Local Plan Part 2: Sites and Development Management
Main Modifications and draft Mitigation Strategy
Representation Form

Name of the DPD to which this representation relates:
New Forest District (outside the National Park)
Local Plan Part 2: Sites and Development Management

Please return to New Forest District Council by 15 November 2013

Please note that your representation will be made available for public viewing at Appletree Court, Lyndhurst and via the Council’s website. (Personal information such as signatures and telephone numbers will not be published on the website).

There are two sections –
Part A – Personal Details
Part B – Your representation(s).

Please fill in Part A, and a separate Part B for each representation you wish to make.

### Part A

1. Personal Details**
   * Mandatory field

   **If an agent is appointed, please complete the Title, Name and Organisation boxes for your client in 1, plus the full contact details of the agent in 2.

   If you have previously made representations on this Plan, please give your representee ref. here:

   **Title**
   **Mr**

   **First Name**
   **John**

   **Last Name**
   **Penny**

   **Job Title**
   **Operational Director**

   **Organisation**
   **RPS**

   **Address Line 1**
   **Forest Lodge Farm**

   **Line 2**
   **Fawley Road**

   **Line 3**
   **Hythe**

   **Line 4**
   **Southampton**

   **Post Code**
   **SO45 3NJ**

   **Telephone Number**
   **01235 821888**

   **E-mail Address**
   *(where an email address is given, this will be used as the primary means of contact)*
Part B – Please use a separate sheet for each representation

(\textit{Part A MUST also be completed})

\textbf{Name or Organisation :}

3. To which matter does this representation relate?

\begin{itemize}
  \item[i.] Main Modification to the Local Plan Part 2: Sites and Development Management
  \begin{itemize}
    \item Main Modification Ref. (i.e. MM1) \hspace{1cm} MM10
    \item Local Plan Part 2: Para. or Policy number \hspace{1cm} N/A
  \end{itemize}

  OR

  \item[ii.] The draft Mitigation Strategy Supplementary Planning Document
  \begin{itemize}
    \item Draft Mitigation Strategy Paragraph No. or Project Reference \hspace{1cm} Page 28, ref2 HYD2
    \item \hspace{1cm} Page 43, ref2 HYD2
  \end{itemize}

  OR

  \item[iii.] If you wish to comment on the Infrastructure Delivery Plan tick here. \hspace{1cm} N/A
\end{itemize}

If commenting on a modification to the Local Plan Part 2 (including the revised Habitats Regulations Assessment and Sustainability Appraisal) please fill in sections 4 – 9.

If commenting on the draft Mitigation Strategy, please fill in section 10.

If commenting on the Infrastructure Delivery Plan, please fill in section 11.

4. On this matter, do you consider the Local Plan Part 2: Sites and Development Management is :

\begin{itemize}
  \item[4.(1)] Legally compliant \hspace{1cm} Yes \hspace{1cm} No \hspace{1cm} No
  \item[4.(2)] Sound* \hspace{1cm} Yes \hspace{1cm} No \hspace{1cm} No
\end{itemize}

\textit{(* The considerations in relation to the DPD being ‘Sound’ are explained in the National Planning Policy Framework)}

If you have entered No to 4.(2), please continue to Qu 5. In all other circumstances, please go to Qu 6.

5. On this matter, do you consider the Local Plan Part 2: Sites and Development Management is \textbf{unsound} because it is not:

\begin{itemize}
  \item[1.] Justified
  \item[2.] Effective \hspace{1cm} \checkmark
  \item[3.] Consistent with national policy \hspace{1cm} \checkmark
\end{itemize}
6. Please give details of why you consider the Local Plan Part 2 (as proposed to be modified by the Main Modifications) is not legally compliant or is unsound on this matter. If you wish to support the legal compliance or soundness of the Local Plan Part 2: Sites and Development Management, please also use this box to set out your comments.

Introduction

1. On behalf of Mr J Penny of Land at For est Lodg e Far m, R PS submits the following representations in respect of the September 2013 Main Modifications document and the related Draft Mitigation Strategy.

