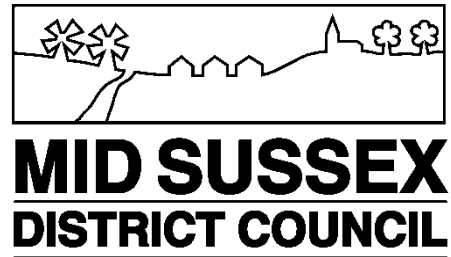


**Mid Sussex
District Council**



Site Allocations DPD

MSDC-02a: Matter 1 - Legal Requirements,
Scope of the Local Plan and Duty to Co-operate

14th May 2021

Matter 1 - Legal Requirements, Scope of the Local Plan and Duty to Co-operate

1.1 Legal Requirements

*(i) Does the Site Allocations Development Plan Document (which I will refer to as the Plan from now on) **meet all its legal requirements** (e.g. in relation to the Local Development Scheme; Statement of Community Involvement; and the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended)? Are there any other legal compliance issues?*

MSDC Response

1.1. The Council is satisfied that it has met all the relevant legal requirements in producing and submitting the Site Allocations DPD. Following best practice, the Council has completed a self-assessment of soundness and legal compliance [DPD4]. This sets out all the relevant requirements and evidence which demonstrates how they have been fulfilled. The Sites DPD [DPD1, pages 10-11) and Topic Paper 3: Introduction to the Sites DPD [TP3, section 2] provide detail regarding meeting the tests of soundness.

Local Development Scheme

1.2. The intention to prepare the Site Allocations DPD was first confirmed in the Local Development Scheme (LDS) published in October 2017 [P2]. The LDS has been kept up to date following alterations to the timetable for the preparation of the Plan, with the latest LDS being published in December 2020 [P1].

1.3. The Council's website (www.midsussex.gov.uk/SitesDPD) has also been kept up-to-date regarding the timetable throughout the production of the Sites DPD to ensure all stakeholders are aware of the next steps.

Statement of Community Involvement

1.4. The Council's approach to consultation is set out in the Statement of Community Involvement (SCI) [C4], which is a 'code of practice' for how the council will engage people in planning processes. The SCI was adopted in March 2019, ahead of both formal rounds of consultation for the Sites DPD.

1.5. The SCI commits the Council to prepare a 'Community Involvement Plan' for all planning policy documents. The Community Involvement Plan (CIP), agreed by Council and published alongside the Regulation 18 [C2 – Appendix 2] and 19 [C1 – Appendix 2] consultation documents, set out how the document would be produced, how and when community involvement would take place and what happens to the results of community involvement in taking decisions. The main consultation methods to be used included:

- Press release, email alert (see below) and social media;
- Documentation available on the Council's website including an on-line response form;
- Hard copies of documents available at the District's libraries, District, Town and Parish Council offices and Help Points;
- Letters or emails to specific consultation bodies (statutory consultees) and to other organisations listed in the CIP.

1.6. As required by legislation, the Council has prepared the following Statements of Consultation which set out who was invited and how, as well as a summary of issues raised and how they have been taken into account:

- **Regulation 22 (1)(C) Statement of Consultation** (following Reg19 consultation) [C1]
- **Consultation Report – Regulation 18** [C3]

1.7. As described in [C1], the Council offers an email alert subscription service, which is used to notify subscribers of progress with the Sites DPD and the start of consultation periods. The subscribers list includes local organisations, developers and agents, and members of the public and totalled 517 subscribers at Regulation 19 stage (paragraph 5.10). In addition, all those who made a response at Regulation 18 stage (1,570 in total – paragraph 5.11) were emailed to notify them of the Regulation 19 consultation period.

1.8. The Covid-19 outbreak meant that places where hard copies of the documents were usually made available were only partially open at the time the Regulation 19 consultation took place. However, the requirement to make consultation documents available was removed through The Town and Country Planning (Local Planning) (England) (Coronavirus) (Amendment) Regulations 2020.

1.9. The full suite of consultation documentation was made available on the Council's website in accordance with the revised regulations. However, despite not being required by the amendment to legislation, the Council still provided printed copies of the consultation documents to Libraries and Help Points, including the Council offices, to enable the documents to be viewed should the buildings re-open during the consultation period. A note explaining the availability of paper documents was published on the website to keep stakeholders updated.

