Report to the Partnership for South Hampshire Joint Committee

Date: **30 September 2024**

Report of: **Simon Kennedy, PfSH Strategic Environmental Planning Manager**

Subject: **DEPLOYMENT OF THE LOCAL NUTRIENT MITIGATION FUND**

SUMMARY

This report will first provide an update on the Local Nutrient Mitigation Fund (LMNF) capital programme as agreed at the last Joint Committee Meeting. The main focus will be the final draft of the Inter Authority Agreement, which details the way local authorities will work together to manage the supply of mitigation and to develop future mitigation solutions. The agreement sets out that Fareham Borough Council, as the lead authority, will manage and sell the nutrient credits created via the LNMF programme in line with the details outlined in Section 3 of this report.

RECOMMENDATION

It is recommended that the Joint Committee:-

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.

1. Project updates

Agricultural Reversion

1.1 Agricultural land has been purchased in Stubbington, within the Fareham Borough Council administrative area. This land, purchased through the LNMF, is for the purpose of ensuring the long-term cessation of intensive agriculture activities on the land. The cessation of intensive agriculture has been calculated, using the most up-to-date Natural England nutrient neutrality calculator, to determine the associated reduction of Total Nitrogen to the protected sites of the Solent. Natural England have provided advice through their discretionary advice service that confirms the principle of the site for mitigation of Total Nitrogen, the quantum of mitigation arising from the cessation of intensive agriculture on the site, and the areas of development that the mitigation can serve.

1.2 It is likely that nutrient credits will be sold from the scheme towards the end of ~~October~~ November this year, dependent upon the speed that individual authorities are able to agree the Inter Authority Agreement. Subject to signing the Inter Authority Agreement, development in the planning authority areas listed in Appendix 1 would be able to benefit from the availability of mitigation from this scheme.

1.3 The site already has elements of public access in the form of a public footpath, with the intention to also improve biodiversity on the site for the purpose of providing Biodiversity Net Gain Units to the development industry alongside nutrient credits.

Water Efficiency

1.4 The rollout of water efficiency upgrades across those authorities with their own housing stock has commenced. The funding has been distributed to many of the relevant authorities, with several of those authorities having started to deploy the funding on physical retrofit of properties. The Strategic Environmental Planning Team have also started to record the specific details of any upgrades undertaken; this record will support the upgrades being used as mitigation for the development of new council built affordable homes.

Winchester City Council Private Treatment Plant (PtP) Upgrades

1.5 The project to upgrade of PtPs is progressing well. Winchester City Council has produced a feasibility study, on 10 sites considered most suitable for upgrade, which has shown a high likelihood of all sites within the project being feasible. Winchester City Council considered a Cabinet report on 11th September 2024 confirming funds could be received from the LNMF to fund both the feasibility work and physical upgrades. Subject to a response from Natural England confirming the technical details of the mitigation, it is anticipated that the first upgrades, and credits available for sale, will be available from this project in the 2024 calendar year.

Eastleigh Wetlands

1.6 Water quality and flow data has been collected over the past year and this data has been used to update a previously commissioned level one feasibility study. Although, the updated data has shown that the previous estimates of nutrient reduction from development of a wetland were overestimated, the current assessment still suggests the project may be undertaken on a cost-recovery basis. A commission to proceed to technical costing of the development of the wetlands sites has been granted, this is designed to provide an insight into the wetlands continued viability. Once a full business case has been produced, including the updated feasibility and detailed costing information, a further update will be provided to the Committee on the projects progress.

2. Inter Authority Agreement

2.1 The Inter Authority Agreement (IAA) has been drafted by Southampton Legal Partnership and builds on many elements of the 2021 PfSH Agreement. The purpose of the agreement is described below.

2.2 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 LNMF contains a schedule of projects which identifies the local authority areas that can be served by each project.~~ 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 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. 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.

2.3 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.

2.4 It is important that individual local authorities formally consider the IAA as quickly as possible to allow the effective delivery of the fund.

3. The sales process

3.1 Development of the credit sale principles has been devised via engagement with authorities that already sell nutrient credits, as well as through an understanding of the currently active private nutrient mitigation market.

3.2 The process will enable an effective and clear way to help developers obtain mitigation in order to demonstrate nutrient neutrality to local planning authorities.

3.3 A dedicated administrator will be in place to effectively manage the credit sales process, as well as maintaining records of all projects and credit sales for auditing and reporting purposes.

3.4 A summary of the important elements of the credit sales process.

3.4.1 Credit price

- Total Nitrogen £3,250 per Kg/TN/Yr,
- Total Phosphorus £50,000 per Kg/TP/Yr

- There will be a £750 administration charge for each transaction
- The price will be reviewed on a regular basis to account for market conditions and inflation (linked to the retail price index)

3.4.2 Apportionment of credits

- Credits will be sold, with no minimum amount required to be purchased.
- Credits will be apportioned to ensure that each local authority area benefiting from a project has a supply of credits, with this apportionment also based on the relative supply and demand position for each authority. The apportionment of credits from each project will be subject to review by the Joint Committee to ensure an even distribution of planned growth.

3.4.3 Website and communication

- A website is under development to serve as a customer facing focus point for the credit sales process.
- The Partnership for South Hampshire will provide communication support for the launch of the credit sale website as well as communication as new projects are delivered

4. Summary

4.1 With the successful delivery of the first nutrient mitigation project, the final stage to be able to provide a nutrient mitigation service to developers is the agreement of the IAA and approach to the sale credits.

4.2 Once the approach to credit sales is agreed, and the IAA signed by the relevant parties, the soft launch of the credit sales service is planned for ~~October~~ November 2024 with the first sale to be actioned shortly after launch.

4.3 It is anticipated that by the end of the 2024 calendar year we will also be in a position to provide mitigation for Total Phosphorus to the market.

RECOMMENDATION

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Committee to debate items related to the deployment of the LNMF capital programme;

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~~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.

Appendix 1 - The proposed Benefiting Parties

Enquiries:
For further information on this report please contact:-

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Appendix 1

The proposed Benefiting Parties, subject to signing the Inter Authority Agreement, for the scheme known as Land at Stubbington are:

East Hampshire District Council
Fareham Borough Council
Gosport Borough Council
Havant Borough Council
New Forest District Council (Development draining to Ashlett Creek Waste Water Treatment Works)
South Downs National Park Authority (East Hampshire Catchment)
Winchester City Council (East Hampshire Catchment)

Portsmouth City Council and Eastleigh Borough Council are not listed as proposed Benefiting Parties as there is currently no reason for those authorities to accept potential liability for a scheme whilst they have their own mitigation offer. These authorities have the ability to be elected as Benefiting Parties at a later date should it become appropriate for them to do so.