



Colchester Borough Council

**Independent Examination – Section 2 Colchester
Borough Local Plan 2017-2033**

Hearing Statement – Local Planning Authority

**Main Matter 1– Legal Requirements and Overarching
Issues relating solely to the policies within Colchester
Local Plan (CLP) Section 2**

April 2021

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Introduction

- 1.1 The Local Plan Legal Compliance Checklist (October 2017) ([CBC 4.10](#)) demonstrates that the Local Plan and supporting documents meet the legal and procedural requirements as set out in the relevant legislation.
- 1.2 Specifically, the CLP Section 2:
- Complies with the SCI and public consultation requirements in the Town and Country Planning (Local Plan) (England) Regulations 2012.
 - Has been subject to Sustainability Appraisal (SA), which meets the requirements for Strategic Environmental Assessment (SEA).
 - Has met the requirements for appropriate assessment under the Habitats Regulations and the results of the Habitats Regulations Assessment been carried forward in the CLP Section 2.
 - Complies with the Town and Country Planning (Local Plan) (England) Regulations 2012.
 - Illustrates the application of policies in the CLP Section 2 through the policies map.
- 1.3 There are no cross-boundary issues within the CLP Section 2, which have not already been addressed in CLP Section 1. The Duty to Cooperate Statement ([CBC 4.12](#)) details the measures the Council has undertaken to co-operate with relevant public sector bodies on strategic matters. While the format of the statement primarily considers the Duty to Co-operate in the context of the joint approach to strategic plan-making found in Section 1, the statement also fully addresses the requirement for the Council to demonstrate co-operation in its own right in relation to Section 2. Since submission, the Council has continued to co-operate with various stakeholders, including all Essex LPAs through the Essex Planning Officers Association (EPOA), Essex County Council, Natural England (see SCG1), the Environment Agency (see SCG2), the North East Essex Clinical Commissioning Group (CCG) and Historic England. The Council is also co-operating with Essex County Council and other Essex LPAs as part of various working groups, including the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), parking standards review and climate change.
- 1.4 The CLP Section 2 is consistent with national policy for plan making in the NPPF. It contributes to the achievement of the three dimensions of sustainable development – economic, social, and environmental. It has been positively prepared and is ‘aspirational but realistic’ (paragraph 154 of the NPPF). CLP Section 2 is consistent with the NPPF in all other respects. The policies in CLP Section 2 provide a clear indication of how a decision maker should react to a development proposal.

Does CLP Section 2 meet all other legal requirements, specifically:

Does the content and timescale for preparation of CLP Section 2 accord with the latest version of the Local Development Scheme?

- 1.5 The Local Development Scheme is prepared in accordance with the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) which requires local planning authorities to prepare, maintain and publish a Local Development Scheme. The Local Development Scheme ([CBC 4.2](#)) was last updated in February 2019, following approval at Local Plan Committee on 4 February 2019. This update was necessary to reflect revised timescales for the Local Plan and Strategic Development DPDs production as a result of the then ongoing Section 1 Local Plan examination.
- 1.6 The Local Development Scheme provides an accurate representation of the preparation of the Local Plan as a whole. However, due to the extensive and unique examination of the Section 1 Local Plan, this has occurred over a longer period of time than expected post submission in October 2017. As a result, the Local Development Scheme anticipated an earlier timetabling of the Section 2 Examination, with Hearing Sessions forecast to be held in Spring/Summer 2020, Modifications Consultation Winter 2020/21 and adoption of the Local Plan in Winter 2020/21 (if both Section 1 and Section 2 were adopted together). If it is considered necessary for the Local Development Scheme to be updated to reflect slippage in the timetable for the Section 2 Examination, the Council can do this.
- 1.7 The Section 1 Planning Inspector concluded at paragraph 25 of his [Final Report](#) that *“The Plan has been prepared in accordance with the NEAs’ Local Development Schemes”*. Paragraph 29 of the Inspectors’ Final Report finds that *“The Plan complies with all other relevant legal requirements, including those in the 2004 Act and 2012 Regulations”*.
- 1.8 There are no legal compliance issues arising from the preparation and submission of the Plan. The legal and compliance matters in relation to Section 1 have followed a parallel process to that which has already been considered and concluded to be satisfactory by the Section 1 Planning Inspector.

Has CLP Section 2 consultation complied with the Statement of Community Involvement and public consultation requirements in the Town and Country Planning (Local Plan) (England) Regulations 2012?

- 1.9 The Council's Statement of Community Involvement March 2013 ([CBC 4.5](#)) outlines how and when communities and stakeholders are involved throughout the process of preparing planning policy documents and considering planning applications. The Statement of Community Involvement outlines the stages and consultation process that will be undertaken in preparing a Local Plan. This is detailed in writing and through a diagram and identifies the type of consultation methods which are used for different consultee groups.
- 1.10 The Statement of Community Involvement has been updated twice since submission of the Local Plan in October 2017. Firstly, in September 2018 to reflect changes in national policy and legislation. The Statement of Community Involvement was also updated in July 2020 ([CBC 4.6](#)) to reflect changes in relation to the Coronavirus Outbreak.
- 1.11 The Consultation Statement October 2017 ([CBC 3.1](#)) outlines how consultation and engagement has been undertaken throughout the preparation of the Local Plan, in accordance with Regulation 17(d) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). The Consultation Statement states on page 9 that *"The LPA has ensured that consultation has complied with the adopted Statement of Community Involvement (SCI)"*.
- 1.12 During the examination of Section 1, an addendum to the Consultation Statement was published, in October 2019, to outline the consultation process for additional evidence base documents and Sustainability Appraisal/SEA that took place in Summer 2019. It should be noted that this technical consultation was limited only to the additional evidence documents as requested by the Section 1 Planning Inspector ([SDCBC006a](#)).
- 1.13 Paragraph 26 of the [Section 1 Planning Inspector's Final Report](#) concluded that: *"Consultation on the Plan and the MMs was carried out in compliance with the NEAs Statement of Community Involvement"*. This conclusion is equally relevant to Section 2 of the Local Plan as the two sections were the subject of consultation at the same time, as two parts of one document at Regulation 19 and the earlier stages of consultation.
- 1.14 Paragraph 29 of the Planning Inspector's Final Report concludes that *"The Plan complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations"*.

