
Medway Local Plan 2041
Matter 1:
Save the Hoo Peninsula Campaign and High Halstow Parish Council
Hearing Statement

Matter 1 – Legal and Procedural Requirements

Introduction

1. This Hearing Statement is submitted on behalf of Save the Hoo Peninsula campaign (“**STHP**”) and High Halstow Parish Council (“**High Halstow PC**”), jointly represented by Richard Buxton Solicitors, with Jack Parker of Cornerstone Chambers as Counsel. STHP seeks to protect the community, environment and heritage of the Hoo Peninsula. High Halstow PC seeks to preserve High Halstow’s rural identity and improve residents’ quality of life through responsible governance, community engagement and sustainable local improvements.
2. This statement responds to the Inspectors' Matters, Issues and Questions relating to the Sustainability Appraisal (**‘SA’**), Habitats Regulations Assessment (**‘HRA’**) and Integrated Impact Assessment (**‘IIA’**) in Matter 1. Representations are also made in relation to the adequacy of the Reg. 18 and Reg. 19 consultations run by the Medway Council (**‘the Council’**) for its draft Local Plan (**‘the Local Plan’**).
3. In preparing this response, STHP and High Halstow PC have had regard to:
 - a. The Reg. 18 & 19 representations made by STHP and High Halstow PC.
 - b. the Inspector's Initial Queries Letter of 27 March 2026 (MLP/ED5);
 - c. Medway Council's response dated 29 April 2026 (MLP/ED6); and
 - d. the submissions made by Richard Buxton Solicitors on behalf of STHP dated 6 July 2026 concerning the legal and evidential deficiencies of the HRA (**‘RBS July 2026 submission’**).
4. Although the Council maintains that the Plan is supported by a legally compliant HRA and SA, the RBS July 2026 submission identifies significant uncertainty in the evidence underpinning the HRA, particularly on recreational disturbance to the North Kent Marshes SPA and Ramsar network. Those concerns are directly relevant to Questions 1.4 to 1.12.

Legal and Procedural Compliance

Question 1.1

How does the Council explain the steps it took to comply with the statutory requirements of Regulation 18 and Regulation 19 consultation?

5. STHP and High Halstow PC acknowledge the Regulation 18, Regulation 19 and post-submission consultations. The issue is whether consultees had a meaningful opportunity to comment on the evidence ultimately relied upon, and whether the post-submission consultation could realistically influence the Plan. The concern arises because:
- (i) Following our instructions from STHP on 14 February 2026, on 19 March 2026 we wrote to the Inspectors on behalf of STHP and referred to a significant body of new environmental evidence including the HRA 17 December 2025 that had only become available *after* the Regulation 19 consultation had closed.¹
 - (ii) The Inspectors raised this in their initial letter of 27 March 2026, leading to the summer 2026 post-submission consultation. The Council's 29 April response stated that a fuller Habitats Regulations response would follow. So far as STHP and High Halstow PC are aware, it was not provided before that consultation and no further clarification has been received.
6. This issue is particularly significant in relation to the HRA and whether the Council has satisfied its legal duties in relation to need for scientific certainty for mitigation measures under the long body of EU and domestic case law.
7. As explained in the RBS July 2026 submission, the HRA relies heavily on Bird Wise/SAMMS and the non-statutory, undelivered Hoo Peninsula Strategic Environmental Programme ('**Hoo Peninsula SEP**'), also unavailable at Regulation 19 consultation, to conclude no adverse effects from recreational impacts. That conclusion is not supported by evidence demonstrating the effectiveness of SAMMS or the Hoo Peninsula SEP.
8. The ad hoc nature of the further consultation has resulted in active and important consultees not being able to respond within the short consultation window – note the RSPB England's consultation response² where there was insufficient time to provide a consultation response.
9. Accordingly, while the Council can demonstrate that consultation stages were undertaken, the Examination should consider whether stakeholders were given a fair and early opportunity to comment on the full evidence base relied upon to justify the submitted Plan, particularly in relation to the HRA and impacts on protected habitats.
10. Given the late production of key material, it is unclear how the Council has shown genuine consideration of reasonable alternatives while all realistic options remained

¹ Richard Buxton Solicitors letter dated 19 March 2026 (MLP/ED4)

² (Response ID 5098) *It has not been possible for the RSPB to review this Topic Paper within the consultation period. We therefore reserve the right to provide our comments on the contents of this document through the Medway Local Plan examination process*."

open (the Seaport Principle). STHP and High Halstow PC submit that piecemeal late disclosure limited consultees' ability to respond at an early formative stage and therefore failed to meet the requirements of statutory consultation.

