

Schedule of Representations on New Local Plan 2016 Habitat Regulations Assessment

Rep ID	Name	Objection (Y/N)	Objection Comments	Support (Y/N)	Support Comments	Technical Comment (Y/N)	Technical Comments	Attend Examination (Y/N)
NLPSUPDOC2	Mark Nowers (RSPB)	Y	<p>Thank you for consulting the RSPB and a wider range of non-statutory conservation organisations. Since 2010, the RSPB has reviewed a number of iterations of the Core Strategy and its assessments. We found the plan unsound at that time due to the possibility of road construction impacting upon Holehaven Creek Site of Special Scientific Interest (SSSI). At the time, we stated our support of the Council's approach to assess Holehaven Creek as if it were a proposed Special Protection Area (pSPA). We consider that this issue has not been addressed in the current plan and assessments (notably the Habitats Regulations Assessment (HRA)).</p> <p>At this time we consider the plan unsound, as it has not demonstrated that a number of policies are justified or that they will be effective in ensuring the environment will not be adversely affected. We have the following points to raise on the content of the HRA.</p> <p>1. Consideration of Holehaven Creek within the HRA (page 5)</p> <p>The HRA lists the various tasks required in its screening stages. Task 1 is the identification of Natura 2000 sites and characterisations. Omitted from that list is Holehaven Creek Site of Special Scientific Interest. The Council's draft Local Plan (paragraph 4.5, page 17) recognises the pSPA status of the Creek, which means that it should be accorded the same level of protection as other European Sites and therefore be included as part of Task 1 of the HRA. We had already acknowledged and welcomed the Council's recognition of the Creek's pSPA status in our letter of the 11th January 2010.</p> <p>Holehaven Creek supports internationally important numbers of Black-tailed Godwits (recent counts have indicated that 9% of the world population have been present at times - 5500 birds recorded in January 2014 per Holehaven Creek Barge Impact Study) in addition to nationally important numbers of Dunlin and a significant population of Curlew. If the Creek is not included within the HRA, any policy against which it is currently screened cannot, at this stage, be considered consistent with national policy (National Planning Policy Framework [NPPF] paragraph 118, bullet 6) nor therefore be judged sound.</p> <p>At this stage, the proposed policy T2 (2) which highlights "...investment necessary to deliver new or improved access to Canvey Island." has not been included in the HRA. This would be a major project that clearly has potential to affect a pSPA (therefore meeting the test of Likely Significant Effect) and must be considered within the</p>	N		N		Y

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			<p>Appropriate Assessment to consider options that would avoid adverse effects on the integrity of the site (that is, the black-tailed godwit population will not be harmed). Failure to assess this major project means the HRA is incomplete and the plan cannot be considered sound, as it has not been demonstrated that this policy is justified or effective in ensuring that the environmental constraints of the area will be managed appropriately.</p> <p>2. Individual policies with the Potential to Cause Harm to European Sites</p> <p><i>Policy E1 Economic Strategy</i> (Page 10) - The HRA has not considered the implications of increased recreational pressure that will result from this policy.</p> <p><i>Policy E10 Port related Activities</i> (Page 11) - The HRA has not considered Holehaven Creek p SPA. In addition, no explicit mention is made of potential dredging operations required with any increase in shipping and the impact that may have on any of the European Sites.</p> <p><i>Policy T1 Transport Strategy</i> - The HRA has not screened this policy and the RSPB considers that this should be included. Policy 2a (page 56 of the draft New Local Plan) highlights "working with neighbouring authorities and transport delivery partners across the Thames Gateway South Essex sub-area to implement the Thames Gateway Planning and Transport Strategy..". It is essential that the HRA considers all policies where an adverse effect could arise, including a robust assessment of the policy cumulatively and in-combination with other plans and projects.</p> <p><i>Policy T2 Improvements and Alterations to Carriageway Infrastructure</i> (Page 13) - The HRA has not considered Holehaven Creek p SPA. It is of the utmost importance that this site is included given the potential for adverse effects on site integrity to occur which a North Thames Link Road (paragraph 11.16, page 58 of the draft Local Plan) would have on Holehaven Creek. The RSPB does not see how this policy would pass the strict tests set down by the Conservation of Habitats and Species Regulations 2010 (the 'Habitat Regulations'). These tests are detailed below:</p> <p>i. Step 1: Under regulation 61(1) (b), consider whether the project is directly connected with or necessary to the management of the European Site(s). If not –</p> <p>ii. Step 2: Under regulation 61(1)(a) consider, on a precautionary basis, whether the project is likely to have a significant effect on the European Site(s), either alone or in combination with other plans or projects (the LSE Test).</p> <p>iii. Step 3: Under regulation 61(1), make an appropriate assessment of the implications for the European Site(s) in view of its conservation</p>					

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			<p>objectives. Regulation 61(2) empowers the competent authority to require an applicant to provide information for the purposes of the appropriate assessment. There is no requirement or ability at this stage to consider extraneous (non-conservation e.g. economics, renewable targets, public safety etc) matters in the appropriate assessment.</p> <p>iv. Step 4: Pursuant to regulation 61(5) and (6), consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the European Site(s), having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the Integrity Test).</p> <p>v. Step 5: In light of the conclusions of the assessment and in accordance with regulation 61(5) and (6), the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the European Site(s), alone or in combination with other plans or projects.</p> <p>vi. Step 6: A competent authority may only derogate from Regulation 61 where there is an absence of alternative solutions, and it is satisfied that there are imperative reasons of public interest that override the protection of the European Site(s) and that compensatory measures have been secured that protect the overall coherence of the Natura 2000 network (Regulations 62 and 66). If there are less damaging alternative solutions, no derogation is permitted and consent must be refused.</p> <p>The tests set out in Regulations 61, 62 and 66 are extremely strict as they concern the protection of sites that are of recognised European and international importance. Relevant effects on a site may be direct (e.g. direct loss of habitat) or indirect (e.g. change to water chemistry due to reduced groundwater inputs). They may also arise from operations outside the boundary of a site e.g. changes to drainage systems. The extent to which any such effects can be removed or reduced by mitigation measures will vary.</p> <p>We note that the comments (page 13, table 4) allude to a route potentially coming east off Canvey Island which, as it rightly states, would cause significant physical disturbance to the Benfleet and Southend Marshes SPA. The RSPB agrees that such a route would be wholly inappropriate, particularly as it would not accord with the Council's own draft Policy NE8 (Determining Applications affecting Ecologically Sensitive and Designated Sites). Given this, the same principles must be applied to the</p>					

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			<p>Holehaven Creek p SPA . Given the failure to assess these policies it has not been demonstrated that they are justified or that they will be effective in maintaining and, where required, restoring the best areas for wildlife in the district. This is important for the wildlife alone, but also for the added benefits they have for people and the ecosystem services they provide. We trust that these comments are helpful. We would wish to attend any Examination in Public (EIP) session regarding these polices.</p>					