Has CLP Section 2 been subject to a Sustainability Appraisal (SA) and have the requirements for Strategic Environmental Assessment been met? Is it clear how the SA influenced the final plan and dealt with mitigation measures?

- 1.15 Yes, the CLP Section 2 has been subject to a Sustainability Appraisal (SA), which incorporates the requirements of Strategic Environment Assessment (SEA). The SA has adequately and appropriately assessed the likely environmental, social and economic effects of the Plan in conformity with the requirements of the SEA Directive and SEA Regulations. The methodology complies with all legal requirements and is clearly set out. The 'Draft Publication Local Plan Sustainability Appraisal Environmental Report (June 2017)' (hereafter 'SA report') ([CBC2.2](#)) was submitted with the CLP.
- 1.16 The SA report identifies, describes and evaluates the likely significant effects on the environment of the plan and reasonable alternatives. The assessment has used sustainability objectives appropriate to the borough and assessed the policies and reasonable alternatives, where they existed, in sufficient detail to assess the likely effects.
- 1.17 A clear and consistent methodology was applied at each stage of plan-making and all reasonable alternatives under consideration at each stage were assessed to the same level of detail.
- 1.18 The SA report ([CBC2.2](#)) is clearly set out and logical. For each policy, context is provided and then the policy itself, the reasonable alternatives are listed, a table highlighting the likely effects of the preferred policy and reasonable alternatives is included, a summary of the appraisal is given, followed by recommendations/mitigation measures and the reasons for selecting the preferred option and rejecting each of the reasonable alternatives. For site allocations, the list of reasonable alternatives, the comparable appraisal and the reasons for selecting the preferred option and rejecting each of the reasonable alternatives is included in the appendix.
- 1.19 Reasonable alternatives were established by the Settlement Boundary Review ([EBC2.14](#)), call for sites process and Strategic Housing Land Availability Assessment (SHLAA) ([EBC2.17](#)). The Settlement Boundary Review and SHLAA enabled the Council to identify sustainable settlements, appropriate for proportionate growth, based on their level of service provision and function. Settlements that are not sustainable were categorised as Other Villages in the spatial hierarchy. Neither the SA nor the SHLAA appraised sites within the Other Villages, as these were not reasonable alternatives as they were contrary to the spatial hierarchy. Section 16.2 of the SA report lists qualifying settlements for growth. The SHLAA provided a progressive filtering process to identify which SHLAA sites were reasonable alternatives for the purposes of the SA. Section 16.2 of the SA report outlines the exclusionary criteria that were applied, e.g., sites within flood zone 3. Sites that were given a red rating in the SHLAA were not considered to be reasonable alternatives. The SA and SHLAA were closely aligned and the SHLAA informed the SA.

1.20 The SA influenced the plan by describing and evaluating the likely significant effects on the environment of the plan and reasonable alternatives. For each policy and site allocation, the SA appraised reasonable alternatives (and for those policies where there were no reasonable alternatives it justifies why this is the case). The SA report includes a table for each policy justifying why the preferred option was selected and why reasonable alternatives were rejected.

1.21 The SA was undertaken in-house by CBC Officers together with Place Services (Essex County Council) and the findings of the SA have been available throughout the plan-making process, allowing them to inform the emerging plan. The process of both SA and plan-making has been truly iterative.

Mitigation measures

1.22 Another way the SA has influenced the plan is by recommending mitigation measures. Each policy and site allocation includes a sub-section 'Mitigation / recommendations', which demonstrates that mitigation measures have been considered for every policy and site allocation (sections 5 – 10 of the SA report). Where relevant, the commentary in the SA report refers to recommendations made at the Preferred Option stage and how these have been incorporated into the plan. Section 13.4 of the SA report details all of the mitigation measures that have been recommended as part of the SA. All of these recommendations were considered by the Council and whilst not all of the recommendations were incorporated into the plan, consideration was given to them all.

1.23 Recommendations were made for the following policies:

- Policy EC2 – The Hythe Special Policy Area. The SA report states that the recommendation about being more specific as to the type or range of any suitable retail development has been factored into the plan. A recommendation was made to make specific regard to brownfield habitats associated with previously developed land. The recommendation to make specific reference to brownfield habitats has not been included in the plan as the Council believe that biodiversity is adequately addressed in Policy ENV1.
- Policy EC3 – East Colchester. The recommendation relating to surface water flooding has been factored into the plan through the inclusion of Policy PP1. Like policy EC2, the recommendation to specifically mention brownfield habitats associated with previously developed land has not been included in the plan as the Council believe that biodiversity is adequately addressed in Policy ENV1. The recommendation to refer to the TPO on Land at East Bay Mill has not been included as the Council consider that it is not necessary.
- Policy SC1 – South Colchester. The SA highlights the potential for cumulative negative impacts on the Roman River SSSI, Donyland and Friday Woods and Berechurch Common and recommends that the policy refer to consultation with Natural England. This recommendation also applies to Policy SC2 – Middlewick Ranges. This recommendation was not incorporated into the plan as Natural

England are consulted on sites that fall within SSSI Impact Risk Zone, there is therefore no need to refer to this in the policy.

