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| Report of: | Corporate Director |
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| Portfolio Leader: | Economic Development and Planning |
| Key Decision: | Yes |
| Report Track: | Cabinet: 20/11/14 |

CABINET
20 NOVEMBER, 2014
CANNOCK CHASE SPECIAL AREA OF CONSERVATION PARTNERSHIP
MEMORANDUM OF UNDERSTANDING AND PERMISSION TO SPEND ON
MITIGATION PROJECTS

1 Purpose of Report

- 1.1 To seek authority for the Council to enter into a Memorandum of Understanding with partner Local Authorities in the Cannock Chase Special Area of Conservation Partnership (the Partnership) to enable them to work together to prepare a mitigation plan and common policies in order to deliver of a set of projects aimed at mitigating the impact of new residential development on the Cannock Chase Special Area of Conservation (SAC).
- 1.2 To seek approval for expenditure of funds collected pursuant to Planning Obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 funds) and a proportion of future Community Infrastructure Levy (CIL) receipts on mitigation projects set out in Appendix 2 and approved by the Partnership.

2 Recommendations

- 2.1 That Cabinet approve the signing of the Memorandum of Understanding attached at Appendix 1; and authorise the Corporate Director, in consultation with the Portfolio Leader for Planning and Economic Development, to agree and enter into any revised or supplemental agreements designed to achieve the purposes of the Memorandum of Understanding
- 2.2 That Cabinet authorise officers to allocate S106 funds and CIL funds to the projects set out in Appendix 2 in order to mitigate the impact of new residential development in the District on the SAC and as part of the Council's share of the

overall mitigation strategy in accordance with the processes agreed by the Partnership.

- 2.3 That the Corporate Director, in consultation with the Portfolio Leaders for Planning and Economic Development and for Environment, be authorised to agree future allocations of funds to mitigation projects and to agree and enter into any business plans and governance arrangements agreed by the Cannock Chase Special Area of Conservation Partnership to implement the mitigation policy.

3 Key Issues and Reasons for Recommendation

- 3.1 Evidence produced to inform policies and proposals in Local Plans prepared by Cannock Chase Council, Stafford Borough Council, Lichfield District Council, South Staffordshire District Council, East Staffordshire Borough Council, Walsall Metropolitan Borough Council and Wolverhampton Metropolitan Borough Council indicates that new housing development will result in additional damage to the Cannock Chase Special Area of Conservation (SAC) as a result of increased visitor pressure unless appropriate mitigation proposals are delivered. The SAC comprises the main heathland areas within the Cannock Chase Area of Outstanding Natural Beauty. All the adopted Local Plans contain policies which require mitigation measures to be secured when dealing with planning applications involving a net increase in dwellings. Plans currently being examined – Lichfield and East Staffs – include similar policies.
- 3.2 The Local Planning Authorities (LPAs) have been working with Natural England, the Government’s advisor on nature conservation, Staffordshire County Council (owners of most of the SAC), the Forestry Commission (major adjoining landowner) and the AONB Unit to develop a set of projects together with a means of funding them, to ensure that there is no additional adverse impact on the integrity of the SAC resulting from the additional visitors occupying new dwellings situated within an agreed zone of influence. It is essential to have these processes in place in order to ensure that the LPAs, as competent authorities under the provisions of the Conservation of Habitats and Species Regulations 2010, are discharging their responsibilities in the correct way.
- 3.3 As an alternative to having a moratorium on new housing development, this Council, Stafford Borough and Lichfield District have been operating interim policies to secure funding via Section 106 Planning Obligations to enable planning permissions to be granted, pending agreement on a consistent approach across the partnership. This Council adopted an Interim Planning Policy following Cabinet approval on 25/07/2013. This means that some funding is already in place in S106 accounts, amounting to £16,200 at the end of September 2014. The position has now been reached where the partnership is close to agreement on a costed set of projects (overall around £2 million) with accurate information on the net increase in dwellings proposed in the respective plans, to enable a formal Memorandum of Understanding and governance procedures to be completed to deliver the mitigation measures.

- 3.4 The proposed Memorandum of Understanding is set out at appendix 1. A table listing the projects and costs is at Appendix 2.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities as follows:
- (i) Environment and Planning
 - Increase the economic, social and environmental prosperity of the District through delivery of sustainable development.
 - (ii) Improved living environment
 - Improve countryside site provision.

