

CANTERBURY LOCAL PLAN EXAMINATION – SUSTAINABILITY APPRAISAL AND CONSIDERATION OF ALTERNATIVES; HABITAT REGULATION ASSESSMENT & APPROPRIATE ASSESSMENT [POLICY SP7]

1. On 14 July, Day 1 of the examination, the Inspector's questions as to whether the Council had complied with the Duty to Cooperate and relevant legal requirements were addressed. The latter included whether the plan had been the subject of Sustainability Appraisal (SA). In addition on 29 July, Day 10 of the examination, in the context of Matter 6 Natural Environment Strategy (Policies SP7 and CC12), the SA work arose once again as well as the appropriateness of SP7.
2. In relation to the adequacy of the SA process, the issue has been raised by a number of parties relating in particular to the adequacy of the Council's assessment of reasonable alternatives.
3. These issues have been addressed by the Council as follows:
 - (i) CDLP 10.12 -The SA Technical Note responding to the Inspector's own earlier questions raised in his letter of 1/04/15.
 - (ii) CDLP 16.22 - Counsel's Advice to the Council re legal issues raised by Herne & Broomfield's QC (repeated in his opinion of June 2015).
 - (iii) CDLP 10.4 - Topic Paper 3 re Habitats Regulations Issues (18/11/14).
4. In addition the Council's consultant Mr Davis from AMEC addressed the further points raised by CPRE's own consultant Levett-Therivel at the examination on Day 1.
5. Further at the hearing on 29 July, Day 10 of the examination, Natural England, in response to issues raised by CPRE, set out its view that the work reflected in Topic Paper 3 might be treated as an Appropriate Assessment. Given that the Council had not treated it in the same way, both parties undertook to discuss the matter and clarify the position.
6. The Council undertook to produce this note at the examination, which also addresses the implications of the Court of Appeal's decision in Ashdown Forest Economic Development Ltd-v>Wealden DC . No representation has been received suggesting that the plan is subject to the same issues which arise in that case. However, given that the Court of Appeal confirmed that this would be no bar to subsequent challenge and given that there are relevant issues, it was considered sensible to address the question of whether the case does have implications on the plan.

Implications of Ashdown Forest Economic Development Ltd-v>Wealden DC [2015] EWCA Civ 681

7. A copy of the judgment was submitted by Pentland on Day 1. As the Inspector is aware Ashdown Forest involved a claim under s.113 of the PCPA 2004 challenging a policy in Wealden DC's Core Strategy WCS12.
8. This policy sought to address adverse effects of development within 7 km, on the integrity of an SPA and SCA, by creating an exclusion zone within 400m for no net increases in dwellings requiring the provision of Suitable Accessible Natural Green Space (SANG) and contributions to management measures for development identified in the Council's Site Allocations DPD within 7km.

9. The essential issue raised by the Claimant was whether there had been a failure on Wealden DC's part to assess reasonable alternatives in accordance with the SEA Directive and the SEA Regulations to the 7km zone (known as the Thames Basin Heath approach). Whilst it was acknowledged that neither NE or the Council's consultants suggested that there were suitable alternatives to the Thames Basin Heath approach, it was held by the Court of Appeal (with reluctance) that the Council could not rely upon its Habitats Regulations Assessment as meeting the requirement to consider alternatives as this was not its function and purpose.
10. The Council's position is that whilst there are similarities in the policy approach taken in the Canterbury District Local Plan, the facts in the Ashdown Forest case do not reflect the approach adopted and facts in the case of Canterbury's plan. Those differences principally relate to compliance with the SEA Directive and SEA Regulations in a number of significant ways and mean that the same issues do not arise and that the Council can show that reasonable alternatives were properly considered.
11. The first point to make is that the Canterbury District Local Plan allocates sites within it and there is no separate site allocation DPD. Whereas, in the case of Ashdown Forest, the development sites have been allocated separately from the Core Strategy. Secondly, the policy approach is different to that taken in Ashdown Forest, in that the zones of influence are not identified in the plan policies, but along with a range of alternative mitigation measures were assessed through the production of strategic access management and monitoring strategies for the coastal SPA/SAC/RAMSAR sites.
12. As such the assessment of reasonable alternatives in respect of the Canterbury District Local Plan was conducted and had to be conducted quite rightly on a wider strategic basis.
13. As set out below, NE have made it clear that it is content with the assessments carried out by Canterbury and that the requirements of the Habitat Regulations have been met.

