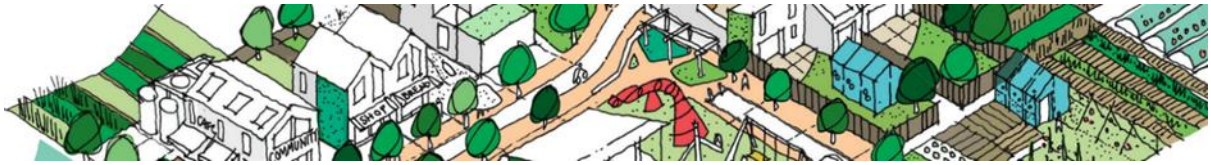
LPAHS1



INDEPENDENT EXAMINATION

Tendring Colchester Borders Garden Community (TCBGC)
Development Plan Document (DPD)

HEARING STATEMENT – LOCAL PLANNING AUTHORITY

Main Matter 1 - Legal Requirements and Overarching Issues

April 2024

Tendring District Council

Colchester City Council

1. INTRODUCTION

1.1. This document is Tendring District Council (TDC) and Colchester City Council (CCC) "the Councils" response to the Matters, Issues and Questions identified for examination by Inspector Graham Wyatt of the Planning Inspectorate, as published on 4 March 2024 (IC3). This is one of nine separate response papers produced by the Councils to address the specific matter and issue as identified on the front page.

1.2 Each response paper includes a number of references to specific evidence which has been relied upon in answering the matters, issues and questions. These reference numbers relate directly to the Examination Library website, where all evidence is published:

Tendring Colchester Borders Garden Community Development Plan Document: Examination Library | Creating a Place for Life (tcbgardencommunity.co.uk)

1.3 As a result of a full and comprehensive review by the Councils of all Regulation 19 representations, and following positive and cooperative engagement with statutory bodies and stakeholders through Statements of Common Ground (SoCG), a series of modifications have been recommended to the DPD Policies and supporting text. Where relevant these modifications are referred to throughout the Councils' Hearing Statements and a full schedule can be found in the 'Schedule of Modifications' (CC4).

2. RESPONSE TO INSPECTOR'S QUESTIONS

Main Matter 1 – Legal Requirements and Overarching Issues

Does DPD meet all its legal requirements, specifically:

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

2.1 The Local Development Scheme (LDS) is prepared in accordance with the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) which requires local planning authorities to prepare, maintain and publish a Local Development Scheme. The DPD is included in the separate Local Development Schemes for Tendring District Council (TDC) and Colchester City Council (CCC).

Tendring District Council

2.2 The TDC LDS (PD9) was last updated in February 2024, following approval at Planning Policy & Local Plan Committee on 27 February 2024. The LDS provides an accurate representation of the preparation of the Local Plan as a whole. The indicative timetable for the DPD production details the hearing sessions taking place Spring 2024, Modification Consultation Summer 2024 and adoption Winter 2024.

Colchester City Council

2.3 The CCC LDS (PD8) was last updated in February 2023, following approval at Local Plan Committee on 6 February 2023. The LDS provides an accurate representation of the preparation of the Local Plan as a whole. However, due to unforeseen minor delays, the

preparation, consultation, submission and examination of the DPD has occurred over a longer period of time than that scheduled in the LDS. As a result, the LDS anticipated an earlier timetable of the DPD Examination, with hearing sessions forecast to be held in Autumn 2023, Modification Consultation Autumn/Winter 2023 and adoption of the DPD in Spring 2024. If it is considered necessary for the LDS to be updated to reflect slippage in the timetable for the DPD Examination, the Council can do this.

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

2.4 TDCs Statement of Community Involvement (SCI) July 2020 (PD12) and CCCs SCI February 2023 (PD11) outline how and when communities and stakeholders are involved throughout the process of preparing planning policy documents and in the consideration of planning applications. Both SCI documents outline the stages and consultation process that will be undertaken in preparing a Local Plan, including the Tendring Colchester Borders Garden Community DPD. TDC's SCI has recently been reviewed. The draft SCI was approved for consultation at the Committee meeting of the 20th December 2023. and was subject to public consultation in February/March 2024. The SCI is due for adoption late May 2024 at TDC's Planning Policy and Local Plan Committee.

2.5 The Councils 'Regulation 22 TCBGC Consultation Statement' (CD6) outlines how consultation and engagement has been undertaken throughout the preparation of the DPD, in accordance with Regulation 17(d) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) and the Statements of Community Involvement.

2.6 The Councils have ensured that consultation has complied with the adopted Statements of Community Involvement and the DPD complies with all other relevant legal requirements, including those in the 2004 Act and the 2012 Regulations

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

2.7 Yes, the DPD has been subject to a Sustainability Appraisal (SA), which incorporates the requirements of Strategic Environment Assessment (SEA). The SA has adequately and appropriately assessed the likely environmental, social and economic effects of the DPD in conformity with the requirements of the SEA Directive and SEA Regulations. The methodology complies with all legal requirements and is clearly set out.

2.8 The 'TCBGC Reg 19 DPD Sustainability Appraisal (May 2023)' (CD4) was submitted with the DPD. Paragraphs 1.18-1.30 of the submission SA set out the various requirements of the SEA Regulations and where these have been addressed.

