New Forest District Local Plan – Part 2

Main Modification 10 - Policy DM2B

Statement for Meyrick Estate Management Ltd

Prepared by Jackson Planning

January 2014
1. This statement is made on behalf of Meyrick Estate Management Ltd (MEM) for the resumed hearing on 21 January 2014. MEM Ltd made representations to the pre-submission stage of the plan and was represented at the main hearings. The reference number is representation 370.

**Policy DM2b**

2. MEM has concerns about the adequacy and drafting of policy DM2b and the effectiveness of delivery as set out in document NFDC46, which is the main evidence to support the policy. This statement is in response to the Inspector’s questions in ID/18 and the comments of the Council in NFDC50.

3. On the basis of the evidence prepared by the Council and with DM2b as drafted MEM believe it is not a sound policy and therefore does not provide a robust and effective framework for the protection of the European Sites. The Inspector questions the efficacy of the policy as a whole to mitigate likely effects on the European sites, in particular whether the selected approach is justified.

4. Policy DM2b assumes that the mitigation measures will be effective. That is not appropriate; residential development must be prevented until it is certain that mitigation will be effective to be consistent with policy DM2a. A suggested modification of the policy wording was included as part of the representations made in response to the consultation on the main modifications, this is included below at appendix B. This is a stronger worded policy that requires residential development that is likely to have a significant effect on the ecological integrity of the European site to demonstrate that adequate mitigation is put in place before development is permitted. The Inspector suggests a link back to policy DM2a as a means to strengthen the policy.

5. The Inspector has expressed concerns regarding the overall delivery, funding and monitoring of mitigation in paragraphs 23-28 of his questions in ID/18. This places further emphasis on
the proposed mitigation strategy as proposed in the SPD (NFDC46) being tested at this stage rather than as a consideration of the supplementary document. Particularly where the mitigation has land use implications that are transposed into the Part 2 Local Plan.

6. The Council acknowledge in NFDC50 that they did not carry out an extensive exercise of evaluating potential alternative SANGs sites. (NFD50 paragraph 18). This implies they only carried out limited testing of the effectiveness as they did not test alternatives; it is difficult to see how this approach to mitigation is justified. Furthermore there seems to be a double standard applied to sites identified for residential development in the Part 2 Local Plan where the SANGs do not meet the minimum threshold criteria in the policy as highlighted in the Inspector’s paragraph 11 of ID/18. It appears that it is convenience rather than the genuine application of SANG capacity or quality that has driven the selection of the SANG sites. The SANGs have been in effect ‘retro fitted’ to existing housing allocations and this is the reason that the capacity for SANGs quoted is lower than standards in the policy DM2b and is lower than the in practice standard used in both the Thames Basin Heaths and Dorset Heaths where is it acknowledged that 8ha/1000 population is considered at the lower end of the scale. This suggests that the whole approach to habitat mitigation is not likely to be effective.

7. The Inspector repeats the question raised in MEM’s consultation response that clarification is needed on what types of development are required to provide mitigation. The first line of the policy in MM10 states ‘Development’, this should read “ new residential development”. The policy is not necessary for other types of development that do not generate additional pressures on the European sites.

**SANG sites strategy in policy DM2b**

8. The Inspector questions the strategy for SANGs to be delivered as set out in ID/18 paragraphs 4 and 5. The Council have set out three categories for SANGs. However, these are not ‘true’ SANGs as commonly accepted and now well-established in the Thames Basin Heaths and in South East Dorset.
9. The policy DM2b requires SANG as new informal space of 30-40ha. This is entirely new open space capacity, which will act as a diverter of trips to the New Forest or Solent Coast European sites. In this respect it must meet the quality threshold to achieve its aim. The quality of these spaces should be set out in the Local Plan 2 to ensure that mitigation is effective. However, there is no scrutiny of the quality of the proposed mitigation by third parties in the SPD as that is not be examined.

10. The Inspector has rightly highlighted the contradiction of existing open space with SANGs quality with no existing public access. This category of mitigation must be clarified. He also highlights issues of existing open space being changed in character, and providing mitigation, but where this sits in the suite of mitigation is not clear. This appears to have been an expedient option rather than any proper assessment of SANG sites in terms of both quality and capacity and the examination of potential alternatives.

