7.1 Introduction

The purpose of this section of the Planning & Regulatory Committee briefing pack is to provide an overview of several pieces of environmental protection legislation that are relevant to the planning process and that regularly come into play in the context of minerals and waste planning in Surrey.

7.1.1 Strategic Environmental Assessment (SEA) & Sustainability Appraisal (SA)


The SEA process provides for the protection of the environment by requiring public authorities to identify and assess the likely significant environmental effects of plans, programmes or strategies prior to their adoption.

Separate to the requirements of the SEA Directive, the Planning & Compulsory Purchase Act 2004 introduce a parallel requirement for sustainability appraisal (SA) to be undertaken as part of the process of preparing Local Development Frameworks and Minerals & Waste Development Frameworks.

Section 7.2 summarises the application of SEA and SA to the town and country planning system in England.
7.1.2 Environmental Impact Assessment (EIA)

EU Directive 85/337/EEC, on the assessment of the effects of certain public and private projects on the environment, typically referred to as the Environmental Impact Assessment (EIA) Directive, was first adopted in 1985 and implemented in UK law in 1988 through a raft of statutory instruments across a range of sectors including town and country planning. The Directive was first amended in 1997, by Directive 97/11/EC, and the transposing UK legislation for the town and country planning system was updated in 1999 (Statutory Instrument 1999 No.293). Three further amending directives were adopted in 2003, 2009 and 2011, and those changes were reflected in England in the revised EIA Regulations implemented in 2011 (Statutory Instrument 2011 No.1824). The 2011 EIA Regulations also to take account of the outcomes of a number of notable court cases.

The EIA process provides for the protection of the environment by ensuring that decision makers are fully informed about the likely environmental effects of a project prior to any decision being taken on whether or not the scheme should proceed.

Section 7.3 summarises the application of EIA to the town and country planning system in England.

7.1.3 Habitat Regulations Assessment (HRA)

Articles 6(3) and 6(4) of the EU Directive on the conservation of natural habitats and of wild fauna and flora (Directive 92/43/EEC) introduced a requirement for public authorities to undertake an appropriate assessment as part of the process of determining whether projects and plans that are likely to have significant effects on areas designated as being of European importance for nature conservation can proceed.

The requirements of Articles 6(3) and 6(4) of the Directive have been implemented in England through the Conservation of Habitats & Species Regulations 2010 (Statutory Instrument 2010 No.490).

The requirement for habitat regulations assessment (HRA) is triggered in respect of Special Areas of Conservation (SACs) designated under the EU Habitats Directive (92/43/EEC), Special Protection Areas (SPAs) designated under the EU Wild Birds Directive (Directive 79/409/EEC on the conservation of wild birds as codified by Directive 2009/1471/EC), and, as a matter of UK policy, of Ramsar Sites designated under the 1971 Ramsar Convention on wetlands of international importance.

Section 7.4 summarises the application of the Habitats Regulations 2010 to the town and country planning system in England, in terms of both applications and plans.
### Glossary

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AA</td>
<td>Appropriate Assessment</td>
</tr>
<tr>
<td>AONB</td>
<td>Area of Outstanding Natural Beauty</td>
</tr>
<tr>
<td>DCLG</td>
<td>Department for Communities &amp; Local Government</td>
</tr>
<tr>
<td>Defra</td>
<td>Department for the Environment, Food &amp; Rural Affairs</td>
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<tr>
<td>EIA</td>
<td>Environmental impact assessment</td>
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<tr>
<td>ES</td>
<td>Environmental statement</td>
</tr>
<tr>
<td>EiP</td>
<td>Examination in Public</td>
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<tr>
<td>HRA</td>
<td>Habitat Regulations Assessment</td>
</tr>
<tr>
<td>NPPF</td>
<td>National Planning Policy Framework</td>
</tr>
<tr>
<td>Ramsar Site</td>
<td>Wetland sites designated under the 1971 Ramsar Convention on internationally important wetlands</td>
</tr>
<tr>
<td>SA</td>
<td>Sustainability Appraisal</td>
</tr>
<tr>
<td>SAC</td>
<td>Special Area of Conservation (designated under the EU Habitats Directive)</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>SPA</td>
<td>Special Protection Area (designated under the EU WildBirds Directive)</td>
</tr>
<tr>
<td>SSSI</td>
<td>Site of Special Scientific Interest</td>
</tr>
</tbody>
</table>
7.2 Strategic Environmental Assessment & Sustainability Appraisal

7.2.1 Key Legislation


The SEA process provide for the protection of the environment by requiring public authorities to identify and assess the likely significant environmental effects of plans, programmes or strategies prior to their adoption.

Separate to the requirements of the SEA Directive, the Planning & Compulsory Purchase Act 2004 introduce a parallel requirement for sustainability appraisal (SA) to be undertaken as part of the process of preparing Local Development Frameworks and Minerals & Waste Development Frameworks.

7.2.2 Requirements of the Environmental Assessment of Plans & Programmes Regulations 2004

The Regulations require public bodies that are preparing plans or programmes that would or could set the context for the future consent of projects that fall within the categories listed in Annex I or Annex II of the EIA Directive, or that would require assessment in line with Articles 6(3) and 6(4) of the Habitats Directive, to undertake an assessment of the likely significant environmental effects of the plan or programme before it is adopted.

The requirement for SEA is not limited to plans being prepared for land use planning purposes, other categories of plans that are subject to the requirement include transport plans, water resource plans, and flood management plans.