Sustainability Appraisal (SA) and Habitats Regulations Assessment (HRA)

Question 1.4

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?

11. STHP and High Halstow PC submit, as detailed in the RBS letter of 6 July 2026, that the Plan's environmental effects have not been adequately assessed. The HRA does not properly evaluate the recreational disturbance impacts of the scale of growth proposed on the Hoo Peninsula upon the integrity of the internationally designated North Kent Marshes SPA and Ramsar sites (Medway Estuary and Marshes, Thames Estuary and Marshes and The Swale) ("**the European Sites**"). Those evidential failings undermine the SA and, consequently, the submitted Local Plan.
12. Recreation pressure on the European Sites within the Local Plan is a key concern, and as the RBS July 2026 submission records marked declines in the numbers of birds using the SPA and Ramsar designations at areas where public access for recreational purposes is greatest³. All proposed allocation sites on the Hoo Peninsula fall within this 6km Zone of Influence of the European Sites (and indeed no part of the Hoo Peninsula is further than around 5km from the nearest area of coast)⁴. The submitted Plan relies heavily upon the conclusion of the Submission HRA that recreational impacts associated with substantial housing growth can be mitigated through the North Kent Strategic Access Management and Monitoring Scheme ('**SAMMS**') and Bird Wise programme, alongside the non-statutory, undelivered Hoo Peninsula Strategic Environmental Programme and therefore reaches a conclusion of no adverse effect on the integrity of the European sites.

The North Kent Strategic Access Management and Monitoring Scheme ('SAMMS') and Bird Wise programme

13. The Council's 29 April 2026 response to the Inspectors questions similarly relies upon the fact that SAMMS is a "*well-established approach*"⁵ which has operated for over ten years and has Natural England support. Although the Council response⁶ states that further clarification on the HRA approach will follow, no such information has been provided, including since the post-reg. 19 consultation. It is therefore unclear to STHP and High Halstow PC what evidence base the Council is relying on going into the EiP.

³ Submission HRA para 7.2.2

⁴ Table 7.1 of the submission HRA lists at least 20 allocations sitting within the Zone of Influence — something in excess of 8,000 residential dwellings (HHH12: 1,800; HHH22/31: 1,700; GN15: 1,100; RN9: 750; HHH26: 760; HHH8: 450;etc). This is before counting the wider 6km Zol population which is larger still.

⁵ Medway Council letter to Inspectors dated 29 April 2026, response to Q.4

⁶ Ibid.

14. As the RBS letter of 6th July 2026 explains, after a decade of SAMMS/Bird Wise operation one would expect the HRA to be able to draw upon a substantial longitudinal dataset for the decade that SAMMS/Bird Wise has been operational — a dataset including visitor counts, warden intervention logs, WeBS trend correlation, and data on disturbance event frequency over multiple years, and sufficient to demonstrate whether the SAMMS mechanism has actually reduced disturbance to qualifying bird populations and successfully prevented adverse effects. Instead, the Submission HRA cites only the Kent Wildlife Trust (“**KWT**”) 2022 study, whose authors state that attributing changes in waterbird numbers or distribution to anthropogenic disturbance from two snapshot surveys eleven years apart would require a longer-term monitoring programme.
15. The KWT 2022 Appendix 2 data show continuing significant decline in the Thames Estuary and Marshes and Swale SPAs, or only a slowing of improvement in the Medway Estuary and Marshes SPA, despite SAMMS. The central question — “is the mitigation working?”—is therefore largely absent from the assessment. On the limited evidence available, the answer would be “don’t know”, so the HRA cannot safely rely upon it.
16. Natural England’s 2015 advice⁷, relied on by the Council, did not simply endorse SAMMS. It identified monitoring as integral to the mitigation strategy and the means by which effectiveness would be determined, allowing measures to respond to evidence while ensuring no adverse effect on the SPAs/Ramsar sites. This is also integral to the 2018 Bird Wise strategy (para 5.17-5.18)⁸.
17. On this basis, STHP and High Halstow PC submit that the HRA does not robustly assess whether this mitigation has been effective during its decade of operation. It relies principally on the existence of the programme, not objective evidence that it prevents adverse effects on SPA bird populations.

