

Wiltshire Council

Strategic Environmental Assessment

**Revised Screening Determination for the Market Lavington
Neighbourhood Plan**

February 2019

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1. Introduction

- 1.1 This document provides a revised screening determination of the need to carry out a Strategic Environmental Assessment (SEA) of the Market Lavington Neighbourhood Plan (hereafter referred to as 'the Plan'). The previous SEA screening determination (September 2018) concluded that the Plan did not require an SEA; the three SEA 'consultation bodies' were consulted from 1st August 2018 to 5th September 2018 on that decision and all agreed with the Council's conclusion (refer to responses in Appendix A).
- 1.2 However, on 11th January 2019, Wiltshire Council wrote to the neighbourhood plan Qualifying Body, Market Lavington Parish Council, confirming that the Plan now requires an 'appropriate assessment' under the Habitats Regulations¹. This decision has implications for the SEA screening, hence this revision.
- 1.3 Wiltshire Council, as the 'Responsible Authority'² under the SEA Regulations³, is responsible for undertaking this revised screening process of the Market Lavington Neighbourhood Plan. It will determine if the Plan is likely to have significant environmental effects, and hence whether SEA is required.
- 1.4 This process has been carried out in accordance with the requirements of European Directive 2001/42/EC⁴, often known as the Strategic Environmental Assessment (SEA) Directive, which has been transposed into English law by the SEA Regulations.

¹ The Conservation of Habitats and Species Regulations 2017

² The organisation which adopts the neighbourhood plan (this is described in Wiltshire Council's guide *Neighbourhood planning – a guide for Wiltshire's parish and town councils* (June 2012) as 'makes the plan').

³ The Environmental Assessment of Plans and Programmes Regulations 2004

⁴ European Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment"

2. Legislative requirements

2.1 The Localism Act 2011 requires neighbourhood plans to comply with EU legislation. The screening procedure outlined in this report meets the requirements of the SEA Directive and Regulations, as introduced in Section 1 of this document.

2.2 Regulation 5 of the SEA Regulations requires an environmental assessment of plans which:

1. are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use (Regulation 5, para. (2)(a), and which set the framework for future development consent of projects listed in Annex I or II to Council Directive 85/337/EEC (EIA Directive) on the assessment of the effects of certain public and private projects on the environment (Reg. 5, para. (2)(b)

2. in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive (92/43/EEC) (Reg. 5, para. (3)

3. set the framework for future development consent of projects⁵ (Reg. 5, para. (4)(b)

4. are determined to be likely to have significant environmental effects as determined under regulation 9(1) (Reg. 5, para. (4)(c)

An environmental assessment need not be carried out for:

a) plans which determine the use of a small area⁶ at local level (Regulation 5, para.

