

## Shoreham Harbour Joint Area Action Plan Examination

### Matters Statement 1B: Other Legal and Procedural Requirements

#### ***Issue: Whether the Plan meets all other relevant legislative requirements?***

3. Has the Plan consultation complied with the Statement of Community Involvement and public consultation requirements in the LP Regs?

#### ***Councils' Response:***

- 3.1 Yes. In fulfilment of Regulation 22(1)(c) of the LP Regs, the Councils have submitted a Consultation Statement (CSD05/01). The statement describes how the Councils have undertaken community participation and stakeholder involvement in the production of the Plan, setting out how such efforts have shaped the Plan and the main issues raised by consultation and representations.
- 3.2 As set out in Section 3 of the Consultation Statement, consultation has been carried out in accordance with the SCI of each Council (LPD01/06 (ADC), LPD02/11 (BHCC), LPD03/05 (WSCC)).
- 3.3 The Consultation Statement includes a response to each of the issues raised in representations made under Regulation 20 of the LP Regs. For clarity, an Addendum to this statement (CSD05/01B) has been prepared to provide further detail on earlier stages of consultation.

4. Has the Plan been prepared in accordance with the published Local Development Scheme?

#### ***Councils' response:***

- 4.1 Yes. The LDS of both ADC and BHCC, and the MWDS of WSCC were submitted alongside the Plan (LPD01/04, LPD02/09, LPD03/04). The JAAP is included within all three documents.

- 4.2 The Adur LDS 2018-20 was in the process of being approved by Committee at the point of submission. The Councils therefore also submitted an Addendum Note (LPD01/05) which set out the revised timetable for submission and examination of the JAAP.
- 4.3 The Brighton & Hove LDS was last updated in September 2017. As above, the Councils submitted an Addendum Note (LPD02/10) which set out the revised timetable for submission and examination of the JAAP.
- 4.4 The West Sussex MWDS was updated shortly before submission of the plan and reflects the current timetable for plan preparation.

5. Has engagement taken place in relation to any Neighbourhood Plans in preparation within the Plan area, to avoid duplication of non-strategic policies?

***Councils' response:***

Adur:

- 5.1 Yes. Within the designated Shoreham Harbour Regeneration Area, (Adur section) there is just one emerging neighbourhood plan. The Shoreham Beach Neighbourhood Forum and plan area were designated in November 2014. This matches the boundary of Marine Ward (see LPD01/08).
- 5.2 In terms of progressing the Neighbourhood Plan, the Forum is at a very early stage. At this point in time, although the group has conducted many small-scale public consultations, they have not yet commenced the statutory Regulation 14 exercise, and are therefore effectively in the early stages of plan development.
- 5.3 The small area which falls within both the Shoreham Harbour Regeneration Area and Shoreham Beach Neighbourhood Plan includes Shoreham Fort, vegetated shingle, and a small sandy beach to the north of the Shoreham Beach peninsula, at the western end. This area is addressed by Policy CA6: Harbour Mouth in the Plan.
- 5.4 ADC officers and other partners have been, and are continuing to work with the group to advise and assist the progression of the Neighbourhood Plan. No conflicts with any non-strategic policies of the JAAP have been identified at this stage. Future work and statutory consultation will provide opportunities to explore any potential issues at an early stage, and also to ensure that other relevant bodies (including Historic England, the Marine Management Organisation, Shoreham Port Authority and Natural England) are consulted.

Brighton & Hove:

- 5.5 There are no existing or emerging neighbourhood plans within the designated Shoreham Harbour Regeneration Area, (Brighton & Hove section).

6. Does the wording of paragraph 1.1.3 of the Plan (indicating that planning applications within the regeneration area must comply with the strategy and policies of the Plan and the relevant local plans) appropriately reflect section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990?