2.9 The Councils commissioned consultants Land Use Consultants (LUC) to undertake the SA. LUC is a market-leader in SA and SEA and has provided advice and support to Government on SA/SEA for many years. LUC have undertaken SA/SEAs of numerous development plan documents in authorities throughout the UK, including the Additional SA for the Section 1 Plan

and a review of the SA of the CCC Section 2 Plan. Many of these have now passed the tests of soundness and have been adopted, including the Section 1 Plan and CCC Section 2 Plan. The findings of the SA have been available throughout the plan making process, allowing them to inform the emerging plan. The process of both SA and plan-making has been iterative.

2.10 The Councils schedule of representations and responses includes, in document (RE11), the Councils consideration of the small number of representations made during the Regulation 19 consultation to the SA Report, many of which were not explicitly comments on the SA. The main issues raised in the Regulation 19 consultation representations referencing the SA were that not enough infrastructure will be put in place to accommodate the additional homes, adding to existing pressure. Particular concerns were road congestion (including due to phased delivery of the A120-A133 Link Road) and social infrastructure. None of the comments or objections raise matters that, in the Councils view, undermine the robustness of either the methodology or assessments detailed within the SA.

2.11 The likely significant effects of the DPD in relation to relevant environmental, social and economic objectives are reported in Chapters 4 (SA findings for Individual Components of the Reg 19 DPD) and 5 (Cumulative Effects) of the SA Report for the Regulation 19 DPD.

2.12 The SA systematically appraised reasonable alternatives. The adopted Section 1 Plan has already established the principle of the Garden Community, its broad location, a range for the number of homes to be provided, and the Strategic Policies and the overarching requirements and expectations that it will need to meet. The SA of alternatives for the DPD therefore focused on the spatial distribution of development at the Garden Community. Appendix E of the submission SA Report (CD4) sets out the reasonable alternative options that the Councils considered for the DPD. It also describes the Councils' reasons for selecting or rejecting each option. In deciding on the preferred approach, the Councils had regard to consultation responses on the emerging DPD and the evidence base, including the findings of the SA process that ran alongside DPD development. The SA findings for the reasonable alternatives are presented in Chapter 4 of the submission SA Report (CD4), alongside the findings for the corresponding proposed policies.

2.13 The SA has been undertaken as an iterative process to allow it to inform the preparation of the submitted DPD, having regard to the flowchart at Planning Practice Guidance paragraph 11-013-20140306. Chapter 2: Methodology of the submission SA Report (CD4) describes the SA work carried out at each of the stages set out in the Planning Practice Guidance flowchart. The iterative approach to DPD drafting, informed by consultation, SA and other evidence at each stage helped adverse effects to be avoided by identifying the potential for these to arise at an early stage in policy development.

2.14 By Proposed Submission stage, the potential for significant adverse effects from individual policies was only identified by the SA in relation to three SA objectives: SA objective 6: Biodiversity and geological diversity; SA objective 11: Water resources and quality; and SA objective 15: Soils and minerals resources. The SA then considered whether these potential effects would be mitigated by other DPD policies. As set out in Chapter 5: Cumulative Effects of the submission SA Report (CD4) the only residual significant adverse effect identified was in relation SA objective 15: Soils and minerals resources. The Garden Community site is mostly greenfield and much of it is grade 1 agricultural land (excellent quality) with areas of grade 2 (very good) and 3 (good to moderate) interspersed. The SA noted that while GC Policy 1 of the DPD maintains areas of the site as undeveloped, its development would still involve the

development of large areas of greenfield land and higher value agricultural soils and significant adverse effects are therefore considered unavoidable. Adverse effects were also identified in relation to GC Policy 1 due to potential sterilisation of sand and gravel mineral resources but at this stage in the planning process, the actual extent of resources are uncertain and the DPD safeguards the position via Part H 'Minerals – Prior extraction' of GC Policy 8: 'Sustainable Infrastructure' which requires masterplan proposals to be informed by a Minerals Resource Assessment so that mineral extraction is not unnecessarily sterilised.

2.15 Recommendations for monitoring the likely significant social, environmental and economic effects of implementing the DPD are included in Chapter 6 of the submission SA Report (CD4). These have been provided in relation to all of the SA objectives, not just those for which significant adverse effects were identified. Use of these will allow unforeseen adverse effects to be identified at an early stage of implementation of the DPD and allow appropriate action to be taken.

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

2.16 Yes, the requirements for Appropriate Assessment (AA) under the Habitats Regulations have been met and the conclusions and recommendations of the Habitat Regulations Assessment (HRA) have been carried forward into the DPD. The HRA (CD5 & CD5a) is robust and comes to credible conclusions.

Requirement for appropriate assessment

2.17 The requirement to undertake a HRA, of which appropriate assessment forms part, of development plans was confirmed by the amendments to the Habitats Regulations published for England and Wales in 2007. The current version is the Habitats Regulations 2017, as amended. When preparing its Local Plan (or in this case the DPD), the Councils are therefore required by law to carry out an HRA. The Councils can commission consultants to undertake HRA work on its behalf, and this is then reported to and considered by the Councils as the 'competent authority' under the Habitats Regulations.

2.18 Regulation 105 of the Habitats Regulations states:

> *(1) "Where a land use plan—*
>
> *(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and*
>
> *(b) is not directly connected with or necessary to the management of the site, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.*
>
> *(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)."*

2.19 Therefore, the Councils may only progress the DPD if it considers that the plan will not adversely affect the integrity of any European site.

