



SOUTH EAST DEVON
HABITAT REGULATIONS
PARTNERSHIP

South East Devon Habitat Regulations Executive Committee

*Arrangements for Governance, operation and
stakeholder interaction*

Neil Harris – Habitat Regulations Delivery Officer
June 2016



Exeter
City Council



Legal comment/advice:

The three partner authorities of East Devon District Council, Teignbridge District Council and Exeter City Council have all approved the entering into this joint committee established under the Local Government Act 1972 (Cabinet / Executive Committee papers of 4th November 2015, 8 December 2015 and 9th February 2016 respectively refer). There have been some amendments to the Terms of Reference / Procedure Rules (at Appendix 1) which have been approved in accordance with the delegated authority given by the partner authorities respective Executives. The HREC must operate in accordance with the approved Terms of Reference and Procedure Rules.

The HREC is a high level committee responsible for overseeing the habitat mitigation delivery required by the South East Devon European Site Mitigation Strategy adopted by all three authorities to ensure development in the Local Plan can occur. The Committee is being asked to delegate the day to day delivery of the mitigation to the Habitat Regulations Delivery Officer. This is entirely permissible but it should be noted that the authority sought to be given to the officer is limited to the extent that what is done must be in accordance with the approved business plans (being the 5 year Delivery Programme and Annual Business Plan which must be, and can only be, approved by the HREC) and subject to a £50,000 limit per item. In order to ensure effective delivery this seems a sensible approach. The officer must report back to the HREC on the delivery and spend against the business plans. It should be noted that the authority is to the Habitat Regulations Delivery Officer and not the Officer Working Group.

It is necessary for there to be a set of procurement rules to ensure legally robust procurement exercises. It seems sensible that East Devon's are used (given the legal / financial support being given) and that these will be adapted to suit in consultation with those senior officers giving the support.

Otherwise legal implications are appropriately addressed within the report.

Finance comment/advice:

There does not appear to be any direct financial implication within the recommendations of this report.

Public Document:	Yes
Exemption:	None
Review date for release	None

Recommendations

It is proposed that the HREC:

1. **Endorses the South East Devon European Site Mitigation Strategy, but notes:-**
 - Further work is required to confirm overall SANGS requirements;
 - The need for future re-evaluation of the (Table 26) costs therein, in particular SANGS delivery priorities and associated costs; and,
 - The need for future re-evaluation of approaches to securing funds for SANGS delivery through CIL and Section 106, taking account of any forthcoming amendments to the CIL regulations.
2. **Notes the Terms of Reference and Rules of Procedure (Appendix 1) which govern the running of the HREC and which have been agreed by the three authorities and that the Committee has no authority in respect of Compulsory Purchase powers.**
3. **Notes the intended working relationships between all interested parties.**
4. **Agree to using East Devon District Council's Contract Standing Orders and financial rules (adapted to suit as appropriate by East Devon District Council's Strategic Lead for Legal, Licensing and Democratic Services and S.151 Officer) for all procurement until such time as the HREC agrees its own procurement rules.**
5. **Delegates all necessary powers to the Delivery Officer to enable the delivery and implementation of approved mitigation projects (including the hiring of staff, purchasing vehicles and equipment, awarding monitoring and surveying contracts) with any expenditure being identified in the Annual Business Plan or 5 yr delivery programme and limited to a maximum sum of £50,000 per item. This delegated authority shall not include decisions relating to:**
 - a) **Agreeing the Annual Business Plan and 5 yr delivery programme.**
 - b) **Any expenditure not contained within the approved Business Plans.**

Equalities impact: Low

Risk: High

If the Strategy is not endorsed and the Delivery Officer is not delegated the necessary powers, there is a high risk that the delivery of the South East Devon European Site Mitigation Strategy would be significantly compromised or delayed. This would put the delivery of the partner Authorities' Local Plans at risk due to the legal duties under the Habitat Regulations.

1. Summary

1.1 This paper sets out the Governance arrangements and method of operation for the South East Devon Habitat Regulations Executive Committee (HREC) as agreed by East Devon District Council, Exeter City Council and Teignbridge District Council.

1.2 It also provides detail on the working relationships between the HREC, the Habitat Regulations Delivery Officer, the Officer Working Group and the Green Infrastructure (GI) Board.

