

# 1. Mid Sussex Regulation 19 Local Plan Habitats Regulations Assessment: Non-Technical Summary

## Introduction

- 1.1 AECOM was appointed by Mid Sussex District Council (the Council) to produce a Habitats Regulations Assessment (HRA) of their District Plan. A Habitats Regulations Assessment examines the effects of the District Plan on internationally important wildlife sites. The requirement for HRA is set by the Conservation of Habitats and Species Regulations 2017 (as amended). HRA has two principal stages which are documented in the full report produced to accompany the District Plan: an initial high-level stage (called the Likely Significant Effect Test) that examines all policies and allocations and determines whether there is any conceivable mechanism for a negative effect on internationally important wildlife sites, and a subsequent more detailed analysis, if relevant, called an Appropriate Assessment. There is no standard content for an Appropriate Assessment, it is literally whatever further assessment is appropriate to draw a conclusion regarding adverse effects on the integrity of any internationally important wildlife sites. As part of the HRA process it is essential to consider the potential for effects not only from the District Plan in isolation, but also 'in combination' with other plans and projects (such as Local Plans of surrounding local authorities).
- 1.2 During the Likely Significant Effect (LSE) Test it was determined that the only internationally important wildlife site for which Likely Significant Effects (i.e., the potential for a significant effect) could not be dismissed, and which therefore required further analysis, was Ashdown Forest Special Area of Conservation and Special Protection Area. Ashdown Forest is designated as a Special Area of Conservation for its heathland and its population of great crested newt. It is designated as a Special Protection Area for its population of two bird species: nightjar and Dartford warbler. Impacts arising from growth in Mid Sussex that required further investigation through Appropriate Assessment concerned two impact pathways: atmospheric pollution from vehicle exhaust emissions associated with traffic traversing the forest, and recreational pressure. Each impact pathway and the conclusions of the Appropriate Assessment are summarised in turn below. The assessment below will need to be repeated for the Regulation 19 HRA.

## Appropriate Assessment (AA)

### Water Neutrality

- 1.3 Natural England raised concerns over the impact of Southern Water abstraction in the Pulborough area of Horsham District on the integrity of Arun Valley SAC, with specific regard to lowering water levels to a damaging degree. Net new housing that is supplied by abstraction in the Sussex North Water Resource Zone (WRZ) of Southern Water could therefore result in combination in an adverse effect on integrity of the SAC without mitigation. No actual allocations are made in the Sussex North Water Resource Zone in the Mid Sussex District Plan; however, a small part of Mid Sussex lies within the WRZ. Therefore, windfall development could still occur in the Sussex North WRZ.
- 1.4 In order to ensure that water supplies can be maintained and the environment protected, the affected local authorities within Southern Water's Sussex North Water Resource Zone (Horsham District, Crawley Borough, Chichester District, Mid Sussex District, South Downs National Park, and West Sussex County) have worked with consultants, Natural England, Southern Water, the Environment Agency and others to produce a Water Neutrality Strategy. Part C of the study develops a Strategy to achieve water neutrality. The purpose of the Strategy is to demonstrate that the Local Plan growth of the commissioning LPAs

(Horsham District, Crawley Borough, Chichester District, Mid Sussex District, South Downs National Park, and West Sussex County) can be delivered in compliance with the Habitat Regulations (i.e., that the Local Plans will be water neutral).

- 1.5 All new development will need to be highly water efficient. This can be achieved by designing in water efficiency measures such as low flush toilets, rainwater harvesting and greywater recycling in new development. This will be achieved by Policy DPS5: Water Neutrality.
- 1.6 However, all new development will still require some additional water. This additional water demand will need to be offset by reducing the demand for water in existing development within the Sussex North Water Resource Zone. This might include fixing leaks or retrofitting existing buildings with more water efficient technology. The affected authorities are looking to introduce an offsetting scheme which planned development could utilise to achieve water neutrality based on the principles outlined in the 'Part C' Study.
- 1.7 It is considered that the water efficiency measures outlined above would make it more feasible for Southern Water to reduce reliance on the Pulborough groundwater abstraction during periods of high demand and/or low flow, this would protect the SAC and Ramsar site.