Robustness and Credibility of Conclusions

2.20 The Councils commissioned Place Services to carry out the HRA for the DPD, Place Services is the leading public sector provider of integrated environmental assessment, planning, design and management services. Place Services approach to the HRA complied with both the Habitats Regulations and best practice. It adopted a two-stage approach comprising, firstly, a Screening Assessment, and secondly, AA. The purpose of the Screening Assessment was to identify whether the policies and proposals in the DPD, either alone or in-combination with other plans or projects, could give rise to Likely Significant Effects (LSEs) on European sites, being those sites considered to be of international importance for nature conservation. A distance of 20km from the boundary of the Garden Community was used to identify such European sites, which is consistent with the HRAs of Local Plans undertaken elsewhere in the country.

2.21 The Screening Assessment in relation to the Submission Version of the DPD identified that LSEs could not be ruled out with respect to a number of policies and proposals with regard to certain European sites. In summary the LSEs identified were:

- Impact on features (protected species) outside the protected site boundary – Stour and Orwell Estuaries SPA and Ramsar, and Colne Estuary SPA and Ramsar
- Recreational disturbance – Stour and Orwell Estuaries SPA and Ramsar, Colne Estuary SPA and Ramsar, Hamford Water SPA, SAC and Ramsar site, Essex Estuaries SAC, Blackwater Estuary SPA and Ramsar site, and Dengie SPA & Ramsar
- Water quality (pollution) – Colne Estuary SPA and Ramsar
- Air Quality – Stour and Orwell Estuaries SPA and Ramsar, Colne Estuary SPA and Ramsar, Blackwater Estuary SPA and Ramsar site, and Essex Estuaries SAC

2.22 The AA stage therefore looked in more detail at the potential for Adverse Effects on the Integrity (AEOI) of these European sites for the LSEs identified, in light of mitigation and avoidance measures, either alone or in-combination with other plans or projects.

2.23 In applying the integrity test at AA stage, the HRA Report (May 2023 CD5) of the Submission Version DPD concluded that - based on the development type and proximity to Habitats (European) sites, the potential for in-combination effects resulting from other plans or projects has also been assessed and avoidance and/or mitigation measures have been considered. It goes on to note that embedded mitigation measures for projects will need to be considered in project level HRA/AA reports and secured by way of any planning consent. Consequently, the DPD *"…is not predicted to have any adverse effect on integrity (AEOI) on any Habitats sites, either alone or in combination with other plans and projects."*

Incorporating NE suggested modifications

2.24 The May 2023 HRA Report (CD5) included a number of recommendations that, where possible, were incorporated into the DPD. In May-June 2023 the May 2023 HRA Report was published for consultation alongside the DPD at Regulation 19 stage. A representation was provided by Natural England (NE) (NE reg.19 rep) which identified that further consideration and clarification was required with regard to the delivery of mitigation required by HRA/AA in the DPD policy. This was with regard to:

- Suitable Alternative Natural Greenspace (SANG).
- Functionally Linked Land and the need for wintering bird surveys.
- Air Quality Impacts and the need for traffic modelling to be undertaken to assess whether any mitigation for traffic-related impacts will be necessary.

2.25 With regard to green infrastructure, NE highlighted the need for the Garden Community to deliver sufficient SANG to mitigate the increased recreational pressure that the new housing will give rise to at the European Sites at the Essex Coast. Concern was raised that it was not possible to establish that the SANG guidance could be met site-wide and that the policy was deliverable. In light of the recommendations of NE, the Councils propose that GC Policy 2 be modified to demonstrate that sufficient SANG will be delivered across each phase of the garden community, including access to temporary SANG where required. The policy also sets out that proposals to incorporate the new County Park will be supported, where evidence, including visitor surveys, is provided to demonstrate that the Salary Brook Local Nature Reserve has sufficient capacity to accommodate any increased visitor usage proposed in order to count towards SANG provision.

2.26 NE went on to note in their reg.19 representation that the need for wintering bird surveys only features in the "Justification" section for GC Policy 2 and does not appear in the wording of this Policy or any other policies in the DPD. The Councils propose that GC Policy 2 is modified to set out that wintering bird surveys will be completed at each phase of development before the granting of planning consent. Where wintering bird surveys confirm that off-site functionally linked land is present, the policy sets out that development must firstly avoid impacts upon the SPA qualifying features. Where this is not possible, development must be phased to deliver habitat creation and management either on or off-site to mitigate any significant impacts. In addition, the policy sets out that any such habitat must be provided and fully functional before any development takes place which would affect significant numbers of SPA birds.

2.27 With regard to air quality impacts, NE outlined that assessment is required due to the potential for the development (alone and in combination) to result in increases in traffic levels on routes that lie within 200m of European Sites whose qualifying features, or the habitats that support them, are sensitive to any related changes in air quality. It was advised that the screening for air quality impacts should be revisited once there is traffic modelling information available to confirm which European Sites merit consideration (due to exceedance of relevant AADT triggers) when the DPD is considered "alone" and "in combination". The Councils propose that GC Policy GC2 is modified to set out that an Air Quality Assessment must be provided, which must be informed by traffic scoping modelling for each relevant phase of development. This has been required to assess increases in traffic levels on routes that lie within 200m of European Sites whose qualifying features, or the habitats that support them, are sensitive to any related changes in air quality.

2.28 The Councils have engaged constructively with NE throughout the plan making process concluding in a Statement of Common Ground (SoCG) (SCG05) which sought to address those matters identified above. This has resulted in suggested modifications to policy wording as outlined within the NE SoCG and subsequently detailed within the Schedule of Modifications (CC4). The NE SoCG concludes that NE supports the suggested modifications to GC Policy 2 and that there are **no unresolved issues**.

