

# The Appropriate Assessment of Spatial Plans in England

A guide to why, when and how to do it



The Royal Society for the Protection of Birds

### **Acknowledgements**

The RSPB would like to thank all the planners, consultants, developers and decision-makers who, through their thoughtful and stimulating contributions to discussions on many of the ideas contained in this guide, have enabled it to be produced.

This guide should be cited as:

Dodd A.M., Cleary B.E., Dawkins J.S., Byron H.J., Palframan L.J. and Williams G.M. (2007)  
*The Appropriate Assessment of Spatial Plans in England: a guide to why, when and how to do it.* The RSPB, Sandy.

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August 2007



## Foreword

# Why Appropriate Assessment is important to planners, planning and the future of our environment

The most important sites for biodiversity in England form part of a Europe-wide network known as Natura 2000, the conservation of which is a key step in halting the decline in Europe's biodiversity. Natura 2000 comprises Special Protection Areas (SPAs) for birds and Special Areas of Conservation (SACs) for other habitats and species – designated under the EU Birds and Habitats Directives respectively. Planners have an important role in ensuring Natura 2000 sites are given the protection they need so helping to contribute to provision of a high quality natural environment for wildlife and people.

The appropriate assessment (AA) of specific development applications under the Habitats Regulations is a well-established and generally understood process. As a wildlife conservation charity with over 1 million members, the protection of internationally important sites is a key part of the RSPB's work. We engage with over 250 planning cases affecting protected sites in England each year. Ambiguity as to the extent to which the provisions of the Habitats Directive affected spatial plans was removed in October 2005, when the European Court of Justice confirmed the application of AA to spatial plans.

We are very aware from our day to day work with the planning community that addressing this decision at a time when the spatial planning system is changing, is challenging; especially when there is no case law and few case examples to lead the way. Nevertheless, this should not overshadow the important opportunity the integration of the AA process into the new style spatial planning system offers planners to help conserve sites of European and global importance for nature conservation. When carried out correctly AA will not only ensure that protection of Natura 2000 sites is central to the plan-making process, but also contribute to the evidence base underpinning the soundness of the final plan. AA allows planners to find solutions that not only deliver the development allocations needed to meet social and economic objectives but also respect and protect these important wildlife sites. This helps to ensure that everything delivered through the spatial plan system is truly sustainable, acting as a litmus test of Government commitment towards sustainable development and keeping within environmental limits.

Our developing involvement with planners over the AA of spatial plans has indicated that written guidance would be of assistance. Consequently, we have prepared this guide to set out our view on:

- When AA is or is not required;
- What the AA should examine;
- The level of detail required; and
- How to use the results of the AA as a key part of the plan-making process.

The outcome should be a well integrated and practical spatial planning and development control system that takes care of our most important wildlife sites, while meeting wider social and economic needs.

This guide is based on our experience of the AA process on projects over the past decade as well as our fast-evolving experience of AA in the spatial plan context. It is intended as a guide. In the absence of case law and a history of case decisions, it cannot be regarded as definitive, and we do not present it as such.

We hope this guide will be of assistance as the planning community embraces this new requirement. We wish to ensure it is helpful, relevant and up to date, so we would be delighted to receive any feedback from you, be it on a specific aspect of the guide or your wider experiences with the AA process. We look forward to hearing from you.

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# The structure of this guide

**This guidance is divided into four main sections and a number of appendices.**

## MAIN GUIDANCE

Each section and sub-section within the guidance contains a summary box setting out its key points.

**Introduction:** outlines the aims of the Birds and Habitats Directives and how they fit with the Government's sustainable development agenda. The network of European wildlife sites is explained and how, following a European Court of Justice judgment, the spatial planning system now has a central role in helping to protect it through the application of AA.

**Part 1: Getting started:** provides a basic checklist of issues to think about before embarking on the formal AA.

**Part 2: The Appropriate Assessment:** provides guidance on screening, scoping, and performing AA of the plan, how to resolve any problems identified by the AA of the plan, and considers the steps that must be taken if an adverse effect cannot be ruled out.

**Part 3: After the Appropriate Assessment:** sets out the decision-making stages that follow a conclusion that an adverse effect on a SPA or SAC cannot be ruled out. It explains the issues that need to be addressed in tackling the strict tests on alternative solutions, imperative reasons of overriding public interest (IROPI) and securing compensatory measures. It illustrates the benefits the plan-making process offers over the traditional project level approach in terms of identifying less damaging alternative solutions through the iterative stages of plan preparation.

**A glossary of terms used in this guide can be found at the end of the document.**



## **Introduction**

**The importance to wildlife and people of  
Appropriate Assessment in plan-making**



## Plan-making and the Birds and Habitats Directives – a central role in achieving sustainable development



*Many of our coastal wetlands are internationally important for their wildlife and vital for future economic growth. Appropriate Assessment of Spatial Plans can ensure these sites remain wildlife havens while meeting wider social and economic needs.*

- i. Both the Birds<sup>1</sup> and the Habitats<sup>2</sup> Directives aim to tackle the long-term declines in European biodiversity arising from decades of habitat destruction and degradation and species persecution and exploitation. The essential aim of both Directives is to maintain at, and where necessary restore to, favourable conservation status, flora, fauna and habitats of European importance. The conservation of Europe's most important wildlife sites is a fundamental means of meeting those aims.
- ii. Their philosophical and legal approach to the conservation of Europe's most important biodiversity reflects the Government's own guiding principles on sustainable development, set out in *Securing the Future*<sup>3</sup>:
  - Living within environmental limits;
  - Using sound science responsibly; and
  - Achieving a sustainable economy.

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<sup>1</sup> Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

<sup>3</sup> [Securing the Future: UK Government sustainable development strategy](#) HMSO (2005).

- iii. The Birds and the Habitats Directives make a vital contribution to the UK and EU target to halt the loss of biodiversity by 2010. At the same time, by protecting internationally important wildlife sites and species, the Directives make a significant contribution to our socio-economic well-being by providing the resources to enhance public health and well-being, presenting educational opportunities to children and adults alike, and giving us the green infrastructure which contributes to the sustainable regeneration of communities.

## The European site network

- iv. Each Directive has established a network of European protected areas:
- **Special Protection Areas (SPAs)** for rare, vulnerable or migratory birds under the EU Birds Directive;
  - **Special Areas of Conservation (SACs)** for other flora, fauna and habitats of Community Interest under the EU Habitats Directive; and
  - Sites which are being considered for designation as one of the above are referred to as pSPA or cSAC.

These have been combined under the Habitats Directive into the **Natura 2000 network**. In the UK, SPAs and SACs are collectively known as **European Sites**. They are the UK's most important wildlife places and around 75% of our Sites of Special Scientific Interest (SSSIs)<sup>4</sup> are European Sites.

**Ramsar sites** are wetlands of global importance, listed under the Convention on Wetlands of International Importance. Most Ramsar sites overlap with SPAs and/or SACs. It is Government policy to afford them the same protection as European sites.

## The role of the spatial planning system

- v. European sites provide a vital refuge not just for wildlife, but also for peaceful enjoyment by the communities that surround them, contributing to mental and physical well-being<sup>5 6</sup>. Some sites also contribute important ecosystem services: flood and sea defence, water quality and carbon sequestration. That is why nature conservation is such an important spatial planning issue – these special places cannot survive if social or economic development deliberately or inadvertently brings about their degradation or destruction.
- vi. The treatment of biodiversity by our spatial planning system has improved considerably over the last 10-15 years in recognition of the vital role that wildlife plays in our lives. Yet, more can be done - the recent review of the UK Biodiversity Action Plan<sup>7</sup> stated that:

*“Infrastructure development (mainly housing infrastructure and development on the coast) is emerging as a particular concern for species and habitats with two thirds of habitat Lead Partners identifying this as a significant threat. This underlines the importance of the protected sites network and the crucial role of the planning system in safeguarding biodiversity.”*

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<sup>4</sup> Designated under section 28 of the [Wildlife and Countryside Act 1981](#).

<sup>5</sup> See RSPB (2007) *Natural Thinking*. A Report by Dr William Bird for the Royal Society for the Protection of Birds Investigating the Link Between the Natural Environment, Biodiversity and Mental Health.

<sup>6</sup> See the RSPB's report: Bird, W (2004) [Natural Fit – Can Green Space and Biodiversity Increase Levels of Physical Activity?](#)

<sup>7</sup> Defra (2006). [The UK Biodiversity Action Plan: Highlights from the 2005 Reporting Round](#).

- vii. The RSPB recognises and strongly supports the planning system's plan-led approach. Spatial plans are the principal way to ensure that strategic and rational decisions are taken to reconcile the need to protect and enhance wildlife with that of providing the right framework for development to proceed. They allow potential problems between socio-economic development and wildlife protection to be identified and resolved at an early stage. This is a vital part of achieving sustainable development.
- viii. Spatial planners are becoming increasingly familiar with Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) as the main tools to ensure their plans are sustainable and key material considerations in preparing and finalising plans. AA is complementary to these assessment systems and is specifically designed to protect European sites. AA is different from SEA and SA in one crucial respect: it **requires** decisions on the content of the plan to be based on its findings, going beyond a material consideration to be weighed in decisions on plan policies and proposals. The application of AA to spatial plans was confirmed by the European Court of Justice in October 2005 (the ECJ UK judgement)<sup>8</sup>.

## Spatial plans and Appropriate Assessment

- ix. The new spatial planning approach focuses on strategies rather than traditional development control policies. Given the importance of spatial plans in directing the scale, location and type of development, it is vital that their impact on European sites is carefully assessed. References to policies should be taken to include discrete elements of the overall plan strategy. CLG advice is that the RSS and national policy framework should be sufficient except in unusual local circumstances.
- x. AA refers to the assessment of the effects of a plan (or project) on a European site to enable a judgement to be made on whether there will be an adverse effect on the site's integrity. This is how we use the phrase "AA" in this guidance. However, it is important to be aware that the phrase "AA" is sometimes used more loosely to refer to the whole process set out under Articles 6(3) and 6(4) of the Habitats Directive. This approach embodies the step-by-step approach set out in those articles to the evaluation of the impacts of plans and projects on European sites and their treatment in decision-making.
- xi. In summary, the decision-making process under the Directives seeks to:
  - Fully assess the impacts of plan proposals and policies likely to have a significant effect on a European site;
  - Avoid damage from those proposals and policies on European sites through acceptable development location or design (including mitigation); and
  - Provide justification for exceptional circumstances where damage cannot be avoided.
- xii. This decision-making process is underpinned by the precautionary principle, especially in the assessment of potential impacts and their resolution. If it is not possible to rule out a risk of harm on the evidence available then it is assumed a risk may exist and needs to be dealt with in the AA process.

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<sup>8</sup> European Court of Justice judgement in Case C-6/04: [Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland](#) (Failure of a Member State to fulfil obligations – Directive 92/43/EEC – Conservation of natural habitats – Wild fauna and flora). See paragraphs 51-56.

- xiii. These rigorous tests can ensure that spatial plan frameworks have the conservation of the UK's most important biodiversity areas at their heart and help to ensure the socio-economic benefits of our natural assets are secured for future generations. They provide the necessary safeguards to ensure that Europe's wildlife is fully considered when spatial planning decisions are made, with the aim of ensuring the most sustainable option for current and future generations is chosen. Overall, AA will ensure the spatial plan is sound by justifying policies and proposals and ensuring there are no long-term obstacles to deliver the plan's objectives. A formal record of the conclusions from a plan AA should be made.
- xiv. This guide sets out the initial views of the RSPB on how to perform plan AA. It is based on our knowledge of SEA, SA and 13 years of AA at project level. Since the ECJ UK judgment, some key questions have cropped up in discussions with planners and will be tackled in the detailed guidance later in this document. For example:
- How do I make sure the plan does not damage European sites?
  - What level of detail is required in the AA to take the right decisions?
  - How should I report on the AA?
- xv. At the moment we do not have the corpus of decisions and case law to help us determine the parameters for decision-making at each level of the plan-making hierarchy: good practice will come through practical experience, testing and establishing the boundaries of AA at these new levels.
- xvi. We are conscious that the Government has consulted on draft regulations and guidance to implement the ECJ UK judgment. The Conservation (Natural Habitats, &c)(Amendment)(England and Wales) Regulations 2007, will be brought into effect during 2007. Also, the Planning White Paper<sup>9</sup> (May 2007) proposes significant changes to the preparation and consultation process for Local Development Frameworks (LDFs). This means that in respect of the AA of plans, while the essential requirements will stay the same, the law and policy influencing it will inevitably change over time, alongside our understanding of how best to implement it. So by necessity this guide is a "work in progress" and the RSPB will continue to develop it to reflect future changes to legislation and Government planning guidance.

## SUMMARY

**The Birds and the Habitats Directives tackle the long-term decline in European biodiversity arising from the destruction and degradation of habitat as well as species persecution and exploitation. Both Directives aim to maintain and restore sites to their best condition (i.e. "favourable conservation status").**

**European sites are Special Protection Areas and Special Area of Conservation. Government policy extends protection to potential SPAs (pSPA) and candidate SACs (cSAC) as well as sites designated under the Ramsar Convention.**

**The European Court of Justice judgment in October 2005 confirmed the application of AA to spatial plans. Plan-making under the Directives is a way of both protecting European sites and ensuring that development is located in the right places – this is a key test of sustainable development.**

**AA differs from SA and SEA in one crucial respect: decisions on how the plan affects European sites must be based on its findings.**

<sup>9</sup> HM Government (2007) Planning for a Sustainable Future. White Paper. Cm 7120. TSO, London.

## **Part 1: Getting started**



## Checklist of preliminary issues

1. This section provides a basic checklist of things to think about before embarking on the formal AA of your plan. It reflects questions raised with the RSPB by planners across the country who have been approaching plan AA for the first time. All of the issues highlighted here will feature in the detailed guidance set out in the rest of this document.
2. It will be important to consult and become familiar with other key guidance documents relevant to the spatial plan system and its role in conserving European sites. These include:
  - PPS11 (Regional Spatial Strategies) and PPS12 (Local Development Frameworks).
  - PPS9 (Biodiversity and Geological Conservation) and its accompanying Circular (ODPM 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impacts within the planning system).

