

## **REPORT TO EXECUTIVE**

**Date of Meeting: 23 June 2015**

**Report of: Assistant Director City Development**

**Title: Habitat Mitigation – Proposed Joint Committee with Teignbridge District Council and East Devon District Council**

### **1 What is the report about?**

- 1.1 This report seeks approval for formal establishment of the new Joint Committee according with the detail set out in the 'Governance Arrangement for Managing European Site Mitigation' as set out in Appendix 1 to this report

### **2 Recommendations:**

- 2.1 That this Council sets up a Joint Committee, with Teignbridge AND East Devon District Councils, to agree on detailed habitat mitigation schemes and the prioritisation and funding of mitigation projects to offset recreational impacts on European wildlife sites resulting from increased housing and tourist accommodation within the three authorities' areas.
- 2.2 That the Joint Committee is set up and operates according to the proposed 'Governance Arrangement for Managing European Site Mitigation' (see Appendix 1) and also that the Officer Working Group and Mitigation Delivery Officer work together and with the Joint Committee according to the proposed 'Governance Arrangement'

### **3 Reasons for Recommendation:**

- 3.1 To implement proposals for a joint committee as agreed at Executive on 7 October 2014:

*'That the proposals to establish a joint committee with East Devon and Teignbridge District Councils to oversee and prioritise funds for mitigation projects be agreed. A detailed report would be brought back early in 2015 to agree how the committee would operate.'*

### **4. What are the resource implications including non financial resources?**

- 4.1 The proposed approach will have implications for future decisions on the use of Community Infrastructure Levy funding. The proposed approach (including joint committee) would be resourced using funds from the mitigation moneys that are being secured.

### **5. Section 151 Officer comments:**

- 5.1 There are no additional financial implications for the Council contained in this report.

### **6. What are the legal aspects?**

It is a statutory requirement for the Council to mitigate the impacts of new development on European Sites. The approach of using a Joint Committee seems a logical and justifiable approach to ensuring that the impacts on all of the European Sites are properly and fairly mitigated. There are specific legal requirements in terms of establishing such a committee (set out in Section 102 of the Local Government Act 1972 and associated Regulations) which will need to be adhered to when setting up the Committee and formulating its remit/terms of

reference. In that regard the Council (along with the partner authorities) needs to formally delegate the appropriate powers to it.

## **7. Monitoring Officer Comments:**

7.1 This report raises no issues to concern the Monitoring officer.

## **8. How does the decision contribute to the Council's Corporate Plan?**

8.1 The joint committee would make decisions relating to conserving natural habitats and wildlife that would contribute towards implementation of the Green Infrastructure Strategy.

## **9 Background**

- 8.1 European legislation, translated into UK law by the Conservation of Habitats and Species Regulations 2010, provides for specific protection of the most important European wildlife sites. Under Regulation 61 Local Planning Authorities must not grant planning permission for developments that, alone or in-combination with other developments, would have a negative impact on a European wildlife site.
- 8.2 Working in partnership, Exeter City Council, East Devon District Council, Teignbridge District Council and Natural England have gathered evidence of negative impacts from recreation use on the Exe Estuary Special Protection Area (SPA), Dawlish Warren Special Area of Conservation (SAC) and the Pebblebed Heaths SPA/SAC. The evidence demonstrates that housing and tourist accommodation developments within 10km of these European sites will result in more recreational use by residents/occupiers and greater adverse impacts on the designated sites.
- 8.3 The partners have developed a Joint Approach to offsetting these impacts through a suite of mitigation measures to be delivered by the Councils/partners. The measures are to be funded by developers through a per-dwelling contribution (to be taken from CIL). The Joint Approach was agreed at executive in October 2014. It was also adopted by Teignbridge and East Devon District Councils in summer 2014.

## **9. The Joint Committee**

- 9.1 S102 of the Local Government Act 1972 sets out the legal basis for the establishment of local authority Joint Committees. Since summer 2014 an Officer Working Group has developed a protocol for the working of the Joint Committee that complies with S102 (see Appendix 1).
- 9.2 It is a legal requirement that a local planning authority does not grant planning permission for any development that would negatively impact a European Site, unless full mitigation is secured. The Mitigation Strategy identifies the mitigation measures needed and the Joint Approach sets out the means to secure funding for these measures. The Joint Committee will be responsible for ensuring the delivery of the mitigation measures and so for ensuring the authorities' Habitat Regulations obligations are met in this matter.