2.29 The HRA Report was updated by way of an addendum (April 2024 CD5a) to address those modifications as detailed within the Schedule of Modifications, being both those agreed with NE through the SoCG and all other recommended modifications available at the time. The addendum to the HRA confirms that the modifications proposed do not alter the conclusions of the HRA such that additional assessment is required, and that DPD is legally and procedurally compliant and sound. The HRA addendum has been reviewed by NE who have confirmed through the SoCG that they have no outstanding areas of concern.

Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)

2.30 The Councils and NE have jointly prepared a statement in response to representation ID no.269 received from Dr Chris Gibson at regulation 19 stage. This statement can be found at **Appendix 1** of this Hearing Statement along with a letter from NE to the RAMS Partnership. Dr Gibson attests that the DPD *"would have a Likely Significant Effect and that it cannot be concluded that it can be ascertained that it will not have an Adverse Effect Upon the Integrity of the Habitats Regulations site".* Further, that the mitigation measures proposed in respect to RAMS are *"wholly insufficient to determine that a mitigation scheme 'might', or even 'should' be successful."*

2.31 The position outlined by Dr Gibson has been given full consideration and it is the Councils' view that it has been robustly rebutted. The need for a RAMS for the Essex coast was identified at an early stage in the iterative HRA process for the Section 1 Plan and the Section 2 CCC and TDC Plans. Further consideration was given to this at the relevant Appropriate Assessment stage. It was considered by the Section 1 Plan Inspector and discussed in the examination hearing sessions. The Inspector concluded that the RAMS *"provision for monitoring its effectiveness, which it is intended will feed back into the mitigation measures in an iterative fashion, enabling adjustments and improvements to be made in response to evidence of how successful the measures are is a strength of the RAMS approach. While there is currently no conclusive evidence that RAMS approaches elsewhere have ensured that no adverse effects on integrity have occurred, that is not because there is evidence that they have failed, but because they have not been operating long enough for definitive conclusions to be drawn."* (paragraph 58 of Inspector's report).

2.32 NE have confirmed by way of the appended statement that it is satisfied with the progress made with the Essex Coast RAMS thus far, and it continues to offer its support for this strategic mitigation strategy.

Conclusions

2.33 As described above, there has been considerable engagement with NE throughout the HRA process, which has helped ensure that the HRA has addressed all the relevant issues in accordance with the Habitats Regulations and best practice.

2.34 In summary, the HRA follows best practice and recent case law and the methodology, conclusions and mitigation recommendations are consistent with the HRA of the Section 1 Plan. The May 2023 HRA (CD5) and its April 2024 addendum (CD5a) replace all previous HRA drafts.

2.35 In the Councils' view, all concerns raised by NE and other parties with respect to the HRA and how these have been addressed through the DPD policies, either as worded in the Submission Version of the DPD, or in the proposed Schedule of Modifications (CC4), have been resolved.

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

2.36 As outlined above, the DPD has been prepared in accordance with the adopted Local Development Scheme (LDS) and Statement of Community Involvement of both TDC and CCC.

2.37 The Councils have addressed how the Sustainability Appraisal and Habitats Regulations Assessment requirements have been met in answer to separate questions within this hearing statement.

2.38 Regulation 8(5) of the 2012 Regulations requires that where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy. There should be no ambiguity regarding which plan and its policies will remain in force for the geographical area of the Garden Community. Chapter 1, Page 6 of the DPD states:

> *"In addition to the Section 1 Local Plan, TDC and CCC each have their own Section 2 Local Plans, which contain policies and allocations that apply to any land or properties outside of the Garden Community. There is also a Neighbourhood Plan for Wivenhoe and Neighbourhood Plans are being prepared for Ardleigh and Elmstead, but they will only apply to land and property outside of the Garden Community. TDC adopted its Section 2 Local Plan in January 2022 and CCC adopted its Section 2 Local Plan in July 2022. Requirements from relevant development management policies from the TDC and CCC Section 2 Plans have been included in this Plan. Therefore, proposals for the Garden Community will need to comply with all policies set out in this Plan, which replaces all policies set out in both the TDC and CCC Section 2 Local Plans."*

2.39 For the purposes of all land within the Site Allocation Boundary of the Garden Community, as defined by the red line on the Policies Map (CD2), all policies within the TDC and CCC Section 2 Plans will be replaced by the DPD. None of the Section 2 Plan policies will apply to land within the red line Site Allocation Boundary of the DPD. In order to provide additional clarity on this point the Councils have proposed a modification as outlined in the Schedule of Modifications (CC4) which provides a full list of the policies within the TDC and CCC Section 2 Plans which for the purposes of the Site Allocation Boundary of the Garden Community will not apply.

2.40 There are no legal compliance issues arising from the preparation and submission of the Plan.

Does the 'policies map' correctly illustrate geographically the application of policies of the DPD?

2.41 Yes, the DPD is accompanied by one 'Policies Map' (CD2) to illustrate the application of all policies within the DPD and which clearly defines the site allocation boundary and the location of land uses. The Councils can make updates to the 'Policies Map' in order to reflect modifications as a result of the examination should they be required.