A fuller list of relevant documents, including various guidance documents from the European Commission, is provided in the Bibliography at the end of this guidance.

3. In getting started on AA, much of the work concerns thinking ahead about the information that will be needed to enable a plan AA to happen and how to integrate this with the overall plan production timetable. This is, however, nothing new and reflects similar preparation for the start of any spatial plan or other plan assessments such as a SA/SEA (see also Appendices 1 and 2 regarding the timing of plan AA with SA/SEA). Therefore, the plan-making authority will already hold much of this information.
4. Although this preparatory stage must not pre-empt the screening stage (see Step 1 below) it does act as an important first step in helping to decide whether the AA of plan is required at all and the range of issues that may need to be considered.

## Expert advice

5. Some plan-making authorities may have access to their own ecological or biodiversity officers. Others may have to rely on external help – fortunately, this is available from a number of sources particularly Natural England, the Government’s statutory nature conservation adviser. Other advice may be had from organisations such as the local Wildlife Trust<sup>10</sup> and the RSPB. A list of the RSPB England regional office addresses is given in Appendix 5.
6. Early contact with ecological experts is clearly an advantage, as they will be able to indicate sources of existing information to assist with a plan AA and any further information needed. The following flags up some of the basic information likely to be needed for a plan AA.

## Site information - location

7. An obvious first step is to ensure that the location of all European sites (SPAs and SACs) is known. This should also include Ramsar sites, as it is Government policy to afford them the same level of protection as European sites.<sup>11</sup> These sites will also be designated as SSSIs because they are of national as well as international importance; plan AA will focus on the European sites. Here are a couple of other things also worth bearing in mind:

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<sup>10</sup> For contact details for local wildlife trusts, see: <http://www.wildlifetrusts.org/index.php?section=localtrusts>.

<sup>11</sup> See paragraph 5 of ODPM Circular 06/05 – *Biodiversity and Geological Conservation*.

- Plan policies and proposals may affect European sites outside the plan boundary – for example, a wetland in a district downstream could be affected by development upstream in the plan-making authority’s boundary; and
  - There may be potential European sites that are not yet designated but could be by the time a plan gets underway. This also applies to possible extensions to existing sites that may be considered.
8. Expert advice, particularly from Natural England, should help decide whether either of these may be an issue.

## Site information - issues

9. Initial discussion with specialists is also likely to indicate some of the broad issues affecting European sites within a particular area. All of this helps planners get a ‘feel’ for issues before the formal process of plan AA starts. It will also help indicate whether a formal plan AA is needed without, of course, pre-judging the formal step of deciding this (see ‘Step 1’ that follows). Initial issues that may be worth noting could, for example, include:
- The condition and ‘health’ of the European site and thus its potential sensitivity to plan proposals;
  - Whether there are any existing problems on sites directly or indirectly attributable to pressure from existing development - for example, low river flows due to over abstraction, disturbance from roads or run off into watercourses from industrial development;
  - Initiatives to maintain or restore and enhance European sites that could be threatened by plan processes - for example, plans to raise water levels that could be affected by water abstraction needed for new houses; and
  - Further information required – the initial information gathering might reveal gaps in knowledge and, in some circumstances, flag up that further survey work might be needed. For example, a plan-making authority might decide that visitor surveys will be needed to establish the full impact of increased recreational pressure caused by plan proposals on say, a quiet estuary or a similar sensitive site.

## How Appropriate Assessment might affect your plan timetable

10. Sufficient time is needed to prepare for and carry out a plan AA – the steps set out in this guidance are designed to help resolve potentially tricky issues to avoid unanticipated delays later on.
11. It is best practice to publish the results of the AA when going out to consultation on plan documents. For the RSS this will be the Draft RSS. For LDFs the Preferred Options and Submission stages for Development Plan Documents (DPDs) and the Public Participation stage for Supplementary Planning Documents (SPDs)<sup>12</sup>. Therefore, it will be sensible to plan for this when working out the production timetable for the plan documents.

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<sup>12</sup> As the issues are similar for DPDs and SPDs, this guide focuses on the DPDs which have a more complicated process. SPDs should treat their Public Participation stage as being equivalent to the Submission Stage for DPDs.

## The Appropriate Assessment process

12. As referred to in paragraph x. on page 5, AA relates only to the assessment of the effects of a plan on European sites to determine whether there will be an adverse effect on site integrity. The key word is “appropriate”: by asking the right questions, sufficient information can be gathered leading to sound conclusions. This document offers guidance on the required steps of the AA process.

## Appropriate Assessment and soundness

13. Modern plan-making focuses upon gathering a robust and credible evidence base to shape and support the policies within the plan. Carrying out an AA to a high standard will improve the quality and sustainability of a plan, and is a key part of making the plan ‘sound’. Starting AA early in the plan-making process and including it in the ongoing public consultation process means it can influence the shape of the plan as it evolves, avoiding the need for extensive last minutes changes.
14. Integrating AA into the plan-making process will also help to meet three key soundness requirements that relate to AA. It can ensure that the plan:
  - Is consistent with national planning policy, in particular the requirement that European sites are protected from adverse effects of development<sup>13</sup>;
  - Is based upon a “robust and credible” evidence base; and
  - Is realistic and can be delivered (e.g. through planning applications or the wider public sector).
15. The Planning Inspectorate has indicated that robust plans will be “strong, straightforward, and able to withstand scrutiny or testing”<sup>14</sup> – a properly performed AA will enable the plan to withstand such an examination.

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<sup>13</sup> See [ODPM Circular 06/2005](#) at paragraph 55. In the light of the ECJ judgment against the UK paragraph 54 should be disregarded.

<sup>14</sup> See page 10, Planning Inspectorate (2005) [Development Plans Examination – A Guide to the Process of Assessing the Soundness of Development Plan Documents](#).



## **Part 2: The Appropriate Assessment**

**A step-by-step guide to the process**



# An overview of the Appropriate Assessment process

Part 2 and Part 3 of the guidance offer a step-by-step approach to conducting an AA and dealing with its conclusions. A brief summary of the role of each step is set out below:

## **PART 2: The Appropriate Assessment: a step-by-step guide to the process**

*Step 1: Screening for a likely significant effect:* the initial evaluation of a plan's effects on a European sites. If it cannot conclude there will be no significant effect upon any European site, an AA is needed.

*Step 2: Appropriate Assessment – scoping and further information gathering:* preparation for the AA where the screening has shown that there is a likely significant effect upon a European site.

*Step 3: Appropriate Assessment:* evaluating the evidence gathered on impacts and considering whether changes to the plan are needed to ensure that it will not have an adverse effect upon any European site. Normally the AA process will stop here and the plan can be adopted.

## **PART 3: After the Appropriate Assessment: what happens if a plan cannot avoid an adverse effect (or risk of one) on a European site**

The next three steps cover what will happen if the AA has been unable to conclude that the plan will not have an adverse effect, but the plan-making authority considers it essential that the damaging policies or allocations within the plan must be included in the plan. The aim is to find the least damaging way of delivering the public need the plan is trying to meet.

*Step 4: Considering alternative solutions:* the plan-making authority must demonstrate that its policy or allocation is the least damaging way of meeting the need identified in the plan.

*Step 5: Considering imperative reasons of overriding public interest (IROPI):* the level of public interest justification that the plan-making authority must establish to proceed with the damaging policy or allocation.

*Step 6: Identifying and agreeing compensation measures:* the requirement to provide compensation measures for the adverse effect that the policy or allocation will have upon the European site.

*Post-plan monitoring and review:* the type of monitoring that should flow from the AA process, how to incorporate that into Annual Monitoring Reports and possible responses to monitoring results.

## Step 1: Screening for a likely significant effect

Screening is the key first step because it decides whether an AA is needed or not. As a result, it should be performed at the earliest practicable stage of plan-making:

- For RSSs: this should be before public consultation on the Draft RSS document;
- For LDFs: this should be before public consultation on the Preferred Options document.

Be aware of the European sites that could be affected by the plan. Natural England can provide advice on this and provide key information and understanding of each European site.

Approach screening on a precautionary basis – capturing plan policies or proposals likely to give rise to a significant effect on a European site. Look at both the effects of individual policies/proposals and the interactions between them – ensuring the effects of the plan as a whole are tested.

Screening must also consider the effects of the plan “in combination” with other plans or projects to ensure plans or projects are captured that would not trigger an AA on their own. Again, Natural England will be able to advise this.

Screening is not the same as a full-blown AA – it only requires sufficient information to decide if a significant effect is likely. An AA goes into more detail to test whether those effects could result in damage to the European site.

It is the RSPB’s view that mitigation measures should not be considered at the screening stage – they should be tested as part of the AA proper to ensure they are effective and capable of implementation.

The results of screening should be clearly recorded, setting out sufficient information to justify the conclusion on whether an AA is needed.

16. Screening is the process of deciding whether or not an AA is required for a particular spatial plan. It reflects the formal requirement of the Habitats Directive that all plans or projects likely to have a significant effect on a European site (either alone or in-combination) must be subject to AA unless they are directly connected with or necessary to the management of European sites. It is not and should not be seen as an alternative to AA itself. Screening requires sufficient information to determine if there is a likely significant effect on a European site. The AA requires more detailed information to determine whether those likely significant effects will or could result in an adverse effect on the integrity of the European site. It is important not to end up front-loading the screening process with detail more appropriate to the AA.
17. The Habitats Directive excludes plans or projects considered necessary for the management of the European sites from the requirements of AA. This is very unlikely to be an issue with spatial plans because it is unlikely they will contain detailed policies dealing with the conservation management of European sites e.g. setting water levels for wet grassland habitats or grazing levels for upland moors.
18. As a key aim of any spatial plan should be to **avoid** any adverse effect on a European site, it is strongly recommended that screening is performed at the earliest practicable stage of spatial plan preparation. This has practical benefits for plan-making, as identifying particularly sensitive areas makes it possible for the plan-making authority to avoid potentially damaging plan objectives, policies or spatial allocations at the plan’s earliest and most flexible stages. Screening early in the process can also help improve the plan’s soundness by helping to avoid difficult changes to the plan late in the drafting process.

19. This section provides guidance on:
- When to screen;
  - Information needed for screening;
  - Defining “significant effect”;
  - How to carry out screening; and
  - Recording the screening decision.

## When to screen

20. There is no formal guidance yet on when to apply the screening requirement although we believe this should be as early as practicable. This is consistent with Government advice regarding the SA of plans, which says that it should be started as soon as a new or revised RSS or LDF is first considered<sup>15</sup>.
21. In practical terms, we recommend formal screening should happen once the authority has identified the initial preferred options it is likely to consult upon. We recommend for LDFs it should be before public consultation on the Preferred Options document, and for RSSs the Draft RSS but after consultation on the issues and options stage. By this stage planners should have a good idea of the European sites likely to be affected by their plans, and the preferred options that should be able to avoid any harmful impacts.
22. To ensure the public can be consulted on the AA, planners will need to ensure the production schedule builds in enough time to produce the AA alongside the Preferred Options or Draft RSS. If at any time during the drafting process the plan fundamentally changes, then it will be necessary for the authority to consider screening again to determine if the changes should be subject to AA.
23. If plan preparation has already started it is still necessary to screen the plan to check if an AA is required. We recommend that the plan-making authority consult Natural England, agree the necessary steps to comply with the requirements of the Habitats Regulations, and integrate these steps into the plan timetable. This concurs with advice from the Planning Inspectorate who recommend ‘frontloading’ Natural England’s involvement in the AA process<sup>16</sup>. In practice, the plan-making authority must complete any AA before the plan’s public examination to avoid a potential finding of unsoundness by the Inspector.

## Information needed for screening

24. As the previous section, *Getting Started* indicates planners should already be aware of European sites either within their or other authorities which could be affected by their plan and should have basic baseline data available. Further information may well come forward in response to the issues and options stage. The first part of this formal step should be to identify European sites that could be affected by the spatial plan. The map below shows that the majority of local authorities have European sites within them or in neighbouring authorities. The latter is particularly important because, for example, a wetland European site could be affected by upstream or downstream proposals contained in a plan. For example, the AA of the Draft South East Plan considered its

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<sup>15</sup> See paragraph 2.36 of PPS11 (Regional Spatial Strategies) and page 23 of PPS12 (Local Development Frameworks).

<sup>16</sup> See paragraph 1.10 in The Planning Inspectorate (2007) *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents*. PINS.

potential effects upon The Wash SPA even though the site is in the East of England region, more than 65 miles downstream of the source of the potential effect<sup>17</sup>. This was because the SPA is located near the mouth of the River Ouse, which runs through Milton Keynes where the potential effects might have arisen, through changes in surface water run-off affecting the catchment.

*Figure 1: Local authorities in England with a SPA/SAC*



25. For screening of potential effects on each European site, Natural England can provide plan-making authorities with key information on the following (if the authority does not already possess it):
  - Why it is important for wildlife, i.e. the features (species and habitats) for which the site was designated as an SPA or SAC<sup>18</sup>;
  - The conservation objectives for the site;
  - The latest assessment of the site's ecological condition<sup>19</sup>; and
  - Any particular problems or sensitivities of the site's features that could be affected by plan policies or proposals.
26. Other information about the European site may have been provided during the issues and options stage by bodies such as the Wildlife Trusts and the RSPB.

<sup>17</sup> See [http://www.southeast-ra.gov.uk/southeastplan/key/appropriate\\_assessment.html](http://www.southeast-ra.gov.uk/southeastplan/key/appropriate_assessment.html) for details of the assessment.

<sup>18</sup> See JNCC web site - **SAC**: [http://www.jncc.gov.uk/ProtectedSites/SACselection/SAC\\_list.asp?Country=E](http://www.jncc.gov.uk/ProtectedSites/SACselection/SAC_list.asp?Country=E);  
**SPA**: <http://www.jncc.gov.uk/page-1401>.

<sup>19</sup> Natural England's web site provides the latest information on the condition of the SSSIs that make up each European site: <http://www.english-nature.org.uk/Special/sssi/search.cfm>.

