**Context of Consideration – Update**

The context of consideration, originally created as an Annex to the Commissioners Paper 01/21 (20 April 2021) made reference to the duty to conserve biodiversity in the Natural Environment and Rural Communities Act 2006 (NERC Act).

This duty, which applies to the Forestry Commission as a government department is set out in Section 40 as follows (relevant extract of text from the Act):

**40 Duty to conserve biodiversity**

(1) Thepublic authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.

(2)In complying with subsection (1), a Minister of the Crown or government department must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992.

(3)Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.

The Environment Act, (s102) which came in on 9 November 2021, so is in scope for the first time, amended the general duty from conserve to conserve and enhance and requires more than just having regard for the United Nations Environmental Programme Convention on Biological Diversity. The relevant extracts from the Act are below. (Because these are amendments they slot in to and between the existing paragraphs so need to be considered with the original text above)

#### 102General duty to conserve and enhance biodiversity

(2)In the heading, after “conserve” insert “and enhance”.

For subsections (1) substitute

(1)A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.

(1A)After that consideration the authority must (unless it concludes there is no new action it can properly take)—

(a)determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and

(b)take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.

(1B)The requirements of subsection (1A)(a) may be satisfied (to any extent) by revising any existing policies and specific objectives for taking action to further the general biodiversity objective.

(5)After subsection (2) insert—

“(2A)In complying with subsections (1) and (1A) the authority must in particular have regard to—

(a)any relevant local nature recovery strategy, and

(b)any relevant species conservation strategy or protected site strategy prepared by Natural England.

It should be noted that these requirements are “consistently with the proper exercise of its functions” i.e. consistent with the Forestry Commissioners powers and duties under the Forestry Act, including the balancing duty, which takes into account the biodiversity gains (and losses) from woodland creation.

It should also be noted that there is no relevant local nature recover strategy.  One was prepared for Northumberland as part of the piloting process, but this has no status.  It is expected that the local nature Recovery Strategies will be prepared over the next couple of years.

There is no relevant species conservation strategy or protected site strategy prepared by Natural England that we are aware of. We would have expected NE to have drawn our attention to this in their letter (14 July 2022) had such a thing existed.