

Agenda item: 

**Decision maker:** Cabinet Member for Planning, Regeneration and Economic Development, 24 January 2014

**Subject:** Solent Special Protection Areas Supplementary Planning Document

**Report by:** City Development Manager

**Wards affected:** All

**Key decision (over £250k):** No

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## 1. Purpose of report

- 1.1 The purpose of this report is to seek Cabinet Member approval to consult on the draft Solent Special Protection Areas Draft Supplementary Planning Document (SPD).

## 2. Recommendations

The Cabinet Member is recommended to:

1. **approve the Solent Special Protection Areas Draft Supplementary Planning Document (appendix A) for consultation**
2. **authorise the City Development Manager to continue working with partner authorities along the Solent to establish a long-term mitigation framework**
3. **authorise the adoption of the SPD, following consideration of any representations submitted as part of the consultation, in agreement with the Cabinet Member for Planning, Regeneration and Economic Development**
4. **authorise the City Development Manager to make editorial amendments to the draft SPD prior to consultation, in consultation with the Cabinet Member for Planning, Regeneration and Economic Development. These changes will not alter the meaning of the document and will be restricted to grammatical and typographical errors**

### 3. Background

- 3.1 Portsmouth has an ambitious agenda for growth, regeneration and development which is set out in the Portsmouth Plan and the Regeneration Strategy. The Solent boasts a long and scenic coastline, which is part of its appeal, much of which is internationally recognised as a Special Protection Area (SPAs) for over-wintering waterfowl and wading species<sup>1</sup>.
- 3.2 This SPD has been prepared to facilitate and guide residential development proposals in the city whilst also fulfilling the city council's obligations to secure compliance under the Conservation of Habitats and Species Regulations 2010 (The Habitats Regulations).
- 3.3 Under these regulations, the city council is identified as a 'competent authority' for the purposes of assessing whether or not a proposed plan or project (such as development proposed through a planning application) is likely to have a significant effect on the conservation objectives of an SPA (see also section 6 below).
- 3.4 It is also necessary to look at the development being assessed in combination with other plans and projects as together, smaller projects can lead to a likely significant effect. At the end of the assessment, if the city council is still not certain that a significant effect will not occur, then it is legally obliged by the regulations not to approve the plan or project.
- 3.5 Human disturbance, much of which is caused by recreation, can have an effect on the protected species which use the Solent SPAs and thus on the conservation objectives of the SPAs themselves. Development has the potential to increase disturbance and thus exacerbate the effect on the SPA.
- 3.6 The city council has been working with other local authorities, the Partnership for Urban South Hampshire (PUSH), Natural England and other stakeholders to investigate this issue locally through the Solent Disturbance and Mitigation Project<sup>2</sup>. The research concluded that there was mortality arising from disturbance in the populations of some SPA species, which would be exacerbated through new development.
- 3.7 Natural England has advised the city council, as a competent authority under the Habitats Regulations, that a significant effect on the Solent SPAs as a result of the extra disturbance caused by new development is likely. As a result a mitigation

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<sup>1</sup> For the purposes of the SPD, the Solent Special Protection Areas (SPAs) refer to Portsmouth Harbour SPA, Chichester and Langstone Harbours SPA and Solent and Southampton Water SPA.

<sup>2</sup> [www.solentforum.org/forum/sub\\_groups/Natural\\_Environment\\_Group/Disturbance\\_and\\_Mitigation\\_Project](http://www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project)

framework will need to be put in place to reduce the effects of disturbance to an extent which makes such effects less than likely to be significant.

### **The solution**

- 3.8 Currently, mitigation measures need to be sought from development to comply with the Habitats Regulations. However it is necessary for developers to look at bespoke solutions on a site-by-site basis. This adds cost, delay and uncertainty to the development process.
- 3.9 The city council has been working with our neighbouring local authorities along the Solent to put together a framework which will enable development to continue coming forward whilst minimising costs.
- 3.10 Mitigation measures would be required from all proposals which would result in a net increase in dwellings. The cost of this framework has been established at £172 per net additional dwelling provided. An administration charge will also apply. This will be secured through a planning obligation completed by the developer.
- 3.11 In the long term, the best solution to this issue would be a joint mitigation framework with the other local authorities along the Solent coast. This will be reported back to the Cabinet Member once developed.

### **Risk assessment**

- 3.12 The proposed interim mitigation framework in the SPD will increase development costs by only a small amount. The principal reason for this is that it has not been necessary to fund infrastructure or capital schemes, which would increase costs substantially.
- 3.13 The cost to development is not seen as significant and should not threaten the viability of any schemes. The city council has had informal dialogue with developers through pre-application discussions. Feedback from the development industry has consistently been that developers require certainty in order to proceed with schemes and the current situation does not provide the required certainty. The proposed framework is seen as proportionate to the scale of the issue and can be incorporated into development schemes without threatening viability.
- 3.14 If an Interim Planning Framework is not agreed and funded by contributions secured from individual development schemes, developers will be required to assess the impact of their proposals both individually and cumulatively with other development in the 5.6 km zone under the Habitat Regulations. The applicant would then have to demonstrate how they would avoid or mitigate significant effects resulting from their housing proposals.