Alternatives and SEA

Revised quantum of housing growth – general approach to spatial strategy for development

14. The preferred spatial strategy and revised quantum of growth has been appraised by the Council. Policy SP2 of the Publication Draft Local Plan sets out the preferred development option for the plan, specifying the quantum of housing and employment land to be provided for over the plan period; Policy SP3 of the Publication Draft Local Plan sets out the location of the strategic sites to deliver the majority of the proposed level of growth. Along with all other policies within the Publication Draft Local Plan, these have been appraised (Appendix I) with the results summarised in section 3.4.1 of the 2014 SA Report.
15. The strategic sites considered most appropriate to deliver this preferred spatial strategy were identified and appraised (section 3.3.5 of the 2014 SA Report). Individual site changes to the preferred configuration of sites are summarised on pages 55 – 56 section 3.3.5 of the 2014 SA Report.
16. The substantial uplift in the quantum of growth occurred between the 2010 Core Strategy (10,200 dwellings) and the 2013 Preferred Option Local Plan (15,600 dwellings). An appraisal of the preferred spatial strategy contained in the 2013 Preferred Option Local Plan and the reasonable alternatives to it was undertaken (based on the allocation of differing

strategic sites). This was summarised in the 2014 SA Report (page 42 – 48) with the following conclusion (final sentence p48):

‘Overall, the distribution and quantum of development sites contained in Option A is able to better meet the future development needs (within the plan period) of the District (by providing a mix of sites, of varying scale located in areas of key demand whilst avoiding more sensitive locations, consistent with transport plans, infrastructure delivery and public opinion research).’

17. The evolution of the spatial strategy, the level of growth and the selection of the strategic sites is recorded in sections 3.3.1 to 3.3.5 of the 2014 SA Report. At each stage, reasons are given for the selection of a preferred option and the discard of the reasonable alternatives considered culminating with the preferred spatial strategy and quantum of growth.
18. The approach is consistent with the judgement in Heard vs Broadland [2012] EWHC 344 (Admin), para 67, which states:

‘...the plan-making process permits the broad options at stage one to be reduced or closed at the next stage, so that a preferred option or group of options emerges; there may then be a variety of narrower options about how they are progressed, and that that too may lead to a chosen course which may have itself further optional forms of implementation. It is not necessary to keep open all options for the same level of detailed examination at all stages. But if what I have adumbrated is the process adopted, an outline of the reasons for the selection of the options to be taken forward for assessment at each of those stages is required, even if that is left to the final SA’.

19. The 2012 Technical Note was written for the Council as part of the emerging evidence base on the preferred quantum of growth to be included within the Preferred Option Local Plan. It contained a Sustainability Appraisal of 10 different scenarios for differing levels of housing growth that were contained in the 2012 Canterbury Development Requirements Study.
20. Each of the development scenarios was appraised against the 16 SA objectives used to appraise the Core Strategy development options and subsequently the draft Local Plan policies. As it was part of the evidence base, there was no intention to consult on the 2012 Development Requirements Study separately and so the accompanying sustainability appraisal was issued as a Technical Note. As the Technical Note was not consulted upon directly and did not meet all the reporting requirements of Annex I of the SEA Directive it cannot itself (as a standalone document) be considered compliant with the Directive, to claim otherwise would be flawed. This is acknowledged in the text of Box 1 of the Executive Summary of the Technical Note; however, the box goes on to state:

“...this technical note, although not intended to comply with the [reporting] requirements of the SEA Directive itself, will form part of the evidence base for the development of spatial options for the Canterbury Core Strategy (or equivalent spatial planning document following conclusion of the planning reforms). As such, it will form the basis for the chapter that will address consideration of reasonable alternatives within the formal Sustainability Appraisal which will accompany the published draft Local Plan document.’

