

BRECKLAND DISTRICT COUNCIL

Report of: Sarah Suggitt: Executive Member for Strategic & Operational Planning

To: Cabinet: 13 March 2023

Author: Simon Wood – Director of Planning and Building Control

Subject: Norfolk Environmental Credits – Norfolk Nutrient Neutrality Joint Venture

Purpose: To seek agreement for Breckland Council to join with other District Councils in Norfolk alongside Anglian Water in the Norfolk Environment Credits Joint Venture.

Recommendation(s):

THAT CABINET:

1. Agree for Breckland Council to enter into a Joint Venture (a company limited by guarantee) with Anglian Water and one or more local authorities in Norfolk for the provision of environmental credits (initially focussing on addressing nutrient neutrality) in accordance with the attached draft heads of terms.
2. Agrees to commit £30,000 revenue in 2023/24 as part of establishing the Joint Venture. The purpose of the funding being to establish the operating model in year one, after which there will be full recovery of the operating costs as part of the credit income.
3. Delegates to the Deputy Chief Executive in consultation with the Portfolio Holder for Strategic and Operational Planning to finalise the details of the joint venture agreement and operating arrangements and enter into the Joint Venture.

1.0 BACKGROUND

- 1.1 On the 16 March 2022 Natural England issued new guidance to local planning authorities concerning nutrient enrichment and the role it must play in preventing further adverse impacts to protected wetland habitats.
- 1.2 This guidance covered the catchment areas of the River Wensum Special Area of Conservation (SAC) and the Broads Special Area of Conservation and RAMSAR. This impacted all the local authorities in Norfolk, either through wastewater discharge or surface water flows running into the River Wensum SAC or Broads SAC. Kings Lynn and West Norfolk District Council and Great Yarmouth Borough Council have indicated that nutrient neutrality requirements will have a minimal impact.
- 1.3 Local Planning Authorities (LPA) are required to consider the impact of nutrient enrichment before planning permission can be granted and therefore all planning applications (including new applications, reserved matters and some of those with outstanding conditions), primarily involving increases to overnight stay were temporarily put on hold.

- 1.4 In relation to such matters the Council is the Competent Authority for planning decisions; however, the habitats legislation requires that sites that are in the catchments of the Wensum SAC and Broads SAC will only be granted planning permission when there is certainty around levels of enrichment and corresponding mitigation. If that certainty is not proven beyond reasonable doubt the LPA is not legally allowed to grant permission and Natural England has made it clear it will also oppose any deviation to the legal framework.
- 1.5 A Written Ministerial Statement on nutrient neutrality was published on 20 July 2022 and Defra issued a Direction to Natural England on strategic mitigation schemes on 28 July 2022. The Secretary of State directed Natural England to
“take the steps that they have proposed and that are within their control to prepare, facilitate and administer the operation of strategic mitigation schemes in any or all the catchments where at the date of this direction there are restrictions on development because of concerns in relation to nutrient pollution.”
- 1.6 It is understood that Natural England will only provide a scheme and nutrient neutrality credits on nature and land-based solutions such as wetlands and woodlands, which by their nature will be medium to long term solutions. This is unlikely to deliver sufficient capacity for the growth agenda in the catchments.
- 1.7 Breckland currently has approximately 1000 dwelling units awaiting planning permission. This has implications for economic growth and the delivery of housing, including affordable housing.
- 1.8 There is also a risk that over time the Council will not be able to demonstrate a 5 year housing land supply and that will result in pressure for development in areas where it would not normally be considered appropriate.
- 1.9 There is also a risk to the construction industry, in particular small and medium sized builders. Many of these organisations do not have the ability or capacity to find their own solutions and many will already have commitments to land and are reliant on the granting of planning permissions to maintain a pipeline of work.
- 1.10 Breckland has been working with the other Norfolk Districts to ensure a consistent approach to decision making but also to seek to deliver a vehicle by which developers can purchase credits that will allow Councils to grant planning permission.
- 1.11 The result of the discussions is the establishment of the Norfolk Environmental Credits Joint Venture between the Norfolk Districts and Anglian Water. Broadland Council and South Norfolk Council have already formally agreed to enter into the Joint Venture, and it is understood North Norfolk and Norwich are actively considering joining as well.
- 1.12 The purpose of the Joint Venture would be to enable developers to purchase environmental credits to cover the additional enrichment load that has been calculated for their site.