**Councils' Response:**

- 6.1 Yes. Section 38(6) of the Planning and Compulsory Purchase Act 2004, and section 70(2) of the Town and Country Planning Act 1990, require that applications for planning permission are determined in accordance with the development plan, unless material considerations indicate otherwise.
- 6.2 Section 17(7) of the Planning and Compulsory Purchase Act makes provision for regulations to prescribe which documents are development plan documents. Regulation 6 of the LP Regs defines development plan documents as local plans. The Plan accords with the description of a local plan as prescribed by regulation 5(1)(a)(i), (ii) and (iv), and 5(2)(a) and (b) of the LP Regs.
- 6.3 The Councils consider that paragraph 1.1.3 does reflect the Acts referred to above. Once the Plan is adopted, it will be part of the development plan alongside the ALP/B&HCP(1), as appropriate. Therefore, as stated in paragraph 1.1.3 of the Plan, planning applications must comply with both the Plan, and the relevant local plan.
- 6.4 Policy 1: Sustainable Development of the ALP and Policy SS1: Presumption in Favour of Sustainable Development in the B&HCP(1) both state that:

*"Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise."*

Similar policy is included in paragraphs 2 and 47 of the NPPF (2018).

- 6.5 Paragraph 1.1.3 of the Plan does not explicitly refer to material considerations. Paragraph 12-009 of the PPG and paragraph 16 of the NPPF state that undue repetition should be avoided and that there is no need to repeat policies set out in the NPPF. The requirement to conform with the development plan unless material considerations suggest otherwise is part of planning law, national policy, and both local plans. Therefore, the Councils do not consider it necessary to repeat this in the Plan. However, if considered necessary for the soundness of the Plan, the following modification could be made to paragraph 1.1.3:

The plan builds on and complements the Adur Local Plan (2017) and the Brighton & Hove City Plan Part One (2016). Planning applications within the regeneration area must comply with the strategy and policies in the JAAP, as well as the relevant local plans, **unless material considerations indicate otherwise.**

7. Does the scale, location and range of development proposed accord with the parameters identified within the ALP and the B&HCP(1)? Are the boundaries of the Plan area appropriate and consistent with the area identified in the ALP and the B&HCP(1)?

***Councils' Response:***

- 7.1 Yes. The scale, location and range of development proposed in the Plan accords with the parameters identified in the ALP and the B&HCP(1). As set out in section 1.11 of the Plan, Policy 8 of the ALP and the Policy DA8 of the B&HCP(1) identify the Shoreham Harbour Regeneration Area as a broad location for future strategic development. The local plan policies set out the minimum quantum of residential development and employment-generating floorspace to be delivered. These match the quantum of development proposed in Policies SH3: Economy and employment, and SH4: Housing and community, as well as the individual character area policies.
- 7.2 The ALP and the B&HCP(1) identify the 7 character areas within the regeneration area, and identify a series of priorities for each area. These form the basis for the area priorities included at the start of each section within chapter 4 of the Plan.
- 7.3 Yes. The boundary of the Plan area is consistent with the Shoreham Harbour Regeneration Area, as identified in the ALP and the B&HCP(1) and in the adopted policies maps of both Adur and Brighton & Hove, and the versions of the policies maps submitted alongside this plan (CSD02/01, CSD02/02, CSD03/01 and CSD03/02). Much of the regeneration area is bounded by either the River Adur, or English Channel to the south, and the West Coastway railway line to the north. This includes the area covered by the Shoreham Port Masterplan (Docs: LPD04/07 and LPD04/08), as well as the industrial estates and social housing estates immediately to the north of the port.

8. Whilst the Plan period to 2032 would be consistent with that of the ALP, it would exceed that of the B&HCP(1) by two years? Would this have any implications for legal compliance?

**Councils' Response:**

- 8.1 No. Planning policies in the Brighton & Hove City Plan Part 1 (B&HCP(1)) would expire in 2030. It is expected that a review of the B&HCP(1) will commence in 2021 with new policies formulated with a longer time horizon. In these circumstances during the period 2030-32, the newer policies in a revised B&HCP(1) would be more up-to-date and therefore afforded more weight than the JAAP policies in the determination of planning applications within the administrative area of Brighton & Hove. This would not cause a legal compliance implication.

9. Are the policies of the Plan consistent with the West Sussex Minerals Plan 2003, the Waste and Minerals Plan 2013 (in relation to the area in Brighton & Hove) and the East Sussex, South Downs and Brighton & Hove Waste and Minerals Site Plan 2017? Are the Plan policies consistent with the emerging West Sussex Joint Minerals Local Plan? If any inconsistency or conflict exists, how has this been identified and addressed within the Plan?