11. The lack of any detailed assessment of SANG qualities including minimum size and length of walking routes is a concern as expressed by the Inspector in paragraph 9 of ID/18. The Council in NFDC50 suggest that the mitigation measures are tested against the performance criteria. However, this is not an assessment of the sites themselves. It would be more effective to assess the performance of each site against the mitigation criteria and part of that must include the size of the site in comparison to the size required by policy DM2b. For example, if the site does not meet the threshold standard of policy Dm2b it should be made clear how that site would then provide adequate mitigation for example with other features or an additional top-up payment made to purchase ‘mitigation credits’ to be provided in free standing SANGs and other projects.

12. The draft SPD suggests a site threshold for delivery of SANG of 0.5ha; this is quite a low threshold for physical provision that means that commensurate SANGs would be small and potentially fragmented. The emerging policy in Christchurch (CBC) and East Dorset (EDDC)
(the adjoining neighbouring Dorset authorities) identifies 50 units as the cut off where physical provision must be made to provide effective mitigation.

13. The Council have produced SANG criteria in the SPD. For ease of comparison I have set out in Appendix A the NFDC criteria compared to the proposed quality criteria in the EDDC and CBC joint Core Strategy. This shows the wide discrepancy in quality terms of the NFDC approach and suggests that the nomenclature of the Council is not appropriate and will cause confusion to developers and consultees who understand SANG (from Dorset and the Thames Basin) to be a more significant provision than envisaged in policy DM2b. The NFDC approach appears to be that almost any open space site can be a SANG as long as it can have an attractive natural environment.

14. The Inspector raises the question of whether developers will be able to understand what is required for an effective SANG, and whether it will effectively mitigate. Small and fragmented SANGS are unlikely to achieve the appropriate level of mitigation as the Inspector has questioned at paragraph 10 in ID/18.

15. An example of this is the proposed SANG New Milton–Proposal NM2, it is a very small site of 0.3 hectares, this is not of sufficient size to accommodate a diversion of trips otherwise made to the New Forest SPA and is at best only a local open space, it is surrounded by housing, and is to be further developed with enabling development, so it cannot replicate the SPA site qualities and therefore cannot be considered as SANG. MEM Ltd are able to provide a suitable sizeable SANG for an alternative proposal in New Milton incorporating Great Woar Copse to support the mixed development of housing and employment as set out in the representations 224 on behalf of Taylor Wimpey UK Ltd. This proposed SANG is of sufficient size and quality to divert trips to the New Forest SPA.
16. Whilst the Council acknowledge that they do not have a comprehensive evidence base to support the mitigation package, they justify their unique approach based upon proximity to New Forest as set out in paragraph 6.26 of the LUC report (NFDC47). However, the consultants appear to be asking the wrong question: they say that it is not conceivable that any form or quantity of SANGs could compete with the attraction of New Forest District. However, this is also the case in the Dorset Heaths and the Thames Basin Heaths, the more pertinent question is: How the SANG performs in terms of convenience and accessibility coupled with attractive qualities to act, as the name suggests, as an ‘alternative’?

17. The same problem with regard to the attraction of both the New Forest and Coast was acknowledged in the research carried out in the South East Dorset Greenspace Study completed by Footprint Ecology in 2008. The research report was in two parts: part 1 looked at access patterns to greenspace in South East Dorset based on empirical research as a result of a large household survey. The Part 2 Report was interpretive and looked at how the empirical research could predict the consequences of future housing and greenspace provision in the conurbation to allow for informed decisions in relation to the mitigation of harmful effects on the European/Natura 2000 heathland sites. The Report’s authors suggest the following:

“It would therefore appear critical that SANGs are different to existing greenspace. In terms of design SANGs potentially need to replicate the experience visitors have when visiting the heaths or the coast. It may therefore be features such as extensive vistas, sense of space and presence of semi-natural habitats (or at least a wild feel) that are important.”

18. The Part 2 Report recognised in SE Dorset that both the New Forest and Hengistbury Head give a significant skew to the pattern of heathland visits. It would appear that LUC’s research has not considered that the very same problem in New Forest also occurs in Dorset and what it needs is a careful approach to each development site to achieve the appropriate
mitigation to prevent any harmful effects on the European sites rather than the negative response implicit in the LUC report, and the lack of ambition in NFDC’s draft SPD.