21. As the appraisal methodology employed in the Technical Note is the same as that used for the SA Report of the Core Strategy and emerging Local Plan, it is appropriate to rely upon the findings of the Technical Note within the subsequent SAs.
22. Consistent with this expectation and the statement in Box 1 of the Executive Summary, both the 2013 and 2014 SA Reports (sections 3.3.1 and 3.3.2 respectively) contain a summary of the 10 different scenarios considered in the 2012 Development Requirements Study, along with the findings of the SA contained in the Technical Note and the conclusion of which option should be taken forward for further consideration. For both the 2013 and 2014 SA Reports, this is the part of the SA Report (section 3.3) which presents information on the evolution of the Local Plan (and the reasonable alternatives considered and appraised at each stage).
23. Both the 2013 and 2014 SA Reports are written to meet the reporting requirements of the SEA Directive. Whilst not intended for public consultation, it is also noted that the Technical Note was then issued by the Council as part of the evidence base for each round of consultation. It has also been included within the suite of documentation on the examinations page website of CCC.
24. From the above, it is shown that the appraisal contained in the Technical Note is part of the SA/SEA process, with findings presented in multiple SEA compliant reports, as well as being available for consultees, and as such we do not accept that the commentary in Box 1 of the Technical Note invalidates the findings, nor can be used to dismiss its findings as part of the continuum of appraisal that makes up the SA/SEA process.

Adequacy of HRA process

25. Both the Habitats Regulation Assessment (HRA) Screening Report (Nov 2014) and the Council's own topic paper 'Habitat Regulations Issues' (Topic Paper 3) have considered the nature of development that could come forward following the adoption of the plan and have considered the effects in turn against the conservation objectives of each of the identified European sites. This included quantification of emissions associated with an increase in traffic loading attributable to the growth proposed within the draft Local Plan within 200m of the Blean Complex SAC (notably along the A290), the impact from increased loading on waste water treatment works (whose treated effluent discharge could then affect the Stodmarsh SAC / SPA / Ramsar) and the effects from increased recreational activities on the coastal European sites. Through the assessment of effects, engagement, consideration of future commitments of relevant parties and the use of mitigation measures, both the HRA Screening Report and the Topic Paper have concluded no likely significant effects will arise.
26. The HRA Screening Report draws on this information to consider whether any individual policies should be screened for further appropriate assessment, in accordance with the requirements of Article 6(3) of the Habitats Directive and regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended). No aspects of the Local Plan were identified as likely to have likely significant effects (taking into account the mitigation and avoidance measures incorporated into the plan during its development, including those arising from Topic Paper 3).
27. Article 6(3) of the Habitats Directive states that '*In the light of the conclusions of the assessment of the implications for the site..... the competent national authorities shall agree*

to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public’.