- Policy SS12a – Mersea. The SA highlights potential impacts on the Blackwater and Colne Estuaries. The Council do not believe it is necessary to refer to these European sites in the policy as Policy ENV1, which applies to all development across the borough, refers to European sites. Furthermore, the Essex Coast RAMS has been adopted. Compliance with the RAMS address the in-combination effects of increased recreational disturbance.
- Policy DM5 – Tourism, Leisure, Culture and Heritage. The SA recommends that the policy could include reference to Policy DM16 – Historic Environment or provide some context as to how a proposal could adequately satisfy Policies DM5 and DM16 in unison regarding heritage assets and the historic environment. A modification to cross reference Policy DM16 is recommended in the Draft Schedule of Recommended Modifications ([CBC1.6](#)).
- Policy DM7 – Agricultural Development and Diversification. The SA recommended that the policy could recognise the need for survey work regarding protected species in the re-use of agricultural buildings, particularly those that are redundant. This recommendation was not incorporated into the plan as protected species are protected by law and Policy ENV1 refers to protected species.
- Policy DM12 – Housing Standards. The SA recommended that the policy could benefit from including a criterion regarding reducing actual crime and the fear of crime through layout considerations to maximise natural surveillance. This recommendation was not incorporated into the plan as natural surveillance is referred to in the supporting text to Policy DM15 – Design. The Council is concerned that this proposed criterion would be too subjective to be included in the policy.
- Policy DM15 – Design and Amenity. The SA recommended that the policy could explore ways to ensure that there are positive outcomes regarding biodiversity and a reduction in water usage through design. Biodiversity is referred to in criterion (i), sustainable drainage is referred to in criterion (viii) and necessary infrastructure and services including utilities is referred to in criterion (ix).
- Policy DM16 – Historic Environment. The SA recommended that the policy is expanded to include a position on the protection and enhancement of Locally Listed buildings. Criterion (iii) refers to protection and enhancement of buildings and areas which have local importance or character. Since the plan was submitted considerable work on the Local List has taken place, including the adoption of selection criteria in 2019, which allow the full range of heritage assets to be incorporated into the local list, based on the NPPF (2019) definition of heritage assets: *A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).*
- Policy DM25 – Renewable Energy, Water, Waste and Recycling. The SA recommended that the policy or supporting text include a level of protection for the historic and natural environment from inappropriate or potentially harmful

renewable energy schemes in the same manner as for landscape value. The policy does refer to internationally designated sites, which protects the most important nature conservation sites, and a modification is recommended in the Draft Schedule of Recommended Modifications ([CBC1.6](#)) to refer to heritage assets.

1.24 The Council carefully considered all the recommendations in the SA and concluded that some of the recommendations are not necessary. However, the Council would not object to modifications to incorporate some or all of these recommendations into the plan if the Inspectors consider that they are necessary.

Review of the SA

1.25 In October 2020, the Council commissioned LUC to carry out a Review of the Sustainability Appraisal of Colchester Section 2 Local Plan (hereafter 'SA Review'). The SA Review is appended to this hearing statement. LUC is a market-leader in SA and SEA and has provided advice and support to Government on SA/SEA for many years. LUC have undertaken SA/SEAs of numerous development plan documents in authorities throughout the UK, including the Additional SA for the North Essex Section 1 Local Plan. Many of these have now passed the tests of soundness and have been adopted, including the Section 1 Local Plan.

1.26 The Council asked LUC to:

- Review Colchester's Section 2 Local Plan Sustainability Appraisal Report [Draft Publication Local Plan Sustainability Appraisal Environmental Report (June 2017)] in terms of the scope of the SA and the process followed in relation to the legal requirements.
- Review and consider how the SA performs in relation to the criticisms that the Inspector made in relation to the Section 1 Local Plan SA.
- Recommend the further work necessary to address any shortcomings identified by the review.

1.27 The SA Review considered whether the SA report meets each of the reporting and procedural requirements of SA and the SEA Regulations. To support this approach, LUC used a review matrix (Table 2.1) that summarises the key reporting and procedural requirements of the Regulations in relation to plan appraisal.

1.28 LUC concluded that, in their professional opinion, *"the SA to date has been carried out to a good standard that is in line with the SEA Regulations. It has been undertaken objectively and consistently to a clear methodology. As set out in our review, there are aspects of the SA that could be improved in line with good practice in order to further strengthen its robustness"* (paragraph 3.2). It is important to note that the recommendations LUC have made are to strengthen the SA and bring it more in line with good practice. No omissions or shortcomings in terms of the requirements for SEA were identified in the SA Review.

1.29 SA is an iterative process. An SA of any Main Modification will be required, and a post-adoption statement and monitoring are required. The Council considers that the detailed recommendations in table 2.1 of the SA Review could be carried out as part of the SA of the Main Modifications, if the Inspectors consider that these are necessary. Whilst these recommendations are not needed for legal compliance, they will strengthen the SA and ensure the SA is in line with good practice.

Have the requirements for appropriate assessment under the Habitats Regulations been met? Have the results of the Habitats Regulations Assessment been carried forward in the CLP Section 2?

- 1.30 Yes, the requirements for appropriate assessment under the Habitats Regulations have been met and the conclusions and recommendations of the Habitat Regulations Assessment (HRA) are included in the Draft Schedule of Recommended Modifications ([CBC1.6](#)), ensuring that the necessary mitigation highlighted in the HRA will be carried forward in the CLP Section 2.

Requirements for appropriate assessment

- 1.31 The requirement to undertake a Habitats Regulations Assessment, of which appropriate assessment forms part, of development plans was confirmed by the amendments to the Habitats Regulations published for England and Wales in 2007¹. The currently applicable version is the Habitats Regulations 2017, as amended². When preparing its Local Plan, the Council is therefore required by law to carry out a HRA. The Council can commission consultants to undertake HRA work on its behalf and this is then reported to and considered by the Council as the ‘competent authority’ under the Habitats Regulations.

