

EXETER CITY COUNCIL

REPORT TO: EXECUTIVE

DATE OF MEETING: EXECUTIVE – 9 FEBRUARY 2016

REPORT OF: ASSISTANT DIRECTOR CITY DEVELOPMENT

**TITLE: SOUTH EAST DEVON JOINT HABITATS MITIGATION
EXECUTIVE COMMITTEE**

Is this a Key Decision?

Yes

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 The purpose of this report is to obtain authority to establish the terms of reference and rules of procedure for the South East Devon Joint Habitats Mitigation Executive Committee (HMEC), the establishment of which was approved, in principle, by the Executive on the 7 October 2014 and then formally on 23 June 2015. This was subsequently approved by full Council on 28 July 2015.

2. Recommendations:

2.1 The Executive recommends to full Council that it:

- 2.1.1 Agrees to the establishment of a Joint Habitats Mitigation Executive Committee (HMEC) with East Devon District Council and Teignbridge District Council for the purpose of delivering habitat mitigation measures and which shall be governed in accordance with the Terms of Reference and Rules of Procedure attached in Appendix 1;
- 2.1.2 Agrees that all necessary powers (save for decisions relating to the compulsory purchase of land) are delegated to the HMEC to enable delivery of mitigation measures in accordance with the Conservation of Habitats and Species Regulations 2010;
- 2.1.3 Agrees that each authority operates its own scrutiny arrangements in order to scrutinise decisions of the HMEC. In Exeter, the Scrutiny Economy committee will scrutinise decisions of the HMEC;
- 2.1.4 Appoints the Portfolio Holder - City Development as Exeter City Council's nominated member of the HMEC;
- 2.1.5 Delegates authority to the Corporate Manager - Legal Services to make any further amendments to the Terms of Reference and Rules of Procedure for the HMEC as necessary to ensure effective working of the HMEC provided that the Solicitor to the Council of Teignbridge District Council and the Strategic Lead - Legal, Licensing and Democratic Services of East Devon District Council are in agreement with the proposed amendments;

- 2.1.6 Delegates authority to Exeter City Council's Section 151 officer to agree how and when and to whom payment of Exeter's share of the contribution to carry out the HMEC's resolutions is made;
- 2.1.7 Agrees that East Devon District Council will be responsible for administering the finances to support the implementation of the decisions of the HMEC (or to any officer taking delegated decisions on its behalf);
- 2.1.8 Delegates authority to Exeter City Council's Section 151 Officer to make arrangements for the Council to transfer funds obtained for mitigation measures from CIL and Section 106 Agreements for expenditure approved by the HMEC; and
- 2.1.9 Agrees that the administration of the HMEC shall rotate with the Chair and that East Devon District Council will Chair the HMEC during the first year. After the first year the Chairmanship will move to Exeter City Council and then Teignbridge District Council, returning to East Devon in the fourth year.

3. Reasons for the recommendation:

- 3.1 The reasons for the recommendation are to enable the implementation and establishment of the Terms of Reference and Rules of Procedure for the South East Devon Joint Habitats Mitigation Executive committee (HMEC). The HMEC will be established jointly with East Devon and Teignbridge District Council.
- 3.2 The establishment of this Joint Committee was approved by the Executive on 23 June 2015 and subsequently by full Council on 28 July 2015.

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

- 4.1 The European Site Mitigation Strategy identifies a suite of mitigation measures and provides indicative costs for them. Contributions are already being collected across Teignbridge, Exeter and East Devon. The joint approach is principally concerned with ensuring timely and effective mitigation for development. Mitigation will be proportionate to the assessed impacts of development and delivered where it will be most effective rather than with regard to administrative boundaries.
- 4.2 The proposed approach will have implications for future decisions on the use of Community Infrastructure Levy funding. The proposed approach, including the joint committee, will be resourced using funds from the contributions secured by the local authorities.

5. Section 151 Officer's comments:

- 5.1 The Section 151 Officer is satisfied with the proposed arrangements for administering the finances associated with the Joint HMEC.

6. What are the legal aspects?

- 6.1 It is a legal requirement that a local planning authority does not grant planning permission for any development that would negatively impact upon a protected

European Site, unless full mitigation is secured. The Mitigation Strategy identifies the required mitigation measures and the Joint Approach sets out the means to secure funding for these measures. The HMEC will be responsible for ensuring the delivery of the mitigation measures and so for ensuring that the obligations imposed by the Conservation of Habitats and Species Regulations 2010 (the Habitat Regulations) upon the Authorities are met. The Terms of Reference and Rules of Procedure set out in Appendix 1 ensure that the HMEC 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.

- 6.2 East Devon District Council's preference is to establish a joint scrutiny committee. This proposal has not been accepted by Teignbridge District Council which will maintain its own scrutiny arrangements in line with the proposals set out in the original report to the Executive dated 23 June 2015.
- 6.3 It is sensible for Exeter City Council to similarly follow the recommendations in the original report to maintain its own independent scrutiny of the activities of the HMEC. Accordingly, the references in the attached documentation to a joint Scrutiny Committee have been removed.

7. Monitoring Officer's comments:

- 7.1 The establishment of a HMEC in itself raises no issue to concern the Monitoring officer.
- 7.2 Paragraph 8.6 of this report states that it is proposed by East Devon District Council that legal and financial support will be provided by East Devon District Council, rather than rotating with the Chair and the committee's administrative support on the basis that this will ensure a consistent and robust support framework to allow the HMEC to operate most effectively. The Monitoring Officer of each authority cannot and should not divest their responsibility to ensure that their respective Councils act lawfully. Accordingly Exeter City Council will consider and review in advance all legal advice provided to the HMEC.

8. Report details:

- 8.1 The Executive agreed on 23 June 2015 to set up a joint committee with East Devon District Council and Teignbridge District Council to ensure that appropriate mitigation measures in respect of sites of European importance (Exe Estuary SPA /Ramsar, Dawlish Warren SAC and East Devon Pebblebed Heaths SAC / SPA) are delivered across the three administrative areas. The background papers give more detail in terms of the evolution of this committee and the rationale for it.
- 8.2 When the matter was reported to the Executive in June 2015, the governance arrangements had not been properly scrutinised in order to ensure that they would work. One of the recommendations was tailored to ensure that prior to the committee being established that this review work would be carried out.
- 8.3 That review has now been completed and it is considered that the Terms of Reference previously endorsed were not sufficient to enable the business of the committee to be properly conducted. There was some lack of clarity in terms of the

remit for the committee, the procedures for meetings and a misunderstanding over how to deal with the powers between the Executive Committee and officers.

- 8.4 East Devon District Council's preference was to establish a joint scrutiny committee. However, Teignbridge District Council's group leaders were consulted on this issue and considered that it was unnecessary to have a shared scrutiny committee. They considered that scrutiny of the HMEC should be subsumed within Teignbridge District Council's existing Overview and Scrutiny Committee function. Teignbridge's view was that this model could be reviewed periodically and, in the event that there was a future agreement to have a joint scrutiny committee, then it could be established at some future date upon agreement by each authority.
- 8.5 East Devon has given its approval to set up the HMEC and the Joint Scrutiny Committee. Teignbridge District Council has given its approval to set up the HMEC. Teignbridge has not agreed to a Joint Scrutiny Committee. Given the lack of agreement between the authorities in relation to scrutiny arrangements and the need for each authority to maintain scrutiny arrangements in relation to the activities of the joint habitats mitigation committee, Exeter City Council will similarly maintain its own independent scrutiny of the activities of the HMEC. The Terms of Reference and Rules of Procedure at Appendix 1 have been amended to remove references to a joint scrutiny committee and to maintain scrutiny arrangements within each authority.
- 8.6 It has been proposed by East Devon District Council that legal and financial support should be provided by East Devon District Council, rather than rotating with the Chair and the committees' administrative support. Exeter City Council's Monitoring officer considers that legal advice on any issue arising must remain the responsibility of the Monitoring Officer of each respective authority. Accordingly Exeter City Council will consider and review in advance all legal advice provided to the HMEC. This approach will also ensure that Exeter City Council's legal interests are protected in relation to the Exe Estuary.
- 8.7 The European Site Mitigation Strategy identifies a suite of mitigation measures and provides indicative costs for them. In accordance with Executive's resolution of October 2014, contributions are already being collected across Teignbridge, Exeter and East Devon. The joint approach is principally concerned with ensuring timely and effective mitigation for development. Mitigation will be proportionate to the assessed impacts of development and delivered where it will be most effective rather than with regard to administrative boundaries.
- 8.8 The recommendation is for the Portfolio Holder - City Development to be appointed to the HMEC.

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

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

10. Time Scale for Committee Formation and initial Meetings

- 10.1 Authority to establish the joint committee has been sought and approved in Teignbridge and East Devon, save that Teignbridge District Council has not approved the Joint Habitats Scrutiny Committee. This accords with Exeter City

Council's intention to retain separate Scrutiny arrangements in relation to the activities of the joint committee. It is proposed that the protocol attached at Appendix 1 will govern the activities of the joint committee together with Scrutiny arrangements remaining with each authority.

- 10.2 In February 2016 the intention 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.

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 It is anticipated that the mitigation measures will have small beneficial effects for some groups, by provision of more easily accessible open space. Additional impact assessments may be needed for specific projects considered by the HMEC. Officers will assist in the preparation of these assessments.

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