28. The HRA Screening Report (and earlier versions) has been consulted upon, as it has been issued to accompany the consultation stages of the Local Plan.
29. Natural England, as the statutory nature conservation body has provided responses and has completed a Statement of Common Ground with the Council agreeing that they consider the plan sound and compliant with regard to HRA.
30. Richard Harwood QC in his opinions considers that the fact that policies SP7 and LB5 are worded to ensure development will not have an adverse effect on integrity, rather than to ensure no likely significant effects, permits the possibility of likely significant effects (and therefore an appropriate assessment is required). The fact that one has not been undertaken renders the Local Plan unsound in his view.
31. However, in making this submission, no weight has been given to the assessment of future activities arising from the Local Plan on the conservation objectives of the European Directive.
32. The suggestion that the HRA process is flawed because an Appropriate Assessment has not been undertaken is not made out. This is because no account is taken of the findings of the assessment of effects against the conservation objectives of each European site (contained in the HRA Screening Report and in Topic Paper 3), which concludes, on the basis of objective and up to date information and the use of appropriate specified mitigation, that the likelihood of significant effects is sufficiently low, not to require an appropriate assessment (NE’s recent comments notwithstanding). Further it does not take into account the view and approval of the statutory nature conservation body.
33. Policies SP7 and LB5 ensure that development on all sites will be undertaken in a manner consistent with the Council’s commitments under the Habitat Directive and will ensure the specific development proposals that come forward for the strategic sites will contain measures to avoid, mitigate or compensate for any effects on biodiversity in a manner that avoids adverse effects on the integrity the district’s designated sites.
34. As noted previously, the approach taken in the Habitat’s Screening Report and in policy SP7 is consistent with approaches elsewhere (for example, the HRA report for Chichester District Council). It is also consistent with practitioner guidance.

Response to Levett-Therivel on behalf of CPRE

35. The following grounds are cited by Levett-Therivel as each being the basis for non-compliance with SA requirements:
 - (i) The extended paper chase that is required to understand the SA is inconsistent with the Directive Recital 15;
 - (ii) The ‘*very limited identification of alternatives*’;
 - (iii) The inconsistent and very limited explanation of how the preferred sites were chosen;
 - (iv) The treatment of cumulative effects;

- (v) The lack of environmental characteristics of areas likely to be significantly affected by the plan.

36. The following addresses the above points and which Mr Davis of AMEC stated orally on Day 1 of the Examination.

(i) Extended Paper Chase

37. Levett-Therivel state that an extended paper chase is required to understand the Canterbury SA and that this is inconsistent with the Directive Recital 15. This is not accepted.

38. The development of the Local Plan has taken a number of years, spanning a number of iterations of plan documentation and has also addressed changes to planning arising from the National Planning Policy Framework. Each iteration and key contributory element to determining either the spatial strategy or the quantum of growth, has been accompanied by a SA Report. These are all summarised in turn in section 3.3 of the 2014 SA Report, as follows:

- 2010 Core Strategy Development Options (section 3.3.1);
- 2012 Development Requirements Study (section 3.3.2);
- 2012 The SHLAA sites (section 3.3.3);
- 2013 The Preferred Option Draft Local Plan (section 3.3.4);
- Revisions to the Preferred Option Draft Local Plan following consultation (section 3.3.5);
- 2014 The Publication Draft Local Plan (section 3.4).

39. Where options are considered, these are summarised, as are the appraisal findings and the reasons for the selection of a preferred option. This is done to aid understanding, provide context for the next stage and to ensure that the Article 5.1 of the SEA Directive and Annex I(h) has been met. By presenting and summarising this information, the 2014 SA Report provides sufficient information to enable an informed understanding of the development of the Publication Draft Local Plan without recourse to the prior documentation, although all supporting documentation remains publicly available (and was so, at each stage of the consultation process). Presentation of the information in this form is considered consistent with Recital 15 of the SEA Directive.

(ii) ' Limited' Identification of alternatives

40. Levett-Therivel state that there has been very limited identification of alternatives which is inconsistent with Article 5.2 of the SEA Directive. Again this is not accepted.

41. At each stage of the development of the Local Plan, options have been identified, described and appraised, with the findings published in the SA Report. It is not for the SA process to develop the alternatives, as this is the responsibility of the plan making body; however, where alternatives have been considered, these have been appraised, with the findings of the SA used to inform judgements on the preferred option to be taken forward.