Other Legal Compliance Issues

1.10. The self-assessment toolkit [DPD4] sets out the Council's compliance with all legal requirements. Whilst some respondents at Regulation 19 ticked the box on the response form to state the Sites DPD did not meet legal requirements, no further information was provided. Similarly, 2 responses were received [C1.4, page 3] which objected on legal grounds however these were related to the operation of the Members Working Group and the content of a Committee Report, which are not legal compliance issues.

*(ii) Has the Council followed **due process** in its preparation of the Plan, including the process of site selection and public involvement?*

MSDC Response

1.11. The Council has prepared the Sites DPD in a robust and transparent manner, following national policy, national guidance and best practice.

1.12. The site selection process involved consultation with District Council Members (including a politically balanced working group), Town & Parish Councils, developers/landowners and neighbouring authorities in establishing the methodology. The process was documented and discussed at the relevant Scrutiny Committee at each significant stage, ahead of Council sign-off for public consultation. The Council is therefore confident that all stakeholders have had the opportunity to guide and be informed of the process as it has progressed.

Site Selection

1.13. Topic Paper 3 “Introduction to the Site Allocations DPD” [TP3, Sections 5 and 6] summarises the Site Selection process. In addition, the Site Selection Papers [SSP1 / SSP2 / SSP3 / SSP4] document each stage of the process – both the methodology and reasons for including/rejecting sites.

1.14. The Council has closely followed Planning Practice Guidance in relation to its assessment of site potential. This has included the involvement of stakeholders, identifying sites (e.g. through local knowledge, existing sources and a call for sites), carrying out site surveys, and assessment against a pre-agreed methodology.

Development of Site Selection Methodology

1.15. In line with Planning Practice Guidance and best practice the Council ensured stakeholders could contribute towards the development of the Site Selection methodology in order to ensure it was fit-for-purpose and robust. To this end, the following key groups were involved:

- **Developers/Landowners**

The Council runs a regular Developer Liaison Group to which developers working within the authority area are invited. The Developer Liaison Group were consulted on a draft SHELAA methodology as well as broad principles of site selection in January 2018. In addition, the detailed site assessment criteria [SSP2] was subject to further consultation with this group at its meeting in October 2018. Feedback was collated which helped inform the final agreed process and criteria.

It should be noted that few responses were received; those making suggestions were considered and methodology amended as a result, none were fundamental objections to the process or criteria to be used.

- **Neighbouring Authorities**

The SHELAA and site selection criteria were shared with neighbouring authorities for their comments, any comments received were considered when finalising the process and criteria.

- **Town and Parish Councils**

The SHELAA and site selection criteria were shared with Town and Parish Councils for their comments, with a meeting held in October 2018 to discuss the proposed approach. Any comments received were considered with finalising the process and criteria, with amendments made to the methodology to suit. No fundamental objections to the process or the criteria were received.

- **Site Allocations Working Group (SAWG)**

A task and finish Member's Working Group, politically and geographically balanced, was established by the Council's Scrutiny Committee for Housing, Planning and Economic Growth. One of the Group's key role was to advise on the site selection methodology. The Working Group helped inform the process throughout, performing a check and challenge role to officer suggestions and revisions proposed following engagement with stakeholders.

- **Scrutiny Committee for Housing, Planning and Economic Growth**

The Scrutiny Committee was guided by the work of the Site Allocations Working Group and considered the revisions to the SHELAA methodology (January 2018) and detailed Site Selection methodology (November 2018).

1.16. The methodology for site selection has therefore been through a thorough and transparent process, including agreement through the Council's governance procedures.

Site Selection Outcomes

1.17. The outcomes of each stage of site selection have been published at each stage, allowing the opportunity to provide factual comments to ensure that the outcomes are robust.

1.18. Whilst it is recognised that there will inevitably be disagreements regarding individual scores or conclusions, officers have exercised their professional planning judgement; the criteria have been applied on a consistent basis and the outcomes have been recorded transparently within the Site Selection Papers [SSP1/SSP3/SSP4], Sustainability Appraisal [SUS1] and final site selection conclusions discussed by the Scrutiny Committee [P6] and Council [P7].

