

From: Derek Murphy, Cabinet Member for Economic Development

Simon Jones, Corporate Director, Growth, Environment and Transportation

To: Growth, Economic Development and Communities Cabinet Committee
22 January 2025

Subject: **Awarding of Local Nutrient Mitigation Funding to Local Planning Authorities for the delivery of mitigation schemes for Nutrient Neutrality in the Stour catchment**

Key decision: 24/00122

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 has awarded £9.8m of capital to KCC for nutrient neutrality mitigation works in East Kent along with revenue grants to support the delivery of those works. The funding must be committed to a programme by March 2025 and it is expected the funding will be awarded to Local Planning Authority partners to deliver nutrient mitigation and unlock the restrictions on housing development.

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 to:

- (i) AGREE, in consultation with the Cabinet Member for Finance and Traded Services to £9.8 million of funding from the Ministry of Housing, Communities and Local Government, be used to award grant funding to Local Authority partners to deliver mitigation schemes for Nutrient Neutrality in the Stour catchment.
- (ii) DELEGATE authority to the Corporate Director of Growth, Environment and Transport in agreement with the Cabinet Member for Environment, and Cabinet Member for Economic Development to nominate an officer as an observer to sit on the executive board of Ashford Borough Council and Canterbury City Council joint venture company Stour Environmental Credits Ltd which will deliver mitigation schemes on their behalf.

- (iii) AGREE to the adoption of the Stodmarsh Nutrient Neutrality Strategy to support the awarding of grant funding to Local Authority partners.
- (iv) DELEGATE authority to the Corporate Director of Growth, Environment and Transport in consultation with the Cabinet Member for Economic Development to take relevant actions including, but not limited to, finalising the terms of, and entering into, required contracts or other legal agreements, as necessary to implement the decision as shown at Appendix A.

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 current 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 has effectively put a hold on housing developments whilst mitigation options are sought.
- 1.5 A total of approximately 30,000 new homes in Kent 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 that is affected).
- 1.6 Papers introducing nutrient neutrality were presented at the GEDCCC on 22 March 2022 and GEDCCC on 22 September 2022. These papers contain more background on nutrient neutrality, options to mitigate it and the impact on development.
- 1.7 A further paper was presented at the GEDCCC on 5 March 2024 for the signing of the Memorandum of Understanding as a prerequisite to access funding to deliver the Nutrient Neutrality Strategy in East Kent.

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, replacing septic tanks with more efficient package treatment works, creation or restoration of floodplain meadows, and agricultural reversion.
- 2.3 Delivering this mitigation requires investment. Large sites will be required to deliver their own mitigation on-site, however smaller sites would not be able to provide this mitigation, and mitigation schemes are required elsewhere in the catchment to support small and medium sites.
- 2.4 The local authorities within East Kent have started to deliver mitigation. Ashford Borough Council has generated a small volume of credits by retrofitting water efficiency measures on council owned housing stock. Maidstone Borough Council has purchased credits generated from the Forestry Commission woodland scheme at Pleasant Farm.
- 2.5 However, an established credit trading market is needed to generate and sell credits. This will meet the current credit demand and will release housing which cannot be discharged from conditions without nutrient credits and also planning applications which similarly cannot be granted without nutrient credits.

3. Delivery of Nutrient Mitigation

- 3.1 KCC as Local Planning Authority received £9.8 million (in December 2024) funding from the Ministry of Housing, Communities and Local Government to fund mitigation works within the catchment and generate credits, this funding must be committed to a programme of delivery by March 2025.
- 3.2 It is expected that £7m of funding will be bid for and awarded in the first quarter of 2025 (2024/24 financial year), with Ashford Borough Council, Canterbury City Council and Folkestone and Hythe District Council having expressed interest in funding for mitigation works.
- 3.3 KCC will require Local Authorities seeking award of any funding to undertaking a bidding process. Successful bids will be required to detail the proposed mitigation measures they are seeking funding for. Demonstrate the KG of Phosphorus and Nitrogen the proposed mitigation will achieve providing a technical assessment which includes the calculations based on the Natural England nutrient budget calculator. The quantity of credits to be generated and the approximate number of housing that will be released and over what timeframe. (Development sites are subject to individual nutrient budgets and therefore housing numbers will vary). Whether credits will be interim/bridging

(up-to 2030), in-perpetuity or both. That measures accord with the Habitat Regulations Assessment (HRA) requirements.

