

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (Place)

To
Cabinet
On

5th November 2019

Report prepared by: Mark Sheppard

Essex Coast Recreation disturbance, Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD)

Place Scrutiny Committee (Chair: Councillor Andrew Moring)
Cabinet Member: Councillor Carole Mulrone
A Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To advise Members of the preparation of an Essex Coast Recreation disturbance, Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) which will support the provisions of the emerging Southend New Local Plan (SNLP) in relation to the protection of important natural habitat sites on the Essex Coast.
- 1.2 The RAMS SPD and supporting technical strategy has been prepared in partnership with 12 other Essex local planning authorities¹ with the support of Essex County Council Place Services and Natural England, the government agency responsible for nature conservation.
- 1.3 Member approval is sought to undertake a period of public consultation on the RAMS SPD in accordance with the Council's adopted Statement of Community Involvement and to seek endorsement of the proposed mechanisms for implementing the RAMS project. A period of public consultation will simultaneously be carried out by all the other local authority partners.

2. Recommendations

- 2.1 **That Members agree the Essex Coast Recreation disturbance, Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) (Appendix 1) for a 6 week public consultation.**

¹ Castle Point, Chelmsford, Colchester, Basildon, Braintree, Brentwood, Maldon, Rochford, Tendring, Thurrock and Uttlesford.

- 2.2 That Members agree to delegate authority to the Deputy Chief Executive (Place) in consultation with the Cabinet Member for Environment and Planning to make necessary minor amendments which may be required as a result of public consultation and to subsequently adopt the RAMS as a Supplementary Planning Document.**
- 2.3 Members note the contents of the RAMS SPD (Appendix 1) which will form an important document supporting the nature conservation policies and provisions of the emerging Southend New Local Plan.**
- 2.4 That Members agree to the implementation of a development tariff to be collected on all residential planning applications submitted in the Southend Borough as a contribution to funding mitigation proposals on the Essex Coast as defined and set out in the RAMS SPD. That this tariff charge of £122.30 per dwelling be reviewed on a yearly basis to permit inflation increases in accordance with the Retail Price Index.**
- 2.5 That Members agree that the Essex Planning Officers Association (EPOA) act as the RAMS Project Delivery Board responsible for the coordination and monitoring of the project, and that Elected Members from each local authority will also be involved with the governance and delivery of the project.**

3. Background

- 3.1 Local planning authorities have a duty as competent authorities to ensure that designated habitat areas are protected in accordance with the Conservation of Habitats and Species Regulations 2017. With increasing recreational pressure on the coast as a result of new housing development, Natural England has identified an urgent need to develop comprehensive strategies to ensure that this pressure is mitigated and does not worsen the favourable status of protected habitat sites.
- 3.2 Natural England has therefore promoted the preparation of RAMS to ensure that local planning authorities, in preparing their local plans, secure a series of mitigation measures that are not only fundable and deliverable but will endure for the lifetime of the plan and beyond. A number of such strategies have already been prepared for sensitive areas of coastline around the country as part of a partnership approach involving a number of local authorities, including the Solent, Severn Estuary, Suffolk Coast and North Kent Coast.
- 3.3 The RAMS and SPD will not take the place of the duties of the Essex Authorities under the Habitats Regulations and Habitats Directive. In particular, it will not replace screening or appropriate assessment. However, it is likely to represent a strong presumption, absent of any contrary evidence, that its provisions are to be followed.
- 3.4 It is clear from a number of recent examinations in public of local plans around the country, that where such mitigation strategies are not in place Natural

England are likely to raise material objections to the plan's planning policy provisions relating to nature and habitat conservation which could be found to be 'unsound' by a planning Inspector. In the light of these circumstances it was resolved by the Essex Planning Officers Association (EPOA) that the best way forward to protect the Essex coastline and to facilitate local plan preparation was to prepare an Essex Coast RAMS strategy.