42. The options considered have been recorded in the 2014 SA Report as follows:

- There were 9 broad spatial strategy options considered in the Core Strategy and appraised in the accompany SA Report (section 3.3.1)

- There were 10 options for the level of growth considered in the appraisal of the Developments Requirements (section 3.3.2)
 - There were 181 potential housing sites identified through the SHLAA process (section 3.3.3)
 - There were 3 options (1 containing 14 sites, 1 containing 12 sites and 1 containing 29 sites) for the different configurations of strategic sites to meet the spatial strategy. These were considered and appraised in the 2013 Preferred Options Draft LP SA report (section 3.3.4)
 - The revised configuration of sites to meet the growth requirement, consistent with the spatial strategy contained 17 housing sites and 9 employment sites (section 3.3.5)
43. Collectively, these clearly represent more than a “*limited number of alternatives*” that have been considered by the Council. They are proportionate to the stage of the development of the plan, reflect the information available at the time, and build iteratively on the preceding stage of plan development.
44. It is argued in the Levett-Therivel report that the other detailed configurations of sites should have been considered at the Preferred Options Draft Local Plan stage, citing one option as to focus on those best performing sites from the SHLAA SA (starting with the 32 SHLAA sites covering 118 ha). However, at Preferred Options Draft Local Plan stage, 86.1 ha of land from sites identified as most sustainable from the SHLAA SA was included in the preferred option, which increased to 92.5 ha at the Publications Draft Local Plan stage. So such an approach was already taken. However, in order to meet the housing and employment land requirement, approximately 650 ha of land would be required (although not all would be developed) and further sites needed to be considered, consistent with the spatial strategy. Once a number of other factors were taken into account (transport, infrastructure delivery, permitted sites and other local plan policies) the options available become more restricted.
45. Given these factors, the 3 options based upon concentrating development at Canterbury and Herne Bay, with some development located at the larger well-served rural centres was considered sufficiently distinct to be meaningful. Levett-Therivel suggests consideration is given to variations in assumptions on individual site allocations. Changes to housing capacity at sites were in fact addressed at the Publication Draft Local Plan stage, with the resulting changes appraised and the findings contained in the 2014 SA Report.

(iii) The inconsistent and limited explanation of how the preferred sites were chosen

46. The Levett-Therivel report states that there is inconsistent and very limited explanation of how the preferred sites were chosen which is inconsistent with Annex I(h) of the SEA Directive. This also is not accepted.
47. Sections 3.3.4 and 3.3.5 provide explanations for the site selection process. This process is consistent with the spatial strategy and includes reference to the SHLAA SA findings, the SA and other matters such as transport, infrastructure delivery, planning process and other draft Local Plan policies.
48. Page 39, section 3.3.4 of the Publication Draft Local Plan SA Report states:

‘In line with the findings of the SA undertaken for the Core Strategy Options Report and the associated HRA, the overall approach to selecting sites for housing and employment taken

forward as part of the Preferred Option Draft Local Plan was based upon concentrating development at Canterbury and Herne Bay, with some development located at the larger well-serviced rural centres. This approach is broadly consistent with public opinion research carried out by Ipsos MORI for the Council. The selection of sites to fulfil this strategy drew on the list of sites prepared under the SHLAA. However, a number of issues were identified by the Council which would influence the final distribution of development.'

49. These issues included: transport, infrastructure delivery, planning process and other draft Local Plan policies (which are described in the 2014 SA Report (page 39-40, section 3.3.4).
50. 19 new sites were proposed in consultation responses to the Preferred Options Consultation Draft Local Plan. These additional sites were appraised in the same manner as the preceding 181 SHLAA sites, with results presented in Table 3.11 (section 3.3.5 of the 2014 SA Report).
51. Under the 'Revised Preferred Development Option', page 59 of the 2014 SA Report states:

'The approach to the selection of sites for housing and employment to support the delivery of the revised preferred development option accords with that adopted during the preparation of the Preferred Option Draft Local Plan (see Section 3.3.4) but importantly the Council has also taken account of the new site submissions. Overall, the quantum of housing to be provided through allocated sites has increased by 7.3% from 9,916 to 10,641 dwellings compared to that provided for in the Preferred Option Draft Local Plan whilst the proportion of housing to be delivered in Canterbury has also increased. This reflects advice received from the Planning Inspectorate that the Council is unable to discount its housing requirement on the basis of over-supply from the previous plan period and that it should consider whether the proportion of housing development at Canterbury could be higher.'

