



North Essex Authorities (NEAs) Section One Shared Strategic Plan

Matter 1: Habitats Regulations Assessment

Further Hearing Statement

December 2019

1.0.1 LUC, on behalf of the NEAs, prepared a Habitat Regulations Assessment (HRA) report in May 2017 (EB/003) to support the submitted Local Plan. This HRA report concluded that through the iterative process of the Appropriate Assessment stage and provided key recommendations and mitigation requirements are fully implemented, it is likely to be possible to ensure that no adverse effects on the assessed sites will occur. Natural England agreed with this conclusion and stated that provided each of the recommended safeguards are fully incorporated into the relevant policies, Natural England agrees that the Plan is unlikely to have an adverse effect on the integrity of European sites (EB/004).

1.0.2 The Inspector, in his letter dated 8 June 2018, advised that the “NEAs will need to ensure that the screening stage assessment of that report, and any future HRA reports, is compatible with the CJEU’s judgment¹.” LUC, on behalf of the NEAs, prepared an updated HRA report (EB/083), which is compliant with the requirements of the Conservation of Habitats and Species Regulations 2017 and relevant legislation and case law. The HRA concluded that:

- The approach being taken by the North Essex Authorities in addressing the key issues, particularly the strategic and collaborative approach, and working closely with Natural England, is advocated and deemed to be the most appropriate and pragmatic approach in ensuring that the Section 1 Local Plan is sound.
- In light of the *People Over Wind* and *Holohan* ruling, it can be confirmed that the findings of the HRA rely on avoidance and mitigation measures only at the Appropriate Assessment and that the complex relationships between qualifying and non-qualifying habitats and species for each site are taken into account.

1.0.3 In conclusion, providing that key recommendations and mitigation requirements are adopted and implemented, the Section 1 Local Plan will not result in adverse effects on the integrity of European sites either alone or in-combination.

1.0.4 The recommendations and mitigation requirements identified in the appropriate assessment have been incorporated into the Section 1 Local Plan. Further modifications are proposed and these are set out in this hearing statement and the Statement of Common Ground between the NEAs and Natural England (SCG/001a) and the Statement of Common Ground between the NEAs and the Environment Agency and Anglian Water Services (SCG/002a). With these suggested amendments, the Section 1 Local Plan will ensure that all necessary mitigation measures will be implemented effectively in order to ensure that the Section 1 Local Plan (either alone or in-combination with other plans or projects) would not adversely affect the integrity of any European site.

1.0.5 This hearing statement has been prepared by the NEAs and LUC.

¹ *People over Wind, Peter Sweetman v Coillte Teoranta* [CJEU Case C-323/17]

1. Should the HRA have taken account of the implications for European sites of development beyond 2033 proposed in the Section 1 Plan?

1.1.1 The requirements of the Habitats Regulations are to assess the plan. The Regulations do not require an assessment of short, medium, long term impacts, or specifically, an assessment of the future growth beyond the plan period.

1.1.2 Nevertheless, Section 2 of the HRA identifies the future total capacities of the garden communities as specified in policies SP7 to SP10. Therefore, the HRA considers the total quantum of future development, beyond 2033, and upon which key conclusions relating to water, recreation and loss of offsite functionally linked land detailed within the Appropriate Assessment are based. For example, the water cycle studies which informed the HRA considered the maximum potential growth of all three proposed garden communities, whilst the assessment of loss of offsite foraging habitat reviewed the entirety of land within each of the site allocations. Furthermore, the Essex Coast RAMS runs to 2038 which is beyond the lifetime of the plan in accordance with a precautionary principle. The RAMS (EXD/050 paragraph 7.6) also specifies the following in relation to delivery of mitigation beyond 2038:

The package of mitigation measures, some coast-wide and others specific to an individual Habitats site, will need to be implemented “in perpetuity” although the costs are limited to the lifetime of the Local Plans 2018-2038. The term “in perpetuity” has a legal definition of 125 years (The Perpetuities and Accumulations Act 2009) and it has been accepted in strategic mitigation schemes for European sites such as those in place for the Thames Basin Heaths and Dorset heathlands. Existing RAMS partnerships elsewhere in England invest some of the developer contributions to ensure that mitigation for impacts from residential development can be delivered for the Local Plan periods without the need for successive funding. Bird Aware Solent currently invest 40% of all such contributions. After the current Strategy lifetime, future timetables will need to be prepared based on reviews of the Strategy itself and its evidence base.

1.1.3 The HRA has therefore taken account of the implications for European sites of development beyond 2033 proposed in the Section 1 Plan.

2. Does the HRA properly identify the sensitive areas of the Colne Estuary in terms of nesting, roosting and feeding for qualifying bird species?

