

**HEARING STATEMENT
MATTER 1: LEGAL AND PROCEDURAL REQUIREMENTS**

HALLAM LAND (ID: E157, E.20)

(Q1.4) How have the likely environmental, social and economic effects of the Plan been adequately and appropriately assessed through the work of the SA and HRA?

- 1.1 There are significant concerns regarding the Council's SA and HRA processes which threaten to undermine the robustness and soundness of the Local Plan. Specifically, the HRA process has not concluded, whilst the SA's assessment of sites' potential effects has not been used to properly inform the selection of sites allocated in the Plan.
- 1.2 The HRA process is flawed on the grounds that, with reference to specific sites, it:
1. does not and cannot conclude that mitigation can and will be secured in relation to potential adverse impacts due to incomplete analysis; and
 2. relies on an aged mitigation solution which was not designed for the purposes to which it is now expected to perform, and which does not provide the necessary certainty of effectiveness.
- 1.3 In relation to the completeness of the HRA process, we note that paragraph 5.3.4 of the June 2025 Interim HRA¹ explained that "...it is not possible to conclude whether the MLP [Medway Local Plan] will have an adverse impact upon the integrity of any European site" in relation to air quality impacts. Further air quality work has now been undertaken, and as our further representations (MLP/ED16A, E.20, HRA) note, the Council's newly available evidence (A4.2 and A4.3) underpinning the Submission HRA (A4.1, December 2025) reaches materially different conclusions on air quality than those set out in the Regulation 19 Interim HRA. However, no mitigation strategy has, as yet, been developed, and such confidence in the mitigation of effects cannot not justified.
- 1.4 The Council's approach to mitigation instead relies on future solutions to address impacts. For example, Policy SA7 is proposed (MLP/ED6) to be amended to "*reference a requirement for mitigation*". Any such mitigation, for example in relation to Lidsing, requires cross-boundary discussions that are still ongoing (as described at paragraph 5.25 of the Submission HRA (A4.1)) and which is therefore yet to be secured and tested. Without certainty regarding the necessary mitigation, it cannot be determined that suitable mitigation can or will be resolved, neither is there certainty that the terms (such as cost, certainty or deliverability) of that mitigation will allow development to be brought forward in

¹ An Interim HRA dated June 2025 was published to support the Regulation 19 Medway Local (see <https://medway.oc2.uk/docfiles/30/Interim%20Habitats%20Regulations%20Assessment.pdf>) but is not currently included within the Examination library.

a timely way. Whilst we acknowledge that those detailed matters fall to be considered in Phase 2 of the Examination, the adequacy of the overall process is of in-principle concern.

- 1.5 We further note Natural England's Regulation 22 representations (MLP/ED16A, E.17) which indicate that the matters above continue to remain unresolved. Natural England acknowledges the recommendations of the Submission HRA and states that it will continue to work with the Council to explore mitigation measures, and that any agreement will then be included in an updated Statement of Common Ground (SoCG). The Council's "*Consideration of Representations*" (MLP/ED16C) states that the SoCG will be updated in August 2026. On 12 August 2026, the Council published (MLP/ED19) a letter together with signed SoCGs with National Highways and Southern Water. There is no reference to Natural England or the timing for completing/publishing an updated SoCG.
- 1.6 In relation to reliance on outdated mitigation, we note that the Submission HRA relies on an emerging Hoo Peninsula Strategic Environmental Programme and an outdated Bird Wise North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to form its conclusions in relation to mitigation for relevant sites. As our Regulation 22 representations (MLP/ED16A, E.20) highlight, the review of the SAMMS to address the emerging allocations will not be complete until 2027. Until that process has completed, the impact on the deliverability and underlying baseline viability of relevant allocations at the Hoo Peninsula is at risk.
- 1.7 We note that Homes England's Regulation 22 representations (MLP/ED16A, E.29) highlights that approximately 27ha of land previously included as part of the Hoo Peninsula Strategic Environmental Mitigation and Management Programme (SEMS) is no longer available for this purpose as it has been put forward for compensation in relation to a live planning application. A further exercise is now required to identify alternative land to meet this purpose, demonstrating that the full mitigation package is not yet secured. Homes England also queries whether the draft SEMS wording has been sufficiently tested to mitigate non-allocated sites. Whilst the specific implications for individual sites, and for the overall trajectory will be addressed by other Examination Matters, there is a demonstrable need for certainty in relation to the HRA process, including the completion of the assessment based on known mitigation, to support the plan-making process.
- 1.8 The SA process is flawed in relation to its conclusions and its application. As a consequence, the spatial development strategy has not responded positively to the SA process.
- 1.9 Our representations (E157, File F) provide a detailed analysis of the erroneous conclusions reached in relation to land at Holborough Quarry (site CHR04). These failings include conclusions not justified by the available evidence².

² We assume that these detailed matters will be addressed in Phase 2 Hearings and therefore do not set out our detailed concerns here.

- 1.10 Our representations also demonstrate that it is apparent that the Council has disregarded the SA's conclusions in relation to key sites, not least of which is the Hoo Peninsula, which it is acknowledged to be "the worst performing" spatial delivery option³. These issues are additional to those unresolved matters which are evidenced by the HRA process, as raised elsewhere in Matter 1 by the Inspectors. The consequences for the spatial strategy are addressed in Matter 2.

(Q1.5) The Plan engages with international nature sites, including Special Protection Areas (SPA) and RAMSAR. Please could the Council confirm and set out how there is legal sufficiency in the process of engagement within the plan-making process relating to such sites and an adequate evidence trail to support this?