**Councils' Response:**

- 9.1 Yes. The policies of the Plan are consistent with the waste and minerals plans. There are no inconsistencies or conflicts between these plans and the JAAP. Issues related to minerals and waste developments are not within the remit of the Plan, so there is no overlap of the scope of the Plan with the various adopted minerals and waste plans.
- 9.2 Wharves at Shoreham Port are vital to the supply of aggregate to support new development in the sub-region (as noted in the Plan in paragraph 1.4.3), and a number of waste management facilities are also located within the port area. It is therefore important that the policy objectives for these facilities, as set out in the waste and minerals plans, are not in conflict with policies in the Plan. The Plan supports the objectives of the waste and minerals plans and it is considered there is no policy conflict.

- 9.3 Further, in recognition of the key role that the provision and safeguarding of minerals wharfage have if the Plan aims are to be achieved, the regeneration project partners, together with SDNPA, and ESCC have signed a Statement of Common Ground (SoCG) (document reference CSD06/04). The purpose of the SOCG is to underpin effective cooperation and collaboration between the signatories in addressing strategic cross-boundary issues as they relate to planning for minerals infrastructure and safeguarding in Shoreham Harbour.
- 9.4 The West Sussex Joint Minerals Local Plan (JMLP) was formally adopted by West Sussex County Council and the South Downs National Park Authority on 20 July 2018. The Councils propose that minor factual modifications are made to the Plan to ensure it is up-to-date.

### **Sustainability Appraisal (SA)**

10. Does the SA comply with the provisions of the Environmental Assessment of Plans and Programmes Regulations 2004 (EA Regs) in identifying, describing and evaluating the likely significant effects on the environment of implementing the Plan, together with economic and social factors?

#### ***Councils' Response:***

- 10.1 Yes. The SA complies with the provisions of the EA Regs. An SA Framework, consisting of 22 objectives covering a broad range of environmental, economic and social issues was developed to assess the JAAP. This was published in Table 7.1 (p. 56) in the SA Scoping Report (Update) December 2012 (ECD03/01). The SA (Nov 17) (CSD04/01) of the Proposed Submission JAAP carried out individual appraisals of each of the policies in the Plan against the SA Framework, provided in Appendix D of the SA report. The appraisals identify whether the policies are likely to achieve or conflict against the various SA objectives and provide a narrative of what the policy is likely to achieve. Where impacts are considered to be significant, this is described within the narrative. Sections 14 to 32 of the report evaluates the impacts of the Character Area policies, the impacts of the Area-wide policies, and the impacts of the JAAP policies together against each of the SA objectives, and provides a summary of the effects, including whether impacts are considered to be significant. Section 34 of the SA Report also provides a summary of potential positive and adverse effects.

10.2 Following publication, the Proposed Modifications were put forward and further SA (May 18) (CSD04/03) was undertaken to assess the likely impacts of the Proposed Modifications. Section 4 includes individual policy assessments for SH1 Climate change, energy and sustainable building, and CA6 Harbour Mouth and the assessments for these policies supersede those in the SA (Nov 17) (CSD04/01). Section 5 also reconsiders the effects of the JAAP on SA Objectives 1: Energy Efficiency, and 4: Conserve Biodiversity”, scores for which had changed since the previous SA. Section 6.2 also provides a summary of potential positive and adverse effects.

11. Is it clear how the SA influenced the final plan and how the Plan addresses the requirement for any mitigation measures? Has the inter-relationship of effects, including cumulative impacts, been addressed? Have the requirements for Strategic Environmental Assessment been met, including in respect of cumulative impacts?

### ***Councils' Response:***

#### How the SA has influenced the Plan:

11.1 Yes. It is clear how the SA has influenced the final Plan. Sections 9 and 10 of the SA of the Plan (Nov 2017) (CSD04/01) provide an overview of plan-making and SA work undertaken up to the point of Publication. This included consideration of strategic options for development which was carried out between 2008 and 2011. For clarity, Appendix B to this Matters Statement has been prepared to support this and provides further details on options or policies considered during plan preparation that are of relevance to the JAAP.