1.2.1 Yes, the HRA recognises sensitive areas of the Colne Estuary based on existing information.

1.2.2 Typically, within a coastal SPA there will be key locations which are of increased value for birds, and which are particularly sensitive to disturbance, such as high tide roosts, favoured feeding areas, and colonial nesting sites, particularly where close to areas with human access.

1.2.3 The information included (e.g. Figure 6.1 of document EB/083 HRA report), which was produced by the RSPB and is based on expert local knowledge, provides essential information in understanding the potential impacts and informing the assessment. The determination and recognition of key locations for birds within the Colne Estuary, and other European Sites is a key component of the Bird Aware Essex Coast initiative, and such information will continue to be updated in light of monitoring and survey results, and consultation with key stakeholders, including Natural England, the RSPB, the BTO, the Wildlife Trust and other land managers, for the lifetime of the plan and strategy. Map 4.1 of the RAMS Strategy Document includes a map of key roosts/ breeding areas in North Essex. This information was provided by the RSPB and demonstrates that information on bird species will continue to be updated. Indeed, Section 9 of the Essex Coast RAMS clearly sets out how monitoring will be implemented, including regularly updating bird survey information which will be used to inform and, if necessary, refine the strategy to ensure it continues to function as intended in perpetuity. Importantly, this ensures that there will be a feedback loop, whereby the provision of the RAMS is able to respond to fluctuations in bird distribution and behaviour.

1.2.4 Furthermore, in accordance with a precautionary approach and relevant case law, it should be recognised that the HRA also assessed the potential importance of areas of land outside the SPA boundary which may represent functionally linked land upon which SPA birds may depend.

3. How would funding of the mitigation measures proposed in the Essex Coast Recreational disturbance & Mitigation Strategy HRA Strategy Document [the RAMS document] (July 2019) [EXD/050] be affected if only two or one of the proposed garden communities were to be found sound?

1.3.1 The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) will deliver the mitigation necessary to avoid significant adverse effects from the in-combination impacts of residential development that is anticipated across Essex; thus protecting the European sites on the Essex coast from adverse effect on site integrity.

1.3.2 The costed mitigation package includes an effective mix of avoidance and mitigation measures to provide flexibility and deliverability, based on costed similar provision elsewhere in England. There are numerous examples of similar mitigation partnerships elsewhere with the same aim of the Essex Coast RAMS of mitigating the in-combination impact of residential development anticipated from new dwellings on European sites. For example, Bird Aware Solent, Bird Wise North Kent, Bird Wise East Kent and the Suffolk Coast RAMS which, like the Essex Coast RAMS are coastal partnerships, and Thames Basin Heaths, River Mease, Cannock Chase, Dorset Urban Heaths Partnership and the Morecambe Bay Partnership.

1.3.3 The Essex Coast RAMS partners are: Basildon Borough Council, Braintree District Council, Brentwood Borough Council, Castle Point Borough Council, Chelmsford City

Council, Colchester Borough Council, Maldon District Council, Rochford District Council, Southend Borough Council, Tendring District Council, Thurrock Council and Uttlesford District Council. The Essex Coast RAMS sets a per dwelling tariff. This is calculated by dividing the total cost of the Essex Coast RAMS mitigation package by the total number of dwellings coming forward up to the end of the Essex Coast RAMS period (2038) not already consented. In accordance with table 5-1 of the RAMS Strategy Document [EXD/050], some figures are based on Local Plan allocations, but where that is not possible LPAs have provided an informed estimate based on evidence from housing trajectory documents and past housing delivery rates. Basildon, Braintree, Brentwood, Chelmsford, and Thurrock are all partially covered by the Zone of Influence (Zol) and so an estimate has been made for the number of dwellings within the Zol. Some Essex Local Plans are still at an early stage in production and preferred allocations are not yet known. Those Local Plans at an early stage of production may experience a substantial uplift in the number of dwellings coming forward within the Zol. The housing figures included in the Essex Coast RAMS are therefore a likely underestimate and subject to change.

1.3.4 The housing numbers in the Essex Coast RAMS Strategy Document [EXD/050] will be reviewed and, where necessary, updated over the lifetime of the strategy in accordance with LPA monitoring data, as part of the Essex Coast RAMS monitoring and review process. The Strategy Document recognises that as the housing figures may change before the SPD is adopted, the tariff will require reassessment prior to adoption (RAMS Strategy Document, paragraph 8.7) [EXD/050].

1.3.5 If only one or two of the proposed garden communities were found to be sound, then other allocations would need to be found to meet housing need within North Essex. Those alternative allocations would then be responsible for the tariff costs and therefore all mitigation measures proposed in the RAMS Strategy Document will be funded.