- 1.32 Regulation 105 of the Habitats Regulations states:

(1) “Where a land use plan—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site,
the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”

- 1.33 Therefore, the Council may only progress the CLP Section 2 if it considers that the plan will not adversely affect the integrity³ of any European site.

- 1.34 A HRA report was published alongside the Publication Draft CLP Section 2 consultation in 2017. Natural England made a representation and modifications to the CLP Section 2 and HRA report were agreed by Natural England and the Council to address all of Natural

¹ The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (2007) SI No. 2007/1843.

² The Conservation of Habitats and Species Regulations 2017 (2017) SI No. 2017/1012, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/579).

³ The integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated. (Source: UK Government [Planning Practice Guidance](#))

England's concerns. These modifications are set out in a signed Statement of Common Ground dated 30 November 2017.

- 1.35 However, since 2017 there have been changes in case law and work on one of the mitigation measures set out in the HRA report has progressed. The Council accordingly commissioned LUC to carry out an Updated HRA ([EBC4.70](#)), which includes an appropriate assessment, given the time expired, the update to the Section 1 HRA and the Inspectors conclusions on this, and in light of updates in case law, including most notably the recent 'People over Wind' and 'Holohan' rulings from the Court of Justice for the European Union (CJEU).
- 1.36 The recent 'People over Wind, Peter Sweetman v Coillte Teoranta' judgment ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed as part of an Appropriate Assessment, and should not be taken into account at the screening stage. In light of this, the HRA screening stage did not relied upon avoidance or mitigation measures to draw conclusions as to whether the CLP Section 2 would result in likely significant effects on European sites, with any such measures being considered at the Appropriate Assessment stage as appropriate.
- 1.37 The HRA also fully considers the recent Holohan v An Bord Pleanala (9 Nov 2018) CJEU judgement which requires the assessment to consider the potential for effects on species and habitats, including those not listed as qualifying features, to result in secondary effects upon the qualifying features of European sites, including the potential for complex interactions and dependencies. In addition, the potential for offsite impacts, such as through impacts to functionally linked land, and or species and habitats located beyond the boundaries of European site, but which may be important in supporting the ecological processes of the qualifying features, has also been fully considered in this HRA.
- 1.38 The HRA also takes into consideration the 'Wealden' judgement and the 'Dutch Nitrogen Case' judgement from the Court of Justice for the European Union in considering traffic growth based on the effects of development provided for by the Plan in combination with other drivers of growth such as development proposed in neighbouring districts and demographic change.
- 1.39 In summary, the HRA follows best practice and recent case law and the methodology, conclusions and mitigation recommendations are consistent with the HRA of the CLP Section 1. This HRA ([EBC4.70](#)) replaces all previous HRA drafts.

Natural England

1.40 Regulation 105(3) of the Habitat Regulations states:

“The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.”

1.41 The appropriate nature conservation body is Natural England, and they were consulted on the Updated draft HRA report on 5 January 2021. Natural England wrote to the Council on 22 February 2021 stating:

“Natural England has considered the updated HRA of Section 2 of the Colchester Local Plan prepared by LUC, on behalf Colchester Borough Council. Natural England is satisfied that the updated HRA addresses the comments/advice raised in Natural England’s previous letter, dated 19 July 2017. Natural England agrees with the key conclusions and recommendations arising from the Appropriate Assessment (AA) and the safeguards and mitigation measures identified in the AA to ensure that there will be no adverse effect on the integrity (AEol) of European Sites as a consequence of the Plan, either alone or in combination with other plans or projects. Natural England is also satisfied that these safeguards and mitigation measures have been appropriately addressed through the development and adoption of the Essex Coastal RAMS and through proposed modifications to relevant policies of the submission Local Plan, as set out in the Main Modifications Schedule.”

1.42 Natural England’s representation identified a few minor inconsistencies in the text of the document, and these were corrected prior to finalising the HRA report.

1.43 To assist the examination, the Council has agreed a Statement of Common Ground with Natural England (SCG1).

1.44 The RSPB were also consulted on the Updated HRA report. Their response said: *“The RSPB recognises that amendments have been made based on our previous comments and therefore have no further representations to make.”*

HRA Conclusions

1.45 The findings of the HRA screening (chapter 4 of the HRA) determined that impacts from physical damage and loss, recreation and water quantity and quality could result in a likely significant effect in relation to:

Physical damage and loss (Offsite) – in relation to Abberton Reservoir SPA and Ramsar, Blackwater Estuary (Mid-Essex Coast Phase 4) SPA and Ramsar, Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar, Stour and Orwell Estuaries SPA and Ramsar.

Recreation – in relation to Essex Estuaries SAC, Abberton Reservoir SPA and Ramsar, Blackwater Estuary (Mid-Essex Coast Phase 4) SPA and Ramsar, Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar, Dengie SPA and Ramsar, Stour and Orwell Estuaries SPA and Ramsar, Outer Thames Estuary SPA.

Water Quantity and Quality – in relation to Stour and Orwell Estuaries SPA and Ramsar.

- 1.46 The Appropriate Assessment stage (chapter 5 of the HRA) identified whether the above likely significant effects will, in light of mitigation and avoidance measures, result in adverse effects on the integrity (AEol) of the European sites either alone or in combination with other plans or projects.

Physical Damage and Loss – the appropriate assessment concluded no AEol as a result of physical damage and loss to all European sites providing safeguards and mitigation measures are implemented.

Recreation – the appropriate assessment concluded no AEol as a result of increased recreational pressure in relation to all European sites providing safeguards and mitigation measures are implemented.