2.42 To correct an omission in the drafting of the 'Policies Map' and to correctly illustrate the 25ha allocation for 'Sports and Leisure Park and University of Essex Expansion' as required by GC Policy 1 Part F, the Councils suggest the extension of the grey hatching denoting "Sports & Leisure Park: General location of sports pitches, parkland..." to cover the existing woodland area south of the A133. In order to provide clarity on this point the Councils have proposed a modification as outlined in the Schedule of Modifications (CC4).

Consistent with National Policy

2.43 The DPD is being examined under the transitional arrangement under Para 230 of the National Planning Policy Framework (NPPF) (Annex 1, NPPF 2023). Para 230 states that plans that reach pre-submission consultation on or before the 19 March 2024 will be examined under the relevant previous version of the Framework being that published in 2021.

Does the DPD accord with national policy for plan making in the NPPF, specifically:

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

2.44 Yes, the DPD contributes to the achievement of the three dimensions of sustainable development – economic, social and environmental. The Section 1 Plan sets the overall strategic framework for the authority boundaries of TDC and CCC, with Policy SP1 reflecting the presumption in favour of sustainable development contained in the NPPF. The definition of sustainable in the 2012 NPPF, and carried forward with only slight variation into the 2021 NPPF, defines the three dimensions as follows in Para 7:

> *a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
>
> *b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*
>
> *c) **an environmental objective** – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

2.45 The DPD policies as a whole are considered to further the three inter-related dimensions of sustainable development. GC Policy 1, GC Policy 7 and GC Policy 9 embody all three elements of sustainable development, with the following policies addressing particular dimensions:

Economic Role	Social Role	Environmental Role
GC Policy 1: Land Uses and Spatial Approach GC Policy 4: Meeting Housing Needs GC Policy 5: Economic Activity and Employment GC Policy 6: Community and Social Infrastructure GC Policy 7: Movement and Connections GC Policy 9: Infrastructure Delivery, Impact Mitigation and Monitoring	GC Policy 1: Land Uses and Spatial Approach GC Policy 2: Nature GC Policy 3: Place Making Principles GC Policy 4: Meeting Housing Needs GC Policy 5: Economic Activity and Employment GC Policy 6: Community and Social Infrastructure GC Policy 7: Movement and Connections GC Policy 9: Infrastructure Delivery, Impact Mitigation and Monitoring	GC Policy 1: Land Uses and Spatial Approach GC Policy 2: Nature GC Policy 3: Place Making Principles GC Policy 7: Movement and Connections GC Policy 8: Sustainable Infrastructure GC Policy 9: Infrastructure Delivery, Impact Mitigation and Monitoring

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

Has it been positively prepared 'in a way that is aspirational but deliverable? (paragraph 16 of the NPPF)

2.47 Yes, the DPD has been positively prepared and is aspirational but deliverable in accordance with the NPPF wording. Paragraph of the NPPF 19 requires that plans should:

- "be prepared positively, in a way that is aspirational but deliverable"
- "contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals"

2.48 The DPD provides a strategy which seeks to meet the areas objectively assessed needs, as supported by the Councils evidence base. The thematic policies set out a range of policy and infrastructure requirements and GC Policy 9 sets out infrastructure delivery mechanisms to ensure that all development is supported by, and has good access to, all necessary infrastructure. The policy is supported by an 'Infrastructure Delivery, Phasing and Funding Plan' (EB17) prepared in advance of submission. This, along with all other DPD policies, has been assessed within the 'Financial Viability Evidence Update' (EB24) to provide financial viability clarity with regard to all policy requirements, as set out in the DPD to ensure they are robust and meet national policy requirements.

2.49 The Councils Duty to Cooperate Statement (CD8) sets out how it has actively engaged and worked with other local authorities and public bodies to maximise the effectiveness with which the DPD has been prepared. It provides details of how joint work and cooperation has shaped the DPD to ensure that it is consistent with achieving sustainable development. As well as working with neighbouring authorities, the Councils continue to work closely with the relevant statutory bodies including Historic England (HE) and Natural England (NE), and have agreed Statements of Common Ground where necessary. Furthermore, the Councils have carefully considered the comments raised by such bodies in their representations and have generally agreed with suggested amendments put forward by such bodies aimed at improving the clarity of policies set out in the DPD.

2.50 The DPD includes a clear spatial framework for development that reflects and responds to the economic, social and environmental circumstances and anticipated changes in the area.

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

2.51 Yes, the DPD is consistent with the 2021 NPPF in all other respects (as per Paragraph 35 which requires that Local Plans should be consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in the Framework and other statements of national planning policy, where relevant). The Section 1 Plan Inspector was satisfied that the Shared Strategic Section 1 Local Plan as modified was consistent with the NPPF - the DPD policies take forward, implement and deliver that strategic policy framework.

Planning and Flood Risk

2.52 The NPPF requires that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. In accordance with paragraph 160 of the NPPF the Strategic Policies contained within the Section 1 Plan were informed by Level 1 and Level 2 Strategic Flood Risk Assessments (SFRA) (S1 Plan SFRA Reports) and Sequential Tests undertaken in accordance with a methodology agreed by the Environment Agency (EA) on allocation sites including the Garden Community (Flood Risk Sequential Test Report 2017).

2.53 In their regulation 19 representation (EA Reg.19 Rep) the Environment Agency (EA) raised no objections to the DPD.

2.54 Through the advancement of the evidence base, including the 'Masterplan Baseline Report' (EB4), 'Masterplan Design Options' (EB3) and 'Strategic Framework Masterplan' (EB1) the Garden Community site boundary as defined by the DPD Policies Map (CD2) has been refined and differs from that considered in the 2017 Sequential Test. Whilst the base data used to inform the original Sequential Test remains consistent with current data, in light of the variation in site boundary the Councils have re-applied the Sequential Test (April 2024 EB26). The methodology for applying the Sequential Test follows that as previously agreed with the EA and undertaken on the 2017 test.