- 1.11 Regulation 105 (2) of The Conservation of Habitats and Species Regulations 2017 requires the plan-making authority to "*consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies*".
- 1.12 Regulation 105 (4) states that "*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*".
- 1.13 Natural England has been consulted by the Council, but its position on air quality, recreational pressure and urbanisation remains open and subject to further discussions and an updated SoCG is yet to be published and there is no further clarity on timescales (the Council's request at MLP/ED19 does not reference Natural England, we note). The process of engagement is therefore incomplete and the Council has not produced the full evidence trail (such as an updated SoCG) to demonstrate legal sufficiency.

(Q1.6) How has the Plan been based on a sound process of SA and how has the SA, as set out in supporting evidence, provided an adequate and appropriate consideration and testing of reasonable alternatives to the development strategy approach presented in the submitted Plan; and

(Q1.7) How does the SA adequately and appropriately assess all sites identified within the Plan, particularly in relation to flooding and how is such an assessment considered sufficiently robust, justified and sound?

- 1.14 Questions 1.6 and 1.7 are taken together since our concerns overlap. The Council's judgement applied to the SA is significantly flawed, as set out in detail in our Regulation 19 representations (C1.2, E.157). The Council effectively appears to disregard its own assessment by selecting constrained and unsustainable sites ahead of sites found by the SA to be the best-performing and least constrained. Whilst site specific matters will be discussed at latter Hearings, our overarching conclusion is that the spatial strategy has not

³ A3.1, Figure N.5.2 which under the 'Evaluated' column summarises the Hoo Peninsula SDO performance as appraised by the R18 Interim SA, 2024.

been fully informed by the underlying SA, including in relation to rejected sites whose sustainability performance merits testing as reasonable alternatives.

- 1.15 Our concern is further supported by the Environment Agency's sustained objections through its Regulation 22 representations (MLP/ED16A, E.15). The EA's position is that the Local Plan is unsound on the basis that vulnerable residential sites within Flood Zones 3/3b are proposed for allocation which is against national policy, especially in the absence of sequential testing. This follows through from the EA's Regulation 19 representations (C1.2, E.68) which raises concerns that *"23 sites are located within or partially within Flood Zone 3b"* and that *"some of these sites taken forward to the Exception text are unsuitable for development and [are based on] incorrect assumptions about new flood defence infrastructure removing every site out of Flood Zone 3b"*. It is concerning that the matters raised previously are still yet to be addressed at this stage of the Local Plan process, with several sites affected including CHR14 and RWB, GN15, GN16 and RWB25. The reliability of the Updated SFRA is also contested by the EA. By contrast, other sites which fall within Flood Zone 1 and require no strategic flood defence, have not been selected – an example where alternatives appear not to have been properly considered.
- 1.16 In response to the EA's concerns, the Council's *"Consideration of Representations"* (MLP/ED16C) states that the EA is reviewing additional evidence with a response expected by the 14th of August. The Council has now sought (MLP/ED21) an extension of time to the 27th of August.
- 1.17 As a consequence, both the composition and deliverability of the development strategy is undermined, since it is clear that the Plan, as submitted, was not fully informed by evidence. It also demonstrates that there has not been an adequate and appropriate consideration of reasonable alternatives. The Local Plan should consider suitable alternative opportunities that are unconstrained and deliverable to support the long-term robustness and deliverability of the development strategy, and to protect the Council from the risk of failed Housing Delivery Tests and lack of 5YHLS during the plan period.

(Q1.9) How are the policies in the Plan reflective of the Submission Habitat Regulations Assessment (A4.1 to 4.3)?

- 1.18 The policies in the Plan do not fully reflect the Submission HRA. Our responses to earlier questions demonstrate that there remain unresolved matters within the HRA which are critical to the ability to deliver the Policies. Absent such resolution, the Policies cannot be concluded to be effective and are not supported by the available evidence. Specifically:
- i. Per questions 1.4 and 1.5, no common ground has been reached with Natural England in relation to the adequacy of mitigation measures to address potential impacts on Designated sites.

- ii. Per question 1.4, it is necessary for Homes England to secure additional land to meet mitigation purposes, thereby questioning the effectiveness of site allocations which are reliant on that mitigation.
- iii. The Council's proposed modifications to Policy S2 need to be drafted, consulted upon, agreed by consultees and considered at Examination and found to be acceptable.

1.19 In this context, it cannot be concluded that the Plan is fully reflective of the Submission HRA.

(Q1.13) Taken as a whole, does the Plan include strategic policies - or a spatial development strategy which contains policies – to address the identified strategic priorities of the Plan area, in accordance with Section 19(1C) and (1D) of the Planning and Compulsory Purchase Act (PCPA)? If not, why?

- 1.20 The spatial development strategy does not contain policies capable of addressing the strategic priorities of the Plan area.
- 1.21 The emerging Local Plan sets a strategic objective to *"provide for homes of varying types to meet demand [and] to deliver high quality energy efficient homes that meet the housing needs of Medway's communities"*.
- 1.22 The spatial development strategy and supporting policies purports to provide a basis for measuring the potential supply of development sites and an appropriate trajectory for their delivery. However, given the available evidence base, including HRA and SA, it cannot be concluded that the policies can effectively demonstrate that housing need will be met in an acceptable and timely way which is compatible with sustainability and environmental requirements.
- 1.23 In the absence of a robust spatial development strategy, the Plan is therefore unable to properly demonstrate that it meets need or that it responds positively to the strategic priorities and therefore falls foul of the requirements of the Regulations. The Council must therefore resolve these matters before reliance can be placed on the relevant policies, or must fully explore that reasonable alternatives and where alternative unconstrained sites are identified, that they are brought into the Plan to ensure the robustness and deliverability of the Local Plan as a whole.