

Report to	Planning Committee
Date	15 June 2017
By	Director of Planning
Title of Report	Draft Pre-Submission South Downs Local Plan
Purpose of Report	To present the draft Pre-Submission South Downs Local Plan

Recommendation:

The Committee is recommended to:

- 1. Endorse the direction of the draft Pre-Submission Local Plan as detailed in Appendix I, subject to any comments made by the Planning Committee being considered.**
- 2. Note the main issues arising from Sustainability Appraisal (SA) and Habitat Regulation Assessment (HRA) set out in this report.**
- 3. Recommend that the National Park Authority approve the draft Pre-Submission Local Plan on 11 July 2017 for public consultation under Regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012 subject to any minor changes that arise prior to the start of the consultation being agreed by the Director of Planning in consultation with the Chair of the Authority.**
- 4. Recommend that the National Park Authority delegate authority to the Director of Planning in consultation with the Chair of the Authority to make any minor changes arising from the consultation and submit the Pre-Submission Local Plan to the Secretary of State under regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 for examination.**
- 5. Note that if major changes are required to the Pre-Submission Local Plan that a further public consultation and decision by the Authority will be required.**

1. Summary

- 1.1. This report introduces the draft Pre-Submission South Downs Local Plan (subsequently referred to as the Local Plan). It recommends that the draft document is endorsed by Planning Committee for consideration by the National Park Authority (NPA) on 11 July 2017, subject to any comments made by the Planning Committee being addressed. The report also asks that Planning Committee recommends NPA to approve the plan for public consultation in September for a period of eight weeks in line with our Statement of Community Involvement. The Local Plan will be presented to and debated by all Members at a Full Authority Local Plan Review Meeting on 29 June 2017 and forms appendix I of this report.
- 1.2. A brief explanation of progress to date on the Local Plan is set out below. A number of key issues relating to the whole plan and individual policies are highlighted. The main issues arising from Sustainability Appraisal (SA) and Habitat Regulation Assessment (HRA) are discussed

including an update on Ashdown Forest. Finally, a brief explanation is given of the way ahead with the plan including submission and examination.

2. **Background**The draft Pre-Submission Local Plan follows on from the Issues and Options and the Preferred Options documents that were published for public consultation in 2014 and 2015 respectively.
- 2.2. All of the chapters, policies and explanatory text have been previously reviewed at least once individually by both Local Plan Members Working Group (LPMWG) and Planning Committee. All the changes recommended at these meetings by Members have been addressed.
- 2.3. An earlier version of the composite plan was presented to LPMWG on 20 April 2017. All the changes discussed at that meeting have been addressed in this version of the plan including colour coding of the policies to provide greater readability. The plan has been appraised as part of the Sustainability Appraisal and the Habitat Regulation Assessment by our consultants. The main findings and issues arising from this work are set out below. The draft plan has been assessed by an inspector from the Planning Inspectorate, David Hogger, who has examined a total of 21 local plans. It was also assessed by Keith Holland, who is the former head of the Planning Inspectorate. Finally, the plan was subject to an assessment by the Chair of the NPA and the Director of Planning. All of the recommended changes have been actioned by the team.
- 2.4. The overall consensus is that the plan is sound. Here is a quote from the Keith Holland's critical friend report:
- 2.5. The draft of the Pre-submission South Downs Local Plan that we have considered is very close to being suitable for submission to the Planning Inspectorate for examination. The broad approach which seeks to protect and build on the special qualities of the SDNP is clearly articulated as is the ecosystems services concept. The document is clearly set out and provides appropriate guidance for anyone wishing to develop in the area. Many of the matters that have been referred to above relate to improving the Plan rather than being essential to make the Plan sound. However, there are two related matters which should be strengthened before the Plan is submitted for examination. The first is the justification for the level of growth being proposed and the second is how the authority is seeking to address the question of unmet need through the Duty to Cooperate.
- 2.6. The two highlighted issues have been addressed with explanatory text added to chapter 3. Full information on the Duty to Co-operate will be provided through our Duty to Cooperate statement. A draft will be presented to NPA in July.
- 2.7. A Policies Map has been prepared as part of the Local Plan. This is a spatial interpretation of the development plan policies covering the National Park and will form part of the consultation in autumn. It consists of three overview maps covering all of the National Park and over 50 inset maps for individual settlements and neighbourhood planning areas. A draft copy of these maps will be available for Members to view on the day of Planning Committee.