2. Background

2.1 Local Plans from each of the three partner Authorities set out allocations for increases in housing provision which will result in an increased population and therefore a proportional increase in recreational requirements.

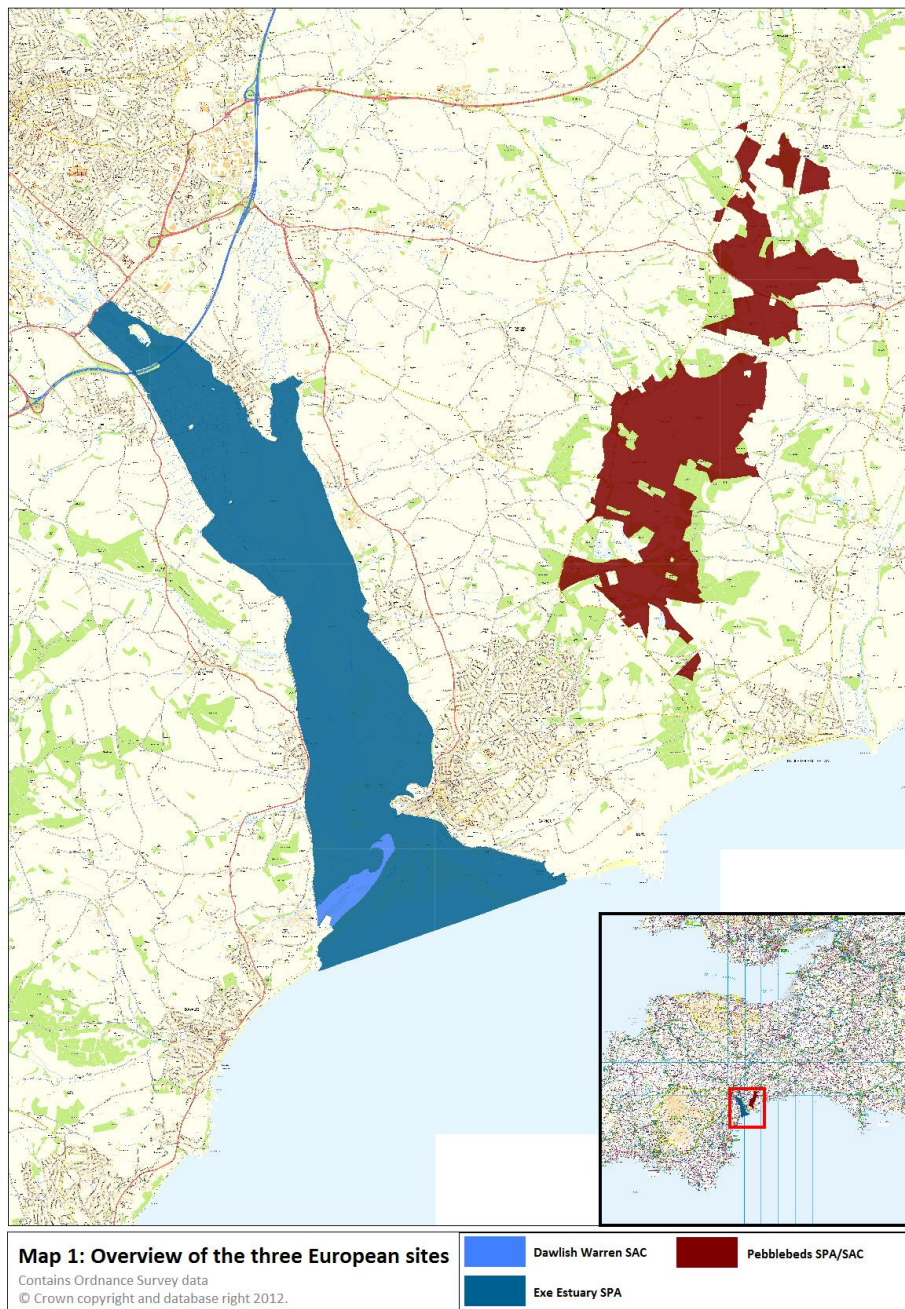
2.2 Through extensive survey work, it has been established that there are likely significant effects from recreational activity which have the potential to affect species and habitats of European importance. Locally these sites are Dawlish Warren Special Area of Conservation (SAC), the Exe Estuary Special Protection Area (SPA) and the Pebblebed Heaths (SAC & SPA) (location map on next page).

