

Essex Coast Recreational disturbance Avoidance and Mitigation Strategy

Supplementary Planning
Document (SPD)
2019

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1. Introduction

This Supplementary Planning Document (SPD) focuses on the mitigation that is necessary to protect the wildlife of the Essex coast from the increased visitor pressure associated with new residential housing development in combination with other plans and project, and how this mitigation will be funded.

This SPD accompanies the strategic approach to mitigation which is set out in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (the 'RAMS'). The RAMS provides a mechanism for Local Planning Authorities (LPAs) to comply with their responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations').

This SPD is implementing/supplementing the policies listed in appendix **xxxxx**.

This SPD distils the RAMS into a practical document for use by LPAs, developers and the public and provides the following information:

- A summary of the RAMS;
- The scope of the RAMS;
- The legal basis for the RAMS;
- The level of developer contributions being sought for strategic mitigation; and
- How and when applicants should make contributions.

A frequently asked questions (FAQ) document has also been produced to provide further information about the RAMS project.

2. A Summary of the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy

The importance of the Essex coast

The Essex coastline is one of importance for people and wildlife. It provides recreational opportunities for Essex residents, and it is home to internationally important numbers of breeding and non-breeding birds and their coastal habitats.

The coast is a major destination for recreational use such as walking, sailing, bird-watching, jet skiing and dog walking. Evidence, described in detail in the RAMS, suggests that the majority of this activity is undertaken by people who live in Essex.

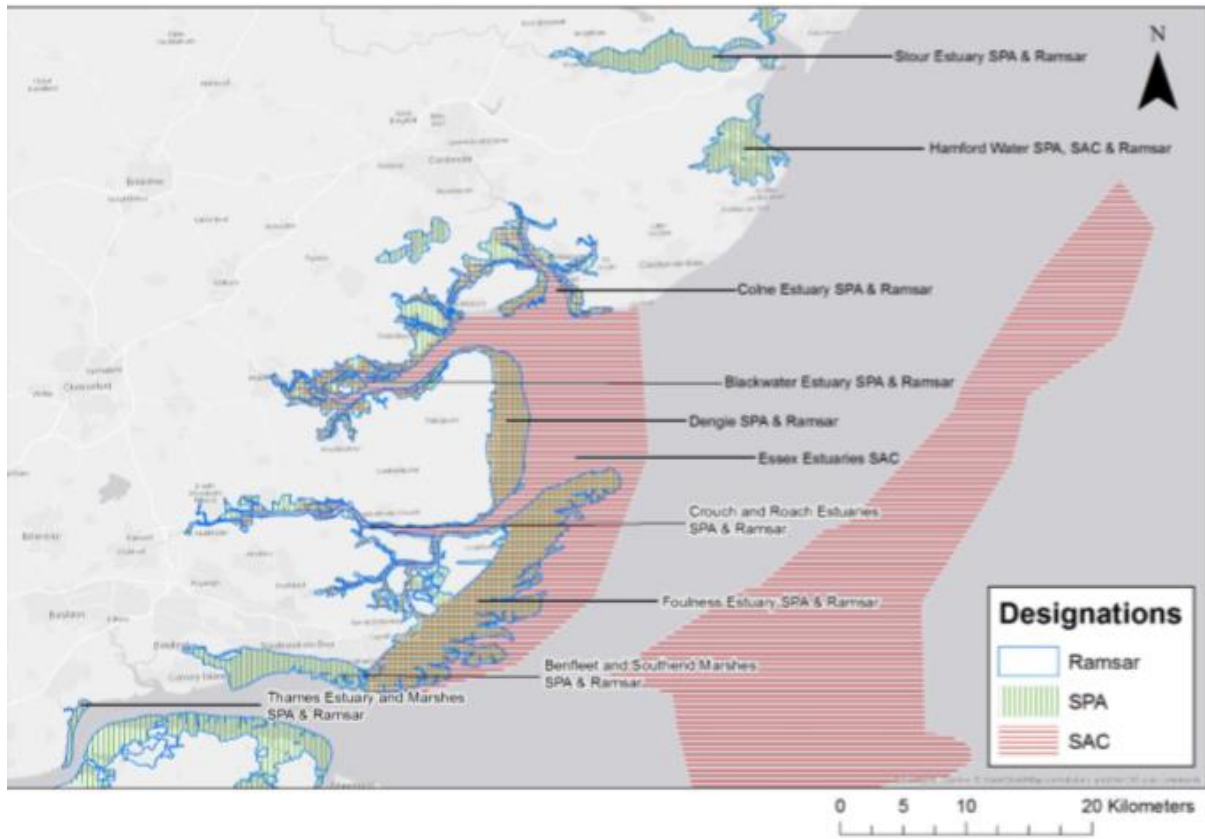
Although only Tendring District, Colchester Borough, Chelmsford City, Maldon District, Rochford District, Southend Borough, Castle Point Borough and Thurrock Councils lie on the coast, residents from, Basildon Borough, Brentwood Borough, and Braintree District are also likely to travel to the coast for recreational use.

