough.
- 2.5 Government has recognised the difficulties faced by developers and local planning authorities in the Solent area relating to the need for new development to mitigate its impact on the water quality of nationally protected sites. In order to address the issue strategically DEFRA is sponsoring a new enterprise called EnTrade to develop an approach to mitigation across the whole area via the introduction of a pilot trading platform. In order to deliver the project DEFRA has been working closely with Natural England as well as the local planning authorities (LPAs) that make up the Partnership for South Hampshire (PfSH), the Department for Levelling Up, Housing and Communities, the Environment Agency and the Forestry Commission.
- 2.6 In simple terms the concept is that they will look to match the demand for developer credits with supply by facilitating the delivery of new mitigation schemes thereby boosting the number of credits in the market. Developers will then be able to acquire credits from the platform which will mean that planning permission can continue to be granted, and new residential development built and occupied, in the longer term. Further information is provided on EnTrade's website which can be viewed at: [Solent Nutrient Market Pilot](#)

### **3 Corporate Objectives and Priorities**

- 3.1 Ensuring that the Council is able to grant planning permission for new residential development across the Borough aligns with the Corporate Plan in terms of regenerating of our town centres, supporting rural communities and helping to ensure there is a supply of new homes to meet local needs whilst protecting the local environment. Achieving nutrient neutrality also underpins the Council's ability to deliver the amount new housing planned for in accordance with our adopted Local Plan 2011-2029.

### **4 Consultations/Communications**

- 4.1 The Council itself has not undertaken consultation in relation to the development of the EnTrade pilot. However, EnTrade has been liaising with councils across the wider Solent area affected by the nitrogen issue, developers and landowners that may potentially be interested in bringing forward mitigation schemes to the market which would increase the supply of nutrient and possibly other credits.

### **5 Options**

- 5.1 Option 1 – Join the EnTrade Solent Nutrient Market Pilot subject to being able to agree legal arrangements which are acceptable to the Council for the delivery and operation thereafter of the scheme (recommended)
- 5.2 Option 2 – Do not join the EnTrade Solent Nutrient Market Pilot.

### **6 Option Appraisal**

- 6.1 **Option 1** - Given the concerns regarding the impact of residential development on nationally protected sites in the Solent area, and associated constraint on housing supply, DEFRA is the sponsor for developing a nutrients trading platform pilot which is being delivered by a company called EnTrade. .
- 6.2 Under this model the development and administration of the market pilot would be carried out by Entrade directly, at least initially, but would need to be underpinned by a framework of legal agreements involving a number of parties, including the Council, to ensure management of the credits, monitoring, and enforcement as summarised below:
- S106 agreements between the Council and developers to ensure the required mitigation is secured as happens currently.
  - Agreement between the Council and Market Operator (MO- EnTrade) for the market operation and monitoring in the Council's area.
  - Contract between the developer and MO for the supply of nutrient mitigation and/or biodiversity credits/units.
  - Contract between the MO and mitigation scheme landowner for the delivery of nature-based project to required standard.

- Legal agreement between the Council and mitigation landowner to ensure delivery of the mitigation in perpetuity (usually at least 80 years) as occurs now for schemes the Council recognises as providing suitable mitigation (credits).
- 6.3 The potential advantage of the market pilot is that it takes a sub-regional strategic approach to the issue and the MO is well positioned to assess and match supply and demand across the whole affected area through the nutrient neutrality/credits system.
- 6.4 EnTrade would identify mitigation schemes proposed by landowners which provide credits and would be responsible for managing their allocation and monitoring delivery under the pilot at least initially.
- 6.5 They are also looking at “layering” credits so mitigation would be available for the impact of phosphorous, nitrogen as well as potentially achieving Bio Diversity Net Gain.
- 6.6 Monitoring would comprise two elements:
- Compliance monitoring to ensure the landowners deliver the mitigation scheme. This will typically consist of; annual compliance returns from individual landowners, annual compliance report to each Council (Local Planning Authority - LPAs), site visits and remote monitoring.
  - Performance monitoring which ensures that the mitigation scheme provides the quantum of mitigation envisaged at the outset. Performance Monitoring will provide the relevant LPA(s) with assurance that the methodology for accrediting the nutrient mitigation from each type of Nature-based Project is not overestimating the amount of mitigation actually being generated by projects of that type.
- 6.7 EnTrade are also advocating market balancing. Given the 80 plus year timeframe for the mitigation projects, there is a need to manage the risk of potential events (anticipated and unforeseen) that could impact on the delivery of the projects. These risks are addressed through Market Balancing which in essence is a pool of reserved credits to compensate for any shortfalls that arise. These Credit Reserves will be held by EnTrade in the relevant LPA’s name, to be used for market balancing in the specific circumstances set out in the market agreement
- 6.8 In terms of funding the pilot scheme EnTrade has indicated that under the market agreement, prior to each Market Round, they would submit a specific costs proposal to each LPA for the monitoring required for the mitigation projects being offered by landowners within that council’s area.
- 6.9 The cost of monitoring will be incorporated into the payment required to be made by a developer for the credits they require. The funding for monitoring will be deducted from the project payments to mitigation landowners. The exact arrangements are yet to be agreed.