- 3.5 The successful delivery of the RAMS will contribute to Southend 2050 Pride and Joy outcome 3 'we have invested in protecting and nurturing our coastline, which continues to be our much loved and best used asset.'

4. **Essex Coast RAMS Project**

Preparation of Strategy

- 4.1 The majority of the Essex coastline is protected habitat sites designated as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and international Ramsar sites of national and international importance for bird life stretching from the Blackwater in north Essex to the Thames Estuary as far as Thurrock in south Essex. In Southend the entire foreshore is protected by such designations.
- 4.2 Given the wide geographical spread of protected areas stretching across the Essex coastline, it was agreed by the EPOA that the most effective way of taking a RAMS project forward for the Essex coastline was in partnership.
- 4.3 A Project Steering Group was therefore formed comprising of officer representation from twelve local authorities, namely Castle Point, Chelmsford, Colchester, Basildon, Braintree, Brentwood, Maldon, Rochford, Tendring, Thurrock and Uttlesford. The Steering Group has been administered and supported by Essex County Council Place Services whilst representatives from Natural England have attended meetings to provide guidance and advice.
- 4.4 This joint approach also met the requirements of the 'duty to co-operate' provisions to ensure that local authority cross-boundary issues are adequately addressed in local plan preparation. To take this partnership approach forward a Memorandum of Understanding and Service Level Agreement was agreed and signed by the participating local planning authorities in early 2018.
- 4.5 The project has been prepared in five phases, namely:
- Phase 1: production of project plan to outline the desired outcomes of the RAMS;
 - Phase 2: production of evidence base report using existing survey information provided by the partners and to identify any required future surveys;
 - Phase 3: required surveys to inform the RAMS;
 - Phase 4: production of RAMS using collected survey information; and
 - Phase 5: production of a single joint Supplementary Planning Document.

- 4.6 The first two phases were completed in early 2018. The winter surveys as part of Phase 3 were undertaken in spring 2018. Summer surveys for the Blackwater and in Southend were undertaken in June to August 2018. No other summer surveys were undertaken in the study area as the other protected areas do not have the breed of bird whose nesting habitats can be impacted by recreational pressure in the summer. This approach was supported by Natural England.
- 4.7 For Southend the winter surveys were undertaken at the Old Garrison site in Shoeburyness and the Cinder Path in Leigh. With regard to summer surveys these were undertaken at the Cinder Path in Leigh and at Two Tree Island which experiences habitat degradation during the summer months.
- 4.8 Workshops to engage key stakeholders, including the RSPB and Essex Wildlife Trust were held in February and June 2018 to inform the preparation of the strategy.
- 4.9 A RAMS for Essex will form an important part of the evidence base in supporting the preparation of new local plans for each of the partner local planning authorities. In Southend's case it will support the preparation of the SNLP.

Proposed Mitigation Measures

- 4.10 The draft Essex Coast RAMS SPD together with the supporting technical strategy sets out a number of measures to mitigate the impacts of increased recreational pressure on the coastline (Appendix 1).
- 4.11 In the early stages of the project most of the funding will be allocated towards appointing a Project Delivery Officer to coordinate, manage and deliver the project and Rangers to raise awareness of nature conservation issues and pursue public behavioural changes within the protected areas. Other projects will include site specific visitor management and bird refuge projects; improving interpretation and marketing through new/improved signage, leaflets, quality web design and establishment of twitter/Facebook accounts; new fencing, waymarking and screening projects; implementation of dog projects to influence behaviour of dog owners and to raise awareness of the impact dogs have in wildlife disturbance; partnership working and monitoring.
- 4.12 The EPOA as the Project Delivery Board – see paragraph 5.3 below - would be responsible for determining the priorities for delivering such projects.
- 4.13 A number of these initiatives are to varying degrees already provided in Southend, and it will be important to ensure that as the RAMS project progresses it is managed in a way that adds value and compliments existing provisions. Liaison with other established nature conservation groups will also be important, particularly the RSPB and Essex Wildlife Trust.

Proposed Zone of Influence

- 4.14 To determine what area of land and its associated recreational activity is likely to have the greatest impact on a protected area, local planning authorities who have already developed RAMS have typically established a Zone of Influence.
- 4.15 Utilising the survey data undertaken for the Essex Coast RAMS, Zones of Influence have been calculated. These are based on the distance travelled by 75% of the visitors surveyed to ensure that the zone reflects the majority of local visits and is not skewed by infrequent long distance visitors. This approach has been used in other RAMS and is supported by Natural England.
- 4.16 For Southend, the surveys give a Zone of Influence of 4.3 kilometres from the protected areas. This zone overlaps with the other study area zones to cover the majority of south east Essex – see Map 1. This is a scenario that is already in practice for the unitary authorities of the City of Southampton and Portsmouth City Councils who are partners of the Solent RAMS.

Map 1: Essex Coast RAMS Zone of Influence



- 4.17 Within the Zone of Influence planning applications received that would increase recreational pressure on the coast would be subject to a tariff to fund the mitigation measures proposed.

Types of Development Affected

- 4.18 It is proposed that all development proposals located within the Zone of Influence that would result in a net increase in residential dwellings would be

subject to a tariff charge, including the conversion of existing houses into smaller flats, or the change of use of other buildings to dwellings. It excludes replacement dwellings (where there is no net gain in dwelling numbers) and extensions to existing dwellings including residential annexes. This would apply to full planning applications, reserved matters planning applications where the outline planning consent was not previously assessed through the Habitats Regulation Assessment process and permitted development.

Level of Tariff and Method of Collection

- 4.19 The draft Essex Coast RAMS SPD proposes to charge a tariff of £122.30 per dwelling. In order to arrive at a per dwelling contribution figure, the strategic mitigation package cost (£8.1m) was divided by the total number of dwellings (79,582 dwellings) which are currently identified to be built in the Zone of Influence over the Local Plan periods until 2038.
- 4.20 Each constituent authority can decide how the money will be collected from developers, with existing examples elsewhere using either Section 106² agreements, unilateral agreements, Community Infrastructure Levy or through Section 111³. Developers have the option of foregoing the levy payment and providing their own mitigation measures in accordance with the RAMS strategy. However, it has been found in other established RAMS that most developers tend to favour paying the levy. The collection and monitoring of tariff monies will be the responsibility of each local authority within the partnership
- 4.21 In the Solent RAMS partnership it has now been established at planning appeals that Inspectors will endorse the principle of the developer contribution or cite the absence of mitigation as a ground for dismissing the appeal.
- 4.22 It is proposed that the monies collected are pooled into one central pot to be administered by the Accountable Body (see paragraph 5.1 below). This 'pot' will then fund all the mitigation proposals as set out in the draft SPD. Accounting procedures will ensure that the funding of 'on the ground' mitigation schemes are spent proportionately along the coast having regard to the area the monies are collected from.
- 4.23 To ensure that mitigation measures are in place for the duration of the impact, Natural England is looking for authorities to secure in perpetuity payments. In the Solent RAMS partnership a proportion of the developer contributions received are set aside to create an investment pot which will fund the partners' mitigation measures in perpetuity for a period of 80 years. This was agreed and accepted by Natural England.

² Town and Country Planning Act 1990 - a mechanism which makes a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site specific mitigation of the impact of development.

³ Local Government Act 1972 - s111 (1) ... "a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions"

5. Proposed Implementation and Delivery

Accountable Body

- 5.1 To implement the RAMS project an 'Accountable Body' responsible for administrating and accounting for the finances collected by each partner local authority and for HR and administration associated with employing the Project Delivery Officer and Rangers will need to be agreed. This is usually a nominated local authority within the partnership.
- 5.2 This practice has been successfully established and employed in other existing RAMS projects.