- 9.3 The Joint Committee protocol detailed in Appendix 1 ensures that the proposed committee will meet the legal requirements for establishing such a committee as set out in Section 102 of the Local Government Act 1972 and associated Regulations.
- 9.4 The Joint Committee is intended to ensure transparent and democratic decisions are made concerning the spending of developer contributions to secure legally required mitigation measures. The developer contribution is calculated to cover the cost of the mitigation measures and their delivery.
- 9.5 Discussions have taken place with Legal Services and Democratic Services across the City Council and East Devon and Teignbridge District Councils. Natural England and a representative of the Dorset Heathlands Interim Planning Framework have also advised on the operation of Joint Committees in relation to Habitat Regulations mitigation delivery. The Mitigation Strategy and Joint Approach are therefore informed expert input.

## **10 Time Scale for Committee Formation and initial Meetings**

- 10.1 Equivalent authority to establish the joint committee in accordance with the protocol at Appendix 1 is currently being sought in Teignbridge and East Devon.
- 10.2 In summer 2015 the intent is that the inaugural meeting of the new Joint Committee will be held. This will be an opportunity for the new committee members to meet the relevant officers and for Natural England/council officers to explain the legislation, evidence, mitigation measures and Joint Approach.
- 10.3 In autumn 2015 the intent is that the next meeting of the committee will consider officer proposals for the five year Delivery Programme and one year Business Plan.

### **Assistant Director City Development**

Contact for enquiries  
Democratic Services (Committees)  
Room 2.3  
01392 265275

## **Appendix 1**

### **Governance Arrangements for Managing European Site Mitigation**

In discharging their obligations under the Conservation of Habitats and Species Regulations 2010, East Devon District, Exeter City and Teignbridge District Councils have all resolved to form a joint committee that makes expenditure decisions on mitigating recreational impacts of new development. Following more than two years of officer working group collaboration assembling evidence and an outline mitigation programme, this document sets out proposals for operation of the joint committee. It is anticipated that respective local authority Executive/Cabinet committees will formally agree these proposals.

### **Proposals**

#### **Purpose of the Joint Committee**

In response to the South East Devon European Site Mitigation Strategy and the emerging Pebblebed Heaths Management Plan the Joint Committee will ensure timely and efficient mitigation of the recreational pressures arising from new development in the area of local European Sites, namely:

- Exe Estuary Special Protection Area (SPA) and Ramsar site;
- Dawlish Warren Special Area of Conservation (SAC); and
- East Devon Pebblebed Heaths (SAC and SPA)

#### **Functions of the Joint Committee**

The functions of the joint committee include the following:

- Agree and prioritise a 5 year programme for delivery of recreation mitigation measures and monitoring
- Agree and implement an annual Business Plan
- Allocate budget accordingly, taking account of other arising mitigation opportunities
- Secure the cooperation of all stakeholders
- Monitor risks, progress and effectiveness of delivery
- Monitor effectiveness of mitigation and agree changes where necessary
- Identify, lobby for and secure complementary funds

#### **Structure of the Joint Committee**

##### **Composition and decisions**

Portfolio holders for sustainable development, strategic planning, environment or similar function. One Councillor per authority, each with an equal stake and all decisions to be made by consensus.

Other interested parties will be invited to attend Joint Committee meetings in an advisory capacity. In particular, it is anticipated that Natural England will attend every meeting as they hold the expertise to comment on the suitability of proposed Joint Committee decisions. The Chair of the Green Infrastructure Board will also be invited

to attend to ensure potential synergies with the delivery of the Green Infrastructure strategy can be taken forward.

### Nominees

Portfolio holders may send nominees in their absence. Any nominee must also be an Executive member.

### Meetings

The Joint Committee should meet quarterly. This frequency can be adjusted to suit the nature, amount and urgency of business.

Meetings must be held in public and therefore they should be conducted at publicly accessible buildings, which also enable disabled access. It is therefore proposed that the venues for meetings of the Joint Committee are the three Councils' offices, hosted on a rotational basis.

Although meetings are to be held in public, it is still possible to discuss exempt and confidential matters in Part II. This is subject to the usual resolution procedure and the same criteria set out in sections 100A and 100I and schedule 12A of the Local Government Act 1972. These provisions enable the public and press to be excluded from meetings and from access to reports and are equally applicable to the Joint Committee.

### Chair

As with the venue, the Portfolio Holders will rotate chairmanship of each meeting to be appointed for not more than 12 months unless otherwise agreed by the Joint Committee. The Chair shall not have a casting vote.

### Clerk

The Clerk will rotate with the Chair, with the same local authority providing both for up to a year.

### Quorum

Decisions must be taken on a unanimous basis and so a meeting of the Joint Committee is quorate with three voting members present. The presence of non-voting officers will not affect whether a meeting of the Joint Committee is quorate.

