

From: Derek Murphy, Cabinet Member for Economic Development

Simon Jones, Corporate Direct, Growth, Environment and Transportation

To: Growth, Economic Development and Communities Cabinet Committee 5 March 2024

**Subject: Signing of Memorandum of Understanding as prerequisite to access funding to deliver a Nutrient Neutrality Strategy in East Kent.**

Key decision 24/00014

Classification: Unrestricted

Past Pathway of report: none

Future Pathway of report: Cabinet Member decision

Electoral Division: Ashford Central, Ashford East, Ashford Rural East, Ashford Rural West, Ashford Rural South, Ashford South, Canterbury City North, Canterbury North, Canterbury City South, Canterbury South, Elham Valley, Herne Village & Sturry, Herne Bay East, Maidstone Rural East.

**Summary:** Nutrient neutrality in the catchment for the Stodmarsh National Nature Reserve is having a significant impact on the delivery of homes in East Kent. The government is offering £9.8m of capital for nutrient neutrality mitigation in East Kent along with revenue grants to support the delivery of the strategy. KCC has to sign Memorandums of Understanding (MoUs) with the government to access the grants available.

**Recommendation(s):**

The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Economic Development on the proposed decision, attached as Appendix A:

- (i) AGREE to enter into a Memorandum of Understanding to accept £9.8m capital and Memorandums of Understanding for supporting revenue funding from DLUHC to support nutrient neutrality mitigation works in East Kent
- (ii) DELEGATE authority to the Corporate Director of Growth, Environment and Transport, after consultation with the Cabinet Member for Environment, and Corporate Director of Finance, to review and agree to the required terms and conditions to enter into the necessary grant arrangements.
- (iii) AGREE for the Director for Growth and Communities to bring a strategy for delivery of nutrient neutrality for adoption to this Committee prior to claiming the capital funding.

## 1. Introduction

- 1.1 In Summer 2020, Natural England issued advice to the local planning authorities (LPAs) on the River Stour (Canterbury, Ashford, Folkestone & Hythe, Maidstone and Swale) that meant new developments must not increase the level of nutrients nitrogen (N) and phosphorus (P) in the River Stour, as they are having a negative impact on Stodmarsh National Nature Reserve, a nationally and internationally designated site.
- 1.2 These nutrients are in the effluent from wastewater treatment works (WwTW). Any new housing development in the catchment of the WwTW will increase the amount of effluent they discharge and therefore the amount of nutrients that enter the River Stour.
- 1.3 To meet planning requirements, proposed new developments with overnight accommodation must demonstrate that the development achieves nutrient neutrality i.e. the level of nutrients in the river is the same after the development as it was before. Achieving nutrient neutrality is complex but planning authorities cannot approve planning applications for developments including overnight accommodation that cannot demonstrate this.
- 1.4 This effectively put a hold on housing developments whilst mitigation options were sought. Some developments have been able to demonstrate nutrient neutrality and get planning permission. For most it is a significant constraint and many will require a strategic mitigation option to buy into or significant on-site infrastructure, at an additional cost, to be able to get planning permission.
- 1.5 There are currently approximately 7,000 homes held up in planning due to nutrient neutrality. A total of approximately 30,000 homes are forecast to be affected by nutrient neutrality up to 2040 (note: not all affected LPAs have an adopted Local Plan that goes up to 2040, this figure is an estimate of future housing need).
- 1.6 [A paper introducing nutrient neutrality](#) was presented at the GEDCCC on 22 March 2022 a [further paper](#) was presented at the GEDCCC on 22 September 2022. These papers contain more background on nutrient neutrality, options to mitigate it and the impact on development.

## 2. Nutrient mitigation

- 2.1 To be able to receive planning approval for a development with overnight accommodation, developers must be able to demonstrate nutrient mitigation is in place that offsets the additional nutrients the development will contribute to the catchment.
- 2.2 This mitigation may be in a number of forms. Large developments can construct their own wastewater treatment works and wetlands to manage the nutrients on site. For smaller sites this might be wetlands that reduce nutrients either by directly taking the effluent from WwTW before it is discharged into the river or taking water out of the river and returning it with fewer nutrients. There are other options, including retrofitting water efficiency measures to existing housing stock.

- 2.3 Delivering this mitigation requires investment. Large sites may be able to achieve this themselves, however smaller sites would not be able to provide this mitigation, a strategic mitigation scheme is required to support smaller sites.
- 2.4 KCC has been working with the planning authorities to develop a strategy to deliver strategic mitigation options.