27. Significant effects can also arise from the effects of the plan in-combination with other plans and projects. As set out in the Habitats Directive, consideration of these possible in-combination effects is part of the AA process. Natural England should also be able to provide initial guidance on the plans or projects that need to be considered as part of the in-combination test. The types of plan or project to consider are summarised in Table 1 below.

**Table 1: Projects and plans to be considered in-combination**

<b>PROJECTS</b>	<b>PLANS (not exhaustive)</b>
<ul style="list-style-type: none"> <li>• Consented but not completed.</li> <li>• Subject to application for consent.</li> <li>• Subject to statutory reviews e.g. discharge consents, extant mineral consents.</li> </ul>	<ul style="list-style-type: none"> <li>• Regional Spatial Strategies or sub-regional strategies.</li> <li>• Local Development Frameworks</li> <li>• Where still in force, Structure Plans, Unitary Development Plans or Local Plans</li> <li>• Shoreline Management Plans and Catchment Flood Management Plans.</li> <li>• Other land-use plans which have a strong influence over project-level decisions.</li> </ul>

28. An example of an in-combination effect could include the interaction between a DPD's proposed industrial development adjacent to an estuarine SPA and changes to coastal sedimentation patterns arising from managed realignment proposals contained within the Environment Agency Shoreline Management Plan covering the same stretch of coast. The Shoreline Management Plan is likely to cover stretches of coast outside the LDF, but which could have indirect effects within the LDF area.
29. In compiling the information for screening, it may prove cost-effective to work with neighbouring authorities, as much of the information needed for screening is likely to be needed by more than one authority. Joint working can reduce the workload of individual authorities and reduce costs overall.

## Defining "significant effect"

30. Screening has to be approached on a precautionary basis. It is intended to capture plan policies or proposals that are likely to give rise to a significant effect on the European site: it is not the same as a full-blown AA. A useful definition of what a significant effect is contained in an English Nature guidance note on the subject:

*"...any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects."*<sup>20</sup>

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<sup>20</sup> English Nature (1999) *Habitats Regulation Guidance Note 3: The Determination of Likely Significant Effect under The Conservation (Natural Habitats &c) Regulations 1994.*

31. A recent European Court judgment<sup>21</sup> helps interpret the concept of significant effect and has confirmed that a significant effect is triggered when:
- There is a *probability* or a *risk* of a plan or project having a significant effect on a European site;
  - The plan is *likely* to *undermine* the site's conservation objectives; and
  - A significant effect *cannot be excluded* on the basis of objective information.
32. This reinforces the precautionary nature of the likely significant effect test. Guidance in the European Commission's Managing Natura 2000 sites says, with regard to the likely significant test, that:

*"...in line with the precautionary principle, it is unacceptable to fail to undertake an [appropriate] assessment on the basis that significant effects are not certain."*<sup>22</sup>

## How to carry out screening

33. Screening a spatial plan means looking at all the policies and proposals within the plan (acting alone and/or in-combination) that could cause a significant effect on European sites either within or outside the plan-making authority's area. The plan-making authority takes the decision on whether a significant effect is likely. This will have been informed by advice and information supplied in the early stages of the plan-making process by expert bodies.
34. It is important to consider separately the effects of the plan on each European site and its features even when their boundaries overlap, as they may have been designated for different reasons. For example, the effects on birds within an SPA may be very different to the effects on the flora of an SAC. Guidance on how to record the information is set out in *Table A3.2: Likely significant effect screening matrix* in Appendix 3.
35. When screening a spatial plan, it means looking both at the effects of individual policies/proposals and the interactions between them. The latter is particularly important as it ensures the effects of the plan as a whole. Clearly, this will differ between the different types of plan. It will be easier to decide if some proposals e.g. allocations in an LDF, have a significant effect than others e.g. strategic housing distribution policies contained in RSSs. However, even at RSS level it will often be clear that the consequences of e.g. a major housing allocation or infrastructure requirements, are likely to give rise to a significant effect when more detailed schemes are brought forward at LDF level. A precautionary approach is needed as indicated above.
36. The RSPB's experience to date and discussions with a wide range of planners and others involved in plan-making has revealed four specific issues that we consider require further elaboration and on which we offer the following guidance:

- **How to deal with in-combination effects**

This is a key part of screening as it ensures plans or projects are captured that would not trigger a likely significant effect on their own. In spatial plan terms, the RSPB consider that in ensuring compliance with the spirit as well as the literal meaning of the Habitats Directive this means it needs to look both at in-combination effects within the plan as well

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<sup>21</sup> ECJ (2004) Case C-127/02: *Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels vs. Staatssecretaris van Landbouw, Natuurbeheer en Visserij* (the Waddenzee ruling).

<sup>22</sup> See section 4.4.2 of [Managing Natura 2000 sites](#).

as with other plans and projects. It is designed to make sure that the impacts that arise from the interaction of the spatial plan with other plans or projects are fully taken into account. So, we consider this approach should apply to:

- The totality of all of the effects of the plan's policies and allocations; be it on their own, cumulatively with other policies and allocations, as well as their interactions with each other. For example, a number of housing allocations around a wetland may cumulatively give rise to increased water demand or run-off;
- The combined effects of all relevant DPDs in an LDF;
- The effects of a DPD with those relevant projects inside and outside the plan area that have been applied for, consented and not implemented, and partially implemented; and
- The effects of a DPD with other relevant plans, either inside or outside the plan area. For example, several housing allocations in different authorities adjacent to different parts of a heathland European site could combine to cause unacceptable recreational pressure on the European site.

It is important to seek the advice of Natural England, other local authorities and other informed bodies e.g. the Environment Agency, who will be able to help identify the extent of these less obvious combined impacts. It may be helpful to map out other plans and projects spatially to gain a fuller understanding of their relationship with European sites and to identify "hot spots" and omissions.

- **Screening and mitigation**

There has been some discussion among practitioners about how and whether mitigation measures should be considered at the screening stage for likely significant effects. The RSPB believes that it is very important that screening is not confused with the assessment of the effect of mitigation measures in the AA proper. This is because it is wrong to confuse the test for whether an AA is necessary with the consideration of impacts and their potential mitigation that is a fundamental part of the AA itself. Not only that, it runs the risk of the plan objectives being unsound if presumed but untested mitigation cannot be delivered subsequently.

The AA ensures possible mitigation measures are fully tested for both their effectiveness and ability to be implemented. For example, a plan may contain a proposed housing allocation that requires water from the same aquifer supplying a wetland European site. The plan-making authority state the proposed allocation will also include development of a mitigation strategy to make sure the wetland is not affected. On this basis, it is suggested the plan will have no likely significant effect. However, without testing the detail of the mitigation strategy, the plan-making authority cannot demonstrate the confidence necessary to prove it can and will be implemented at planning application stage.

- **The use of buffer zones to help determine the likely significant effect of plan policies and proposals**

The RSPB urges caution on the use of buffer zones. Their use should be based on objective scientific research. Therefore, use of a buffer zone should be justified on a combination of a proper understanding of the European site's characteristics, its qualifying interests, their sensitivities and the underlying ecosystem processes they depend on, and relevant published scientific research. The selected boundaries of buffer zones should be clearly

related to the type of effect being considered and the distance at which it is known to be an issue e.g. recreation disturbance, upstream water abstraction.

Some planning authorities have placed buffer zones around the boundaries of European sites to determine those policies or proposals likely to have a significant effect. Policies or proposals whose effects are felt outside the buffer are deemed not to have a likely significant effect and ruled out from requiring an AA.

Superficially, this appears to be a pragmatic spatial approach to determining whether an AA is needed. However, inappropriate use of a buffer zone, without objective information to back it up, could result in effects of policies or proposals outside the buffer being missed or, conversely, unnecessary inclusion of policies or proposals that result in further work at the AA stage to rule out possible adverse effects.

- **Relationship between Core Strategies and other LDF documents**

The expectation is that local planning authorities will prepare their Core Strategies before other DPDs, in line with PPS12. The Planning Inspectorate has recently emphasised the need for the Core Strategy to be seen “the “lead” DPD, unless there is some up-to-date, relevant and strategic framework in place”<sup>23</sup>.

The Core Strategy is important because it sets out the key elements of the planning framework for the authority’s area, specifying what the other LDF documents will be expected to deliver. As it relies on those subsequent documents to deliver the plan’s objectives in detail it is important to have a clear idea of the likely strategic allocations and policies of those future documents when screening the Core Strategy. To make sure this is possible, we advise careful consideration is given to the relative timings for producing the Core Strategy and other DPDs when drawing up the Local Development Scheme.

## Recording the screening decision

37. As screening is a legal requirement, it is important to record the reasons for the final screening decision (see paragraph 1.11 of The Planning Inspectorate *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents* (2007)). This record should set out sufficient information to justify the conclusion on whether or not there is a likely significant effect. There is no standard format for recording the opinion, but the document should clearly set out who has been consulted, the information gathered, the assessment of effects alone and in-combination, whether they are considered significant and the reasoning leading to the conclusion. We provide a sample table for recording likely significant effects in Appendix 3<sup>24</sup>.

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<sup>23</sup> See paragraph 1.22 in: The Planning Inspectorate (2007) *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents*.

<sup>24</sup> See also EC (2001) *Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Articles 6(3) and 6(4) of the Habitats Directive 92/43/EC*.

## Step 2: Appropriate Assessment - scoping and further information gathering

Scoping always follows a screening decision that an AA is required. Its aim is to identify more precisely what impacts the AA should cover and to ensure the appropriate information is gathered to ensure the AA can be carried out. It helps ensure the final AA is complete and accurate.

Scoping should address any gaps in knowledge about the site, external conditions and potential impacts highlighted during screening.

38. Once screening has decided that an AA is required, it will be necessary to obtain more detailed information and define more precisely what impacts the AA should cover. This goes much further than screening for significant effects and is essentially the same as the scoping stage for other forms of environmental assessment i.e. the process of determining the **content** and **extent** of matters that should be covered by the environmental information to enable a competent authority to assess and make decisions on it.
39. Scoping will ensure planners have the right information to carry out the AA (see Step 3). Benefits include<sup>25</sup>:
  - Early involvement of stakeholders to identify concerns and deal with them at an early stage;
  - Focusing the AA on likely significant impacts;
  - Clear terms of reference and criteria are agreed and used to evaluate the significance of their findings; and
  - Early identification of further research or survey work needed and planned for.
40. This section will cover:
  - When scoping should be carried out; and
  - Information required and how to scope.

### When scoping should be carried out

41. Scoping always follows a screening decision that there is a likely significant effect on a European site. For RSSs, this should be before production of the Draft RSS. For LDFs it will be before the production of the Preferred Options document, and if subsequently necessary, the Submission DPD.

### Information required and how to scope

42. The information to be gathered is, broadly, a more complete set of the information examined as part of screening. One of the functions of the scoping process is to ensure that all the necessary information is correctly identified. The information can be grouped under the following headings:
  - Up-to-date information on the affected European sites;

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<sup>25</sup> Adapted from: IEEM (2006) *Guidelines for Ecological Impact Assessment in the United Kingdom*.

- Detailed information on relevant plans and projects; and
  - Detailed information on likely impacts identified at screening.
43. Scoping is a critical step. If the correct issues are not considered the final assessment will be incomplete and/or inaccurate, requiring more work and delay while correcting and completing the AA. Scoping should start by focussing on what is already known about the European site, including its conservation objectives and related information on its condition. This provides the foundation for the assessment. In addition to neighbouring planning authorities, it is crucial to consult with Natural England and other environmental bodies, e.g. the Environment Agency, the Wildlife Trusts and the RSPB, who will be able to offer advice on the specific issues that need to be covered in each case to ensure the most up-to-date information is being used. Appendix 3 sets out more detailed guidance on the standard information that should be provided.
44. Scoping should address any further gaps in knowledge about the site, external conditions and potential impacts that have been highlighted during screening. It should identify what must be done to gather the information necessary to fill in those gaps, including commissioning research if that is considered necessary. Doing this early in the plan preparation process ensures this work can be built into the plan timetable and so avoid subsequent delays. Table 2 below provides a simple illustration of the type of information requirements scoping might identify.

**Table 2: Illustrative example of further information requirements identified during scoping**

LIKELY SIGNIFICANT EFFECT	INFORMATION NEEDED	
	European site	Potential impacts
Major road improvement gives rise to: <ul style="list-style-type: none"> <li>- Direct habitat loss;</li> <li>- Road noise;</li> <li>- Vehicle emissions.</li> </ul>	Habitat requirements of breeding bird interests.  Distribution of relevant breeding birds on European site.  Distribution of key habitats on European site.	Summary of relevant research into: <ul style="list-style-type: none"> <li>- effects of fragmentation of heathland habitat;</li> <li>- effects of road noise on breeding birds;</li> <li>- effects of NO<sub>x</sub> on heathland vegetation.</li> </ul>

45. As the information comes in it should be regularly evaluated to ensure all the necessary information is available to carry out the assessment of impacts. We recommend Natural England's advice is sought as to when sufficient information has been obtained.
46. The information gathered through the AA process will focus upon European sites. National sites (such as SSSIs) are not subject to the AA process but as all European sites are also SSSIs they will share common interest features - information about them will be part of the broader evidence gathering process for the plan. Protecting European sites through the AA process will also help the plan-making authority implement its duty under section 28G of the Wildlife and Countryside Act 1981 to conserve and enhance SSSIs.
47. Following scoping, the plan-making authority should be in a position to carry out the formal AA of the plan.

## Step 3: Appropriate Assessment – assessing the impacts

AA requires decisions to be made on the content of the plan based on the assessment's findings on the impacts on European sites.

AA critically evaluates the potential impacts of the plan on European sites and identifies amendments to policies or proposals so that adverse effects are avoided. This is easiest if AA is carried out as early as practicable in the plan-making process. We recommend AA is carried out on the following documents:

- For RSSs: this should be on the Draft RSS document;
- For LDFs: this should be on the Preferred Options document and Submission DPD.

Carrying out the AA early should lead to following benefits:

- Information on how impacts have been addressed is available for public consultation;
- Avoids risk of fundamental redrafting; and
- Reduces risks of plan being “unsound” as potential impacts are addressed early on.

