

Solent Local Nutrient Mitigation Fund - Inter Authority Agreement

Report of the Planning Portfolio Holder

Recommended:

1. That the Head of Planning and Building, in consultation with the Planning Portfolio Holder, be authorised to sign the Solent Local Nutrient Mitigation Fund Projects Inter Authority Agreement ('the Agreement').
2. That the Head of Planning and Building in consultation with the Head of Finance and Revenues and Portfolio Holders for Planning and Finance and Resources be authorised:
 - a. to confirm the Council as a Benefiting or Host Authority for projects delivered through the Inter Authority Agreement, and
 - b. in consultation with the Head of Property and Asset Management in addition to those consultees listed at 2 to take all steps necessary to effect the purchase of land to comprise a mitigation project as set out in the Agreement.

SUMMARY:

- To consider the Council entering into a legal agreement that establishes the mechanism from which nutrient mitigation projects can be delivered, via the Solent Local Nutrient Mitigation Fund, to support residential development.
- The recommended option is that the Council agrees to enter the agreement.

1 Introduction

- 1.1 Nutrient Neutrality impacts have been limiting the opportunities for new housing growth and effective strategic planning in the Borough for several years.
- 1.2 The purpose of this report is to seek approval for the Council to enter into a legal agreement that establishes the mechanism from which mitigation projects can be delivered via the Solent Local Nutrient Mitigation Fund.

2 Background

- 2.1 In May 2022, Partnership for South Hampshire (PfSH), via Fareham Borough Council, provided an expression of interest to government for funding to provide local authority led nutrient mitigation solutions across the Solent. The expression of interest was submitted for the funding to help ensure a

consistent 5-year supply of nutrient mitigation across the impacted areas of the Solent. The expression of interest provided an indicative capital programme of mitigation schemes. All authorities impacted by nutrient neutrality across the Solent, with the exception of the South Downs National Park Authority, supported both the expression of interest and proposed capital programme of mitigation options.

- 2.2 Government funding was awarded in January 2024 to facilitate the delivery of nutrient mitigation across the Solent sub-region. This funding is referred to as the Local Nutrient Mitigation Fund (LNMF). Fareham Borough Council was identified as the lead authority in respect to the fund and, as such, were required to sign a Memorandum of Understanding associated with the requirements of the funding.
- 2.3 The Memorandum of Understanding for the LNMF identified that all funding must be committed within the 2024/2025 financial year. In order to meet the requirements of the funding, Fareham Borough Council, as lead authority, have started to deploy the fund on behalf of impacted authorities.
- 2.4 In order to effectively deploy the fund across all catchments, and to form a Solent Mitigation Partnership that brings together all impacted authorities to deliver a strategic local authority led solution, an Inter Authority Agreement (IAA) is proposed. Governance for the project is provided by PfSH including which mitigation sites are brought forward. The lead authority will be responsible for managing the sale of nutrient credits to developers.

3 Corporate Objectives and Priorities

- 3.1 The Council's Corporate Plan 2023-27 sets out the five strategic priorities based on the results of community engagement. The Growth priority relates to meeting the needs of our communities including through the delivery of homes. The IAA would provide a mechanism to enable planning permissions for new homes to be granted by increasing options for developers to acquire nutrient credits to ensure that their schemes do not adversely affect protected sites in the Solent area. This would be achieved by the delivering new mitigation schemes that would benefit sites in Test Valley.

4 Consultations/Communications

- 4.1 There has been no public consultation on the IAA, however, the PfSH officers continue to work with the development sector and statutory consultees.

5 Options

- 5.1 The option to consider is whether to sign the IAA (option 1) or not (option 2).

6 Option Appraisal

Option 1

- 6.1 The Council, as Local Planning Authority, needs to ensure that sufficient mitigation is available to meet planned growth as set out in our Local Plan.

Without sufficient mitigation, planned development may not be able to proceed and, in this situation, development may occur where developers can demonstrate on-site mitigation. These sites may be in locations where land has not been allocated for development by the Council and that are considered inappropriate for development.

- 6.2 Although there is a private supply of mitigation schemes across the majority of impacted areas in the Solent, regular reporting of the relative supply of mitigation has shown that the private market is unable to supply a sufficient amount of mitigation to maintain a 5-year supply. Consequently, it is appropriate to identify and support schemes which are able to deliver additional nutrient mitigation to enable local planning authorities to grant planning permissions into the future.
- 6.3 Additionally, reliance on the private market requires substantial work on cross-boundary legal agreements in order to ensure compliance with the Habitat Regulations, as Competent Authorities, in decision making (when planning permission is given).
- 6.4 The IAA aims to ensure a 5-year supply of nutrient mitigation, by working alongside the private market, to provide a further supply of mitigation for developers. It is also proposed that projects delivered through the IAA can provide multiple benefits, including potentially the provision of BNG units, and removing the need for cross-boundary legal agreements for projects delivered through the IAA.
- 6.5 By becoming a party to the IAA, the Council should have the opportunity, over time, of a consistent 5-year supply of mitigation that would benefit housing development within the Borough as well as the wider Solent area. Additionally, local planning authority decision makers can have the confidence that schemes meet the requirements of the Habitat Regulation regarding certainty of delivery without the additional staff resource needed to arrange cross boundary legal agreements for each mitigation project that comes forward.