1.19. Regarding each stage of the process:

- **High Level Assessment - Site Selection Paper 1 [SSP1]**

Site Selection Paper 1 documents the assessment of sites against the District Plan strategy (DP4: Housing and DP6: Settlement Hierarchy). The outcomes at this stage were reviewed by the Site Allocations Working Group and reported to Scrutiny Committee for Housing, Planning and Economic Growth on 25th September 2018.

This was published alongside the Sites DPD during the Regulation 18 consultation, allowing all stakeholders to provide formal comments. In total, 5 responses were received at Regulation 18 stage in relation to SSP1 however these related to disagreements on sites that were rejected at that stage or how the criteria were applied rather than to the criteria themselves.

- **Detailed Site Assessment – Site Selection Paper 3: Housing [SSP3] and 4: Employment [SSP4]**

Site Selection Papers 3: Housing and 4: Employment document the assessment of each site against the criteria established in the methodology [SSP2].

The performance against each site selection criteria was assessed not only by the Council, but also by external experts. For example, all sites within the AONB were sent to the High Weald AONB Unit for their assessment against the AONB criterion, the County Archaeologist was asked to provide assessments against the Archaeology criterion, and evidence from Land Use Consultant's 'Capacity Study' [O20] informed the performance against the Landscape criterion. In addition, site promoters were able to input directly in relation to the developability criterion. This has resulted in a robust assessment based on expert opinion and evidence.

It is recognised that there are differences of opinion between the Council's assessment against the criteria and those promoting sites, predominantly from those whose sites were rejected during the process. Whilst professional judgement would have been required in determining the performance against some criteria (both by external bodies and by the Council), each assessment has been carried out on a consistent basis.

Prior to publishing SSP3, a draft of each site assessment was provided to the relevant site promoter for a 'fact check'. This process provided site proponents the opportunity to verify quantitative conclusions (such as the calculated distance from a site to the nearest school) or note if the assessment had overlooked proximity to a key feature, constraint or service which might affect the overall suitability of the site. Although it also provided an opportunity to review the way in which officers applied the Council's assessment methodology, the fact checking exercise was not designed to be a forum for disputing qualitative findings and professional judgement of officers. The Site Allocations Working Group were also presented with the draft Site Assessments and were tasked with fact-checking them in April 2019. Updates were made to the assessments where relevant.

- **Final Site Selection – Sustainability Appraisal, Scrutiny Committee and Council**

Whilst stakeholders have been provided with the opportunity to inform and input into site selection, and the Members' Site Allocations Working Group was set up to guide the process, the ultimate decision regarding the final content of the Sites DPD belongs to Full Council.

The results of the Detailed Site Assessments and further evidence testing informed the reasonable alternative options to be assessed within the Sustainability Appraisal (SA) [SUS1]. The options appraised within the SA, and outcomes, were considered by Scrutiny Committee for Housing, Planning and Economic Growth at its meeting on 11th September 2019. The Committee recommended to Council that the draft Sites DPD should be subject to public consultation (Regulation 18).

On 25th September 2019, Council considered the site options and subsequently agreed with the 22 housing and 7 employment sites, the specific location for the Science and Technology Park (SA9) and development policies (SA34 – SA38) which formed the content of the draft Sites DPD. Council approved the draft Sites DPD for Regulation 18 consultation [P5].

Further to the Regulation 18 consultation and amendments made as a result, the Regulation 19 Sites DPD was considered by Scrutiny Committee on 11th March 2020. Council [P7] subsequently approved the consultation on the Regulation 19 Sites DPD and its subsequent submission to the Secretary of State on 22nd July 2020. The Sites DPD was therefore subject to due democratic process at all formal stages.

1.20. The Site Selection process has been carried out robustly and transparently, providing stakeholders with the opportunity to inform the process and provide factual corrections. The outcomes of the process, and the final decision on which sites to include within the Sites DPD were carried out in accordance with the Council's governance procedures.

Public Involvement

1.21. As set out in Q1.1 above, the Council has carried out two rounds of public consultation (Regulation 18 and Regulation 19) in accordance with the relevant legislation and its adopted Statement of Community Involvement.

1.22. Full details of the approach the Council has taken to public involvement are included within the Council's Statement of Consultation (Regulation 22(1)(C)) [C1].