AA should consider direct, indirect and cumulative effects, using expert advice, particularly from Natural England. An initial assessment of impacts on European sites will probably have the following findings:

- No adverse effect; or
- Definite adverse effect or unable to rule one out.

If an adverse effect cannot be ruled out, the plan-making authority must address mitigating the impacts so it can reach a conclusion of no adverse effect. The main options will be:

- Delete or modify the policy or proposal;
- Relocate or re-design the proposal; and
- Implement a strategic mitigation strategy.

If the plan changes significantly at any time before adoption, an AA may need to be carried out again.

The conclusions of the AA should be confirmed with Natural England and set out clearly in a report summarising the findings and how decisions have been reached.

There may be limited circumstances where a genuine lack of detail means it is not possible to assess what impacts a policy or proposal will have. However, plan-making authorities should take care before deciding whether to defer such decisions on adverse effects to a lower planning level as it could create unnecessary uncertainty.

48. Assessment of the impacts of the plan policies and proposals on European sites is the heart of AA. The key objective here is to look critically at those potential impacts. Most importantly, it allows the plan policies and proposals to be amended to **avoid** any adverse effects (or risk of this) on these internationally important wildlife interests. This is one of the unique attributes of plan-making which provides the flexibility to adjust and remove potentially harmful effects before any subsequent detailed development schemes are brought forward.

49. This section will cover:
- When to carry out the AA;
  - How to carry out the AA;
  - Reporting the findings of the AA; and
  - Deferring decisions to lower levels in the planning system.

## When to carry out the Appropriate Assessment

50. Once all the information identified in the scoping stage has been collated it is then possible to assess the impacts of the spatial plan on the relevant European sites with confidence.
51. The RSPB considers that the AA of impacts should be done as early as practicable in the plan-making process, i.e. once the planning body has made up its mind on the preferred options it wishes to consult on for the plan. This offers significant benefits as:
- It will provide all the necessary information for the public and other statutory consultees to show that impacts on European sites have been fully considered and potentially harmful ones resolved where possible;
  - It will avoid the risk of fundamental redrafting (and subsequent delay) of the plan in light of information on the assessment of impacts that otherwise could have been considered and resolved earlier on; and
  - It reduces the risk that a plan will be found to be ‘unsound’ because potentially harmful impacts on such important interests as European wildlife sites have not been properly taken into account.
52. In terms of timing of this part of the AA, the RSPB recommends:
- **For RSSs** – the AA should be carried out following the strategic options stage and before publication and consultation on the Draft RSS. The process may need to be repeated for the Secretary of State’s proposed changes if these are likely to have a significant effect on European sites.
  - **For LDFs** - AA should be carried out following the issues and options stage. We recommend an AA is carried out on both the Preferred Options document and Submission DPD before these are put out for public consultation. PINS has indicated that the evidence base should be substantially complete by the Preferred Options stage<sup>26</sup>, and that the AA must be done before the DPD is submitted<sup>27</sup>. **A key principle to remember is that if the plan changes at any time during the process to adoption an AA may need to be carried out again if those changes are likely to have a significant effect on European sites.**
53. As indicated in *Getting Started*, there will be links between this process and the timing and content of SA/SEA. Indeed, with regard to timing, SA/SEA is required at a similar stage of plan-making as AA (e.g. see Figure 4.1 of PPS12 and Figure 2.1 of PPS11). In addition, by carrying out AA alongside SA/SEA, it will ensure both assessment processes benefit from each other’s findings and will help make best use of available resources.

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<sup>26</sup> See paragraph 1.12 of The Planning Inspectorate (2007) *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents*.

<sup>27</sup> See paragraph 1.10 of The Planning Inspectorate (2007) *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents*.

## How to carry out the Appropriate Assessment

54. Unlike the previous stages of screening and scoping, this part of AA really concentrates on identifying the likely impacts on European sites of the plan's policies and any specific allocations or proposals, addressing as precisely as possible their nature, magnitude and permanence.
55. In order to do this, the plan-making authority will have to consider all of the information gained following scoping for the potential range of impacts from its likely plan proposals and policies. In order to be able to assess more precisely what the impacts are likely to be, the plan-making authority will need to take account of expert guidance. This can be obtained from several sources including any in-house ecological expertise within the authority, external statutory bodies such as Natural England and the Environment Agency, organisations such as the Wildlife Trusts and the RSPB, or consultants engaged by the authority to carry out the AA.
56. As with all impact assessment, the impacts of the plans and proposals the authority needs to consider will be break down into three main categories:
- Direct;
  - Indirect; and
  - Cumulative.
57. Table 3 below gives examples of these.

*Table 3: Illustrative example of direct, indirect and cumulative effects of plan policies and proposals*

Policy	TYPE OF EFFECT		
	Direct	Indirect	Cumulative
RSS: district housing allocations	None	Disturbance of breeding birds from increased recreation and noise from associated traffic	Increase in traffic leading to higher NO <sub>x</sub> loadings leading to changes in vegetation within 200m of road
LDF: allocation for major port development	Direct loss of estuarine habitats	Changes in sediment pattern of estuary	Interaction with existing dredging regimes cause increase erosion of intertidal habitats
LDF: housing allocation	None	Increased recreational disturbance prevents nesting of ground-nesting birds	Increase in predation rates of ground-nesting birds from increase in recreational disturbance

## Evaluation of impacts and their mitigation

58. There are three basic steps to the evaluation of impacts during AA:
- Initial assessment of impacts;
  - Considering how to mitigate impacts; and
  - Concluding the AA – the decision.

## Initial assessment of impacts

59. In order to assess impacts the plan-making authority will need to consider the possible range of impacts against the conservation objectives for the affected European sites. To do this, the plan-making authority will need suitable expert advice particularly from Natural England. The initial assessment of impacts is likely to have the following findings:

- **Finding of no adverse effect:** the plan-making authority must be absolutely clear that no effect on the site's integrity will occur i.e. no reasonable scientific doubt<sup>28</sup>. Failure to do this could ultimately prevent the policy or proposal being realised and raise problems at the public examination of the plan. If there is any doubt whether an adverse effect will occur then, on a precautionary basis, it should be assumed there will be one. It is important that a finding of no adverse effect is clearly reported (see paragraphs 72-74 below).
- **Definite adverse effect or where an adverse effect cannot be ruled out:** where an adverse effect is certain or there is sufficient doubt that one cannot be ruled out, the precautionary and preventive principles come into play<sup>29</sup>. In this situation, the plan-making authority needs to consider what measures it can introduce to avoid the predicted adverse effects. In essence, this boils down to two options: removing the relevant policy or proposal or mitigating its effects. The latter is discussed in more detail below. It is possible that further information may be obtainable to provide sufficient confidence that an adverse effect will not occur. Again, the plan-making authority will need to seek expert advice.

## Considering how to mitigate impacts

60. Mitigation can be defined as:

*“measures that avoid or reduce overall potential adverse effects on the integrity of a Natura 2000 site and should be taken into account during the Appropriate Assessment of the impacts of a plan or project.”*

61. The overarching principle is to use the iterative plan-making process to filter out the potentially damaging elements of the plan policy framework and, if necessary, put robust and meaningful policy safeguards in place. The key point to remember is that the plan-making authority must be confident that the mitigation will work in order to be able to conclude that, when it is taken into account, there will be no adverse effect on the integrity of the European site. This underpins the legal requirements of the Habitats Directive and reflects a suitably precautionary approach.

62. Mitigation measures for plan policies and allocations that will or might have an adverse effect on a European site can be devised in a number of ways. Some of these ideas may already have been thought about as the policies and allocations have been drafted and impacts considered. Mitigation measures can range from a simple removal of a damaging policy or proposal through to targeted mitigation strategies. Table 4 below sets out a number of examples to show how this could be done.

63. Any mitigation solutions identified must be capable of delivery through the planning system or other relevant regulatory systems and, if implemented, ensure the adverse effect is avoided.

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<sup>28</sup> See ECJ (2004) Case C-127/02 (the Waddenzee judgment) and section 1.2.1 of European Commission (2007) *Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC. Clarification of the concepts of: alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission.*

<sup>29</sup> See section 1.2.1 of European Commission (2007).

**Table 4: Possible mitigation responses**

<b>Policy or proposal</b>	<b>Adverse effects on integrity</b>	<b>Mitigation options</b>
RSS: district housing allocations	Housing in certain districts which contain a lowland heathland SPA will give rise to higher levels of recreational disturbance to breeding birds.	<b>Strategic mitigation strategy policy</b> establishing parameters for detailed LDF policy to ensure sufficient area of well-located high quality greenspace is provided to attract new residents away from SPA.
LDF: housing allocation	Increased water abstraction from aquifer reducing water available to wetland SAC.	<b>Relocate</b> housing allocation to non-damaging location, or seek alternative abstraction point or water supply.
LDF: employment allocation on former playing fields	Playing fields used for feeding by significant numbers of wintering geese from nearby coastal SPA.	<b>Strategy provides alternative feeding areas</b> to mitigate the impact of the employment allocation.
LDF: employment allocation	Increased pollution risk on SAC downstream in adjoining local authority area. Botanical interests highly sensitive to certain discharges.	<b>Modify policy</b> following discussions with Natural England and Environment Agency. Policy amended to include need for suitable pollution control strategy to safeguard SAC.

64. At the RSS level, it is possible to specify issues the LDFs must address to ensure that an adverse effect upon the site is avoided. In those cases, the RSS should provide clear guidance on what the LDFs must achieve, whilst avoiding unnecessary detail<sup>30</sup>. Where the Regional Planning Body considers it necessary, the RSS can set out strategic development control policies to be implemented directly through the grant and refusal of planning permission<sup>31</sup>. Although likely to be rare, this could offer a clear means of ensuring that future developments required by the RSS can be delivered without harming a European site.
65. At the LDF level there should be sufficient understanding of the physical and spatial parameters of the policy or proposal to predict its effects with reasonable certainty and to scope the requisite mitigation measures to be delivered at the planning application stage. Setting out mitigation strategies in policies linked to those for the development ensures that potential developers are fully aware of the requirements to deliver that policy in accordance with both the plan and the Habitats Regulations. The mitigation strategy may comprise one or more measures removing the adverse effect.
66. Each mitigation strategy must be evaluated to ensure it can remove the adverse effect and to check that it has no adverse effects on European sites. Policies setting out a specific mitigation strategy should relate the nature and phasing of mitigation to the relevant policy or allocation to ensure that an adverse effect is avoided (where appropriate by cross-reference to proposals maps). It may be necessary for the policy to phase development so that the relevant mitigation is in place and shown to be working before the development takes place.

<sup>30</sup> [PPS11](#), paragraph 1.5.

<sup>31</sup> [PPS11](#), paragraph 1.18(i).

67. By the planning application stage, the RSS and LDF should have established a robust strategic mitigation framework. The plan-making authority will need to screen individual planning applications to be sure that they comply with the mitigation framework and that sufficient legally enforceable measures are incorporated into the application to avoid a significant effect on the European site. It is at this project level that the proposed measures become “avoidance” measures as they ensure a likely significant effect on the European site is avoided by the planning application. If the legal guarantees are either absent or insufficient, then a likely significant effect could not be ruled out and the application would be subject to AA as normal.
68. Finally, if mitigation measures need to be implemented outside the administrative boundary of the plan careful consideration will need to be given as to how to make this legally deliverable. The use of joint plans is one possible solution and would need to be explored with the relevant neighbouring authorities. Given the potential ramifications of this approach for the plan production timetable of the affected plan-making authorities, early liaison with the Government Office is advised.

### **Concluding the Appropriate Assessment – the decision**

69. Having considered potential mitigation measures, the plan-making authority should be in a position to set out its decision on whether the plan can avoid an adverse effect on the integrity of European sites.
70. If mitigation is needed, the plan-making authority’s decision must to set out how that mitigation will be implemented through the plan and how it has concluded the plan will not have an adverse effect (or a risk of this) on any European sites within or outside the authority’s boundary. It is important that in reaching this decision the plan-making authority seeks confirmation from Natural England that this conclusion is robust.
71. However if, despite consideration of possible mitigation the plan-making authority concludes adverse effects on integrity cannot be ruled out, and it wishes to proceed with the plan in its current form, it will not be possible to do so until it has satisfied the subsequent requirements of the Habitats Directive and provide proper justification for a damaging plan. These are covered in Steps 4-6 below.

### **Reporting the decision**

72. As with SA/SEA, the plan-making authority should clearly record all the steps taken in the AA process, the information gathered, the conclusions reached and how it has influenced the plan. This should be clearly presented in a single document as part of the evidence base of the RSS or LDF document. The AA report should accompany the RSS or DPD when it is put out for public consultation.
73. It should **summarise** the findings of the impact assessment and include appropriate detail on the impacts of the plan for each European site identified during screening. The format is entirely a matter for the plan-making authority, but it should capture the site’s qualifying interests, its conservation status and sensitivities and the impacts of each policy or allocation predicted during the assessment process, and the decisions taken on necessary changes to the plan to reduce or remove (the risk of) adverse effects. A suggested format for recording the **detailed** impact assessment is set out at the end of Appendix 3. Careful compilation of the working document will enable easy updates both during the preparation of the current plan document and other future documents that also need this information.

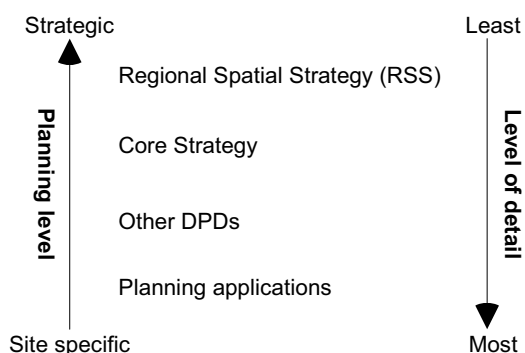
74. Ultimately, the final assessment of the plan will be made through its public examination. For RSSs this will be the changes proposed by the Secretary of State having considered the report of the Panel. For LDFs the Inspector will consider the soundness of the DPD using the AA as part of the evidence base, although it is not the role of the Inspector to assess the compliance of the plan with the Habitats Directive.