### **3. Government support**

- 3.1 The Government announced a fund to support the delivery of infrastructure to deliver nutrient neutrality in Spring 2023, and expressions of interest were sought. The Stour catchment group submitted a bid for £15.66m to support land purchase and construction of a new wetland at Wye in Ashford and partial land purchase of land for a new wetland at Sturry in Canterbury.
- 3.2 The Government then changed its approach and sought to address the issue by proposing amendments to the Levelling Up and Regeneration Bill in the Autumn, which would have removed the requirement to consider nutrient neutrality in the planning process. These proposed amendments were voted down in the House of Lords and could not be reintroduced.
- 3.3 Following this, the Government then confirmed that primary legislation to address the issue of nutrient neutrality would not be brought forward in the next parliamentary session, but that they remained committed to making rapid progress to unlock homes.
- 3.4 In the Autumn Statement 2023, the Government announced a £110m funding pot for mitigation and returned to the expressions of interest that had been submitted in the Spring. The Stodmarsh catchment was subsequently awarded a grant of £9.8m.
- 3.5 The grant and any returns from it must be invested locally on nutrient mitigation schemes for the whole catchment until nutrient mitigation is no longer required. At this point, any residual funding must be invested in measures to aid the restoration of Stodmarsh to a favourable conservation status; and secondarily to be invested in the objectives of sustainable development and promoting public access to nature.
- 3.6 The grant of £9.8m falls short of what we bid for, and therefore the strategy for spending the money must be reconsidered or additional funding sought. It is only available until March 2025 and, unusually, can be claimed in advance, once we have shown a commitment to a programme of work that achieves the housing delivery we have committed to.
- 3.7 In addition to this capital funding, the government is offering £430k of revenue funding to support the spending of the capital funding.

### **4. Catchment mitigation strategy**

- 4.1 The capital funding is available until March 2025. The revenue funding is only available this financial year, 2023/24 but can be spent in 2024/25. Before we can access the government funding, we must sign a Memorandum of Understand (MoU), there is an MoU for the capital funding and a separate one for the revenue funding.

- 4.2 Signing the MoU will not release the capital funding. To receive it, we must demonstrate a commitment to spend it, for instance through a key decision to adopt a strategy to deliver nutrient mitigation. The revenue funding will be available on receipt of that signed MoU.
- 4.3 The catchment mitigation strategy will be delivered by other parties, either by the LPAs where the mitigation is located or a special purpose vehicle set up by the LPAs to deliver the strategy. KCC will defray the funding to the appropriate body or bodies to deliver the strategy once appropriate legal agreements are in place.
- 4.4 If we cannot develop a strategy that we are satisfied with, we can return the revenue funding and not claim the capital funding.

## **5. Financial Implications**

- 5.1 There are no financial implications for KCC. Any spending on this will come from the government grants. It is likely that KCC will defray the capital funding to another body to deliver the capital schemes, either one of the LPAs or a Special Purpose Vehicle.
- 5.2 We will not spend any money until there is a catchment strategy that we are confident we can deliver.

## **6. Legal implications**

- 6.1 A legal review has been undertaken of the MoUs for KCC to receive the two Government grants of £430k and £9.8m. It has advised us that the MoUs are not legally binding nor could they be interpreted as being legally binding or give rise to legal obligations. There is therefore not a risk to KCC of accepting the money at this stage, ahead of developing with partners a clear programme against which to spend the grants.

## **7. Equalities implications**

- 7.1 An EqIA has been undertaken and no equalities impacts have been identified.

## **8. Other corporate implications**

- 8.1 The delivery of nutrient neutrality affects the delivery housing developments and consequently impacts other schemes KCC is delivering that relies on S106 contributions from those developments.
- 8.2 Nutrient neutrality also impacts the ability for KCC to secure planning permission for development on its own land holdings to facilitate their disposal.

## **9. Governance**

- 9.1 The Corporate Director for Growth, Environment and Transport will have delegated power to sign the relevant MoUs.
- 9.2 A strategy for the delivery of nutrient mitigation measures will be brought to the GEDCCC prior to claiming the capital funding.

## 10. Conclusions

- 10.1 The requirement for nutrient neutrality in the catchment for the Stodmarsh National Nature Reserve is having a significant impact on the delivery of homes in East Kent.
- 10.2 The government is offering £9.8m of capital for nutrient neutrality mitigation in East Kent along with revenue grants to support the delivery of the strategy.
- 10.3 KCC has to sign MoUs with the government to access the grants available. Further rounds of decision-making limit the exposure to risk of signing these MoUs.
- 10.4 A decision about the adoption of a nutrient mitigation strategy will be brought to GEDCCC in future prior to claiming the capital funding available.

## 11. Recommendation(s):

The Growth, Economic Development and Communities Cabinet Committee is asked to consider and endorse or make recommendations to the Cabinet Member for Economic Development on the proposed decision, attached as Appendix A:

- (i) AGREE to enter into a Memorandum of Understanding to accept £9.8m capital and Memorandums of Understanding for supporting revenue funding from DLUHC to support nutrient neutrality mitigation works in East Kent
- (ii) DELEGATE authority to the Corporate Director of Growth, Environment and Transport, after consultation with the Cabinet Member for Environment, and Corporate Director of Finance, to review and agree to the required terms and conditions to enter into the necessary grant arrangements.
- (iii) AGREE for the Director for Growth and Communities to bring a strategy for delivery of nutrient neutrality for adoption to this Committee prior to claiming the capital funding.

## 12. Background Documents

Appendix A - Proposed Record of Decision

Appendix B – EqIA

## 13. Contact details

Report Author:  
Max Tant, Flood and Water Manager  
03000 413466  
[Max.tant@kent.gov.uk](mailto:Max.tant@kent.gov.uk)

Relevant Director:  
Stephanie Holt-Castle, Director Growth  
and Communities  
03000 412064  
[stephanie.holt-castle@kent.gov.uk](mailto:stephanie.holt-castle@kent.gov.uk)