1.3.6 The Essex Coast RAMS has been designed to be flexible and respond to changes to Local Plans through regular monitoring and review. This process will be implemented under the guidance of the RAMS steering group which includes representatives from Natural England and project board.

4. Does the HRA take adequate account of the implications for European sites of the Section 1 Plan in respect of: (a) water use and waste water? (b) powered paragliding? (c) loss of feeding grounds at Tendring Colchester Borders GC for lapwings and golden plovers?

Water use and waste water

1.4.1 The Integrated Water Management Strategy (IWMS), which considers the maximum potential growth of all three proposed garden communities (43,720 dwellings at NEAGC1, NEAGC2 and NEAGC3, 2017 estimate), has identified that additional water demand from proposed growth could be accommodated beyond the plan period through a combination of strategic supply options, demand reduction and water efficiency measures.

1.4.2 The HRA made reference to the findings of available water cycle studies for the individual NEAs and the Integrated Water Management Strategy. This evidence was based on the NEAs' submitted Plans and as such, caution was exercised by the HRA in drawing on their conclusions to inform assessment of the effects of the Plan. It is good practice for HRAs to rely on evidence provided by water cycle studies.

1.4.3 Neither the Environment Agency, Natural England nor Anglian Water Services has raised concerns about water quantity or water quality in consultation on the Additional Sustainability Appraisal or HRA.

Powered Paragliding

1.4.4 EB/083 HRA specifies (Paragraph 5.2) that '*Increased recreation from land and water-based activities, as a result of increased housing within the NEAs has the potential to cause Likely Significant Effects to European sites*'. Whilst powered paragliding has not been assessed in isolation, the nature of such an affect falls within the assessment described above.

1.4.5 The HRA recognises that '*Recreational pressures on coastal European sites is a complex issue and is likely to require a strategic approach across the North Essex Authorities to ensure that adverse effects on integrity can be avoided*'.

1.4.6 The survey work, which informed the RAMS Strategy Document, did not record paragliding as an activity during the survey work. However, the workshops with local experts as part of the discussion on potential mitigation solutions, noted that power gliders currently take off from a field on Mersea Island. The power gliders occasionally fly low and fly over the Colne and Blackwater SPAs.

1.4.7 Natural England has met with paramotor users on the Colne and Blackwater Estuaries to explain the impacts their sport can have if not undertaken responsibly. Guidance was also provided on how they can avoid disturbing birds whilst flying. As a result of this meeting the users are more aware of their responsibilities and are self-policing the sport locally where possible. Natural England is looking to undertake a similar approach with Jet skiers. The Essex Coast RAMS can build on this approach already taken forward by Natural England staff.

1.4.8 A code of conduct would not in isolation address all the issues associated with recreational pressures, including activities such as powered paragliding. Indeed, no one single measure would be solely relied upon. The purpose of a RAMS, of which a code of conduct would form part, is to provide a suite of measures which, together, provide sufficient certainty that adverse effects on integrity would be avoided. A code of conduct would not guarantee the avoidance of AEoI on its own, but it would certainly provide an important role in encouraging people to undertake recreational activities responsibly, particularly if promoted by RAMS rangers and linked to penalties and enforcement as is intended.

1.4.9 Encouraging responsible recreation is a key measure endorsed by land managers of important wildlife sites across the country, including NE, RSPB and the wildlife trusts. These bodies regularly provide educational material at sites to encourage visitors to comply with key objectives. A good example is the long-established mitigation strategies in place for heathland SPAs in the south of England where the use of educational material, including signage, leaflets and via wardening has been successful in encouraging people to put dogs on a lead, stick to accessible footpaths, and avoid activities which could otherwise be harmful to the SPA features.

1.4.10 A code of conduct approach is not intended to mitigate for the small proportion of irresponsible people, but rather to educate and inform the majority of people who are keen to act in responsible and sensitive manner. Indeed, most forms of disturbance to are likely to be a result of ignorance rather than malice, and therefore whilst such measures will never be solely effective at eliminating potential impacts, they have a key role to play in contributing to the effectiveness of overall mitigation and avoidance, and therefore education through a code of conduct should be recognised as a key component to the Essex Coast RAMS.

1.4.11 As a result adequate account has been taken of the implications of powered paragliding and other recreational activities with the potential to result in bird disturbance.