2.3 The Conservation of Species and Habitats Regulations (2010) (as amended), often referred to as the Habitat Regulations, sets out certain requirements for plans and projects which are likely to have a significant effect, alone or in combination, on a European site. Simply, Regulation 61 of the Habitat Regulations states that if these plans or projects cannot be avoided, their impacts must be mitigated or they cannot legally proceed.

2.4 To enable Local Plans to deliver the development envisaged, it is necessary to mitigate for the projected increase in recreational pressure so as to satisfy the legal requirements imposed under the Habitats Regulations. The three partner authorities have worked up an evidence-based strategy which identifies and estimates costs for a number of projects which will mitigate the impacts of development on the European Sites identified above, which developers are required to fund. The total amount of developer contribution will therefore be delivered in line with the amount of development.

2.5 The South East Devon European Site Mitigation Strategy (“the Strategy”) prepared by Footprint Ecology was received by East Devon District Council, Exeter City Council and Teignbridge District Council in June 2014. The Strategy was accepted by all three authorities. The final approved version of the Strategy can be seen here – [<http://eastdevon.gov.uk/planning-libraries/evidence-document-library/chapter8.4-environment/env038a-footprintecologysedevoneuropeanmitigationstrategy.pdf>]

Map: Overview of the three European sites.



2.6 The Strategy recommends two approaches to mitigation – on site measures and the provision of Suitable Alternative Natural Green Space (SANGS). The on site measures relate to projects on the protected sites, whilst SANGS will provide accessible countryside areas which will ease the pressure on the protected sites by providing desirable alternatives.

2.7 In order to ensure that the Strategy is effectively implemented across the three partner authorities it was agreed between the authorities that there should be established a joint committee to ensure that this happens. The South East Devon Habitat Regulations Executive Committee (HREC) has formally been approved by East Devon District Council, Teignbridge District Council and Exeter City Council. This collective approach to a common issue accords with the 'Duty to Cooperate'.

2.8 The three partner authorities have agreed to delegate all necessary powers that would otherwise have been exercisable by each partner authority to the HREC, to enable it to ensure the delivery of the mitigation measures set out in the Strategy. It should be noted that powers relating to compulsory purchase have been retained by each partner authority and not divested to the HREC.

2.9 The partner authorities have agreed a Terms of Reference and Procedure Rules (Appendix 1) by which the HREC will operate. Scrutiny arrangements will be operated at a local level.

2.10 It has been agreed that East Devon District Council (EDDC) will be the accountable body, responsible for administering the finances to support the decisions of the HREC. The S.151 Officers from the partner authorities are currently agreeing the appropriate mechanism for dealing with the financial arrangements.

3. Functions of the Executive Committee

3.1 The functions of the Executive committee include the following:

- Monitoring the implementation and effectiveness of the mitigation measures and agree changes where necessary.
- Ensure that there is a simple and transparent audit trail linking S106 and CIL financial allocations for European site mitigation, and the works and projects that deliver mitigation. Allocate budget accordingly, taking account of other arising mitigation opportunities.
- Secure the cooperation of all stakeholders.
- Monitor risks, progress and effectiveness of delivery.
- Identify, lobby for and secure complementary funds.
- Monitor and review the delivery of the South-East Devon European Site Mitigation Strategy (and when adopted the Pebblebed Heaths Visitor Management Plan) quarterly and publish a progress report annually.
- Formally advise on any emerging requirements for refreshing the evidence base used to determine the Strategy (and when adopted the Plan).
- To include reviews of developer contribution charges in line with increased costs, inflation/index linking and funding mitigation expenditure in perpetuity.

- Establish and maintain a financial model that ensures delivery of mitigation in perpetuity.
- Liaise between partner organisations and share best practice.
- Ensuring that a record is kept of planning proposals which are agreed through the planning process to satisfy their own mitigation requirements (and as such do not form part of the mitigation Strategy).

3.2 Decisions regarding delivering the mitigation measures will be taken in accordance with a 5 year Delivery Programme and an Annual Business Plan, both of which the HREC will be asked to agree at its first meeting and at appropriate intervals thereafter. The HREC will be supported and advised as set out below.

4. Relationship with the Habitat Regulations Delivery Officer, Officer Working Group, Green Infrastructure Board, Exeter and Heart of Devon Growth Board.

