



**Title of meeting:** Cabinet

**Date of meeting:** 29 October 2024

**Subject:** Inter-Authority Agreement for Local Nutrient Mitigation Fund

**Report by:** Ian Maguire - Assistant Director for Planning and Economic Growth

**Cabinet Member:** Councillor Hugh Mason, Planning Policy & City Development

**Wards affected:** All

**Key decision:** Yes

**Full Council decision:** No

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**1. Purpose of report**

- 1.1 To authorise entering into an inter-authority agreement to facilitate the delivery of nutrient mitigation across the Solent sub-region utilising the Local Nutrient Mitigation Fund ('LNMF').

**2. Recommendations**

That the Cabinet:

- 2.1 AGREES that authority is delegated to the Assistant Director of Planning and Economic Growth to authorise the sealing of the proposed Inter Authority Agreement, including any minor amendments.
- 2.2 AGREES that authority is delegated to the Assistant Director of Planning and Economic Growth to agree the Council as a Benefiting Authority for projects delivered through the Inter Authority Agreement in consultation with the Council's S151 Officer and Portfolio Holder for Planning Policy and City Development.

**3. Background**

- 3.1 Nutrient Neutrality impacts Portsmouth by limiting the opportunities for new housing growth and effective strategic planning for growth more widely. The impact of nutrient neutrality on planned growth across the Solent sub-region has been reported on regularly through the Partnership for South Hampshire.
- 3.2 In May 2023 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 provided an indicative capital



programme of mitigation schemes. 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. 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.

- 3.3 Funding was awarded from MHCLG 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.
- 3.4 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

Proposed Capital Programme			
Projects	Scope	Total LNMF Budget Allocation	Catchment(s)
Water Efficiency (Council Led)	Design water efficiency measures for council owned housing stock and social tenanted property for the purposes of nutrient reduction. Commission local authorities to implement new measures and collate data for reporting mitigation of water resource savings and lower water bills to residents without the need to access the private market.	£540,000	East Hampshire, Test and Itchen, New Forest Rivers
Water Efficiency (Registered Providers)	Design water efficiency measures for affordable stock managed by registered housing providers for the purposes of nutrient reduction. Commission registered housing providers to implement new measures and collate data for reporting mitigation of water resource savings and lower water bills to residents without the need to access the private market.	£360,000	East Hampshire, Test and Itchen, Arun (Western Streams)
Upgrades to Council Owned Sewerage Infrastructure	The identification of authority owned Sewerage Treatment Works (P+P and septic tank) which are suitable for upgrades to enable reductions in Nitrogen and Phosphorus into waterways and improves discharge point to Controlled Waters. Lead design planning and obtain Authority agreement to proceed with upgrade and manage oversight of the upgrade.	£900,000	Test and Itchen, Itchen (P)
Wetland Delivery	Using collated evidence on the deliverability of different wetlands to proposed several schemes where land is in control of an LPA. Proposed full feasibility on projects and obtain agreement on most suitable option(s). Setup mechanism to implement delivery of preferred option.	£1,200,000	Test and Itchen
Reduction of Intensive Agriculture	Strategy predicated on all sites providing, in addition to nutrient mitigation, additional benefits such as public access, BNG, and national and local policy objectives. Where possible sites should also aim to deliver further benefits, such as providing mitigation for recreational disturbance and assisting in water resource management. Initial projects should be focused on the Test and Itchen and East Hampshire catchments	£6,560,000	All
Institutional Framework	Develop a long-term delivery vehicle, that address state aid and public v's private classification issues, to manage and provide a local authority led nutrient credit offer by creating and maintaining mitigation schemes.	£40,000	All
<b>TOTAL</b>		<b>£9,600,000</b>	

Figure 1 - Proposed LNMF Capital Programme



3.5 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.

#### **4. Reasons for recommendations**

4.1 The Council as Local Planning Authority need to ensure that sufficient mitigation is available to meet planned growth. Without sufficient mitigation planned development may not be able to proceed, and while the Council has adopted an interim mitigation strategy for nutrient neutrality (updated in June 2022), the ability of this strategy to achieve neutrality is limited by its scale. Additional sources of 'credits' to achieve neutrality are therefore beneficial.

4.2 Although there is a private supply of mitigation across the majority of impacted areas across 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 within the market across the Solent sub-region.

4.3 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.

4.4 The IAA aims to create an ongoing framework to provide mitigation in the sub-region and to ensure a 5-year supply of mitigation by working alongside the private market to provide a supply of mitigation for developers for those authorities that do not yet have their own mitigation strategies. It is also proposed that projects delivered through the IAA deliver multiple benefits, including the provision of BNG units and removing the need for cross-boundary legal agreements for projects delivered through the IAA.

4.5 By becoming a party to the IAA, the Council will have the benefit, over time, of an additional supply of mitigation in their local authority area to facilitate planned sustainable growth.

#### Inter Authority Agreement

4.6 The IAA (Appendix A) has been drafted by Southampton Legal Partnership. The agreement has been reviewed by all 17 of the authorities impacted by nutrient neutrality across the Solent. The review process culminated in a number of multi-authority round-tables in September 2024 to further review and refine the agreement.

4.7 At the 30th September PfSH Joint Committee meeting the following recommendations were agreed.



- a. NOTES the update on projects within the LNMF capital programme;
- b. AGREES the principles of the Inter Authority Agreement and supports their individual authorities to enter into the agreement as appropriate;
- c. AGREES the sales approach, including sales price and approach to allocation of credits;
- d. AGREES that parties who are not members of the Partnership for South Hampshire, but who sign the Inter Authority Agreement, will be invited to Joint Committee to debate items related to the deployment of the LNMF capital programme;
- e. AGREES that parties who are members of the Partnership for South Hampshire, but who do not sign the Inter Authority Agreement, will not be able to debate items related to the deployment of the LNMF capital programme; and
- f. AGREES that Hampshire County Council, Portsmouth City Council and Southampton City Council would have no right of veto for items relating to the LNMF capital programme.

#### 4.8 There are 5 main principles of the IAA:

- Shared benefits – The deployment of projects through the LNMF is designed to facilitate development in multiple authorities with the aim of providing a robust and sustainable supply of mitigation across the Solent area. The IAA identifies the PfSH Joint Committee as the body responsible for confirming delivery of new projects and the body responsible for agreement of the planning authority areas benefiting from each project.
- Monitoring functions – within the agreement it details the process for ensuring that the mitigation schemes meet the requirements to provide nutrient neutrality over the defined period (usually 100+ years). It creates the role of Monitoring Authority which will carry out this function. As such, the IAA seeks to remove the need for additional legal agreements to deal with cross-boundary enforcement requirements.
- Working together – Due to the cross-boundary nature of many environmental services, 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.
- Risk management – 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, and in the case of the purchase of land at Stubbington is £1,377,000. 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 sink 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 ("the benefiting parties"). 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.

- Sales process – The IAA identifies the PfSH Joint Committee as the body responsible for agreeing the sales price and allocation of credits. This is to allow easier review and agreement of these elements as the market continues to evolve. Local authority signatories outside of PfSH will be invited to sit at the relevant Joint Committee items.

4.9 As the nutrient neutrality function expands its remit by adding new schemes, as well as rolling out the delivery and sale of BNG units, the IAA will need to be reviewed periodically. New schemes will be added to a Schedule of the agreement and authorities and organisations not already a signatory can be added to the agreement through a variation process.

## **5. Integrated impact assessment**

5.1 Not Required

## **6. Legal implications**

6.1 The legislative and policy background to the proposed IAA is described in the body of the report.

6.2 The proposed IAA will provide a framework for a collaborative relationship between the participating authorities for the delivery of LNMF projects which will support those authorities in fulfilling their roles and duties as competent authorities under the Conservation of Habitats and Species Regulations 2017 (the "Habitat Regulations").

6.3 The proposed IAA establishes arrangements for the development, management and oversight of projects supported by the LNMF and aims to assign and manage commercial and financial risks in a way which is equitable for all parties to the Agreement.

## **7. Director of Finance's comments**

7.1 As projects delivered through the IAA are for the benefit of all authorities, and must be maintained for at least a 100-year period, there is a potential financial liability for authorities confirmed within the agreement.



- 7.2 The IAA confirms that only authorities identified by the parties as Benefiting Parties for each project will have a potential financial liability. The IAA also confirms a sink fund will be ring fenced to account for potential liabilities and only when the applicable sink fund, as well as remaining grant funding and available income, have been exhausted will Benefiting Parties potentially be asked on to cover any additional liability.
- 7.3 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 Sink Fund, exposes the Council to undue financial risk, this can be avoided by determining not to become a Benefiting Party for that project.
- 7.4 The first project to be brought forward, 'Land at Stubbington' is a scheme within Fareham Borough for the reduction of intensive agriculture on existing farmland. This scheme is similar to that which Portsmouth currently operates on the Isle of Wight in partnership with the Hampshire and Isle of Wight Wildlife Trust. Consequently Portsmouth do not intend to become a Benefiting Party for this project as it provides no immediate advantage to the City Council to do so, but does exposing the Council to an, albeit very small, risk of additional liabilities.
- 7.5 Any future decisions to become a benefiting party to a project will be evaluated at that time based on the Council's consideration of liability and any need to secure further mitigation.

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Signed by:

**Appendices:**

Appendix A - Proposed Inter Authority Agreement

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
PfSH Report 23/07/2024 - Deployment of the Local Nutrient Mitigation Fund.	<a href="#">(Public Pack)Agenda Document for Partnership for South Hampshire (PfSH) Joint Committee, 23/07/2024 17:00 (push.gov.uk)</a>
Portsmouth Nutrient Neutrality Strategy	<a href="#">Nitrate mitigation strategy - Portsmouth City Council</a>



The recommendation(s) set out above were approved/ approved as amended/ deferred/  
rejected by ..... on .....

.....  
Signed by: