

Report to: **Strategic Planning Committee**



Date of Meeting 23<sup>rd</sup> February 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

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## **Habitats Mitigation Non-Infrastructure Contributions**

### **Report summary:**

Currently the Council is collecting financial contributions from residential developments within 10km of the Exe Estuary and East Devon Pebblebed Heaths to contribute to the joint mitigation strategy to address the recreational impacts of these developments on the protected habitats. The mitigation measures are split between those that are classed as infrastructure which are taken from CIL contributions and those that are for non-infrastructure mitigation measures that are collected through a separate legal agreement under Section 111 of the Local Government Act or under Section 106 of the Town and Country Planning Act.

The South East Devon Habitat Regulations Executive Committee have determined that further staff resources are needed to deliver the strategy. These costs are classed as non-infrastructure and this report seeks Members agreement to increase these non-infrastructure charges to reflect the additional costs involved in delivering the strategy.

### **Recommendation:**

That Members agree that the revised non-infrastructure habitats mitigation contributions as shown in Table 2 within the report be required for all applications for residential developments within the habitats mitigation zone that are received after the 1<sup>st</sup> March 2021.

### **Reason for recommendation:**

To ensure that appropriate levels of staff resources and funding are available to deliver the habitat mitigations strategy to protect the Exe Estuary and Pebblebed Heaths from the recreational impacts of development.

Officer: Ed Freeman – Service Lead – Planning Strategy and Development Management

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Portfolio(s) (check which apply):

- Climate Action
- Coast, Country and Environment
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Finance
- Policy Co-ordination and Regional Engagement

- Strategic Planning
- Sustainable Homes and Communities

**Financial implications:**

The proposed redirection and additional developer contributions through the revised charges will provide funding for the strategy delivery. However, in making 2 posts permanent it means that this funding will also now be required permanently (rather than the fixed term contract lengths).

**Legal implications:**

Planning obligations are governed by the Town and Country Planning Act 1990, as amended. The Community Infrastructure Levy is governed by the Planning Act 2008, as amended and the Community Infrastructure Levy Regulations 2010 as amended. This report ensures the Council as a partner to the South East Devon Habitat Regulations Executive Committee can update the contributions payable towards the non-infrastructure costs in habitat mitigation. There are no legal implications other than as set out in the report.

**Equalities impact** Low Impact

**Climate change** Low Impact

**Risk:** Low Risk;

**Links to background information**

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
- Outstanding Homes and Communities
- Outstanding Economic Growth, Productivity, and Prosperity
- Outstanding Council and Council Services

**1. Background**

- 1.1 The Exe Estuary, Pebblebed Heaths and Dawlish Warren are European Protected Wildlife Sites that have strong legal protection and the Council must not grant planning permission, unless any harmful effects will be fully mitigated.
- 1.2 The Conservation of Habitats and Species Regulations 2017 sets out how we must deal with planning applications that have potential to impact on European wildlife sites (Special Protection Areas, Special Areas of Conservation and Ramsar sites). This impact may be direct or indirect for example:
  - distant development may cause significant impact on the key species when they are away from the designated site;
  - a single development may have a small effect but a combined overall large effect.
- 1.3 The legislation says that we MUST NOT grant consent for a development that would, either alone or in combination with other developments, have a likely significant effect on a European wildlife site, unless full mitigation is provided. Studies have shown that any housing or tourist accommodation developments within 10km of the Exe Estuary/Pebblebed Heaths/Dawlish Warren are likely to have a significant impact either individually or in combination due to recreational impacts of residents on these sites and so they must provide appropriate mitigation.