Loss of feeding grounds

1.4.12 As specified in the HRA the Tendring and Colchester Borders Garden Community and larger housing allocations on the edge of Clacton-on-Sea were identified as providing suitable offsite foraging habitat for golden plover and lapwing in the form of arable fields and short grazed pasture. The HRA concluded that, in isolation, the importance of these sites for these species is likely to be low when compared with the extensive areas of habitat of greater suitability both within the North Essex Authorities and the wider land areas surrounding these European sites, particularly given the influence of limiting factors such as distance from SPAs, disruption of flight paths by urban settlements, and presence of edge features. As a result, the potential for the loss of offsite habitat to adversely affect these species related primarily to the cumulative effect of reducing the extent of feeding areas. The likelihood of this occurring was considered low given the quality of the habitat affected and the small amount of habitat affected as a proportion of that available around each of the European sites.

1.4.13 Given the dependency of these species on offsite arable fields and grasslands, inclusion and implementation of appropriate safeguards and mitigation were recommended for inclusion in the Section 1 Local Plan as part of a highly precautionary approach, and to provide certainty that there will be no adverse effect on European sites. The mitigation included in the HRA and committed to in the Section 1 Local Plan includes:

- Wintering bird surveys as part of any project level development proposals and masterplanning for the Tendring and Colchester Borders Garden Community, undertaken as part of a coordinated approach with the parallel requirement which has been identified as mitigation for certain site allocations in the HRA of the Tendring District Draft Section 2 Local Plan.
- A commitment to phasing of development and mitigation. This may include provision of appropriate mitigation in the form of habitat creation and management in perpetuity, either on-site or through provision of strategic sites for these species elsewhere.

1.4.14 It is important to recognise that the mitigation measures recommended in the HRA are considered precautionary. Given its size, the Tendring Colchester Borders Garden Community would likely be capable of mitigating for its own impact on-site if necessary, but if required, such habitat could be provided elsewhere within their feeding ranges. Increasing the extent and suitability of habitats for lapwing and golden plover could be achieved by following the habitat management guidance provided by Natural England², which specifies a preference during winter for overwintered stubble, and grasslands that support; little dead plant litter; scattered bare ground covers up to 10% of the area; a short sward, less than 5 cm tall and covers more than 70% of the area; scattered clumps 10-15 cm or occasional taller tussocks make up about 20% of the sward.

1.4.15 These conclusions are not driven by an over-abundance of 'pragmatism' in order to reach a conclusion in line with the tests of the regulations. However, a pragmatic approach is one which deals with things sensibly and realistically in a way that is based on practical rather than theoretical considerations, and therefore it serves to reason that the use of a pragmatic approach provides additional certainty in its deliverability and effectiveness.

1.4.16 As specified in the HRA report; *'A risk-based approach involving the application of the precautionary principle was adopted in the assessment, such that a conclusion of 'no significant effect' was only reached where it was considered very unlikely, based on current knowledge and the information available, that a policy or site allocation would have a significant effect on the integrity of a European site'*. Specifically, in relation to the loss of offsite habitat the HRA states that; *'The mitigation measures provided above are considered precautionary, appropriate and effective. Given their size, each allocation would likely be capable of mitigating for their own impact on-site if necessary, and therefore the above measures have been recommended to provide certainty that the cumulative effect of habitat loss would not result in significant adverse effects'*.

1.4.17 In light of the above the assessment of loss of feeding grounds is considered precautionary, and robust.

² Natural England Technical Information Note TIN090, First edition 6 May 2011 www.naturalengland.org.uk, Illustrated guide to managing farmland for lapwings

5. Would implementation of the mitigation measures proposed in the RAMS document [EXD/050] ensure that the Section 1 Plan (either alone or in combination with other plans or projects) would not adversely affect the integrity of any European site?

1.5.1 The implementation of the mitigation measures proposed in the RAMS Strategy Document will ensure that the Section 1 Plan will not adversely affect the integrity of any European site from increased levels of recreational disturbance in-combination with other plans or projects.

1.5.2 In terms of the appropriateness and deliverability of the RAMS, this approach is now widely promoted and relied upon nationwide as the primary measure in avoiding impacts to European sites as a result of recreational pressures. This approach has successfully passed scrutiny as part of examinations of numerous Local Plans in the UK.

1.5.3 As a result, there is a high degree of confidence in the appropriateness and effectiveness of such a measure. The production and implementation of the Essex Coast RAMS (now Bird Aware Essex Coast) includes a commitment to regular monitoring, has the flexibility to adapt to findings and pre-empt impacts before they affect integrity, and is considered likely to provide an effective form of mitigation and avoidance for recreational pressures arising from the Shared Strategic Section 1 Local Plan.

Background

1.5.4 The Essex Coast RAMS was initiated by Natural England, the government's adviser for the natural environment in England.

