

BHCC Informal Guidance Note (April 2022)

Environmental Assessments of Neighbourhood Plans and the process of obtaining a Screening Opinion

1. Introduction

1.1 This guidance note sets out and explains:

- The types of environmental assessments that may legally be required to be undertaken in relation to Neighbourhood Plans (see Section 2). This includes:
 - Strategic Environmental Assessment (SEA)
 - Habitats Regulations Assessment (HRA)
- The types of assessments that are not legally required to be carried out whilst preparing a Neighbourhood Plan, but that a group developing a Plan should be aware of (see Section 3). This includes:
 - Sustainability Appraisal (SA)
 - Environmental Impact Assessment (EIA)
- The process of how to find out whether any environmental assessments need to be carried out on a Neighbourhood Plan. This is referred to as “screening” (see Section 4).

1.2 All these assessments arise from EU obligations. Neighbourhood Plans must not breach and must be compatible with these obligations and a local planning authority has a duty to check and determine whether a Neighbourhood Plan meets these and other legal requirements (as set out in section 38A of the Planning and Compulsory Purchase Act 2004 and Schedule 4B of the Town & Country Planning Act 1990).

1.3 The UK left the EU on 31st January 2020. Under the UK-EU withdrawal agreement, a transition period ended on 31st December 2020, during which time all EU law continued to apply to the UK. During the transition period the UK needed to continue following domestic law that implements EU law, or directly applicable EU law that is given effect through the Withdrawal Act 2018. Beyond the transition period, the Environmental Assessment of Plans and Programmes Regulations (also known as the SEA Regulations), which transposed the requirements of the SEA Directive into UK law, will continue to apply as before unless and until new legislation is introduced.

1.4 There is not a standard answer to the question “*will our Neighbourhood Plan need to be subject to any type of environmental assessment?*”. This will depend on several factors including:

- The sensitivity of the surrounding environment, for example, will the Neighbourhood Plan cover an area within or near a nature conservation site of international importance, the South Downs National Park, a Site of Special Scientific Interest (SSSI), or any sensitive heritage assets?
- The scale of the proposals, for instance, will the Neighbourhood Plan allocate any sites for development? Will this development differ significantly from the proposals set out in the Brighton & Hove City Plan Part 1 and Part 2?
- The nature of the proposals, for instance, will the Neighbourhood Plan propose development that may require an EIA, such as a housing development over a certain size? (See Appendix 2).
- Whether the Neighbourhood Plan is likely to have any significant effects that have not already been considered by the SA of the City Plan Part 1 and Part 2.

1.5 Regardless of the area covered by your Neighbourhood Plan, or the type of development your Plan proposes, it must go through a screening process to find out if it needs to be subject to an environmental assessment.

1.6 Brighton & Hove City Council is happy to provide further advice on all forms of environmental assessment referred to in this guidance. The council does not want to make your plan preparation any more difficult than it needs to be. However, the Government has made it a formal requirement to submit either a Screening Determination or a Strategic Environment Assessment at submission stage (see Paragraph 4 of the Neighbourhood Planning (General) (Amendment) Regulations 2015) and is therefore necessary for any Neighbourhood Plan to proceed to examination.

2. Environmental assessments that may legally be required

Strategic Environmental Assessment (SEA)

2.1 Strategic Environmental Assessment (SEA) is required for certain plans or programmes that are likely to have significant environmental effects and is a requirement of 'The Environmental Assessment of Plans and Programmes Regulations 2004 (as amended).

2.2 The main objective of SEA is *“to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development”* (The Environmental Assessment of Plans and Programmes Regulations 2004).

2.3 SEA involves the assessment of the environmental effects of an emerging plan on specific issues including biodiversity, soil, water, air, climate, human health and population, material assets, cultural heritage, and landscape. The

assessment considers the positive and negative effects that the plan may have, as well as the combined, or cumulative impacts.

2.4 Not every Neighbourhood Plan needs a SEA, however, generally a SEA **will be required** where a Neighbourhood Plan allocates sites for development, such as for housing, employment, or community facilities.

2.5 In addition, a SEA may be required where a Neighbourhood Plan area contains or is near a nature conservation site of international importance, the South Downs National Park, a Site of Special Scientific Interest (SSSI), or any sensitive heritage assets.

2.6 It will also depend on whether the Neighbourhood Plan is likely to result in significant environmental effects, particularly those that have not already been assessed as part of the assessment of a higher tier planning policy (i.e., the City Plan Part 1 and Part 2).