Water Quantity and Quality – the appropriate assessment concluded that given the safeguards provided by policies SS9 and PP1, no AEol is predicted as a result of water quantity and quality in relation to Stour and Orwell Estuaries SPA and Ramsar.

- 1.47 The appropriate assessment concluded that no AEol will occur subject to the provision of safeguarding and mitigation measures as detailed in Chapter 5 of the HRA report.

Mitigation measures

- 1.48 The following recommended safeguards and mitigation measures were identified in the HRA report:

- 1.49 Physical Damage and Loss – it is recommended that the Local Plan commits to include the provision of the following mitigation measures:

Wintering Bird Surveys for sites identified with high and moderate suitability to support qualifying bird species to inform the importance of the site for these birds and to inform specific mitigation measures.

If the bird surveys identify that proposed new development will exceed the threshold of significance mitigation will be required. A commitment in the Local Plan to mitigate development following the completion of wintering bird surveys is therefore required.

The following text, which will be included in the Draft Schedule of Recommended Modifications, is required for each of the site allocations identified in the HRA as having moderate potential to support significant numbers of SPA birds⁴:

“Before granting planning consent, wintering bird surveys will be undertaken at the appropriate time of year to identify any offsite functional habitat. In the unlikely event that significant numbers are identified, development must firstly avoid impacts. Where this is not possible, development must be phased to deliver habitat creation and management either on or off-site to mitigate any significant impacts. Any such habitat must be provided and fully functional before any development takes place which would affect significant numbers of SPA birds.”

1.50 Recreation – Colchester Borough Council has signed up to and is a key partner in the Essex Coast RAMS/ Bird Aware Essex Coast recreational mitigation strategy, this mechanism is supported by Natural England as ensuring that AEoI to European Sites will be avoided through the Local Plan. The strategy has also been found robust and appropriate through the NEAs Section 1 Local Plan Examination in Public and Chelmsford City Council's Local Plan Examination. It therefore provides certainty that AEoI will be avoided.

1.51 The following modification to Policy ENV1 is recommended, which includes reference to the Essex Coast RAMS, which has been adopted (both the Strategy Document and SPD) and is being implemented by Colchester Borough Council:

“D. Essex Coast RAMS

A Recreational disturbance Avoidance and Mitigation Strategy has been completed in compliance with the Habitats Directive and Habitats Regulations. Further to Section 1 Policy SP2, contributions will be secured from qualifying residential development, within the Zones of Influence as defined in the adopted RAMS, towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS).”

Related modifications are also proposed to the supporting text to ENV1 to provide context.

1.52 Water Quantity and Quality – existing avoidance and policy commitments in policies PP1 and SS9 are considered sufficient to avoid AEoI on European Sites.

⁴ SC1 (South of Berechurch Hall Road), SC2 (Middlewick Ranges), WC2 (Land to the North of London Road), WC2 (Land off Dyers Road including Fiveways Fruit Farm), WC2 (Land to the West of Lakelands), WC3 (Colchester Zoo), SS10 (Layer de la Haye), SS14 (Tiptree, Tower End), SS14 (Tiptree, Highland Nursery), SS14 (Tiptree, Elms Farm), SS14 (Employment Land – Tiptree Jam Factory).

1.53 The mitigation measures referred to above are included in the Draft Schedule of Recommended Modifications, which will provide sufficient certainty that they will be implemented. Natural England is also satisfied that safeguards and mitigation measures have been appropriately addressed through the development and adoption of the Essex Coast RAMS and through proposed modifications to relevant policies of the submission Local Plan, as set out in the Modifications Schedule.

1.54 In addition to the mitigation measures identified in the Updated HRA, a number of additional modifications are agreed by Natural England and the Council as necessary, on a precautionary basis, to avoid AEoI. These are detailed in the Statement of Common Ground (SCG1), included in the Draft Schedule of Recommended Modifications ([CBC1.6](#)) and are listed below.

- Add the following sentence to the end of the fourth paragraph of policy SG7:
“Measures required to mitigate the impacts of recreational disturbance on European Sites will be delivered as detailed in the adopted Essex Coast Recreational disturbance Avoidance and Mitigation Strategy.”
- Amend criteria (ii) of policy SS12c as follows:
“Help protect the integrity of European sites and minimise disturbance to migratory or over wintering birds **designated breeding and wintering species** using the sites; **Any future extensions to caravan parks will require their own HRA and where required AA.**”
- Move the following text from paragraph 14.246 to Policy OV1 and include in OV2:
“Proposals in close proximity to a European site must demonstrate through HRA screening that the scheme will not lead to likely significant effects to the integrity of the European site. Where this cannot be ruled out a full appropriate assessment will be required to be undertaken.”
- Move text currently in paragraph 15.32 to the end of Policy DM6:
“Proposals in close proximity to a European site must demonstrate through HRA screening that the scheme will not lead to likely significant effects to the integrity of the European Site. Additionally, any planning application within 400 metres of a European site must provide mechanisms to prevent fly tipping, the introduction of invasive species and vandalism. Where this cannot be ruled out a full appropriate assessment will be required to be undertaken.”
- Amend the 6th criteria of policy DM25 as follows:
“.....District Heating Networks and Community led renewable energy initiatives at appropriate locations in the Borough, **which will need to be subject to a Habitats Regulation Assessment and if necessary an Appropriate Assessment**, to help reduce Colchester’s carbon footprint”.

Has the preparation of CLP Section 2 complied with the Town and Country Planning (Local Plan) (England) Regulations 2012?

