



NORWICH City Council

Committee name: Cabinet

Committee date: 08/03/2023

Report title: Establishing a Joint Venture with Anglian Water and Norfolk Authorities to provide environmental credits

Portfolio: Councillor Stonard, Cabinet member for inclusive and sustainable growth

Report from: Executive director of development and city services

Wards: All wards

OPEN PUBLIC ITEM

Purpose

The issuing of planning consents for new overnight accommodation in Norwich is currently on hold due to the nutrient neutrality constraints that arose following guidance issued by Natural England in March 2022.

The purpose of this report is to consider whether the Council should seek to participate in a Joint Venture company being established in partnership with neighbouring Councils and Anglian Water Ltd. The purpose of the company will be to purchase environment credits created by the delivery of nutrient mitigation measures and sell the credits to the development industry so they will be able to provide information to the Local Planning Authorities so that the nutrient neutrality constraint may be overcome.

Recommendation:

It is recommended that:

1. The principle of entering into a Joint Venture (a company limited by guarantee) with Anglian Water and other local authorities in Norfolk for the provision of environmental credits (initially focussing on addressing nutrient neutrality) be endorsed;
2. To commit £30,000 revenue funding finance in 2023/24 to allow the Joint Venture to cover its year one operating costs and produce a business case so that it can secure capital investment and deliver its objectives;
3. A report be brought back early in the new civic year to consider formally joining the Joint Venture once a business case is produced and investment requirements are known.

Policy framework

The council has five corporate priorities, which are:

- People live independently and well in a diverse and safe city.
- Norwich is a sustainable and healthy city.
- Norwich has the infrastructure and housing it needs to be a successful city.
- The city has an inclusive economy in which residents have equal opportunity to flourish.
- Norwich City Council is in good shape to serve the city.

This report addresses corporate priority 3: “Norwich has the infrastructure and housing it needs to be a successful city”. In particular:

- to develop and regenerate strategic areas such as East Norwich and Anglia Square;
- to provide and encourage others to provide new homes, open spaces and infrastructure for residents;
- to refine and deliver the strategic framework for city development.

This report helps to meet the housing, regeneration and development objective of the COVID-19 Recovery Plan.

Report details

Background

1. On 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.
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 impacts all the local authorities in Norfolk to some extent, either through wastewater discharge or surface water flows running into the River Wensum SAC or Broads SAC. However, Kings Lynn and West Norfolk District Council and Great Yarmouth Borough Council have indicated nutrient neutrality requirements will have a minimal impact.
3. Local Planning Authorities (LPAs) are now required to consider the impact of nutrient enrichment before planning permission can be granted for development involving increases to overnight stays in the affected catchment areas. The onus is on developers to demonstrate that development will not contribute to enriched nutrient levels. The practical effect of this has been to prevent most Norfolk LPAs issuing relevant planning permissions.
4. No planning applications for overnight accommodation have been released in Norwich since the introduction of the new guidance. The issue is causing serious disruption to the development industry across Norfolk. It is estimated that around 12,000 homes are currently on hold due to the nutrient neutrality constraints. In addition, there is a significant backlog of applications that were halted on the 16 March 2022. For Norwich alone, there is a backlog of over 1,800 residential consents (plus consents for other forms of overnight accommodation).
5. Further details on the background to nutrient neutrality are available at [nutrient neutrality webpage](#).

City Council's Own Mitigation Scheme

6. In December Cabinet considered a [report](#) which identified how a nutrient mitigation scheme can be created through delivery of a programme of fitting more water efficient fittings into Council owned properties. The scheme will create headroom to allow credits to be issued so that new development will be able to demonstrate nutrient neutrality.
7. The report estimated that the scheme would create the headroom sufficient for c1400 new dwellings, only a fraction of the planned growth in the City. Cabinet approved a policy led approach towards allocation of the potential mitigation credits subject to developers agreeing to meet the costs of the scheme. It was noted that this approach "would only operate on a temporary basis and any unused headroom could be incorporated into the emerging catchment wide scheme".
8. The scheme is still proceeding through technical assessment and sign off processes. Subject to receiving the response of Natural England it may be possible to issue credits in accordance with the agreed approach by early April.

Joint working

9. The affected Councils have worked closely in collaboration since the introduction of the Natural England guidance. Royal Haskoning DHV were commissioned by the City Council on behalf of the local Councils to lead technical work on possible solutions. This led to the publication of Norfolk nutrient budget calculator in the autumn available [here](#).
10. Royal Haskoning are continuing to work for the local authorities. A Norfolk Nutrient Mitigation Strategy is currently being produced. This report will set out suitable short, medium and long-term mitigation options that could potentially be used to offset the additional nutrient load from a new development within the catchment of the River Wensum SAC and/or the Broads SAC, including potential strategic options to manage nutrient inputs and allow further residential development to proceed. This work is at draft stage.
11. The authorities have also been considering their role in developing a scheme in which they could offer credits to offset the constraints on nutrient neutrality. There is a strong case for taking such action as there are no signs that the emerging Natural England Scheme or market solutions will be available within an acceptable timescale. Without swift action to mitigate nutrient neutrality there is a risk to the development industry and the Council's own housebuilding programme.
12. This has led the authorities to develop proposals for a joint venture company to be established jointly with Anglian Water to address the issue. Broadland and South Norfolk cabinets have already resolved to enter the joint venture, North Norfolk and Breckland and expected to resolve similarly in early March. Anglian Water are also expected to formally agree to enter it in March.
13. Legal advice has been taken on the possible structure and governance of the joint venture from Birketts LLP. The draft heads of terms produced are available [here](#). A draft and commercially confidential business case for the joint venture is attached as an exempt appendix A. The business case looks at options, timescales, costs, resourcing and risks. It also lists the range of possible interventions being considered.
14. A shadow board has been established with representatives from potential partner authorities to oversee the establishment of the company. If the Council does elect to join the company, it is intended to work with the shadow board to develop the governance proposals alongside development of the business case and understanding of the risks.
15. It is possible that the company will be formally established in April with the partners providing £300,000 (of which £30,000 is proposed from the City Council) to ensure it can resource its first year in operation and develop a detailed business case and operational framework to ensure it can access much greater levels of capital funding to ensure mitigation is delivered. The scale of the possible future investment is outlined in the attached business case. This should be confirmed in any detailed business case.

Options Considered

16. Options considered in setting up the joint venture are set out in the business case. Clearly the City Council has an additional option of it developing its own mitigation scheme to augment its emerging mitigation scheme. This would see the Council establishing arrangements to either fund further mitigation measures, or buy credits from those who have undertaken mitigation on sites. The Council would then sell these credits to developers. This approach has been discounted on the basis that the Council doesn't control sufficient possible mitigation to deliver a satisfactory scheme without reliance on third parties and solutions delivered outside of our boundaries. There are also considerable potential benefits of working in partnership due to efficiency savings in establishing any vehicle and avoiding competing with neighbouring authorities.
17. All options considered have risks attached to them. As these relate to the commercially confidential emerging business plan these are considered further in exempt appendix B.

Proposed action

18. The proposed way forward is to establish a company in consultation with other Councils. The purpose of the company would be to enable developers to purchase environmental credits to cover the additional enrichment load that has been calculated for their site. Operating through a company has various benefits including allowing for private sector investment and limiting the liability of partner Councils.
19. The company (which for this purpose is referred to as a joint venture) would secure mitigation and then issue certificates confirming the credits that had been purchased. Developers would then submit the certificates with their planning applications.
20. The company would obtain mitigation through either funding organisations to implement mitigation measures on their own sites, guaranteeing the credits, or by purchasing the credits generated by landowners undertaking work on their own sites.
21. The joint venture would comprise Anglian Water and those local authorities currently impacted by nutrient neutrality, namely South Norfolk Council, Broadland District Council, Breckland District Council and North Norfolk District Council in addition to Norwich City Council. The presence of Anglian Water provides significant potential to ensure the mitigation created by environmental works on their sites can be quickly passed to developers.

Proposed Governance

22. To inform establishment of the company, advice was sought from Birketts as to the potential governance options, which led to initial Heads of Terms being developed. At this stage, the Heads of Terms have been considered and supported by the other partner authorities.
23. There are a number of areas in which it is considered the Heads of Terms could be developed or reconsidered. In particular, it is proposed the Board shall consist of two representatives from Anglian Water, one representative from the

Greater Norwich authorities (Norwich, Broadland and South Norfolk) and one representative from North Norfolk and Broadland. Anglian Water's two representatives reflects their 50% share of establishing and operating the company. The governance arrangements have also been established before the detailed business plan, and may need re-aligning to most effectively support the intended delivery model of the company.

24. With that in mind, if this report is agreed, it is intended to work with partners to encourage development of the governance arrangements in the following areas:

- a. looking at options that could provide for all shareholders to have a presence on the company board or a say in company decision making;
- b. a review of the split of responsibilities between the shareholders and Board members to ensure that decision-making on the most important matters would rest with the shareholders;
- c. A review of how the decisions to allocate credits to particular developers and sites will be made;
- d. Ensuring that business activities of the company, including any further funding requests to shareholding partners, will be subject to the formation of robust business cases and appropriate risk appraisal;
- e. a more detailed mechanism to address any concerns on the part of shareholders about the Board's operation of the company, decision-making etc;
- f. Reviewing clauses relating to restrictive activities, and in particular ensuring that each Council has the discretion to use credits it has either directly funded or created in its own right – whether that may be using on its own developments, selling to a developer or to the joint venture;
- g. Clarity on the role of the company versus the shareholding partners to develop proposals relating to future mitigation delivery (such as commissioning studies to investigate potential mitigation solutions);
- h. How the company will manage potential conflicts between the role of board members and shareholders from a planning perspective and the duty of the board to act in the best interests of the company; and
- i. How the company will continue to assess Subsidy Control implications and ensure ongoing compliance with the Public Contract Regulations 2015.

25. At present, the proposed governance arrangements understandably have a non-compete clause, whereby partner authorities would not be able to establish competing ventures whilst a member, or within 24 months of leaving the joint venture. To help all partners manage the risk that the joint venture is being established without a clear business case, it is recommended that as part of our commitment to join the governance arrangements must make clear that any partner can leave the partnership without being bound by the non-compete clauses if they cannot support the business case.

Implications

Financial and resources

26. Any decision to reduce or increase resources or alternatively increase income must be made within the context of the council's stated priorities, as set out in its Corporate Plan 2022-26 and budget.
27. Seed revenue funding of £30,000 is being requested from all shareholding councils to establish the company and operate during 2023/24. Annual operating costs of 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.
28. The council's contribution can be funded from its contingency. Although the £30,000 is described in the company documents as a loan, as opposed to it being an equity stake or share capital it is better to consider it to be a repayable grant as it is the intention for the JV to repay it during 2023/24 when sufficient credit income has been received; this will avoid undue delay in drafting and agreeing loan arrangements and conditions.
29. This upfront funding will cover the initial operating and programme costs. It should be noted that any investment made by the council will carry some element of risk, and may be vulnerable to legislative change. It is important to understand that any commitment to being part of the JV may also carry an expectation, at least, of further financial support to either initially cashflow the purchase of mitigation or by the commissioning of mitigations. Such support will need to be compliant with subsidy control regulations.
30. There remain several unknowns at this stage of the JV development and some initial risks have also been identified and set out in Annex B. Members will want to be clear on the point at which the outstanding issues have been satisfactorily resolved before committing to being part of the JV.
31. It is expected that the JV will be established in April and each council - including Norwich - is asked to provide £30k to develop a more detailed business case. As the Council will not be a formal member at this stage it will not be liable for further investment or to formally join the company until a further decision is made by Cabinet in the new civic year based on the business case.

Legal

32. The Council has the power to be able to enter a joint venture arrangement as proposed in this report (most notably as a result of the general power of competence provided by the Localism Act 2011).
33. The proposed joint venture, through a company limited by guarantee, presents particular governance challenges. In addition to the specific governance elements as outlined above, there are considerations that will need to be made by the company as it develops its business case including that the company will not have TECKAL status, meaning transactions between the company and its owners will need to have a commercial standing. Further, considerations such as the ongoing impact of the Subsidy Control Act through the life of the

joint venture and financing a company limited by guarantee, rather than shares, will all need to be made as the business case is developed. These matters will be explored further as part of future cabinet decisions.

34. The current proposed financing of £30,000 is below the subsidy control act de minimis level and therefore there are no subsidy control implications of this particular decision.

Statutory considerations

Consideration	Details of any implications and proposed measures to address:
Equality and diversity	There are no direct implications with regard to equality and diversity and therefore no measures proposed. An EqIA is not required.
Health, social and economic impact	The establishment of the Joint Venture will enable mitigation to be provided, enabling planning consents to be issued and housing development to take place. This will have positive health, social and economic impacts.
Crime and disorder	There are no implications with regard to crime and disorder and therefore no measures proposed
Children and adults safeguarding	There are no implications with regard to safeguarding and therefore no measures proposed.
Environmental impact	The proposal will have significant impacts on the environment by establishing a Joint Venture that will provide mitigation to initially stop the nutrient enrichment arising from new overnight accommodation worsening the water quality in the Wensum SAC and Broads SAC and provide headroom for development to proceed.

Risk management (see exempt appendix)

Other options considered

35. Other options that have been considered are set out and discussed above and in exempt appendix A.

Reasons for the decision/recommendation

36. Protecting the natural environment in our rivers and Special Areas of Conservation remains a priority. However, the nutrient neutrality constraints that have been placed on the council present a huge barrier to growth and addressing some the wider social and economic challenges.

37. A solution needs to be found swiftly that meets the local requirements without creating a further uncertainty across the wider region.
38. The proposed Joint Venture with Anglian Water and the other local authorities that have been significantly affected by nutrient neutrality is considered the most efficient and effective way of enabling mitigation to be delivered whilst supporting the delivery of development plans in the area. However, it is considered preferable to postpone formal entry into the joint venture until a detailed business case can be considered and governance concerns explored. It is intended to report progress on these to a meeting early in the new civic year.

Background papers: None

Appendices: Exempt Appendices A – outline business case. B risks register

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