A large proportion of the coastline is covered by international, European and national wildlife designations. A key purpose of these designations is to protect breeding and non-breeding birds and coastal habitats. Most of the Essex coast is designated under the Habitats Regulations as part of the European Natura 2000 network: for the purposes of this SPD these are Special Protection Areas, Special Areas of Conservation and Ramsar sites. These sites are also defined as 'Habitats Sites' in the National Planning Policy Framework (2018).

The Habitats Sites to which this SPD applies are as follows and these are shown overleaf on Figure 2.1:

- Essex Estuaries SAC
- Stour and Orwell Estuaries SPA and Ramsar
- Hamford Water SPA and Ramsar
- Colne Estuary SPA and Ramsar
- Blackwater Estuary SPA and Ramsar
- Dengie SPA and Ramsar
- Crouch and Roach Estuaries SPA and Ramsar
- Foulness Estuary SPA and Ramsar
- Benfleet and Southend Marshes SPA and Ramsar
- Thames Estuary and Marshes SPA and Ramsar

Figure 2.1: Habitats (European) sites covered by the Essex Coast RAMS



Notes:

- Ramsar sites are areas of wetland which are designated of international importance under the Ramsar Convention (1971).
- Special Protection Areas (SPAs) are sites which support rare, vulnerable and migratory birds.
- Special Areas for Conservation (SACs) are sites which support high-quality habitats and species.

The duties of Local Planning Authorities

LPAs have the duty, by virtue of being defined as ‘competent authorities’ under the Habitats Regulations, to ensure that planning application decisions comply with the Habitats Regulations. If the requirements of the Habitats Regulations are not met and impacts on Habitats sites are not mitigated, then development must not be permitted.

Where a Habitats site could be affected by a plan, such as a Local Plan, or any project, such as a new hospital/housing/retail development, then Habitats Regulations Assessment (HRA) screening must be undertaken. If this cannot rule out any possible likely significant effect either alone or in combination on the Habitats site prior to the implementation of mitigation, then an Appropriate Assessment (AA) must be undertaken. The AA identifies the interest features of the site (such as birds, plants or coastal habitats), how they could be harmed, assesses whether the proposed plan or project could have an adverse effect on the integrity of the Habitats site (either alone or in-combination), and finally how this could be mitigated.

The aim of the HRA process is to ***‘maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest’*** (The EC Habitats Directive, 92/43/EEC, Article 2(2)).

The requirement for delivery of strategic mitigation

The published Habitats Regulations Assessments (HRAs) for the relevant Local Plans have identified recreational disturbance as an issue for all of the Essex coastal SPAs, SACs and Ramsars.

Mitigation measures have been identified in the HRA (screening and/or Appropriate Assessments) for many of the Local Plans. There are similarities in the mitigation measures proposed, reflecting the identification of ‘in-combination’ effects resulting from planned and un-planned growth in LPA areas. In recognition of this, Natural England recommended a strategic approach to mitigation along the Essex coast.

Furthermore, each Habitats site or complex of sites in England has a Site Improvement Plan (SIP), developed by Natural England and recreational disturbance is identified as an issue for all ten of the Habitats sites considered in this strategy.

Mitigation measures are therefore necessary to avoid these likely significant effects in-combination with other plans and projects. Mitigation at this scale, and across a number of LPAs, is best tackled strategically and through a partnership approach. This ensures maximum effectiveness of conservation outcomes and cost efficiency.

Some housing schemes, particularly those located close to a Habitats site boundary or large-scale developments, may need to provide mitigation measures to avoid likely significant effects from the development alone, ***in addition to the mitigation***

required in-combination and secured for delivery through the RAMS. This would need to be assessed and, where appropriate, mitigated through a separate project level Habitats Regulations Assessment (HRA) (including AA where necessary). The local planning authority, in consultation with Natural England, would advise on applicable cases.

Other housing schemes, particularly again those located close to a Habitat site boundary or large-scale developments, may need to provide mitigation measures to address site-specific impacts **over and above the mitigation** required through the RAMS. This would also be assessed and, where appropriate, mitigated through the project level Habitats Regulations Assessment (HRA). The local planning authority, in consultation with Natural England, would advise on these cases.

A summary of the RAMS

The Essex coast RAMS aims to deliver the mitigation necessary to avoid the likely significant effects from the 'in-combination' impacts of residential development that is anticipated across Essex; thus protecting the Habitats sites on the Essex coast from adverse effect on site integrity. This strategic approach has the following advantages:

- It is endorsed by Natural England and has been used to protect other Habitats sites across England;
- It is pragmatic: a simple and effective way of protecting and enhancing the internationally important wildlife of the Essex coast and will help to reduce the time taken to reach planning decisions;
- It provides an evidence based and fair mechanism to fund the mitigation measures required as a result of the planned residential growth; and
- It provides developers, agents and planning authorities with a comprehensive, consistent and efficient way to ensure that appropriate mitigation for residential schemes within the Zone of Influence is provided in an effective and timely manner.

The RAMS approach is fair and seeks to mitigate the additional recreational pressure in a way that ensures that those responsible for it, pay to mitigate it at a level consistent with the level of potential harm. It also obeys the 'precautionary principle'¹. Existing visitor pressure at Habitats sites would be mitigated through alternative means and any pressure that would arise from different types of development would be addressed through the project HRA.

The majority of the HRAs produced by Essex LPAs as part of the production of their respective Local or Strategic Plans identified that the level of planned housing

¹ 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.' (Principle 15) of Agenda 21, agreed at the Rio Earth Summit, 1992.

growth may lead to disturbance of birds in coastal Habitats (European) sites within and beyond each individual LPA boundary.

HRA work relating to the Essex coast Habitats sites undertaken to date at the plan level and project level across the 11 LPAs is detailed in appendix **XXX**.

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3. Scope of the SPD

Where does the RAMS apply?

The 11 LPAs which are partners in and responsible for the delivery of the RAMS are listed below:

- Basildon Borough Council
- Braintree District Council
- Brentwood Borough Council
- Castle Point Borough Council
- Chelmsford City Council
- Colchester Borough Council
- Maldon District Council
- Rochford District Council
- Southend Borough Council
- Tendring District Council
- Thurrock Borough Council

The SPD applies to new residential dwellings that will be built in the Zone of Influence (Zoi) of the Habitats sites. The ZOI identifies the distance within which new residents are likely to travel to the Essex coast Habitats sites for recreation.

The Habitats sites are shown on the Magic maps along with the RAMS Zone of Influence (Zoi). This Zoi was calculated by ranking the distances travelled by visitors to the coast based on their home town postcode data. Not all postcode data is used as this can skew the results and therefore the Zoi is based on the 75th percentile of postcode data. This provides the ZOI distance.

This method has been used for a number of strategic mitigation schemes and is considered by Natural England to be best practice. The distances used to create the zone are illustrated in table 3.1 (below).

Table 3.1: Zones of Influence for the Essex Coast RAMS

| European designated site | Final distance to calculate RAMS Zoi (km) |
|--|---|
| Essex Estuaries SAC | -* |
| Hamford Water SPA and Ramsar | 8 |
| Stour and Orwell Estuaries SPA and Ramsar | 13 |
| Colne Estuary SPA and Ramsar | 9.7 |
| Blackwater Estuary SPA and Ramsar | 22 |
| Dengie SPA and Ramsar | 20.8 |
| Crouch and Roach Estuaries Ramsar and SPA | 4.5 |
| Foulness Estuary SPA and Ramsar | 13 |
| Benfleet and Southend Marshes SPA and Ramsar | 4.3 |
| Thames Estuary and Marshes SPA and Ramsar | 8.1 |

The ZOI has been calculated from these distances and can be accessed via Magic Maps, where you will find the definitive boundaries. A broad illustration of extent of the RAMS ZOI is shown in figure 3.1, below.

Figure 3.1: Broad Illustration of the Zone of Influence for the Essex Coast RAMS



What types of dwellings does this apply to?

New residential developments where there is a net increase in dwelling numbers are included in the RAMS. This would include, for example, the conversion of existing large townhouses 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. Applicants are advised to contact the LPA if in any doubt as to whether their development is within the scope of the RAMS.

Does it apply to all schemes?

It applies to all schemes regardless of size. The [National Planning Practice Guidance](#) confirms that local planning authorities may seek planning contributions for sites of less than 10 dwellings to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory requirements.

The RAMS and this SPD apply to the following Planning Use Classes:

Table 3.2: Planning Use Classes covered by the Essex Coast RAMS

| Planning Use Class* | Class Description |
|------------------------------------|---|
| C2 Residential institutions | Residential care homes, boarding schools, residential colleges and training centres. |
| C2A Secure Residential Institution | Military barracks. |
| C3 (a) Dwelling houses (a) | - covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child. |
| C3 Dwelling houses (b) | - up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. |
| C3 Dwelling houses (c) | - allows for groups of people (up to six) living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger. |
| C4 Houses in multiple occupation | - Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom |
| Sui Generis *** | - Residential caravan sites (excludes holiday caravans and campsites) -Gypsies, travellers and travelling show people plots |

Notes:

* This table is based on Natural England advice (244199, included as Appendix xx) which was advisory, not definitive.

** Care homes will be considered on a case-by-case basis according to the type of residential care envisaged.

*** Sui Generis will be considered on a case-by-case basis according to the type of development.

What types of application does this apply to?

The RAMS applies to all full applications, outline applications, hybrid applications, permitted development (see below) **and reserved matters applications where no contribution was made at the outline application or hybrid application stage.** This includes affordable housing.

In order to consider RAMS contributions at the outline application stage, the application should indicate a maximum number of dwelling units.

The General Permitted Development Order (GPDO) allows for the change of use of some buildings and land to Class C3 (dwelling houses), with development being subject to the prior approval process. However, the Habitats Regulations also apply

to such developments. The LPA is therefore obliged by the regulations to scope in those GDPO changes of use to dwelling houses where these are within the Zol.

In practice, this means any development for prior approval should be accompanied by an application for the council to undertake an HRA on the proposed development. The development will need to include a mitigation package which would incorporate a contribution to the RAMS to mitigate the 'in-combination' effects.

Applicants can secure this mitigation via the RAMS through a direct payment using a Section 111 agreement. This refers to Section 111 of the Local Government Act 1972.

Sites that already have planning permission will not be required to pay any additional mitigation sum, unless they are resubmitted for consideration.

The alternative is for the developer to provide information for a project level HRA/AA and secure bespoke mitigation to avoid impacts on Habitats sites in perpetuity.

4. Mitigation

Measures to mitigate adverse impacts on the Habitats sites are statutory requirements and mitigation which must be delivered for any residential development within the areas of the LPAs that falls within a zone of influence as identified in this SPD.

The RAMS identifies a detailed programme of strategic mitigation measures which would be funded by contributions from residential development schemes. These measures are summarised in Table 4.1 (overleaf):

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Table 4.1 – The Essex coast RAMS toolkit

| Action area | Examples |
|--|---|
| Education and communication | |
| Provision of information and education | <p>This could include:</p> <ul style="list-style-type: none"> • Information on the sensitive wildlife and habitats • A coastal code for visitors to abide by • Maps with circular routes away from the coast on alternative footpaths • Information on alternative sites for recreation <p>There are a variety of means to deliver this such as:</p> <ul style="list-style-type: none"> • Through direct engagement led by rangers/volunteers • Interpretation and signage • Using websites, social media, leaflets and traditional media to raise awareness of conservation and explain the Essex Coast RAMS project. • Direct engagement with clubs e.g. sailing clubs, ramblers clubs, dog clubs and local businesses. |
| Habitat based measures | |
| Fencing/waymarking/screening | Direct visitors away from sensitive areas and/or provide a screen such that their impact is minimised. |
| Pedestrian (and dog) access | <ul style="list-style-type: none"> • Zoning • Prohibited areas • Restrictions of times for access e.g.to avoid bird breeding season |
| Cycle access | Promote appropriate routes for cyclists to avoid disturbance at key locations |
| Vehicular access and car parking | Audit of car parks and capacity to identify hotspots and opportunities for “spreading the load” |
| Enforcement | <ul style="list-style-type: none"> • Establish how the crew operating the river Ranger patrol boat could be most effective. It should be possible to minimise actual disturbance from the boat itself through careful operation. • Rangers to explain reasons for restricted zones to visitors |
| Habitat creation | Saltmarsh recharge, regulated tidal exchange and artificial islands may fit with Environment Agency Shoreline Management Plans |
| Partnership working | Natural England, Environment Agency, RSPB, Essex Wildlife Trust, National Trust, landowners, local clubs and societies. |
| Monitoring and continual improvement | Birds and visitor surveys with review of effectiveness of measures with new ideas to keep visitors wanting to engage |



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Appendix xx contains details of the full mitigation package. The overall cost for the mitigation package is £8,916,448.00 in total from today until 2038.

5. What the applicant needs to do

What is the tariff?

The current tariff [is here](#). This will be indexed linked, with a base date of 2019. This will be reviewed periodically.

In order to arrive at a per dwelling contribution figure, the strategic mitigation package cost was divided by the total number of dwellings which will be built in the Zols over the Local Plan periods until 2038. This includes dwellings which have not received Full/Reserved matters consent. Any houses already consented in the Plan period are not included in this calculation.

The tariff per dwelling is therefore £122.30.

When will the tariff be paid?

Contributions from housing development schemes will be required prior to commencement of each development. This is necessary to ensure that the financial contribution is received with sufficient time for the mitigation to be put in place before any new dwellings are occupied.

Where development is built in phases this will apply to each phase of house building. A S106 agreement will be used to ensure compliance.

How will the tariff be paid?

The applicant will be required to enter into a formal deed with the LPA to secure the payment of the required financial contribution. Alternatively, the applicant can arrange to pay the financial contribution directly the LPA to avoid the need to draft and complete a legal agreement.

This contribution is payable in addition to any Community Infrastructure Levy liability and/or any other S106 or S278 contributions for other types of contribution and there may be other site-specific mitigation requirements in respect of Habitats sites and ecology as outlined above.

The mitigation measures identified in this SPD are specifically sought to avoid additional recreational pressures on Habitats sites and do not provide wider benefit or represent the provision of infrastructure. These contributions are not classed as providing infrastructure so can be secured through section 106 obligations without any restriction on pooling of contributions from 5 or more developments (Regulation 123 of the Community Infrastructure Levy regulations). This approach is consistent

with the views of other local authorities across the country in dealing with mitigation requirements for other Habitats sites and has been accepted by Planning Inspectors at appeal/examination.

Planning obligations are legally binding on the landowner (and any successor in title). They enable the LPA to secure the provision of services (or infrastructure), or contributions towards them, which is necessary in order to support the new development i.e. by making an otherwise unacceptable development acceptable in planning terms.

The statutory framework for planning obligations is set out in Section 106 of the Town and Country Planning Act 1990 (as amended) and Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). In addition, paragraphs 54 to 57 of the National Planning Policy Framework (NPPF) 2018 set out the Government's policy on planning obligations. The obligation can be a unitary obligation, referred to as a 'Unilateral Undertaking' or multi party agreement, referred to as a 'Section 106 agreement'.

Legal agreements for planning purposes should meet all the following tests in order to be taken into account when determining a planning application:

- They are necessary to make a development acceptable in planning terms;

LPAs, as competent authorities under the Habitats Regulation, have the duty to ensure that planning application decisions comply with regulations.

- They are directly related to the development;

Evidence in the RAMS demonstrates that visitors come mainly from within the Zol indicated above to the Habitats sites. The 'in-combination' impact of proposals involving a net increase of one or more dwellings within this Zol is concluded to have an adverse effect on Habitats site integrity unless avoidance and mitigation measures are in place.

- They are fairly and reasonably related in scale and kind to a development.

The measures put forward in the RAMS represent the lowest cost set of options available which will be both deliverable and effective in mitigating the anticipated increase in recreational pressure from new residential development within the Zol. The costs are apportioned proportionately between all developments dependent on the scale of development. This contribution is therefore fairly and reasonably related in scale and kind to the development.

Developers or land owners are expected to meet the LPA's legal fees associated with any drafting, checking and approving any deed. These legal fees are in addition to the statutory planning application fee and the contribution itself and must be

reasonable. Details of the LPA's current legal fees can be found on the Council's website.