The key procedural requirements of the SEA Regulations may be summarised as follows:

- The environmental assessment must be carried out during the preparation of the plan, prior to its submission for Examination in Public (EiP) and subsequent adoption (if found sound).
- The environmental report in which the findings and conclusions of the assessment are documented should identify the likely significant effects on the environment of the proposed plan, and of all reasonable alternatives to it, taking into account the objectives and the geographical scope of the plan. The required contents of the environmental report are set out in Schedule 2 to the SEA Regulations (see Box 1).
The draft plan and the accompanying environmental report are to be made available to the statutory consultees and the public for consultation. The public and the statutory consultees must be given an early and effective opportunity within appropriate timeframes to express their opinion on the draft plan, and the accompanying environmental report, prior to the plan’s submission for EiP and subsequent adoption (if found sound).

Once the plan has been adopted a post-adoption environmental statement must be published, alongside the notice of adoption, which explains how account has been taken of the findings and recommendations of the environmental report and the outcomes of the consultation process in the development of the adopted version of the plan, and gives the reasons for choosing the adopted version of the plan in preference to other reasonable alternatives.
### Box 1: Requirements of the Environmental Assessment of Plans & Programmes Regulations 2004 (as set out in Schedule 2)

1. An outline of the contents & main objectives of the plan or programme, & of its relationship to other relevant plans & programmes.

2. The relevant aspects of the current state of the environment & the likely evolution thereof without implementation of the plan or programme.

3. The environmental characteristics of the area likely to be significantly affected.

4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds & the Habitats Directive.

5. The environmental protection objectives established at international, Community or Member State level, which are relevant to the plan or programme & the way those objectives & any environmental considerations have been taken into account during its preparation.

6. The likely significant effects on the environment, including short, medium & long-term effects, permanent & temporary effects, positive & negative effects, & secondary, cumulative and synergistic effects, on issues such as:
   - (a) biodiversity;
   - (b) population;
   - (c) human health;
   - (d) fauna;
   - (e) flora;
   - (f) soil;
   - (g) water;
   - (h) air;
   - (i) climatic factors;
   - (j) material assets;
   - (k) cultural heritage, including architectural & archaeological heritage;
   - (l) landscape; &
   - (m) the inter-relationship between the above.

7. The measures envisaged to prevent, reduce & as fully as possible off-set any significant adverse effects on the environment of implementing the plan or programme.

8. An outline of the reasons for selecting the alternatives dealt with, & a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.
Box 1: Requirements of the Environmental Assessment of Plans & Programmes Regulations 2004 (as set out in Schedule 2) (continued)

| 9. | A description of measures envisaged concerning monitoring in accordance with regulation 17. |
| 10. | A non-technical summary of the information provided under paragraphs 1 to 9 above. |

### 7.2.3 Requirements for Sustainability Appraisal

A key difference between SEA and SA is that the scope, purpose and content of the SEA process and the documents arising from it are defined in law. For SA the need for such an appraisal to be undertaken as part of the plan preparation process is enshrined in law, but the nature of the appraisal, and the content of any documentation arising from it, is not.

Another important difference between SEA and SA is the range of issues that are to be addressed. Paragraph 165 of the National Planning Policy Framework sets out the following requirements in respect of ‘sustainability appraisal’ for development plans, “…A sustainability appraisal which meets the requirements of the European Directive on strategic environmental assessment should be an integral part of the plan preparation process, and should consider all the likely significant effects on the environment, economic and social factors.”. In comparison the purpose of the SEA Directive is to provide for a high level of protection of the environment, although the implications of environmental change for the health and well-being of the human population also falls within the scope of the Directive.

The key differences between SEA and SA in terms of breadth of coverage and level of detail is illustrated in the following diagram, adapted from Figure 2 (An illustration of the differences between environmental appraisal, SA & SEA) Scott Wilson Ltd’s 2010 report for DCLG\(^1\) on the implementation of SEA and SA in the UK.

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\(^1\) ‘Towards a more efficient & effective use of Strategic Environmental Assessment & Sustainability Appraisal in spatial planning’, Steven Smith, Jeremy Richardson, Andrew McNab at Scott Wilson Ltd. March 2010. Department for Communities & Local Government: London
Figure 1: Illustration of the differences between SEA & SA

**Sustainability Appraisal**

<table>
<thead>
<tr>
<th>Social</th>
<th>Environmental</th>
<th>Economic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breadth of coverage</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Strategic Environmental Assessment**

<table>
<thead>
<tr>
<th>Social</th>
<th>Environmental</th>
<th>Economic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional elements: current &amp; future baseline, identification &amp; assessment of impacts on environmental receptors, cumulative effects, assessment of alternatives, mitigation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
7.3 Environmental Impact Assessment

7.3.1 Key Legislation

In 1985 procedures for taking environmental issues into account in development management decision making were harmonised across the European Community by the adoption of the EU Directive on the effects of certain public and private projects on the environment came into effect. The Directive, referred to as the Environmental Impact Assessment (EIA) Directive, has been subsequently amended in 1997, 2003, 2009 and 2011.

The EIA Directive was first transposed into UK law in 1988, through a range of statutory instruments. At the present time (2013), for projects that are subject to development control through the planning system the requirements of the Directive are transposed into domestic legislation in England by the Town & Country Planning (Environmental Impact Assessment) Regulations 2011 (Statutory Instrument 2011 No. 1824).

The EIA Regulations have the capacity to revoke permitted development rights, as a consequence of amendments made by the 1999 EIA Regulations to Article 3 of the Town & Country Planning (General Permitted Development) Order 1995.

7.3.2 Requirements of the Town & Country Planning (EIA) Regulations 2011

The Regulations make provision for planning authorities to carry out the following actions as part of the wider development management process.