- 6.10 Overall therefore there is merit in developing a strategic market pilot in that it may well stimulate interest from potential mitigation landowners, that otherwise would not occur, and boost the supply of credits which can then be acquired by developers, without direct cost to the Council, thereby supporting housing supply.
- 6.11 The scheme would be operated and managed by EnTrade at least initially (5 years – it is not clear exactly what would happen if En-Trade withdraws but the operation would probably pass to the LPAs). The Council would have step-in rights for enforcement should any mitigation projects fail to deliver their credits as is the case now.
- 6.12 Furthermore, whilst the development of the pilot scheme is welcomed in principle, the exact timing of when the platform will go live, and how many credits it will be able to provide to support development in the Borough, is not yet clear. This is why the Council has resolved to acquire more credits itself which can then be purchased by developers to mitigate the impact of their developments. Initially, the intention is to buy 100 credits with the authority to acquire a further 400 should the need arise. If the EnTrade scheme is successful it may make it unnecessary for the Council to continue this practice in future.
- 6.13 **Option 2** – The Council could decide not to participate in the trading pilot scheme. However, it is considered that would constitute a missed opportunity as the Council would not be part of strategic solution supported by Government designed to increase the supply of credits to help achieve nutrient neutrality, and possibly to help meet BNG requirements for residential development, across the Borough in the longer term. Whilst some of the details regarding exactly how the scheme would operate have yet to be finalised the principles established by EnTrade for the market pilot are considered to be positive. Hence, subject to agreeing the details of the scheme's delivery, option 1 is recommended.

## **7 Risk Management**

- 7.1 An evaluation of the risks relating to this decision indicate that the controls in place mean that no significant risks have been identified at this time. In specific terms, the Council will only join the pilot if acceptable conditions can be agreed with EnTrade, as set out in the corresponding legal agreement between the parties.

## **8 Resource Implications**

- 8.1 It is understood that most of the costs associated with the operation of the scheme would be met by other members of the trading platform and not the Council. However, if it proved necessary for the Council to step in with enforcement powers because a landowner was not delivering the mitigation agreed, there would be resource implications for the authority. Similarly, if EnTrade ceased to manage the pilot LPAs would need to take over this function. This is considered to be a low risk and would most likely also be the case for mitigation schemes accepted by the Council outside the EnTrade pilot. Again, the mechanics of how this would work in practice would need to be agreed under the proposed delegation before joining the scheme.

## **9 Legal Implications**

- 9.1 There are no legal implications other than agreeing the details of the agreement between the Council and EnTrade which will be required to join the scheme.

## **10 Equality Issues**

- 10.1 Delegating authority as per the recommendation in this report would not result in any equality or inclusion issues.

## **11 Other Issues**

- 11.1 Community Safety - There are no implications for Community Safety.
- 11.2 Environmental Health Issues - There are no implications for Environmental Health and Protection.
- 11.3 Sustainability and Addressing a Changing Climate – There are positive implications in meeting our statutory duties, in line with the requirements of the Habitat Regulations, and preventing deterioration in the quality of the water environment of nationally protected sites in the Solent area whilst enabling the continuing supply of housing in the longer term.
- 11.4 Property Issues – None.
- 11.5 Wards/Communities Affected – All wards and communities are affected by the requirement that residential development can only be permitted, built and occupied if it can be demonstrated that the waste water it generated would not adversely affect nationally protected sites in the Solent area.

## **12 Conclusion**

- 12.1 In light of the benefits outlined above at 6.1 – 6.12 it recommended that the Council joins the EnTrade trading platform scheme, provided that appropriate terms and conditions with EnTrade and other interested parties can be agreed, with the final decision therefore being delegated to the Head of Planning and Building in consultation with the Head Finance and Revenues, Head of Legal and Democratic Services and the Portfolio Holders for Planning and Finance. The recommendation set out above would also provide the same delegation arrangement for the Council to participate in any extension to the trading platform scheme, or new scheme by EnTrade, which covers a broader range of environmental mitigation for new development such as Biodiversity Net Gain.

Background Papers (Local Government Act 1972 Section 100D)

None.

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	None	File Ref:	N/A
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(Portfolio: Planning) Councillor P Bundy

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Report to:	Cabinet	Date:	12 April 2023
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