Using a Unilateral Undertaking:

The preferred approach for applications which will create up to 10 new units of residential accommodation is for applicants to use the template Unilateral Undertaking (UU) which is Appendix 1 to this SPD. This should be submitted when the planning application is submitted.

Applicants will need to provide the following documents as part of their planning application:

- The original UU committing to pay the total RAMs contribution (index linked) before commencement of house building on the site/in accordance with the phasing of the development. This must be completed and signed by those who have a legal interest in the site including tenants and mortgagees;
- A copy of the site location plan signed by all signatories to the UU and included as part of the undertaking;
- Recent proof of title to the land (within the last month) which can normally be purchased from the Land Registry. Please note there are two parts to the proof of title: a Register and a Title Plan, both of which must be submitted.
- If the land is unregistered the applicant must provide solicitors details and instruct them to provide an Epitome of Title to the LPA

A payment for the Council's reasonable costs of completing and checking the agreement will be necessary. The council will only charge for the actual time spent on this matter if the applicant follows the guidance. These legal fees are in addition to the statutory application fee and any contributions themselves. Please send a separate payment for this fee (£150/200/more??). This may be increased if the matter is particularly complex).

The Council will require a payment towards the council's LPAs legal costs of completing and checking the UU. Current fees can be found on the Council's website.

If the applicant does not wish to use the template, it can request that the LPA prepare the UU and shall submit:

- Recent proof of title to the land (within one month) from HM Land Registry if the land is registered (this can be obtained online from the Land Registry website). Please note there are two parts to the proof of title: a Register and a Title Plan, both of which must be submitted.
- If the land is unregistered the applicant must provide solicitors details and instruct them to provide an Epitome of Title to the LPA

- Payment of the LPAs legal fees (current fees can be found on the LPAs website)

Section 106 agreements

In the case of larger or more complicated developments including matters beyond RAMs contributions, the most appropriate route for securing contributions will be via a multi-party Section 106 Agreement.

Applicants must submit a Heads of Terms document for the Section 106 Agreement, identifying these requirements and specifying their agreement to enter into a planning obligation. Heads of Terms should be provided at the point of submission of the planning application.

Please contact Planning Officers at [INSERT AUTHORITY] at the earliest opportunity to discuss your application and the most appropriate method of paying your RAMS charge.

Payment in Advance

[details of how an applicant can pay the RAMs contribution without entering into a UU / where the Lender will not sign / where the cost of the UU outweighs the contribution]

6. Alternative to paying into the RAMS

The 11 RAMS partner LPAs encourage mitigation to be secured via the strategic approach and prefer developer contributions to the RAMS. This approach will facilitate the planning application process and ensures the adequate and timely delivery of effective mitigation at the Habitats sites and is likely to be more cost effective for developers.

As an alternative, developers may choose to conduct their own visitor surveys to provide information to support the LPA in preparing project level Habitats Regulations Assessment (HRA) Screening Reports (in order to ensure that they can demonstrate compliances with Regulation 63 of the Habitats Regulations) and secure the bespoke mitigation specified within. Where developers choose to pursue this option, the LPA will need to consult Natural England on the effectiveness of the mitigation proposed.

7. Monitoring of this SPD

To monitor the effectiveness of the RAMS and this SPD, a strategic monitoring process has been put in place which will be managed by the delivery officer in liaison with LPA monitoring officers.

Monitoring will be undertaken annually and a report provided to each LPA to inform their Annual Monitoring Report (AMR). As competent authorities under the Habitats Regulations, the delivery of the Essex Coast RAMS is the responsibility of the LPA needing it to ensure their Local Plan is sound and legally compliant.

The Steering Group shall work with the Essex Coast RAMS team to establish the monitoring procedure, which will include SMART targets to effectively gauge progress.

To ensure the monitoring process is fit for purpose, there will be various monitoring activities which will be undertaken at different times and at an appropriate frequency. For example, visitor survey updates will be scheduled for after 2 and then 5 years.

8. Consultation

Add Section on the consultation/how to comment, how comments will be used, next steps/adoption timetable

Consider if we want to add in specific consultation questions, where appropriate

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9. Glossary

To be copied from the RAMS and to include and legal terms.

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Appendix 1 - Strategic Mitigation

Insert from final RAMS.

Appendix 2 - UU Template

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