1.5.5 Natural England invited Essex LPAs to a meeting on 13 September 2017. Natural England explained that their West Anglia Team had identified the Essex coast as a priority for strategic and proactive planning engagement with LPAs for a number of reasons, including:

- The Essex Coast is rich and diverse and has many European protected sites.
- By working together we can hopefully help each other achieve our aims and objectives for the coast.
- There are a high number of local plan consultations programmed for this financial year. All of which have the potential to have recreational disturbance impacts on our European protected sites, in their own right and in-combination.

1.5.6 Natural England explained about the role of mitigation strategies and identified the Habitats sites and LPAs that should be involved in the Essex Coast RAMS based on existing evidence of visitor pressure.

1.5.7 Zones of Influence (Zoi) were calculated for each European site using the survey data and are used to trigger developer contributions for the delivery of mitigation

measures. The whole of Colchester Borough and the whole of Tendring District falls within the Zol of the Essex Coast RAMS and so all development within Colchester and Tendring is deemed to have the potential to cause likely significant effect on European sites in terms of recreational disturbance in-combination with other plans or projects. Contribution to the package of mitigation measures set out in the Essex Coast RAMS (or alternative bespoke mitigation agreed by Natural England) is essential for all residential development in Colchester and Tendring and those parts of Braintree within the Zol.

Adoption of the Essex Coast RAMS Strategy Document

1.5.8 The Essex Coast RAMS was completed in January 2019 and has been adopted by each of the NEAs. Natural England provided advice throughout the preparation of the Essex Coast RAMS and 'signed off' the RAMS Strategy Document before it was finalised and adopted by LPAs. The NEAs are collecting RAMS contributions for development within the Zone of Influence (Zol), which will be spent on the mitigation measures package detailed in the RAMS Strategy Document.

1.5.9 Mitigation measures are listed as: immediate, shorter to medium term, and longer-term projects. A contingency is included. The first measure is staff resources: The Delivery Officer and then two rangers. The contributions that the NEAs have collected will be combined with contributions from other LPA partners to fund the project staff, appointments are expected to take place in 2020. One of the LPA partners will become the accountable body and a draft agreement between all partners is currently being developed.

Effectiveness

1.5.10 Through the provision of a per dwelling tariff, the RAMS enables the achievement of proportionate mitigation measures and enables development proposals of all scales to contribute to necessary mitigation.

1.5.11 During development of the Strategy Document workshops were held with key stakeholders with local and specialised knowledge to capture the mitigation measures considered as most effective to avoid the impacts likely to result from increased recreational pressure.

1.5.12 The costed mitigation package (Table 8.2 of the RAMS Strategy Document) includes an effective mix of measures considered necessary to avoid likely disturbance at key locations with easy public access. The package is flexible and deliverable and based on best practice elsewhere in England. A precautionary approach has been adopted, with priority areas for measures identified as those which have breeding SPA birds which could conflict with high numbers of summer visitors to the coast and those with important roosts and foraging areas in the winter. Sensitive habitats have also been identified for ranger visits. The mitigation package prioritises measures considered to be effective at avoiding or mitigating recreational disturbance by

European site managers and Maldon District Council in managing water sports on the Blackwater estuary.

1.5.13 The RAMS is intended to be a flexible project that can adapt quickly as necessary. The rangers will quickly become familiar with the sites and areas that are particularly sensitive, which may change over time, and sites that experience a high number of visitors. The rangers on the ground experience will steer the project and necessary measures.

1.5.14 The Essex Coast RAMS will be deemed successful if the level of bird and habitat disturbance is not increased despite an increase in population and the number of visitors to the coastal sites for recreation (paragraph 1.7 of RAMS). The baseline has been identified in the RAMS Strategy Document and will be used to assess the effectiveness of the RAMS.

Monitoring and Review

1.5.15 The Essex Coast RAMS will be monitored and reviewed on a regular basis by the RAMS project staff. The NEAs will report on the Essex Coast RAMS as part of their Annual Monitoring Reports (AMR). The Delivery Officer and Officer steering group Chairperson will present an annual report to the Project Board, which is made up of Chief Planners across Essex, detailing what has been achieved in the past year and the plans for the upcoming year based on a forecast of developer contributions. Elected members will review the Essex Coast RAMS through an annual report to the Essex Coastal Forum.

1.5.16 The Essex Coast RAMS will provide a flexible and responsive approach, allowing it to respond to unforeseen issues. Close engagement will continue with Natural England who will be able to advise if recreational disturbance is increasing at particular Habitats sites and specific locations. Thus, enabling these locations to be targeted by the rangers to have an immediate impact. Updated visitor surveys, which are included in the mitigation package, will enable Zol to be reviewed and expanded if it is shown that visitors are travelling further than previously found. There is scope to adjust the tariff too if it is shown that contributions are not covering the identified measures, if the Zol is made smaller or to respond to changes in housing numbers across Essex.