The Hoo Peninsula SEP

18. As addressed in the RBS letter of 6th July 2026, the submission HRA flags, at para 7.2.13, that Bird Wise “may not completely address” recreational impacts for exactly these higher-risk allocations — a gap the submission HRA then suggests is closed by the non-statutory, undelivered Hoo Peninsula SEP which remains in an early stage of development. As set out in our 19 March 2026 letter, this document also was not available in the Reg. 19 consultation, despite the reliance on the Programme in the submission HRA.
19. The RBS July 2026 submission concludes that the Hoo Peninsula SEP is no answer to the problem – it is merely an aspirational policy initiative, not any bespoke, improved or enhanced form of the unproven SAMMS/Bird Wise initiative, and it therefore similarly fails the lacunae/certainty tests.

⁷ See letter 6 January 2015 appended to Medway Council’s 29 April 2026 letter to Inspectors (pdf pgs 17)

⁸ Bird wise North Kent Mitigation Strategy January 2018 (appended to Medway Council’s response to Inspectors initial questions (MLP/ED6) (PDF pgs 24-52)

20. The environmental effects of allocating thousands of dwellings within the European Sites Zone of Influence therefore cannot be regarded as properly assessed. The HRA fails to meet the high scientific certainty test in Waddenzee and reflected domestically in cases such as Steel Cross. Without evidence of mitigation effectiveness, as required by Natural England and relied on by the Council, the HRA's conclusions are unsupported and the Plan's environmental balance is materially undermined.

Question 1.5

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.

21. The key legal question under the Habitats Regulations is whether the competent authority can ascertain, beyond reasonable scientific doubt, that the Plan will not adversely affect the integrity of the designated sites. The concern identified in the RBS letter of 6th July 2026 and set out above in the Hearing Statement response to question 1.4, is that the Submission HRA does not demonstrate that certainty because it fails to show whether SAMMS/Bird Wise is working and relies on the early-stage, untested Hoo Peninsula SEP.
22. The Submission HRA relies heavily upon the single Kent Wildlife Trust 2021/22 Bird Disturbance Survey as its evidence base. Yet the authors of that study expressly concluded that the available monitoring evidence was insufficient to determine whether observed changes in bird populations could be attributed to recreational disturbance or to mitigation measures. They recommended further monitoring and additional studies. The HRA nonetheless proceeds to a conclusion of no adverse effect on integrity.
23. Accordingly, while there is an evidence trail, the RBS July 2026 submission demonstrates that it does not support the scientific certainty required by the Habitats Regulations or show SAMMS effectiveness. The Council's own evidence highlights the need for further monitoring and investigation. Consultation and an evidence trail are therefore not synonymous with legal sufficiency.

Question 1.6

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?

24. The adequacy of alternatives testing must be considered in the context of the environmental uncertainties identified within the HRA.
25. A significant proportion of planned growth is directed to the Hoo Peninsula despite its proximity to internationally designated habitats and sensitivity to recreational disturbance. The HRA's conclusion that this growth can proceed depends on mitigation

whose effectiveness has not been demonstrated and on a programme yet to be implemented. The SA therefore cannot fairly test reasonable alternatives if it assumes, without adequate evidence, that recreational impacts are capable of mitigation.

26. Had the HRA appropriately identified uncertainty relating to mitigation effectiveness, it is likely that alternative development strategies involving a lower concentration of housing on the Hoo Peninsula would have produced materially different environmental outcomes. The SA process therefore appears to have been influenced by an unresolved and potentially flawed HRA conclusion. Similar issues have been raised by our clients in relation to the transport infrastructure for the Hoo Peninsula.

Question 1.7

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?

27. The concerns raised in relation to the HRA are directly relevant to the robustness of SA site assessment.
28. Many of the strategic allocations on the Hoo Peninsula combine multiple environmental constraints including proximity to internationally designated habitats, extensive flood-risk considerations and the requirement for substantial mitigation infrastructure. Yet the SA scores and overall conclusions do not appear to reflect the uncertainty associated with these cumulative risks.
29. Where significant environmental evidence remains subject to revision, and transport infrastructure evidence is just coming forward, it is difficult to conclude that the site assessments are sufficiently robust or justified.

Question 1.8

How has the submitted Plan been formulated on a sound HRA process and why is the conclusion that a comprehensive Appropriate Assessment is not required justified?