## Deferring decisions to lower levels in the planning system

75. There is however, one other issue that has cropped up several times in the RSPB's experience of plan AA. That is whether it is possible to defer decisions on assessing effects to a subsequent more detailed stage in the planning system i.e. lower level plan or planning application. The RSPB's view is that this needs to be approached with great care and very much depends on the individual circumstances and issues of the plan(s) concerned.

76. A first issue to consider is the level of detail that is practically available to a plan-making authority when it is carrying out an AA. One consequence of the tiered structure of the planning system is that less information is available to predict the consequences of each policy or allocation in a plan than for an individual planning application. The diagram below illustrates the relationship between the detail available and the position in the planning system: the more strategic the plan, the less information will be available.

*Figure 2: Levels of detail available to inform an Appropriate Assessment*



77. Spatial plans may not have all the answers about the detailed effects upon European sites, but each should, at least, be able to provide some of them and set the parameters for the more detailed questions which subsequent plans or planning applications must answer as part of their AA process.

78. The RSPB accepts that because of the different levels of detail available it may be difficult for a plan-making authority to be confident in knowing the extent or likelihood of adverse effects on European sites. This is most likely at the RSS level. This is not to say that it is an impossible task, because many elements of the plan can be subject to AA as the examples above demonstrate. Careful and transparent use of logical assumptions on the spatial implications of policies can greatly aid the AA process and avoid the need to defer to lower levels e.g. assumptions on traffic movements arising from a quantum of new housing or commercial floor space.

79. However, there may be limited circumstances when there is a genuine lack of detail on how the policy or allocation will be realised because this depends on detailed implementation through lower-level plans, or where strategic level information is absent on the real schemes that the market will bring forward. Such deferral of decisions to lower tiers of the planning system should only be necessary in a limited number of cases.

80. For example, an RSS is expected to establish locational criteria, including suitable areas of search, for regionally or sub-regionally significant employment land in order to provide the proper strategic framework for local planning authorities to prepare their LDFs. The local planning authority may have a wide choice of locations where this level of employment provision could be met. Some of these may be located next to sensitive European sites e.g. a major port as a principal employer, while others are not. In this situation, the only practicable solution to understanding the potential impacts on a European site may be for the local planning authority at the LDF level to assess the impacts of the options for meeting the RSS employment land targets for its area. In such a situation the plan-making authority responsible for producing the RSS may not be able to assess whether a significant or even adverse effect on a European site will arise because it does not have sufficient location detail available.
81. In this situation the Regional Planning Body may be able to conclude that it can adopt its employment policy as it is more appropriate to deal with the impacts of providing employment land at the LDF level. It must be emphasised however that such deferral is not acceptable where an RSS policy has clear impacts upon a European site and will give legal effect to subsequent more detailed plans or projects that could have a significant or adverse effect upon it.
82. The deferral of decisions on impacts on European sites is likely to occur less frequently at an LDF level as local planning authorities will have much more detailed information available to assess whether a significant or an adverse effect will arise.
83. In summary, plan-making authorities need to take particular care in deciding whether to defer a decision on adverse effect to a lower planning level as it could create unnecessary uncertainty. It will be far better to tackle the issues at the appropriate level of the planning hierarchy in order to avoid problems later on.

### **Part 3: After the Appropriate Assessment**

**What happens if a plan cannot avoid an adverse effect (or risk of one) on a European site?**



## Step 4: Considering alternative solutions

Searching for alternative solutions is a key step if an adverse effect (or risk of one) cannot be avoided. The aim of this test is to find a less damaging means of meeting the public interest need the plan is trying to meet by promoting the damaging policy or proposal. If a less damaging alternative exists, it must be used.

Alternative solutions can only **formally** be considered once all options to mitigate predicted adverse effects have been exhausted. This means they may have to be addressed as follows:

- For RSSs: after completion of the AA but before publication and consultation of the Draft RSS;
- For LDFs: following completion of the AA at both the Preferred Options and Submission DPD stages, before they go out to public consultation.

However, the iterative nature of plan-making means the search for less damaging options should inform the plan-making authority's thinking at all times.

Alternative solution should include: do-nothing, different sites, different methods, and re-drafting plan objectives and the resulting policy framework.

The geographical area of search is wide and may include other districts, regions or even countries – it must not be limited by the plan boundary.

Less damaging alternatives should exist in all but the most exceptional cases.

Consideration of alternative solutions should be fully documented and reported on, giving reasons on decisions to proceed or not with each of the alternatives considered.

84. If despite the plan-making authority's best efforts, an adverse effect (or risk of one) cannot be avoided, the next step is to consider whether there are less damaging alternative solutions to meet the plan's objectives. This is where the spatial plan system comes into its own.

85. This section will address:

- When to consider alternative solutions;
- What to consider; and
- Recording the decision on alternative solutions.

### When to consider alternative solutions

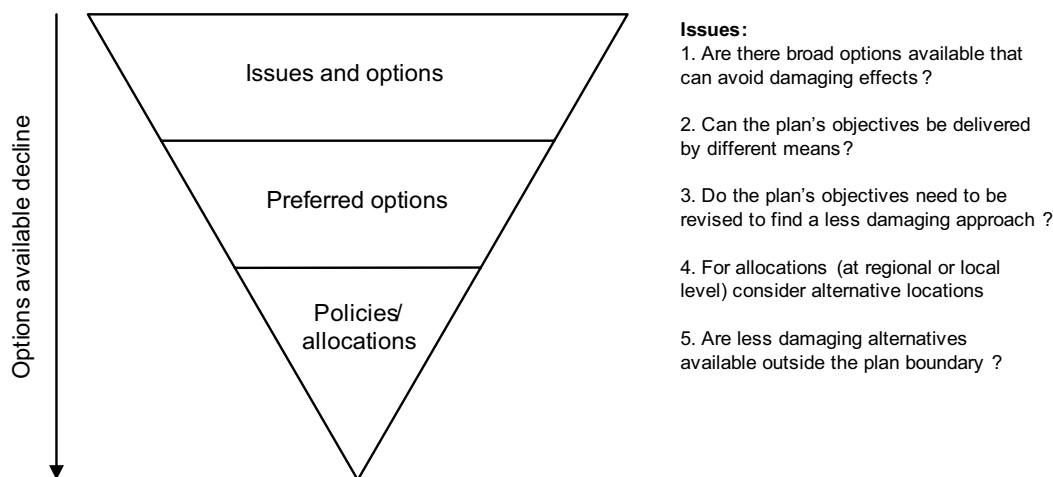
86. The iterative nature of the plan-making process encourages the consideration of less damaging alternative solutions at each plan-making stage and is one of its strengths. To take maximum advantage of the iterative plan-making process, consideration of less damaging options to meet the plan's objectives should inform the plan-making authority's thinking at all times during plan formulation. By integrating this thinking into plan drafting, the plan-making authority increases the likelihood that the plan will have no adverse effects on European sites, and improves its soundness by minimising the disruptive effects of late changes to the plan if the AA was put off until the end of the plan-making process. Ultimately, this offers significant flexibility to planning authorities compared to the much more restricted options typically available to developers at the planning application stage.

87. The alternative solutions test can only **formally** be considered once all options to mitigate predicted adverse effects have been exhausted (see Step 3) and it is concluded that adverse effects cannot be ruled out. In line with this, alternative solutions may need to be addressed as follows:

- **For RSSs** – following completion of the AA but prior to publication and consultation on the Draft RSS. Any proposed changes by the Secretary of State may require consideration of alternative solutions if an adverse effect cannot be ruled out.
- **For LDFs** – following completion of the AA at both the Preferred Options and Submission DPD stages and before they are put out for public consultation.<sup>32</sup> Subsequently, alternative solutions may have to be considered if further changes are made to the plan and adverse effects cannot be ruled out.

88. For LDFs, considering alternative solutions at the Preferred Options stage offers greater scope to find less damaging options than will be available at the policies and allocations stage. This is illustrated below in Figure 3.

*Figure 3: Scope for considering less damaging alternative solutions during LDF process*



## What to consider

89. In approaching the question of what comprises a less damaging alternative solution, a key concept to understand is the “need” the policy or allocation is seeking to fulfil. This is because that “need” may be capable of being met in a less damaging way – if this is correct a less damaging alternative solution may exist. The “need” will have to relate to the wider public interest the plan is seeking to meet e.g. provision of 50MW of renewable energy, or 100ha of employment land. A spatial plan will seek to meet a wide range of “needs” or public interests of different levels of importance. However, in this context, because any damaging option that is chosen will ultimately have to pass the test on IROPI (see Step 5), the “need” the plan is trying to meet will have to satisfy the high (national) level public interest objectives that could justify damage to a European site.

90. Assuming the need can meet these high level public interest objectives this helps to establish the geographical area of search and the types of alternative solutions that can be considered. The Habitats Directive requires the types of alternatives to be relatively broad in approach, provided they successfully meet the need the plan is trying to address. For example, the need for employment within a plan-making authority’s area could be addressed by a range of different employment types in different parts of the plan area.

<sup>32</sup> Although alternative solutions could be considered for an SPD, it is recommended that issues of this importance should more properly be considered within the parent DPD.

91. The alternative solutions test is a strict one, concerned with clearly demonstrating the genuine lack of less damaging alternatives. The Government has made it clear that the alternatives considered should be “credible and feasible”<sup>33</sup>. These may include:
- The “do-nothing” option;
  - A different site to deliver the desired development (including sites outside the plan boundary if there is a lack of options within the plan area) e.g. sites for onshore wind power are very likely to exist in a wide range of less damaging locations;
  - A different method to deliver the need e.g. use of Combined Heat and Power or wind energy, rather than a tidal barrage; and
  - Redrafting the plan objective(s) and the resulting policy framework.
92. The “do nothing” option should always be considered and will act as a true test of whether the particular policy or allocation is needed to deliver the defined public interest objectives. It will also provide the plan-making authority with a baseline from which it can assess the effects of the proposed policy/allocation and the other alternatives being considered<sup>34</sup>.
93. The area of search may have to be quite wide. It is Government policy, in line with European Commission advice, that the search for alternative solutions is wide and they may be located in different regions or even countries<sup>35</sup>. Therefore, the search for alternative solutions should not be limited simply to those available within the plan boundary.
94. Searching for alternative solutions **outside** the RSS or LDF boundary will probably only be necessary if it looks likely that the need for the policy or allocation cannot be met through less damaging means or locations **within** the plan boundary. If faced with this situation, the plan-making authority should contact neighbouring planning authorities to see if they are going to or can propose policies or proposals in their plans that can meet the public interest objectives in a manner that will not damage a European site.
95. In terms of the criteria against which to judge alternatives, European Commission guidance makes it clear that:
- “...other assessment criteria, such as economic criteria, cannot be seen as overruling ecological criteria.”<sup>36</sup>*
96. In all but the most exceptional circumstances, there should always be less damaging alternatives available to the plan-maker: one of them must be selected and the more damaging policy or allocation dropped from the plan. Less damaging alternative solutions that do not avoid damage completely must be subject to AA.

## Recording the decision on alternative solutions

97. The plan-making authority should ensure that it clearly documents the alternatives it has considered, and the reasons why those alternatives will not be followed. This will help support the plan-making authority’s case that there are no alternatives that can be followed in this instance.

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<sup>33</sup> See paragraph 51 of the Secretary of State for Transport’s decision letter on the [Dibden Bay Container Terminal proposal](#), 20 April 2004.

<sup>34</sup> See section 5.3.1 of [Managing Natura 2000 sites](#).

<sup>35</sup> See paragraph 51 of Secretary of State for Transport’s decision letter on the [Dibden Bay Container Terminal proposal](#), 20 April 2004.

<sup>36</sup> See section 5.3.1 of [Managing Natura 2000 sites](#).

## Step 5: Considering imperative reasons of overriding public interest (IROPI)

The IROPI test is a very rigorous check to see if damage to the European site can be justified in the public interest, once the search for less damaging alternative solutions has been exhausted.

The test is strict and very few policies or proposals will be important enough to pass it – to date, only ports and flood defence projects have passed it. It is not an easy option.

Only genuine public interests come into consideration and have to be balanced against the conservation aims of the Birds and Habitats Directives – the interest must be both public and long-term to qualify, and must be shown to be overriding. Not every public interest will be important enough to outweigh the conservation aims of the Birds and Habitats Directives.

Any policy or proposal put forward to pass the IROPI test will require a clearly argued and well presented case, set out against high level public interest objectives. Short-term or regional level socio-economic interests will not be sufficiently important.

Consult early with Government Office as they will play a central role in deciding if the policy or proposal passes the IROPI test, and act as the conduit for consultation with central Government.

98. If it has proven impossible to identify less damaging alternative solutions to the policy or allocation in the plan, the plan-making authority needs to carefully consider whether the need for the policy or allocation is so important that it justifies causing the damage predicted for the European site. This is the purpose of the “IROPI” test.
99. The IROPI test is strict and very few policies or allocations will be important enough to justify damage to European sites. To date, the main types of project that have passed this strict test in the UK have been either flood defence schemes or major port proposals. Elsewhere in the EU the type of scheme has extended to include major transport infrastructure projects such as motorways or high-speed rail links. Commoner forms of socio-economic development are extremely unlikely to be of sufficient importance to justify damage to European sites.
100. CLG’s draft guidance reinforces this high threshold:

*“5.20 After mitigation measures have been exhausted on an emerging option and it is shown to still have a potentially negative effect on the integrity of a European site, and in absence of any other alternative solution, as a rule the option should be dropped.”<sup>37</sup>*

101. This section addresses:

- When to consider IROPI;
- What issues to consider for the IROPI test; and
- What to report on IROPI.

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<sup>37</sup> DCLG (2006) *Planning for the Protection of European Sites: Appropriate Assessment* (our emphasis).

## When to consider IROPI

102. Consideration of the IROPI test must follow completion of the search for less damaging alternative solutions. Therefore, it will need to follow closely the timings suggested for consideration of alternative solutions in paragraph 87 above.