2. The representations primarily direct themselves towards MM10, and the consequential effect of the approach adopted in MM10 and related policy, on the housing and open space allocations (MM50) in the Hythe and Dibden area. Our representations may have consequences to other parts of the consultation documents but RPS is instructed to highlight the consequences for this area of the plan only.

3. In essence our representations identify what we believe to be an error in the HRA documents that underpin an important part the Main Modifications document. That error needs to be corrected. The consequences of this error, and in particular its remedy, remain to be seen.

4. To go some way to redress this error but also to reduce further potential adverse impacts upon European sites, RPS has suggested an amendment to Policy DM2b to require an additional level of scrutiny or screening for any site within any 400m buffer zone, but also to add an additional site as has been done elsewhere in the plan (e.g. MM67), in order to avoid the adverse effects arising from the Cabot Drive site allocation (HYD2 under Policy CS11). This new site could be allocated to ensure housing continues to be delivered in the plan area in the short term; something that may not be possible if the Cabot Drive site is unable to proceed for reasons including the potential conflict with a European site. The new site also has the considerable advantage of having land and available for SANGS if required, immediately adjacent and within the same ownership.

Representations to MM10

5. RPS acknowledges the difficulties that New Forest District Council and indeed other planning authorities face when applying the Habitats Regulations Assessment (HRA) to land use plans in the UK. Under Article 6(3) of the Habitats Directive, an assessment must determine whether or not a plan will adversely affect the integrity of European sites. Where negative effects are identified, the process requires alternatives to be considered, and only if there are ‘Imperative Reasons of Overriding Public Interest’ (IROPI) should one continue with the proposal.

6. The authority has gone to some length in their HRA to identify the likely significant effects of their proposed housing sites upon the relevant European sites.

7. In the case of the Cabot Drive site (HYD2) they have identified that the European site likely to be affected is the Solent and Southampton Water SPA, SAC and Ramsar sites (refer to Habitat Regulations Assessment January 2012 and September 2013).

8. However, whilst the allocation of the Cabot Drive site for approximately 25 residential units (as well as for educational purposes) may well have a significant effect upon the Solent and Southampton Water European site, it is much more likely to have a significant effect upon the New Forest SAC, SPA and Ramsar site.

9. Cabot Drive is within 400m of the buffer area with the New Forest Site (a commonly used, and accepted, buffer distance to highlight potentially significant effects and as used, for
example, by the National Park Authority – see ref at ID/7 para 4.3), and yet no assessment or screening has been under taken of its potential effects. No assessment has been made of this sites impact on the New Forest SAC and SPA in either the Habitat Regulations Assessment of Proposed Submission Document (January 2012), nor the Habitat Regulations Assessment of Submission Document and Main Modifications (Revised September 2013). In both cases the authority has assessed the Cabot Drive site as if it only affects the Solent and Southampton Water Site, and in the case of the 2012 document, the authority even go on to state on page 25 that the site is within 400m of the Solent Site which is evidently not the case (see Appendix 1).

10. The absence of identifying the New Forest Site as one which will be affected by the Cabot Drive allocation is an error by the Council.

Soundness and Legal Compliance

11. Ecologists at RPS have looked at this issue and based on their experience elsewhere in the Country have indicated that this omission needs to be rectified. In the absence of properly considered habitats assessment to understand impacts, and the consequences of those effect (possibly ruling out or altering a policy or allocation), the document must be considered unsound. Not correcting this deficiency would also lead to a plan that is not effective in terms of its ability to deliver the requirements of CS11 (in the form of the Cabot Drive site) in a satisfactory manner. This is something that the Inspector raised as a concern in his note ID/4 and again in ID/7 at paragraph 3.