- **Screening**: the screening process is used to determine whether a Schedule 2 project requires EIA – screening is carried out under Regulation 5 in response to a pre-application request from the prospective developer, or under Regulation 7 once an application has been submitted without an accompanying Environmental Statement. For ‘county development’ applications screening opinions are adopted under Regulation 26, and for unauthorised development against which the planning authority is considering taking enforcement action screening opinions are adopted under Regulation 32. Screening opinions have to be adopted within 3 weeks of a Regulation 5 request having been made or an application having been submitted (Regulation 7/Regulation 26). Adopted screening opinions are placed on the planning register for 2 years.

- **Scoping**: scoping opinions are prepared and adopted in response to a request made at the pre-application stage by the prospective developer under Regulation 13. The purpose of the scoping opinion, which is developed following consultation with relevant statutory and technical consultees (e.g. the Environment Agency, Natural England, English Heritage, the district or borough council for the affected area, etc.), is to advise the prospective applicant of the key issues that need to be addressed in the Environmental Statement. Scoping opinions have to be adopted within 5 weeks of a request having been made, and once adopted are placed on the planning register for 2 years.
• **Reviewing the Environmental Statement**: where an EIA application has been made the planning authority has to evaluate the environmental information presented in the Environmental Statement. Where the submitted information is deemed to be inadequate, further information can be requested under Regulation 22. Where further information is requested additional consultation must be undertaken, to afford all relevant parties the opportunity to review and comment on the new information before the application is determined.

### 7.3.3 Defining ‘EIA development’

The EIA Regulations 2011 include two Schedules that list different categories of development for which EIA is either *mandatory* – Schedule 1 projects – or for which EIA may be *required at the discretion of the relevant planning authority* – Schedule 2 projects.

#### 7.3.3.1 Schedule 1 Projects

Given their nature and scale, Schedule 1 projects should be easily identified and it is unlikely that an applicant for such a development would submit a proposal without having undertaken an EIA and produced an Environmental Statement. The categories of Schedule 1 projects that are most likely to be encountered by the County Planning Authority are listed below.

- **Schedule 1, paragraph 7(c)** – construction of a new road of 4 or more lanes, or realignment &/or widening of an existing road of 2 lanes or less so as to provide 4 or more lanes, where such new road, or realigned &/or widened section of road would be 10 kilometres or more in a continuous length.


- **Schedule 1, paragraph 13** – Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Council Directive 91/271/EEC.

- **Schedule 1, paragraph 19** – Quarries & open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

- **Schedule 1, paragraph 21** – Any change to or extension of development listed in this Schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this Schedule.
7.3.3.2 Schedule 2 Projects

For projects that fall within the categories of development listed in Schedule 2 of the EIA Regulations 2011, screening is the process by which the planning authority decides which projects require EIA. The categories of Schedule 2 projects that are most likely to be encountered by the County Planning Authority are listed below.

- **Schedule 2 Table, Part 2 ‘Extractive industry’** – including: (a) quarries, open cast mining & peat extraction; (b) mineral extraction by dredging; (c) deep drillings; (d) surface installations associated with fossil fuel & ore extraction.

- **Schedule 2 Table, Part 3 ‘Energy industry’** – including: (a) installations for the production of electricity, steam & hot water; (d) underground storage of combustible gases; (g) installations for the processing & storage of radioactive waste; (j) installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC.

- **Schedule 2 Table, Part 5 ‘Mineral industry’** – including: (f) manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

- **Schedule 2 Table, Part 10 ‘Infrastructure projects’** – including: (b) urban development projects, etc.; (f) construction of roads; (k) oil & gas pipeline installations & pipelines for the transport of carbon dioxide streams for the purposes of geological storage.

- **Schedule 2 Table, Part 11 ‘Other projects’** – including (b) installations for the disposal of waste; (c) waste water treatment plants; (d) sludge deposition sites; (e) storage of scrap iron, including scrap vehicles.

- **Schedule 2 Table, Part 12 ‘Tourism & leisure’** – including (e) permanent camp sites & caravan sites; (f) golf courses & associated developments.

7.4 Screening for EIA

The key issue to be considered in determining whether or not a proposal that falls within one or more of the categories listed in Schedule 2 of the EIA Regulations constitutes ‘EIA development’ is whether the scheme is likely to give rise to **significant effects on the environment**.

Small-scale projects that are located within, or in close proximity to ‘sensitive areas’ as defined by **Regulation 2** of the EIA Regulations (see Box 2), can have effects just as damaging as those from larger-scale development located in less environmentally sensitive areas. Consequently a key question for the screening process is the extent to which the development concerned might impact upon ‘sensitive areas’, by direct or indirect means.
### Box 2: ‘Sensitive Areas’ as defined by Regulation 2 of the EIA Regulations 2011

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SSSIs</strong></td>
<td>Land notified under section 28(1) (Sites of Special Scientific Interest - SSSIs) of the Wildlife &amp; Countryside Act 1981. There are 63 SSSIs located wholly or partially within the boundaries of Surrey.</td>
</tr>
<tr>
<td><strong>National Parks</strong></td>
<td>A National Park within the meaning of the National Parks &amp; Access to the Countryside Act 1949. The South Downs National Park lies close to the southern border of Waverley borough in the south west of the county.</td>
</tr>
<tr>
<td><strong>The Broads</strong></td>
<td>The Norfolk Broads</td>
</tr>
<tr>
<td><strong>World Heritage Sites</strong></td>
<td>A property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural &amp; Natural Heritage</td>
</tr>
<tr>
<td><strong>Scheduled Monuments</strong></td>
<td>A Scheduled Monument within the meaning of the Ancient Monuments &amp; Archaeological Areas Act 1979. There are some 168 Scheduled Monuments located within Surrey.</td>
</tr>
<tr>
<td><strong>AONB</strong></td>
<td>An Area of Outstanding Natural Beauty (AONB) designated as such by an order made by Natural England under section 82(1) (areas of outstanding natural beauty) of the Countryside &amp; Rights of Way Act 2000. The Surrey Hills AONB stretches across Surrey from west to east along the North Downs, and part of the High Weald AONB covers the south eastern corner of the county in the district of Tandridge.</td>
</tr>
<tr>
<td><strong>SPA or SAC</strong></td>
<td>A European site within the meaning of Regulation 8 (Special Areas of Conservation (SACs) or Special Protection Areas (SPAs)) of the Conservation of Habitats &amp; Species Regulations 2010. There are three SACs and four SPAs located wholly or partially within the boundaries of Surrey</td>
</tr>
</tbody>
</table>