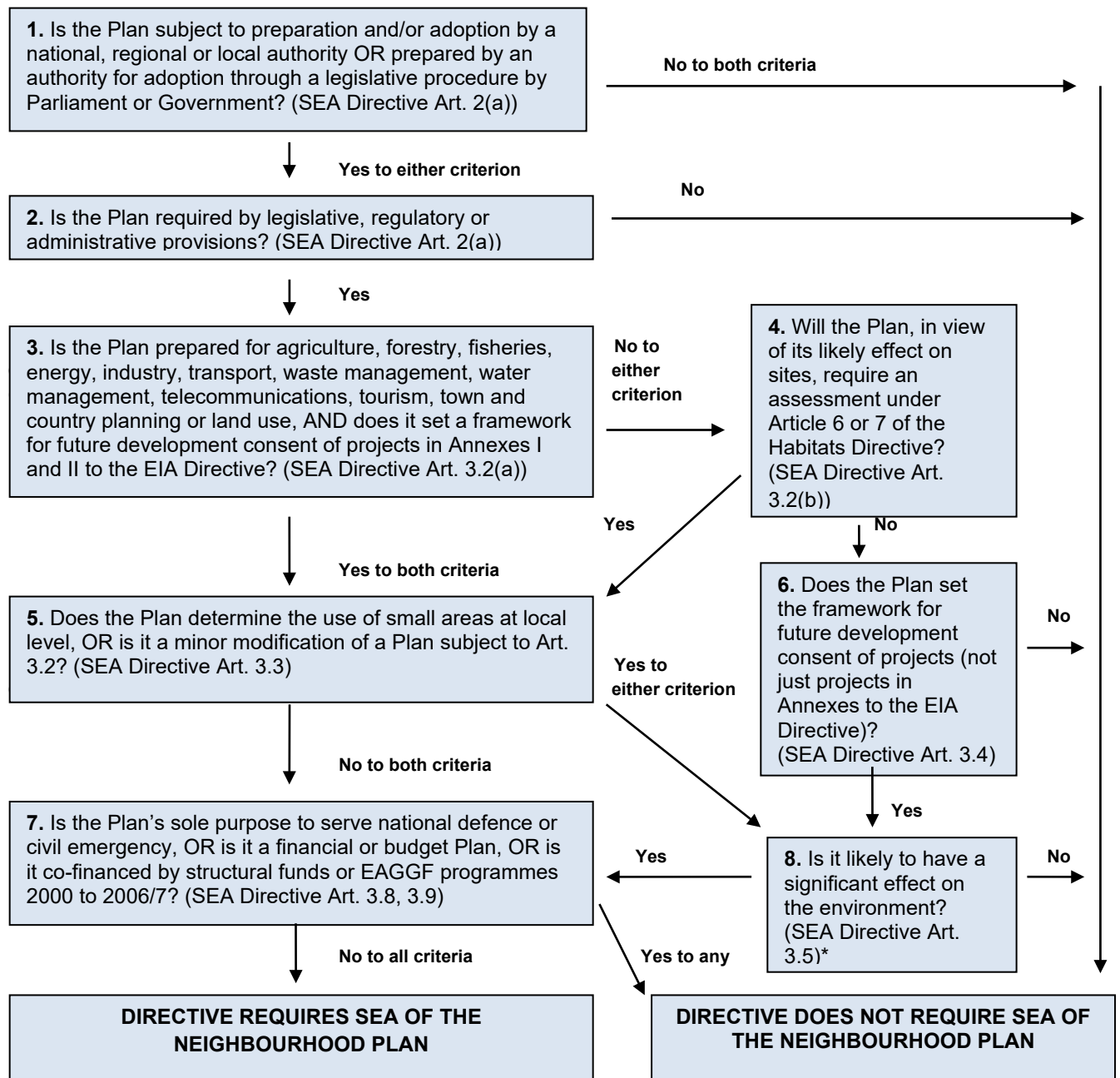
(6)(a); or b) plans which are a minor modification⁷ to a plan or programme (Regulation 5, para. (6)(b) unless it has been determined under regulation 9(1) that the plan is likely to have significant environmental effects.

⁵ European Commission guidance states that plans and programmes which set the framework for future development consent of projects would normally contain 'criteria or conditions which guide the way a consenting authority decides an application for development consent'. Development consent is defined in the EIA Directive as "the decision of the competent authority or authorities which entitled the developer to proceed with the project" (Article 1(2) of the EIA Directive).

⁶ European Commission guidance suggests that plans which determine the use of small areas at local level might include "a building plan which, for a particular, limited area, outlines details of how buildings must be constructed, determining, for example, their height, width or design"

⁷ 'Minor modifications' should be considered in the context of the plan or programme which is being modified and of the likelihood of their having significant environmental effects. A modification may be of such small order that it is unlikely to have significant environmental effects.