12. The document may also not be legally compliant as an assessment of the effect of the development of Cabot Drive upon the new Forest European site has not been undertaken at all. This omission is significant and cannot be hidden or excused on the basis of an argument that the plan as a whole is considered acceptable. In the opinion of RPS the removal of the Cabot Drive site may be enough to render the document lawfully compliant, and for that site to be replaced with a site which can provide its own SANGS, otherwise the plans, we would argue, is not in our opinion legally compliant in this regard.

Recommended Changes

13. If we are right in identifying this as an error, the Council must undertake a further habitat assessment for the Cabot Drive site, but this time in respect of potential for adverse effects upon the New Forest European site. The consequences of this further assessment, or as a way to mitigate against the adverse effect on the European site, may require or justify an alternative approach in order to avoid this weakness.

14. In the opinion of RPS residential development as proposed for the Cabot Drive site will lead to significant effects on the New Forest and this effect is likely to be greater than might otherwise be the case by virtue of its close proximity to the edge of the New Forest i.e. within a 400 m buffer zone (see RPS Plan 1). On this basis mitigation measures will need to be identified which are significant enough, and can be delivered with sufficient certainty, in order to avoid an adverse effect on the integrity of the New Forest European site.
15. Such mitigation would ideally need to be found either within or adjacent to the site (so as to intercept dog walkers etc from straying into the Forest area), in order to effectively compensate for the impact arising directly from the Cabot Drive site. The Council’s own consultants, LUC, in their Addendum to Habitat Regulations Assessment of Proposed Submission Document, dated August 2013, page 53, para. 6.29. first bullet point, accepts this proposition.

16. In respect of relevant data, RPS find it extremely surprising that any proposed residential allocation identified as being within or adjacent to a 400m buffer zone i.e those scoring a ‘9’ using the ‘Relevant Criteria’ in the HRA document September 2012, should be allowed to proceed on the basis of some generic mitigation strategy. At that point it would have been sensible for alternative sites to be considered that were beyond the 400m buffer zone and by definition likely to have less effect. This, in the opinion of RPS, should still be the preferred approach that the authority should take in these cases within the Mitigation Strategy.

17. In the opinion of RPS sites within or immediately adjacent to a European Site, should not be allowed to proceed unless more detailed screening of their effects has been undertaken and then not until site specific (as opposed to generic or remote) measures are proposed. Each site due to its size, nature, and relationship to surrounding land uses or features is likely to differ from an opensite to a diversely affected nearby European Sites. This level of analysis for sites within or immediately adjacent to European sites is required given the importance of these features. Without this level of analysis there is an absence of data and an absence of certainty over the effectiveness of mitigation. This combination of these weaknesses, particularly for sites within any 400m buffer zone, risk non-compliance with the Directive – or at the least not in the spirit of the purpose of the Directive.

18. Notwithstanding the outcome of a further habitat assessment of the Cabot Drive site, RPS would seek alternative wording to the changes proposed in MM10. In the paragraphs accompanying new policy DM2b, as well as the policy itself, RPS seek changes which clearly acknowledge the increased propensity for residential sites within 400m of a European site to adversely impact that site and for that reason to require those sites to provide SANGS within the site or immediately adjacent to that site. Only in these circumstances should they be allowed to proceed.

19. Given the way the authority have applied the HRA to their allocated sites, and thus developed a generic approach to offset impacts from new as well as existing development, RPS would reluctantly accept that for sites beyond a 400m buffer, one might well rely upon remotely located SANGS for mitigation. However this approach is not safe when considering sites within a 400m buffer zone.

20. When one then considers the security of mitigation, then there is a considerable question mark over the deliverability of the SANGS on which the Cabot Drive residential allocation relies. The Council we understand has identified that the SANGS under MM50 are not presently available, and may only be available at a significant cost. It is understood that the monies to acquire these SANGS depends upon developer contributions (for example through the CIL route), as well as landowner consent. Developer contributions, particularly at such a late stage in the plan review process depend upon the ability of particular sites to have the flexibility in value to pay such contributions.