11.2 From 2014 onwards, the SA work has involved refinement of policies and has made various recommendations for policy changes throughout these stages of appraisal. These recommendations were incorporated into the policy where considered relevant:

- SA 2014 (ECD02/02) of Draft JAAP included recommendations for policy changes within the narrative of the appraisals within Appendix 8.
- SA 2016 (ECD01/02) of Revised Draft JAAP included recommendations for policy changes within the appraisals within Appendix C and a summary of recommendations under section 33.1.2 (page 68).
- SA 2017 (CSD04/01) of Publication JAAP included recommendations for policy changes within the appraisals within Appendix D and a summary of recommendations under section 34.1.2 (page 69)

### How the Plan addresses mitigation:

11.3 Yes. The inter-relationship of effects, including cumulative impacts, has been addressed. Where mixed or adverse effects were identified through the policy appraisals, the SA considered whether any of the other policies in the Plan could help to provide mitigation. This is documented within the narrative of the individual policy appraisals (e.g. see Appendix D of CSD04/01). Mitigation is also summarised within the SA Non-Technical Summary (e.g. see Section 7.4 to 7.4.8 of CSD04/02). The SA (CSD04/01) concluded that mitigation of possible effects should be provided through implementation of the JAAP policies.

### Inter-relationship of effects and cumulative effects:

11.4 Yes. The requirements for Strategic Environmental Assessment have been met. The SA process considered the cumulative effects and inter-relationships between effects of the Plan for each SA objective throughout the appraisals and is documented as follows:

- SA 2016 (ECD01/02) – sections 14 to 32;
- SA 2017 (CSD04/01) – sections 14 to 32; and section 33 and subsequent table.
- The SA 2018 (CSD04/03) also considered the cumulative effects and inter-relationship between effects – see sections 6.1 and 6.2.

12. Has an adequate site assessment process been undertaken? Is there adequate coverage of all reasonable alternatives and have they been similarly evaluated to the preferred option? Have outline reasons been given in the SA for selecting the alternatives dealt with and a description given of how the assessment was undertaken? Have reasons been given for rejecting alternatives?

### ***Councils' Response:***

#### Site assessment process

12.1 The Plan includes four allocations for new development; each comprised of several individual sites:

- Aldrington Basin (within Character Area 2)
- South Portslade (within Character Area 3)
- Southwick Waterfront (within Character Area 5)
- Western Harbour Arm Waterfront (within Character Area 7)



12.2 Site selection has been an iterative process. For further details please see Matters Statement 3 (for employment sites) and Matters Statement 4 (for housing sites). The proposed allocations have been identified through the following documents:

- Shoreham Port Masterplan (2010) (LPD04/08) and Review (2017) (LPD04/07)
- Shoreham Harbour Capacity and Viability Study (2011) (CD10/02)
- Shoreham Harbour Development Briefs (LPD04/03, LPD04/04)

12.3 Housing and mixed-use sites within the four allocations are identified through the SHLAA process carried out by both ADC and BHCC, which is updated on annually.

12.4 The recent stages of SA (CSD04/01, ECD01/02 and ECD02/02) have all included an assessment of the Character Area policies, which includes consideration of any site-specific constraints where relevant to the allocations and Character Areas.

#### Assessment of reasonable alternatives

12.5 Alternative strategies to growth within the Shoreham Harbour Regeneration Area were considered at earlier stages of plan preparation. The stages where options were considered and evaluated through the plan-making process are described in Section 10 of Submission SA (CSD04/01) and include:

- 2008: consideration of 5 strategic options for growth.
- 2009: consideration of options for various topics including transport, economy, housing, open space, port development, retail, community facilities and waste & energy.
- 2012: consideration of options for Western Harbour Arm, South Portslade and Aldrington Basin development briefs

12.6 Running concurrent to these stages, the preparation of the Adur Core Strategy/Local Plan and Brighton & Hove Core Strategy/City Plan also considered options of relevance to the Shoreham Harbour area:

#### Adur:

- 2005: Adur Core Strategy Issues & Options included options for the amount of homes to be delivered at Shoreham Harbour and options for the Shoreham Harbour policy including 1) Secure major infrastructure to enable regeneration; or 2) pursue limited regeneration.