2.55 The 2024 Sequential Test report conclusion is:

> *"Built development (particularly residential) should be contained to flood zone 1 and avoid land in areas defined as Flood Zone 3a or 3b adjacent to the Salary Brook and in*

areas susceptible to surface water flooding. This land could be used as part of the provision of a SuDS train through the site to help manage surface water.

Based on the strategic assessment of flood risk and subject to the recommendations and mitigation measures set out above being implemented, the Sequential and Exceptions Test are passed.

Recommendation: Allocate the site."

2.56 The Councils consider that through undertaking the further Sequential Test in light of the updated evidence base and refined site area, that the DPD has comprehensively satisfied the requirements of paragraph 161 of the NPPF which requires that 'all plans' should apply a sequential, risk-based approach to the location of development.

Are there any policies within the DPD which are Strategic Policies, and should they be identified as such?

2.57 Para 21 (NPPF, 2021) requires that Plans should make explicit which policies are strategic policies. Further, the NPPF requires that 'Strategic Policies' should be limited to those necessary to address the strategic priorities of the area (and any relevant cross-boundary issues), to provide a clear starting point for any non-strategic policies that are needed.

2.58 The DPD does **not** contain any strategic policies.

2.59 The 'Section 1 Plan' was prepared jointly by TDC, CCC and Braintree District Council (BDC) – collectively known as the 'North Essex Authorities' (NEAs) to form the first part of each of the authorities' respective Local Plans. The Section 1 Plan of the authorities' Local Plans reflects the Duty to Co-operate as it concerns strategic matters with cross-boundary impacts in North Essex.

2.60 All Strategic Policies of relevance to the Garden Community are contained in the Section 1 Plan which sets out an overall strategy for the pattern, scale and design quality of places, including those relevant cross-boundary issues relating to the Garden Community. The Section 1 Plan contains the following Strategic Policies:

Section 1 Plan Policy	Policy Title	Section 1 Plan Objectives
SP1	Presumption in Favour of Sustainable Development	Providing sufficient new homes Fostering economic development Providing new and improved infrastructure Addressing education and healthcare needs Ensuring high quality outcomes
SP2	Recreational disturbance Avoidance and Mitigation Strategy (RAMS)	
SP3	Spatial Strategy for North Essex	
SP4	Meeting Housing Needs	
SP5	Employment	
SP6	Infrastructure and Connectivity	
SP7	Place Shaping Principles	
SP8	Development and Delivery of a New Garden Community in North Essex	
SP9	Tendring / Colchester Borders Garden Community	

2.61 There are no conflicts between the Strategic Policies in the Section 1 Plan and the policies in the DPD that the Councils are aware of or that have been highlighted through any representations.

2.62 In addition to the Section 1 Plan, TDC and CCC each have their own Section 2 Plans. Section 2 of each plan contains policies and allocations addressing authority-specific issues. For the purposes of all land within the Site Allocation Boundary of the Garden Community, as defined by the red line on the Policies Map (CD2), all policies within the TDC and CCC Section 2 Plans will be replaced by the DPD. None of the Section 2 Plan policies will apply to land within the Site Allocation Boundary of the DPD, as defined by the red line on the Policies Map (CD2).

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

2.63 Yes, the policies in the DPD provide a clear indication of how a decision maker should react to a development proposal. The policies and targets are based on a comprehensive evidence base and coherent spatial strategy.

2.64 The structure of the DPD is clearly divided into logical sections as follows:

1. *Land Uses and Spatial Approach*

GC Policy 1 provides the spatial and contextual background for the Councils approach to sustainable development.

2. *Nature*
   GC Policy 2 sets out the policy expectations in relation to nature and green-blue infrastructure, detailing that nature will be placed at the heart of the development.
3. *Buildings, Places and Character*
   GC Policies 3 and 4 set out a detailed criteria and requirements for development, and so set a clear framework for how the Council will assess planning applications with regard to place shaping and housing delivery.
4. *Economic Activity and Employment*
   GC Policy 5 details the approach to maximising the economic potential of the Garden Community and explains how this will be achieved.
5. *Community and Social Infrastructure*
   GC Policy 6 contains the Councils expectations and requirements on ensuring the Garden Community is served by community services and facilities of the right type in the right location.
6. *Movement and Connections*
   GC Policy 7 sets out the Councils expectation for the Garden Community to be walkable, low traffic and liveable. Proposals must be designed with active travel, high frequency public transport and the Rapid Transit System at its core.
7. *Sustainable Infrastructure*
   GC Policy 8 sets out high expectations for energy efficiency, renewable energy generation, water efficiency and water recycling, and allows proposals for the Garden Community to respond to changing technologies, new standards and practice.
8. *Infrastructure Delivery, Impact Mitigation and Monitoring*
   GC Policy 9 details the Councils overall approach to infrastructure delivery which requires that proposals must demonstrate that the required infrastructure to support development will be delivered in a timely and, where appropriate, phased manner. This is supported by an Infrastructure Delivery, Phasing and Funding Plan (EB17).

2.65 All policies within the DPD are accompanied by a 'Planning Applications Requirement' section which clearly details documents required for application submission purposes and those to be approved by the Councils prior to determination. Together these policies provide a clear indication of how the Councils will react to development proposals.

END.

APPENDIX 1: Natural England & LPA Joint Statement

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Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS)

1. Introduction (refers to points 1, 2 & 3 in Dr Gibson's representation given in italics below)

1. It is a matter of common ground that being so close (only some 3km at the nearest point) to the designated site, the vulnerability and sensitivity of the site to additional recreational pressures means that the Plan would have a Likely Significant Effect and that it cannot be concluded that it can be ascertained that it will not have an Adverse Effect Upon the Integrity of the Habitats Regulations site (note that the emboldened phrases refer specifically to the tests of soundness, acceptability and sustainability embodied within the legislation).

2. That being the case, the plan can proceed only if mitigation measures are provided that will with certainty remove the adverse effects of the plan in perpetuity.

3. The only other exception is if the plan is deemed to be of national significance. No determination has been made to that effect, and indeed it has never been put forward as a Nationally Significant Infrastructural Project, the clear implication being that this route for delivering the legal approval for the plan cannot be pursued further.

1.1 This statement has been prepared jointly between Colchester City Council, Tendring District Council (hereafter the Councils) and Natural England. It rebuts the criticism of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) made in the representation to the TCB Submission Plan by Dr Chris Gibson.

1.2 It is a matter of common ground that the vulnerability and sensitivity of the habitats sites to additional recreational pressure from new residential development means that the Plan would have a Likely Significant Effect taken alone. The Councils and Natural England are working towards an agreed approach to mitigation to ensure that the TCB Plan will not result in Adverse Effects on the Integrity of habitats sites either alone or in-combination with other plans or projects. The mitigation measures, when agreed, will be incorporated into policy wording, to ensure that the identified mitigation measures will be delivered by the Plan.

2. Background

2.1 The need for a Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) for the Essex coast was identified at an early stage in the iterative HRA process for Section 1 and Section 2 Colchester and Tendring Local Plans. Further consideration was given to this at the Appropriate Assessment stage. To reflect that mitigation measures must be considered at the Appropriate Assessment stage and as examples of mitigation strategies elsewhere have continued to emerge and the conservation community continue to share good practice.

2.2 Natural England supports and is involved in the preparation of the Essex Coast RAMS and has endorsed the RAMS Strategy Document. The Essex Coast RAMS Strategy Document was finalised in January 2019 and adopted by the twelve local authority partners, including the

Councils. A RAMS Supplementary Planning Document (SPD) was adopted by Colchester City Council in August 2020. The Essex Coast RAMS has the brand name, Bird Aware Essex Coast, which uses the same branding as the well-established Bird Aware Solent.

3. Section 1 Local Plan

3.1 The Essex Coast RAMS was considered by the Section 1 Local Plan Inspector and discussed in the examination hearing sessions. The Inspector concluded that the RAMS "provision for monitoring its effectiveness, which it is intended will feed back into the mitigation measures in an iterative fashion, enabling adjustments and improvements to be made in response to evidence of how successful the measures are is a strength of the RAMS approach. While there is currently no conclusive evidence that RAMS approaches elsewhere have ensured that no adverse effects on integrity have occurred, that is not because there is evidence that they have failed, but because they have not been operating long enough for definitive conclusions to be drawn." (paragraph 58 of Inspector's report).

4. Certainty of approach - including examples from elsewhere (refers to points 6 & 7 in Dr Gibson's representation given in italics below)

6. In respect of certainty that a RAMS approach will work, it would be useful if there were any definitive evidence that it does. Such schemes (with monitoring) have been operation now for up to 15 years in parts of the country (indeed, I was involved in setting some of them up) and yet there is still no published evidence that such schemes have actually offset the harm caused by human factors impacting a site. The burden of proof required for an authority to 'ascertain' that a plan will not have an adverse effect upon a Habitats Regulations site: case law and precedent have concluded that the degree of certainty is close to that required in criminal cases ('beyond reasonable doubt') rather than the normal test in civil cases ('on the balance of probabilities').

7. In other words, the legal requirements are such that it is wholly insufficient to determine that a mitigation scheme 'might', or even 'should' be successful. It must be possible to demonstrate that it 'will' be successful, otherwise the risk to the Habitats Regulations site is such that the development, as a matter of law cannot be allowed to proceed. The Precautionary Principle is paramount.

4.1 The adverse effects of recreational disturbance on habitats sites, and/or those sites with sensitive bird populations have been recognised throughout the UK. In light of an emerging body of research, the preferred approach to avoidance and/or mitigation of such impacts via the delivery of strategic mitigation strategies, often including several local authorities, has received a growing consensus of support by Natural England and other key stakeholders such as the RSPB and the Wildlife Trusts.

4.2 There are numerous examples of strategic mitigation partnerships being set up with the aim of mitigating increased recreational disturbance from new housing to habitats sites. This is a growing area in the conservation community and those working on such strategies regularly share good practice and assist each other. It will take time to embed, but following periods of monitoring and review, in time the success of mitigation partnerships will be able to be measured.

4.3 There is evidence that this Strategic Solution approach is working elsewhere in the UK. There is no reason for us to be concerned that it won't work here, once it has had time to establish.

The linked pieces of evidence below relate to Strategic Solutions that have matured over the course of the last 15 years:

Hart, Rushmoor and Surrey Heath Special Protection Area mitigation project - Rushmoor Borough Council

footprint-ecology.co.uk/reports/Liley and Caals - 2022 - Ashdown Forest Visitor Survey Report 2021.pdf

footprint-ecology.co.uk/reports/Saunders, P. et al. - 2022 - Solent SANGs Visitor Survey.pdf

footprint-ecology.co.uk/reports/Saunders, and Liley, D. - 2022 - Solent Bird Disturbance Surveys 2021-22 assessmen.pdf

5. Essex Coast RAMS Implementation

5.1 Year one of the implementation of the Essex Coast RAMS was 2022/23, this is later than the dates in the RAMS Strategy Document due to several reasons. Principally, the time taken to agree the governance arrangements amongst the 12 partner Councils (the largest number of partners of any mitigation strategy) and set up the accountable body, the time to recruit the Delivery Officer, and the impact of the Covid-19 pandemic. However, the Bird Aware Essex Coast brand and website was established prior to 2022/23 as an early mitigation measure.

5.2 The priorities for year 1 of the project were as follows:

- recruit and establish the two coastal rangers;
- support the monitoring of nesting birds for the spring / summer;
- start collecting baseline year data on disturbance and recreational activities;
- audit existing recreational clubs and groups and start engaging coastal users and providing educational materials;
- develop first year campaigns;
- raise the profile of Bird Aware Essex Coast;
- create additional resource through volunteer recruitment;
- Develop social media accounts - Home - Bird Aware Essex Instagram, (10) Bird Aware Essex Coast | Facebook Facebook, (4) Bird Aware Essex Coast (@BirdAwareEssex) / Twitter Twitter..

5.3 The Delivery Officer and 3 x Coastal Rangers (one more ranger than set out in the mitigation strategy, which demonstrates the flexibility of the project) are in post and delivery of the project is well underway. The Bird Aware Essex website: Home - Bird Aware Essex and social media accounts (links above) detail the work that is taking place around engagement, which is a key aim of Bird Aware Essex Coast.

5.4 The Delivery Officer and rangers have quickly become familiar with the sites and areas that are particularly sensitive (which may change over time) and sites that experience a high number of visitors. The Delivery Officer and the rangers on-the-ground experience steers the project. The Bird Aware delivery group, which comprises local nature conservation experts, helps to ensure that the most sensitive habitats sites are targeted. The delivery group also

discuss particular avoidance and mitigation measures. The delivery group are able to advise if recreational disturbance is increasing at particular habitats sites and specific locations thus enabling these locations to be targeted by the rangers to have an immediate impact.

6. Existing coastal issues (refers to point 4 in Dr Gibson's representation given in italics below)

4. The mitigation measures proposed to remove the Adverse Effects on Integrity concentrate on two approaches, of: a. The creation of interceptive or diversionary green infrastructure in order to divert and absorb the additional recreational pressures away from the Habitats Regulations Site. While this may have some success (with for example dog walking, biking etc), equally clearly the 'lure of the coastal path' will render the provision of generic greenspace partially ineffective, and then there are also those activities (eg jet skiing) than could only be carried out on the estuary. b. Setting up a Recreational Access Management Scheme on and around the Habitats Regulations site (involving some wardening and information provision, and monitoring) to inform and encourage sustainable use. I would contend that such a scheme is ALREADY necessary (practically and legally) to try to prevent the deterioration of the site under the current levels of recreational use.

6.1 The Essex coast is environmentally sensitive and experiences pressures from a range of issues. Pressures that are not unique to Essex, such as jet skiing. The Essex Coast RAMS deals with future recreational impacts and is not designed to address existing or past issues. It is not for this DPD to address existing / historic issues. The RAMS provides a strategic solution to address future impacts.

7. In-perpetuity (refers to point 5 in Dr Gibson's representation)

5. However, to allow the plan to proceed, the deployment of a RAMS approach must benefit from a requisite degree of certainty that it will reduce impacts to a level whereby they no longer represent an Adverse Effect on Integrity, and that there is a guarantee that such measures would be delivered in perpetuity, long after developers' contributions have been exhausted, and immune to the vagaries of politics on public finances (this of course can never be known, and therefore such an insecure approach cannot be relied upon to implement a legal requirement).

7.1 Natural England is satisfied with the progress made with the Essex Coast RAMS thus far and recognises that with any mitigation strategy the initial priority is establishing the project and raising sufficient funds to recruit the project staff. Attached to this statement is a letter from Natural England to the RAMS Partnership. This letter re-iterates Natural England's support for the significant hard work that the project team have put into the Partnership and recognises that a review of the financial structure and contributions model and a review of the project plan is now required.

7.2 In autumn 2023, discussions commenced between Natural England and the Bird Aware Essex Coast steering group about carrying out a review of the strategy to ensure it remains up to date and effective and incorporates funding in-perpetuity. The Section 1 Local Plan Inspector recognised the provision for monitoring its effectiveness, enabling adjustments and improvements to be made which is a strength of the RAMS approach. This work continues in earnest at the behest of the steering group and with continued support from Natural England. An update meeting occurred in February 2024. The Bird Aware team are making progress on

reviewing the project and definitively securing it for in perpetuity. The steering group are hoping to have this review complete by 2025.

7.3 The garden community is phased over a 30-year period. It as yet does not have planning permission. It is highly likely that dwellings will not be occupied in advance of the current 2025 deadline for the RAMS review. At this juncture, development in the garden community will contribute to the refreshed project, including the in-perpetuity fund.

END.