2.7 To find out whether a SEA needs to be undertaken, a screening process must take place, ideally towards the start of the Neighbourhood Plan preparation process with some indication of the policies the Plan may include. Any significant changes to policies further into the process may require another screening to be undertaken (e.g., if sites for development are introduced or changes to housing densities). This is described in more detail in Section 4.

2.8 Where it is determined that the Plan is unlikely to have significant environmental effects (and accordingly does not require a SEA), a statement of reasons for the determination should be prepared. A copy of the statement should be submitted to the independent examiner in addition to the other documents formally required at submission stage.

Habitats Regulations Assessment (HRA)

2.9 There is a network of internationally protected sites, which includes Special Areas of Conservation (SACs), Special Protected Areas (SPAs), and RAMSAR sites. These sites are designated for their flora, fauna or birds under the Conservation of Habitats and Species Regulations 2017 (as amended). They are collectively known as the Natura 2000 sites.

2.10 All plans and projects, which may have a significant effect on an internationally designated site, are required to undertake a Habitats Regulations Assessment (HRA). This assesses their effect on the flora and fauna that are listed as the reason for the designation. Neighbourhood Plans may only proceed to examination where there are no likely significant environmental effects in these sites.

- 2.11 Within Brighton & Hove, there is one internationally designated site, Castle Hill which is designated as a SAC. There are other internationally designated sites within 20km of the city, including Lewes Downs (SAC), Ashdown Forest (SAC & SPA), Arun Valley (SAC, SPA & Ramsar) and Pevensy Levels (SAC, SPA & Ramsar).
- 2.12 A Neighbourhood Plan may require an HRA, but this will depend on its content and particularly its location, although impacts of development can often occur well beyond its boundaries (i.e., recreational disturbance).
- 2.13 To find out whether an HRA needs to be undertaken, an initial screening process will take place early in the Neighbourhood Plan preparation. This is explained in more detail in Section 4.
- 2.14 It is important to note that if a HRA is required, this automatically triggers the need to carry out an SEA.

3. Environmental assessments which are not legally required at Neighbourhood Plan preparation stage

Sustainability Appraisal (SA)

- 3.1 Sustainability Appraisal (SA) is required for Development Plan Documents (DPDs), such as a Local Plan. It is a process which aims to promote sustainable development by assessing the extent to which an emerging plan will help to achieve environmental, economic, and social objectives. A Sustainability Appraisal of a plan often incorporates a SEA as described above.
- 3.2 An SA is **not legally required** for Neighbourhood Plans. This is because a Neighbourhood Plan is not a DPD, as defined by the Planning and Compulsory Purchase Act 2004. Neighbourhood Plans have their own designation, they are a neighbourhood development plan produced by qualifying bodies under the 2004 Act. Even when a Neighbourhood Plan is “made” by a local planning authority following a successful referendum, and it becomes part of the development plan for the city, it does not change its designation into a DPD.
- 3.3 It is important to note that a Neighbourhood Plan is required to contribute towards the achievement of sustainable development as this is one of the ‘basic conditions’ set out in Paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990). A SA can be a useful tool for doing this. Even if a SA is not produced, the Basic Conditions Statement submitted alongside the Neighbourhood Plan must set out how the Neighbourhood Plan contributes to the achievement of sustainable development. The SAs prepared for the City Plan Part 1 and Part 2 may be a useful model and starting point for undertaking sustainability appraisal of a Neighbourhood Plan.

3.4 If a SEA is required, then it may be useful to incorporate the requirements of an SA, which in addition to an assessment of environmental impacts, would also include an assessment of social and economic impacts.

Environmental Impact Assessment (EIA)

3.5 Environmental Impact Assessment (EIA) is **not required** at Neighbourhood Plan preparation stage; however, it may be required at planning application stage for certain proposals that are likely to have significant effect on the environment.

3.6 The EIA regulations define two schedules of developments:

- Schedule 1 projects, e.g., oil refineries, power stations, or asbestos operations, must always be subject to EIA. A Neighbourhood Plan cannot incorporate these types of development, as these are classes of 'excluded development' as set out in the Localism Act.
- Schedule 2 projects, e.g., an urban development project (including housebuilding) over a certain size. EIA only needs to be carried out on a Schedule 2 project if the development is likely to have a significant environmental effect. A Neighbourhood Plan can include proposals listed in Schedule 2.

3.7 The formal requirement for EIA applies at planning application stage. However, if the Neighbourhood Plan identifies a site for a Schedule 2 development, and it is likely to result in significant effects, then this itself will trigger the requirement for an SEA.

3.8 For further information on types of projects classified under Schedule 2 see the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

4. Screening Processes

4.1 Two separate screening exercises will need to be undertaken to ensure the requirements of both the SEA Regulations and the Habitats Regulations are met. However, only one set of information will be required for the Council to provide both screening opinions.