- 1.55 The Local Plan as a whole (Sections 1 and 2) were prepared, consulted upon and submitted for examination with a shared evidence base, as two parts of the same document. As outlined above, the Local Plan has been prepared in accordance with the Local Development Scheme and Statement of Community Involvement.
- 1.56 The Section 1 Planning Inspector outlined in his [Final Report](#) that each of the North Essex Authorities (NEAs) have met the duty to cooperate in the preparation of the Section 1 Local Plan (paragraph 15). Further detail of ongoing cooperation since submission of the Local Plan is outlined in the introduction above and in paragraphs 1.62 to 1.71 below.
- 1.57 The Council have addressed how the Sustainability Appraisal and Habitats Regulations Assessment requirements have been met in answer to separate questions within this hearing statement.
- 1.58 The Section 1 Planning Inspector concluded at paragraph 24 of his [Final Report](#) that *“Each of the NEAs’ development plans, taken as a whole, therefore, includes policies designated to secure that the development and use of land in the LPA’s area contribute to the mitigation of, and adaption to, climate change as Section 19(1A) of the 2004 Act requires”*.
- 1.59 The Section 1 Planning Inspector’s [Final Report](#), section “Other Legal Compliance Matters” concludes all matters of legal compliance relating to the Local Development Scheme (Paragraph 26), Statement of Community Involvement (Paragraph 26) and Strategic Priorities (Paragraph 27) have been met. The Planning Inspector found that all of the matters have been carried out in accordance with the relevant regulations and legal requirements. Paragraph 29 of the Planning Inspectors’ Final Report finds that *“The Plan complies with all other relevant legal requirements, including those in the 2004 Act and 2012 Regulations”*.
- 1.60 Through the Section 1 Examination, it was identified that the Section 1 Local Plan did not sufficiently meet the requirement of Regulation 8(3) of the 2012 Regulations. This requires that where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy. The Section 1 Local Plan has been modified to clarify that the Plan as a whole will supersede previous Local Plan policies and allocations upon adoption. It is acknowledged that as submitted, the Section 2 Local Plan does not adequately meet this requirement as a full list of policies superseded by Section 2 of the Plan is currently omitted. The Council have therefore proposed a modification to rectify this, as outlined in the Draft Schedule of Proposed Modifications ([CBC 1.6](#)). This follows the same approach as that taken in respect of the Section 1 Local Plan which resulted in that plan being found sound.

1.61 There are no legal compliance issues arising from the preparation and submission of the Plan. The legal and compliance matters, in relation to Section 1 followed a parallel process to that which has already been considered and concluded to be satisfactory by the Section 1 Planning Inspector.

Are there any cross-boundary issues including Gypsies, Travellers and Travelling Showpeople within CLP Section 2 that required the Council to engage effectively with neighbouring authorities and other relevant organisations which have not already been addressed in CLP Section 1?

- 1.62 There are no cross boundary issues with neighbouring authorities and other relevant organisations, which have not already been considered during the Section 1 Examination. Cross boundary working remains an ongoing priority for the Council, not least through the Tendring Colchester Borders Garden Community and related Development Plan Document (DPD) and future reviews of the Local Plan.
- 1.63 There was extensive and ongoing partnership working between Colchester Borough Council, Braintree District Council and Tendring District Council (the North Essex Authorities - NEAs) through the work on the shared Section 1 Local Plan.
- 1.64 Each of the NEAs separately prepared and submitted Duty to Cooperate Statements alongside their Local Plans. Colchester's Duty to Cooperate Statement October 2017 ([CBC 4.12](#)), outlines how the Duty to Cooperate has been met in production of the Section 1 and 2 Local Plans. This includes details of joint evidence base preparation between the NEAs to inform the Local Plan as a whole, and Appendix 1 includes a Memorandum of Cooperation between Braintree District Council, Chelmsford City Council, Colchester Borough Council, Essex County Council and Tendring District Council (dated June 2016) regarding collaborative working on strategic growth priorities in North and Central Essex.
- 1.65 The need for Gypsies, Travellers and Travelling Showpeople sites as outlined in CLP 2 Policy DM11 will be met through expansion of the existing site at Severalls Lane and through strategic sites and allocations within the Tendring Colchester Borders Garden Community. The process of determining allocations to meet this need involves cross boundary engagement with other Essex authorities through the Essex Planning Officers Association. Essex authorities jointly commissioned consultants Opinion Research Services (ORS) to complete the Gypsy and Traveller Accommodation Assessment July 2014 ([EBC 2.7](#)), updated September 2014 ([EBC 2.6](#)) and May 2017 ([EBC 2.4](#)), and have commissioned them to complete further work in 2021 on Essex wide need for transit sites. Allocations for the Garden Community will be addressed in more detail through the DPD.
- 1.66 The NEAs published their shared Section 1 and individual Section 2 Plans at the same time within a single document. As a result, the findings and conclusions of the Section 1 Planning Inspector in relation to legal compliance and the duty to cooperate are considered to be equally relevant to the Section 2 Local Plans.
- 1.67 The Section 1 Planning Inspectors' [post hearing letter](#) to the NEAs dated 8 June 2018, stated at paragraph 8 that 'substantial and effective' co-operation had taken place between the NEA's, other local authorities and prescribed bodies. The strategic cross boundary matters addressed included assessments of need for housing and gypsy and traveller accommodation, employment land, strategic infrastructure including improvements to trunk and local road networks, railway network, education, healthcare

and broadband provision; and the environmental and other cross boundary impacts of the Plan's proposals. The Inspector concluded that *"I find that each of the NEAs met the duty to cooperation in the preparation of the Section 1 Plan"* (see paragraph 16).

1.68 The Planning Inspector further considers the duty to cooperate and other legal requirements in his [Final Report](#) paragraphs 15 to 29. His previous conclusions remain unchanged, with the Inspector concluding at paragraph 16 *"I am satisfied that where necessary the NEAs engaged constructively, actively and on an ongoing basis in the preparation of the Plan, and that the duty to co-operate has therefore been met"*.

1.69 The Council have continued working and engaging with other statutory authorities including notably the Environment Agency, Historic England and Natural England. The Council have agreed Statements of Common Ground with Natural England (SCG1), the Environment Agency (SCG2) and Historic England (SCG3). These will be available on the [Examination Statements of Common Ground webpage](#). The Council are seeking to agree Statements of Common Ground with others where necessary. Examples of how this engagement has included agreement on cross boundary issues include:

- The Essex wide approach to Recreational disturbance Avoidance and Mitigation Strategy; which involved joint agreement on mitigation measures by the Environment Agency, Natural England and Essex Authorities;
- Working with Historic England and Tendring District Council to ensure a consistent approach to heritage impact assessments both within each authority and in the cross boundary Tendring Colchester Borders Garden Community.

1.70 The Council have considered all representations made to the Section 2 Local Plan, and in particular where statutory bodies have suggested amendments/modifications to policies, communication has been ongoing to agree wording to ensure soundness of the Local Plan.

1.71 The Council have also continued working with various stakeholders and neighbouring authorities since submission of the Local Plan in October 2017 to ensure that the cross boundary issues are properly understood and addressed. This includes:

- Essex Planning Officer's Association (EPOA) working with all Essex LPAs and Essex County Council including the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS), Parking Standard Review and Climate Change;
- Housing Infrastructure Fund (HIF); partnership working with NEAs leading to successful HIF bid, awarding £99 million for the A120/A133 Link Road and Rapid Transit System to facilitate the Tendring Colchester Borders Garden Community;
- Liaison regarding infrastructure provision arising from development proposals with cross boundary impacts, including larger housing and employment developments and transport proposals. This is through regular Development Team meetings to provide a consistent approach to planning obligations;

- Planning for the Tendring Colchester Borders Garden Community Development Plan Document is proceeding on the basis of joint working between Colchester Borough Council, Tendring District Council and Essex County Council;
- Health and Planning Working Groups – periodic meetings with health sector and Tendring District Council and Colchester Borough Council to discuss consistent approach to health infrastructure requirements; and
- Commissioning of joint studies with other Essex Planning Authorities, such as an Essex wide assessment of Transit Site provision.

Does the policies map correctly illustrate geographically the application of policies in the CLP Section 2?

- 1.72 The Colchester Local Plan is accompanied by a separate set of 'Policies Maps' ([CBC 1.3](#)) which include a series of maps with reference to particular allocation policies. A number of modifications have been proposed to the policies maps to address mapping errors and provide factual updates. These modifications will be outlined in the Draft Schedule of Recommended Modifications.
- 1.73 The Council has also produced one singular Policy Map at borough wide scale to illustrate the application of all policies in the Local Plan. This has been updated to reflect the conclusion of the Section 1 examination and the modifications currently proposed to the individual Section 2 Policies Maps.
- 1.74 The Council can make further updates to the policies maps in order to reflect modifications as a result of the examination.

Consistent with National Policy

Does CLP Section 2 accord with national policy for plan making in the NPPF, specifically:

Does CLP Section 2 contribute to the achievement of the three dimensions of sustainable development – economic, social, and environmental?

1.75 Yes, the CLP Section 2 contributes to the achievement of the three dimensions of sustainable development – economic, social and environmental. The Section 1 Local Plan sets the overall strategic framework for the borough, with Policy SP1 reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework (NPPF). The definition of sustainable in the 2012 NPPF, and carried forward with only slight variation into the 2019 NPPF, defines the three dimensions as follows in Paragraph 7:

- *an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements including the provision of infrastructure.*
- *a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and*
- *an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and as part of this, helping to improve biodiversity, use natural resources prudently, minimize waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*

1.76 Section 2 policies as a whole are considered to further the three inter-related dimensions of sustainable development. The Spatial Strategy, Place Policies and transport policies embody all three elements of sustainable development, with the following policies addressing particular dimensions:

Economic Role	Social Role	Environmental Role
SG3 Economic Growth Provision SG4 Local Economic Areas SG5 Centre Hierarchy SG6 Town Centre Uses TC1 Town Centre Policy and Hierarchy TC2 Retail Frontages NC1 North Colchester and Severalls Strategic Economic Area EC1 Knowledge Gateway and University of Essex Strategic Economic Area WC1 Stanway Strategic Economic Area DM5 Tourism, Leisure, Culture and Heritage DM6 Economic Development in Rural Areas and the Countryside DM7 Agricultural Development and Diversification	SG2 Housing Delivery SG7 Infrastructure Delivery and Impact Mitigation PP1 Generic Infrastructure and Mitigation Requirements DM1 Health and Wellbeing DM2 Community Facilities DM3 Education Provision DM4 Sports Provision DM8 Affordable Housing DM10 Housing Diversity DM11 Gypsies, Travellers, and Travelling Showpeople DM12 Housing Standards DM15 Design and Amenity DH16 Historic Environment DM17 Retention of Open Space and Recreation Facilities DM18 Provision of Public Open Space DM19 Private Amenity Space	ENV1 Environment ENV2 Coastal Areas ENV3 Green Infrastructure ENV4 Dedham Vale Area of Outstanding Natural Beauty ENV5 Pollution and Contaminated Land CC1 Climate Change PP1 Generic Infrastructure and Mitigation Requirements DM23 Flood Risk and Water Management DM24 Sustainable Urban Drainage Systems DM25 Renewable Energy, Water, Waste and Recycling

1.77 These policies work together to set a policy framework for sustainable development.

Has it been positively prepared and is it ‘aspirational but realistic’? (paragraph 154 of the NPPF)