- 3.4 The funding must be recycled and returns generated from the sale of credits will either be recirculated into the purchase of additional mitigation measures by the Local Authority or will be returned to KCC to be reallocated to further bids. Bidders will be required to set out their arrangements for the recirculation of credit returns.
- 3.5 Bids will be determined by a panel decision, the panel will be formed of KCC, Ashford Borough Council, Canterbury City Council, Folkestone and Hythe District Council, Maidstone Borough Council, Swale Borough Council, Dover District Council and Thanet District Council.
- 3.6 A technical assessment of bids will be undertaken by the consultancy Water Environmental Ltd, who have been commissioned by KCC since 2022 to provide technical guidance for the development of nutrient neutrality in the Stodmarsh catchment.
- 3.7 It is recommended that the decision to award funding be delegated to the Corporate Director of Growth, Environment and Transport in consultation with the Corporate Director of Finance based on the recommendations of the panel.
- 3.8 Ashford Borough Council and Canterbury City Council have sought agreement from their respective cabinets to establish a joint venture company, Stour Environmental Credits Ltd. Ashford Borough Council and Canterbury City Council will jointly bid for grant funding via this wholly owned joint venture company and will use Stour Environmental Credits Ltd to deliver mitigation and generate credits to release housing across the catchment but primarily within their own districts.
- 3.9 The local authorities within the catchment which do not wish to join with Ashford Borough Council and Canterbury City Council and use Stour Environment Credits Ltd will have the opportunity to bid to deliver mitigation within their own districts.
- 3.10 Bidders will be required to enter a legally binding grant agreement with KCC for the delivery of the mitigation. The grant agreement will be with the Local Authorities and conditions will be placed on how the grant is spent, monitored and recovered in the event that it is not spent.
- 3.11 Bids from Ashford Borough Council and Canterbury City Council, via Stour Environmental Credits Ltd, a company wholly owned by the relevant councils and limited by shares will be required to meet the additional condition that KCC will appoint an observer to the executive board of Stour Environmental Credits Ltd. The 'observer' will provide no direction or instruction but will have oversight of the decision-making process for the grant funding and the use of the awarded funds to provide additional assurance to KCC as the accountable body.

- 3.12 The grant will be released in tranches, and bidders will be required to demonstrate spend within the first six months of receipt of the allocation. Receipt of spending will be required to release the next tranche of funding to support a bid.
- 3.13 The grant and any returns from it must be invested locally on nutrient mitigation schemes for the whole catchment. There is currently only a limited credit market available to developers, priority will be given to bids which can realise mitigation measures quickly, such as septic tank conversion and agricultural reversion, to unlock housing which is currently blocked.
- 3.14 The recycling of returns will continue 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.

1. Options considered and dismissed, and associated risk

- 4.1 Do nothing - If KCC was to decide to take no action this would prevent the delivery of high-quality locally led mitigation solutions, and result in the housing allocation within the impacted districts not being met. This would have wider implications of negatively impacting economic growth within the county

5. Financial Implications

- 5.1 There are no financial implications for KCC; revenue spending will come from the £531,414 Ministry of Housing Community and Local Government revenue grant awarded to KCC. The award of grant funding to Local Authority partners to deliver nutrient mitigation will be made from the £9.8 million capital funding received from the Ministry of Housing, Communities and Local Government.
- 5.2 KCC will be the Accountable Body, so part of this role will be to ensure funds are spent in line with the terms of the grant determination letter and the identification and review of controls to ensure Local Authorities also conform to the terms of the grant.
- 5.3 The Water Resources Manager within the Flood and Water Management team is a base funded member of staff who has the catchment co-ordinator role within their remit. The Water Resources Manager will be responsible for the administration of the defrayment of the funding via the service level agreements.
- 5.4 Additional resourcing to support the awarding of grant funding will be required from the Planning, Policy and Strategy and Internal Audit teams as part of business as usual activity. Any costs incurred to these teams will be met from the revenue grant funding.

6. Legal implications

- 6.1 A legal review has previously been undertaken of the MoUs for KCC to accept the Government Grants. The MoUs are not considered to be legally binding nor could they be interpreted as legally binding or give rise to legal obligation.