4.2 It should be noted that the City Plan Part 1 and Part 2 has already been subject to a SA (incorporating the requirement of a SEA), and HRA.

4.3 In some circumstances the findings of these existing assessments may be sufficient to cover the effects of a Neighbourhood Plan, and a judgement on this will form part of the screening exercise. This will depend on the content and

policies contained within the Neighbourhood Plan and how these differ from that contained within the City Plan Part 1 and Part 2.

SEA Screening

4.4 Brighton & Hove City Council has a duty to ensure that emerging Neighbourhood Plans are screened to determine whether they are likely to result in significant environmental effects. For the Council to provide a screening opinion, some information about the content of the Plan will need to be provided by the neighbourhood group:

- What are the broad aspirations of the Neighbourhood Plan (e.g., what type of policies will the Plan cover, what types and amount of development will it include)?
- Do any of the elements of the Plan trigger the need for an EIA?
- Will the Plan propose a higher level of development for the Neighbourhood Area than that already identified in the City Plan Part 1 and Part 2 for that area?
- Will the Plan identify and allocate sites for development that are not included in the City Plan Part 1 and Part 2?
- What are the key physical environmental issues currently affecting the neighbourhood? Are there issues such as flooding, contaminated land, sewage treatment, pollution, and if so, how will these be addressed?
- What are the key social issues and how does the plan seek to address these?
- Will the Plan affect a nature conservation site of international importance, the South Downs National Park, a Site of Special Scientific Interest (SSSI), or any sensitive heritage assets?
- Will implementation of the policies in the Plan lead to major new development in the future, such as a new road which could lead to further development?
- Will cumulatively the impact of policies and proposals in the Plan, when assessed together, give rise to a significant effect, such as several small housing developments impacting on a nearby protected habitat?

4.5 It should be noted that if a Neighbourhood Plan is intending on allocating sites for development, a full SEA will be required.

4.6 The SEA Regulations sets out the criteria for determining the significance of effects on the environment, which will form the main part of the Screening Assessment. These are set out in Appendix 1.

4.7 Once the Screening Assessment has been carried out, the Council must consult the Environment Agency, Natural England, and Historic England on the initial findings before any formal response can be provided. The South Downs National

Park Authority may also be consulted on the Screening Assessment, depending on the area and location of the Neighbourhood Plan.

- 4.8 If the initial screening opinion suggests that an SEA is not required, screening may also be undertaken at a later stage of the Plan's preparation to ensure that there have not been any significant changes that would result in the requirement to carry out an SEA.
- 4.9 If the screening concludes that a SEA is required, the qualifying body must ensure an environmental assessment is carried out and that it fully meets the requirements and stages as set out in the SEA Regulations. The Council has a duty to advise and assist in ways considered appropriate to facilitate the making of proposals for Neighbourhood Plans, as well as having a duty to check that a submitted Plan meets the basic conditions and legal requirements.
- 4.10 If a SEA is required, it is recommended that you contact the Council to discuss the best way to progress this work. A brief outline of the stages of SEA can be found in Appendix 2.
- 4.11 As described under Paragraph 2.7 above, where it is determined that the Plan is unlikely to have significant environmental effects (and accordingly does not require an SEA), a statement of reasons for the determination should be prepared by the council. A copy of the statement should be submitted to the independent examiner in addition to the other documents formally required at submission stage.

HRA Screening

- 4.12 Brighton & Hove City Council is the competent authority under the Conservation of Habitats and Species Regulations 2017 and needs to ensure that Neighbourhood Plans have been assessed through the Habitats Regulations process.
- 4.13 A basic initial screening will be undertaken early in Neighbourhood Plan preparation to assess whether it is likely a HRA will be required. This initial screening will mainly be assessing whether any Internationally designated site could be impacted by the proposals within the Neighbourhood Plan. The initial screening will compare the similarities and differences between the types and amounts of development the Plan is proposing if available, and those set out in the City Plan Part 1 and Part 2.
- 4.14 The information provided for the SEA screening, as listed in the SEA Screening section above, will also be used to carry out the initial HRA screening.
- 4.15 As described under 4.2, a HRA screening was carried out on the City Plan Part 1 which concluded that the City Plan was unlikely to result in any significant

environmental effects on any of the local internationally designated sites. An updated HRA screening was undertaken during the preparation of City Plan Part 2 to reconsider the effects of growth associated with City Plan Parts 1 and 2 in combination with growth from other areas. The screening discounted significant effects on Castle Hill, Lewes Downs, Arun Valley and Pevensy Levels sites, however, could not discount significant effects on air quality in the Ashdown Forest SAC & SPA. An Appropriate Assessment was therefore undertaken which concluded that growth resulting from City Plan Parts 1 and 2 would not result in significant adverse effects on the Ashdown Forest SAC & SPA, either alone or in combination with growth from other areas

4.16 It is considered very unlikely that a Neighbourhood Plan will have any effects on the local internationally designated sites that are more significant than those resulting from implementation of the City Plan. However, as noted above, HRA screening is a legal requirement for your Neighbourhood Plan. The initial screening will be sent to Natural England for comments, at the same time as the SEA screening.

