

# Poole Harbour Recreation Mitigation

## Interim Scheme



# Context

## Local Plan

The Poole Local Plan (2018) sets out provision for 14,200 new homes to be delivered within Poole over the plan period. The Habitats Regulations Assessment (HRA) supporting the Poole Local Plan identifies that this new development, through increased visitors to Poole Harbour undertaking recreation activities, will result in greater disturbance to important birds and other species. Poole Harbour and its species are subject to international protection through the harbour being designated as a Special Protection Area (SPA) and Ramsar. The Poole Local Plan HRA identified that proposed housing growth is likely to adversely affect protected aspects of Poole Harbour, unless suitable mitigation is provided to avoid such effects.

PP32 (Poole's nationally, European and internationally important sites) of the Poole Local Plan (2018) was therefore required to set out a planning policy framework to ensure that development does not lead to significant adverse effects on the borough's nationally, European and internationally sites. PP32 states that:

*“Development will only be permitted where it would not lead to an adverse effect upon the integrity, either alone or in-combination, directly or indirectly, on nationally, European and internationally important sites.*

*The Council will determine applications that are likely to adversely affect these sites in accordance with the recommendations of relevant Habitats Regulations Assessments and Supplementary Planning Documents.”*

Part (b) of Policy 32 is specific to recreational effects on Poole Harbour SPA / Ramsar and states that:

*“Development proposals for any net increase in homes or tourist accommodation will provide a Strategic Access Management and Monitoring (SAMM) contribution for wardening, education and monitoring, to mitigate the adverse effects of recreation related pressures within Poole Harbour in accordance with the adopted SPD.*

*Development proposals may be required to contribute to the implementation of the Poole Harbour SPA European Marine site Management Scheme where the identified effects can be best addressed.”*

## Appropriate Assessments

The Council, as decision maker on planning applications, is the Competent Authority under the Conservation of Habitats and Species Regulations 2017, and is advised by Natural England in how to fulfil these duties. Natural England advise that residential development in Poole will have a likely significant effect upon the integrity of International and European protected sites<sup>1</sup> and therefore planning permission should not be granted until appropriate assessment has been carried out that considers how any adverse effects can be mitigated.

<sup>1</sup> Special Protection Areas (SPA), Special Areas for Conservation (SAC) and Ramsar Sites

A recent judgement by the European Court of Justice<sup>2</sup> indicates that it is unlawful to screen out likely significant effects on the basis of mitigation measures. Consequently, a full *Appropriate Assessment* should be undertaken at decision making stage (i.e. the grant of planning permission).

To assist the Council in fulfilling its duties as Competent Authority, from 2<sup>nd</sup> January 2019, the Council will undertake an appropriate assessment for all development that is likely to have a likely significant effect on sites covered by the Conservation of Habitats and Species Regulations 2017. This means that before the Council is able to grant planning permission for a net increase in dwellings, the Council will need to undertake an appropriate assessment of the proposal.

Mitigation for the majority of nationally, European and internationally important sites is already planned through measures set out in the Poole Local Plan, the Nitrogen Reduction in Poole Harbour SPD and Dorset Heathlands Planning Framework SPD. The full range of measures that are likely to be required to mitigate the recreational impact of population increase on Poole Harbour, however, have not yet been secured other than the overarching provisions set out in PP32.

Accordingly, detailed mitigation measures will be set out in the proposed Recreational Impact upon Poole Harbour SPD, which is currently being produced. However, as the process for adopting the SPD will take in the order of 6 months or longer, with the support of Natural England, the Council is introducing an interim SAMM payment scheme to ensure planning permission can still be granted for net new residential dwellings in the period before an SPD can be adopted. These interim strategic measures will help new development to pass appropriate assessment, thereby enabling the Council to grant planning permission for new dwellings.

## Mitigation and Costings

### Mitigation Measures

The Council, with the advice of Natural England, considers that effective mitigation for the recreational impact will comprise both SAMM activities as well as infrastructure. Infrastructure mitigation projects will be funded through CIL (and therefore not part of this interim scheme that relates only to SAMM activities) and will comprise physical improvements or facilities relating to reducing recreational impact.

In terms of Poole Harbour SAMM mitigation, the Council in consultation with Natural England considers that this will include a combination of surveys and monitoring, a co-ordinator role and warden role, SAMMS projects, and development of an access management plan and infrastructure projects. SAMM mitigation will be secured through Section 106 provisions.