1.23. In Summary:

- Regulation 18 consultation was held for a 6-week period between 9th October and 20th November 2019. Approximately 1,300 representations were received. The results of this consultation were reported to the Scrutiny Committee for Housing, Planning and Economic Growth on 22nd January 2020 [P6].
- Regulation 19 consultation was held for an 8-week period between 3rd August and 28th September 2020. The consultation period was longer than the statutory minimum period to account for the Covid-19 pandemic and the summer holidays. Just under 1,500 representations were received.

1.24. For both formal consultations, the consultation documents were approved subject to the Council's internal governance procedures. This involved discussion by the Scrutiny Committee for Housing, Planning and Economic Growth and final sign-off by Council [P5 (Reg18) / P7 (Reg19)].

1.25. As set out in the Legal Compliance Checklist [DPD4] both rounds of formal consultation were carried out in accordance with the legislation, adopted Statement of Community Involvement and agreed Community Involvement Plans. This included:

- Notification to General and Specific Consultation Bodies
- Notification by email to those on the Council's subscriber lists, including local groups, organisations and residents
- Notification of the Regulation 19 consultation to all those who responded at Regulation 18 stage
- Notification to District Council Members and Town & Parish Councils
- Making the documents available in accordance with Regulation 35 (with Regulation 19 consultation according with the amendment as a result of Covid-19)
- Press release and notification on the Council's social media channels

1.26. The adequacy of consultation at Regulation 18 stage was subject to objections on grounds of process from 2 respondents. These were related to not being provided pre-warning of the content of the DPD ahead of the consultation, and that publicity material (in particular a display in a local library) were not satisfactory. Five objections on consultation were received at Regulation 19 stage, these were general statements about non-compliance with the SCI (although no details were provided), the adequacy of publicity material, the response form being too complicated (it followed the PINS suggested model) and the effectiveness of local newspapers and the email alert service.

1.27. The Council is confident that public involvement in preparation of the Sites DPD has followed all relevant legislation and requirements and has followed due process.

1.2 Scope of this part of the Local Plan

Summary of the scope of the Plan: *The main aims on page 4, paragraphs (i) to (iv), make clear reference to the Spatial Strategy in the adopted District Plan, which provide for the delivery of around **543 jobs per annum** from several sources, including a new science and technology park and several smaller employment allocations. The Plan also provides for a minimum requirement of **16,390 homes** between 2014 and 2031 (equating to 876 dwellings per annum (dpa) until 2023/24, increasing to 1,090 dpa from 2011-2029). The Spatial Strategy distributes new development based on a **sustainable hierarchy of settlement types**, with the employment and housing over the plan period focused on the largest settlement, Burgess Hill, and to a lesser extent in the other towns, Haywards Heath and East Grinstead, and smaller amounts in the villages. The Spatial Strategy makes additional strategic allocations at Hassocks in the south of the District, close to Brighton and at Pease Pottage, in the north of the District, close to Crawley, having regard to the housing needs of these two urban areas. The District Plan also aims to **conserve and enhance the environment**, including in the High Weald Area of Outstanding Natural Beauty (AONB), the Ashdown Forest 7km Zone of Influence and the setting of the South Downs National Park (SDNP), bearing in mind that the National Park is a separate local planning authority.*

(i) Is the scope of the Plan in line with the main aims and strategy of the District Plan as set out above, including as set out in the Executive Summary and in particular in relation to its four main aims which are set out on page 4 of the submitted Plan?

MSDC Response

- 2.1. The Mid Sussex District Plan was adopted in March 2018. The District Plan sets the Council's strategy and policies for the period 2014-2031, including its housing and employment requirements.
- 2.2. Policy DP4: Housing commits the Council to the preparation of a Site Allocations DPD. As described in the supporting text to this policy, the purpose of the Sites DPD is to identify the nature, scale and location of development to meet the full plan requirement. At the time of adoption, the residual housing requirement was 2,439 – this has now been revised to 1,280 as a result of completions and additional commitments since the District Plan was adopted (full details are provided in [TP3] and in response to ID-02 Question 3.1 [MSDC-02c]).
- 2.3. Site selection has been based on the principle of being consistent with the District Plan strategy, in particular policies DP4: Housing and DP6: Settlement Hierarchy. Site selection criteria, and the weighting afforded to each criterion, is consistent with the aims of conserving and enhancing the environment. Further information on these elements are provided in response to ID-02 question 3.2 "Proposed Distribution of New Homes" [MSDC-02c] and in response to Matter 4 [MSDC-02d]
- 2.4. The Sites DPD contains 4 aims, as set out the Executive Summary [DPD1, page 4]:

- i. **To allocate sufficient housing sites to address the residual necessary to meet the identified housing requirement for the district up to 2031 in accordance with the spatial strategy set out in the District Plan**

The residual housing requirement is 1,280 dwellings, which is the minimum requirement for the Sites DPD to allocate. The Sites DPD proposes the allocation of 1,764 dwellings, an over-supply to provide flexibility and to provide a sufficient buffer to ensure that minimum housing requirements can be met exceeded.

- ii. **To allocate sufficient employment land to meet residual need and in line with policy requirements set out in District Plan policy DP1: Sustainable Economic Development**

Whilst no residual employment need was identified when the District Plan was adopted, ongoing monitoring identified a revised employment requirement of 10-15ha for the remainder of the plan period, required to support housing growth within the DPD (i.e. the stepped trajectory set out in DP4: Housing). The Sites DPD proposes the allocation of 17.45ha, an over-supply to provide flexibility and buffer.

- iii. **To allocate a specific site for a Science and Technology Park west of Burgess Hill in line with policy requirements set out in District Plan policy DP1: Sustainable Economic Development**

DP1: Sustainable Economic Development identified a broad location for a Science and Technology Park “to the west of Burgess Hill”. Two options were presented to the Council, and the Sites DPD allocates the Council’s preferred location (SA9: North of the A2300) to provide certainty.

- iv. **To set out additional policies necessary to deliver sustainable development**

The additional policies are required to offer additional protection to existing employment sites and provide support for intensification/expansion to ensure the employment requirement can be met (SA34), to safeguard land for highways improvements as a result of allocations within the DPD or other ongoing schemes (SA35), to safeguard land for sustainable transport projects that are already within the pipeline (SA36 and SA37) and to provide an update based on new air quality guidance which has been necessary to implement to assist with preventing adverse impacts from development proposals on the Ashdown Forest SPA/SAC (SA38). These policies support the allocations within the DPD.

- 2.5. These are the only elements that fall within the scope of the Sites DPD. All other considerations, for example re-establishing housing need or any other strategic/cross-boundary issues, further Strategic Policies and reviewing Development Management policies are not within the scope of the Sites DPD. The District Plan Review process, which has commenced (scheduled to be adopted 2023), is the appropriate vehicle for considering these matters further, rather than a specifically focussed DPD which is a ‘daughter’ to the parent District Plan.

*(ii) Does the scope of the Plan accord with the Court of Appeal (COA) Judgment of Oxted Residential Ltd v Tandridge District Council (EWCA Civ 414; 29 April 2016)? This COA Judgment is in the Examination Library, and the paragraphs that I would particularly like to draw attention to are: 28, 31, 32 and 38. The third sentence of paragraph 38 states: **An Inspector conducting an examination must establish the true scope of the development plan document he is dealing with, and what it is setting out to do. Only then will he be able to properly judge “whether or not, within the scope and within what it has set out to do”, it is “sound” (Section 20(5)(b) [of the 2004 Act]).***