2.3 The diagram⁸ below shows the SEA Directive's requirements and its application to neighbourhood plans:



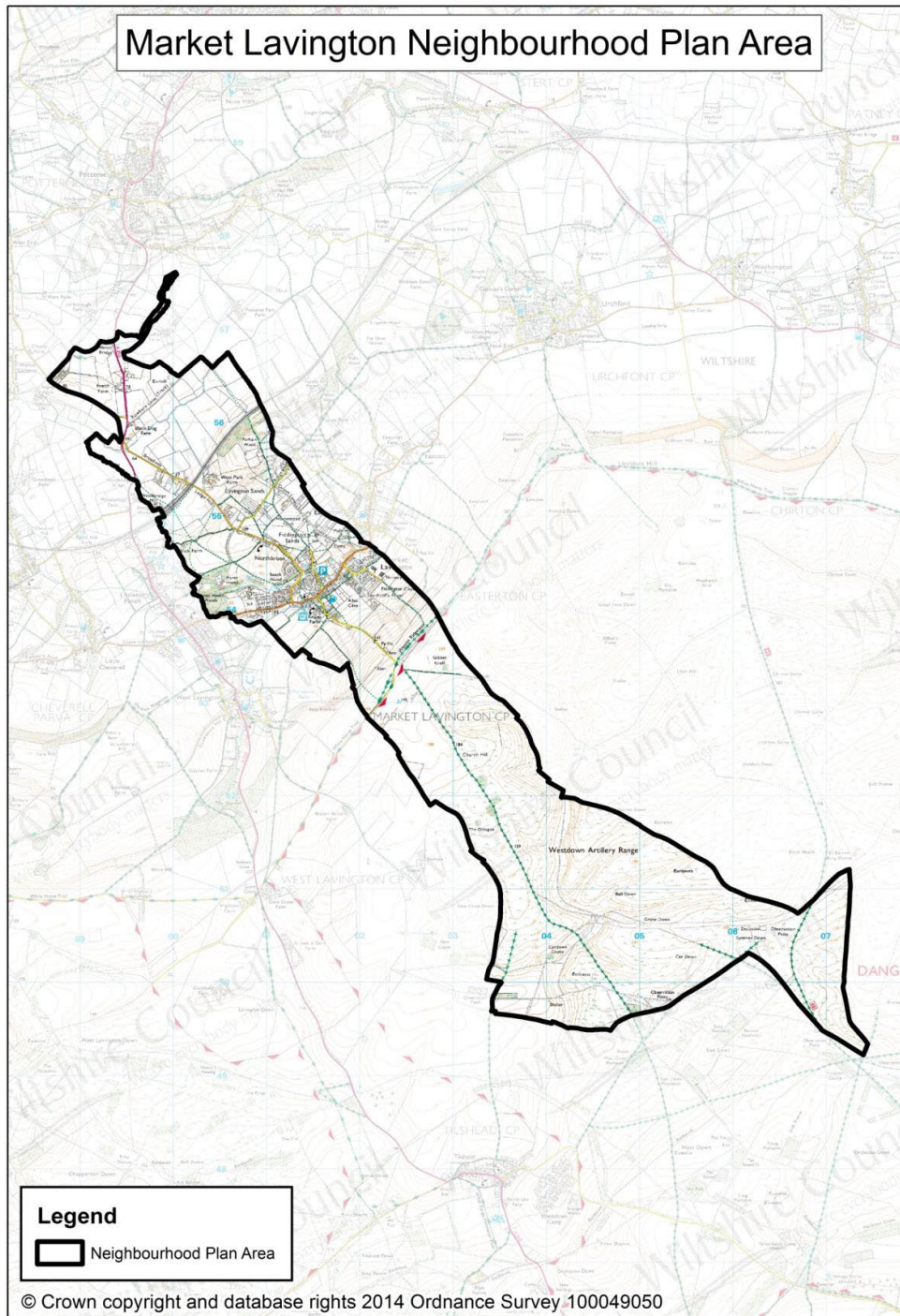
* Plans falling in this category (No.8) will be screened by Wiltshire Council to determine if they are likely to have significant environmental effects. This determination will be made on a case by case basis for neighbourhood plans coming forward in Wiltshire.

NB This diagram is intended as a guide to the criteria for application of the Directive to neighbourhood plans. It has no legal status.

⁸ Taken from *A Practical Guide to the Strategic Environmental Assessment Directive* ODPM, 2005)

3. The Market Lavington Neighbourhood Plan

- 3.1 The parish of Market Lavington is preparing a neighbourhood plan under the provisions of the Localism Act 2011.
- 3.2 The designation of the Market Lavington Neighbourhood Area was made on 2nd March 2015. For the designation notice see <http://www.wiltshire.gov.uk/planning-neighbourhood-latest-news>
- 3.3 The designated neighbourhood area is shown on the map below:



4. SEA Screening assessment

4.1 Wiltshire Council, as the 'Responsible Authority', considers that the Market Lavington Neighbourhood Plan falls within the scope of the SEA Regulations on the basis that it is a plan that:

- a)** is subject to preparation or adoption by an authority at national, regional or local level (Regulation 2);
- b)** is prepared for town and country planning or land use and it is a plan that sets the framework for future development consent of projects generally (Regulation 5, para. 4); and
- c)** will apply to a wider area other than a small area at local level and is not a minor modification to an existing plan or programme (Regulation 5, para. 6).