Note: the types of sensitive area listed in grey type above are not found within, or in close proximity, to Surrey.
The screening process must take account of the factors listed in **Schedule 3** of the EIA Regulations, when determining whether a given project is likely to have significant environmental effects (see Box 3).

### Box 3: Factors to consider when screening as listed in Schedule 3 of the EIA Regulations 2011

#### Characteristics of development

1. The characteristics of development must be considered having regard, in particular, to:
   (a) The size of the development;
   (b) The cumulation with other development;
   (c) The use of natural resources;
   (d) The production of waste;
   (e) Pollution and nuisances;
   (f) The risk of accidents, having regard in particular to substances or technologies used.

#### Location of development

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to:
   (a) The existing land use;
   (b) The relative abundance, quality & regenerative capacity of natural resources in the area;
   (c) The absorption capacity of the natural environment, paying particular attention to the following areas:
      (i) wetlands;
      (ii) coastal zones;
      (iii) mountain & forest areas;
      (iv) nature reserves & parks;
      (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
      (vii) densely populated areas;
      (viii) landscapes of historical, cultural or archaeological significance.

#### Characteristics of the potential impact

3. The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 & 2 above, & having regard in particular to:
   (a) The extent of the impact (geographical area & size of the affected population);
   (b) The trans-frontier nature of the impact;
   (c) The magnitude & complexity of the impact;
   (d) The probability of the impact;
   (e) The duration, frequency & reversibility of the impact.
7.5 Scoping

The scoping process is about setting out the issues to be considered in the ES, the parameters and the broad approach that is to be taken during the assessment - in effect the important environmental issues.

Applicants for planning permission may request the planning authority to provide a "scoping opinion" on the impacts and issues that the EIA should address - i.e. those impacts that are likely to be significant. The statutory process requires discussion between the authority, applicant and statutory bodies and a scoping opinion to be issued within 5 weeks of the request or such longer period as may be agreed.

7.6 Evaluating the Environmental Statement

The Environmental Statement has to address the direct and indirect effects of the development on a number of factors including the population, fauna, flora, soil, air, water, climatic factors, landscape and archaeology. Where alternatives have been considered – e.g. alternative locations or different ways of executing the projects – these should be reported in the Environmental Statement. Details of any measures proposed by way of mitigation should be also included.

There is no prescribed format or recommended length for Environmental Statements, but they must at least contain the information specified in Part II of Schedule 4 of the EIA Regulations (see Box 4), and ideally should provide as much of the information listed in Part I of Schedule 4 as is reasonable for the project. The submitted Environmental Statement may comprise more than one document, usually there is a main report supported by various technical appendices, and a non-technical summary must also be provided.

The planning authority is responsible for evaluating the Environmental Statement to ensure it addresses all of the relevant environmental issues and that the information is presented accurately, clearly and systematically. Consultation responses from statutory consultees (e.g. the Environment Agency, Natural England, English Heritage, the relevant district or borough council, etc.), and the public, can help to inform the process of determining whether or not the information presented in the Environmental Statement is sufficient and accurate. Where the planning authority is of the view that key issues are not fully addressed, not addressed at all, or are not adequately supported by scientific evidence it has the power to request further information from the applicant under Regulation 22.
Box 4: Information for Inclusion in Environmental Statements (Schedule 4)

**Part II: Minimum information to be provided**

1. A description of the development comprising information on the site, design & size of the development.

2. A description of the measures envisaged in order to avoid, reduce & if possible, remedy significant adverse effects.

3. The data required to identify & assess the main effects which the development is likely to have on the environment.

4. An outline of the main alternatives studied by the applicant or appellant & an indication of the main reasons for his choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

**Part I: Information to be provided**

1. Description of the development, including in particular:
   
   (a) a description of the physical characteristics of the whole development & the land-use requirements during the construction & operational phases;
   
   (b) a description of the main characteristics of the production processes, for instance, nature & quantity of the materials used;
   
   (c) an estimate, by type & quantity, of expected residues & emissions (water, air & soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.
Box 4: Information for Inclusion in Environmental Statements (Schedule 4) *(continued)*

<table>
<thead>
<tr>
<th>Part I: Information to be provided <em>(continued)</em></th>
</tr>
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<tbody>
<tr>
<td>2. An outline of the main alternatives studied by the applicant or appellant &amp; an indication of the main reasons for his choice, taking into account the environmental effects.</td>
</tr>
<tr>
<td>3. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural &amp; archaeological heritage, landscape &amp; the inter-relationship between the above factors.</td>
</tr>
<tr>
<td>4. A description of the likely significant effects of the development on the environment, which should cover the direct effects &amp; any indirect, secondary, cumulative, short, medium &amp; long-term, permanent &amp; temporary, positive &amp; negative effects of the development, resulting from:</td>
</tr>
<tr>
<td>(a) the existence of the development;</td>
</tr>
<tr>
<td>(b) the use of natural resources;</td>
</tr>
<tr>
<td>(c) the emission of pollutants, the creation of nuisances &amp; the elimination of waste,</td>
</tr>
<tr>
<td>&amp; the description by the applicant of the forecasting methods used to assess the effects on the environment.</td>
</tr>
<tr>
<td>5. A description of the measures envisaged to prevent, reduce &amp; where possible offset any significant adverse effects on the environment.</td>
</tr>
<tr>
<td>6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.</td>
</tr>
<tr>
<td>7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.</td>
</tr>
</tbody>
</table>
7.4 Habitat Regulations Assessment