52. Individual site changes to the preferred configuration of sites are summarised on pages 55 – 56 Section 3.3.5 of the Publication Draft Local Plan 2014 SA Report.
53. The reasoning is provided to reflect the stages in the development of the Local Plan and is considered consistent with the requirements of the Article 5.1 of the SEA Directive and Annex I(h) regarding reasonable alternatives.

(iv) The treatment of cumulative effects

54. The Levett-Therivel submission states that no assessment of the cumulative effects of development and transport has been done (and is therefore deficient against the requirements of the SEA Directive Annex I (f). The Council disagrees.
55. Information is provided on cumulative effects in section 3.5 of the 2014 SA Report sets out the summary of the assessment of cumulative effects arising from the Publication Draft Local Plan (section 3.5.1), and the cumulative effects arising in conjunction with other plans and programmes (section 3.5.2). The cumulative effects of policies (grouped by thematic chapter) are also assessed within the detailed appraisal of the policies (contained in Appendix I).
56. The relationship between the housing and economic development policies is appraised as a significant negative effect within the summary of cumulative effects (Table 3.15). Further information is also contained in the appraisal of policies which notes the cumulative effects of development and transport, for example, section 3.4.2 includes the comment: '*Policy HD1*

would be expected to result in significant negative effects on the Transport SA objective in the medium and long term. This is due to the fact that the scale of development proposed under this policy would significantly increase the need to travel by unsustainable forms of transport and contribute to road traffic and congestion.'

57. When considering the detailed commentary on the appraisal of the policies within Appendix I, the issues are also noted. For example it is stated (Appendix I105) that: '*Policies T11, T12, T13, T14 and T15 would mitigate the congestion effects of new development through providing new roads and should alleviate any increase in congestion as a result of increasing population in the medium to long term. However, the construction and completion of the network improvements may over the long term accommodate or possibly contribute to the generation of further traffic. The net effects of these will be to lead to a localised improvement in air quality, especially policy T12 which will address the already heavily congested A2 and also promotes sustainable transport options such as fast bus link. However, that overall, there may be an increase in vehicle emissions from increased movements.'*

Or that (Appendix I27):

'Policy SP2 notes the infrastructure that will accompany development on sites identified under Policies HD1 and HD2. Some of this infrastructure (park and ride facilities, bus link, car park at rail stations, relief roads) will mitigate the adverse effects expected on the transport objective. A commitment could be made to ensure provision is also made for sustainable forms of transport such as walking or cycling or reference made to policy T1 which seeks to ensure any new development is consistent with the Transport Strategy principles.'

(v) The lack of environmental characteristics of areas likely to be significantly affected by the plan

58. Levett-Therivel state that the SA lacks information of environmental characteristics of areas likely to be significantly affected by the plan including a clear statement of environmental problems. This too is not accepted.
59. Section 2.1.1 and Table 2.1 presents a summary of sustainability issues relevant to the appraisal of likely significant effects arising from the Local Plan. It summarises information that is presented in Appendix C which contains the data that represents the baseline (and an evolution of the baseline) consistent with Annex I (b). Information is presented in this section that includes the environmental characteristics of the District (for example from the 'B: Biodiversity, landscape and Geology' section in Table 2.1):

'The District can be roughly split into four natural areas. These regions include:

- *The coastal region, roughly 20km of coastline, the biodiversity value of much of this is recognised by international and national designations;*
- *The Blean, which sits to the south of the coastal region and comprises the ancient Blean Forest complex, the region is important for the diverse woodland species which this area supports. Much of the Blean area is designated at both national and international levels;*
- *The floodplain of the River Stour, which is associated with important wetland habitats either side of Canterbury. The Stodmarsh National Nature Reserve (NNR) is an*

important wetland habitat to the north east of Canterbury which is protected through national and international designations.

The Downs, which lie to the south of Canterbury (some of the southern parts of the Canterbury District lie within this area). The Kent Downs is an Area of Outstanding Natural Beauty (AONB) characterised by rolling countryside with chalk grasslands and areas of ancient woodland.

Within the District there are three Ramsar sites and Special Protection Areas (SPAs): Thanet Coasts and Sandwich Bay, The Swale and Stodmarsh. There are also two Special Areas of Conservation (SAC) (Blean and Stodmarsh). Parts of Blean Woods and Stodmarsh are further designated as National Nature Reserves. Fifteen Sites of Special Scientific Interest (SSSI) and a number of regional and local wildlife reserves fall within Canterbury District. Within the District there are 12 Local Nature Reserves (LNRs) as well as 49 Local Wildlife Sites (LWSs) which are considered to be of County importance for nature conservation (AMR April 2012-March 2013)'.

60. Or from 'F. Historic Environment' section of Table 2.1:

'The Cathedral, St Augustine's Abbey and St Martin's Church are important milestones in the religious history of England and were inscribed by UNESCO as a World Heritage site in 1988. The World Heritage Site is one of only 28 sites in the UK (www.unesco.org.uk)....'

61. Appendix C (C8) contains information on conditions that are relevant to the description of existing environmental problems (for sites affected by the Habitats Directive):

'Three SSSIs have small areas in 'unfavourable (no change or declining)' condition (West Blean and Thornden Woods, Lynsore Bottom and The Swale). Chequers Wood and Old Park is now in a 'favourable or unfavourable recovering' condition, an improvement since 2009. Lleden and Oxenden Woods and Thanet Coast are now also in a 'favourable or unfavourable recovering condition.'

62. Baseline information was collated for the SA, as part of the scoping process. This was presented in the 2010 Scoping Report which was issued for consultation (in line with SEA Regulation requirements). Changes were made to reflect the views of statutory consultees. Subsequently the baseline has been updated for inclusion in SA Reports to accompany the emerging Local Plan consultations.

Position of the Council and Natural England with regard to Appropriate Assessment of the Plan

63. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations') states that if a land-use plan "(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and (b) is not directly connected with or necessary to the management of the site" then the plan-making authority must "...make an appropriate assessment of the implications for the site in view of that site's conservation objectives" before the plan is given effect.

64. The process by which Regulation 102 (*inter alia*) is met is known as Habitats Regulations Assessment (HRA). European Commission guidance (EC (2002) *Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*) suggests a four-

stage process for HRA, although every stage will not always be required. The first two of these stages are ‘screening’ and (if necessary) ‘appropriate assessment’.