4.2 A determination under Regulation 9 is therefore required as to whether the Market Lavington Neighbourhood Plan is likely to have significant effects on the environment.

4.3 The screening requirements set out in Regulation 9 and Schedule 1 of the SEA Regulations includes two sets of characteristics for determining the likely significance of effects on the environment. These relate to i) the characteristics of the Market Lavington neighbourhood plan and ii) the characteristics of the effects and of the area likely to be affected by the Market Lavington Neighbourhood Plan. In making a determination, Wiltshire Council will take into account the criteria specified in Schedule I of the Regulations as follows:

1. The characteristics of the plans and programmes, having regard in particular to:

- (a)** the degree to which the plan or programme 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 and programmes including those in a hierarchy;
- (c)** the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development;
- (d)** environmental problems relevant to the plan or programme; and
- (e)** the relevance of the plan or programme for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:

- (a)** the probability, duration, frequency and reversibility of the effects;
- (b)** the cumulative nature of the effects;
- (c)** the transboundary nature of the effects;
- (d)** the risks to human health or the environment (for example, due to accidents);
- (e)** the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
- (f)** the value and vulnerability of the area likely to be affected due to—

- (i) special natural characteristics or cultural heritage;
- (ii) exceeded environmental quality standards or limit values; or
- (iii) intensive land-use; and

(g) the effects on areas or landscapes which have a recognised national, Community or international protection status.

The screening assessment of the Market Lavington Neighbourhood Plan is set out below:

Criteria (Schedule 1 SEA Regs.)	Significant environmental effects likely?	Justification and evidence
1. The characteristics of plans, having regard, in particular, 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	No	The neighbourhood plan covers the parish area only. It sets a new policy framework for projects in the parish only, not over a wider area, and it is considered to be in general conformity with policies of the adopted Wiltshire Core Strategy and national planning policies.
(b) the degree to which the plan influences other plans and programmes including those in a hierarchy	No	The neighbourhood plan is produced by the local community to influence development at the local parish level. A neighbourhood plan must be in general conformity with Local Plans and national planning guidance.
(c) the relevance of the plan for the integration of environmental considerations in particular with a view to promoting sustainable development	No	The neighbourhood plan is a land-use plan that promotes sustainable development, in general conformity with the Local Plan and national planning guidance. One of the Basic Conditions for any neighbourhood plan is that it contributes to the achievement of sustainable development. However, it is not a Plan specifically for the integration of environmental considerations. The Plan is not required to contain policies that relate to environmental considerations as these are already contained within strategic and national level policies.
(d) environmental problems relevant to the plan	No	There are no specific environmental problems relevant to this neighbourhood area.
(e) the relevance of the plan for the implementation of Community legislation on the environment (for example, plans and programmes linked to waste management or water protection).	No	The neighbourhood plan is not relevant as a plan for implementing community legislation.
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to:		
(a) the probability, duration, frequency and reversibility of the effects	Yes	Due to the proximity of Market Lavington to the Salisbury Plain Special Protection Area (SPA), and considering the judgement of the European Court of Justice