19. SANG is different from other greenspace, and is primarily catering for the daily and weekend dog walker, and must be of sufficient size and quality so that residents don’t resort to their cars and drive to the more sensitive sites. This is the basis for European mitigation and the basis of the alternative provision. This is recognised by the Council in NFDC46 paragraph 2.19

“Alternative green space – the report states that any alternative green space must be very carefully considered in terms of its ability to attract people who would otherwise visit the New Forest…….. It concludes that the visitors who are likely to be the easiest to divert from the New Forest are those who do not stay overnight and that potential alternative green spaces need to be located closer to development areas than the sensitive site to be protected and might be found within parts of the New Forest that currently have no public access. These would need to be located in area of low sensitivity to disturbance. Sites to attract dog walkers should provide safe off-road parking, a range of routes, and be in locations perceived to maximise enjoyment of the dog.”

20. However, this solution is not reflected in the practical choice of sites provided in the SPD (NFDC46) and appears to support the position that there has not been a proper assessment of SANG sites and alternatives. There appears to be have only been a reclassification of other greenspace sites.

21. It is acknowledged that part of the answer is to have the stick as well as the carrot and therefore access management is an essential component of the mitigation. However, it is clear that both strands of the mitigation need to be effectively delivered.

22. The alternative strategy for European mitigation is in part set out in policy DM2b but the details of the projects are in the SPD. This lists the SANGs necessary to ensure mitigation is provided at the correct level for the delivery of the development planned as a whole. This is necessary for proper planning of the area (discussed below) and is necessary to assist with the double counting of CIL where physical SANG provision is made by a developer, although this is problematic as discussed below in paragraph 27 - 33.
23. Another major flaw of policy DM2b is that it is not in itself effective as it relies on mitigation that is not certain. The current draft wording relies on the European Mitigation Strategy SPD. This is currently in draft, subject to consultation, and is not tested. A significant concern of the draft SPD is that the list of mitigation projects are not to be subject to scrutinised for soundness at examination. MEM are of the firm opinion that the critical mitigation projects need to be subject to examination, and therefore should be part of the Local Plan Part 2. Regulation 5 and 6 of 2012 Local Planning Regulations limits the contents of SPD, and Regulation 5 (1) (a) (i) and (ii) provides that any document dealing with (i) the development and use of land which the local planning authority wish to encourage during any specified period; (ii) the allocation of sites for a particular type of development or use is a DPD and not an SPD. In addition, as examined below, the policy does not deal with the effective distribution of SANG.

**Proposed alterations**

24. To overcome the problems identified above it is suggested that either the ‘SANGs’ are renamed in NFDC, or make sure all SANGs in NFDC are consistent with accepted SANG practice that is well established in the neighbouring authorities by reviewing the SANGs proposed so they meet the quality thresholds of ‘replicating the visitor experience’ to include an element of wildness, sense of space, naturalness, and are of sufficient scale to achieve that effectively.

25. The difference between a SANG allocation and what is termed mitigation improvements to existing open space in the SPD is unclear. It appears there is an element of double counting with capacity. It is also not clear how these two types of SANG provision would attract contributions from CIL and maintenance payments. There are also issues highlighted by the Inspector in ID /18 paragraph 29 that indicate the loss of formal open space to habitat mitigation projects and the implications for development proposals.
CIL and SANG issues

26. CIL payments and SANG provision are a serious concern with regard to habitat mitigation. The Inspector reviewing the Poole CIL charging regime noted that CIL severed the direct link between development and mitigation, but did not resolve the issue as part of her consideration of the CIL charging schedule.

27. The Draft mitigation strategy (NFDC46) at paragraph 7.18 relies on the land for SANG to be provided as a ‘payment in kind’ to avoid double charging. This may not always be possible as the landowner may not wish to dispose of the land to the charging authority. Private SANG provision that achieves the same habitat mitigation cannot be precluded, so must be allowed for in policy to avoid CIL double charging.