4.17 Through continual engagement, the Council will work with you to help ensure that any proposed developments or policies within the Neighbourhood Plan will not lead to any significant environment effects upon an internationally designated site.

5. Further information and contacts

5.1 Below are pieces of relevant legislation:

- [Environmental Assessment of Plans and Programmes Regulations 2004 \(as amended\)](#)
- [Conservation of Habitats and Species Regulations 2017](#)
- [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#)
- [Neighbourhood Planning \(General\) Regulations 2012](#)
- [Neighbourhood Planning \(General\) \(Amendment\) Regulations 2015](#)

5.2 National Planning Practice Guidance:

- [Strategic environmental assessment and sustainability appraisal \(last updated December 2020\)](#)
- [Neighbourhood planning \(last updated September 2020\)](#)

5.3 Neighbourhood Planning Guidance published by Locality

- [Understand if your plan requires a Strategic Environmental Assessment \(SEA\)](#)

5.4 Contact the Brighton & Hove City Council Planning Policy Team:

planningpolicy@brighton-hove.gov.uk

Appendix 1 Screening for Strategic Environmental Assessment

Criteria for determining the likelihood of significant environmental effects for Strategic Environmental Assessment

These criteria are taken from Schedule 1 of the SEA Regulations and must be taken into account when making a determination under Regulation 9 of the SEA Regulations, e.g., providing a Screening Opinion.

The Characteristics of the Plan or Programme, having regard to:

- (a) The degree to which the plan sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
- (b) The degree to which the plan or programme influences other plans including those in a hierarchy;
- (c) The relevance of the plan for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d) Environmental problems relevant to the plan;
- (e) The relevance of the plan for the implementation of community legislation on the environment (plans linked to waste or water protection)

The Characteristics of the effects and of the area likely to be effected, having regard to:

- (f) What is the probability, duration, frequency and reversibility of the effects of the plan?
- (g) What is the cumulative nature of the effects of the plan?
- (h) What is the trans-boundary nature of the effects of the plan?
- (i) Are there any risks to human health or the environment (e.g., due to accidents)?
- (j) What is the magnitude and spatial extent of the effects (i.e., geographical area and size of population likely to be affected) of the plan?
- (k) Is the value and vulnerability of the area to which the plan or programme relates likely to be affected by the plan due to:
 - Special natural characteristics or cultural heritage;
 - Exceeded environmental quality standards or limit values, or
 - Intensive land use?
- (l) Will the plan have an effect on area or landscapes, which have a recognised national, community or international protection status?

The full Regulations can be found as follows:

<https://www.legislation.gov.uk/ukxi/2004/1633/contents/made>

Appendix 2 Stages of Strategic Environmental Assessment

Stage A – Scoping Stage including initial consultation

- This stage is carried out at the same time as evidence and local information gathering to help identify issues to be addressed by the Neighbourhood Plan, and whilst the vision and objectives for the Plan are being developed.
- This stage sets the SEA contact and objectives, establishes the local baseline information, and decides on the scope of the SEA
- This stage involves the production of a Scoping Report, which must be subject to consultation including with the three statutory environmental bodies (Natural England, Historic England and the Environment Agency) in accordance with Regulation 12 (5) of the SEA Regulations.

Stage B – Developing and refining objectives, options, policies and sites

- This stage is carried out as the objectives, options, policies and sites for the Neighbourhood Plan are developed and refined.
- This stage involves the assessment of the objectives, options, policies and sites contained within the Plan, as well as alternative options, including the ‘no Neighbourhood Plan option’ and any other reasonable alternatives, with an aim of identifying the environmental effects and choosing the most sustainable option.
- This stage also involves identifying mitigation to reduce adverse effects, and ways of maximising beneficial effects.
- Measures to monitor the likely effects should also be proposed at this stage.

Stage C – Production of Environmental Report

- This stage essentially involves bringing together all the information from Stages A and B into a report, ensuring that all the requirements of Regulation 12 (and Schedule 2) of the SEA Regulations are met.