3. Ashdown Forest

- 3.1. The main risk to the Local Plan is linked to Ashdown Forest and the quashing of policies SP1 and SP2 of the Lewes Joint Core Strategy (JCS) in respect to the National Park. These policies set the housing and employment requirements and the distribution of the new housing. The judicial review (JR) centred on the methodology for the Habitat Regulations Assessment (HRA) in regard to understanding the impact of traffic movements through Ashdown Forest, which is a Special Area of Conservation (SAC); in particular at what point, and how, assessments should be undertaken in combination with other Local Plans.
- 3.2. Ashdown Forest is an extensive area of lowland heath, which is vulnerable to nitrogen dioxide pollution from a number of sources including motor vehicles. The legal ruling was that Natural England provided incorrect advice on the methodology. This advice involved a particular threshold of traffic movements below which the impact of an individual Local Plan could be considered 'de minimus' or negligible, is flawed, and it is necessary for plans to consider the in-combination effect of the traffic. Therefore the likely increase in traffic as a result of all plans

and proposals within an area of potential impact around Ashdown Forest SAC needs to be considered. It is not specified how big an area should be considered and what is the minimum levels that are realistic to assess. No appeal has been made on the ruling.

- 3.3. Advice subsequently received from the Planning Inspectorate and Department for Communities and Local Government (DCLG) is that the issue should not slow down the preparation of the Local Plan or any neighbourhood development plans (NDP) being prepared in Lewes District namely Lewes Town and Ditchling.
- 3.4. As the previously used threshold of traffic movements can no longer be applied, an in-combination assessment must be carried out. This triggers the second stage of the HRA process called Appropriate Assessment (AA). This will include all internationally designated sites within the scope of the HRA, which are potentially vulnerable to air quality/atmospheric nitrogen deposition and lie within 200m of any significant roads. In addition to Ashdown Forest SAC, these are: Butser Hill SAC, Wealden Heath Phase II SPA, Duncton to Bignor Escarpment SAC, Kingley Vale SAC, Woolmer Forest SAC, Ebernoe Common SAC, and The Mens SAC. AECOM has been commissioned to undertake this work and we are awaiting the results. The second part of the AA is currently being commissioned with Lewes District Council and includes Ashdown Forest. The final report for the AA is expected in August. This will include traffic modelling taking into account all known relevant development that might affect Ashdown Forest (the in-combination approach). Consideration will then need to be given to possible mitigation measures, if required, and duty to cooperate with relevant authorities.
- 3.5. In order to ensure the Local Plan isn't subject to delay, and to ensure that a precautionary approach is taken with regard to impacts on the SAC, officers have considered a phasing policy. This would stop all development within a defined area around Ashdown Forest that would result in a net gain of housing and increase traffic movements through Ashdown Forest until the issue is resolved and suitable mitigation is in place. We discussed the matter in detail with both Keith Holland and David Hogger. Such a policy has not been included in the plan, because we do not yet have the necessary evidence to support it. However, a background paper will be drafted that will include a draft policy that could, if ultimately necessary to ensure legal soundness, be included in the plan. Legal advice has been sought on the matter and will be shared with Members if available at Planning Committee.
- 3.6. The NPA has led on the formation of a working group to consider how the issues of nitrogen deposition and traffic movements through Ashdown Forest can be measured and addressed in a coordinated manner. We have agreed to work collaboratively on the issues and share information. This is part of our Duty to Cooperate work on a cross-boundary strategic issue.
- 3.7. It will also be necessary to review draft policy SD10: International Sites, SD19: Transport and Accessibility and SD54: Pollution and Air Quality in light of the judgement and to reflect the new HRA work. The current draft policies have not been updated.

4. Key issues

- 4.1. The wording of Local Plan policies and the extent to which they should be positively or negatively worded has been thoroughly discussed at LPMWG and Planning Committee. It is a matter on which the NPA has sought two sets of legal advice, which have been discussed in detail with Members at Local Plan Members Working Group and Planning Committee. The matter was also discussed with Keith Holland and David Hogger who both thought we had the right balance of positivity and negativity. Further legal advice has been sought on policies SD6: Safeguarding Views, SD7: Relative Tranquillity, SD8: Dark Night Skies. Verbal updates will be provided if available at Planning Committee.
- 4.2. We also queried the use of the phrase 'conserve and enhance' in a number of policies and asked whether 'or' should replace 'and.' David Hogger said that there were several instances where the NPPF used the phrase 'conserve and enhance.' Furthermore, purpose 1 as set out in the Environment Act 1995 uses the phrase 'conserve and enhance.' He thought it was appropriate to use it in Local Plan policies and that there was always something that could be done to enhance a scheme, in a proportionate manner.

