

REPORT TO:-

PLACE SCRUTINY COMMITTEE 9th November 2017
EXECUTIVE 14th November 2017
COUNCIL – 19th December 2017

Report of: Principal Project Manager, Strategic Infrastructure Planning, City Development

Title: MITIGATING THE IMPACTS OF DEVELOPMENT ON PROTECTED HABITATS

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

- 1.1 Along with its Greater Exeter partner authorities, the City Council is legally required to mitigate the impacts of development in its area on protected habitats, i.e. the Exe Estuary, Dawlish Warren, and the East Devon Pebblebed Heaths. In catering to population growth, new dwellings increase the pressure on protected habitats, and measures must be taken to mitigate these impacts. These include on-site measures to reduce visitor pressures, as well as the implementation of Suitable Alternative Natural Greenspace (SANGs), the purpose of which is to provide potential visitors to the protected habitats with an alternative greenspace to visit, thus reducing the pressure on the protected habitats. If the impacts of development on protected habitats are not mitigated, Exeter City Council would not be fulfilling its legal obligations, and Natural England may decide to intervene to place a block on development.
- 1.2 The mitigation measures relating to the Exe Estuary, Dawlish Warren, and the East Devon Pebblebed Heaths are contained in the South East Devon European Site Mitigation Strategy (SEDESMS - Table 26), which was published in June 2014, and subsequently endorsed by the South East Devon Habitats Regulations Executive Committee (SEDHREC) on 29th June 2016, subject to further work being undertaken to re-evaluate costs, and to confirm overall SANGs requirements and delivery approaches. This work has now been completed. A number of the assumptions which underpinned the SEDHREC as originally drafted were revisited during the course of this work.
- 1.3 Mitigation measures and associated costs have now been finalised. Overall SEDESMS implementation costs have been refined and reduced from £23,553,767 to £15,456,264, a considerable overall cost saving. However, these costs must be apportioned between fewer dwellings as a result of the aforementioned revisit of a number of the assumptions underpinning the SEDESMS. There is consequently a need to revisit and increase the amount that is top-sliced from the Community Infrastructure Levy receipts from each dwelling in each of the three partner authorities' areas, and each of the partner authorities also needs to revisit any high level CIL

commitment to habitats mitigation. (ECC Executive made a high level commitment of £2 million for habitats mitigation at its meeting on 10th February 2015). Each of the partner authorities now needs to approve the implementation of these revised per dwelling contributions, as endorsed by the SEDHREC at its meeting on 27th July 2017, and as detailed in Appendix 1 to this report. These revised contributions will be top-sliced from CIL receipts from dwellings which do not yet have planning permission (i.e. from 'future dwellings'). The revised contributions will *not* be retrospectively top-sliced from dwellings which already have planning permission. Top-slicing the revised contributions from 'future dwellings' will have implications for other CIL commitments, insofar as:

- less CIL will be available for other infrastructure; and,
- the CIL available for and committed to other projects will take longer to accumulate than would otherwise have been the case.

2. Recommendations:

2.1 It is recommended that:

- (i) The significant reduction in the overall cost of habitats mitigation measures referenced in Table 26 of the SEDESMS be welcomed.
- (ii) The revised per dwelling charges for habitats mitigation detailed in Appendix 1 be approved and implemented from 1 January 2018, and index linked in accordance with the recommendation made by the SEDHREC on 27th July 2017.
- (iii) Members note that the revised per dwelling charges will have the effect of increasing Exeter's contribution to overall habitats mitigation costs from the £2,000,000 committed for this purpose to 2026 (by ECC Executive on 10th February 2015) to approximately £4,000,000 of the £15,456,264 total cost of implementing the Strategy to 2026¹.
- (iv) Members note that, while no SANGs are to be delivered in Exeter to 2026, the SEDHREC has approved an appraisal being undertaken of future SANGs capacity and likely delivery costs, including in Exeter's Valley Parks, to inform the development of the Greater Exeter Strategic Plan and any future iteration of the SEDESMS.

3. Reasons for the recommendation

- 3.1 The Conservation of Habitats and Species Regulations 2010 (as amended – commonly known as the Habitats Regulations) have the effect of requiring local authorities which grant planning permission for developments that impact upon protected habitats to ensure that those impacts are appropriately mitigated. If the impacts of development on those protected habitats are not appropriately mitigated, Natural England may intervene to block consent from being granted for further development. The South East Devon European Site Mitigation Strategy (SEDESMS) has been developed and endorsed to respond to the requirements of the Habitats Regulations. Natural England are represented on the SEDHREC and, like the local authority partners, have therefore endorsed the SEDESMS.