30. This is the central issue.
31. Our clients submit that the HRA process is not sound because it relies upon assumptions regarding mitigation effectiveness rather than evidence demonstrating effectiveness.
32. The RBS July 2026 submission identifies that, despite ten years of operation, SAMMS/Bird Wise has not produced the monitoring evidence anticipated by Natural England in 2015. The KWT report relied on by the HRA expressly notes evidential limitations and recommends further monitoring and analysis. Rather than filling those gaps, the Submission HRA proceeds to a conclusion of no adverse effect on integrity.
33. The HRA therefore appears to invert the precautionary approach required by the Habitats Regulations. Monitoring is treated as something that may confirm effectiveness in future, rather than evidence that should already exist given the length

of time the SAMMS programme has been in place before a conclusion of no adverse effect can be reached.

34. Over 8,000 dwellings within the HRA's recreational disturbance zone are proposed to rely on SAMMS/Bird Wise and the developing Hoo Peninsula SEP. Given that scale, the absence of robust evidence demonstrating effectiveness is a critical failing. The Submission HRA's conclusion of '*no AIOSI at the North Kent Marshes European sites from recreational impacts*' is therefore unfounded.

Question 1.9

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

35. Policies S2 & S3 and the strategic allocations on the Hoo Peninsula are heavily dependent upon the conclusions of the Submission HRA.
36. The difficulty is that the policies reflect the HRA's assumptions rather than resolving its evidential uncertainty. Policy S3 assumes financial contributions to Bird Wise can prevent adverse effects on integrity. Policy S2 and the HRA rely on the Hoo Peninsula SEP, which remains in development and whose objectives and evidence base are unclear and untested. The HRA provides little evidence capable of demonstrating the necessary certainty required by Waddenzee.
37. Consequently, the policies may be consistent with the HRA's conclusions but that does not demonstrate that those conclusions are themselves legally sound given the clear evidential issues and uncertainties in the Council's submission HRA.

Question 1.10

Have Natural England's views been sought on the Submission Habitats Regulations Assessment (A4.1 to 4.3) and if so, how have they been considered?

38. Natural England has been involved in the wider development of the North Kent SAMMS framework and the Council has confirmed discussions regarding the HRA process.
39. However, the issue is not whether consultation occurred but whether the evidence supports the HRA conclusions. The legal responsibility rests with the competent authority, and ultimately the Examination, to determine whether adverse effects can genuinely be ruled out. Natural England consultation cannot cure deficiencies in the underlying evidence, particularly where the monitoring required by Natural England in 2015 has not taken place.

Question 1.11

Has the Integrated Impact Assessment (IIA) submitted been undertaken in accordance with all the relevant Regulations (including SA and HRA) and the National Planning Policy Guidance (NPPG)?

40. The answer to this question is closely linked to the adequacy of the HRA. An IIA can only be regarded as robust where its findings are founded upon reliable evidence. If the HRA contains unresolved uncertainties about the effectiveness of recreational disturbance mitigation, the environmental component of the IIA is correspondingly weakened.
41. In addition, the Council acknowledged that several significant evidence base documents post-dated Regulation 19 consultation and that further consultation and review work may be required. This further demonstrates that the appraisal process remains incomplete.

Question 1.12

Overall, how is the IIA adequate in its expression of why the Plan's preferred strategy and policies were selected, as opposed to other alternatives?

42. The Plan directs substantial growth towards the Hoo Peninsula, including some of the largest allocations in the Plan. The supposed justification for this approach depends significantly upon the assumption that environmental impacts upon the European Sites can be effectively mitigated.
43. Because the HRA does not provide convincing evidence, as required by Natural England's 2015 approach and the Bird Wise strategy, that SAMMS/Bird Wise has been effective during its decade of operation, the preferred strategy lacks sufficient certainty. The Hoo Peninsula SEP is also relied upon despite remaining undeveloped. The IIA therefore does not adequately explain why this strategy should be preferred over alternatives involving lower growth in the environmentally sensitive Hoo Peninsula.
44. For these reasons, STHP and High Halstow PC consider that the relationship between the IIA, SA and HRA is fundamentally weakened by the unresolved question at the heart of the HRA process: whether the mitigation strategy upon which the Plan relies is demonstrably effective in preventing adverse effects on the integrity of the European Sites. Until that question is answered through adequate evidence, the Plan cannot be regarded as sound in respect of its HRA, SA or IIA foundations.