## What issues to consider for the IROPI test

103. The Habitats Directive sets out what comprise ‘imperative reasons of overriding public interest’. EC guidance is clear that only public interests can be balanced against the conservation aims of the Habitats Directive, irrespective of whether they are promoted by public or private bodies<sup>38</sup>. The scope of the factors that can be considered includes social and economic reasons. However, if the European site contains a priority habitat and/or priority species<sup>39</sup> this list is restricted to human health, public safety, beneficial consequences of primary importance to the environment or (following an opinion provided by the European Commission) other imperative reasons of overriding public interest. The most frequent example in the UK of an IROPI for human health and public safety reasons is flood defence.
104. If the policy or allocation is predicted to affect priority habitats or species, the plan-making authority should contact the Government Office as soon as practicable. It will be up to the Government Office, in consultation with relevant Government departments, to decide whether to consult the European Commission for an opinion.
105. In terms of judging the need for a particular policy or allocation, guidance from the European Commission<sup>40</sup> is clear that an interest must be both public and long-term to qualify as an IROPI. Projects to be developed by private bodies can only be considered where such public interests are served and demonstrated<sup>41</sup>. The public interest need must also be **overriding** – not every kind of public interest will automatically be sufficient to outweigh the conservation aims of the Birds and Habitats Directives. For example, the need to provide employment will not always outweigh the need to conserve an SPA or SAC. Other higher level factors will be more relevant e.g. continued global competitiveness of the UK economy.
106. The Secretary of State has indicated that certain matters will not constitute IROPI. If the proposal will only yield short-term economic interests or other short term benefits for society this will not be sufficient to outweigh the long-term conservation interests affected by the proposal<sup>42</sup>. Even “very significant” enhancement of the socio-economic and economic interests of a sub-region would not comprise an IROPI<sup>43</sup>.

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<sup>38</sup> European Commission (2007) Guidance document on Article 6(4) of the ‘Habitats Directive’ 92/43/EEC. Clarification of the concepts of: alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission.

<sup>39</sup> Priority habitats and priority species are listed in [Annex I](#) and [Annex II](#) respectively of the Habitats Directive and relate to SACs only. The definitive Natura 2000 Standard Data Forms for each SAC will list the priority habitats or species for which the site has been designated. A full list of SACs and their Natura 2000 Standard Data Forms can be found at: <http://www.jncc.gov.uk/page-1458>.

<sup>40</sup> See section 5.3.2 of [Managing Natura 2000](#).

<sup>41</sup> See section 1.3.2, EC (2007).

<sup>42</sup> See paragraph 47 of the Secretary of State for Transport’s decision letter on the [Dibden Bay Container Terminal proposal](#), 20 April 2004, which relies upon guidance within [Managing Natura 2000](#). The Secretary of State concluded that the short-term problems to the UK economy of not building port facilities at Dibden did not amount to IROPI that would justify the damage.

<sup>43</sup> See paragraph 76 of the Secretary of State’s decision letter on the [Bathside Bay Container Terminal proposal](#), 21 December 2005 and the related paragraph 18.142 of the [Inspector’s Report](#).

## What to report on IROPI

107. Justifying a policy or allocation for IROPI will require a clearly argued case in the context of the high-level public interest objectives identified when establishing the parameters for alternative solutions. The IROPI case should set out the following:
  - i. How the policy/allocation will meet identified high-level public interest objectives;
  - ii. How the policy/allocation will meet and sustain those objectives over the long-term; and
  - iii. Why the public interest met by the policy/allocation outweighs the conservation of the European site. This should be set in the context of the aims of the Birds and Habitats Directives.
  
108. Early consultation with the Government Office will be important, as it will be pivotal in evaluating whether the policy or allocation will pass the IROPI test and will act as the conduit for wider consultation with relevant central Government departments, especially the International Protected Areas Team in the Wildlife, Habitats and Biodiversity Division of Defra.

## Step 6: Identifying and agreeing compensation measures

Compensation measures are required as a legal last resort once all options to avoid damage to a European site have been exhausted. They should not be seen as a reason to justify a bad development.

The aim of compensation measures is to offset the damage to be caused by the plan policy or proposal and so ensure the overall coherence of the Natura 2000 network is maintained: this is normally done by addressing the specific predicted impacts of the policy or proposal.

The role of the plan is to help ensure developers implementing the damaging policy or proposal understand what will be required of them in providing compensation measures and can plan their projects accordingly to meet the standards set out in Government policy guidance. This requires that new habitats be in place in time to replace fully the ecological functions before the predicted damage occurs.

At an RSS level, this is likely to mean setting out the broad parameters for compensation measures that should be worked up in more detail at LDF level, where it should be possible to set out the ecological, locational, temporal, legal and financial parameters that need to be met by any planning application implementing the policy or proposal. These should be validated by relevant bodies such as Natural England to ensure they are both appropriate and capable of being implemented.

To ensure a clear audit trail, it is strongly recommended that spatial plan policies setting out the requirements for compensatory measures are linked to the specific policy or proposal that gives rise to the need for compensation. It will be important to document thoroughly the options considered and the confidence in whether the proposed compensation measures can be implemented.

109. Compensation measures are a legal requirement of last resort that come into play when it has not been possible to identify any less damaging alternative solutions and it is proven that the damaging policy or allocation is justified for imperative reasons of overriding public interest. The aim of compensatory measures is to make good the predicted adverse effects that will be caused when the policy or allocation is implemented at the planning application stage. It should not be seen as justifying a bad development.
110. At project level very few compensation schemes have been approved in the UK and fewer implemented. The Habitats Directive requires that the Government secure the necessary compensatory measures to ensure the overall coherence of the Natura 2000 network is protected. In practice, this has meant creating replacement habitat that both provides the same ecological functions and is located as close as possible to that to be lost or damaged by the particular project. Providing new habitat that is a close ecological match greatly increases the chances of success of maintaining the wider Natura 2000 network. Using the polluter pays principle, the Government has placed the responsibility on the developer for providing habitat compensation.
111. Tackling compensatory measures at the plan level is new to the UK. The main aim should be to provide a robust and appropriate policy framework to ensure the compensation measures are delivered at the planning application stage in accordance with both Government policy and the requirements of the Habitats Directive.
112. This section provides guidance on:
  - When to consider compensatory measures;
  - Key issues to address when dealing with compensatory measures;

- Implementing compensatory measures at the plan level; and
- Recording the compensation requirements.

## When to consider compensatory measures

113. The need to address compensatory measures arises once the plan-making authority is confident it is dealing with a damaging policy or allocation that has a strong likelihood of passing the alternatives solution and IROPI tests. For RSSs this will need to occur before publication of the Draft RSS document. However, as noted under 'Key issues' below, the relative lack of detail at the RSS level will limit the depth to which compensatory measures can be addressed.
114. For LDFs, compensatory measures should certainly be addressed before publication of the Submission DPD, as sufficient detail on the impacts of the policy or allocation on the European site will be available at this stage. It may prove possible to address the broad-brush need for compensatory measures at the earlier Preferred Options stage, especially if the spatial options being considered contain sufficient detail to predict potential adverse effects on European sites.

## Key issues to address when dealing with compensatory measures

115. Key Government guidance on the standards expected of compensatory measures is set out in paragraph 30 of Circular 06/2005:

*"... where new habitats are created as compensatory measures, the newly created habitats should be in place in time to provide fully the ecological functions that they are intended to compensate for. The newly created habitats should normally be included in the SPA network within a reasonable timescale."*

116. This establishes the need to understand certain key parameters in assessing whether it will be practical for compensatory measures to be implemented as part of a policy or allocation that will (or is likely to) have an adverse effect on a European site:
- The nature and magnitude of the predicted adverse effects;
  - Availability of suitable land in the right location;
  - Whether the habitat can be provided in a fully functional way before damage occurs;
  - Whether the habitat is capable of being maintained in perpetuity; and
  - When the site will be capable of being designated as a Natura 2000 site.
117. Obtaining all of this information will be difficult at the RSS level where the level of detail will probably be insufficient to set out precisely the nature and location of any compensatory measures. However, where it has been possible to identify an adverse effect arising from an RSS policy, it should prove possible to set out broad parameters for compensatory measures that need to be worked up in more detail at the LDF level e.g. location, type of habitat, timing.
118. At the LDF stage it should prove more practical to identify the ecological, locational, temporal, legal and financial parameters that a planning application will need to address in order to provide satisfactory compensatory measures. These should be set out clearly in policy so that prospective developers understand fully the habitat compensation standards they are expected to meet in bringing forward the associated development e.g. specific types of habitat needed, species affected, preferred location, likely timescales to provide habitats, funding requirements.

119. It will be important that any such policies are validated by relevant bodies as being appropriate and capable of being implemented. We recommend the plan-making authority work closely with Natural England and organisations such as the RSPB. Their support will help ensure the Secretary of State is happy to sign-off that this element of the plan can be delivered.

## **Implementing compensation measures at the plan level**

120. As noted above, the role of the spatial plan is to provide the appropriate policy framework for the delivery of compensation measures at the planning application stage. This will be more straightforward at LDF level than at RSS level due to the relative lack of detail available on impacts at the regional level. To ensure there is a clear audit trail, it is strongly recommended that spatial plan policies setting out the requirements for compensatory measures are linked to the specific policy proposal that gives rise to the need for compensation.
121. The key spatial element that plan-making authorities will need to consider is the most suitable location for habitat compensation to be located. This clearly relates to the type of habitat needed and the availability of suitable sites that will enable habitat of appropriate quality to be created. Practical experience in the UK has established the following hierarchy for the area of search:
- i. Adjacent or in close proximity to the Natura 2000 site adversely affected;
  - ii. Outside the Natura 2000 site but within a common topographical or landscape unit; or
  - iii. Outside the Natura 2000 site and in a different topographical or landscape unit.
122. At the RSS level, it should be possible to set out in policy the broad parameters indicating the general nature of the habitat compensation needed and, critically, the area of search for suitable habitat creation sites. This is especially important for large European sites suitable as locations for compensation measures may fall outside the boundary of the LDF delivering the damaging RSS policy.
123. At the LDF level, more policy detail should be expected, commensurate with information available on the predicted impacts of the damaging policy or allocation. As noted in paragraph 117 above, this should set out the ecological, locational, temporal, legal and financial parameters that will need to be fulfilled by any planning application designed to implement the policy or allocation. If it is likely that compensatory measures will be required outside the plan-making authority's boundary, the advice of Natural England and other nature conservation bodies should be sought on suitable locations. If necessary, contact should be made with relevant neighbouring planning authorities to discuss whether suitable habitat creation sites may exist in their area.
124. By setting out this information at the spatial plan stage, plan-making authorities can help ensure prospective developers are able to fully integrate the need to provide habitat compensation measures into their project planning. This is vital given the Government's policy advice that compensation measures should be fully functional before the predicted damage occurs. This means that spatial plan policies should make consent contingent on the developer being able to provide fully functional habitat in advance of the damaging elements of the development being implemented. To meet this timing requirement will normally require the replacement habitat to be created several years before damage occurs, the timescale varying dependent on the habitat being created. For some dynamic habitats, such as intertidal mudflats, it may be between 3-10 years. Others, such as reedbeds or lowland heathlands, may require 10 years or longer. This reinforces the message that compensatory measures are a last resort and are not an easy option.

125. Gaining the necessary confidence at the plan level that compensatory measures can be secured raises significant challenges and new approaches and thinking will need to be developed to deliver workable solutions. As outlined above, we consider the current solution is to include a policy requiring a planning application to include the necessary compensation measures such that they can be provided in advance of the damaging elements of the development. To improve the chances of avoiding time-lags between damage and the habitat becoming fully functional, it may be possible to identify and allocate suitable compensation sites in the plan. However, further work is required to determine how this would be implemented through the planning system.

## **Recording the compensation requirements**

126. Given the obligation on the Government to demonstrate it has secured appropriate compensation measures, it will be important for the plan-making authority to document thoroughly the options considered and the level of confidence that appropriate compensation can be delivered at the planning application stage. To ensure there is complete transparency, the spatial plan should clearly distinguish any compensatory measures to meet the requirements of the Habitat Directive from other habitat creation proposals or policies contained in the plan. We recommend that a specific policy dealing with the compensation measures is developed and explicitly linked to the policy or allocation that gives rise to the need for compensation.

## Post plan monitoring and review

**Monitoring is central to the delivery of the new spatial plan system. In biodiversity terms, the fate of European sites is critical and should form a central part of the biodiversity monitoring of both RSSs and LDFs.**

**The Annual Monitoring Report provides the best opportunity to present information on how the plan is meeting its biodiversity targets in respect of European sites. Such targets should be informed by the conclusions of the AA and any associated mitigation, and in rare cases, compensatory measures considered necessary.**

**Monitoring the timing and effectiveness of mitigation measures set out in plan policies will be important to ensure the AA's conclusions of no adverse effect are realised.**

**The plan-making authority should be prepared to address any unpredicted effects of the plan thrown up by monitoring – this will normally be through modifications at the next scheduled review unless an effect is so severe it warrants earlier action.**

127. Monitoring is central to the 'plan, monitor and manage' ethos of the new spatial plan system: the Planning Inspectorate has stated that the implementation and monitoring section of a DPD is of equal importance to the policies<sup>44</sup>. Regional and local planning authorities are now required to submit Annual Monitoring Reports on the implementation of their spatial plans, setting out the extent to which their policies are being achieved. As part of its advice, Government has identified changes to the status of international protected areas i.e. European sites, as a core output indicator of the effects of regional and local plan implementation on biodiversity<sup>45</sup>.
128. As European sites are the most important biodiversity resources within a plan area, tracking the practical consequences of the plan on these sites should form a central part of the biodiversity monitoring of both RSSs and LDFs. The need for this is increased now that spatial plans must be screened, and where necessary, assessed for their effects on European sites. Such monitoring will:
- Help to validate the findings of screening, the AA and the effectiveness of any mitigation or compensation measures required;
  - Inform the next scheduled review of the plan;
  - Provide an early warning if those findings are not borne out in practice and the effects on European sites are worse than predicted; and
  - Provide a means of responding to any significant changes since plan adoption e.g. the effects of consent for significant developments not in conformity with the plan.
129. The need for such monitoring is also an implicit requirement of the Habitats Directive as the European Court has reinforced the need to take proactive steps to deal with problems that were not predicted as part of the AA<sup>46</sup>.