¹ CIL that is ring-fenced for habitats mitigation is only set aside at the point at which CIL is paid, which is when development commences, and then in instalments in accordance with the Council's CIL Instalment Policy.

- 3.2 The implementation of the SEDESMS is dependent upon significant finances being made available for this purpose. The Community Infrastructure Levy is the mechanism for securing the necessary funds. The SEDESMS and CIL funding mechanism provide for planning permission to be granted for residential developments without the need for Habitats Regulations Assessments to be undertaken for each and every residential development. In other words, implementation of the SEDESMS is considered to address the impacts of all residential developments on the protected habitats.
- 3.3 The costs associated with implementing the SEDESMS were initially significantly higher than the costs that have now been arrived at following the above-mentioned Strategy and cost re-evaluation. It has also been necessary to re-evaluate the number of dwellings from which CIL will be secured, and to re-apportion per dwelling charges accordingly. More CIL will need to be top-sliced on a per dwelling basis in the future than has been the case in the past, but the overall reduction in Strategy implementation costs means that the implications for CIL receipts generally are less significant than they might otherwise have been. CIL receipts which are top-sliced for habitats mitigation are ring-fenced at the point of collection, and subsequently transferred to East Devon District Council when payment is due (in accordance with the SEDHREC's terms of reference, EDDC manages the finances associated with implementing the SEDESMS on behalf of EDDC itself, Exeter City Council, and Teignbridge District Council).
- 3.4 Whilst none of the monies collected to implement the SANGs element of the current SEDESMS will be spent in Exeter, it is acknowledged that there is (potentially considerable) capacity to deliver SANGs in Exeter's Valley Parks (in Ludwell Valley and Lower Riverside Valley Park, for example), and that this capacity should be assessed with a view to it being utilised in the post-2026 period, beyond the timeframe of the current SEDESMS and during the timeframe to be covered by the Greater Exeter Strategic Plan. Investment in SANGs in Exeter's Valley Parks is therefore anticipated to be a matter of 'when' not 'if', particularly if a strategy of urban intensification is pursued in parallel with further greenfield development on Exeter's fringes as part of the GESP approach to development distribution.

4. What are the resource implications including non- financial resources

- 4.1 On the 7th of October 2014, ECC's Executive resolved to agree proposals to establish the SEDHREC. Per dwelling charges for habitats mitigation were established at this time.
- 4.2 On the 10th of February 2015, ECC resolved to set aside £2,000,000 of CIL for Habitats Mitigation, alongside a number of other commitments. At that time, SEDESMS costs were assumed to be £23,533,767, and therefore the £2,000,000 set aside was always unlikely to have been sufficient to meet Exeter's share of the costs, given the numbers of dwellings to be built in each of the three local authority areas.
- 4.3 The implication of the above recommendations is that an additional £2,000,000 of CIL receipts will need to be set aside for habitats mitigation, taking the total set aside to £4,000,000. To reiterate, this needs to be seen in the context of overall SEDESMS implementation costs having fallen to £15,456,264, and of these costs being shared by the three partner authorities. It should also be noted that CIL which is ring-fenced for habitats mitigation is only set aside at the point at which CIL is paid, which is when development commences, and then in instalments in accordance with the Council's CIL Instalment Policy. If development does not commence, and CIL is not paid, monies for

habitats mitigation are not set aside, and the £4,000,000 referenced in recommendation (iii) above will reduce accordingly. In circumstances in which there was a dramatic reduction in development activity across the three districts covered by the SEDESMS, it is likely that there would be a need to further revisit the mitigation measures in the SEDESMS.

- 4.4 In February 2015, it was forecast that ECC income from CIL would total £24,770,526 by 2025/26. It is intended that an updated CIL forecast will be presented to a future Executive meeting.
- 4.5 Although the SEDHREC has agreed to move away from quarterly to bi-annual monitoring of habitats mitigation accounts, monitoring nonetheless places a burden on ECC City Development and Finance human resources (i.e. staff) at particular points, which can mean that work on other priorities has to be put on hold.

5. Section 151 Officer Comments:

- 5.1 The Section 151 Officer notes the recommendations and will work with City Development to ensure that the appropriate funds are set aside for habitats mitigation if the recommendations are approved.