21. In respect of the Cabot Drive site not only do we understand that the owner, Hampshire County Council, have yet to commit to making the site available for development, but the viability itself of the site must be in question too. There is not only these question marks over the Cabot Drive site, but other parties have made representations to the effect that this site is not available to be released for residential purposes as it was bequeathed to the County on the basis that it was to be used as educational purposes only.

22. In light of the above and bearing in mind that the Council and Inspector are quite rightly wanting to deliver sustainable and otherwise environmentally acceptable development within this constrained area of the district, an alternative approach to the allocation of Cabot Drive would be to define a suitable alternative site, certainly in the short term if not
in the long term. This approach is something that the Inspector has encouraged in the case of sites in New Milton, where there has been similar doubt over deliverability (see MM68).

**Replacement of or addition to Cabot Drive**

23. To avoid some of the above problems associated with the Cabot Drive site, including the further work required to understand its impact upon the New Forest European site and then to find further mitigation measures (if any are available and deliverable to try to offset the adverse effects), the Council and Inspector are respectfully requested to take this opportunity to find a suitable and better alternative site. NFDC50 at paragraph 34 anticipates this approach.

24. Land at Forest Lodge Farm to which representation no. 226 relates, avoids the criticisms of unsoundness to which the Cabot Drive site and the Plan is presently vulnerable to, and possess the following attributes:

a. The land is in single ownership unencumbered by any covenant and is available;
b. The site is a brownfield site (see aerial photograph at Appendix 2) with lawful use. The Inspector is requested to visit the site to understand its nature and character;
c. The site benefits from development layouts that have already been prepared to show how the site can be developed for residential purposes either with the proposed HYD1 allocation, or independently from it;
d. The site is beyond any 400 m buffer of either the New Forest or Solent and Southampton European sites (see plan at Appendix 1);
e. The Council has already undertaken a sustainability appraisal of the site and found it to be acceptable in principle. The Council has also recently accepted that the site is capable of redevelopment in principle in recent pre-application advice;
f. There is suitable land adjacent to this alternative site which is within the same ownership and can be made available as a SANGS (see plan at Appendix 3). If brought forward as SANGS for a newly allocate Forest Lodge Farm site under Policy CS11, it is already well connected to adjacent footpath networks and other amenities and would be extremely effective at avoiding adverse impacts that might otherwise occur on either the Solent or New Forest SAC, SPA areas;

**Conclusion**

25. In light of the above RPS consider it necessary for a further habitat assessment to be undertaken for the Cabot Drive site in order to assess its effects on the New Forest European site.

26. Notwithstanding the outcome of the above assessment, the authority and Inspector are requested to alter MM10 in order to properly identify a higher test for any residential site that falls within or immediately adjacent to the 400m buffer zones surrounding the European sites. Sites falling within or immediately adjacent to these buffer zones must provide mitigation on site or immediately adjacent.

27. In the absence of the above the plan is unsound and arguably not legally compliant.

28. Replacing Cabot Drive with land at Forest Lodge Farm, which can provide its own SANGS (Appendix 3) may be a way to avoid a legal compliance and soundness issue. Allocating Forest Lodge Farm as a C11 site would also aid in housing delivery generally and in the short term, as it does not possess the considerable difficulties in successfully and lawfully delivering the Cabot Drive site.
8. If your representation is seeking a change to the Local Plan Part 2, do you consider it necessary to participate at the oral part of the examination?

| No, I do not wish to participate at the oral examination | Yes, I wish to participate at the oral examination |

9. If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the oral part of the examination.

Comments on other documents, for consideration by NFDC.

10. Please state here your comments on the draft Mitigation Strategy.
11. Please state here your comments on the Infrastructure Delivery Plan.

(Continue on a separate sheet /expand box if necessary)

Signature: Date: 15/11/2013

Representations should be posted to:  Or e-mailed to: sdmrepresentations@nfdc.gov.uk
Policy and Plans Team
New Forest District Council
Appletree Court
Beaulieu Road
Lyndhurst
Hampshire
SO43 7PA

Representations should be received by no. later than 5pm on 15th November 2013.