4.1 Habitat Regulations Delivery Officer

4.1.1 Neil Harris has been appointed as the Habitat Regulations Delivery Officer and will work on the detailed implementation of the work programme set by the HREC, addressing the practical and technical aspects of project delivery. He will act as the link between the HREC and the Officer Working Group.

4.1.2 Delivery Officer function:

- 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, recommend to the HREC 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
- co-ordinating monitoring of European Site integrity
- reporting to the HREC on progress with project implementation, monitoring outcomes and any resulting recommended action.

4.2 Officer Working Group

4.2.1 Organisational membership of this Group reflects that of the Committee at officer level as well as other statutory agencies, key stakeholders and land managers. Accordingly the Group comprises:

East Devon District Council
Teignbridge District Council
Exeter City Council

Natural England
Clinton Devon Estates
National Trust
RSPB
Devon Wildlife Trust
Exe Estuary Management Partnership

4.2.2 The Group will provide expert advice to the Delivery Officer and HREC from their areas of expertise.

4.2.3 The Group will also provide support and regular management input to the Delivery Officer, as well as assisting with reports and setting agendas for the HREC. They will meet at least quarterly, prior to HREC meetings and will:

- Provide expert advice to Delivery Officer and HREC from their areas of expertise.
- Provide support and regular management input to the Delivery Officer. At least one dedicated officer allocated to support the Delivery Officer from each partner authority, within the Officer Working Group.
- Work with Delivery Officer to prepare agendas and reports to HREC
- Continue in planning/delivery interface role
- Continue to be aware of / investigate developments/novel approaches to recreation mitigation.

4.2.4 There is potential to widen the membership of this Group on a project by project basis e.g. by seeking representation from Devon and Severn IFCA (Inshore Fisheries and Conservation Authority) and others.

4.3 Green Infrastructure Board

4.3.1 Similar in structure to the HREC (except non-statutory), the Green Infrastructure Board is a strategic advisory body of elected members from Exeter, East Devon and Teignbridge, supported by senior representatives from statutory agencies, the respective local authorities and key stakeholders. The Board is presently chaired by Peter Lacey, who is not affiliated to any local authority or statutory agency.

4.3.2 The Chair of the GI Board will be invited to attend HREC meetings to ensure potential synergies with the delivery of the Green Infrastructure strategy can be taken forward.

4.3.3 The Board governs and assists with the delivery of the area Green Infrastructure Strategy for Exeter, East Devon and Teignbridge. The Board is supported by its own Officer Delivery Group and Green Infrastructure Project Manager, Simon Bates. It is anticipated that there will be close working between the GI Project Manager and the Habitat Regulations Delivery Officer, with a view to collaboration where appropriate.

4.4 Exeter and Heart of Devon Growth Board

4.4.1 The Growth Board exists to overcome barriers to the delivery of strategic projects and to progress the growth agenda for the Exeter and Heart of Devon economically functional area. It supports enterprise, innovation and skills development, coordinating approaches to investment and infrastructure planning.

4.4.2 Successful implementation of mitigation requirements is inexorably linked to new development and is therefore of significant importance to the Growth Point. Therefore, progress on the delivery of the Strategy will be reported quarterly to the Growth Board.

5. Funding

5.1 Funds are collected through two approaches: Section 106 planning obligations and through the Community Infrastructure Levy (CIL). Recent amendments to the CIL regime mean it is no longer possible to “pool” more than 5 S106 planning obligations signed after April 2015 to pay for items defined as infrastructure within the CIL Regulations.

5.2 The Delivery Officer is keeping a record of all developer contributions through S106 planning obligations and CIL which have been received, as well as those not yet received (but for which permissions have been granted) at each of the 3 authorities. This enables a clear and simple audit trail of developer contributions and the work or projects required to deliver mitigation.

5.3 Mitigation measures enable a competent authority to permit development with certainty that adverse effects on the integrity of the European sites will not occur. As new residential development is permanent in nature, the mitigation secured should equally provide lasting protection for the European site interest features. Mitigation measures therefore include measures that will need to fulfil their function in-perpetuity.

5.4 Accordingly, the Delivery Officer is working with accountants at East Devon District Council in order to identify a practical financial model which will provide funding in perpetuity for on site measures. Options for ongoing maintenance of

SANGS are being developed by the relevant planning departments at the 3 authorities.