1.5.17 A proportion of developer contributions collected (% to be determined by the Essex Coast RAMS Project Board) will be invested to cover the cost of delivering the visitor management measures in perpetuity, as the number of new residents will be permanent.

Examples from elsewhere

1.5.18 A key requirement of the RAMS will be to provide a flexible and responsive approach which adapts to survey and monitoring findings and ensures that refinements can be implemented in advance of LSE's (or AEOI) being realised. Crucially, the

management of flagship nature reserves across the UK provides a wealth of evidence that appropriate management, which represents a crucial component of the RAMS, can successfully avoid and mitigate recreational effects on coastal habitats and species.

1.5.19 Whilst the use of mitigation strategies as effective mitigation is relatively recent, there are numerous examples of mitigation partnerships, with the aim of mitigating recreational disturbance to European sites. This is a new and growing area in the conservation community and those working on mitigation strategies regularly share good practice and assist each other. It will take time to embed, but in time success of mitigation partnerships will be able to be measured.

1.5.20 A good example of an early and successful approach is provided by Policy NRM6 of the South East Plan [The Thames Basin Heath Delivery Framework (TBHDF)] which has been and remains crucial in facilitating population growth in the authorities located within the Thames Basin Heaths SPA zone of influence (the authorities include Bracknell Forest Borough Council, Elmbridge Borough Council, Guildford Borough Council, Hart District Council, Royal Borough of Windsor and Maidenhead, Runnymede Borough Council, Rushmoor Borough Council, Surrey Heath Borough Council, Waverley Borough Council, Woking Borough Council, Wokingham Borough Council, and Hampshire County Council). The Delivery Framework was prepared in 2008 and adopted as part of the statutory development plan for the South East Plan proposed changes in 2009. The Framework is also reflected by individual avoidance strategies produced by each of the authorities, and the key approach to avoidance and mitigation focuses on the provision of (i) strategic access management and monitoring (SAMM), and (ii) provision of suitable alternative natural greenspace (SANGs). This provides a useful example of an equivalent mechanism for the delivery and effectiveness of this approach in perpetuity.

1.5.21 Bird Aware Solent has been operating since 2014. Earlier this year the partnership won the RTPI South East Regions Planning for the Natural Environment Award and the overall Regional Winner award. Annual reports are prepared on the implementation of the partnerships work. The 2018/19 report explains that the partnership is now operating under the long-term strategy and introduced a higher tariff. Like the Essex Coast RAMS, the key mitigation measure is a team of rangers who patrol the coast. The rangers aim to reduce bird disturbance by helping people to better understand the importance of the over-wintering birds and their vulnerability to disturbance. They advise people on how small changes in their behaviour can be hugely beneficial to the birds. The ranger team currently includes a lead ranger, two permanent rangers and three seasonal rangers employed for the winter period. During the 2018/19 winter period the Bird Aware Solent rangers engaged with 12,811 people during site visits and 1,881 people at events. They have 1,139 twitter followers, 714 facebook followers and 348 instagram followers (as at 31 March 2018). Monitoring work includes a study of the effects of the rangers presence on people's behaviour,

which over time will show if there has been a reduction in disturbance over time due to the rangers presence.

1.5.22 The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) was established in 2015 and Bird Wise was created in 2017 to deliver the mitigation measures identified in the strategy. The 2018/19 monitoring report states that this year marked the first year with a full complement of staff. Rangers completed 172 site visits and engaged with 1,600 people. Social media following has grown significantly: Twitter has increased by 229% from 103 followers in June 2018 to 339 in June 2019, Facebook by 178% from 33 to 92 and Instagram by 316% from 24 to 100.

Green infrastructure and SANGS

1.5.23 The RAMS does not cover site specific infrastructure, such as the provision of green infrastructure. The RAMS mitigates likely significant effects from recreational disturbance in-combination with plans or projects. Discussion on the necessary measures to address likely significant effects from recreational disturbance alone will form part of discussions on individual planning applications and will be dealt with on a case by case basis based on the proximity of the site to European sites, the size of development proposed and the existing green infrastructure in the immediate area. Similarly, likely significant effects from non-recreational impacts will need to be considered on a case by case basis.

1.5.24 Given that the coast cannot easily be replicated inland, Suitable Accessible Natural Greenspace (SANG) does not form part of the Essex Coast RAMS. However, if people are only visiting the coast because it is their nearest greenspace, then they can be drawn away from the coast by provision of an attractive site nearer to their home. Natural England therefore advise that on-site greenspace should be provided as part of individual developments over 100 dwellings or smaller developments close to Habitats sites (e.g. to include circular walks, dogs off lead areas etc.) to take some of the pressure off the coastal sites. However, this will not remove residents' overall desire to visit the coast, so a contribution to the mitigation measures at the coastal Habitats sites still needs to be made in all cases.