The costings for Poole Harbour SAMM mitigation over the Poole Local Plan period are set out as follows:-

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<sup>2</sup> People over Wind, Peter Sweetman v Coillte Teoranta (12/4/18))

	Total Cost (£)	Average Yearly Cost (£)
<b>Surveys and Monitoring</b>	275,430	19,216
<b>Co-ordinator &amp; Warden</b>	837,476	58,429
<b>SAMMS Projects</b>	143,333	10,000
<b>Access Management Plan</b>	15,000	1,071
<b>Total</b>	<b>1,271,240</b>	<b>88,716</b>

## Contribution Charge

To provide certainty to those considering or making applications for residential development and to ensure transparency and accountability, a formulae approach is used to set out the calculation of SAMM charges to constitute the planning obligation. The SAMM standard charge has been prepared having regard to the tests set out in the Community Infrastructure Levy Regulations 2010 and subsequent amendments, in particular Regulation 122 which sets out that a planning obligation should be necessary, directly related and fairly and reasonable related in scale and kind to the development.

Evidence to date<sup>3</sup> has shown that whilst proximity can be a factor (in terms of frequency); visitors to the harbour derive from a wide catchment of areas in Poole, both close to, and furthest, from the harbour. Hence, the charge is to be applied to all new residential development within Poole.

The charge for the mitigation is calculated having regard to the number of dwellings which are yet to be delivered in Poole over the remaining plan period (Jan 2019- 2033<sup>4</sup>):-

<b>Total Cost Mitigation (14.25 Years)</b>	£1,271,240
<b>Annual Yearly Cost Mitigation</b>	£87,645
<b>Total Dwellings (14.25 years)</b>	10,031
<b>No. of Flats (14.25 years)</b>	5,015
<b>No. of Houses (14.25 years)</b>	5,016
<b>Min cost per dwelling</b>	£117
<b>SAMM cost per flat</b>	£95
<b>SAMM cost per house</b>	£139
<b>Total Income Generated</b>	£1,173,649

As from 2<sup>nd</sup> January 2019, the charge for the cost of delivering SAMM for the recreational impacts upon Poole Harbour will be as follows:

**For a house:-** **£139**

**For a flat:-** **£95**

<sup>3</sup> Poole Harbour Visitor Survey (2016)

<sup>4</sup> Remaining Local Plan period is equivalent to 14.25 years

The contribution is based upon a standard charge that will cover the SAMM mitigation costs set out above<sup>5</sup>. There is an adjustment for flats and houses based upon the different occupancy rate (averages) for houses and flats<sup>6</sup>. The charge will apply to all developments which would result in a net increase in dwellings (including houses, flats and maisonettes). Other uses which have the potential to impact upon the harbour will be considered on a case by case basis in consultation with Natural England as to what mitigation is required.

The payment will be calculated to take into account discount of existing dwellings on site. For example, if a dwellinghouse is to be replaced by 10 flats then the calculation would be 10 times the cost of a flat and minus the cost of 1 house. Or for example where an existing flat is converted to a house, the difference between the two rates will be payable i.e. the cost of a house minus the cost of a flat.

The standard charge will ensure that it covers the SAMM costs on a yearly basis. The charge will be index linked and adjusted annually each year to reflect inflation and ensure that the appropriate level of SAMM can be delivered over the plan period.

### Administration

The contribution is payable through a Section 106 agreement, a Unilateral Undertaking or a Section 111 agreement, together with an administration fee of 5% of the total contribution. In the case of a S111, payment of the contribution and administration fee is required upfront, whilst in the case of a Section 106 agreement and a unilateral undertaking, is usually payable on commencement of development. The administration payments are subject to a minimum charge of £25 and capped to a limit of £330 per contribution type.

The administrative charge is to cover the Council's cost of collection and distribution of the obligation, and will be applied at a standard rate reflecting the work involved in administering the obligation payable. The charge excludes any legal costs that are incurred in respect of the completion of the deed that secures the planning obligation.

### Model Clauses for Planning Obligations

It is suggested that the standard clause for either a Section 106 agreement or unilateral undertaking should be as follows:

*“the Poole Harbour Recreation contribution” means the sum of ( ) thousand ( ) hundred and ( ) Pounds increased by the percentage (if any) by the Retail Price Index shall have increased between the date of publication prior to the date of this Deed and the date of payment together with an administrative fee of £(pounds) towards measures which avoid or mitigate against any adverse effect of the Development on the Poole Harbour in accordance with PP32 of the Poole Local Plan (2018). For the avoidance of doubt such sum or any part of thereof shall not be reimbursed to the party or to any other party”.*

The obligation should be worded as follows:

*“The Owner hereby Covenants with the Council that he will not cause or permit the commencement of the development on the land until the Poole Harbour Recreation Contribution has been paid to the Council.”*

<sup>5</sup> An additional small amount of development around the harbour is expected to come forward which lies outside of Poole (authority boundary), hence the income generated does not fully cover all of the costs of mitigation.

<sup>6</sup> Forecast increase in population from the ONS 2012 sub national population projections

For strategically significant sites delivering large numbers of residential units the obligation may be worded differently to reflect payment of the contribution on a phased basis.