Stage D – Consultation of Environmental Report

- The Environmental Report should be published for consultation alongside the Neighbourhood Plan, in accordance with Regulation 13 of the SEA Directive.

Stage E – Post-adoption Report and Monitoring Stages

- This stage comes into place once the Neighbourhood Plan is adopted.
- This stage involves production of a statement that summaries the main stages of SEA and how the results of the SEA findings and consultation have been taken into account.
- The statement also finalises the monitoring arrangements, which are put in place to ensure the predicted significant environmental effects are measured and reported on a regular basis.

Diagram to show SEA stages and Neighbourhood Plan preparation

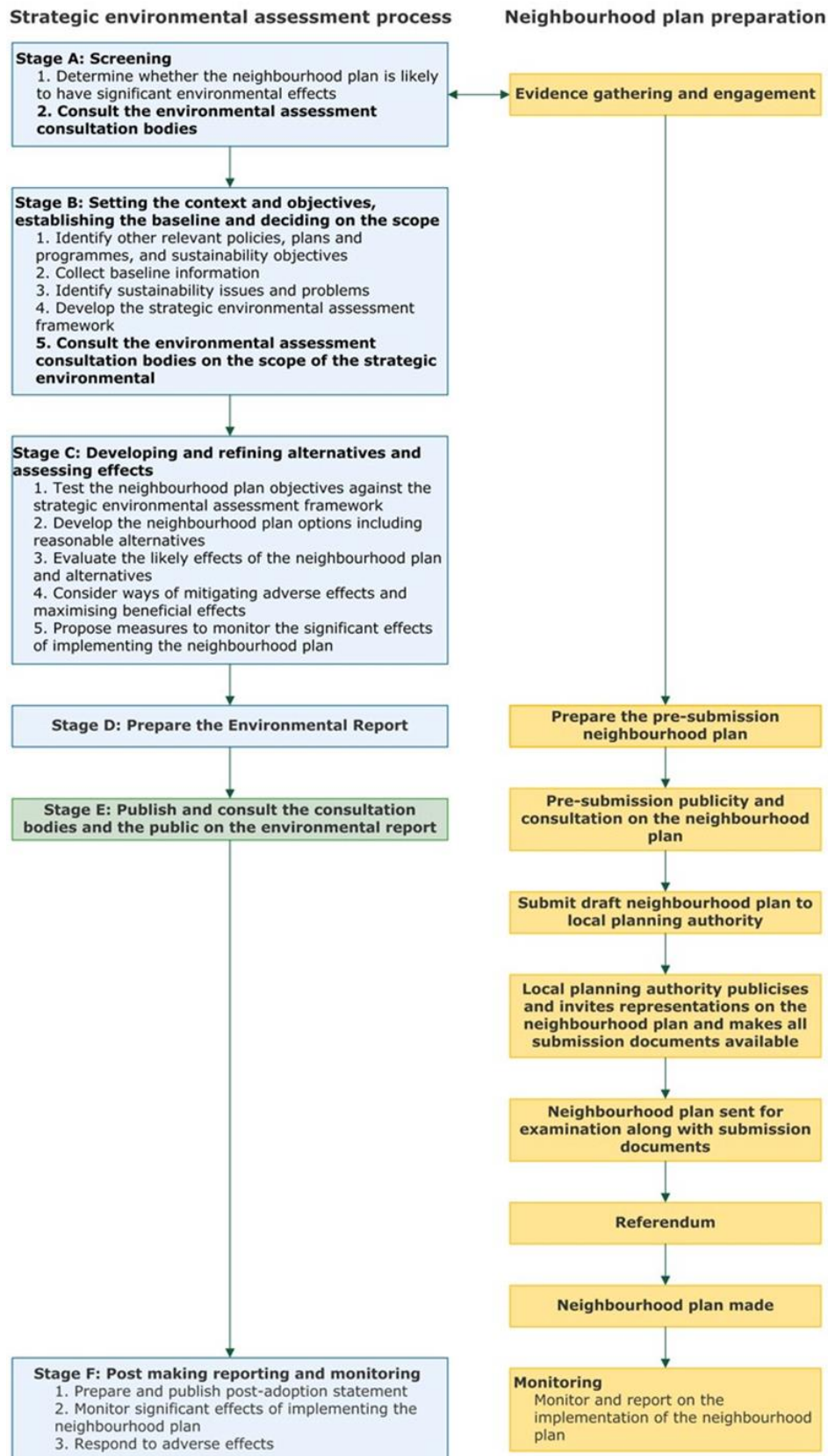


Diagram taken from: <https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal>