

Committee: Epping Forest & Commons	Dated: 17/01/2022 For Decision
Subject: EFSAC SAMM Mitigation Partnership Agreement (SEF 7/22)	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	2, 4,10,11 and 12
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	External: local authorities
Has this Funding Source been agreed with the Chamberlain's Department?	Yes
Report of: Juliemma McLoughlin, Executive Director, Environment Department	For Decision
Report authors: Jeremy Dagley, Head of Conservation, Epping Forest	

Summary

This report presents the proposed Strategic Access Management & Monitoring Strategy (SAMMS) Agreement for Epping Forest Special Area of Conservation (EFSAC) in response to the likely future significant increase in recreational pressures on the Forest. As successive Habitat Regulations Assessments for the local plans of the surrounding local authorities have demonstrated, very significant increases in visitor numbers are predicted. These increases would result from the planned increase in housing within the agreed recreational Zone of Influence (Zol) of 6.2km from SAC boundaries. The increase in housing proposed by six local authorities in the Zol amounts to the building of over 68,000 residential units over the next 15 years.

As part of the necessary mitigation for these increased pressures on the Forest environment, a wide range of mitigation proposals, for implementation across the EFSAC, were approved by your Committee in November 2020. These were the subject of negotiation with the six local authorities and Natural England over the last year. As a result, a package of measures, including the employment of specialised staff, amounting to a total cost of over £24M for an in perpetuity period of 80 years, has been agreed for the EFSAC. This package is included as a detailed Schedule within a comprehensive Partnership Agreement for the governance and financing of the SAMM Strategy by the local authorities. This report proposes that, as the Delivery Body of the mitigation measures, the City Corporation should be a signatory and party to the Partnership Agreement to ensure the appropriate control and auditing of the financial contributions and the timely implementation of the mitigation.

Recommendation(s)

Members are asked to:

- approve the City Corporation (as The Conservators of Epping Forest) acting as the Delivery Body and, thereby, being a party to the EFSAC SAMMS Partnership Agreement (a working draft of which is appended to this report);
- delegate authority for the negotiation and completion of the draft EFSAC SAMMS Partnership Agreement to the Executive Director in consultation with the City Solicitor and Chamberlain, and in consultation with the Chairman and Deputy Chairman, subject to the final terms reflecting the arrangements as set out in this report.

Main Report

Background

1. A large proportion of Epping Forest (2,450ha) is under statutory protection for its features of international importance for nature conservation, as a Special Area of Conservation (EFSAC), 1,605ha in extent, and for features of national importance, as a Site of Special Scientific Interest (SSSI) (1,728ha). As an SAC it is to be protected from the adverse impacts of any proposed projects or plans, including those of Local Plans, by the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
2. In formulating their Local Plans, the local authorities within the recreational Zone of Influence of 6.2km from the boundaries of the EFSAC, as competent authorities under the Habitats Regulations, are required to prevent adverse impacts. These impacts are likely due to the predicted increased 'in combination' recreational pressure that would result from the housing proposals in the respective local plans.
3. The in combination scale of development, more than 68,000 planned new homes within 6.2 km of the EFSAC, is very significant, given the already significant visitor pressure on the Forest. Direct additional management of recreational pressure within the Forest, therefore, is considered essential to prevent adverse impacts.
4. The local plans need to provide effective mitigation measures and ensure in perpetuity funding for the mitigation, underscored by policy. The in combination scale also requires local authorities to tackle the issue collectively as competent authorities. To prevent adverse impacts from recreation, the mitigation should re-direct pressure away from the EFSAC through provision of suitable alternative natural greenspaces (SANGS) and/or should provide mitigation measures within the EFSAC itself.
5. The report below covers only these latter within-Forest measures and follows from the detailed report to your Committee on November 2020 (SEF 27/20b) on costed mitigation measures proposed for a Strategic Access Management

& Monitoring Strategy (SAMMS) considered appropriate for the Forest and, more particularly, the EFSAC. The list of measures presented were to form the basis of negotiation with Natural England (NE) and the main local authorities within the Zol.

6. Following your Committee's approval of the SAMMS proposals in November 2020 (Report SEF 27-20b – see *Background Papers* below), negotiations on these and the mechanisms for their implementation began in January 2021, with the local authorities meeting together as competent authorities at the EFSAC Oversight Group, chaired by NE with the Greater London Authority (GLA) as observer.
7. Seven local authorities, each contributing >2% of visitors to the EFSAC within the 6.2km Zol, were involved initially at the EFSAC Oversight Group but as Harlow District Council is not bringing forward any development within the Zol it is not a partner in the proposed Agreement (Appendix 1 – see Schedule 2, paragraph 3.4).
8. The SAMMS proposals put forward for negotiation were initially costed to cover a range from £17M to £63M for either 25-year or 125-year in perpetuity periods, respectively (Report SEF 27-20b – see *Background Papers* below). These proposals have been the subject of analysis by NE to ensure compliance with the Habitats Regulations and the extensive case law on acceptable mitigation measures, and subsequently subjected to lengthy consideration by the competent authorities.

Current Position

9. As a result of the 12-months of negotiations and deliberations amongst the six local authorities, NE, the GLA and your officers, the SAMMS proposals were refined and a number of proposed measures were deemed non-compliant with Habitats Regulations mitigation, including some habitat restoration work that was considered not to directly address adverse impacts from the likely increase in recreational pressure. In addition, some costs were considered to be not proportionate with the likely *uplift* in visitor pressure from the increased housing, which the mitigation measures are designed specifically to address.
10. Of the Forest-wide measures originally proposed in November 2020, 5 were removed, including:
 - an apprentice role,
 - bicycle hire scheme
and
 - the development by consultants of a visitor masterplan.
11. The percentage contribution to the repair and maintenance of the surfaced tracks was also amended in the light of the revised housing number calculations. However, an additional annual cost was accepted for the management and maintenance of unsurfaced (natural) paths.

12. In addition, the costs of the SAC Ambassador posts were added to the Forest-wide items and the costs of these posts were revised to reflect current salary level and overheads for posts at the proposed grade at the City Corporation. The costs of the Mitigation Strategy Development Officer (MSDO) were revised upwards to reflect the current salary and on-costs for the proposed officer grade. In total there are four new officer posts proposed, to be employed by the City Corporation for the SAMM Strategy.
13. The costs for the three visitor hubs, lying within the EFSAC, at High Beach, Chingford and Leyton Flats, were similarly examined and revised. Your officers were involved in detailed discussions on all revisions and took guidance from both NE and a specialist consultant on case law around mitigation measures.
14. The issue of in perpetuity was resolved at a minimum of 80 years, following legal advice to a number of the local authorities and further guidance from NE. As a result, the costs of the mitigation measures that had been calculated for a range covering 25 years to 125 years (see paragraph 8 above and Report SEF 27-20b in *Background Papers*) were revised for this new in perpetuity period. The revised proposals, their rationale and the costs for 80-years in perpetuity are included in the draft EFSAC SAMMS Partnership Agreement at Schedule 1 (see **Appendix 1** of this report).
15. The role of the City Corporation as The Conservators of Epping Forest was discussed and it was agreed, following legal advice from the City Solicitor, that as the Delivery Body for SAMMS measures, the City Corporation should be a signatory to the EFSAC SAMMS Partnership Agreement. This would make the City Corporation a *party* to the Agreement but not a *partner* authority, as the partnership is the responsibility of the competent local authorities. As a proposed party to the Agreement, your officers, with City Solicitor's and Chamberlain's advice, have contributed in detail to the main text and also to the Schedules of the Agreement, particularly Schedules 1 and 3 (see **Appendix 1**)
16. Governance issues are dealt with in the main body of the Agreement. Financial management of the tariffs and the transfer of monies to the City Corporation as the Delivery Body are covered in Section 6 and Schedule 3.
17. The Terms of Reference for the EFSAC Oversight Group, which from now onwards would be referred to as the Epping Forest SAMM Strategy Technical Oversight Group, are set out in Schedule 4 of the Agreement (**Appendix 1** to this Report).
18. The six local authorities will be considering the Agreement for approval at their respective Committees and/or Cabinets in the next two months.

Proposals

19. The SAMMS package of mitigation measures presented in Schedule 1 of the attached draft EFSAC SAMMS Partnership Agreement has been significantly

modified through review and discussions at the SAC Oversight Group in the last year. NE advised that certain projects should be removed because they did not fit the strict criteria under the Habitats Regulations, and its accompanying substantial case law, for adverse impact mitigation from new developments. The package of measures amounts currently to over £24M across 80 years and it is proposed that these be accepted, subject to further development of detailed implementation plans, regular monitoring of their effectiveness and annual review at the SAC Oversight Group.

20. It is further proposed that the City Corporation as Conservators of Epping Forest should be a signatory to the proposed SAMMS Agreement given that it, by necessity, must be the Delivery Body for any mitigation on Forest Land. The arrangements to be set out in the SAMMS Agreement are broadly (i) for the competent authorities (“Partners”) to levy sums from housing developers (in connection with the grant of planning permission) for mitigating impacts and making appropriate recreational provision at the Forest to address increased use; (ii) for those funds to be passed to the City of London Corporation as Conservators of Epping Forest and “Delivery Partner”; and (iii) for the City Corporation to manage and expend those funds in carrying out the mitigation measures and by investment with the aim of providing an endowment to generate sufficient income to provide the measures in perpetuity (including their maintenance and replacement).
21. It is proposed that the monies transferred to the City Corporation are ring-fenced in an account to be managed by Chamberlains for the sole use of the SAMM Strategy, with the potential to explore the creation of an additional endowment fund, subject to approval by Members, as required. The details of the transfer arrangements are set out under Schedule 3 of the Agreement (**Appendix 1**) with account details redacted.

Options

22. In respect of the proposals above, authority is sought from your Committee to adopt Option 1 below. The options are as follows:
23. **Option 1:** To approve the proposals set out above in paragraphs 19 - 21, including the acceptance of the role as the Delivery Body for the Agreement and as a signatory and party to the Agreement and the resulting formal role in the Epping Forest SAMM Strategy Technical Oversight Group **This option is recommended.**
24. **Option 2:** To reject the SAMMS proposals and governance, finance and in perpetuity arrangements and to pursue further negotiations and seek further amendments with NE and the competent authorities. **This option is not recommended.**
25. **Option 3:** To refuse to engage any further with the SAMMS mitigation and request that all mitigation should take place through the provision of alternative sites only. Given the lack of greenspace options within London Boroughs this option would not be acceptable to nor practicable for the local authorities or Natural England. It is unlikely to be considered as a reasonable

standpoint in the ongoing local plan examination processes and would most likely result in a loss of influence on future development control issues. See also Paragraph 44 below on *Charity implications*. **This option is not recommended.**

Key Data

26. More than 68,000 new residential units are planned to be built within 6.2km of the Epping Forest SAC boundaries over the next 15 years, as a result of the surrounding Local Plans' development policies.
27. The proposed SAMMS mitigation measures, to be implemented within the Forest's SAC boundaries, amount to a financial package of over £24M across 80 years.
28. The measures involve the employment of four new posts to manage the SAMM Strategy. These posts would be in the employment of the City Corporation as the Conservators of Epping Forest to ensure the implementation and long-term management of the SAMM Strategy.
29. There are six local authorities that are partners to the proposed Agreement, acting in their capacities as competent authorities under the Habitats Regulations

Corporate & Strategic Implications

30. The recommendations of this report support the Corporate Plan, with particular reference to the following aims:
 - a. Contribute to a flourishing society**
 - i. People enjoy good health and wellbeing
 - ii. Communities are cohesive and have the facilities they need.
 - b. Shape Outstanding Environments**
 - i. We inspire enterprise, excellence, creativity and collaboration
 - ii. We have clean air, land and water and a thriving and sustainable natural environment
 - iii. Our spaces are secure, resilient and well maintained.
31. The report supports the Open Spaces Business Plan as follows:
 - a. Open Spaces and historic sites are thriving and accessible.**
 - i. Our open spaces, heritage and cultural assets are protected, conserved and enhanced
 - ii. London has clean air and mitigates flood risk and climate change
32. Strategic implications: the engagement by your officers in this SAMMS mitigation process and in formulating the Agreement with NE and the local authorities is consistent with Outcomes 11 and 12 of the Corporate Plan. Outcome 11 states that: "*We will have clean air, land and water and a thriving and sustainable natural environment*" is met. Outcome 12 states that: *Our spaces are secure, resilient and well-maintained. Build resilience to natural*

and man-made threats by strengthening, protecting and adapting our infrastructure, directly and by influencing others.

33. Financial Implications: Financial arrangements for managing the tariff income for SAMMS are covered in Section 6 and Schedule 3 of the draft EFSAC SAMMS Partnership Agreement
34. All these mitigation costs would need to be funded through developer contributions or other funding mechanisms, chosen and approved by the participating local authorities as the competent authorities, with in perpetuity funding agreed as 80 years minimum on legal advice provided to the local authorities and guidance from Natural England.
35. Resource implications: regular attendance by your Epping Forest officers will be required at the SAC Oversight Group and recruitment of the new posts to be funded by the Agreement will also need to be completed during the near future, should the Agreement be approved by all parties. However, for the implementation and management of the SAMM Strategy this additional work will be covered by the new posts to be appointed, including the Mitigation Strategy Delivery Officer (MSDO) and the SAC Ambassadors (see Schedule 1 of the Agreement at this report's **Appendix 1**). Assistance for the Chamberlain to manage the additional auditing and SAMMS budget reporting would be provided through the MSDO although there may in future be a requirement for an additional part-time post, which would need review in the first year of the Agreement.
36. Legal implications: These are contained in the body of this report and the previous report (SEF 27/20) in terms of the Habitats Regulations. Legal issues in relation to the appended EFSAC SAMMS Partnership Agreement have been examined. Further legal advice from the City Solicitor would be taken as part of the delegated authority sought in this Report's recommendations.
37. Property implications: The Local Plans of the surrounding authorities set out how and where land and property will be used into the 2030s. It is important to the City Corporation's stewardship of the Forest to protect the Forest from any likely adverse impacts of development while having regard to opportunities for the best use of property and land for operational purposes.
38. Risk implications: there is a risk that the mitigation strategy or the apportionment of costs across each local authority might be challenged by judicial review or at local plan examinations-in-public. However, this coordinated, multi-authority assessment of the mitigation measures with GLA oversight, combined with NE guidance based on many similar successful, long-running mitigation strategies for other internationally-protected sites, should significantly minimise the risk of any successful challenge.
39. Equalities & diversity: equality impact assessments would be carried out ahead of the installation of any new infrastructure on the Forest (e.g. path surfacing) under the SAMMS Agreement and equalities assessments would also be carried out in the visitor surveys proposed. Recruitment of the new

posts would be subject to equalities assessment as required by the City Corporation recruitment process.

40. In addition, equality impact assessments of Local Plans and associated or incorporated documentation (e.g. SAC Mitigation Strategy) would be undertaken by the local authorities as the plan-making bodies and could be reviewed at meetings of the EFSAC Oversight Group.
41. Climate implications: no direct implications arise from this proposed Agreement or the mitigation measures, but the measures should improve the resilience of the EFSAC to withstand increasing recreational pressures and the additional soil compaction and erosion that might otherwise result.
42. Security implications: none
43. Charity implications: Epping Forest is a registered charity (number 232990). Charity Law obliges Members to ensure that the decisions they take in relation to the Charity must be taken in the best interests of the Charity.
44. The Charity has clear obligations to protect the Forest under its founding legislation and, through subsequent legislation requirements, to similarly conserve the SSSI and SAC. While the SAC SAMMS Partnership Agreement arrangements will help residential developers to acquire planning consents, it is in the clear interest of the Charity to work collaboratively with the competent authorities, to prevent the adverse impacts of the inevitable increased recreational pressures on the EFSAC.

Epping Forest Consultative Committee

45. A preliminary report on the outcome of the negotiations at the SAC Oversight Group was presented to the Consultative Committee in October 2021, advising the representatives of the direction of negotiations, the 80-year in perpetuity decision and the approximate revised total of mitigation funding over that 80-year period. A summary of the revised Schedule 1 measures was also provided with that report. No substantive comments were received at or subsequent to the Consultative Committee meeting.
46. The Consultative Committee had received the full SAC proposals, with appended Land Use Consultants report, in November 2020 and had been fully appraised of the Habitats Regulations Assessment process.

Conclusions

47. After 12 months of discussions and negotiations at the SAC Mitigation Oversight Group, the SAMMS package of measures has been agreed and forms Schedule 1 of the proposed draft EFSAC SAMMS Partnership Agreement. The measures are costed over 80 years as the minimum period for in perpetuity mitigation for the local plans that has been agreed in this case.

48. The City Corporation, as owners and Conservators of Epping Forest, would need to be the Delivery Body for the proposed measures and, as such, in consultation with the City Solicitor, it was agreed that it should be a signatory and party (but not partner) to the proposed EFSAC SAMMS Partnership Agreement.
49. The governance and finance structures have also been agreed, with advice and guidance from Natural England, and are set out in the draft EFSAC SAMMS Agreement and its Schedules.

Appendices

- **Appendix 1:**
Proposed draft Epping Forest SAC SAMM Strategy Partnership Agreement

Background Papers

- Report to Epping Forest Consultative Committee (SEF47/21): EFSAC Mitigation for Local Plans: on-site SAMM Proposals progress and update. 20th October 2021
- Report to Epping Forest & Commons Committee (SEF27/20): *EFSAC Mitigation for Local Plans: on-site SAMM Proposals*. 16th November 2020

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