- 1.13 The Joint Venture company would secure mitigation and then issue certificates confirming the credits that had been purchased. Developers would then submit the certificates with their planning applications.
- 1.14 The Joint Venture would comprise of Anglian Water and several of the local authorities. It is estimated that the offer from the company would capture around 40% of the nutrient neutrality market. Some developers will have the capacity and space to develop their own nutrient neutrality solutions on site or work with Natural England and other market providers.
- 1.15 This solution will provide housing developers in the catchments with certainty around the delivery of the mitigation required. It is not anticipated that the Joint Venture will be a direct provider of mitigation solutions itself.
- 1.16 The operating model would sit alongside what Natural England provides on nature and land-based solutions. It is recognised that some landowners may prefer to work with the partnership on nature and land-based solutions rather than Natural England and vice versa.
- 1.17 It is expected that other commercial providers, such as the Wendling Beck Environment Project, will also enter the nutrient neutrality market in due course.
- 1.18 The Council will continue to positively engage with other providers of credits such as Natural England and other market led providers such as the Wendling Beck Environmental Project.

2.0 **OPTIONS**

- 2.1 Option 1 - To require Natural England to produce the whole nutrient neutrality solution for Norfolk. Natural England has indicated that they will focus on the nature and land-based solutions. This option is not recommended as a way forward. A mixed economy of mitigation will need to be delivered to meet the requirements. Any nature-based solutions are also unlikely to be operational in the short term and Natural England will only be able to meet a portion of the nutrient requirement.
- 2.2 Option 2 - To pass responsibility to some other third party or investment vehicle to run a credit-based scheme for developers to access. This is not, by itself, recommended as a way forward. There is a significant role for other providers to be part of the solution and Breckland is actively working with third parties to support the provision of an additional credit-based system.
- 2.3 Option 3 - Do nothing. Allowing the market to develop credits themselves alongside the Natural England nature and land-based offer. Developers can trade between themselves and develop their own mitigation plans. This is not recommended as a way forward. There is no indication of how long this would take to become established and many of the developers are small and medium sized enterprises that will not be able to develop their own solutions.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 To provide the Council with a vehicle to deliver nutrient neutrality credits alongside other options to deliver housing development in line with national and local planning guidance.

4.0 **EXPECTED BENEFITS**

4.1 To deliver housing growth within the River Wensum and The Broads catchment areas.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Legal**

5.1.1 Legal advice was sought on several governance models through external advisors (Birketts LLP) and each of the working options was considered by officers in November 2022. The options explored were as follows: -

- A Joint Venture Company Limited by Shares
- A Joint Venture Company Limited by Guarantee
- Contractual arrangements using Council in-house powers
- A Limited Liability Partnership

5.1.2 The preferred option was a joint venture company limited by guarantee. This was influenced by:-

- (a) a desire to show this was not about making profit out of nutrient neutrality - particularly when funding for affordable housing and other infrastructure is being squeezed
- (b) the fact that the liability on each of the parties is limited and
- (c) there is a constraint for Anglian Water (given their funding base and operational arrangements) to pursue this model rather than a profit-making vehicle

5.1.3 A draft Heads of Terms document has been produced by Birketts and is set out in Appendix 1 to this report.

5.2 **Corporate Priorities**

The delivery of housing aligns with the following corporate priorities in the Breckland Corporate Plan 2021–2025.

- Thriving Communities
- Breckland 2035

5.3 **Financial (See Pro-forma B attached as Appendix 2)**

5.3.1 Annual operating costs for the Joint Venture have been estimated at £300,000, with a 50:50 split between Anglian Water and the local authorities. Therefore, with five local authorities indicating they wish to be a part of the joint venture it would be

£30,000 each. Provision will need to be made in the 2023/24 budget for the initial revenue funding of £30,000 to support the establishment of the Joint Venture.

5.3.2 Once the Joint Venture is operational, and credits are sold it is anticipated that the revenue costs associated with the future running costs would be met as part of the developer contributions.

5.3.3 An officer representative from the Council would become a member director of the Joint Venture and then a Board would be drawn from the member directors. Decision making on the most important matters would rest with the member directors. Board members may also be Executive directors that are appointed to oversee the day-to-day arrangements. Further details are set out in the draft Heads of Terms (See Appendix 1).

5.3.4 The Joint Venture company would employ a small team of staff, a programme lead/general manager to run the company on a day-to-day basis and a separate support role to oversee, monitor and track arrangements and agreements.

5.4 **Staffing**

5.4.1 In the short-term work on nutrient neutrality has been carried out by members of the planning policy and development management teams. This is becoming increasingly unsustainable due to pressures on other priorities such as the Local Plan. The Council may need to make further resource investments in resolving nutrient neutrality and its economic and growth impact as the issues evolve. Further reports are likely to come forward in this regard as the exact nature of this requirement becomes clearer.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All

Background papers:- None

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Key Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix 1 – Draft Heads of Terms
Appendix 2 – Pro-forma B