- 4.3. Policy SD28: Affordable Housing is in chapter 7c) of the Local Plan. It is an important strategic policy for the Authority, as delivering affordable housing is a key part of delivering on the National Park's duty. The Strategic Housing Market Assessment (SHMA) has evidenced that there is a need for 294 affordable homes per year across the National Park. The draft policy sets a target of at least 50% of new homes on market-led schemes to be affordable. It also sets a threshold requiring this provision to be met on all schemes for three or more homes. This is considered appropriate for a National Park where most new homes are delivered on small sites, and our focus is on meeting affordable housing requirements. This reflects evidence of strategic and local need, and the importance that local communities place on affordable housing given the scale and magnitude of the issue.
- 4.4. Notwithstanding existing extensive evidence, further evidence has been commissioned to test the detailed viability of implementing the policy. Initial findings from this work will be provided verbally at Planning Committee if available. Both Keith Holland and David Hogger indicated the need for robust evidence to prove exceptional circumstances and go beyond the 2014 Ministerial Statement and Planning Practice Guidance. The NPA has received Queens Counsel in relation to the affordable housing thresholds. This is that the NPA as local planning authority has the power to adopt a different position to that stated in government guidance, however, the adoption of that position must be for a clear planning purpose.
- 4.5. Shoreham Cement Works and North Street Quarter are allocated as strategic sites in chapter 8 of the draft Local Plan. Criterion 2c) of policy SD56 states that 'further types of development that would enable the environmentally-led restoration of the site' will be supported. This was discussed and endorsed by Planning Committee in March. The policy does not expressly allocate the site for housing but does not preclude housing from being considered as part of a mix of uses that will enable a visionary landscape-led restoration of the site. We discussed this in detail with both David Hogger and Keith Holland, who supported our approach. Here is an extract from the Keith Holland's critical friend report:
- 4.6. We understand that there is pressure from the development industry for the policy to explicitly refer to housing development. We see no need for such a definitive statement which would jeopardise the sensible flexibility that the policy as drafted contains.
- 4.7. The Sites & Settlements chapter deals with all the draft Housing, Gypsy, Traveller and Travelling Showpeople and Employment allocations in the National Park outside neighbourhood planning areas and apart from Strategic Sites. We have worked closely with the parish councils on the allocations. This included the Sites and Settlements informal consultation in November last year. Further engagement has taken place with a number of villages where allocations and/or housing provision figures have changed significantly. Work has started on a number of development briefs for housing allocations including Land South of London Road, Coldwaltham (SD64), WSCC Depot and Former Brickworks, Midhurst (SD81), Holmbush Caravan Park, Midhurst (SD82) and Land at Pulens Lane, Sheet (SD96).
- 4.8. The draft Local Plan allocates a number of Gypsy & Travellers sites. It should be noted that the draft Gypsy & Traveller allocation at Sweet Hill, Waterhall (SD95) has been deleted from the plan as significant constraints relating to a gas mains running through the site means that development would be extremely problematic to deliver and then manage. The site has therefore been withdrawn by Brighton & Hove for further consideration.

5. Sustainability Appraisal (SA)

- 5.1. The SA considers and reports on the likely significant effects of an emerging plan, and the reasonable alternatives considered during the plan making process, in terms of key sustainability issues. The aim of SA is to inform and influence the plan-making process with a view to avoiding or mitigating negative effects and maximising positive effects.
- 5.2. AECOM has been commissioned to undertake an independent SA in support of the emerging Local Plan. The SA is currently in a draft stage and will be published alongside the Local Plan for NPA. No significant issues have arisen so far. Minor additions to policies and site allocations are suggested and in relation to the latter have already been incorporated into the Plan. The air

quality issues previously raised and covered in the report below are yet to be considered through the SA. The two studies and their outcomes are intrinsically linked and crucial to the progression of the Local Plan.

6. Habitat Regulations Assessment

- 6.1. The purpose of the HRA is to report on the 'likely significant effects' of the plan on internationally designated nature conservation sites.
- 6.2. AECOM has been commissioned to undertake an HRA in support of the emerging Local Plan. The HRA is currently in a draft stage and will be published alongside the Pre-Submission Local Plan for NPA. As set out in section 3 above, the High Court decision on the Lewes JCS has implications for the HRA of the South Downs Local Plan.
- 6.3. Regarding other matters which are assessed in the HRA, no significant issues have arisen so far. Minor wording amendments or additions are recommended to policies and site allocations and in relation to the later, these draft recommendations have already been incorporated into the Plan.

7. Duty to Cooperate

- 7.1. The duty to co-operate applies to all local planning authorities, national park authorities and county councils in England as well as a number of other public bodies including the Environment Agency, Highways England and Natural England. It places a requirement on all such bodies to engage constructively and actively on cross boundary matters. A draft Duty to Cooperate statement setting out the strategic issues where cooperation might be required and highlights areas of agreement and unresolved issues will be presented to NPA in July.
- 7.2. The unresolved issues are likely to form the basis of responses by these public bodies on the Local Plan when it is published. This is an ongoing piece of work which will involve discussions with key parties through-out the summer.