6.2 KCC legal will be drawing up the grant agreements between KCC and the Local Planning Authorities, which will provide a back-to-back agreement with the grant determination letter and MOUs for the funding. Conditions within the grant agreement will include how the monies are to be returned if unspent, failure to meet the terms of the agreement and the payment of credit returns for bidder who will not recirculate the returns themselves.

7. Equalities implications

.7.1 An EqIA screening has been completed and identified no harmful implications for any protected characteristic groups at this stage.

8. Other corporate implications

8.1 This issue is affecting the delivery of up to 30,000 homes up to 2040 in East Kent, including developments around Ashford, Canterbury, Herne Bay, Otterpool, and Lenham. The costs of mitigation options will potentially also affect the viability and deliverability of sites, which may require the need to renegotiate S106 agreements and Community Infrastructure Levy and ultimately, see less funding for key infrastructure and services delivered by KCC. The delay to new housing impacts KCC's share new Council Tax income with direct impact on KCC's finances as a significant proportion of new growth pressures and overall funding come from Council Tax, therefore facilitating development is in KCC's interests.

9. Governance

9.1 An Executive working group comprising of KCC, Ashford Borough Council, Canterbury City Council, Folkestone and Hythe District Council, Maidstone Borough Council, and Swale Borough Council as catchment partners and Dover District Council and Thanet District Council will be invited as independants to form a panel to make recommendations, subject to heads of terms to be agreed by the Corporate Director of Growth Environment and Transport in January 2025 . This panel will review and vote on the submitted bids and the recommendations of the panel will be submitted to the Corporate Director of Growth, Environment and Transport in consultation with the Corporate Director of Finance for sign off of the grant. KCC will retain the ultimate decision making over the awarding of monies.

9.2 The Corporate Director of Growth, Environment and Transport and Corporate Director of Finance will have delegated powers to award grant funding to mitigation schemes for nutrient neutrality in the Stour catchment.

9.3 The Corporate Director of Growth, Environment and Transport in agreement with the Cabinet Member for Environment, and Cabinet Member for Economic Development will have authority to appoint an officer as an observer to the executive board of the Stour Environment Credits Ltd.

10. Conclusions

- 10.1 The requirement for nutrient neutrality in the catchment of Stodmarsh National Nature Reserve is having a significant impact on the delivery of homes in East Kent.
- 10.2 The government has awarded KCC £9.8 million of capital for the delivery nutrient mitigation, which will generate credits which in turn will release housing. This funding must continue to be recycled and invested in mitigation until nutrient mitigation is no longer required. The residual funds must then be invested in measures to aid the restoration of Stodmarsh to favourable conservation status.
- 10.3 KCC as catchment coordinator will be responsible for the delivery of the catchment strategy and the awarding of capital grant funding to local planning authorities to deliver mitigation measures to achieve nutrient neutrality.

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 to:

- (i) AGREE, in consultation with the Cabinet Member for Finance and Traded Services to £9.8 million of funding from the Ministry of Housing, Communities and Local Government, be used to award grant funding to Local Authority partners to deliver mitigation schemes for Nutrient Neutrality in the Stour catchment.
- (ii) DELEGATE authority to the Corporate Director of Growth, Environment and Transport in agreement with the Cabinet Member for Environment, and Cabinet Member for Economic Development to nominate an officer as an observer to sit on the executive board of Ashford Borough Council and Canterbury City Council joint venture company Stour Environmental Credits Ltd which will deliver mitigation schemes on their behalf.
- (iii) AGREE to the adoption of the Stodmarsh Nutrient Neutrality Strategy to support the awarding of grant funding to Local Authority partners.
- (iv) DELEGATE authority to the Corporate Director of Growth, Environment and Transport in consultation with the Cabinet Member for Economic Development to take relevant actions including, but not limited to, finalising the terms of, and entering into, required contracts or other legal agreements, as necessary to implement the decision as shown at Appendix A

12. Appendices:

- Appendix A Proposed Record of Decision
- EQIA
- Stodmarsh Nutrient Neutrality Strategy

13. Contact details

Report and Appendices Authors:

Louise Smith
Flood and Water Manager
03000 414 829
Louise.Smith@kent.gov.uk

Relevant Director:

Stephanie Holt-Castle
Director of Growth and Communities
03000412064
Stephanie.Holt-Castle@kent.gov.uk