7.4.1 Key Legislation

Articles 6(3) and 6(4) of the EU Directive on the conservation of natural habitats and of wild fauna and flora (Directive 92/43/EEC) introduced a requirement for public authorities to undertake an appropriate assessment as part of the process of determining whether projects and plans that are likely to have significant effects on areas designated as being of European importance for nature conservation can proceed.

- Article 6(3) states that any plan or project (or element thereof) 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 an appropriate assessment of its implications for the site in view of the site's conservation objectives. In light of the conclusions of the appropriate assessment, the relevant competent authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site;

- Article 6(4) requires that if, in spite of a negative appropriate 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 (IROPI), the Member State shall take all compensatory measures necessary to ensure the overall coherence of the Natura 2000 network of sites is protected.

The Natura 2000 networks is composed of Special Areas of Conservation (SACs) designated under the EU Habitats Directive (92/43/EEC), and Special Protection Areas (SPAs) designated under the EU Wild Birds Directive (Directive 79/409/EEC on the conservation of wild birds as codified by Directive 2009/1471/EC).

The requirements of the Directive have been implemented in England through the Conservation of Habitats & Species Regulations 2010 (Statutory Instrument 2010 No.490). In particular, Regulation 61(1) makes clear that if a plan or project is likely to have a significant effect on a protected site in Great Britain (either alone or in combination with other plans or projects), and it is not directly connected with or necessary to the management of the site, the competent authority shall undertake an appropriate assessment of the implications for the site in view of its conservation objectives.

Regulation 62 of the Habitats Regulations 2010 transposes the requirement of Article 6(4) which seeks to allow the approval of plans or projects where there is a negative assessment subject to there being no alternative solutions available, imperative reasons of overriding public interest for agreeing to a plan or project exist and adequate compensatory measures to maintain the overall ecological coherence of the Natura 2000 network of sites are in place (or at least secured).
Regulation 68 of the Habitats Regulations 2010 allows for conditions or limitations to be imposed on planning permissions where this is necessary to avoid any adverse effects of the plan or project on the integrity of the protected site.

Neither, the Directive nor the Regulations define what is meant by ‘the integrity of the site’. However, paragraph 20 of Circular 06/2005 defines the integrity of the site as ‘the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats, and/or the levels of populations of the species for which it was classified’.
### 7.4.2 Habitats Regulations Assessment (HRA)

There are seven possible stages in the HRA process. However, once one of the steps has been met there is no requirement to go on to consider the remaining steps.

<table>
<thead>
<tr>
<th>Key HRA Questions/Stages</th>
<th>Possible actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Is the proposal directly connected with or necessary to the management of a protected site?</td>
<td>If the answer is ‘yes’ then planning permission can be granted, providing no other harm is identified. If the answer is ‘no’ the HRA must continue to Stage 2.</td>
</tr>
<tr>
<td>2 Is the proposal likely to have a significant effect on the interest features of the site, alone or in combination?</td>
<td>If the answer is ‘no’, planning permission can be granted providing no other harm is identified. If the answer is ‘yes’ the HRA must continue to Stage 3.</td>
</tr>
<tr>
<td>3 If it is or such a risk cannot be excluded on the basis of objective information, then an appropriate assessment must be undertaken to determine whether or not the development will have an adverse effect on the integrity of the site.</td>
<td>If there are no risks of adverse effects, planning permission can be granted providing no other harm is identified.</td>
</tr>
<tr>
<td>4 If any adverse effects are identified, can they be mitigated or overcome by conditions or other restrictions or undertakings</td>
<td>If adverse effects can be sufficiently reduced or overcome through mitigation measures, such that the integrity of the site is not adversely affected, then planning permission may be granted subject to conditions or other appropriate legal undertakings.</td>
</tr>
<tr>
<td>5 If not, are there alternative solutions that would have a lesser effect on the integrity of the site?</td>
<td>If the answer is ‘yes’ then planning permission must not be granted. If there are no alternative solutions which would have no or a lesser effect on the integrity of the site, then the next step is dependent on whether or not a priority habitat or species would be adversely affected.</td>
</tr>
<tr>
<td>6a If a priority habitat or species would not be affected, are there imperative reasons of overriding public interest, which could be of a social or economic nature, sufficient to override the harm to the site?</td>
<td>If the answer is ‘no’ then planning permission must not be granted.</td>
</tr>
<tr>
<td>6b If a priority habitat or species would be affected, are there imperative reasons of overriding public interest relating to human health, public safety or benefits of primary importance to the environment?</td>
<td>If the answer is ‘no’ then planning permission must not be granted.</td>
</tr>
<tr>
<td>7 If there are imperative reasons of overriding public interest can it be determined that compensatory measures necessary to ensure the overall coherence of the Natura 2000 network have been undertaken or at</td>
<td>If appropriate compensatory measures cannot be provided then planning permission must not be granted.</td>
</tr>
</tbody>
</table>
7.4.2.1 **Defining a likely significant effect**

The probability or a risk that the plan or project will have a significant effect on the site must be evaluated on a precautionary basis. It can only be concluded that a proposal would be unlikely to have a significant effect if such a risk can be excluded on the basis of objective information. Any proposed avoidance or mitigation measures, which form part of the proposal, should normally be taken into account when evaluating the probability of likely significant effects.