8. Way Ahead with the Local Plan

- 8.1. This report asks that Planning Committee recommends that the National Park Authority approves the draft Pre-Submission Local Plan for public consultation under Regulation 19 of The Town and Country Planning (Local Planning) (England) Regulations 2012. There will be a Full Authority Local Plan Final Review Meeting on 29 June to discuss the plan in detail and the formal NPA meeting will take place on 11 July.
- 8.2. The Pre-Submission consultation would start in September for a period of eight weeks in line with the Statement of Community Involvement. The Local Plan and its Policies Map will be published alongside the SA, HRA, Duty to Cooperate Statement and the full core document library. This includes all the evidence supporting the Local Plan such as the South Downs Integrated Landscape Character Assessment (SDILCA) and the Strategic Housing Market Assessment (SHMA).
- 8.3. In line with the Regulations the pre-submission consultation will focus on specific questions of soundness and whether it meets legal and procedural requirements. These questions are:
- 8.4. Has the Plan been positively prepared? (Based on a strategy that provides for the development and infrastructure needs).
- 8.5. Is the Plan justified? (Founded on proportionate evidence and is the most appropriate strategy against all reasonable alternatives).
- 8.6. Is the Plan effective? (Deliverable and based on effective joint working on cross-boundary strategic priorities).
- 8.7. Is the Plan consistent with national policy? (Enable the delivery of sustainable development in accordance with the National Planning Policy Framework).
- 8.8. We will log and summarise the main issues arising from the representations on the plan. Providing that no issues are raised that go the heart of soundness, the NPA will submit the

Local Plan and any proposed minor changes it considers appropriate along with the core document library to the Planning Inspectorate for examination on behalf of the Secretary of State. If the NPA considers that major changes are required that go to the heart of soundness then a further round of public consultation will be required.

- 8.9. The examination of the South Downs Local Plan will commence on the submission of the plan. The examination will include public hearings, but the majority of matters arising will be addressed through written representations.
- 8.10. The examination will focus on matters of soundness. It is likely that the Inspector will recommend main modifications to make the plan sound and legally compliant. We will consult on these modifications.
- 8.11. If the Local Plan is found sound, subject to a number of modifications, the NPA will then decide whether to adopt the plan. Following the adoption of the Local Plan, it will be the first time that the National Park has been planned for as a single entity. It will also supersede all inherited Local Plans and Joint Core Strategies which cover the National Park other than those relating to minerals and waste. The Local Plan will be the key to delivering sustainable development in the National Park in a way that conserve and enhances the landscape.
- 8.12. The Local Plan will form part of the ‘development plan’ alongside adopted neighbourhood development plans, which are being developed by local communities in many settlements across the National Park. The Minerals and Waste Plans will also be part of the Development Plan. The new Local Plan must be in conformity with the National Planning Policy Framework (NPPF) (2012) and the DEFRA Vision and Circular for National Parks (2010).

9. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	The draft Pre-Submission Local Plan will be presented to an NPA workshop on 29-06-17 and NPA on 11-07-17 to approve the document for consultation in July.
Does the proposal raise any Resource implications?	The Local Plan is one of the top corporate priorities for the SDNPA with adoption timetabled for 2018, which has been reflected in approved budgets and the Medium Term Financial Strategy. Officers within the Planning Policy team are leading the work on developing the Local Plan and utilising expertise elsewhere within the Authority. Costs associated with the delivery of the Local Plan will be monitored and any variation to approved budgets will be reported as part of the budget monitoring process.
Has due regard been taken of the South Downs National Park Authority’s equality duty as contained within the Equality Act 2010?	Due regard, where relevant, has been taken to the South Downs National Park Authority’s equality duty as contained within the Equalities Act 2010. An Equalities Impact Assessment is being prepared for the whole Local Plan.
Are there any Human Rights implications arising from the proposal?	These draft policies have been considered in light of statute and case law and any interference with an individual’s human rights is considered to be proportionate to the aims sought to be realised.
Are there any Crime & Disorder implications arising from the proposal?	It is considered that the proposal does not raise any crime and disorder implications.

Are there any Health & Safety implications arising from the proposal?	None.
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy:	The South Downs Local Plan is a landscape led plan that seeks to deliver multiple eco system services within a nationally protected landscape. A sustainability appraisal has been prepared to inform the preparation of the Local Plan and is addressed above.

10. Risks Associated with the Proposed Decision

Risk	Likelihood	Impact	Mitigation
That the South Downs Local Plan is not found 'sound' at examination.	Medium	High	The policies are consistent with the NPPF and are based on robust evidence.

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Appendices I. Draft Pre-Submission South Downs Local Plan

SDNPA Consultees Legal Services; Chief Finance Officer; Monitoring Officer.

External Consultees None

Background Documents [South Downs Local Plan: Preferred Options](#)
[Summary of Responses on the South Downs Local Plan: Preferred Options](#)