5.5 The Delivery Officer will present a financial report at each subsequent meeting of the Executive Committee which will detail:

Contributions received;

Contributions from permissions granted but not yet received;

Funds allocated;

Funds committed;

Funds spent.

6. Mitigation Delivery

6.1 The Annual Business Plan and the 5 year Delivery Programme is a list of on site mitigation measures from the Strategy, scored and prioritised by the Delivery Officer according to criteria agreed by the Officer Working Group and timescales recommended in the Strategy. The criteria have been developed in order to identify the most effective mitigation projects.

6.2 The Executive Committee will approve projects in the Annual Business Plan and 5 year delivery programme at the first meeting of each year of operation. Thereafter, subject to the amount of contribution received, there is the flexibility to include other projects at subsequent quarterly meetings. The Committee will receive quarterly progress reports from the Delivery Officer regarding the implementation of the Annual Business Plan. The Delivery Officer will also provide quarterly updates on the situation of current and forecasted developer contributions, as well as project expenditure.

6.3 Subsequent to approval from the Executive Committee and allowing time for call-in and scrutiny, the Delivery Officer will undertake delivery and implementation of those projects, supported by relevant officers from the working group. The Delivery Officer will require powers sufficient to hire staff, purchase vehicles and equipment, award monitoring and survey contracts, subject to a recommended per item limit of £50,000. Until such time as the HREC agree a set of procurement rules it is expected that the HREC / Habitat Regulations Delivery Officer will rely on East Devon District Council's Contract Standing Orders (adapted to suit) for procurement.

6.4 Other interested parties will be invited to attend Executive Committee meetings in an advisory capacity. In particular, Natural England will attend every meeting as they hold the expertise to comment on the suitability of proposed Executive Committee decisions.

6.5 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.

6.6 A HREC Communications protocol has been agreed between lead Communications Officers at the three authorities (see separate report) which provides details of all key communications contacts – at the authorities and for all key stakeholders. This will enable a proactive, comprehensive and co-ordinated approach to media relations.

6.7 The Exeter and East Devon Growth Point will act as the key Communications Officer for all Habitat Regulations media contact, in close liaison with the Delivery Officer.

7. Delivery of Suitable Alternative Natural Green Space (SANGS)

7.1 The delivery of SANGS is being undertaken by dedicated Planning Officers at Teignbridge District Council and overseen at Exeter City Council and East Devon District Council by the Green Infrastructure Project Manager, Simon Bates.

7.2 Due to the confidential nature of negotiations with landowners, particularly regarding land values and location, it has only recently been practicable for SANGS progress to be brought to the Officer Working Group.

7.3 SANGS proposals based on enhancing Riverside and Ludwell valley parks in Exeter have been developed through masterplanning work, also ongoing, and have been presented to the Officer Working Group and Exeter City Council Executive.

7.4 Separate reports on current SANGS progress and options are considered commercially sensitive and therefore are reported in Part B of the meeting.

7.5 Future SANGS progress and opportunities will be reported to the Officer Working Group by planning officers for approval and comment. Thereafter, those officers – or the Green Infrastructure Project Manager - will report SANGS recommendations to the HREC.

Natural England comments:

Regarding 2.6 we wish to clarify, for the benefit of committee members, that the Strategy includes 3 elements: on-site measures, cross-site measures, of which SANGS forms a part, and monitoring. Regular review of the annual business plan and 5 year delivery programme through this committee should ensure that an appropriate balance between these elements is achieved.

4.1.2 Delivery Officer Function: In natural England's opinion it is essential that the Delivery Officer maintains an overview of all the elements of mitigation delivery and monitoring, including those which he is not specifically responsible for. Without this he will be unable to provide comprehensive reporting to the committee.

Given the complexities of delivering the Habitat Regulations Mitigation Strategy we recommend that a specific requirement of the post, to build and maintain communication with the officers of other strategic mitigation approaches to enable learning and sharing, is recognised.

There appear to be inconsistencies in the rates being charged (whether through CIL or S106) between authorities and zones. This needs to be rectified ASAP and we therefore recommend that a review of current charging rates be undertaken prior to the next meeting of this committee.

Neil Harris
Habitat Regulations Delivery Officer

South East Devon
Habitat Regulations
Executive Committee
June 2016