

Cabinet Member for Finance, Development Management

and Strategic Planning – Cllr Nick Botterill

Environment Service

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Reference: FDMSP-04-24

Inter-Authority Agreement with Partnership for South Hampshire

Purpose of Report

1. Wiltshire Council forms part of the Solent protected sites catchment– due to part of the authority falling within the River Test catchment. The Council has its own strategic project through [Roundbarrow Nature Reserve](#) and this has ensured that development in Wiltshire has a strategic mitigation project that can be used to ensure development in this catchment can be [nutrient neutral](#). This has enabled planning applications for overnight accommodation to proceed in this part of Wiltshire.
2. Wiltshire Council has previously had a silent partner role with respect to the wider work being progressed by the Solent authorities but is becoming more involved as the Partnership for South Hampshire (PfSH) has been awarded a grant in the Local Nutrient Mitigation Fund Round 2. We intend to sell surplus nutrient credits from Roundbarrow Nature Reserve to other local planning authorities in the River Test catchment, and this Inter-Authority Agreement (IAA) will allow the Council to do so without the need for multiple separate legal agreements with each local authority. There is also an opportunity for land purchase in this catchment being explored and could benefit from the Partnership for South Hampshire’s Local Nutrient Mitigation Fund Round 2 grant.
3. The purpose of this report is to
 - i. AGREE that the Corporate Director of Place is delegated to sign the proposed Inter-Authority Agreement, including any minor amendments, in consultation with the Council’s S151 Officer and the Cabinet Member for Finance, Development Management and Strategic Planning.
 - ii. AGREE that the Corporate Director of Place, is delegated 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 the Cabinet Member for Finance, Development Management and Strategic Planning.

Relevance to the Council’s Business Plan

4. The Business Plan 2022-2023 ‘Sustainable Environment’ seeks to improve and protect biodiversity and to promote and encourage sustainable sympathetic development. Delivery of new homes where they are needed through implementation of the Wiltshire Core Strategy and Local Plan Review in a way to ensure a ‘Thriving Economy’.

Background

5. Nutrient Neutrality impacts Wiltshire Council 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. For development in Wiltshire that falls in the Solent catchment (River Test), a strategic mitigation project at Roundbarrow Nature Reserve can be used to achieve nutrient neutrality. This has capacity for all growth in Wiltshire now and for the local plan review and has surplus capacity that can be used by other development in the River Test catchment that falls outside of Wiltshire.
6. In May 2023 Fareham Borough Council – who lead on the nutrient neutrality work in the Solent - 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.
7. 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. Wiltshire Council was awarded a £9.8m grant from the same fund but for a different river catchment – the River Avon catchment.
8. 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.

Main Considerations for the Council

9. 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.
10. There are 5 main principles of the Inter-Authority Agreement (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 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.

- 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. If an authority feels they are unable to sign the IAA within the required timescales, then no credits created from the LNMF funding, 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.
- 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 ring-fenced 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. 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.

11. 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.

12. The main consideration for Wiltshire Council is that the IAA will allow surplus nutrient credits from the Roundbarrow Nature Reserve to be sold to developers in the wider Solent authorities also in the River Test catchment. This will allow the Council to recover funds for the long-term operation of this project. It will also allow the Council to be a recipient for funding of other projects that may come forward in the authority area.

Overview and Scrutiny Engagement

13. No engagement that has taken place with the Council's Overview and Scrutiny function on the Inter-Authority Agreement, but should the Council be a recipient for the funding in the future, future engagement will be progressed. The Roundbarrow Nature Reserve scheme has been discussed with Councillors, Parish Councils and the public.

Safeguarding Implications

14. There are no implications for safeguarding children, young people or vulnerable adults as this is a legal agreement for the progression of nutrient neutrality mitigation projects.

Public Health Implications

15. There are no direct public and health wellbeing implications associated with the proposals. However, the ability to secure provision of housing while protecting the integrity of wildlife sites helps meet the needs of a growing population in a sustainable way supporting the well-being of communities.

Procurement Implications

16. Procurement will be undertaken in line with corporate procedures.

Equalities Impact of the Proposal

17. There are no equalities impact implications in relation to the proposal.

Environmental and Climate Change Considerations

18. The proposal will ensure that there are no adverse effects from nitrogen on the integrity of internationally important wildlife sites. Land secured for nitrogen strategic mitigation may also be used to meet other local and central government objectives unrelated to nitrogen e.g. securing biodiversity net gain, natural flood management, carbon sequestration or public open space to avoid recreational pressures on other wildlife areas.