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<sup>44</sup> See paragraph 5.9 in The Planning Inspectorate (2007) *Local Development Frameworks: Lessons Learnt Examining Development Plan Documents*.

<sup>45</sup> See page 41 of ODPM (2005) *Regional Spatial Strategy Monitoring: A Good Practice Guide* and pages 29 and 64 of ODPM (2005) *Local Development Framework Monitoring: A Good Practice Guide*.

<sup>46</sup> See paragraphs 36-37 of the Waddenzee judgement.

130. This section sets out:
- What to monitor and report on; and
  - How to respond to the monitoring results.
131. The results of the monitoring the plan's effects on European sites should form part of the Annual Monitoring Report. Where relevant, monitoring results at the LDF level should be passed up to the regional level and vice-versa.

## **What to monitor and report on**

132. The Annual Monitoring Report provides the best opportunity to gather and present information on how well the plan is meeting its biodiversity targets in respect of European sites. These targets should be informed by the conclusions of the AA and any mitigation or, in rare cases, compensatory measures, considered necessary by the plan-making authority to meet the requirements of the Habitats Directive. It is important to discuss the monitoring needs with Natural England at an early stage and identify what information is needed and how it can be most effectively obtained. Some plan-making authorities will have in-house ecological expertise that can also advise on this.
133. Information on European sites should be reported under a separate section and the implications of the information considered. The plan-making authority should ensure that the ecological information is kept up-to-date: the type of information and its recording frequency should be agreed with Natural England.
134. A key part of such monitoring will be to confirm that European sites are not being adversely affected by development provided for in the plan. By ensuring the information is fit for purpose any European site deterioration arising from the implementation of the policies or allocations, or problems with a mitigation scheme, can be identified and addressed at the earliest possible stage, limiting the further harm done. As a minimum, this will require certain key pieces of information including:
- The conservation condition of the European site and the reasons for that condition (supplied by Natural England);
  - The location and scale of relevant development identified during the AA process; and
  - The location, scale and effectiveness of mitigation measures identified in the plan.
135. Monitoring the timing and effectiveness of mitigation measures set out in plan policies will be particularly important to ensure any AA conclusions of no adverse effect become a reality. The precise nature of the monitoring will vary, dependent on the circumstances, but should include the timing of mitigation implementation in relation to the development it is meant to ameliorate.
136. It may be necessary to commission specific surveys to gather relevant information, particularly in relation to the effectiveness of mitigation schemes identified in the plan. The design and frequency of such surveys should be discussed with Natural England and any other relevant bodies.
137. Similarly, if it has been decided that compensatory measures are required to offset predicted adverse effects, it will be important to gather information on how and when these have been implemented and any assessment by Natural England of their effectiveness. Such information will normally be provided by detailed monitoring schemes that form an integral part of the legal framework for delivering compensatory measures.

## How to respond to monitoring results

138. Monitoring should be regarded as an evaluation of the consequences of the plan and the plan-making authority should be prepared to address any unpredicted effects the plan is causing. Normally, these will be addressed through modifications to the plan at the next scheduled review, but, if the effect is particularly severe, the authority should consider bringing the review forward to address the problem sooner.
139. The best research and most accurate evaluation of potential effects at plan level cannot preclude the chance that a consented development leads to an adverse effect on site integrity. The plan or project level AA may have overlooked something, better scientific understanding of the effects may emerge over time, or an in-combination effect may be significantly stronger than initially expected. Monitoring enables these issues to be identified early and the plan's implementation adjusted to address any problems that have arisen or are emerging.
140. For example, monitoring the effectiveness of mitigation measures in avoiding adverse effects of a particular development type may reveal that the mitigation is not working properly. Further analysis will be needed to understand why, normally in conjunction with Natural England. In considering the implications for plan delivery, the analysis may suggest the need to slow the pace of development consents if it is found that mitigation measures are not being implemented in a timely manner. Alternatively, it may indicate a change in the scale or nature of mitigation measures to ensure more effective removal of the predicted adverse effects. Conversely, monitoring may show that the adverse effects are less severe than predicted, requiring a reduction in the scale of mitigation required of developers.



# Appendices



# Appendices

The appendices offer specific and additional detailed guidance on key aspects of the AA process.

**Appendix 1: Suggested approach to include the Appropriate Assessment requirements of the Habitats Directive in revisions of the Regional Spatial Strategy (RSS).**

**Appendix 2: Suggested approach to include the Appropriate Assessment requirements of the Habitats Directive in DPD preparation.**

These appendices explain the links between the SA/SEA process and AA and illustrate how the two processes can be performed side by side during the preparation of the RSS or LDF.

**Appendix 3: The information required to support an Appropriate Assessment:** this provides detailed guidance on the types of information, as well as potential sources, which will be needed as part of the formal AA process. It is intended to give planners a clearer idea of what information and analysis they are expected to gather.

**Appendix 4: Articles 6(3) and 6(4) of the Habitats Directive:** The text of the key legal provisions.

**Appendix 5: List of RSPB regional office addresses.**

# Appendix 1: Proposed methodology for including the Appropriate Assessment requirements in revisions of the Regional Spatial Strategy (RSS)

The table is adapted from Figure 2 in the ODPM (now DCLG) guidance on SA for Regional Spatial Strategies and Local Development Documents<sup>47</sup>, showing activities to be undertaken at each stage in the RSS revision and SA process. Information has been added to show the steps needed to fulfil the AA requirements of the Habitats Directive. The match between the SA and AA steps is a best fit and is not perfect – in part because SA is a statutory obligation for all RSS documents and therefore does not require screening. We have indicated which steps in our guide are relevant to each SA stage. Practice on the SA process is still evolving and may change in the future. However, this table provides some key practical steps on how to run the SA and AA in tandem.

Natural England will be a key consultee throughout this process. Guidance on the type of information required is included in Appendix 3.

As noted in DCLG (2006)<sup>48</sup>, AA should be used throughout the options generation and appraisal process and both the SA/AA tasks may need to be revisited as new options emerge from stakeholders and community engagement.

Sustainability Appraisal	Article 6(3) and 6(4) requirements
<b>RSS Stage 1: Drawing up a project plan</b>	
<p><b>SA Stage A: Scoping</b></p> <p>A1. Identifying other relevant plans, policies, programmes and sustainability objectives.            A2. Collecting baseline information.            A3. Identifying sustainability issues and problems.            A4. Developing the SA framework.            A5. Consulting on the scope of the SA.</p>	<p><b>Getting Started</b></p> <p>The SA process identifies that the plan area includes European sites (SPAs/SACs). Information is collected for AA as part of the SA baseline studies collection, for example:</p> <ul style="list-style-type: none"> <li>- European sites within and outside the plan area potentially affected (a map should be produced showing this information);</li> <li>- The characteristics of these European sites;</li> <li>- Their conservation objectives; and</li> <li>- Other relevant plans or projects.</li> </ul> <p>Natural England and relevant NGOs are consulted on the proposed methodology for dealing with AA issues.</p>

<sup>47</sup> [Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents – Guidance for Regional Planning Bodies and Local Planning Authorities](#) – ODPM – November 2005. See Figure 1 which summarises SA requirements at each of the RSS revision stages.

<sup>48</sup> DCLG (2006) [Planning for the Protection of European Sites: Appropriate Assessment - Guidance For Regional Spatial Strategies and Local Development Documents \(Consultation Paper\)](#).

Sustainability Appraisal	Article 6(3) and 6(4) requirements
<b>RSS Stage 2: Develop options and policies</b>	
<p><b>SA Stage B: Developing and refining options and assessing effects</b></p> <p>B1. Testing the RSS revision objectives against the SA Framework.</p> <p>B2. Developing the RSS revision options.</p> <p>B3. Predicting the effects of the RSS revision.</p> <p>B4. Evaluating the effects of the RSS revision.</p> <p>B5. Considering ways of mitigating adverse effects and maximising beneficial effects.</p> <p>B6. Proposing measures to monitor the significant effects of implementing the RSS revision.</p> <p><b>SA Stage C: Preparing the Sustainability Appraisal report</b></p>	<p><b>Steps 1 to 2 (screening and scoping/further information)</b></p> <p>The AA requirements are integrated into the process of developing and refining options, to ensure that emerging options avoid adverse effects on European sites. As preferred options are confirmed, the RPB screens for AA: are any policies or options likely to have significant effects on the European site, alone or in-combination with other plans or projects<sup>49</sup>? If they are, AA is needed. Expert ecological advice should be sought in reaching this decision, e.g. from Natural England and wildlife NGOs.</p> <p><b>Step 3 – Appropriate Assessment</b></p> <p>If significant effects are likely to arise from the RSS, AA is undertaken to ascertain if there will be no adverse effects on site integrity, taking account of mitigation proposed. The AA test may mean that options and policies need to be rejected or refined. Again, consultation with Natural England and other wildlife bodies should be undertaken.</p> <p><b>Steps 4 to 6 - additional tests</b></p> <p>If the information analysed indicates that adverse effects on site integrity cannot be ruled out, and the RPB will not reject the policy or option of concern, it should identify whether there are less damaging alternative solutions. If there are not, the RPB must provide information if it believes there are Imperative Reasons of Overriding Public Interest (IROPI) that justify damage. Finally, it must bring forward appropriate policies for how compensation should be provided to secure the coherence of the Natura 2000 network.</p> <p>Final version of SA Report and AA report prepared, including a non-technical summary.</p>

<sup>49</sup> This will include other policies or proposals within the RSS, as well as other relevant plans or projects.

Sustainability Appraisal	Article 6(3) and 6(4) requirements
<b>RSS Stages 3, 4 and 5: Submission of the draft revision to the Secretary of State, Examination in Public and the Panel report</b>	
<p><b>SA Stage D: consulting on the draft RSS revision and the SA report</b></p> <p>D1. Consulting on the draft RSS revision and SA report.</p> <p>D2. Appraising any significant changes proposed by the Secretary of State.</p>	<p>Consultation takes place on the information presented in respect of AA, as well as the draft RSS revision and SA report.</p> <p>During the Examination in Public, the Panel scrutinises the information provided by the RPB in respect of AA and any justification for approval of policies or proposals that it cannot ascertain will have no adverse effect on a European site. Justification must address issues of alternative solutions and IROPI. If relevant, any compensatory measures proposed will be scrutinised.</p> <p>The Panel proposes any necessary amendments to policies/proposals in order to comply with obligations under Articles 6(3) and 6(4) of the Habitats Directive.</p> <p><b>Step 1 to 6</b></p> <p>The Secretary of State (SoS) considers the Panel report and publishes any proposed changes, which will be subject to the AA process as appropriate, ensuring that the RSS to be adopted conforms with the requirements of the Habitats Directive.</p>
<b>RSS Stages 6 and 7: Publication of proposed changes and issue of revised RSS</b>	
<p><b>SA Stage D cont.</b></p> <p>D3. Making decisions and providing information.</p>	<p>Following a period of consultation, the RSS is published incorporating the SoS's final changes. In accordance with the SEA Directive, the RSS is accompanied by a statement explaining how environmental information and the opinions of consultees were taken into account. This includes information about the AA.</p>

## Appendix 2: Proposed methodology for including the Appropriate Assessment requirements in DPD preparation

The table is adapted from Figure 5 in the ODPM (now DCLG) guidance on SA for Regional Spatial Strategies and Local Development Documents<sup>50</sup>, showing activities to be undertaken at each stage in the DPD revision and SA process. Information has been added to show the steps needed to fulfil the AA requirements of the Habitats Directive. The match between the SA and AA steps is a best fit and is not perfect – in part because SA is a statutory obligation for all DPD documents and therefore does not require screening. We have indicated which steps in our guide are relevant to each SA stage. Practice on the SA process is still evolving and may change in the future. However, this table provides some key practical steps on how to run the SA and AA in tandem.

Natural England will be a key consultee throughout this process. Guidance on the type of information required is included in Appendix 3.

As noted in DCLG (2006)<sup>51</sup>, AA should be used throughout the options generation and appraisal process and both the SA/AA tasks may need to be revisited as new options emerge from stakeholders and community engagement.

Note that similar principles are applicable to Supplementary Planning Documents, although Government guidance should be followed regarding consultation (for which the requirements are different).

Sustainability Appraisal	Article 6(3) and 6(4) requirements
<b>DPD Stage 1: Pre-production – evidence gathering</b>	
<p><b>SA Stage A: Setting the context and objectives, establishing the baseline and deciding on the scope</b></p> <p>A1. Identifying other relevant policies, plans and programmes, and sustainability objectives.</p> <p>A2. Collecting baseline information.</p> <p>A3. Identifying sustainability issues and problems.</p> <p>A4. Developing the SA framework.</p> <p>A5. Consulting on the scope of the SA.</p>	<p><b>Getting Started</b></p> <p>The SA process identifies that the plan area includes European sites (SPAs/SACs). Information is collected for AA as part of the SA baseline studies collection process, for example:</p> <ul style="list-style-type: none"> <li>- European sites within and outside the plan area potentially affected (a map should be produced showing this information);</li> <li>- The characteristics of these European sites;</li> <li>- Their conservation objectives; and</li> <li>- Other relevant plans or projects.</li> </ul> <p>Natural England and relevant NGOs are consulted on the proposed methodology for dealing with AA issues.</p>

<sup>50</sup> [Sustainability Appraisal of Regional Spatial Strategies and Local Development Documents – Guidance for Regional Planning Bodies and Local Planning Authorities](#) – ODPM – November 2005. See Figure 1 which summarises SA requirements at each of the RSS revision stages.

<sup>51</sup> DCLG (2006) [Planning for the Protection of European Sites: Appropriate Assessment - Guidance For Regional Spatial Strategies and Local Development Documents \(Consultation Paper\)](#).