MSDC Response

- 2.6. The Court of Appeal (COA) Judgment of Oxted Residential Ltd v Tandridge District Council (EWCA Civ 414; 29 April 2016) provides a clear and helpful clarification on the role of a supporting Development Plan Document compared to that of a Local Plan (e.g. the District Plan).
- 2.7. **Paragraph 28** of the Judgement concludes that it is not the role of a “Part 2” plan to rectify any shortcomings in the approach to housing land supply or to re-assess the “objectively assessed needs” for housing. For Mid Sussex, the adopted District Plan [DPD5] is the Local Plan which establishes the housing requirement, spatial strategy and strategic policies. As noted in response to Q 1.2(i) above, the role of the Sites DPD is clearly set out within the DPD itself – a ‘daughter’ (part 2) plan with the role of allocating sufficient sites to meet residual needs.
- 2.8. **Paragraph 31** paraphrases a previous judgment by Lewis J. in Gladman Developments Ltd. v Wokingham Borough Council [2014] EWHC 2320 (Admin) which states that “There is nothing in the statutory scheme to prevent the adoption, for example, of a development plan document that is making allocations consistent with an adopted core strategy, simply because the core strategy may require revision or amendment to bring it into line with national policy (paragraphs 61 and 62 of the judgment).”
- 2.9. The relationship between the District Plan and Sites DPD is identical to the one described in this paragraph. The Sites DPD proposes allocations consistent with the adopted District Plan strategy. The District Plan was adopted in March 2018, as such a review is required within five years (NPPF, paragraph 33). The District Plan Review has already commenced, with its timetable for preparation set out in the adopted Local Development Scheme [P1], with adoption scheduled in 2023 in accordance with the commitment made in District Plan policy DP4: Housing and DP5: Planning to meet future housing need. At this point in time, no conclusions have been reached on whether policies within the District Plan require review or amendment, but it is through the District Plan Review process that strategic policies (such as updating the housing requirement if required) will be updated.
- 2.10. **Paragraph 32** clearly states that policies in the NPPF “do not require every development plan document within its broad definition of a “Local Plan” to fulfil all the requirements described in paragraph 47 and “does not require a development plan document which is dealing with the allocation of sites for an amount of housing

provision agreed to be necessary to address, also, the question of whether further housing provision will need to be made”.

- 2.11. The Sites DPD is a Development Plan Document that deals with the allocation of sites in line with District Plan policy DP4: Housing therefore does not re-consider whether further housing provision will need to be made.
- 2.12. Paragraph 38 refers to the scope of the DPD in question, that the Development Plan is a modular structure with potential for numerous parts, and that Inspectors conducting examinations must establish the true scope in order to assess soundness.
- 2.13. The scope of the Sites DPD has been clearly set out within the plan itself, and consistently referenced within Committee/Council reports and in advertising consultation to stakeholders. The Council’s response to Q 1.3(i) provides the detail. It is clear that the scope only includes the four aims set out in the Sites DPD (Executive Summary, page 4 as summarised in Q 1.3(i)) and that the Inspector should conduct the assessment of legal compliance and soundness on that basis.

*(iii) Does **policy SA GEN** adequately set out the general principles for the Site Allocations that are made in this Plan?*

MSDC Response

- 2.14. SA GEN provides an overview of the requirements that apply to all site allocations, to ensure consistency and prevent repetition within individual allocation policies. Policy SA GEN draws together requirements from elsewhere in the Development Plan, predominantly the relevant policies within the District Plan and other material considerations such as the adopted Mid Sussex Design Guide SPD. In determining planning applications for the proposed allocated sites, weight will be afforded to both the policies within the Sites DPD as well as adopted policies within the District Plan.
- 2.15. It is not intended for SA GEN to be a definitive list in relation to cross-references to other policies within the development plan.
- 2.16. Site allocations within the Sites DPD include site-specific requirements that will need to be met when planning applications follow in due course. These requirements are categorised into the following groups:
 - Key Objectives
 - Urban Design Principles
 - Landscape Considerations
 - AONB
 - Social and Community
 - Historic Environment and Cultural Heritage
 - Air Quality, Light, Noise and Amenity

- Biodiversity and Green Infrastructure
- Access and Highways
- Flood Risk and Drainage
- Ashdown Forest
- Utilities
- Sustainability
- Contaminated Land
- Minerals Safeguarding

2.17. These categories closely relate to the Site Selection [SSP2] and Sustainability Appraisal [SUS1] assessment criteria, therefore provide the opportunity to set out mitigation against any potential negative impacts, where required.

2.18. Policy SA GEN captures requirements against the same headings and contain requirements that would be applicable to all site allocations in order to provide consistency.

2.19. The Council is confident that SA GEN captures the necessary requirements adequately.

(iv) Policies SA34 to SA38 are termed 'development policies' in the Plan; can they be considered to be strategic in nature, and if so, does that in any way set a precedent or even a requirement for the Plan to deal with other strategic issues, such as housing provision?

MSDC Response

2.20. Paragraph 3.2 of the Sites DPD states that policies SA34 to SA38 are policies required to help ensure that the Development Plan supports the delivery of sustainable development when considered as a whole. The scope of the Sites DPD includes the aim of meeting residual housing and employment need – it is not the role of the Sites DPD to review other strategic policies which were established within the District Plan (see response to Q.1.2).

2.21. The inclusion of policies SA34 – SA38 is to specifically support the allocations within the DPD. All five policies are related to the allocations within the Sites DPD.

- **SA34** – Given the Sites DPD allocates employment sites to meet residual needs, this policy ensures current supply can be maintained and enhanced.
- **SA35** – Supports the delivery of highway schemes that mitigate proposals within the DPD itself (e.g. SA9: Science and Technology Park), or reflect ongoing projects which will improve transport capacity overall
- **SA36** – Supports expansion and upgrade to Wivelsfield Station, providing sustainable transport options in Burgess Hill (therefore benefiting allocations within Burgess Hill and contributing to the sustainable transport aims of SA9: Science and Technology Park)

- **SA37** – Supports the Burgess Hill/Haywards Heath multifunctional network, providing sustainable transport options in Burgess Hill (therefore benefiting allocations within Burgess Hill and contributing to the sustainable transport aims of SA9: Science and Technology Park)
- **SA38** – Given the implications of development on the Ashdown Forest SAC (as noted in DP4: Housing), this policy updates the Air Quality policy within the District Plan based on new guidance.

2.22. Paragraph 20 of the NPPF sets the scope of Strategic Policies. An assessment against NPPF paragraph 20 concludes that:

- **SA34** – Existing Employment Sites – is strategic in nature as it is safeguarding existing employment sites to ensure sufficient employment land is retained.
- **SA35** – Safeguarding of Land for Strategic Highway Improvements – is strategic in nature as it seeks to safeguard land for strategic highway improvements,
- **SA36** – Wivelsfield Railway Station – is strategic in nature as it seeks to safeguard land for improvements to transport infrastructure.
- **SA37** – Burgess Hill/ Haywards Heath Cycle Network - is strategic in nature as it seeks to safeguard land for improvements to transport infrastructure
- **SA38** – Air Quality - is applicable to development across the whole district.

2.23. The inclusion of strategic policies in the Site DPD does not set a precedent or requirement of the Sites DPD Plan to deal with other strategic issues, when it is clearly a ‘daughter’ document of the District Plan and all Policies proposed are required to support the Sites DPD to deliver its objectives.

2.24. This is confirmed by The Court of Appeal (COA) Judgment of Oxted Residential Ltd v Tandridge District Council (EWCA Civ 414; 29 April 2016), as detailed in the response to matter 1.2 (ii) above. Given the outcome of this judgment, the Council is confident that the inclusion of additional policies to support development proposed within the Sites DPD is within the scope set out for the Sites DPD, with other strategic issues falling out of scope. These will be reviewed (and updated if necessary) as part of the District Plan Review process which has commenced, with adoption scheduled for 2023 – this provides the most sensible vehicle for considering strategic issues as a whole.

(v) Does the Plan keep within its remit in relation the ‘made’ and emerging Neighbourhood Plans within the Plan Area?

MSDC Response

2.25. MSDC has been supportive of the preparation of Neighbourhood Plans in Mid Sussex and all Town and Parish Councils within the District Plan area have prepared or are preparing Neighbourhood Plans. There are now only two areas without an adopted Neighbourhood Plan; Copthorne (currently at Examination, with no sites allocated) and

Horsted Keynes (Regulation 16 published, further work paused by Parish Council, with no sites allocated).

- 2.26. Of the 18 'made' Neighbourhood Plans in Mid Sussex, 16 of these were made before adoption of the District Plan in 2018. They were therefore in general conformity with the previous Local Plan (2004) and its established housing requirement. The District Plan re-established the housing requirement for the plan period 2014-2031, and this figure increased during the course of the examination. This has necessitated allocating additional sites in Neighbourhood Plan areas in order to meet the district housing requirement – this has been achieved within the Sites DPD.
- 2.27. The NPPF confirms (paragraph 30) that, once a neighbourhood plan has been brought into force, the policies it contains take precedence unless they are superseded by strategic or non-strategic policies that are adopted subsequently. The Sites DPD, in being adopted subsequently, would therefore supersede Neighbourhood Plan policies where there is a conflict.
- 2.28. Since 2015, when the Pre-Submission District Plan was published, the Council has been clear that it will prepare a Site Allocations DPD in order to meet the remaining housing requirement in the Plan period, to cover any 'shortfall' not met by the then emerging Neighbourhood Plans. The need to allocate additional sites to meet housing requirements for the full plan period is also stated in the supporting text to Policy DP6. Given the extensive Neighbourhood Plan coverage in Mid Sussex it would have been impossible for the Sites DPD not to allocate sites in areas with made Neighbourhood Plans.
- 2.29. Town and Parish Councils also had opportunity to review their made plans to increase housing numbers (District Plan, paragraph 3.32), but to date no Neighbourhood Plans have been formally reviewed.
- 2.30. The Site Selection process included a consideration of sites against 'made' Neighbourhood Plans and took into account any land use designations in the Neighbourhood Plans [SSP3, paragraph 6.6 and Appendix 3, site proformas]. Further information about the relationship between the individual site allocations and Neighbourhood Plans are set out in the response to Matter 3.3 [MSDC-02c(ii)].

1.3 Duty to Cooperate (DTC)

*(i) Is the DTC, which covers some strategic matters, therefore **applicable to this Plan**, as a 'Part 2' Plan, and if so, has the Council adequately discharged the DTC in preparing the Plan?*

MSDC Response

- 3.1. Local Authorities have a duty to cooperate with each other and prescribed bodies on strategic matters that cross administrative boundaries [NPPF, paragraph 24]. The strategic matters for the District Plan were identified and addressed during the plan

making process, as set out in the Statements of Common ground prepared to support the District Plan.

- 3.2. Some strategic matters such as meeting the housing and employment needs of neighbouring authorities are outside the scope of the Sites DPD and therefore the duty does not apply in this context. However, the Council has sought to engage with its Neighbouring Authorities during the preparation of the sites DPD to ensure ongoing dialogue and to demonstrate that the District Plan Strategy is being delivered through the sites DPD.
- 3.3. There are cross boundary matters that have arisen during the preparation of the plan, particularly where sites are in close proximity to administrative boundary and potential for cross boundary impacts. This relates to sites SA19 and SA20 which are close to the administrative boundary of Tandridge District Council and Surrey County Council, and SA12 and SA13 which are close to administrative boundaries of Lewes District Council, East Sussex Council and South Down National Park. In these instances, the duty to cooperate on strategic matters, in relation to transport/highway infrastructure has been required.
- 3.4. SA35 is a strategic policy which has cross boundary implications with Tandridge District Council and Surrey County Council, therefore the duty is relevant to this policy.
- 3.5. In addition, all the allocations also have potential to impact on infrastructure provision, which requires engagement with statutory service providers.
- 3.6. The Councils approach to DTC is set out in Duty to Co-operate Statement [DC1]. Statements of Common Ground have been prepared between the Council and all neighbouring authorities and relevant statutory bodies. MSDC is therefore satisfied that it has adequately discharged the DTC in preparing this Plan. There are no other outstanding DTC matters in relation to this Plan.

(ii) In particular, does the Plan satisfy the DTC in relation to planning for the longer-term growth of neighbouring areas?

MSDC Response

- 3.7. It is clear from the content of the Plan, and as explained in the response to Q1.2(i) and (ii) above, that the sites DPD is a 'daughter' document of the District Plan. It will be for the District Plan Review to plan for the longer-term growth of neighbouring areas as that does not fall within the remit of the Sites DPD.
- 3.8. This approach is established in District Plan policy DP5: Planning to Meet Future Housing Need which states:

"The Council will continue to work under the 'Duty to Cooperate' with all other neighbouring local authorities on an ongoing basis to address the objectively assessed

need for housing across the Housing Market Areas, prioritising the northern West Sussex HMA as this is established as the primary HMA.

The Council will work jointly and proactively with the Gatwick Diamond and the West Sussex and Greater Brighton Strategic Planning Board to address unmet housing need in the sub region.

The Council's approach will ensure that sites are considered and planned for in a timely manner and will be tested through a robust plan-making process, as part of a review of the Plan starting in 2021, with submission to the Secretary of State in 2023.”

- 3.9. The December 2020 LDS [P1] provides a timeline for the preparation of the District Plan Review. Work has commenced and consultation on a Regulation 18 Plan anticipated later in 2021.
- 3.10. Statements of Common ground have been signed with all neighbouring local authorities and none have suggested that the Sites DPD should be seeking to address any unmet need beyond that identified in policy DP4: Housing.