65. The ‘screening’ determines whether there will be ‘likely significant effects’ (LSE) on any European site as a result of a plan’s implementation (either on its own or ‘in combination’ with other plans or projects); if so (or if this is uncertain), the ‘appropriate assessment’ stage determines whether there will be any adverse effects on the integrity of the site(s). It is possible for effects on a site to be initially uncertain (so requiring further information or ‘appropriate assessment’), but subsequently be shown to be ‘not significant’ (effectively, the information collected allows the conclusions of the screening to be revisited).
66. The staged approach to HRA outlined in the EC guidance is most easily understood in relation to specific projects or consents, where scheme design is usually established or largely finalised, and possible effects on European sites can be identified and assessed (usually quantitatively) using a linear stepwise process.
67. In contrast, land-use plans and similar strategic documents can present a number of distinct challenges for HRA and the rigid application of discrete assessment ‘stages’. This is because:
 - a. Regulation 102 essentially provides a test that the final plan must pass; there is no statutory requirement for draft plans or similar developmental stages (e.g. issues and options; preferred options) to be subject to the tests outlined in Regulation 102; but
 - b. it is accepted best-practice for the HRA of strategic planning documents to be run as an iterative process alongside the plan development, with sustainable policies or proposals developed from the beginning of the plan-making process, rather than undertaking the HRA as a purely retrospective assessment exercise on the finalised plan; and
 - c. the ‘Dilly Lane’ judgement (*Hart District Council v Secretary of State for Communities and Local Government* [2008] EWHC 1204) allows for incorporated mitigation to be taken into account at the screening stage.
68. This means that the ‘screening’ stage for a plan is usually a more involved process of assessment and iteration than that which is arguably envisaged by the EC guidance. Furthermore, unlike many specific projects, a land-use plan is a collection of often quite disparate aspects (policies, allocations etc.) with very variable effects – some plan aspects can arguably be ‘screened out’ whilst others require further assessment.
69. It arguably makes little sense for ‘screening’ to be applied once and irrevocably to early draft versions of a plan (in their entirety) since there will often be many alternative approaches to the various aspects that ensure that significant effects do not occur; and further information can also be sought to bear in this regard.
70. The July 2014 ‘screening’ reviewed the CCC plan as it stood at that point, and indicated that there were some aspects which, if unchanged, could result in ‘significant effects’ and hence require an ‘appropriate assessment’. However, it noted that options were available to prevent significant effects occurring, including amendments to policy wording.

71. NE reviewed the July 2014 document and the accompanying plan, and concluded that additional information was required to inform the HRA process and the proposed policies. This information was collected and presented as Topic Paper 3.
72. NE has stated that Topic Paper 3 provides sufficient evidence to support an ‘appropriate assessment’. This evidence:
- a. demonstrates that some envisaged effects will either not occur or will not be significant (i.e. e.g. air quality impacts on the Blean Complex SAC); and
 - b. is considered entirely suitable for informing the development of policy controls that ensure that the plan has ‘no likely significant effects’.
73. In effect, therefore, the evidence presented in Topic Paper 3 and the draft screening report, in conjunction with the proposed policy changes and measures incorporated in the plan, are strong enough to allow the conclusion of the draft screening to be re-visited: i.e. the plan can be considered to have ‘no likely significant effects’.
74. It is accepted that the current collection of documents informing the HRA are not as explicitly integrated as they could be; however, NE has stated that the work undertaken by Canterbury is compliant with the Habitats Regulations, and that it supports a conclusion of ‘no significant effects’. Regulation 102 is applied to the finalised plan by the competent authority (hence the title of the November 2014 report ‘*Report to Inform Screening for Appropriate Assessment*’, since this process will be formally completed by CCC). On the basis of NE’s assessment, therefore, it is entirely acceptable for CCC to conclude that the plan (with the incorporated measures) will have ‘no likely significant effects’.
75. The advice the Council has received from NE following the points made on 29 July 2015 is that taken together, the Habitats Regulation Assessment Screening Report undertaken by Amec, and Canterbury City Council’s subsequent Topic Paper 3, form the Habitats Regulations Assessment for the local plan.
76. The conclusions reached, and the resulting policies SP7 and LB5, together with the suitable mechanisms which the policies ensure will be put in place, provide a sound basis for concluding the plan will not impact on European sites.
77. The Council is currently considering NE’s further advice that for the sake of clarity both documents should be brought together under an overarching title of Habitats Regulations Assessment, with a covering note that explains the HRA process that was undertaken, and how this resulted in the formation of the Council’s policy wording.

CONCLUSION

78. Canterbury Local Plan has therefore been subject to SEA Directive, SEA Regulations and HRA compliant assessment.
79. In particular it is clear that the approach to assessment of reasonable alternatives included assessment of impact upon SAC, SPA and Ramsar sites.