7.4.2.2 **In-combination effects**

Any decision on planning consent must be made not only on the basis of the effect of the proposal alone, but in combination with any other plans or projects that have been approved or are likely to take place. How far emerging plans and proposals should be taken into account will be a matter of judgement based on the extent to which there is a realistic prospect of their being implemented. However, in coming to a view regard should always be had to the precautionary principle. Unless there is objective evidence to indicate that an emerging plan or project is unlikely to be adopted and/or implemented regard should normally be had to it.

7.4.2.3 **Level of detail in HRA for planning applications**

If it cannot be excluded on the basis of objective evidence that the proposal will have a significant effect then an appropriate assessment must be undertaken, unless it is proposed to refuse the proposal on other grounds. Such an assessment should be proportionate. It doesn’t need to be unduly elaborate. The level of detail should be consistent with the likely impact. Generally it should be undertaken on the basis of the information that is already available. Natural England should be consulted on both the scope of the assessment, and the final conclusions.

In undertaking an appropriate assessment the impact of the proposal on the site needs to be considered in the light of the site’s conservation objectives. The key test is whether the proposal would **adversely affect the integrity of the site.** In considering this test the protected site should be looked at as a whole and not just the part which is nearest the appeal site.

If planning permission is to be granted the planning authority must be certain that there would be **no adverse effect** i.e. there must be no remaining reasonable scientific doubt that such effects will occur.

If there would be a significant adverse effect, or the effect is uncertain but could be significant, then it is necessary to consider whether it could be overcome through the imposition of conditions or a planning obligation which would achieve effective measures to mitigate the effect. In appropriate cases, these could include habitat or access management measures or the provision of alternative land which would reduce the potential pressure on the affected
site to a sufficient degree such that there was no longer the risk of an adverse effect.

If the harm cannot be mitigated then consideration needs to be given to whether there are alternative solutions which would have a lesser effect. These could include locating the development elsewhere. This is a stiff test and there are unlikely to be many proposals where some form of alternative solution would not be available.

If there are no alternative proposals then it is necessary to go on to the imperative reasons of over-riding public interest (IROPI) test. It is essential at this stage to establish whether or not a priority species or habitat would be affected, as different criteria apply where this would occur.

- If a priority habitat or species would not be affected, then it is still necessary to conclude whether there are imperative reasons of overriding public interest to justify granting planning permission. However, the reasons can be fairly broad in this scenario and can include social or economic reasons. Nevertheless, given that the reasons have to be imperative and of overriding public interest, the barrier to allowing development is still fairly high. It would be normal in such cases to expect some indication from Government policy that the proposal would meet this test before deciding to permit. However, even where no such indication exists it will still be necessary to consider whether such reasons exist but there would need to be very sound evidence for concluding that they did before granting permission.

- If a priority habitat or species would be affected, the grounds for granting permission are far more restricted. There must be imperative reasons of overriding public interest either on health or public safety grounds or benefits of primary importance to the environment. Alternatively it must be for other imperative reasons of overriding public interest agreed by the European Commission.

There will be few cases where it can be judged that imperative reasons of overriding public interest will allow a development to proceed which will have a potentially negative effect on the integrity of a protected site.

If it is concluded that there are imperative reasons then the final stage in the process is to consider whether or not compensatory measures have been secured as required by Regulation 66 of the Habitats Regulations 2010.
7.4.2.4 Proposals that require dual consents

Many proposals e.g. power stations, waste management facilities, water treatment plants etc., require consents such as environmental permits or abstraction licences in addition to planning approvals. Decisions on such consents are also subject to the assessment provisions of the Habitats Regulations, and Regulation 65(2) provides that a competent authority is not required to assess any implications of a plan or project that would be more appropriately assessed by another competent authority.

The fact that a particular impact, e.g. air quality, on a protected site will be controlled by a separate consent does not negate the requirement for the competent authority for the planning consent to assess whether a proposal is likely to have a significant effect and whether it is necessary to undertake appropriate assessment. However, if with the benefit of information before them they are satisfied that a particular impact is more appropriately assessed by another competent authority they are not required to consider whether it is necessary to undertake appropriate assessment in relation to that particular impact.

7.4.2.5 The Habitats Directive & development plans

The decision in Commission of the European Communities v United Kingdom of Great Britain & Northern Ireland (C-6/04:2005 ECJ) made clear that the requirements of the Bird Directive and the Habitats Directives apply to development plans. Regulations 102 to 106 of the Habitats Regulations 2010 provide for the appropriate assessment of development plans. In order for a development plan to be found sound through the Examination in Public (EiP) process it will first have to have been subject to HRA, as part of the plan making process. Responsibility for undertaking the HRA lies with the authority preparing the plan, and not with the Inspector conducting the EiP.

In relation to development plans HRA is an iterative process, and will need to be reviewed at each stage where changes are made to the plan. The depth of any plan-level HRA should be proportionate to the level of detail set out the plan itself, for example the more strategic the plan, the more strategic the assessment. In many cases, it may be appropriate to leave more detailed matters to a later stage in the decision making process, taking account of the fact that further assessments will be required at each stage in the process, including at the planning application stage.
7.5 European &/or International Sites of Nature Conservation Importance relevant to Surrey

Within Surrey three different categories of sites of European or international nature conservation importance can be found.

- **Special Protection Area (SPA):** Designated under the provisions of the EU Directive on the conservation of wild birds (79/409/EEC) (referred to as the Birds Directive).

- **Special Area of Conservation (SAC):** Designated under the provisions of the EU Directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC) (referred to as the Habitats Directive).

- **Ramsar Sites:** Designated under the 1971 Ramsar Convention on wetlands of international importance

All nature conservation sites covered by a European or international designation will also be designated as Sites of Special Scientific Interest (SSSI) and will be of national importance for biodiversity.
<table>
<thead>
<tr>
<th>Site Name</th>
<th>Location &amp; Composition</th>
<th>Reasons for Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mole Gap to Reigate Escarpment SAC</strong></td>
<td>The Mole Gap to Reigate Escarpment SAC is composed of a single SSSI, the Mole Gap to Reigate Escarpment SSSI. Located entirely within Surrey.</td>
<td>The SAC is designated for the presence of:</td>
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<tr>
<td></td>
<td></td>
<td>- Box scrub – Stable xerothermophilous formations with <em>Buxus sempervirens</em> (box) on rock slopes.</td>
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<td></td>
<td></td>
<td>- Chalk grassland – Semi-natural dry grasslands &amp; scrubland facies on calcareous substrates (<em>Festuco-Brometalia</em>).</td>
</tr>
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<td></td>
<td></td>
<td>- Orchids – Semi-natural dry grasslands &amp; scrubland facies on calcareous substrates (<em>Festuco – Brometalia</em>) (important orchid sites) (Priority feature).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- European dry heaths</td>
</tr>
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<td></td>
<td></td>
<td>- <em>Asperulo-Fagetum</em> beech forests</td>
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<td></td>
<td></td>
<td>- Great crested newt (<em>Triturus cristatus</em>)</td>
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<tr>
<td></td>
<td></td>
<td>- Bechstein’s bat (<em>Myotis bechsteinii</em>)</td>
</tr>
<tr>
<td><strong>South West London Waterbodies SPA &amp; Ramsar Site</strong></td>
<td>The South West London Waterbodies SPA &amp; Ramsar Site is composed of 7 SSSIs, most located within Surrey &amp; the remainder within Berkshire &amp; Greater London.</td>
<td>The SPA is designated for the presence of bird species protected under Article 4.2 of the Birds Directive. Over winter the area regularly supports:</td>
</tr>
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<td></td>
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<td>- Gadwall (<em>Anas strepera</em>)</td>
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<tr>
<td></td>
<td></td>
<td>- Shoveler (<em>Anas clypeata</em>)</td>
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<tr>
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<td>The Ramsar Site is designated for the presence of the same two wetland bird species at levels of international importance. The South West London Waterbodies site comprises a series of reservoirs &amp; former gravel pits that support internationally important numbers of wintering gadwall <em>Anas strepera</em> &amp; Northern shoveler <em>Anas clypeata</em>.</td>
</tr>
</tbody>
</table>
| Thames Basin Heaths SPA | The Thames Basin Heaths SPA is composed of 13 SSSIs, most located within Surrey & the remainder within Berkshire & Hampshire.  
- Ash to Brookwood Heaths SSSI  
- Bourley & Long Valley SSSI  
- Bramshill SSSI  
- Broadmoor to Bagshot Woods & Heaths SSSI  
- Castle Bottom to Yateley & Hawley Commons SSSI  
- Chobham Common SSSI  
- Colony Bog & Bagshot Heath SSSI  
- Eelmoor Marsh SSSI  
- Hazeley Heath SSSI  
- Horsell Common SSSI  
- Ockham & Wisley Commons SSSI  
- Sandhurst to Owlsmoor Bogs & Heaths SSSI  
- Whitmoor Common SSSI | The SPA is designated for the presence of bird species protected under Article 4.1 of the Birds Directive. During the breeding season the area regularly supports:  
- European nightjar (*Caprimulgus europaeus*)  
- Woodlark (*Lullula arborea*)  
- Dartford warbler (*Sylvia undata*) |
| --- | --- | |
| Thursley, Ash, Pirbright & Chobham SAC | The Thursley, Ash, Pirbright & Chobham SAC is composed of 4 SSSIs, most located within Surrey & the remainder within Berkshire & Hampshire.  
- Ash to Brookwood Heaths SSSI  
- Chobham Common SSSI  
- Colony Bog & Bagshot Heath SSSI  
- Thursley, Hankley & Frensham Commons SSSI | The SAC is designated for the presence of:  
- Northern Atlantic wet heaths with *Erica tetralix*  
- European dry heaths  
- Depressions on peat substrates of *Rhynchosporion* |
| Thursley, Hankley & Frensham Commons (Wealden Heaths Phase I) SPA | The Thursley, Hankley & Frensham Commons (Wealden Heaths Phase I) SPA is composed of the Thursley, Hankley & Frensham Commons SSSI, located within Surrey. | The SPA is designated for the presence of bird species protected under Article 4.1 of the Birds Directive. During the breeding season the area regularly supports:  
- European nightjar (*Caprimulgus europaeus*)  
- Woodlark (*Lullula arborea*)  
- Dartford warbler (*Sylvia undata*) |
| Thursley & Ockley Bogs | The Thursley & Ockley Bogs Ramsar Site is composed of part of the Thursley & Ockley Bogs Ramsar Site. | The Ramsar Site is designated for the presence of:  

| Ramsar Site | Thursley, Hankley & Frensham Commons SSSI, located within Surrey. | • A community of rare wetland invertebrate species including notable numbers of breeding dragonflies.  
• All 6 native reptile species.  
• Nationally important breeding populations of European nightjar *Caprimulgus europaeus* & woodlark *Lullula arborea*. |
|---|---|---|
| Windsor Forest & Great Park SAC | The Windsor Forest & Great Park SAC is composed of the Windsor Forest & Great Park SSSI, most of which is located within Berkshire & the remainder within Surrey. | The SAC is designated for the presence of:  
• Old acidophilous oak woods with *Quercus robur* on sandy plains  
• Violet click beetle *Limoniscus violaceus*  
• Atlantic acidophilous beech forests with *Ilex* & sometimes also *Taxus* in the shrub layer (*Quercion robori-petraeae* or *Ilici-Fagenion*) |
## Sites of European & International Nature Conservation Importance within Surrey

<table>
<thead>
<tr>
<th>Site Name</th>
<th>Location &amp; Composition</th>
<th>Reasons for Designation</th>
</tr>
</thead>
</table>
| **Wealden Heaths Phase II SPA** | The Wealden Heaths Phase II SPA is composed of 4 SSSIs, most located within Hampshire & the remainder within Surrey & West Sussex.  
- Bramshott & Ludshott Commons SSSI  
- Broxhead & Kingsley Commons SSSI  
- Devil’s Punch Bowl SSSI  
- Woolmer Forest SSSI | The SPA is designated for the presence of bird species protected under Article 4.1 of the Birds Directive. During the breeding season the area regularly supports:  
- European nightjar (*Caprimulgus europaeus*)  
- Woodlark (*Lullula arborea*)  
- Dartford warbler (*Sylvia undata*) |

## Sites of European & International Nature Conservation Importance within 10 kilometres of the Surrey border

<table>
<thead>
<tr>
<th>Site Name</th>
<th>Location &amp; Composition</th>
<th>Reasons for Designation</th>
</tr>
</thead>
</table>
| **Ashdown Forest SPA & SAC (East Sussex)** | The Ashdown Forest SPA and SAC cover the Ashdown Forest SSSI, located within East Sussex. | The SAC is designated for the presence of:  
- Northern Atlantic wet heaths with *Erica tetralix*  
- European dry heaths  
- Great crested newt *Triturus cristatus*  

The SPA is designated for the presence of bird species protected under Article 4.1 of the Birds Directive. During the breeding season the area regularly supports:  
- European nightjar (*Caprimulgus europaeus*)  
- Dartford warbler (*Sylvia undata*) |
| **Ebernoe Common SAC (West Sussex)** | The Ebernoe Common SAC is composed of the Ebernoe Common SSSI, located within West Sussex. | The SAC is designated for the presence of:  
- Atlantic acidophilous beech forests with *Ilex* & sometimes also *Taxus* in the shrub-layer (*Quercion robori-petraeae* or *Ilici-Fagenion*)  
- A maternity colony of Barbastelle *Barbastella barbastellus*  
- A maternity colony of Bechstein’s bat *Myotis bechsteinii* |
| **East Hampshire Hangers SAC (Hampshire)** | The East Hampshire Hangers SAC is composed of 7 SSSIs, located within Hampshire.  
- Coombe Wood & the Lythe SSSI  
- Noar Hill SSSI  
- Selborne Common SSSI  
- Upper Greensand  
- Hangers: Empshott to Hawkley SSSI  
- Upper Greensand | The SAC is designated for the presence of:  
- Semi-natural dry grasslands & scrubland facies: on calcareous substrates (*Festuco-Brometalia*) (important orchid sites)  
- *Asperulo-Fagetum* beech forests  
- *Tilio-Acerion* forests of slopes, screes & ravines  
- Semi-natural dry grasslands & scrubland facies: on calcareous substrates (*Festuco-Brometalia*)  
- Early gentian *Gentianella anglica* |
<table>
<thead>
<tr>
<th>Site Name</th>
<th>Location &amp; Composition</th>
<th>Reasons for Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hangers: Wyck to Wheatley SSSI</strong></td>
<td>Hangers: Wyck to Wheatley SSSI, Wealden Edge Hangers SSSI, Wick Wood &amp; Worldham Hangers SSSI</td>
<td>- Taxus baccata woods of the British Isles</td>
</tr>
</tbody>
</table>
| **Richmond Park SAC (Greater London)** | The Richmond Park SAC is composed of the Richmond Park SSSI, located within Greater London. | The SAC is designated for the presence of:  
- Stag beetle *Lucanus cervus*                                                                                                                                   |
| **Shortheath Common SAC (Hampshire)** | The Shortheath Common SAC is composed of the Shortheath Common SSSI, located within Hampshire. | The SAC is designated for the presence of:  
- Transition mires & quaking bogs  
- European dry heaths  
- Bog woodland                                                                                                                                             |

<table>
<thead>
<tr>
<th>Site Name</th>
<th>Location &amp; Composition</th>
<th>Reasons for Designation</th>
</tr>
</thead>
</table>
| **The Mens SAC (West Sussex)** | The Mens SAC is composed of The Mens SSSI, located within West Sussex.                 | The SAC is designated for the presence of:  
- Atlantic acidophilous beech forests with *Ilex* (holly) & sometimes also *Taxus* (yew) in the shrublayer (*Quercion robori-petraeae or Illici-Fagenion*)  
- Barbastelle bat *Barbastella barbastellus*                                                                                                                                 |
| **Wimbledon Common SAC (Greater London)** | The Wimbledon Common SAC is composed of the Wimbledon Common SSSI, located within Greater London. | The SAC is designated for the presence of:  
- Stag beetle *Lucanus cervus*  
- Northern Atlantic wet heaths with *Erica tetralix*  
- European dry heaths                                                                                                                                 |

For further information contact Dr Jessica Salder  
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