28. The CIL charging schedule with a rate of £80 per square metre for residential development was developed before the NFDC 46 was prepared and it did not consider the SANG mitigation costs. There are likely therefore to be problems with delivery of sufficient habitat mitigation at the £80 rate. Given that the SANG opportunity land costs are not included in the CIL charging schedule viability calculations of the ‘benefit in kind’ route is effectively seeking a significant subsidy from the landowner. This is likely to be resisted by developers who would favour paying the CIL off-site rather than lose the value of SANG land that Natural England have estimated to be between £50,000 - £90,000 per hectare (based on a capitalisation of setting up costs).

29. It must therefore be for the Local Plan Part 2 with the SPD to direct practical arrangements to deliver the appropriate mitigation whilst avoiding double charging, or avoidance of physical SANG provision by paying CIL only and not providing the land. You cannot have both CIL and SANG as envisaged in the draft mitigation strategy (NFDC46) for fear of double charging with regard to European mitigation where the SANG land remains in private control.

30. It is essential that the Local Plan Part 2, the SPD and the CIL Charging Schedule effectively provide the framework to ensure that Habitats compatible development is delivered,
without this the plan would be inconsistent with national policy and could not be found sound.

31. The other significant problem with CIL and SPA mitigation is affordable housing, which is not required to make CIL payments. The solution in the SPD is that private development must cover all housing development including affordable where habitat mitigation is required. The difficulty with this solution is for the Council to know that appropriate mitigation is provided for the development proposed. How, for example, is habitat mitigation to be secured for 100% affordable housing exception sites? Those would in effect have no mitigation, and cannot meet the habitats directive.

32. Given that the CIL regulations require change to local policy to reflect the implementation of CIL, it is possible to pre-empt this with changes to this plan. The list of what would be the Regulation 123 projects could be included in more detail in the IDP, and expressed spatially on the proposals map. This way the projects will be subject the examination and avoid the issues highlighted in paragraph 9 above.

33. By including the land use specific SANG requirements in the plan under policy DM2b with the express requirement to take opportunities to link this with existing or proposed green infrastructure is the sound approach since:

   (i) It avoids the uncertainties over the SPD and the difficulties with relying upon CIL.

   (ii) This should be paralleled by an approach of listing the specific Habitats mitigation infrastructure that will be funded through CIL on the regulation 123 list and in detail in the IDP, consistent with the CIL Guidance and making it clear other such projects will not be funded by CIL thus avoiding the issue of double counting.

34. Alternatively those sites that provide a physical SANG could have a nil rated CIL tariff to avoid double counting.
## Appendix A