### Powers

The Joint Committee will have delegated to it all those powers which, in the absence of the Joint Committee, would be held by the respective Executives to enable delivery of mitigation measures in accordance with the Habitat Regulations 2010.

### Call-in

Members of the three local authorities will have call-in rights over Joint Committee decisions, equivalent to those for other committee decisions within the authorities.

### **Scrutiny**

Scrutiny arrangements should be managed at a local authority level. If Members of the Joint Committee sit on the relevant scrutiny committee, they should declare an interest if European site mitigation issues are discussed. In Exeter, Economy

Scrutiny Committee will conduct scrutiny arrangements, in Teignbridge and East Devon, respective Overview and Scrutiny Committees.

### **Relationship with the Green Infrastructure Board**

An existing Green Infrastructure Board, which is supported by its own officer working group and delivery officer, has also been established for the area. Its roles and responsibilities encompass a broad range of GI management and delivery issues. Given the legislative requirements of the Habitat Regulations, it was considered necessary to form a focussed Joint Committee whose role is limited to delivering and monitoring European Site mitigation projects rather than subsume these responsibilities into those of the GI Board. Nevertheless, there will be a close relationship between the roles of the two. It is anticipated that respective Delivery Officers will work together (being based at the same growth team) and advise both the Joint Committee and GI Board with a view to collaboration where appropriate.

### **The Habitat Regulations Officer Working Group**

The Officer Working Group will consist of relevant officers from each of the Local Authorities and Natural England. LA representatives may include officers with planning, ecology, ranger, harbour authority or beach safety remits. The Group will also include appropriate officers/representatives from key stakeholders including the RSPB, the Exe Estuary Management Partnership and the Pebblebeds Conservation Trust. The Officer Working Group will meet at least quarterly, prior to Joint Committee meetings.

The Officer Working Group will:

- Provide expert advice to Delivery Officer and Joint Committee from their areas of expertise.
- Provide support and regular management input to the Delivery Officer.
- Work with Delivery officer to prepare agendas and reports to Joint Committee
- Continue in planning/delivery interface role

### **The Habitat Regulations Delivery Officer**

A Delivery Officer has been appointed to ensure delivery of habitat mitigation projects. With support from the existing officer working group and drawing on the finalised South East Devon European Site Mitigation Strategy, this will involve:

- identifying projects that can come forward in a timely manner and will result in cost effective mitigation benefits
- bringing projects to a stage where they are ready for final design/delivery in close collaboration with relevant authorities, landowners and delivery agents
- estimating costs and timescales
- drafting a 5 year programme for delivery and 1 year Business Plans
- identify mitigation opportunities that aren't in the programme for delivery and, if appropriate, recommended to the Board as valid 'departure' projects
- managing projects and the completion of works in accordance with the current Business Plan
- overseeing effective management of mitigation measures to ensure their long-term effectiveness

- coordinating monitoring of European Site integrity
- Reporting to the Joint Committee on progress with project implementation, monitoring outcomes and any resulting recommended action.

### **Delegation to the Delivery Officer**

It is suggested that the Joint Committee delegates to the Delivery Officer all of the powers that are delegated to the Joint Committee, except for decisions relating to:

- Agreeing the 'delivery programme' and 'Business Plans';
- Any expenditure not contained within the approved Business Plans.

### **Delivery Programme**

The Delivery Officer will prepare a Delivery Programme setting out the most effective proposed mitigation projects for the following 5 years. This will include anticipated costs and timescales. Once agreed by the Joint Committee, the Programme will provide certainty to other stakeholders and any funding partners. At 5 years, the Programme will provide stakeholder certainty without extending so far into the future as to become unreliable. Projects should not therefore be removed from the programme unless all relevant stakeholders agree.

### **Business Plan**

The Delivery Officer will work up delivery programme projects to a stage where they are ready for funding. Projects should then enter the draft Business Plan. It may be that design costs enter the plan in year 1 with project implementation coming forward in the following period(s). The Business Plan may involve making savings in one year in order to pay for large delivery programme projects in subsequent years.

### **Management of Funds**

The Delivery Programme and Business Plans will be formulated on the basis of projected income from new development. If development is delayed the plan and programme will need to adjust accordingly. The Delivery Officer will maintain a record of:

- number of houses/other relevant development built;
- mitigation income each local authority has received;
- mitigation funds in the pipeline (from approved developments);
- funds allocated;
- funds committed;
- funds spent.

Project invoices should be shared across the three local authorities proportionate to how much is on account for each European site and bearing in mind the need to deliver mitigation for the houses/other developments which have been built.