Sustainability Appraisal	Article 6(3) and 6(4) requirements
<b>DPD Stage 3: Examination</b>	
<p><b>SA Stage D cont.</b></p> <p>D2(ii). Appraising significant changes resulting from representations.</p>	<p>The Inspector uses the AA report as part of the evidence base to assess the soundness of the DPD during the independent examination.</p> <p><b>Steps 1 to 6</b></p> <p>The Inspector makes binding recommendations regarding any necessary amendments to policies/proposals.</p>
<b>DPD Stage 4: Adoption and monitoring</b>	
<p><b>SA Stage D cont.</b></p> <p>D3. Making decisions and providing information.</p> <p><b>Stage E: Monitoring the significant effects of implementing the DPD</b></p> <p>E1. Finalising aims and methods for monitoring.</p> <p>E2. Responding to adverse effects.</p>	<p>At the same time as it publishes the adopted plan, the LPA produces an adoption statement, which explains how environmental information and the opinions of consultees were taken into account in finalising the DPD. This includes information about the AA It should also include information on any monitoring measures required to ensure compliance with the Habitats Directive.</p>

## Appendix 3: The information required to support an Appropriate Assessment

This appendix offers an introduction to the information that will normally be needed as part of the AA process. Advice in relation to specific issues with each individual site should be sought from Natural England. Some of this information will be necessary for the screening of the plan, but the amount of information needed for a screening opinion is considerably less than that for the AA.

Where a site has multiple designations they are likely to have been made for different reasons and will have different conservation objectives. It is important to compile the information separately for each designation. This should not be laborious as much of the background site information will be common to all the designations. We suggest a template for recording the information at both the screening and the AA stages at the end of this Appendix. Plan-making authorities are encouraged to modify this template to suit the needs of their own AA.

In some circumstances where it is not possible to gather detailed information, it should be recorded as “unknown”. This is part of the process as it identifies where further information is needed.

### 1: Site information

As part of the site designation process Natural England will have written to all of the local authorities within whose area part of an SAC, SPA or Ramsar site lies. The notification will have contained a site citation giving details of the designation (including the name of the designated site and a map showing its area) and the reasons for the site designation.

Natural England will also be able to assist in identifying designated features for sites outside of the authority’s area.

*Table A3.1: How to obtain information about European sites affected by the plan*

Question	Information
What sites are in the authority’s area? What sites may be affected by the plan?	Try the Multi Agency Geographic Information for the Countryside (MAGIC) website, <a href="http://www.magic.gov.uk">www.magic.gov.uk</a> , for details of all the designated sites.
Why was the European site designated? What are its qualifying features (species and/or habitats)?	For SPAs and SACs consult the Natura 2000 Standard Data Forms at the web pages below: <b>SAC:</b> <a href="http://www.jncc.gov.uk/ProtectedSites/SACselection/SAC_list.asp?Country=E">http://www.jncc.gov.uk/ProtectedSites/SACselection/SAC_list.asp?Country=E</a> <b>SPA:</b> <a href="http://www.jncc.gov.uk/page-1401">http://www.jncc.gov.uk/page-1401</a> <b>Ramsar sites:</b> see the citation at the following web page: <a href="http://www.jncc.gov.uk/page-1390">http://www.jncc.gov.uk/page-1390</a>
What are the site’s conservation objectives?	Natural England can supply the conservation objectives for each site designation. They are the benchmark against which adverse effects on integrity will be measured.

Question	Information
Is the site mapped out accurately and referred to properly in the plan documents?	Site boundaries should be accurately recorded – representing a site as a star (or similar marking) that does not reflect the spatial characteristics of the designated area is misleading.

Each set of site conservation objectives is accompanied by a Favourable Condition Table. This table is used by Natural England to assess in detail the condition of the qualifying features. It can also be used to help assess the effects of the spatial plan on the European site.

The Favourable Condition Table identifies the **attributes** that contribute to the feature’s favourable condition and the **target** condition of that attribute. These ‘attributes’ and ‘targets’ are useful benchmarks for judging (i) likely significant effect and (ii) whether there is an adverse effect or not. The qualifying interests and associated attributes should be treated as “receptors” which can be affected by policies or allocations within the plan. All the possible impacts for each policy or allocation on each of these key receptors should be evaluated, using expert judgement based on the best scientific knowledge.

It is also essential to identify the current condition of the site. Natural England carries out a rolling programme to assess the conservation condition of each SSSI and these SSSIs make up the European sites. It will help establish the baseline condition of the qualifying features and what current and ongoing activities are affecting the site. This will be an important part of the cumulative effects assessment carried out as part of the AA. The information can be obtained from [www.english-nature.org.uk/special/sssi/search.cfm](http://www.english-nature.org.uk/special/sssi/search.cfm)<sup>53</sup>. Further details about the site’s condition can be obtained from the local Natural England office.

## 2: Identifying matters which may have an effect on the site

It is important to understand the sensitivities of the European site to the range of possible land-use changes that the spatial plan might bring about. This step enables the authority to draw together its views on the likely significance of the proposals contained within the spatial plan. Possible questions to ask include:

- Will there be a loss of habitat?
- Will habitat fragmentation occur?
- Could noise, visual or human activities cause disturbance?
- Will breeding productivity (of species) be affected?
- Will the water quantity or quality be affected?

In addition to gathering information about the features for which the site is designated it is important to consider how human activities within and outside the designated site may impact upon its condition. Some of these impacts may come from some distance away: a good example would be the level of river flow through a site – upstream abstraction or drainage may lead to levels of water sufficiently low or high that they affect the designated site, even though those activities may occur many miles away (this is sometimes referred to as a “functional relationship”).

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<sup>53</sup> Although English Nature became part of Natural England at the end of September 2006 the link above is still valid at the time of writing (July 2007).

Once information about the site and its current context have been gathered it is important to relate this information to the plan. When answering the questions the focus should be on considering the implications that the answers may have for the overall integrity of the designated site. Issues to consider in assessing either the likely significant effect question or determining whether the plan will have an adverse effect or not include:

- How long is the plan expected to last?
- What is the lifetime of the proposal? e.g. housing might last 120 years
- Is land adjacent to the European site going to be affected and is this important to the qualifying species or habitats?
- Are there any differences in impacts likely between the construction and operational phases of the proposed development?
- Will associated infrastructure or the need for natural resources (such as water) have any effects?
- Will the proposal give rise to direct loss, indirect damage, fragmentation, disturbance etc?

### **3: Identifying further research needed**

After the background information has been gathered it should be examined carefully. This examination should seek to identify whether gaps in the overall picture of the designated area(s) still exist. It may be possible to fill some of these gaps by desk-based work, whilst others might need further literature reviews, research or survey work. If available, relevant peer-reviewed published scientific literature should be examined to shed light on the potential impacts on the qualifying species and habitats. Natural England will be able to advise on any specific pieces of work needed. Other biodiversity stakeholders such as the Wildlife Trusts and the RSPB will also be able to help.

### **4. Screening and Appropriate Assessment matrices**

Tables A3.2 and A3.3 below show suggested ways of recording the findings of the screening and AA, together with some illustrative examples. Both tables share common features:

- European site name;
- Conservation objectives of the European site;
- Qualifying features of the European site; and
- Attributes and targets necessary to secure favourable condition of the European site.

These will establish the foundation against which the judgements at screening and during the AA are made.

Table A3.2: Likely significant effect screening matrix

POLICY/PROPOSAL	Tourism Policy 1: Coastal Tourism							
	Qualifying feature <sup>54</sup>	Attribute <sup>55</sup>	Target <sup>56</sup>	Possible impacts	Likely significant effect alone?	Other plans or projects in-combination	Likely significant effect in-combination?	Overall likely significant effect conclusion
European site name <u>Site Conservation objectives:</u> <i>to maintain the [qualifying interests] in favourable condition.</i>  <i>Maintain = restore if features judged to be in unfavourable condition</i>								
Sandy Shore SPA	Little Tern (40 pairs)	Population size	Maintain population above 75% of designation population	Recreational disturbance	Yes	Housing DPD Neighbouring Council's LDF	Yes	Increased recreational disturbance could reduce breeding success
		Habitat extent	Maintain area used by Little Tern	Recreational disturbance	Yes	Housing DPD Neighbouring Council's LDF	Yes	Increased recreational use could deprive terns of breeding area

<sup>54</sup> Taken from Natura 2000 Standard Data Form (see <http://www.jncc.gov.uk/page-1458>) and/or official notification documents from Natural England.

<sup>55</sup> Taken from Favourable Condition Table accompanying Site Conservation Objectives for European site – obtained from Natural England.

<sup>56</sup> See footnote 55. Failure to meet either target means that the overall conservation objective is not met.

Table A3.3: Appropriate Assessment matrix

POLICY/PROPOSAL	Tourism Policy 1: Coastal Tourism							
	Qualifying feature	Attribute	Target	Predicted impacts	Confidence (identify any further research needed)	Possible mitigation measures?	Residual effect?	Conclude no adverse effect on integrity?
European site name <u>Conservation objectives:</u> to maintain the [qualifying interests] in favourable condition.								
Sandy Shore SPA	Little Tern (40 pairs)	Population size	Maintain population above 75% of designation population	Increased recreational disturbance likely to reduce breeding success by: - increased predation risk - exposure of eggs and chicks to inclement weather	Visitor surveys to assess use during the breeding season  Effectiveness of mitigation measures at other Little Tern colonies	Public information  Wardening (including fencing around colonies)  Access management (including reduced car park capacity)	No	Yes
		Habitat extent	Maintain area used by Little Tern	Increased recreational use of colony site could deprive terns of breeding area	As above	As above	No	Yes

## **Appendix 4: Articles 6(3) and 6(4) of the Habitats Directive**

### *Article 6(3)*

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in-combination with other plans or projects, shall be subject to AA of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

### *Article 6(4)*

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

## Appendix 5: List of RSPB England regional office addresses

### Eastern England

Stalham House  
65 Thorpe Road  
**Norwich**  
Norfolk  
NR1 1UD  
Tel: 01603 660066

### Midlands Region

46 The Green  
South Bar  
**Banbury**  
Oxfordshire  
OX16 9AB  
Tel:01295 253330

### North England

Westleigh Mews  
Wakefield Road  
**Denby Dale**  
Huddersfield  
HD8 8QD  
Tel: 01484 861148

1 Sirius House  
Amethyst Road  
Newcastle Business Park  
**Newcastle-upon-Tyne**  
NE4 7YL  
Tel: 0191 233 4300

c/o The Priory Street Centre  
15 Priory Street  
**York**  
YO1 6EY  
Tel: 01904 613121

### South East England

2nd Floor  
42 Frederick Place  
**Brighton**  
East Sussex  
BN1 4EA  
Tel: 01273 775333

### South West England

Keble House  
Southernhay Gardens  
**Exeter**  
Devon  
EX1 1NT  
Tel: 01392 432691

## Glossary

Alternative solutions	The first test under Article 6(4) of the Habitats Directive following an AA that has concluded damage to the European site's integrity cannot be avoided. The aim is to identify alternative solutions that better respect the European site's integrity i.e. are less ecologically damaging to the site's conservation objectives. This will require consideration of credible and feasible means that meet the public interest objectives the plan or project is designed to meet e.g. alternative locations, routes, designs, processes. The area of search may be in other regions or countries.
Appropriate Assessment (AA)	The process under Article 6(3) of the Habitats Directive by which the potential effects of a plan or project upon a Special Protection Area or Special Area of Conservation are assessed to determine whether an adverse effect can be avoided.
Birds Directive	The European Union directive that introduced the Special Protection Area designation to ensure the protection of areas of habitat of key importance to protect certain rare, vulnerable and/or migratory European bird species. A copy of the text is available at <a href="http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en_1979L0409_do_001.pdf">http://europa.eu.int/eur-lex/en/consleg/pdf/1979/en_1979L0409_do_001.pdf</a> .
Compensatory measures	A requirement set out in Article 6(4) where damage to a European site has been justified for imperative reasons of overriding public interest (IROPI – see below). The Government must ensure all necessary compensation measures are provided that protect the overall coherence of the Natura 2000 network. This is normally through the creation of appropriate habitat as close as possible to where the damage will occur and fully functioning before the damage occurs.
Habitats Directive	The European Union directive that introduced the Special Area of Conservation designation to ensure the protection of species and habitats of European Community interest. A copy of the text is available at <a href="http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf">http://europa.eu.int/eur-lex/en/consleg/pdf/1992/en_1992L0043_do_001.pdf</a> .
Habitats Regulations	The Conservation (Natural Habitats &c) Regulations 1994 (SI 1994 no. 2716) is the mechanism by which the UK Government has implemented the Habitats Directive in England, Scotland and Wales. The Regulations are available from the Office of Public Sector Information at <a href="http://www.opsi.gov.uk/si/si1994/Uksi_19942716_en_1.htm">www.opsi.gov.uk/si/si1994/Uksi_19942716_en_1.htm</a> .
Imperative Reasons of Overriding Public Interest (IROPI)	A requirement set out in Article 6(4) which, in limited circumstances, permits a plan or project to go ahead even after an AA has identified an adverse effect to a European site.
Natura 2000 network	The EU network of designated sites comprising Special Protection Areas and Special Areas of Conservation.

Precautionary principle	Where there is incomplete information about the nature or extent of an effect the precautionary principle requires action to be taken to prevent harm in the absence of complete certainty about the adverse effects.
Screening	This process is used to determine whether an AA is needed. This term is also used for similar procedures in EIA and SEA.
Scoping	This process is used after a screening exercise has determined that an AA is required. Its function is to establish what information an AA must gather and analyse. This term is also used for similar procedures in EIA and SEA.
Site of Special Scientific Interest (SSSI)	The SSSI is the key domestic nature conservation designation. In England, SSSIs underpin all areas which are designated as Special Protection Areas or Special Areas of Conservation.
Special Area of Conservation (SAC)	The protected area designation introduced by the Habitats Directive. Designated for certain habitats and species listed in Annexes I and II of the Habitats Directive respectively.
Special Protection Area (SPA)	The protected area designation introduced by the Birds Directive. Designated for species listed on Annex I of the Directive and regularly occurring migratory species.
Strategic Environmental Assessment (SEA)	SEA involves the environmental assessment of certain plans and programmes likely to have significant effects on the environment. The requirement to perform SEA was introduced by EU Directive 2001/42/EC.
Sustainability Appraisal (SA)	SA aims to integrate social, environmental and economic considerations in the preparation of spatial plans. It must incorporate the requirements of the SEA Directive and is a mandatory assessment under the Planning and Compulsory Purchase Act 2004. The SA is a useful contributor towards the evidence base required to make the plan sound.

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