## Atmospheric Pollution

- 1.8 Traffic and air quality modelling was undertaken for five different model scenarios, comprising the Baseline (current emission rates based on traffic count data and other sources of atmospheric pollution), Future Baseline (current vehicle emissions extrapolated to the end of the Plan period, accounting for improvements to vehicle emission factors), Do Minimum (future emission rates accounting for growth in adjoining authorities, but excluding the Mid Sussex District Plan) and a Do Something scenario (future emission rates accounting for growth in adjoining authorities and the growth scenario proposed for Mid Sussex District). Air quality modelling was undertaken for 13 transects up to 200m from the roadside, in increments of 10m perpendicular to relevant roads.
- 1.9 In summary, the modelling analysed four key pollutants shown to affect ecosystems, namely ammonia (NH<sub>3</sub>), oxides of nitrogen (NO<sub>x</sub>) and total nitrogen and acid deposition. NO<sub>x</sub> and nitrogen deposition within 200m of the roadside in 2039 is forecast to be significantly better than the 2019 baseline notwithstanding the precautionary assumptions made about both growth and improvements in vehicle emissions factors. NO<sub>x</sub> concentrations within 200m of all roads are expected to be below the critical level by 2039 except immediately adjacent to the A26 where there is no heathland in any event.
- 1.10 Along many modelled transects, nitrogen and acid deposition rates and ammonia concentrations will remain elevated above the critical load and critical level, but are forecast to be lower, or no higher, with the Mid Sussex District Plan in place than they will be without the District Plan, most likely due to changes in employment and housing within the district changing journey to work patterns through the SAC, to such routes simply not being significant journey to work routes for residents of Mid Sussex in the first place (since the main employment centres for Mid Sussex are away from Ashdown Forest) or because of the pattern of future development in the district being away from Ashdown Forest. At these locations the Mid Sussex District Plan will therefore not contribute to an increase in pollution.
- 1.11 There are seven transects (T5, T6, T9, T10, T11, T12, T14) where growth in the Mid Sussex District Plan will make a contribution to nitrogen deposition and ammonia concentrations. However, with the exception of transect T10 the contribution of the District Plan is not visible in the model (i.e. is forecast as 0.00) more than 10m from the roadside.
- 1.12 This distance information is relevant because no SAC habitat is present within 10m of modelled road links. These areas have low sensitivity to nitrogen deposition and contain lower value habitats due to the general presence of the road and its associated salt spray, dust, runoff, and altered drainage or soils. In addition, the belts of dense gorse and trees close to the road may be preserved in the long-term to protect SPA birds using the heathland more broadly from exposure to the disturbing (visual and noise) effects of the road and to reduce the risk of livestock straying into the carriageway; moreover, localised dense gorse can be of direct value for one of the SPA birds (Dartford warbler) as nesting and foraging habitat, as cited in the Supplementary Advice on the Conservation Objectives for the SAC. Even at roadside locations the

nitrogen due to traffic growth would not prevent heathland restoration if Natural England ever did decide to undertake it, particularly within the context of the forecast net reduction in total nitrogen deposition.