Workforce Implications

19. The Inter-Authority Agreement will streamline agreements between Wiltshire Council and other local authorities in the Solent region and will help to reduce resources from the legal and ecology teams on this matter.
20. 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 in schedule 1 that the Host Authority may provide a number of services, with these services funded through the LNMF as per the excerpt below. As such any staffing implications of the agreement would be cost neutral to the Council.

16.2 The Parties agree that the reasonable, directly related and proportionate costs incurred by the Host Authority of providing the Services shall be met by the Grant Funding and that the Lead Authority shall reimburse the Host Authority as soon as reasonably practicable.

21. If the Council is a recipient of the LNMF grant in the future there will be workforce implications, but these would be covered by revenue from the sale of the credits.

Risks that may arise if the proposed decision and related work is not taken

22. The Council would need to undertake separate legal agreements between local authorities and may not be able to sell surplus nitrogen mitigation to other local authorities in the Solent. The Council would also not be able to be a recipient of Local Nutrient Mitigation Fund Round 2 grant.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

23. If we sign the agreement and accept grant funding from the Local Nutrient Mitigation Fund Round 2 then the Council, as a host authority for a mitigation project (the local authority where the mitigation project is based), will be legally bound to deliver on the mitigation requirements of that project.
24. However, the Council, as a competent authority, is obliged to manage the land appropriately to deliver this mitigation already under provisions of the Conservation of Habitats and Species Regulations (England and Wales) (2017 as amended). The agreement results in an extra layer of protection for an obligation that already exists.

Financial Implications

25. The signing of the agreement would allow the Council to be a recipient of monies from the PfSH's Local Nutrient Mitigation Fund Round 2 grant, should the Council wish to progress a land purchase opportunity. If we receive a grant from PfSH the agreement also includes provision that reasonable, directly related and proportionate costs incurred by the Lead Authority of providing the Services shall be met by the Grant Funding and/or Income (as the case may be).
26. It will also allow the Council to sell surplus nitrogen credits from the Roundbarrow Nature Reserve scheme to deliver funding for this project.
27. 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.
28. The IAA confirms that only authorities identified by the parties as Benefiting Authorities 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.

8.5 The Lead Authority shall apply such sum(s) from the Grant Funding or Income (as agreed between the Parties and by PfSH) towards the establishment and maintenance of a Sink Fund for a Project.

18.2 Whilst the affected Parties shall make all reasonable attempts to mitigate loss, each Party ("the indemnifying Party") shall indemnify the others in respect of any reasonable loss caused to each of the other affected Parties as a direct result of that indemnifying Party's negligence, wilful default or fraud or that of any of the indemnifying Party's employees in respect of its role in the activities of the PfSH Joint

Committee and/or under this Agreement and/or where acting as Lead Authority, Host Authority or Monitoring Authority (as the case may be).

18.3 Save where Clause 18.2 above applies, the Lead Authority, the Host Authority and the Monitoring Authority shall be indemnified by the Benefiting Parties (including for the avoidance of doubt the Lead Authority, the Host Authority and the Monitoring Authority if applicable) in respect of any liability arising out of or in connection with the performance of this Agreement by the Lead Authority and/or the Host Authority (as the case may be) in relation to a Project on an equal basis PROVIDED ALWAYS that any remaining Grant Funding, the applicable Sink Fund and any Income shall first be used in respect of such liability.

29. 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. The signing of the agreement will, in the first instance, allow the Council to sell nitrogen credits from the Roundbarrow Nature Reserve to the other local authorities in the Solent catchment. Should the Council, at a later stage, wish to become a Benefiting Authority for the grant, then the details of the proposals and scheme are delegated to Parvis Khansari, Corporate Director of Place.

Legal Implications

30. The Inter-Authority Agreement has been reviewed and approved by Wiltshire Council's legal team.

Options Considered

31. Early discussions with separate local planning authorities to progress separate section 106 and section 33 agreements have been progressed, but this alternative Inter-Authority Agreement presents an alternative streamlined option for Wiltshire Council.

Conclusions/Proposal

32. It is proposed that the Inter-Authority Agreement is signed to allow the Council

- To Sell surplus nitrogen credits from the Roundbarrow Nature Reserve Strategic Mitigation scheme to development in other local authorities
- To further consider the purchase of land that may benefit from the Local Nutrient Mitigation Fund Round 2 grant awarded to the Partnership of South Hampshire and meet wider environmental and community benefits.

33. The conclusions reached having taken all of the above into account.

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Appendices

Appendix A – Inter-Authority Agreement

Background Papers

None