- 2009: Adur Local Plan Issues & Options included 1) Do nothing; 2) 10,000 new homes and 7,750 new jobs with a new link road; 3) 10,000 new homes and 7,750 new jobs without a new link road; 4) 7,750 new homes and 6,000 new jobs with a new link road; 5) 10,000 new homes and 6,000 new jobs without a new link road.
- 2011: considered 4 options for quanta of housing delivery and 2 options for quantum of employment delivery.

#### Brighton & Hove:

- 2008: Core Strategy Revised Preferred Options included: 1) ad-hoc market led approach; 2) major regeneration at Shoreham Harbour through implementation of an AAP.
- 2009: Core Strategy Proposed Amendments Paper included 5 options: 1) employment led regeneration with number of housing and jobs to be agreed; 2) delivery of 5,500 dwellings; 3) delivery of 8,000-8,700 dwellings; 4) 10,000 dwellings; 5) No development, reliance on windfall.
- 2010: Submission Core Strategy included 3 options: 1) large scale regeneration with land-reclamation from the sea; 2) large scale regeneration without land reclamation; 3) small scale regeneration without land reclamation.
- 2011: Policy Options Papers included options for housing delivery and employment, both of which referred to development at Shoreham Harbour

12.7 Further details on all of the above stages can be found in Appendix B to this Matters Statement.

#### Reasons for selecting and rejecting alternatives

12.8 Section 10 of SA (CSD04/01) provides an overview of plan-making and SA work undertaken between 2008 and 2017 which outlines reasons for selecting and rejecting alternative approaches to growth and to development within the Character Areas. Appendix B has been produced to supplement this information and provide greater detail on all the stages of plan preparation including the selection and rejection of alternatives and includes those undertaken as part of the Adur Local Plan and Brighton & Hove City Plan, which are of relevance to the JAAP.

#### Description of how the assessment was undertaken

12.9 The assessment methodology is described within Section 12 of the Submission SA (2017) (CSD04/01), as well as within the Non-Technical Summary (Section 6) (CSD04/02). The Methodology was also described in previous versions of the SA including Section 12 of the Revised Draft JAAP (2016) (ECD01/02) and Section 2 of SA of the Draft JAAP (2014) (ECD02/02).

## **Equality and Health Impacts**

13. The Equality and Health Appraisal (CSD04-05) considers the effect of the Plan on those with relevant protected characteristics, as set out in s149 of the Equality Act 2010. In what way does the Plan seek to ensure that due regard is had to the three aims of the Equality Act in relation to those who have a relevant protected characteristic?

### ***Councils' response:***

- 13.1 The Equality and Health Appraisal (CSD04/05) was carried out in order to address the public sector equality duty as set out in Section 149(1) of the Equality Act 2010. This sets out the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not share it.
- 13.2 The appraisal finds that the JAAP is expected to have generally positive or neutral impacts on persons with a protected characteristic. The JAAP aims to create mixed, healthy communities and help to eliminate discrimination and inequality. This can help to foster good community relations.
- 13.3 Improvements to the public realm and open space will allow for increased 'natural surveillance' in these spaces. This can help to reduce perceived and actual crime and anti-social behaviour, including discrimination and harassment of individuals and groups with a protected characteristic. The Equality and Health Appraisal finds that this is a potential positive impact in relation to the following protected characteristics: age, gender reassignment, race, religion and belief, gender, sexual orientation.
- 13.4 Improvements to transport links and pedestrian facilities will provide the opportunity of increased accessibility and amenity. The Equality and Health Appraisal finds that this is a potential positive impact in relation to young and older people who may have lower levels of private car ownership.

## **Habitats**

14. Have the requirements for appropriate assessment under the Habitats Regulations been met, having regard to relevant national policy and guidance?

## **Councils' Response:**

14.1 ADC and BHCC each carried out HRA screening during the preparation of the ALP and B&HCP(1), as required under Regulation 61 of The Conservation of Habitats and Species Regulations 2010. These reports are submitted as additional examination documents:

- Habitat Regulations Assessment of the Draft Adur Local Plan (2012) (SED07/06)
- Addendum to the Habitat Regulations of the Draft Adur Local Plan (2014) (SED07/08)
- Brighton & Hove Draft City Plan Part One Appropriate Assessment (2012) (SED07/09)
- Brighton & Hove Submission City Plan Part One (2014) (SED07/10)

14.2 As the proposals and quantum of development proposed in the JAAP are consistent with both the ALP and B&HCP(1), the Councils' initially considered that the HRA screenings undertaken for these plans would suffice. The Councils consulted with Natural England to confirm that this approach was acceptable (see additional document SED07/11)

14.3 The Habitats Regulations Statement (2014) (ECD02/05) was published alongside the Draft JAAP in 2014. This outlined the Councils approach and summarised the findings of the HRA screening carried out for the ALP and the B&HCP(1).