1.78 Yes, the CLP Section 2 has been positively prepared and is aspirational but realistic in accordance with the National Planning Policy Framework wording in the following paragraphs:

- Paragraph 182 requires that "*the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development*".
- Paragraph 154: "*Local Plans should be aspirational but realistic. They should address the spatial implications of economic, social and environmental change. Local Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where. Only policies that provide a clear indication of how a decision maker should react to a development proposal should be included in the plan.*"

1.79 Section 2 provides a strategy which seeks to meet the area's objectively assessed needs, as supported by the Council's evidence base and detailed in the Topic Papers on Housing ([Topic Paper 2](#)), Economic Growth ([Topic Paper 3](#)) and Retail and Town Centres ([Topic Paper 4](#)). Policy SG7 addresses infrastructure requirements to ensure that all development is supported by, and has good access to, all necessary infrastructure. The policy is informed by an Infrastructure Delivery Plan ([EBC 5.3](#)) prepared in advance of submission as well as an April 2021 update (EBC 5.13) which will be added to the evidence base imminently.

1.80 The Council's Duty to Cooperate Statement ([CBC 4.12](#)) sets out how it has worked with other authorities to develop protocols to address any unmet need from neighbouring areas, and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development. The Plan includes a clear spatial framework for development that reflects and responds to the economic, social and environmental circumstances and anticipated changes in the area.

Is CLP Section 2 consistent with the NPPF in all other respects? Or if not, what is the justification for any inconsistency?

- 1.81 Yes, CLP Section 2 is consistent with the 2012 NPPF (as per Paragraph 151 which requires that Local Plans should be consistent with the principles and policies set out in the Framework, including the presumption in favour of sustainable development). The Section 1 Inspector was satisfied that the Shared Strategic Section 1 Plan as modified was consistent with the NPPF – the Section 2 policies follow on from that strategic policy framework.
- 1.82 Topic Paper 1 ([TP1](#)) on Consequential Changes Arising from Section 1 and Implications arising from National Policy details a small number of modifications where recent changes to Government policy, including the NPPF 2019, are considered to prompt limited modifications to the Colchester Section 2 Local Plan. These are primarily confined to modifications to environmental policies to address subtle change in emphasis around the protection of the countryside, particularly beyond those areas which are covered by special designations and to Town Centres uses / economy policy requirements to address changes to the Use Classes order to increase flexibility. These are set out in the Draft schedule of Recommended Modifications ([CBC 1.6](#)). The Council does not consider that these changes make the plan inconsistent with the policies and principles of the 2012 NPPF but they do ensure that it is effective over the Plan period.

Are there any policies within CLP Section 2 which are Strategic Policies, and should they be identified as such?

- 1.83 The Section 2 Plan is being examined under the transitional arrangement under Paragraph 214 (Annex1, NPPF 2019). Paragraph 214 states that the “policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019”. However, the Council is also aware that Para 21 (NPPF, 2019) requires that Plans should make explicit which policies are strategic policies which are those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed. In particular, it is appreciated that an identification of Strategic Policies is required to aid the consideration of conformity of Neighbourhood Plans to the area-wide Local Plan.
- 1.84 The overall framework for strategic policies in Section 2 was established by the cross-boundary and strategic policies contained in the adopted Section 1 of the CLP which set the spatial strategy for North Essex, overall housing and economic development targets, strategic infrastructure requirements, place-shaping principles, and requirements for a Garden Community crossing the Colchester-Tendring border.
- 1.85 The Strategic Policies in CLP Section 2 are clearly delineated in two areas headed Sustainable Growth Policies and Environmental Assets Policies. Neighbourhood Plans would be expected to conform with Section 1 policies and with the following strategic Section 2 policies:

SG1 Colchester’s Spatial Strategy

SG2 Housing Delivery

SG3 Economic Growth Provision

SG4 Local Economic Areas

SG5 Centre Hierarchy

SG6 Town Centre Uses

ENV1 Environment

ENV2 Coastal Areas (if applicable to Neighbourhood Plan area)

ENV3 Green Infrastructure

ENV4 Dedham Vale Area of Outstanding Natural Beauty (if applicable to Neighbourhood Plan area)

ENV5 Pollution and Contaminated Land

CC1 Climate Change

PP1 Generic Infrastructure and Mitigation Requirements

Do the policies in CLP Section 2 provide a clear indication of how a decision maker should react to a development proposal?

1.86 Yes, the policies in CLP Section 2 provide a clear indication of how a decision maker should react to a development proposal. The policies and targets are based on a comprehensive evidence base and coherent spatial strategy. The structure of Section 2 is clearly divided into logical sections as follows:

- 1) Strategic and environmental policies providing the spatial and contextual background for the Council's approach to sustainable development. The Council's overall approach to infrastructure delivery is set out in Policy SG7 which requires that 'all new development should be supported by, and have good access to, all necessary infrastructure'. Requirements for necessary infrastructure are detailed in the June 2017 Infrastructure Delivery Plan ([EBC 5.3](#)) and April 2021 Update (EBC 5.13) which will be added to the evidence base imminently. Policy PP1 itemises generic areas of infrastructure and mitigation which all proposals should be expected to address and
- 2) Subsequent Place Policies provide detailed infrastructure and mitigation requirements tailored to the specific circumstances present at each allocated site.
- 3) Finally, the 25 Development Management policies set out how detailed criteria and requirements for development, and so set a clear framework for how the Council will assess planning applications. Some of the DM policies apply to all developments (for example DM1 which requires all developments to be designed to help promote healthy lifestyles). Other DM policies set requirements for particular types of development (for example agricultural development and diversification (DM7), affordable housing provision (DM8) and criteria for development affecting heritage assets (DM16). Together these policies provide a clear indication of how the Council will react to development proposals.