

<b>DECISION-MAKER:</b>	<b>CABINET</b>
<b>SUBJECT:</b>	<b>Partnership for South Hampshire's Inter-Authority Agreement (IAA) for Nutrient Mitigation</b>
<b>DATE OF DECISION:</b>	<b>7<sup>th</sup> January 2025</b>
<b>REPORT OF:</b>	<b>COUNCILLOR BOGLE CABINET MEMBER FOR ECONOMIC DEVELOPMENT</b>

<b><u>CONTACT DETAILS</u></b>			
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<b>STATEMENT OF CONFIDENTIALITY</b>
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n/a

<b>BRIEF SUMMARY</b>
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The Partnership for South Hampshire (PfSH) Inter-Authority Agreement aims to facilitate the delivery of nutrient mitigation across the Solent sub-region utilising the Local Nutrient Mitigation Fund ('LNMF').

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.

By becoming a party to the IAA, the Council will have the benefit, over time, of an additional supply of nutrient mitigation to facilitate planned sustainable growth.

<b>RECOMMENDATIONS:</b>
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	(i)	To delegate authority to the Executive Director of Growth and Prosperity to enter into and become a party to the Inter Authority Agreement (IAA) by way of a deed of adherence and to agree to any minor amendments from time to time.
	(ii)	To delegate authority to the Executive Director of Growth and Prosperity to agree the Council as a Benefiting Authority and/or Host Authority for projects delivered through the Inter Authority Agreement following consultation with the Council's S151 Officer and Cabinet Member for Economic Development.

<b>REASONS FOR REPORT RECOMMENDATIONS</b>
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1.	The Council, as Local Planning Authority, needs to ensure that sufficient nutrient mitigation is available to meet planned growth. Without sufficient mitigation, planned development may not be able to proceed. Whilst 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
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	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. 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.
2.	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.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
3.	<p><u>Do Nothing:</u> Southampton City Council, as local planning authority must comply with the Habitat Regulations when granting planning permission. Planning permissions issued by the Council could be challenged if it is unable to secure a 5-year supply of nitrate mitigation.</p> <p>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. This opportunity would be lost to Southampton by not being part of the IAA.</p>
<b>DETAIL (Including consultation carried out)</b>	
4.	Nutrient Neutrality impacts Southampton 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 PfSH.
5.	Southampton City Council currently has a Nitrogen Mitigation Position Statement <a href="#">SOUTHAMPTON NITROGEN MITIGATION POSITION STATEMENT</a> following a Cabinet decision in June 2022 and has entered into a 'section 33' legal agreement with Eastleigh Borough Council in-order to implement the Position Statement in accordance with the Habitat Regulations that ensures it presently has a sufficient supply of nitrate mitigation in place.
6.	In May 2023 Fareham Borough Council, on behalf of Partnership for South Hampshire, 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 and so provide further resilience over and above Southampton's current supply of nitrate mitigation. 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

	<p>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.</p>
<p>8.</p>	<p>The IAA (Appendix 1) has been drafted by Southampton Legal Partnership on behalf of PfSH. 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. At the 30th September PfSH Joint Committee meeting the following recommendations were agreed.</p> <ul style="list-style-type: none"> <li>a. NOTES the update on projects within the LNMF capital programme;</li> <li>b. AGREES the principles of the Inter Authority Agreement and supports their individual authorities to enter into the agreement as appropriate;</li> <li>c. AGREES the sales approach, including sales price and approach to allocation of credits;</li> <li>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;</li> <li>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</li> <li>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.</li> </ul>
<p>9.</p>	<p>There are 5 main principles of the IAA:</p> <p><b>Shared benefits</b> – 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.</p> <p><b>Monitoring functions</b> – 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.</p> <p><b>Working together</b> – 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.</p> <p><b>Sales process</b> – The IAA identifies the PfSH Joint Committee as the body responsible for agreeing the sales price and allocation of credits. This is to</p>

	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.
10.	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.
11.	<p><u>Southampton City Council Position</u></p> <p>At present, there are circa 6,000 credits available via the existing Eastleigh scheme. This is more than sufficient for the expected needs in the local area in the short term. What is more important for the city however is ensuring stability in the medium to long-term to ensure an increased growth rate can be adequately supported, in line with our growth ambitions, which the IAA will assist with by ensuring the Council is not solely reliant on the Eastleigh scheme.</p> <p>In light of this, Southampton does not need to be listed as a “benefitting party” of the IAA for the time being, but there will need to be a further review of this position within 6-12 months to establish when SCC will need to be a benefitting party to the IAA. This will be guided by an assessment of need and supply both within SCC and across the PfSH authorities. An initial assessment of all PfSH needs has recently begun but SCC’s position will be reviewed next year following further housing trajectory work linked to the emerging Local Plan and fed into PfSH officers leading on the PfSH-wide assessment.</p>
12	Due to the urgency of other local authorities to rely on credits from projects identified in the IAA and the council’s own governance arrangements, the IAA was completed on 10 December without the council as a party. The council will join the IAA as a party by way of formal deed of adherence following cabinet approval.
<b>RESOURCE IMPLICATIONS</b>	
<u>Capital/Revenue</u>	
13	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. 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.
14.	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 first project

	<p>to be brought forward, 'Land at Stubbington' is a scheme within Fareham Borough for the reduction of intensive agriculture on existing farmland. Southampton cannot be a Benefiting Party for this project as it relates to a different catchment. Other projects such as at Winchester, which is within catchment are also not identified for Southampton as a Benefiting Party as currently Southampton has sufficient credits available via the existing Eastleigh scheme. So presently the LNMF capital programme provides no immediate advantage to the City Council, beyond the £90,000 allocation for SCC water efficiency measures, but this has been allocated to authorities outside of this IAA and is subject to a separate MOU. 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.</p>
<b><u>Property/Other</u></b>	
15.	n/a
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
16.	Section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972, s.33 Local Government (Miscellaneous Provisions) Act 1982
<b><u>Other Legal Implications:</u></b>	
17.	The legislative and policy background to the proposed IAA is described in the body of the report. 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"). 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
<b>RISK MANAGEMENT IMPLICATIONS</b>	
18.	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, as 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.
19.	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. Southampton City Council is not currently listed as a benefitting party of the current deployed projects.

<b>POLICY FRAMEWORK IMPLICATIONS</b>	
20.	In order to comply with the Habitat Regulations and to ensure no adverse effect on the internationally protected Solent, the Council needs to ensure that new residential and hotel development achieves 'nitrogen neutrality'. This will enable the Council as local planning authority to continue to support the sustainable growth of the city and a greener city, in accordance with the Council's Corporate Plan.

<b>KEY DECISION?</b>	<b>Yes</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	<b>All</b>
<u>SUPPORTING DOCUMENTATION</u>	
<b>Appendices</b>	
1.	Proposed Inter Authority Agreement
2.	Draft deed of Adherence

**Documents In Members' Rooms**

1.	None.
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**Equality Impact Assessment**

<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>No</b>
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**Data Protection Impact Assessment**

<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	<b>No</b>
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**Other Background Documents**

**Other Background documents available for inspection at:**

<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1.	
2.	