14.4 An updated Habitats Regulations Statement (2016) (ECD01/05) was published alongside the Revised Draft JAAP in 2016. This report reflected the updates to the HRA carried out for the ALP and the B&HCP(1). Appendix 2 of the report contains correspondence from Natural England, again confirming that it is satisfied with the Councils' approach.

14.5 In light of the Wealden judgement (Wealden V SSCLG [2017] EWHC 351Admin), the Councils considered it appropriate to undertake further HRA screening (CSD04/06) to support the submission of the Plan. This assessed the potential environmental impacts of the policies in the Plan. It concluded that Shoreham Harbour is a significant distance from any European designated sites, and therefore no pathways of impact are likely to occur. The plan was therefore screened out of the requirement for a full Habitats Regulations Assessment.

14.6 The HRA Screening Reports refer to the previous iteration of the Conservation of Habitats and Species Regulations (2010). With regard to the appropriate assessment of plans and projects, the requirements on the Councils remain the same. These are now set out in Regulation 63 of Conservation of Habitats and Species Regulations (2017).

14.7 Further HRA work (submitted as additional document (SED07/12) carried out as part of the preparation of B&HCP(2) has confirmed the findings of earlier work. Therefore, the Councils consider that the requirements for appropriate assessment under the Conservation of Habitats and Species Regulations (2017) have been met.

15. Does the Habitats Regulations Assessment (HRA) process followed take account of the Wealden judgement (Wealden V SSCLG [2017] EWHC 351Admin) and potential "in combination" air quality impacts of traffic flows on relevant designated areas?

15.1 The latest HRA Screening Report for the JAAP (CSD04/06) was carried out after the High Court judgement. As set out in response to Question 14, this did not identify any pathways of impact on designated sites resulting from the proposals in the Plan.

15.2 Ashdown Forest is a designated Natura 2000/European site (with both SAC and SPA designations). It is located 19.5km from the Brighton & Hove City boundary by closest straight-line distance (and therefore well beyond 20km from the JAAP area boundary). Together with the other European sites within a 20km radius of the city, it was assessed and 'screened out' in the HRA report accompanying City Plan Part One which concluded that there was no risk of significant 'in combination' effects resulting from the City Plan strategic policies. However, in March 2017, the High Court upheld a legal challenge from Wealden District Council in respect of the Lewes District and South Downs National Park Authority Joint Core Strategy<sup>1</sup> concluding that the accompanying HRA was flawed because its assessment of air quality impact on the Ashdown Forest SAC had not been undertaken 'in combination' with the increase in vehicle flows likely to arise from the adopted Wealden Core Strategy.

15.3 Since the High Court judgment, Brighton & Hove Council has commissioned further HRA work to support its preparation of the City Plan Part Two (B&HCP(2)). B&HCP(2) will align with B&HCP(1) in terms of the overall quantum and distribution of development, but will allocate further specific sites for development (mostly non-strategic). This includes the proposed allocations in the Plan within the Brighton & Hove city area.

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<sup>1</sup> [Wealden District Council vs Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority, and Natural England. \[2017\] EWHC 351 \(Admin\)](#)

- 15.4 The updated HRA work has included a robust review and update of the HRA for B&HCP(1) in the context of updated evidence, particularly in relation to the Ashdown Forest SAC/SPA. The resulting HRA screening report (SED07/12) was published in June 2018 to support the public consultation on the draft B&HCP(2). This screened out all potential linking impact pathways between the B&HCP(2) and all European sites with the exception of potential air quality effects on Ashdown Forest SAC, where it concluded that more detailed evidence was needed to satisfy the requirement for 'appropriate assessment' in the HRA Regulations.
- 15.5 To address this, the Council's consultants have undertaken further assessment of the potential air quality impacts on the Ashdown Forest SAC likely to result from additional vehicle trips generated by the development proposed in the City Plan (in combination with local plans and projects elsewhere). The resulting report was published in August 2018 (SED07/13)
- 15.6 The assessment of likely air quality impacts was based on modelling traffic flows and vehicle emissions on Ashdown Forest up to the year 2033 (i.e. beyond the end date of both the City Plan and the JAAP). This analysis indicated that the projected development in Brighton & Hove to 2033 makes virtually no contribution to changes in concentrations of ammonia, nitrogen oxides (NOx), or nitrogen deposition at the closest areas of heathland to the modelled links. The report therefore concludes that the planned growth in the City Plan will not result in an adverse effect on the integrity of Ashdown Forest SAC either on its own or 'in combination' with other plans and projects.
- 15.7 As required by the Habitat Regulations, Natural England has been consulted on the results of the HRA screening and appropriate assessment and has stated in a letter dated 9 August 2018 (SED07/14) that it agrees the conclusions of the HRA that the proposed City Plan will not have significant adverse impacts on the designated European sites including Ashdown Forest SAC and SPA.
- 15.8 The HRA assessment of impacts on Ashdown Forest does not cover the JAAP area within Adur District. However, due to its greater distance from Ashdown Forest and the much smaller scale of development compared to the City Plan, it is considered that there is no potential for proposed development in the JAAP within Adur District to generate significant traffic movements affecting Ashdown Forest.

16. The Council's response to my Initial Questions referred to the Appropriate Assessment being undertaken for the Brighton & Hove City Plan Part 2, in relation to air quality impacts on Ashdown Forest. With regard to this, are the Councils content that the Habitat Regulations Assessment screening undertaken in relation to the Plan, including that carried out as part of screening of Adur Local Plan and Brighton & Hove City Plan Part 1, is legally compliant in light of the recent CJEU judgement (Case C-323/17) in *People over Wind, Peter Sweetman v Coillte Teoranta*?

16.1 The significance of the CJEU judgement (Case C-323/17) in *People over Wind, Peter Sweetman v Coillte Teoranta* is that it indicates that measures intended to avoid or reduce the harmful effects of a proposed project on a European site, but which are not an integral part of the project or plan, should not be taken into account by competent authorities at the Likely Significant Effects or 'screening' stage of an HRA. This contradicts many years of UK court rulings that concluded that mitigation could be taken into account in 'screening'. This essentially means that the role of avoidance and measures should be considered at the subsequent 'appropriate assessment' stage instead rather than in initial HRA screening.

16.2 The Councils are confident that this recent judgment does not have any consequences for the JAAP. The HRA screening for the ALP considered potential impacts on the three closest European designated sites – Arun Valley SAC, SPA and Ramsar, Castle Hill SAC and Lewes Downs SAC - and in all cases screened out any potential impacts due to the considerable distance of these sites from the Adur District boundary. Similarly, the HRA undertaken for B&HCP(1) also screened out any potential impacts on those sites, together with the Pevensey Levels SAC and Ramsar and Ashdown Forest SAC and SPA (both of which are well over 20km from the JAAP boundary).

16.3 As referred to in answer to Q15, Brighton & Hove Council has since commissioned HRA work for the draft B&HCP(2). This has led to the publication of an up-to-date HRA screening report (SED07/12) and an additional more detailed report assessing potential air quality impacts on Ashdown Forest SAC (SED07/13). Both these reports post-date the CJEU judgment and follow the approach required by that ruling. For all European designated sites, likely significant impacts have been ruled out due to the distance to the sites and/or because the likely in combination impacts from planned development will be negligible.

16.4 Since the JAAP is consistent with the policies contained in the B&HCP(1) (and the emerging B&HCP(2) and the ALP and is not proposing any additional development, the HRA work undertaken to support those local plans is relevant. The HRA work for both the ALP and the City Plan has screened out any potential impacts from proposed development on European designated sites both in isolation and combination due to distance and/or negligible impacts on identified pathways. These conclusions have been reached without assuming any avoidance or mitigation measures and are therefore not affected by the recent CJEU ruling. The HRA work undertaken therefore remains legally compliant.