- 1.4 Teignbridge, East Devon District Council and Exeter City Council have joined together to form the [South East Devon Habitat Regulations Executive Committee](#) that works across the three authority areas to protect the Exe Estuary, Dawlish Warren and the East Devon Pebblebed Heaths for future generations to enjoy. This Committee is working with partners including Natural England, Clinton Devon Estates, National Trust, RSPB, Exe Estuary Management Partnership and Devon Wildlife Trust to off-set the effects of new developments and population growth on these protected conservation sites.
- 1.5 Funding for the mitigation strategy comes from developer contributions on new residential housing or tourism accommodation within a 10km "zone of influence" from the protected sites. At this point in time we collect contributions through a combination of CIL, S106 (UU and S106 agreements) and S111. We collect Capital Habitat Mitigations via top-slicing CIL receipts and non-infrastructure Habitat Mitigation contributions are secured by either;
- A S111 agreement and payment (a standardised letter linking an upfront payment to a submitted application).
  - A S106 Agreement (normally has several types of planning mitigation secured).
  - A Unilateral Undertaking (a simplified type of S106 agreement normally payable linked to occupation)
- 1.6 At present the non-infrastructure contribution required is as the table below:

Table 1:

|   | EXE  | PBH  | BOTH |
|---|------|------|------|
| Total required from future EDDC dwellings | £164 | £190 | £354 |

- 1.7 These contributions were amended in 2019 following a rebasing of the strategy to ensure that it secures sufficient funding to deliver the mitigation required. A recent review of staff resources has suggested that a further review of these charges is needed.

## 2. Staff Resources

- 2.1 The delivery of the mitigation strategy and the monitoring of its success is overseen by a team of officers led by the Delivery Manager with Habitat Mitigation Officers and the Devon Loves Dogs Project Co-ordinator. These staff were appointed as part of a 5 year delivery programme and their employment was on a fixed term basis to reflect this with funding apportioned to paying them on the same basis. It is now proposed to make the Delivery Manager and Habitat Mitigation Officers posts permanent and extend the Devon Loves Dogs Co-ordinator post by a further 5 years to enable the on-going delivery of the strategy. As a result the continued funding of these posts needs to be secured. To achieve this it is proposed to redirect some monies that were allocated to monitoring of the strategy and the delivery of a project that now appears to be unachievable. This will realise the majority of the funding needed for these posts but leaves a shortfall of £105k outstanding which will need to be secured through additional developer contributions.
- 2.2 To date, communications support for delivery of the mitigation strategy has been provided by EDDC without the cost of this being accounted for through the habitat mitigation

strategy. The work of the small mitigation team requires regular and ongoing communications input, guidance and reporting. Resourcing this role should therefore be considered as part of the costs of strategy delivery and incorporated as a “Cross site” (non-infrastructure) measure.

2.3 It is proposed to identify a dedicated resource that will ensure an appropriate communications strategy is taken forward to communicate the work of the habitats mitigation team which includes educating users of the sites of their sensitivity and the impacts their actions can have for which good communications is vital. A requirement for a 0.2 FTE Communications Officer is anticipated for the next 5 years. This would utilise capacity of the existing Communications Officer within the Growth Point Team as has been the case up until now. The major difference will be that rather than that cost being absorbed within EDDC budgets the cost of this resource would be funded from additional developer contributions across the 3 authorities.

2.4 In order to cover the cost of both the extension of the contracts of the existing habitats mitigation team and the communications officer resource a total of just over £150k is required. These costs are classed as non-infrastructure and so would be secured outside of CIL and through either a Section 106 agreement, unilateral undertaking or Section 111 agreement. These amount to £6.81 per house per site. The revised charges would therefore be as follows:

Table 2: Proposed revised non-infrastructure habitats mitigation charges.

|   | <b>EXE</b> | <b>PBH</b> | <b>BOTH</b> |
|---|------------|------------|-------------|
| Total required from future EDDC dwellings | £170.81    | £196.81    | £367.62     |

2.5 The Habitats Mitigation Executive Committee agreed these revised charges at their meeting on the 18<sup>th</sup> November 2020, however the Executive Committee does not have the authority to revise the charges themselves. This needs to be done by each individual authority and in the case of EDDC this is done through Strategic Planning Committee.