6. What are the legal aspects?

- 6.1 The Conservation of Habitats and Species Regulations 2010 (as amended) transpose the EU Habitats Directive 92/43/EEC into national law.
- 6.2 The City Council is legally required to mitigate the impacts of development in its area on protected habitats. In other words, the Council has no choice but to mitigate the impacts of residential developments on protected habitats if it is to continue to accommodate growth. Natural England may intervene on behalf of the Government if the Council were to grant planning permissions without ensuring that those developments' impacts on the protected habitats were mitigated.
- 6.3 In accordance with its Terms of Reference and Rules of Procedure, the SEDHREC makes operational decisions on habitats mitigation and associated financial expenditure. However, adjustments to the per dwelling charges applied to residential developments for the purpose of habitats mitigation must be approved by the respective partner local authorities, i.e. authority to make such adjustments rests with the individual partner authorities and has not been delegated to the SEDHREC, hence the need for recommendation (ii) above.
- 6.4 The SEDHREC Terms of Reference and Rules of Procedure stipulate that the committee can only make decisions when there is a quorum, meaning that the appointed member of each of the three partner authorities must be present, and that decisions must be unanimous. The recommendations made by the SEDHREC on 27th July 2017 were therefore made unanimously.
- 6.5 Provided an item on which it is intended to spend CIL can be categorised as 'infrastructure', and provided that item is identified on the Council's CIL Regulation 123 List, the Council is at liberty to spend CIL on that item. As currently drafted, the first item identified on the Council's Regulation 123 List is 'Mitigation of recreational impact on European designated habitats'. Along with its partner authorities, the Council has therefore identified that it will fund habitats mitigation through CIL.

7. Monitoring Officer Comments:

- 7.1 The Monitoring Officer has raised no issues beyond those set out in paragraph 6.1 above.

8. Report Details / Background

Mitigating the Impacts of Development on Protected Habitats

- 8.1 Partnership working to mitigate the impacts of development on protected habitats is now well established through the SEDHREC and associated officer support mechanisms. The SEDHREC is currently chaired by ECC's Portfolio Holder for City Development, Cllr Dan Gottschalk. Prior to recent changes in portfolios, ECC was represented on the SEDHREC by Cllr Rachel Sutton.
- 8.2 The SEDESMS has been subject to a comprehensive re-appraisal over the last 18 months. Many of the assumptions that underpin the Mitigation Strategy have been challenged and revisited, and the overall costs identified in Table 26 of the Strategy have been refined and trimmed back considerably, in some cases on the back of work which has been commissioned and finalised subsequent to the publication of the SEDESMS itself, for example the Pebblebed Heaths Visitor Management Plan.
- 8.3 There has been a particular focus on interrogating the number of dwellings to be mitigated through the SEDESMS, and on how many of these have yet to be consented. Going forward, and taking account of monies already secured for habitats mitigation through the charges that have been applied to date (including through the so-called 'Joint Interim Approach', which was in place before the introduction of CIL in each of the three districts), the overall revised costs of habitats mitigation measures need to be apportioned between the number of dwellings which have yet to be consented, such that each dwelling contributes, through CIL, to the overall costs of implementing the mitigation strategy.
- 8.4 Based on the number of dwellings which it is anticipated will be given consent to 2026, Exeter's contribution to the £15,456,264 overall cost of mitigation measures is not expected to exceed £4 million in total, with the remainder of the funds to be secured through charges applied to dwellings in East Devon and Teignbridge Districts. ECC therefore needs to commit a further £2 million in CIL towards habitats mitigation, in addition to the £2 million it has already committed for this purpose (in February 2015).
- 8.5 It has been particularly challenging for the SEDHREC to agree on which SANGS to prioritise for delivery over the SEDESMS timescale (i.e. to 2026). Decisions on SANGS delivery have necessarily been informed by cost, but also by the views expressed by Natural England about which potential SANGS locations might best perform the intended SANGS function of drawing potential visitors to the protected habitats away from those sites.
- 8.6 SEDHREC decisions must be made on the basis of unanimity, and ECC has therefore been party to decisions on which SANGS to implement, and to the recommendation to implement revised per dwelling charges.

- 8.7 Whilst it is disappointing that no SANGS are to be delivered in Exeter to 2026, the delivery of SANGS in Teignbridge and East Devon will (in combination with other measures) help to mitigate the impacts of development and thereby provide for Exeter to continue to grow. Although not located within Exeter's administrative boundary, the SANGS will, of course, also be available for the residents of Exeter to visit – the planned SANGS at South West Exeter will be particularly accessible to residents of Alphington.
- 8.8. It is anticipated that further SANGS will be required to accommodate growth over the period to 2040 (the timeframe of the Greater Exeter Strategic Plan), and that the appraisal of future SANGS capacity and likely delivery costs which the SEDHREC resolved should be undertaken at its 29th March 2017 meeting will identify capacity to deliver SANGS in Exeter's Valley Parks. Consequently, there remains scope for SANGS to be delivered within Exeter's administrative boundary in the not too distant future.