		<p><i>(People Over Wind, Peter Sweetman v Coillte Teoranta)</i> which ruled that it is not permissible to take account of mitigation measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage, it has now been determined by Wiltshire Council, the ‘competent authority’ under the Habitats Regulations, that the neighbourhood plan will require a full Appropriate Assessment (AA) due to the potential effects on the integrity of the SPA.</p> <p>Regulation 5 of the SEA Regulations requires an environmental assessment of plans which ‘<i>in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive (92/43/EEC) (Reg. 5, para. (3)).</i>’ Planning Practice Guidance (PPG) para 047 states that ‘<i>if a plan is one which has been determined to require an appropriate assessment under the Habitats Directive then it will normally also require a Strategic Environmental Assessment.</i>’</p> <p>In light of this, it is considered that the draft NP is likely to have significant environmental effects and therefore an SEA will be required.</p>
(b) the cumulative nature of the effects	Yes	Refer to 2(a) above.
(c) the transboundary nature of the effects	No	No transboundary effects with other EU countries are considered likely to be significant.
(d) the risks to human health or the environment (for example, due to accidents)	No	There are no significant environmental effects considered likely to risk human health or the environment.
(e) the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);	No	The neighbourhood plan covers a mainly rural parish which includes the Local Service Centre of Market Lavington. Significant environmental effects due to the geographic size of the area and population size are not considered likely.
(f) the value and vulnerability of the area likely to be affected due to— (i) special natural characteristics or cultural heritage; (ii) exceeded environmental quality standards or limit values; or (iii) intensive land-use;	Yes	Refer to 2(a) above.
(g) the effects on areas or landscapes which have a recognised national, Community or international protection status.	Yes	Refer to 2(a) above.

5. SEA Screening decision

- 5.1 Regulation 9 of the SEA Regulations requires that the responsible authority shall determine whether or not a plan is likely to have significant environmental effects. The responsible authority shall —
- (a) take into account the criteria specified in Schedule 1 to these Regulations; and
 - (b) consult the consultation bodies.
- 5.2 Where the responsible authority determines that the plan is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), it shall prepare a statement of its reasons for the determination.
- 5.3 Wiltshire Council considers that the proposed Market Lavington Neighbourhood Plan is **likely to have significant environmental effects** and accordingly **does require a Strategic Environmental Assessment**. This decision is made for the following reason:
1. Due to the proximity of Market Lavington to the Salisbury Plain Special Protection Area (SPA), it has now been determined by Wiltshire Council, the 'competent authority' under the Habitats Regulations, that the neighbourhood plan will require an Appropriate Assessment (AA) due to the potential effects on the integrity of the SPA. Regulation 5 of the SEA Regulations requires an environmental assessment of plans which *'in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive (92/43/EEC) (Reg. 5, para. (3)).'* Planning Practice Guidance (PPG) para 047 states that *'if a plan is one which has been determined to require an appropriate assessment under the Habitats Directive then it will normally also require a Strategic Environmental Assessment.'* In light of this, it is considered that the draft NP is likely to have significant environmental effects and therefore an SEA will be required.
- 5.4 This SEA screening is based on a confirmation in January 2019 that the neighbourhood plan has been 'screened in' under the Habitats Regulations and therefore requires an Appropriate Assessment (AA). If this HRA screening decision changes, or if the draft Plan is subsequently amended significantly i.e. changes that substantially alter the draft plan e.g. adding, amending or removing site allocations and policies, this SEA screening should be reviewed. In this instance, the Qualifying Body should request a revised SEA screening assessment from Wiltshire Council.
- 5.5 This screening decision was sent to Natural England, Environment Agency and Historic England, requesting comments in accordance with Regulation 9(2) of the SEA Regulations. The consultation took place from 23rd January 2019 to 27th February 2019. Comments received from the consultation bodies are presented in Appendix A.

Appendix A- Consultation responses from statutory consultation bodies

Historic England

No comments received.

Environment Agency

From: Challans, Ellie <ellie.challans@environment-agency.gov.uk>

To: David Way

Date: Thu 14/02/2019 12:49

Dear David

We would have no comments to offer on the revision of your screening opinion for the above Neighbourhood Plan.

Sorry I couldn't respond any quicker.

Thanks, Ellie

Ms Ellie Challans

Planning Advisor – Wessex Sustainable Places – Environment Agency

02030 2 59311

Environment Agency, Rivers House, Sunrise Business Park, Higher Shaftesbury Road, Blandford, Dorset, DT11 8ST

Natural England

From: Routh, Charles (NE) [charles.routh@naturalengland.org.uk]

Sent: Fri 01/02/2019 12:32

To: Way, David

Dear Sir/Madam, I can confirm that Natural England concurs with the conclusion of the above revised SEA Screening Decision, namely that a SEA will be required.

Charles Routh

Lead Advisor, Planning & Licencing, Somerset, Avon and Wiltshire Area Team, Natural England. 07990 773630