Option 2

- 6.6 The alternative option is that the Council could decline to enter into the IAA with the other authorities at this point (it may be possible for authorities to join at later date). Due to the cross-boundary nature of many environmental solutions, it is intended that the IAA ensures that the projects delivered within the LNMF meet the requirements of the Habitat Regulations for all signatories of the IAA. If the Council did not sign the IAA within the required timescales then no credits created from the LNMF funded mitigation schemes, or future investment generated by the sales of these credits, will be able to be sold in those local authority areas not covered by IAA.
- 6.7 The consequence would be that developers of sites within the Borough would not be able to benefit directly from the mitigation schemes funded through the mitigation fund. This could have an impact on housing delivery within the Borough as it would reduce the options for developers to acquire nutrient credits. The Council would continue to signpost developers to third party mitigation schemes; however, these opportunities are limited. In order to

position the Council, so that developers in the Borough can benefit from mitigation schemes at the earliest opportunity, this option is not recommended and it is recommended that we proceed to sign IAA. In the past the Council has also invested in acquiring nutrient credits itself to support development in the Borough which proved successful in helping to deliver new residential development. Initiatives funded by the LNMF can bring more credits to the market and should mean that it would be unnecessary in future for the Council to take this type of action.

- 6.8 Signature to the Agreement limits the Council's pricing of Credits under any new nitrogen or phosphorous mitigation scheme developed outside of the Agreement. The Council agrees not to compete with or present an economic advantage over the pricing of credits. This will be taken into account in deciding whether to sign the agreement.

7 Risk Management

- 7.1 All costs associated at the outset of a mitigation scheme are funded by the LF or income from credits sales. This includes land acquisition, works to provide the mitigation and management costs. In addition, in order to protect against any financial risk arising from projects deployed through the LNMF the IAA confirms the use of a sinking fund to be ringfenced for that purpose. The sinking fund is designed to be equal to the potential liability arising from each site, though the risk exists that liability may exceed the sinking fund value. As each new project comes forward the sinking fund will be increased and agreed as part of the business case agreement process. Should the sinking fund not be sufficient to meet any future liability then the IAA identifies that any remaining grant funding, or any available income from credit sales, will be first used to satisfy that liability. In the unlikely event of any additional liability, in excess of the sinking fund and available funds, liability will be shared equally among those who have signed the agreement and are listed as receiving a benefit for the project from which the liability arises. In the event a party leaves the agreement they continue to be liable for any projects for which they are listed as a benefiting authority.
- 7.2 Although potential liability is un-capped it is considered that there is sufficient ability to assess any liability on a project-by-project basis as they are presented. Should the Council feel that a project, and proposed applicable sinking fund, exposes the Council to undue financial risk, this can be avoided by determining not to become a Benefiting Party for that project. It is proposed that the determination as to whether the Council becomes a Benefiting Party is delegated as per the recommendation. If the Council signs the IAA but does not have any scheme which benefit development in Test Valley, there would be no liability.
- 7.3 Therefore, the first mitigation scheme coming forward under the agreement would not benefit development in Test Valley so, this being the case, signing the IAA would not expose the Council to any liability. As explained above deciding whether to become a Benefiting Party is a decision the Council can take on a scheme-by-scheme basis, taking into account matters like the degree and nature of the risk, and whether there is a current need for additional mitigation to support development in the Borough.

- 7.4 It is possible that mitigation schemes will be brought forward under the IAA within the Borough, and these would help support development in Test Valley, and further afield for development in the relevant river catchments as is the case with existing schemes. In this scenario Test Valley would work with the Lead Authority (Fareham Borough Council) and would be the “Host Authority” responsible for delivery and subsequent management of the scheme under the IAA. However, the Council would have discretion, in terms of deciding whether to agree to deliver the project and would not be required to do so under the agreement having considered the nature of the mitigation scheme proposed and any associated risks. As set out above the first schemes to be provided under the IAA are not projects which would benefit development in Test Valley so signing the agreement does not expose the Council to any risk at this point.

8 Resource Implications

- 8.1 The LNMF has been led by PfSH officers and this will continue. Where the Council may be the Host Authority for the project, with the project being delivered in their administrative area, there is the potential for Council Officer time to be required across multiple departments to facilitate delivery of the projects. The IAA identifies that the Host Authority may provide a number of services, with these services funded through the LNMF. As such any staffing implications of the Agreement would be cost neutral to the Council. The extent of the proposed services required for a particular scheme would be taken into account as part of the risk assessment in deciding whether to become a host Authority in relation to a scheme under the agreement.

9 Legal Implications

- 9.1 The proposed approach would help the Council to satisfy its obligations through the Habitat Regulations in determining planning applications and with regard to the Local Plan (adopted and emerging).

10 Equality Issues

- 10.1 No equality, diversity or inclusion issues have been identified in the production of this report.

11 Other Issues

- 11.1 Community Safety - none
- 11.2 Environmental Health Issues – none
- 11.3 Sustainability and Addressing a Changing Climate
- 11.3.1 The delivery of mitigation for nitrates will reduce the impact on the Solent Special Protection Areas.
- 11.4 Property Issues – none
- 11.5 Wards/Communities Affected – the proposed IAA would benefit those areas that fall within the catchment of the River Test, Itchen and Blackwater.

12 Conclusion

- 12.1 Nutrient Neutrality impacts have impacted on housing development rates for several years. This report recommends that the Council enter into the legal agreement that establishes the mechanism from which mitigation projects can be delivered via the Solent Local Nutrient Mitigation Fund.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
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
(Portfolio: Planning) Councillor P Bundy			
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Report to:	Cabinet	Date:	20 November 2024