- 1.13 For transect T10 (Hindleap Lane west of Wych Cross) the contribution of Mid Sussex District Plan shows in the model up to 40m from the roadside. According to survey and aerial photography data the heathland on this section of road is c. 20m from the roadside at its closest. Within the zone 20-40m from the roadside (amounting to 1.2ha of heathland) the contribution of the District Plan is 0.01 kgN/ha/yr (0.2% of the lowest part of the critical load range). Total ammonia concentrations in the same area are forecast to be 0.71 to 0.78  $\mu\text{g}\text{m}^{-3}$ , even allowing for all traffic growth in combination. No adverse effect from ammonia is therefore forecast as the critical level of 1  $\mu\text{g}\text{m}^{-3}$  to 3  $\mu\text{g}\text{m}^{-3}$  will not be exceeded.
- 1.14 In European Court of Justice Case C-258/11 Advocate-General Sharpston stated at paragraph 48 of her Opinion that: *'the requirement for an effect to be 'significant' exists in order to lay down a de minimis threshold. Plans and projects that have no appreciable effect on the site can therefore be excluded. If all plans and projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill'*. It is also relevant that Mr Justice Jay, when ruling in *Wealden v SSCLG* [2017] EWHC 351 (Admin) (2017), did accept that if the contribution of an individual plan or project to traffic related air quality effects on Ashdown Forest SAC was 'very small indeed' it could be legitimately and legally excluded from 'in combination assessment'. This is consistent with Advocate-General Sharpston's position. The forecast contribution of Mid Sussex District Plan can be considered very small indeed, being barely above zero.
- 1.15 Moreover, the 'in combination' dose from all forecast traffic growth on the network from 2019 to 2039 is forecast to be 0.06 kgN/ha/yr to 0.1 kgN/ha/yr (1.2% to 2% of the critical load) over the same area. Without traffic growth nitrogen deposition at this location is forecast to have fallen to 13.89 kgN/ha/yr by 2039. An improvement of 2.49 kgN/ha/yr, or 0.12 kgN/ha/yr every year on average. With all forecast growth the nitrogen deposition rate in 2039 is forecast to be 13.99 kgN/ha/yr. The forecast worst case in combination nitrogen deposition will therefore show the rate of forecast improvement by one year (0.1 kgN/ha/yr). This will have a negligible impact on restoration of air quality at this part of Ashdown Forest SAC.
- 1.16 Furthermore, Natural England have confirmed in discussions over the Wealden, Tunbridge Wells and South Downs Local Plans that nitrogen deposition from traffic is not preventing the SAC from achieving its conservation objectives, but rather the principal issue is lack of management, which is ultimately a land stewardship issue for the site owners and managers rather than something associated with Local Plans. For example, a review of the Natural England condition assessment on a unit by unit basis clearly indicates that historic (and in many cases current) inadequate management is the reason why only 20% of Ashdown Forest SAC is currently in a favourable condition. That is not to say that there is no objective to address nitrogen deposition at the SAC. The Shared Nitrogen Action Plan (SNAP) is the primary mechanism by which Natural England aim to reduce nitrogen deposition to the SAC. It is targeted at agriculture rather than traffic because almost three times more nitrogen deposited at the SAC stems from agriculture (fertiliser and livestock) than traffic and agricultural emissions affect a much greater area of the SAC, whereas the effect of the roads is localised. The forecast 'in combination' nitrogen doses due to traffic growth will have a negligible effect on Natural England's ability to restore good quality heathland through improved management and the implementation of the SNAP.
- 1.17 For all these reasons it is considered that the ability of the SAC and SPA to achieve its conservation objectives would not be significantly compromised by the Mid Sussex District Plan growth either alone or in combination with other plans or projects.

## Recreational Pressure

- 1.18 For the AA, the visitor surveys undertaken in the Ashdown Forest SPA / SAC in 2008, 2016 and 2021 were reviewed and recreation patterns assessed. The data from the 2008 and 2016 surveys indicate that Mid Sussex residents, particularly those from East Grinstead, along with residents from other local authority areas are frequent visitors to the site. Based on the initial survey results and subsequent data analysis, a 7km zone of influence surrounding the SPA / SAC was established, in which mitigation requirements in

the form of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) apply to residential developments.

- 1.19 The District Plan allocates a net increase of up to 444 dwellings within or just beyond 7km of the Ashdown Forest SPA / SAC. According to average housing occupancy figures (2.4 residents per dwelling) and Natural England SANG standards (8ha per 1,000 population increase), delivery of the 444 dwellings would require 9ha of functional SANG to be provided. The Council already has a SANG inventory in place, which provides bespoke and strategic mitigation for recreational pressure. This is comprised of operational SANG (e.g. East Court & Ashplats Wood and Hill Place Farm) and SANGs that are to be delivered as part of emerging development proposals and allocations (e.g. Imberhorne Farm). Provided that these are delivered as planned, it is considered that sufficient residual capacity is available to accommodate the additional growth coming forward in the Mid Sussex District Plan. For example, the proposed strategic Imberhorne Farm SANG in East Grinstead is likely to provide around 40Ha of SANG. Overall, AECOM concludes that an adequate framework regarding SANG provision is in place, but work will need to be undertaken to ensure that functional SANG is available prior to dwellings becoming occupied (see Conclusions and Recommendations).
- 1.20 Work on the SAMM strategy for the Ashdown Forest SPA / SAC has been ongoing between the local authorities of Wealden, Mid Sussex, Lewes, Tunbridge Wells, Tandridge and Sevenoaks in partnership with the Conservators of Ashdown Forest and Natural England since 2012. Key SAMM projects that are being undertaken in the site include a Code of Conduct that is focused on dog walkers, provision of adequate signage and interpretation boards, deployment of volunteer dog rangers and an Access Management Lead Officer, and protected bird surveys. The working group has published a SAMM tariff guidance document that currently sets out a per-dwelling tariff of £1,170 (subject to annual review), to be paid into an inter-authority monetary pot that funds the SAMM initiatives. All residential dwellings within the 7km mitigation zone are subject to this tariff, such that the integrity of the SPA / SAC is protected.

## Conclusions and Recommendations

### Water neutrality

- 1.21 All new development will need to be highly water efficient. This can be achieved by designing in water efficiency measures such as low flush toilets, rainwater harvesting and greywater recycling in new development. This will be achieved by Policy DPS5: Water Neutrality. Coupled with the water efficiency measures in the Part C Water Neutrality Study no adverse effect on the integrity of Arun Valley SAC will arise alone or in combination with other projects or plans.

### Atmospheric Pollution

- 1.22 Air quality modelling data at key road links highlight that there will be no adverse effect on the integrity of the Ashdown Forest SPA / SAC, both alone and in-combination. The contribution of the Mid Sussex District Plan to nitrogen deposition and ammonia concentrations is mathematically imperceptible at the closest areas of heathland and in many cases only marginally above zero. In-combination atmospheric pollution impacts are typically below 1% of the Critical Load or, where this is exceeded, would not prevent nitrogen deposition from significantly improving in the period to 2039 and would not prevent heathland restoration at the SAC through improved management (since the main issue with heathland quality and establishment at this SAC is long-term under-management) or interfere with broader initiatives to reduce nitrogen deposition rates across the SAC through the Shared Nitrogen Action Plan.

### Recreational Pressure

- 1.23 Mid Sussex District Council is a member of the Ashdown Forest SAMM Partnership and acknowledges the 7km mitigation zone surrounding the Ashdown Forest SPA / SAC, which requires the delivery of SANG and SAMM measures. There is a policy in the District Plan that supports the strategic solution for recreational pressure on Ashdown Forest. An adequate SANG approach has already been adopted by the Council and the existing / future SANGs are projected to have sufficient capacity to accommodate the new residential



growth proposed to be allocated in the Mid Sussex District Plan. The Council would have to ensure that sufficient SANG capacity is or will be available prior to giving planning consent and for any proposed residential allocations that lie within the 7km zone of influence. Contributions to SAMM are governed by the published SAMM guidance document and will be collected accordingly. Provided that the process of SANG identification and delivery is progressed in agreement with Natural England and contributions towards the SAMM Strategy are collected, any potential adverse effects of the Mid Sussex Local Plan on the Ashdown Forest SPA / SAC regarding recreational pressure can be excluded.