5 Report Detail

- 5.1 The evidence of potentially damaging impact on the SAC of additional visitors/visits from occupiers of new housing development is contained in reports produced on behalf of the LPAs by consultants Footprint Ecology (FE). The types of damage includes creation of new tracks and widening of existing tracks through the heathland, particularly but not solely by mountain bikers, and changes to vegetation alongside tracks as a result of nutrients in dog faeces. Exhaust gases from vehicles also have an adverse impact. The FE evidence identified an overall zone of impact of 15 kilometres from the boundary of the SAC, with an inner zone of most significant impact of 8 kilometres. All potential housing sites within this District are within the inner zone.
- 5.2 The Black Country LPAs have questioned the validity of the 15k zone and commissioned their own evidence to seek to establish a position where the need to mitigate impact from development within their boundaries was minimised. Natural England and the Staffordshire LPAs have maintained the position that the FE evidence remains valid. This evidence was accepted by Inspectors at the examinations into the South Staffs, Cannock Chase and Stafford Local Plans. It was debated (Thursday 16th October) at the final session of the examination into the Lichfield Local Plan and the Inspector's report is now awaited.
- 5.3 The original draft set of mitigation projects included proposals to deliver large areas of new public open space known as Suitable Alternative Natural Green Spaces (SANGS) to divert some visitors from the SAC, based on a similar approach to mitigation taken in the Dorset and Thames Basin Heaths. The inclusion of SANGS made the overall costs of mitigation in excess of £5 million, with a large component of this being land acquisition costs. Natural England has since advised that an alternative approach of managing visitors in and around the SAC involving the two partner landowners, Staffordshire County Council and

the Forestry Commission, is more appropriate for the local circumstances and the overall cost is now nearer to £2 million.

- 5.4 As the ratio of impact identified in the evidence is 5:1 between the 0-8K and the 8-15K zones it is unlikely to be cost effective to collect funds via planning obligations in the outer zone as the sums involved would only be around £50 per dwelling. The estimated cost of obligations per dwelling in the inner zone to cover the total cost of mitigation is likely to be in the region of £250 to £300 per dwelling, a significant reduction from the current interim policy charge in this District of £450. With the introduction of CIL the agreed figure per dwelling would need to be “top sliced” from annual CIL receipts received from residential developments instead of being obtained via individual planning obligations. If the proposed CIL charge for residential development of £40 per square metre proposed in Cannock Chase District is confirmed following examination, an average three bedroomed dwelling would attract a charge of around £3,400. The essential “top slicing” for SAC mitigation would therefore be between 7% and 9% of this figure and as such is considered reasonable.
- 5.5 Cannock Chase Council’s contribution to the overall cost of the mitigation project to the end of the Local Plan period of 2028 based on the proportion of the total housing supply to be delivered is likely to be around £400,000 at current prices or £26,666 per year over the 15 year plan period. £16,200 has already been received via planning obligations under the current interim policy. A further £150,000 is anticipated to be received via planning obligations which are either already completed or likely to be completed before April 2015, at which date CIL is expected to provide the alternative funding stream.
- 5.6 The Partnership will need to plan the delivery of the mitigation project to take into account the risk that future house building may not take place at the rate per year and at the overall scale envisaged in the Local Plans. As a large proportion of the project costs involve employment of new staff, the initial length of contracts will need to be carefully considered to ensure that the overall cost of the project does not exceed the funds received from a combination of S106s and CIL on an annual basis. This detail will be identified in the Partnership Business Plan covering the period 2014 – 2029, which will be reviewed on an annual basis.
- 5.7 The proposed Memorandum of Understanding provides the overall mechanism for committing the partnership to co-operate on delivering the appropriate mitigation measures. Detailed governance arrangements will need to be worked up to cover matters such as delegation of decision making, roles and responsibilities, establishment of an accountable body to receive pooled S106 funds /CIL funds from the partner Local Authorities, quorums in meetings, voting rights and reporting processes at the partnership level and to individual member LPAs. An essential part of the process will be the monitoring of the delivery of mitigation, with provision to review the project costs if necessary.

6 Implications

6.1 Financial

The total cost to the Partnership of the 15 year Plan to mitigate the impact of new housing development is estimated to be £2m, of which this Councils share is estimated to be £400,000.

Under the “*current existing planning obligations*” the Council has already received £16,200 as of 30th Sept 2014 and as referred to in para 5.2 anticipates that a further £150,000 will be received up to April 2015, at which point CIL will provide an alternative funding stream.

The annual contribution required from the Council will be dependent on the number of house completions in any one financial year. Once the Councils total of £400,000 has been contributed the CILS receipts will be retained by the Council and utilised for other projects which contribute to the overall objectives of the Local Plan.

Once the Accountable Body has been finalised an additional report will need to be submitted which requests authority from Cabinet to transfer money to the Accountable Body.

Should the current £2m cost be revised in the future, additional reports will be submitted for consideration.

6.2 Legal

The legal implications are set out in the report.

6.3 Human Resources

None.

6.4 Section 17 (Crime Prevention)

None

6.5 Human Rights Act

None

6.6 Data Protection

None

6.7 Risk Management

Without a formal mechanism for managing the overall mitigation project there is a risk that individual LPAs would not be able to discharge their responsibilities effectively as competent authorities under the Habitat Regulations and therefore be in breach of their obligations to do this.

6.8 Equality & Diversity

None.

6.9 Best Value

None.

7 Appendices to the Report

Appendix 1 Memorandum of Understanding

Appendix 2 SAC access management projects

Previous Consideration

| | | |
|---|---------|------------|
| Interim Planning Policy on SAC Mitigation | Cabinet | 25/07/2013 |
|---|---------|------------|

Background Papers

Cannock Chase Local Plan (Part 1) 2014

Cannock Chase SAC Visitor Impact Mitigation Report – Footprint Ecology December 2012.

Minutes of meetings of Cannock Chase SAC Partnership 2012 to date.

MEMORANDUM OF UNDERSTANDING

of the

**CANNOCK CHASE SPECIAL AREA OF CONSERVATION
PARTNERSHIP**

between

Cannock Chase District Council
East Staffordshire Borough Council
Lichfield District Council
South Staffordshire District Council
Stafford Borough Council
Walsall Council
Wolverhampton City Council

Advisors

Natural England
Cannock Chase AONB Unit

Major Landowners

Staffordshire County Council
Forestry Commission

1.0 Purpose

The Cannock Chase Special Area of Conservation (SAC) Partnership provides a framework for coordination between statutory bodies having responsibilities in Cannock Chase SAC. This Memorandum of Understanding sets out how the Cannock Chase SAC Partnership will take responsibility for a programme of mitigation, how the above organisations will work together to review, prepare and implement common plans and policies to protect and enhance the SAC, promote its understanding and appreciation to help to deliver sustainable development.

The objective of the partnership is to use statutory planning processes and specific site and visitor management measures to secure appropriate mitigation for the impacts on the Cannock Chase Special Area of Conservation (SAC) of Development Plan and Local Transport Plan policies and proposals contained in individual planning applications and projects, thereby ensuring that the integrity of the SAC is maintained.

2.0 Background

Sitting within the wider AONB, the Cannock Chase SAC was designated in 2005 under the provisions of the European Habitats Directive, the majority of the site having previously been designated as a SSSI in 1987. Cannock Chase represents the largest area of heathland habitat surviving in the English Midlands and though much diminished in area from its original extent, as with all lowland heathland zones, the habitat and dependent species are of very high nature conservation importance. The Annex I habitat, European Dry Heath is the primary reason for designation of the SAC. The character of this vegetation is intermediate between

the upland or northern heaths of England and Wales and those of southern counties. Dry heathland communities belong to NVC types H8 Calluna vulgaris – Ulex gallii and H9 Calluna vulgaris – Deschampsia flexuosa heaths. Within the heathland, species of northern latitudes occur, such as cowberry Vaccinium vitis-idaea and crowberry Empetrum nigrum. Cannock Chase has the main British population of the hybrid bilberry Vaccinium intermedium, a plant of restricted occurrence. There are important populations of butterflies and beetles, as well as European nightjar and five species of bats.

The evidence base (from Footprint Ecology) shows significant impacts from high visitor numbers. Additional visits from the residents of new developments would be expected to increase this impact unless measures to prevent this are put in place. The main impacts are the fragmentation of habitat from a multiplicity of paths and tracks, track and path widening with erosion, trampling and compaction, and eutrophication from dog fouling.

In October 2005, the judgment the European Court of Justice in the case of Flood Management Plans and the implications of Case C-6/04 Commission Vs United Kingdom, required the UK to extend the requirements of Article 6(3) and (4) of the Habitats Directive to include the assessment of the potential effects of spatial and land use plans on European sites. Evidence commissioned by the SAC Partnership suggests that the planned level of growth within a 15 kilometre radius of the SAC is likely to have a significant effect on its condition. The greater part of this effect would arise from development within an 8km zone as it has been determined through research that this zone would contribute the most visitors to the SAC¹. The effect of increased visitor numbers consists of additional damage from site use and vehicle emissions². In granting planning permissions the Local Planning Authorities must comply with their duty under the Habitats Regulations as a Competent Authority to ensure appropriate mitigation is delivered prior to developments being built and new visits generated.

3.0 Conservation Objectives

European Site Conservation Objectives for Cannock Chase Special Area of Conservation Site code: UK0030107

With regard to the natural habitats and/or species for which the site has been designated (“the Qualifying Features” listed below);

Avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.

Subject to natural change, to maintain or restore:

¹ Further Analysis of Cannock Visitor Survey Data to Consider Apportioning Costs between Zones – Durwyn Liley, 30th September 2013.

² NE advice letter to the partnership dated 10/04/2013

- The extent and distribution of qualifying natural habitats and habitats of qualifying species;
- The structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species;
- The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
- The populations of qualifying species;
- The distribution of qualifying species within the site.

Qualifying Features:

H4010. Northern Atlantic wet heaths with *Erica tetralix*; Wet heathland with cross-leaved heath

H4030. European dry heaths

4.0 Objectives of the Partnership

The objectives of the partnership are to secure measures to avoid or mitigate for the effects of development³ and aim to:

- Conserve, enhance and restore the Cannock Chase SAC by delivering its Conservation Objectives.
- Raise awareness and understanding of the biodiversity of the Cannock Chase SAC
- Achieve 'joined up' management with neighbouring protected landscapes and habitats.
- Avoid the deterioration of the qualifying features for which the SAC has been designated (see Qualifying Features in section 3.0) and enable the sustainable development of the area.

5.0 Key Commitments to be Addressed

1. Work through the Local Authorities within the SAC Partnership to develop and implement consistent planning policies in respect of Development Plan documentation and development processes of Local Authorities which provides a framework for the mitigation strategy.
2. Collectively and individually ensure that all plans, projects and management activities meet the requirements of the Habitat Regulations
3. Agree an evidenced planning obligations charging schedule.
4. Develop, agree and monitor a 15 year mitigation plan reviewed on a 5 year basis for the Cannock Chase SAC, with clear priority actions, outcomes and monitoring, including evidence of its deliverability with identified funding sources.
5. Agree a protocol for decision making on spending funding provided by development, from contributions based on the mitigation plan.
6. The Project will work closely with other complementary initiatives such as the AONB and the Connecting Cannock Chase Partnership.
7. The area within which the Project will operate is the statutorily designated areas of the Cannock Chase SAC, but on occasions will also include the wider adjoining areas in relation to specific issues, for example visitor management

³ Housing and other development such as tourist accommodation which requires HRA and would have an impact on the SAC.

and directions, where a wider working area may be required to maintain favourable condition of an interest feature within the SAC.

8. The collecting LPA's will agree the pooling of developer contributions will be spent collectively. The contributions will be held by one partner authority who will act as financially accountable body.

6.0 Roles and Responsibilities

Although only Competent Authorities have statutory responsibilities, it is necessary that other advisory bodies and landowners participate in the management of the site.

The governance of the project will be determined through the Terms of Reference.

7.0 Governance

There is a need to establish governance arrangements and protocols to ensure that the requirements of the mitigation strategy and therefore the Habitats Regulations are satisfied. It is initially proposed that the following governance arrangements are established, with the partnership management structure to be reviewed on a 12 month basis:

- Cannock Chase SAC Joint Strategic Partnership Board to meet, or receive reports, a minimum of quarterly, with a rotating chair from each local authority in turn, and supported by an officer in a project management role. It will consist of senior representatives from each of the organisations listed in this MoU. Terms of Reference will need to be agreed⁴.
- SAC Project Partnership Group will meet quarterly or as required, to coordinate and quality assure project delivery, ie what is being delivered, where, when and by who to avoid duplication of effort. This group will be supported by an officer in a project management role and consist of officers from each of the organisations listed in this MoU along with representatives from appropriate organisations. Terms of Reference will need to be agreed⁵.

8.0 Commencement and Termination

This MoU will take effect when it has been signed by all Parties. It is anticipated that this MoU will operate for a period of five years when it will be reviewed. It may be amended by agreement in writing between all parties. Membership of the Partnership may be terminated forthwith at any time by any Party giving a 12 month notice in writing to the other Parties. Each Party will use their best endeavours to give reasonable notice to the other Party if they intend to withdraw from the MoU.

⁴ Terms of Reference including membership and voting powers to be agreed through supporting documents.

⁵ Terms of Reference to be agreed through supporting documents.

Cannock Chase SAC related Access Management Measures – Proposal – Table of measures and estimated costings (Amendments from original proposal highlighted in yellow wash)

| Measure | Cost £K | Duration | Explanatory comments |
|---|---------|---------------|--|
| Project initiation: business plan; agreement of partner responsibilities (Memorandum); recruitment of project staff. | 50 | Year 0 | A simple assumption that there is a cost in employing the Lichfield DC project team for project initiation. |
| Staff: one full-time project manager and one full-time visitor engagement officer | 1400 | Years 1 to 10 | Project manager £40k salary plus overheads = £80K. Engagement officer salary £30K, plus overheads = £60K. Costs dependent on managing body. These staff set up and manage all consultancy and other contracts, and undertake all engagement work above |
| Engagement of three of four key sectors: walkers and dog walkers; cyclists; horse riders. Development of volunteering and education programmes. Promotional and interpretation material | 30 | Years 1 to 10 | Cost here only includes the promotional and interpretation material, which would consist largely of web-based material. The other cost of sector engagement is staff time and is adequately built into the figures below |
| Strategies: an overarching strategy for visitors and nested strategies for car parking, track and footpath management and each visitor sector, plus a monitoring strategy | 135 | Years 2 and 3 | Consultancy costs. Overarching strategy including monitoring £50K, car parking £40K, each of three visitor sectors £15K. |
| Physical management: improvement of paths and tracks; implementation of parking plan; way marking and on-site interpretation panels | 255 | Years 1 to 15 | Contract costs. Paths and tracks: quoted cost £10 per m; 1km a year for 10 years; followed by 100m a year for 5 years. Assume implementation of a parking plan will be cost neutral (funded by car park charges) for car park closures. Allow approx. £100k for car park construction or modification (see note below). Panels and way marking £50K. |
| Monitoring | 100 | Years 4 to 15 | Consultancy costs. Two repeats of the aerial survey of paths and tracks, £10K each to include ground truthing and targeted biological monitoring as necessary. Two visitor surveys 40K each. |
| Total | 1970 | Years 1 to 15 | |

Additional notes

a) **Monitoring** – repeat visitor surveys – cost increased from £20k to £40k each. Amended figures indicated in yellow wash.

b) **Car parking plan** – Cost neutrality agreed with respect to de-commissioning car parks. FC estimates £300/parking space for a new car park of 100 spaces with short access track (not including admin/planning costs) i.e. £30k per new 100 space car park plus planning/admin. Smaller car parks cost relatively more.

Thought process in terms of what allowance to make for potential new car park spaces at this early stage:

Existing car park provision (FC land) = 480 spaces plus 15% (72 extra spaces) = 550 spaces (approx.)

For SCC car park resource the Partnership should take account of following:

Footprint Ecology Visitor Survey Report – Car park tally counts for the SAC indicate that apart from the Marquis Drive site, the general pattern of car parking is one of scattered and often low level usage across a large number of car parks. Applying a 15% increase to the notional total resource of SCC car park spaces would appear likely to generate an excessively high sum in these circumstances.

Assuming a £100k funding pot for this strand of the project a 15% increase in car park space on FC land equates roughly with a cost of £30k. A residue of £70k then remains to deal with any changes to the SCC car park resource. Considering whether this is justified might take account of the following:

- Uncertainty regarding what outcomes will flow from the review of car parking arrangements. Costs of any implementation measures are therefore very hard to predict*
- Caution may be needed in view of the sensitive nature of any proposals involving car park charges*
- To give a feel for what this might mean in terms of the developer contribution tariff we can assess the effect of a range of car park cost scenarios*

Action - Partners to indicate their views on preferred approach at this early stage of the project.

c) Query raised regarding **inflation/index linking** of figures in recognition of long term nature of project.

Update – Table format revised 4.8.14 to show sequence of project tasks more clearly.

Natural England 4.8.14