General Commentary on CIL

- 8.9 CIL is the mechanism through which ECC secures funds for habitats mitigation, although there is scope to secure funds for the 'non-infrastructure' elements of habitats mitigation through Unilateral Undertakings (i.e. through the Section 106 mechanism).
- 8.10 The Council's Community Infrastructure Levy Charging Schedule came into effect on 1st December 2013. The Levy is expected to raise around £24.7 million during the period to 2025/2026 and can be used to fund a wide range of projects as long as they support development growth. To date, CIL invoices have been issued for in excess of £7 million.
- 8.11 In February 2015, the Council set out a framework for the prioritisation of CIL in the absence of joint infrastructure governance arrangements for the Greater Exeter area. This earmarked £18 million of forecast receipts for major infrastructure, of which the first £8 million is for city centre priorities. The estimated £10 million balance is for strategic investments that support development growth elsewhere across Exeter.
- 8.12 In February 2015, it was forecast that the £8 million city centre funding will have been received by 2019 / 2020. CIL receipts are dependent on the profile of future development commencements.
- 8.13 Appendix 2 to this report is the CIL forecast to 2025/26 from February 2015. It is intended that an updated CIL forecast will be presented to a future Executive meeting.

9. How does the decision contribute to the Council's Corporate Plan?

- 9.1 One of the key strands in the Corporate Plan is to grow the economy through delivering new housing and business growth. If the impacts of development on protected habitats are not mitigated, it will not be possible to deliver this growth because a brake will be placed on development by Natural England. The Corporate Plan references the bus station / swimming pool development at St. Sidwell's Point. Delivery of this project is part-dependent upon CIL receipts. If the impacts of development on protected habitats are not mitigated, and a brake is placed on development as a consequence, CIL receipts will not be forthcoming and the Council's ability to deliver the project will be compromised. The Corporate Plan similarly references supporting Exeter's communities. 15% of CIL receipts are ring-fenced to

be spent in neighbourhoods, on projects which address the demands that growth place on those neighbourhoods. Failure to mitigate the impacts of growth on protected habitats could place a brake on the development that gives rise to these CIL receipts. Mitigating the impacts of growth on protected habitats is therefore integral to the delivery of the Council's Corporate Plan, because growth provides a significant resource (CIL receipts) with which to implement the Corporate Plan.

10. What risks are there and how can they be reduced?

- 10.1 If the impacts of development on protected habitats are not mitigated, it is inevitable that future development will be compromised because this will give rise to legal obstacles being placed in the way of growth. The financial benefits that accrue to the Council through growth will be undermined if growth is impeded in this way.
- 10.2 Top-slicing a greater proportion of CIL receipts from each dwelling for habitats mitigation will have the effect of making a smaller residual amount available for other infrastructure, meaning that the CIL available for and committed to other projects will take longer to accumulate than would otherwise have been the case.
- 10.3 The reality is that habitats mitigation and the delivery of other infrastructure cannot be divorced or considered in isolation. The two are inextricably linked insofar as one cannot be delivered without the other. In this context, any delay to the delivery of the proposed new bus station and swimming pool may not be entirely unhelpful, in that this will provide a window for CIL receipts committed for that purpose to accumulate over a longer timeframe, taking account of the fact that a greater amount will be top-sliced from each future dwelling for habitats mitigation purposes.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

- 11.1 The decision will impact positively in terms of a number of these considerations, but on the environment specifically. Mitigating the impacts of development on protected habitats is important to maintaining those habitats' capacity to continue to function as oases for fauna and flora. The provision of Suitable Alternative Natural Greenspace (SANGS) will impact positively on the human environment, by providing people with new green spaces to visit, thus contributing to general health and wellbeing.

12. Are there any other options?

- 12.1 There is an option not to implement the proposed revised per dwelling charges for habitats mitigation, i.e. not to make more CIL available for this purpose. At a superficial level, this might appear to leave more CIL available for other infrastructure priorities. However, the reality is that a block would be likely to be placed on development (because its impacts on protected habitats were not being appropriately mitigated) and the CIL receipts available for other infrastructure priorities would subsequently reduce significantly and dramatically. The reality is that it is impossible to separate the need to fund the mitigation of the impacts of development on protected habitats from the need to secure funding through CIL with which to deliver other infrastructure. In other words, CIL funding for infrastructure in its entirety is inextricably linked to funding the mitigation of development impacts on protected habitats through CIL.

Principal Project Manager, Strategic Infrastructure Planning, City Development

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

- Report to ECC Executive on 'Governance and Prioritisation of CIL Funding', 10th February 2015 – see:
<http://committees.exeter.gov.uk/ieListDocuments.aspx?CId=112&MId=4002&Ver=4>
- Report to ECC Executive on 'Strategy and Governance for European Site Development Impact Mitigation', 7th October 2014 – see:
<http://committees.exeter.gov.uk/ieListDocuments.aspx?CId=112&MId=3612&Ver=4>
- South East Devon European Sites Mitigation Strategy – Final Version – June 2014 – see: <https://www.teignbridge.gov.uk/media/4049/south-east-devon-european-site-mitigation-strategy-9th-june-2014.pdf>
- SEDHREC agenda and papers 27th July 2017 – see:
<http://eastdevon.gov.uk/media/2167373/270717-sedhrec-agenda-public.pdf>
- SEDHREC minutes 27th July 2017 – see:
<http://eastdevon.gov.uk/media/2185577/270717-south-east-devon-hrec-minutes.pdf>
- SEDHREC agenda and papers 29th March 2017 – see:
<http://eastdevon.gov.uk/media/2049924/290317-sedhrec-agenda-public.pdf>
- SEDHREC minutes 29th March 2017 – see:
<http://eastdevon.gov.uk/media/2074196/290317-south-east-devon-hrec-minutes.pdf>
- SEDHREC Terms of Reference and Rules of Procedure – see:
<http://eastdevon.gov.uk/media/2128502/constitution-2017-part-9.pdf>

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Habitat Regulations Executive Committee

Rebasing the SEDESMS – the strategic response –
Appendix 1: Revised per dwelling contributions.

Table 1. Revised per dwelling contribution – SANGS.

| | |
|--------------------------------------|-------------|
| SANGS Cost | £6,381,254 |
| SANGS Income | £5,471,753 |
| Shortfall | £909,501 |
| Future dwellings | 5680 |
| Cover shortfall – per dwelling | £161 |
| Existing contribution | £477 |
| New per dwelling contribution | £638 |

Table 2. Revised per dwelling contribution - Dawlish Warren (and Exe).¹

| | |
|---|---------------|
| On site costs | £2,541,754 |
| Income | £1,796,980 |
| Shortfall | £744,774 |
| Future dwellings | 596 |
| Cover shortfall – per dwelling | £1,250 |
| Existing contribution | £820 |
| New per dwelling contribution (EXE only) | £221 |
| New per dwelling contribution (DW & EXE) | £2,291 |

¹ Revised SANGS costs to be added as per Table 1
Rebasing the SEDESMS – the strategic response – Appendix 1

Table 3. Revised per dwelling contribution – Exe Estuary.²

| | |
|--------------------------------------|-------------|
| On site costs | £3,406,189 |
| Income | £2,483,668 |
| Shortfall | £922,521 |
| Future dwellings | 9424 |
| Cover shortfall – per dwelling | £98 |
| Existing contribution | £123 |
| New per dwelling contribution | £221 |

Table 4. Revised per dwelling contribution – Pebblebed Heaths (and Exe overlap)³

| | |
|--|-------------|
| On site costs | £3,127,067 |
| Income | £2,271,686 |
| Shortfall | £855,381 |
| Future dwellings | 7038 |
| Cover shortfall – per dwelling | £122 |
| Existing contribution | £149 |
| New per dwelling contribution (PBH only) | £271 |
| New per dwelling contribution (EXE only) | £221 |
| New per dwelling contribution (PBH & EXE) | £492 |

² Revised SANGS costs to be added as per Table 1

³ See (2)

APPENDIX 2**Forecast CIL Income – February 2015**

| | 2014/15 | 15/16 | 16/17 | 17/18 | 18/19 | 19/20 |
|-------------------|----------------|--------------|--------------|--------------|--------------|--------------|
| Annual | £163,335 | £654,336 | £1,369,737 | £2,170,538 | £2,345,019 | £5,913,460 |
| Cumulative | £163,335 | £817,671 | £2,187,408 | £4,357,946 | £6,702,965 | £12,616,425 |
| | | | | | | |
| | 20/21 | 21/22 | 22/23 | 23/24 | 24/25 | 25/26 |
| Annual | £2,915,661 | £1,759,702 | £1,071,743 | £716,064 | £1,661,425 | £4,029,506 |
| Cumulative | £15,532,086 | £17,291,788 | £18,363,531 | £19,079,595 | £20,741,020 | £24,770,526 |