1.5.25 The delivery of new green infrastructure and open space forms part of the proposals/principles in the Section 1 Local Plan for all garden communities. One of the accepted functions of green infrastructure/new open space is to relieve reactional pressure on designated European sites. The Shared Strategic Plan establishes the principle of delivering a network of multi-functional green infrastructure and open space as part of the garden communities.

1.5.26 A more detailed Development Plan Document will be prepared for each of the garden communities that will provide greater details on the amount and location of new green infrastructure within the wider garden community. GI provision will be determined through masterplanning to support the preparation of the DPDs and as part of these processes, the types of GI to be provided, its functionality and location will be

determined. Importantly, given the location and extent of the Tendring Colchester Borders Garden Community, there is a high level of certainty that such a network of connected high quality green infrastructure and open space can be provided, and serve an effective contribution in providing a mitigatory role in reducing recreational pressure at the European Sites.

6. Would the policies of the Section 1 Plan (including if necessary the relevant amendments suggested by the NEAs) provide sufficient certainty that the necessary mitigation measures will be implemented in order to ensure that the Section 1 Plan (either alone or in combination with other plans or projects) would not adversely affect the integrity of any European site?

1.6.1 Natural England, the government's advisor for the natural environment, as set out in the Statement of Common Ground (SCG/001) and their representation to the Habitat Regulations Assessment as part of the Technical Consultation, agree with the NEAs that an adverse effect on the integrity of European sites, either alone or in-combination, can be avoided, based on the described mitigation measures.

1.6.2 Proposed modifications provide sufficient certainty that the necessary mitigation measures will be implemented in order to ensure that the Section 1 Local Plan (either alone or in-combination with other plans or projects) would not adversely affect the integrity of any European site.

1.6.3 The HRA conclusions rely on the following key mitigation measures specified in the Section 1 Plan (see section 8):

1.6.4 **Loss of off-site habitat** - To mitigate for the loss of off-site habitat, the Appropriate Assessment identified the need for wintering bird surveys for the Tendring Colchester Borders Garden Community as part of any project level development proposals and masterplanning, to determine the sites individual importance for golden plover and lapwing and inform mitigation proposals. The following further modification is agreed between the NEAs and Natural England (SCG/001a) as necessary to provide sufficient certainty that the necessary mitigation measures will be implemented:

1.6.5 'Depending on the findings of the wintering bird surveys, development may need to be phased to take into account the cumulative numbers of SPA birds. In the unlikely but possible event that cumulative numbers of SPA birds affected are likely to exceed thresholds of significance (i.e. > 1% of the associated European Site), appropriate mitigation in the form of habitat creation and management in perpetuity, either on-site or through provision of strategic sites for these species elsewhere, will be required. If required, mitigation will need to create and manage suitably located habitat which maximises feeding productivity for these SPA species, and such mitigatory habitat would need to be provided and fully functional prior to development which would affect significant numbers of SPA birds.'

1.6.6 **Recreational Impacts** - To mitigate for any increase in recreational pressures at the European sites, the Appropriate Assessment recommended the production of Recreational Avoidance and Mitigation Strategies (RAMS) for the Colne & Blackwater, Stour and Orwell SPAs/Ramsar sites and Essex Estuaries SAC.

1.6.7 **Water quality** – To ensure that the water quality of the European Sites are not adversely affected by growth proposals in Section 1, the Appropriate Assessment recommended the inclusion of policy safeguards to ensure that adequate water treatment capacity exists prior to developments proceeding and a commitment that the phasing of development would not exceed water and sewage infrastructure capacity and that the necessary infrastructure upgrades would be in place prior to developments coming forward.

1.6.8 The Local Plan states that '*The three authorities are committed to implementing the recommendations in the Section 1 Appropriate Assessment and these will be further progressed through the Strategic Growth DPDs*'.

1.6.9 Furthermore, the Plan specifies the following commitments. Further modifications agreed as part of updates to Statements of Common Ground (SCG/001a and SCG/002a) are highlighted, with bold indicating new text and strikethrough deleted text.