- 3.15 If they were unable to do this the Council would have to refuse planning permission and Natural England has indicated that they would be likely to raise objections to developments where mitigation measures have not been secured. This is likely to be very difficult for developers, especially on smaller sites and could prove to be more expensive and time consuming for both the developer and the local planning authority than agreeing a strategic mitigation scheme.
- 3.16 The evidence shows that there is a likely significant effect from all housing development within 5.6km of the Solent coast and so this will impact on a large number of local authorities (see map 1 in the SPD for more detail). Mitigation schemes will need to be in place by the end of April, after which time, Natural England have indicated that objections will be issued to all housing developments within 5.6km of a Solent SPA which do not propose mitigation as part of the scheme.
- 3.17 Nonetheless, it is likely that Portsmouth will be the first authority to put in place a mitigation scheme. Whilst there will be a small increase in construction costs in the city as a result, this should on balance increase the attractiveness of investing in the city as the development industry can be sure that there is a swift, simple and cost-effective solution to addressing this issue.
- 3.18 Given the city's extensive coastline and the fact that mitigation will need to be provided from all developments stretching to 5.6km from the Solent SPAs, it is likely that Portsmouth will be a net benefactor from the scheme and will benefit from the additional resource to help manage the city's coastline for the benefit of people and wildlife.
- 3.19 Conversely, failure to implement the SPD could seriously threaten the delivery of housing in the city, which could in turn affect the city council's growth and regeneration plans.

### **Consultation**

- 3.20 Consultation on the draft SPD will take place for four weeks. Any interested parties will be able to comment on the document in writing, submitted to the city council by post or e-mail. During the consultation period, the draft SPD will be available to view online and at the Civic Offices.
- 3.21 After the consultation, the results will be reported to the Cabinet Member together with any revisions which are proposed for the SPD before adoption.

#### **4. Reasons for recommendations**

- 4.1 Before finalising the SPD, it is important that stakeholders are given an opportunity to comment on the fine detail of its proposals.

#### **5. Equality impact assessment (EIA)**

- 5.1 The Portsmouth Plan was subject to a full Equalities Impact Assessment. As the SPD simply expands on Portsmouth Plan policies and provides details on how they will be implemented, it is not necessary to conduct a separate assessment of the SPD.

#### **6. Legal comments**

- 6.1 The Habitats Regulations prevent the council giving permission to developments which individually or in combination are likely to have a significant effect on a Special Protection Area. This places a severe limitation on development and regeneration in the city unless a mitigation scheme can be afforded. The interim scheme proposed allows for developers to provide a proportionate element of mitigation so that development can proceed that would otherwise be delayed, and prevents a development hiatus occurring until more permanent mitigation measures are devised.

#### **7. Head of Finance's comments**

- 7.1 The costs associated with the consultation process will be funded through existing budgets.
- 7.2 The financial detail of the draft SPD is provided at Appendix 1 on Appendix A of the report.
- 7.3 The interim mitigation strategy charge per dwelling of £172 is based on predicting the likely housing delivery per year and the cost of funding the mitigation scheme at a Solent-wide level. This has been calculated over the remaining period of the each local authority's local plan from a base date of 31 March 2013. After this, the scheme should be self funding for the development carried out within the time frame considered in this report. A methodology demonstrating how this could be achieved is provided in Appendix 1.
- 7.4 PCC will collect the Portsmouth element of the migration strategy charge and will passport this to the lead authority on a regular basis.
- 7.5 The cost of the mitigation package primarily relates to the employment of a ranger team who will work on the ground to reduce wildlife disturbance levels. It is anticipated that this team will not be employed by PCC but by one of the other partner organisations such as Hampshire County Council who already operate

large, skilled ranger teams and manage extensive countryside sites. There is a risk that insufficient development income will be earned to fund these posts, should this be the case, a contribution towards the shortfall may be required from the other partners, which would be provided in the form of a loan.

- 7.6 This proposal is an interim solution to enable development to go ahead without delay. Further discussions will take place between local authorities, PUSH, the Solent LEP and Natural England to establish a long term mitigation framework. Discussions will include a review of the mitigation strategy to date, financial implications and the future proofing of the framework.

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Signed by City Development Manager:

**Appendices**

Appendix A - Solent Special Protection Areas draft Supplementary Planning Document.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
None.	

The recommendation(s) set out above were approved/ approved as amended/ deferred/

rejected by ..... on .....

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Signed by: