



## **North Devon Council**

Report Date: 17 May 2021

Topic: **Braunton Burrows Special Area of Conservation Visitor Impact Strategy**

Report by: Sustainability Officer

### **1. INTRODUCTION**

- 1.1. The purpose of this report is to present the finalised Visitor Mitigation Strategy for Braunton Burrows Special Area of Conservation (SAC). An interim mitigation strategy and developer contribution rate of £100 per unit was approved by Strategy and Resources Committee on 1<sup>st</sup> July 2019.
- 1.2. The report seeks approval to increase the developer contribution rate to £190 per unit and to begin implementation of the Strategy's recommendations. The principal deliverable of the Strategy is a Christie Estates appointed part-time Engagement Officer to deliver the Strategy in partnership with the Council and Natural England.
- 1.3. Evidence produced since the adoption of the North Devon and Torrington Local Plan (the "Local Plan") concludes that, as a result of increasing visitor pressure, adverse effects on the integrity of the SAC cannot be ruled out and development which contributes to harm of the SAC should not be granted without appropriate mitigation measures being in place.
- 1.4. Natural England has advised that a formal mitigation strategy must be produced to provide certainty on what mitigation measures are required and the cost of delivery.
- 1.5. The Braunton Burrows SAC Visitor Mitigation Strategy has now been finalised in consultation with Natural England and Christie Estates, and the Council is responsible for ensuring the successful delivery of the Strategy. In order to monitor the delivery of the strategic objectives, periodic visitor behaviour surveys and habitat condition surveys are costed within the Strategy.

### **2. RECOMMENDATIONS**

- 2.1. That the Local Authority commence collection of developer contributions at a revised rate of £190 per unit (including administration fees) on any development resulting in a net gain in temporary or permanent residential or holiday accommodation within the identified Zone of Influence (Zoi).

- 2.2. That the rate of contributions is placed under constant review to ensure that the delivery of development within the ZOI is sufficient to fund the strategy's capital costs and recurring costs as set in Table 1 of the Strategy.
- 2.3. That Full Council be recommended to amend the Scheme of delegations to provide delegated power to the Senior Solicitor to enter into undertaking and obligations under s106 T&CPA and/or s111 LGA1972 to secure contributions.
- 2.4. That Full Council be recommend to amend the Scheme of delegations to provide delegated power to the Senior Solicitor to develop a legal agreement with Christie Estates for developer contributions collected for the purpose of Braunton Burrows SAC mitigation to fund a Christie's appointed 60% full time equivalent Engagement Officer.

#### REASONS FOR RECOMMENDATIONS

- 2.5. To fulfil the Council's statutory duty to ensure that any plan or project will not adversely affect the integrity of a European Council Habitats Directive designated site and to secure any necessary compensatory measures to ensure the overall coherence of the site is protected and enhanced.
- 2.6. To enable the ongoing functionality of the Local Planning Authority to determine planning applications and continue issuing permission for otherwise policy compliant development within the Zol.
- 2.7. To enable the timely appointment of an Engagement Officer to lead on the delivery of the Strategy and ensure appropriate engagement and monitoring between the Council and Christie Devon Estates.

#### REPORT

- 2.8. The Conservation of Habitats and Species Regulations 2017 sets out a duty to maintain and restore European Designated Sites. Local authorities are required to have regard to the implications of plans or projects on the integrity of protected site's conservation objectives.
- 2.9. The SAC is also designated as a Site of Special Scientific Interest (SSSI) and is protected by the provisions of Part II of the Wildlife & Countryside Act 1981 (as substituted by Schedule 9 to the Countryside & Rights of Way Act 2000 and inserted by section 55 of the Natural Environment and Rural Communities Act 2006).
- 2.10. The North Devon and Torridge Local Plan Habitat Regulations Assessment (HRA) has iteratively assessed the Local Plan at each stage of

its development. The HRA includes detailed Appropriate Assessment (AA) of potential impacts on Braunton Burrows SAC and the Culm Grassland SAC resulting from the cumulative effect of all development within the Local Plan.

- 2.11. All further impacts on any protected sites resulting from individual Local Plan allocations alone or in combination with other plans or projects were screened out from further assessment.
- 2.12. At the Local Plan Examination the Inspector agreed with the conclusions of the Local Plan HRA/AA in that the potential impacts on Braunton Burrows SAC and the Culm Grassland SAC were minimal and within acceptable limits. The Local Plan was adopted on this basis.
- 2.13. In 2019, the Council commissioned Footprint Ecology to assess potential impacts on Braunton Burrows SAC as a result of further non plan-led development in-combination with that allocated for within the Local Plan. The Braunton Burrows SAC – An Assessment of the Potential Recreational Impacts Linked to Non Plan-Led Development report was finalised in March 2019.
- 2.14. The report concluded that ‘the Council as competent authority and Natural England as statutory nature conservation body can now respond positively, recognising a threat to the site that is only going to be exacerbated with further development in the absence of mitigation. It is therefore right to strive to achieve the conservation objectives by putting mitigation measures in place now, and not waiting for further deterioration before acting. The latter would be contrary to their public body duties’ and that ‘when considering measures to alleviate recreation pressure, any mitigation measures necessary to provide the necessary certainty of effectiveness are best established at a more strategic level, i.e. where individual developments contribute towards a centrally managed mitigation approach’.
- 2.15. In its e-mail of 13th November 2018 Natural England responded to a draft version of the report stating that “This would suggest that there is a probability or risk that recreational activities arising from occupants of all new residential development within the Zone of Influence (ZOI) would, in combination, have a significant effect on the SAC and that the appropriate Assessment to accompany all new applications will need to address measures for mitigation.”
- 2.16. In response to the final version of the previous report Natural England stated that ‘If in the light of the recent Footprint evidence (and any further evidence that emerges subsequently) adverse effects on the integrity of the SAC cannot be ruled out consent should not be granted’ and that ‘there are

requirements for certainty both that mitigation measures will be in place before impacts occur and that the measures will work’.

- 2.17. On behalf of the Local Authority, Footprint Ecology have carried out further visitor surveys and identified a robust Zol. The Zol encompasses Mullacott Cross and Putsborough in the north and runs from Lynton Cross to Barnstaple, with the southern edge following the A361/A39 as far as the Torridge (Appendix 1).
- 2.18. The Local Authority received approval to adopt an interim position on 1<sup>st</sup> July 2019 to cover the period prior to the mitigation plan being finalised. The interim position has enabled the Local Planning Authority to determine applications and continue issuing planning permissions for otherwise policy compliant development within the Zol.
- 2.19. The Local Authority has secured contributions at a rate of £100 per unit (including administration fees) on development resulting in a net gain in temporary or permanent residential or holiday accommodation within the Zol. The interim mitigation costs were based on an interim strategy and delivery costs.
- 2.20. A fully costed mitigation Strategy has now been produced and reflects the Local Authority position in partnership with Natural England, and the landowner Christie Devon Estates. Delivery of the mitigation strategy will be through contributions secured from development within the Zol over the lifetime of the Local Plan up to 2031.
- 2.21. The finalised Strategy is now costed at £568,780 for the 10 year period to 2031. The most significant action of the Strategy is the appointment of the Engagement Officer at £20,000 annual salary, plus 45% to cover NI, superannuation, 10% management cost etc. The Officer would implement and oversee the remainder of the Strategy alongside existing Christie Estates ground staff. The Officer would be responsible for delivering improved access management, dog training/awareness events, creation of homeowner packs/codes of conduct, creation of dog friendly meadow area and ongoing visitor surveys as detailed in the Strategy.
- 2.22. Christie Estates have stated that their preference would be for Christies to appoint the Engagement Officer on a temporary 2 year contract. Christies propose that terms of agreement are drawn up with the Council that would ensure the Council cover the costs of the Officer once sufficient developer contributions have accrued. This would enable the Officer to be in post without further delay to delivery of the Strategy. The contributions collected to

date are not currently sufficient to pay for the appointment due to the payment structure of s106 planning obligations.

- 2.23. The appointment of an Officer as a Christie Estates employee would also help to ensure that the Strategy compliments and is consistent with site management carried out under the existing Natural England Stewardship Grant. Christie Estates are also working closely with Natural England on the delivery of the England Coast Path and with Plantlife on the Dunescape project which both feature potential overlaps in delivery of improving public engagement and access.
- 2.24. The Local Planning Authority cannot legally grant planning permission for developments where the impacts on the protected habitats are not mitigated, and hence the habitats mitigation contribution must either be paid before permission is granted, or a Unilateral Undertaking must be in place before permission is granted. Advice has been sought from local authorities managing the Exe Estuary/Dawlish Warren habitat mitigation plans which have informed the selection of the most appropriate means of collecting contributions.
- 2.25. Unilateral Undertakings can involve significant legal expense for applicants, and delays to the issue of consent, and the Council's preference is therefore for applicants to provide an s111 Undertaking (Local Government Act 1972) and the necessary payment at the time at which planning applications are submitted.
- 2.26. The s111 Undertakings provide for the return of any monies paid in the event that planning permission is refused, or the timeframe for implementing the permission has expired, or an appeal lodged in respect of a refused planning permission is dismissed, subject to a reduction of any administration costs.

## RESOURCE IMPLICATIONS

- 2.27. There are no additional costs to North Devon Council other than the already identified costs of Local Plan evidence base and currently emerging mitigation plan.
- 2.28. There are administrative fees associated with collection of developer contributions and drawing up of contracts with Christie Devon Estates.

2.29. If the Council determines not to formally seek developer contributions towards strategic mitigation measures, the Authority may be subject to challenge.

### 3. EQUALITIES ASSESSMENT

3.1. Not applicable

### 4. CONSTITUTIONAL CONTEXT

4.1. Article of Part 3 Annexe 1 paragraph:

4.2. Referred or delegated power?:

### 5. STATEMENT OF CONFIDENTIALITY

5.1. This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

### 6. BACKGROUND PAPERS

6.1. The following background papers were used in the preparation of this report:

- North Devon and Torridge Local Plan – Adopted (October 2018)
- North Devon and Torridge Local Plan Habitats Regulations Assessment (November 2017)
- Braunton Burrows SAC – An Assessment of the Potential Recreational Impacts Linked to Non Plan-Led Development. Footprint Ecology. (March 2019).
- Braunton Burrows Visitor Survey Results 2019. Interim Report with Postcode Data. Footprint Ecology. (March 2019)
- Braunton Burrows SAC Mitigation Strategy (March 2021)

The background papers are available for inspection and kept by the author of the report.

### 7. STATEMENT OF INTERNAL ADVICE

7.1. The author (below) confirms that advice has been taken from all appropriate Councillors and Officers:

Author: Mark Saunders

Date: 29<sup>th</sup> April 2021

Appendix 1

