

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Hampshire 2050 and Corporate Services
Date:	24 October 2024
Title:	Partnership for South Hampshire Inter Authority Agreement for Local Nutrient Fund Projects
Report From:	Director of Hampshire 2050

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Purpose of this Report

1. The purpose of this report is to seek delegated authority for the Director of Hampshire 2050 to enter into the inter authority agreement in respect of the Local Nutrient Mitigation Fund administered by the Partnership for South Hampshire.

Recommendation

1. That the Director of Hampshire 2050 be granted delegated authority to conclude negotiations on the Partnership for South Hampshire Local Nutrient Mitigation Fund inter authority agreement, with the support of legal services, and enter into the agreement on behalf of the County Council.

Executive Summary

2. This paper seeks to
 - set out the background to the Local Nutrient Mitigation Fund
 - explain the reason for the agreement and the benefits associated with it
 - set out the financial implications for the County Council
 - look at key issues

Contextual information

3. The Partnership for South Hampshire (PfSH) has been working together for some time to tackle the issue of nutrient neutrality. Most of the rivers within the PfSH area drain into the Solent; internationally recognised for its range of rare habitats and has been designated to protect the wildfowl and wading species that rely on it. Under Regulation 63 of the Conservation of Habitats and Species

Regulations 2017, local councils, as “competent authorities”, can only approve planning projects that will not have a significant effect on these protected areas. As a part of this, a Habitats Regulations Assessment must be completed alongside any planning applications to prove that the project won't negatively impact on protected areas.

4. In 2019, Natural England introduced a requirement that any new development in catchments draining into the Solent must be ‘nutrient neutral’, mitigating the increase of nutrients entering the Solent from urban runoff and sewage treatment for the development’s life cycle (usually 80-130 years depending on the authority). This is to prevent any further damage to the protected areas of the coast caused by nutrient loading from development. Without evidence of mitigation planning permission cannot be granted.
5. This change to the planning system has caused issues across the country and remains a controversial issue for many stakeholders. Within the PfSH area, nutrient neutrality has been addressed by the provision of strategic planning support to facilitate the creation of a network of mitigation sites and schemes around Hampshire. Developers obtain mitigation credits to offset the impact of their new developments directly from the credit providers, using a simplified process underpinned by a legal agreement.
6. In January 2024, Fareham Borough Council - acting as lead authority for the Solent catchment area - was awarded £9,600,000 in capital funding by the Department of Levelling up, Housing and Communities through the Local Nutrient Mitigation Fund 4. In addition to the capital funding, £422,610 of revenue funding was also received to support deployment of the fund.
7. The Local Nutrient Mitigation Fund has been provided for the purpose of delivering nutrient mitigation solutions to support delivery of new housing across the Solent region. The funding required a memorandum of understanding be signed between Fareham Borough Council - as lead PfSH local authority and accountable body - and the Department for Levelling up, Housing and Communities as funding authority. The memorandum of understanding attached a number of conditions to the funding; most notably it required all funding to be committed by the end of the 2023/2024 financial year. Additionally, it requires all funded projects to achieve cost recovery in order to invest any income into further mitigation projects and to provide additional benefits where possible.
8. The PfSH Joint Committee has approved a capital programme to commit the funding and deliver the mitigation needed to unlock development across the area. As a mechanism to establish how the local authorities will work together to manage the supply of mitigation and to develop future mitigation solutions, an inter-authority agreement has been drafted by Southampton Legal Partnership. The agreement builds on many elements of the 2021 Partnership for South Hampshire agreement but extends to a wider number of authorities including Basingstoke and Deane Borough Council, Chichester District Council, South Downs National Park Authority, and Wiltshire Council.

9. There are five main principles of the agreement as follows:
 - a) Shared benefits – the deployment of projects through the Local Nutrient Mitigation Fund 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 Local Nutrient Mitigation Fund contains a schedule of projects which identifies the local authority areas that can be served by each project.
 - b) 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. It creates the role of Monitoring Authority which will carry out this function. As such, the agreement removes the need for signatories to enter into individual section 106 agreements for each scheme, as well as removing the need for additional legal agreements to deal with cross-boundary enforcement requirements.
 - c) Working together – due to the cross-boundary nature of many environmental services, it is intended that the agreement ensures that the projects delivered within the Local Nutrient Mitigation Fund meet the requirements of the Habitat Regulations for all signatories. If an authority feels unable to sign the agreement within the required timescales, no credits created from the Local Nutrient Mitigation Funding, or future investment generated by the sales of these credits, will be able to be sold in that local authority area.
 - d) Risk management – in order to protect against any financial risk arising from projects deployed through the Local Nutrient Mitigation Fund, the agreement confirms the use of a ringfenced sinking fund. The sinking fund is designed to be equal to the potential liability arising from each site. 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, the agreement identifies that any remaining grant funding, or any available income from credit sales, will be 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.
 - e) Sales process – the agreement 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 in at the relevant Joint Committee items.
10. As the nutrient neutrality function expands its remit by adding new schemes, as well as rolling out the delivery and sale of Biodiversity Net Gain units, the agreement 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.

Finance

11. There are no financial obligations on the County Council as signatory to the inter authority agreement unless it becomes a 'benefiting party'. This is defined as 'a Party who in respect of a given Project expresses an interest in becoming one and is subsequently agreed as being one by the PfSH Joint Committee'. The County Council is not currently planning to become a benefiting party and therefore there is not expected to be any financial implications of the entering the agreement.

Consultation and Equalities

12. The decision sought in this report will not reduce the scope of the service provided or have any impact on service users or the individuals working on the service, so has been assessed as having a neutral impact on groups with protected characteristics.

Climate Change Impact Assessments

13. Hampshire County Council utilises two decision-making tools to assess the carbon emissions and resilience of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.
14. The tools to assess specific impacts on climate change adaptation and mitigation were found not to be applicable on the grounds that the decision relates to the entering of a legal agreement. However, the Local Nutrient Mitigation Fund and associated capital programme will provide environmental benefits, leading to improved water quality. There will undoubtedly be additional improvements for biodiversity and nature recovery as a result of the programme and therefore will have a positive impact in respect of climate change.

Climate Change Adaptation

16. The Local Nutrient Mitigation Fund will help to deliver nature-based solutions to help mitigate nitrates which may also help to counter the impacts of climate change. It will therefore help to ensure Hampshire's natural environment can adapt to the changing climate.

Carbon Mitigation

17. The Local Nutrient Mitigation Fund may help with carbon mitigation, depending on the specific schemes delivered, and therefore is expected to have a positive impact in this respect.

Key Issues

18. Whilst the County Council is not likely to seek benefit from the agreement, not signing would prevent the County Council taking part in any debate in items related to the deployment of the Local Nutrient Mitigation Fund capital programme at PfSH Joint Committee meetings. It is therefore considered beneficial for the County Council to be party to the agreement, particularly given that there are no financial liabilities as a result of signing.

Conclusions

19. The PfSH has been awarded funding through the local Nutrient Mitigation Fund and has established a capital programme to deliver projects which will offer nutrient mitigation for planning applications and help deliver new homes.
20. An inter authority agreement has been drafted as a way of managing as a mechanism to establish how the local authorities will work together to manage the supply of mitigation and to develop future mitigation solutions. In addition to the PfSH authorities, the agreement will include Basingstoke and Deane Borough Council, Chichester District Council, South Downs National Park Authority and Wiltshire Council.
21. The inter authority agreement has been drafted on the basis of the PfSH agreement, and shares liability between those authorities that are benefiting parties. As such, there is no financial liability to the County Council as a result of entering the agreement. Being a signatory, however, does enable the County Council to participate in debate at Joint Committee meetings about the Local Nutrient Mitigation Fund and associated capital programme.
22. It is recommended that the County Council enter into the agreement, and that the Director of Hampshire 2050 be given delegated authority to conclude negotiations and provide authority to legal services to sign the agreement.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	no
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	no

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss 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. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

The decision sought in this report will not reduce the scope of the service provided or have any impact on service users or the individuals working on the service, so has been assessed as having a neutral impact on groups with protected characteristics.