<table>
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<tr>
<th>Dorset Heaths SANG criteria</th>
<th>Proposed NFDC SANG criteria</th>
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<tbody>
<tr>
<td>SANGs are principally for the local population within a 400 metre catchment around the site or designed to primarily attract visitors who arrive by car (or both)</td>
<td>SANGs, where possible, being located closer to the development to be mitigated than the sensitive part of the European site to be protected to encourage access from the home by walking, thereby increasing convenience and likelihood of use.</td>
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<tr>
<td>SANGs must be designed so that visitors are not deterred by safety concerns.</td>
<td>In certain SANGs locations such as those serving a wider catchment, short stay car parking may need to be provided, preferably with height restriction to discourage overnight stays and fly tipping.</td>
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<tr>
<td>Car parks should be easily and safely accessible, be of an open nature and should be clearly signposted.</td>
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<tr>
<td>SANGs must have adequate parking for visitors the amount of car parking spaces should be determined by the anticipated numbers using the site and arriving by car.</td>
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<tr>
<td>There should be easy access between the car park of housing &amp; the SANG with the facility to take dog safely from the car park to the SANG off the lead.</td>
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<td>SANGs must be perceived as natural spaces without intrusive artificial structures, except in the immediate vicinity of car parks. Visually sensitive way markers and some benches are acceptable. Access points should have signs outlining the SANG and the routes available to visitors.</td>
<td>An attractive natural environment, with features of interest.</td>
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<td>SANGs must aim to provide a variety of habitats for visitors to experience (e.g. some of: woodland, scrub, grassland, heathland, wetland, open water)</td>
<td>Areas of woodland, particularly in larger SANGs, as these have the ability to absorb many more people than an open landscape without seeming to be crowded</td>
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<tr>
<td>Access within the SANGs must be largely unrestricted with plenty of space provided where it is possible for dog exercise freely and safely off the lead.</td>
<td>Individual sites (smaller SANGs sites) or zones (larger SANGS sites) are targeted at different user groups. Sites to attract dog walkers, for example, should provide safe a range of routes which are safe for dogs to be let off the lead, for example by fencing off from busy roads, and be in locations perceived to maximise enjoyment of the dog.</td>
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<tr>
<td>SANGs must be free from unpleasant visual, auditory or olfactory intrusions (e.g. derelict buildings, intrusive adjoining buildings, dumped materials, loud intimate or continuous noise from traffic, industry, sports grounds, sewage treatment works, waste disposal facilities.)</td>
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<tr>
<td>All SANGs with car parks must have a circular walk that starts and finishes at the car park.</td>
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<tr>
<td>It should be possible to complete a circular walk of 2.3 to 2.5 km around the SANGs and for larger size SANGs there should be a variety of circular walks. Paths must be easily used and well maintained but most should remain unsurfaced. The majority of paths should be suitable for use in all year round. Boardwalks may be required in wet sections.</td>
<td>SANGs sites of an appropriate scale (or connected networks of sites) provide attractive, accessible linear routes that allow for a choice of circular walks, including some longer ones. These should include some way-marked footpaths without intruding on the natural character of the SANGs</td>
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<tr>
<td>Catering for other users (BMX/ motor scramblers) to be considered on case by case basis</td>
<td>The inclusion of special features, which are likely to attract use by particular user groups.</td>
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<tr>
<td>SANGs should be clearly signposted and advertised. They should have leaflets and/or website advertising and location to potential visitors. Would be desirable from the restricted to new homes Be made available at entrance points and car parks.</td>
<td>None</td>
</tr>
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Appendix B

Suggested Revised Policy DM2b

1. The following wording is suggested to make DM2b effective.

DM2b - Protection of the European Nature Conservation Sites

Any new residential development within the plan area is likely to have a significant effect on the ecological integrity of the European sites:

• the New Forest European nature conservation sites (the New Forest SAC; New Forest SPA; The New Forest Ramsar site) or
• the Solent Coast European nature conservation sites (the Solent Maritime SAC; Solent and Southampton Water SPA; Solent and Southampton Water Ramsar site).

In order to allow the new residential development to be permitted, the development proposal will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Where required this will provide mitigation through a range of measures as set out in the below and in the European Mitigation Supplementary Planning Document including:

• Provision of on-site alternative natural greenspace (SANG) (provided in accordance with guidelines set out Appendix X of this plan) either through new provision or upgrading of existing open space
• Access and Visitor Management: measures to manage the number of recreational visits to the New Forest European sites and the Solent Coast European sites; and to modify visitor behaviour within those sites so as to reduce the potential for harmful recreational impacts.
• Monitoring of the impacts of new development on the European nature conservation sites and establishing a better evidence base: to reduce uncertainty and inform future refinement of mitigation measures.

The avoidance or mitigation measures are to be delivered in advance of the developments being occupied and must provide for mitigation in perpetuity. For allocated development sites (NB Add specific list of all allocated new and large existing sites where SANG is to be provide.) Suitable Alternative Natural Greenspaces (SANGs) will be secured by way of a legal agreement between the developer and the relevant council. The new SANG sites will link to existing and proposed green infrastructure and other ecological mitigation projects to form a network.
On other small sites where SANG is not directly provided Heathland mitigation measures will be secured through CIL. The authority will ensure that mitigation measures to avoid harm are given priority as required by this policy by including all projects on the Regulation 123 list and the Infrastructure Delivery Plan.

The list of projects here: (repeated in the Regulation 123 List) will be funded by CIL will include Suitable Alternative Natural Greenspace (SANG), access and visitor management, wardening, education, habitat re-creation and other appropriate avoidance measures. They will link to existing and proposed green infrastructure and SANGS to form a network.

The combination of, the SANGS listed above alongside access and visitor management and mitigation measures set out in the regulation 123 list, existing and proposed green infrastructure and SPD function together as an effective package avoiding the harmful effects of additional residential development on the European and internationally designated heathlands.