Project Delivery Board

- 5.3 It is proposed that initially the EPOA, comprising senior officer representation from all the Essex local authorities, would act as the Project Delivery Board for the Essex Coast RAMS project.
- 5.4 The Board would be responsible for agreeing the mitigation project priorities and overseeing the effective delivery and monitoring of the project. Elected Members from each LPA will also be involved with the governance and delivery of the project (potentially through the expansion of the existing Essex Coastal Forum).

Steering Group

- 5.5 To administer the detailed working and implementation of the Essex Coast RAMS project, it is proposed that the established officer Steering Group, comprising officer representation from all the partner local authorities, continues into the delivery phase.

Branding

- 5.6 As the title 'Recreational disturbance and Avoidance Mitigation Strategy' is a very long winded technical heading that does not truly reflect the purpose of the strategy or lend itself to effective marketing and public understanding and raising awareness of the issues, it is proposed that the branding 'Bird Aware' is adopted for the Essex Coast RAMS project. This has been branded by the Solent RAMS partnership and enables the sharing of materials, data and best practice at minimal cost and provides for a national identity to bird protection. This concept is supported by Natural England.
- 5.7 It is therefore proposed to brand the Essex Coast RAMS as 'Essex Coast Bird Aware' and to adopt the Bird Aware logo to incorporate on documents and web site provision.
- 5.8 Essex County Council have agreed to establish a web site on the Essex Coast Bird Aware project on behalf of the partners and to maintain and update the site as appropriate.

6. Legal Implications

- 6.1 In the preparation of the RAMS SPD there have been several issues raised by partners as to the legality of certain aspects of the RAMS aims and proposed implementation methods, particularly about the levying of the tariff, having regard to planning law and related regulations. These have been considered and incorporated into the draft SPD.

7. Benefits of Adopting an Essex Coast RAMS

- 7.1 There is no doubt that local planning authorities are coming under increasing scrutiny at the examination stage of their local plan preparation process in relation to the protection of habitat sites of international and European importance. Natural England are now requiring strong mitigation measures to be put in place in local plans and realistic and deliverable funding mechanisms to implement these measures.
- 7.2 As such an Essex Coast RAMS would be of significant benefit to Southend in supporting the preparation of the SNLP and in protecting the Southend Foreshore designated sites. Whilst the Southend coastline is currently well managed, it is coming under growing pressure from increasing numbers of visitors and residents and new resources will be required if the natural habitat of the Southend Foreshore is to continue to be adequately protected.
- 7.3 Adopting a Supplementary Planning Document for RAMS also provides the opportunity to bid for other Government resources to mitigate the impacts of increased recreational activity on the coastline. For example, in the Solent RAMS partnership partners managed to secure an additional £1.3m of Government funding from the Local Growth Deal to create and enhance alternative local green spaces (Suitable Alternative Natural Greenspace – SANG) to attract visitors, especially dog walkers, away from the sensitive coastline.

8. Reason for Recommendation

- 8.1 To ensure that an appropriate strategy and supporting evidence is put in place to support the nature conservation provisions of the SNLP and to meet the requirements of the Conservation of Habitats and Species Regulations 2017.

9. Corporate Implications

Contributions to the Council's Vision & Corporate Priorities

- 9.1 The successful delivery of the RAMS will contribute to the fulfilment of several spatial elements of the Council's vision and priorities, for example through Southend 2050 Pride and Joy 'we have invested in protecting and nurturing our coastline, which continues to be our much loved and best used asset.'

Financial Implications

- 9.2 Financial and human resource input is necessary to fulfil the requirements of all statutory stages in the preparation of the SNLP and associated evidence base production, including draft RAMs SPD.
- 9.3 The mitigation measures proposed together with the cost associated with collecting the tariff on relevant planning applications, will be covered by the total money levied from developer contributions.

Legal Implications

- 9.4 To deliver its statutory local planning function, each local authority must engage with adjoining local authorities under the Duty to co-operate provisions set out in the Localism Act. This places a legal duty on local planning authorities to engage constructively, actively and on an on-going basis to maximise the effectiveness of development plan preparation in the context of strategic cross boundary matters. The production of the RAMS SPD depends on joint cross-boundary working if the statutory obligations of meeting the provisions of the Conservation of Habitats and Species Regulations 2017 are to be effectively met.
- 9.5 Local planning authorities must demonstrate how they have complied with the duty at the independent examination of their Local Plans. If a local planning authority cannot demonstrate that it has complied with the duty then the Local Plan will not be able to proceed further in examination.

People Implications

- 9.6 Staff resources from the Strategic Planning Team have and will be required in order to contribute to the preparation, adoption and delivery of the RAMS SPD as a joint partner. Support from the Department of Place Business Support Unit will be required with regard to the public consultation process. As the project moves into the delivery phase there may also be a need to reappraise which staff are the most appropriate to take the project forward.

Property Implications

- 9.8 The RAMS project will contain mitigation projects affecting the Southend Foreshore including land within Council ownership.

Consultation

- 9.9 The RAMS SPD will be subject to a period of 6 weeks public consultation. Partner local authorities will also carry out a similar consultation exercise in their administrative areas.

Equalities and Diversity Implications

- 9.10 An equalities impact assessment will be produced for the SNLP. The public consultation on the RAMS SPD will give the opportunity for different sections of the community to input into the plan making process.

Risk Assessment

- 9.11 If the RAMS SPD were not to be published and taken forward to adoption there would be a real risk that the nature conservation policies of the emerging SNLP would be found to be 'unsound' by an independent Inspector at the Plan's examination in public. In addition, the absence of the mitigation projects are likely to result in increased recreational pressure on the coast to the detriment of the protected areas of natural habitat and in contravention of the Conservation of Habitats and Species Regulations 2017.

Value for Money

- 9.12 There will be significant beneficial impacts on value for money by carrying out the work proposed using in-house resources wherever possible. This will have benefits in terms of building in-house experience and expertise for officers, as well as utilising local knowledge and experience.

Community Safety Implications

- 9.13 The RAMS SPD, as an integral part of the SNLP, will seek to improve the natural environment thereby contributing towards improving community safety.

Environmental Impact

- 9.14 The RAMS SPD will form an important supporting document to the SNLP in detailing the policy provisions in the Plan relating to the protection of the natural habitat.
- 9.15 All iterations of the SNLP will require a Sustainability Appraisal to be undertaken. The Sustainability Appraisal is an assessment of the potential significant social, environmental and economic impacts of development. It forms an integral part of the plan making process. It ensures that all policies and proposals are prepared with a view to contributing to the achievement of sustainable development. The appraisal will be used to assist decision making and identification of the most sustainable policies to take forward.

Environmental Impact – Habitats' Regulations Screening Report

- 9.16 The Habitats screening is an assessment of the potential significant effects of a policy on European Sites designated for their nature conservation importance. These include special Areas of Conservation, Special Protection Areas and international Ramsar sites. In Southend the foreshore is protected by these designations. As the RAMS project seeks to mitigate the environmental impact of increased recreational activity on the foreshore because of increased development pressure, it contributes significantly to habitat protection.

10. Background Papers

- 10.1 The Town and Country Planning (Local Development) (England) Regulations 2012.
- 10.2 Planning and Compulsory Purchase Act 2004.
- 10.3 National Planning Policy Framework 2019.
- 10.4 Draft Essex Coast Recreational disturbance, Avoidance and Mitigation Strategy Report (June 2019)

11. Appendices

- 11.1 **Appendix 1:** Draft Essex Coast Recreational disturbance, Avoidance and Mitigation Strategy Supplementary Planning Document

Appendix 1: Draft Essex Coast Recreational disturbance, Avoidance and Mitigation Strategy Supplementary Planning Document (September 2019)