1.6.10 Para 6.1 – 'Section 1 of the Local Plan highlights strategic and cross-boundary infrastructure, identifying the strategic transport infrastructure projects required to underpin delivery of the planned growth in the area including the proposed Garden Communities, and sets priorities for other infrastructure requirements such as education, healthcare, digital connectivity, water supply and wastewater **infrastructure and treatment.**' (Modification reference 25)

1.6.11 New section E and paragraph 6.24 – 'The authorities will need to work with Anglian Water, Affinity Water, Environment Agency and ~~developers~~ **other infrastructure providers** to ensure sufficient capacity and provision of an adequate water supply and **foul drainage and wastewater treatment** ~~waste-water management facilities~~ to support growing communities as outlined in the Integrated Water Management Strategy and Infrastructure Delivery Plan. This will be particularly important as water supplies continue to be threatened by climate change **and pressures from continuing growth and development. Water provisions need to be protected and it is essential for adequate water and wastewater infrastructure to be in place to accommodate the demands of growth and development in accordance with the Water Framework Directive and the Habitats Directive.** Garden Communities have the opportunity to minimise demand and wastewater generation, through exploring opportunities at both the strategic and local level.' (Modification reference 56)

1.6.12 SP5 - 'The authorities will work with relevant providers to ensure that there is ~~resilient~~ **sufficient** capacity in the water ~~supply management~~ and waste water **infrastructure systems** to respond to new development. **Where necessary, and** ~~provide~~ improvements to water infrastructure, ~~and~~ waste water treatment and off-site

drainage **should be made ahead of the occupation of dwellings in accordance with environmental legislation.** improvements.’ (Modification reference 62)

1.6.13 SP7/8/9/10 – ‘To ensure new development does not have an adverse effect on any European Protected **or nationally important sites and complies with environmental legislation (notably the Water Framework Directive and Habitats Directive)**, the required waste water treatment capacity must be available **ahead of the occupation of dwellings.**’ (Modification reference 75)

1.6.14 SP8/9/10 – ‘The delivery of smart, innovative and sustainable water efficiency/re-use solutions that fosters climate resilience and a 21st century approach towards water supply, water and waste water treatment and flood risk management. **Taking a strategic approach to Flood Risk through the use of Strategic Flood Risk Assessments and the updated Climate Projections 2019 and identifying opportunities for Natural Flood Risk Management.** Provision of improvements to waste water treatment plant including an upgrade to the Colchester Waste Water Treatment Plant and off-site drainage improvements aligned with the phasing of the development within the plan period and that proposed post 2033. (Modification reference 84 & 97)

1.6.15 There are policy safeguards in the Local Plan, including additional proposed amendments which have been agreed between the NEAs, Anglian Water Services and the Environment Agency (SCG/002a), and the NEAs and Natural England (SCG/001a) as detailed above, which ensure that the NEAs will work with relevant providers to ensure that there is sufficient capacity in the water management and waste water systems and water supply to respond to new development and provide improvements, where necessary, to water infrastructure and waste water treatment and off-site drainage improvements, and adequate waste infrastructure to accommodate the demands of growth ahead of the occupation of dwellings.

1.6.16 A new policy - SP1B on the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy, was proposed as part of the Suggested Amendments to the Publication Draft Braintree, Colchester & Tendring Local Plans: Section One - July 2019 (modification reference 14). Natural England, in their representations on the Suggested Amendments to the Publication Draft Braintree, Colchester & Tendring Local Plans: Section One - July 2019, state that they welcome and fully support the inclusion of Policy SP1B and the intention of securing the commitment towards the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) within policy. Natural England state that whilst policy wording was previously agreed within the Statement of Common ground (SG/001) within individual policies (including SP6, SP8, SP9 & SP10), the inclusion of an overarching Essex Coast RAMS policy is a positive approach.

1.6.17 The following update to new policy SP1B is agreed between the NEAs and Natural England (SCG/001a):

An Essex Coast Recreational disturbance Avoidance and Mitigation Strategy **has been** ~~will be~~ completed in compliance with the Habitats Directive and Habitat Regulations. Contributions will be secured towards mitigation measures identified in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMSs) ~~which will be completed by the time the Local Plan is adopted.~~

~~Prior to RAMS completion, the NEAs will seek contributions from proposed residential development to deliver all measures identified (including strategic measures) through project level HRAs, or otherwise, to mitigate any recreational disturbance impacts in compliance with the Habitat Regulations and Habitats Directive~~

1.6.18 Crucially, the impacts identified, and the mitigation proposed assesses the maximum development scenario. For example, the IWMS considers the maximum potential growth of all three proposed garden communities, the assessment of loss of offsite habitat considers the entire footprint of the strategic site allocations, and the approach to avoiding and mitigating recreational impacts is specifically designed to address the strategic growth. This approach is considered in accordance with the precautionary principle and provides a high degree of certainty that the mitigation measures specified will avoid adverse effects on the integrity of European sites.

1.6.19 In summary, the policies of the Section 1 Plan provide sufficient certainty that the necessary mitigation measures will be implemented in order to ensure that the Section 1 Plan (either alone or in combination with other plans or projects) would not adversely affect the integrity of any European site.