



STROUD DISTRICT COUNCIL

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Case Officer

[REDACTED]

Our Ref:

Bisley/SEA/HRA

Date:

25/05/2025

Dear Sir/Madam,

Bisley with Lypiatt Development Plan – SEA and HRA Screening Report Consultation Draft

To assist production of the Bisley with Lypiatt Neighbourhood Development Plan, Stroud District Council has undertaken a Strategic Environmental Assessment screening exercise. This is to determine whether or not the Neighbourhood Development Plan (NDP) would require a Strategic Environmental Assessment (SEA) and/or a Habitats Regulations Assessment (HRA).

SEA Screening Opinion – Stroud District Council

A draft NDP, received in February 2025 by Stroud District Council, was used to consider the likely environmental effects of the draft policies of the emerging Bisley with Lypiatt NDP. To ensure legal compliance and a robust screening opinion Stroud District Council considered the likely effects of the NDP against the criteria in Schedule I, of the Environmental Assessment of Plans and Programmes Regulations 2004. The consideration of likely effects against the Schedule I criteria are available to view in **appendix 1**.

Following analysis of likely significant effects, Stroud District Council considers that the NDP is unlikely to have any significant effects on the environment. Therefore, the Council determines that Strategic Environmental Assessment of Bisley with Lypiatt Neighbourhood Development Plan is not required.

As required by Regulation 9(2)(a) of the Environmental Assessment of Plans and Programmes Regulations 2004 the Council's screening opinion was sent to Historic England, Natural England and the Environment Agency, to arrive at a determination in consultation with the statutory consultees.

SEA Screening Opinion – Statutory Consultees

All three statutory consultees agreed with Stroud District Council's screening opinion, that the Bisley with Lypiatt Neighbourhood Development Plan was unlikely to give rise to significant environmental effects and therefore would not require Strategic Environmental Assessment.

The response of Historic England, Natural England and the Environment Agency can be viewed in **appendix 2**.

Habitat Regulation Assessment Screening Opinion – Stroud District Council

Stroud District Council has also used the analysis of likely significant effects to consider whether the NDP would be likely to give rise to significant environmental effects on European Designated Sites. Following this analysis, Stroud District Council considers that the NDP is unlikely to have any significant effects on European Designated Sites and can therefore be screened out from any requirement for further assessment under the Habitat Regulations.

Habitat Regulation Assessment Screening Opinion – Natural England

Natural England utilised the information within the analysis of likely significant effects to also determine that the NDP would be unlikely to give rise to significant environmental effects on European Designated Sites.

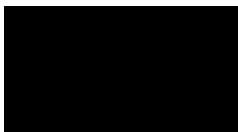
Natural England's determination is also available to view in **Appendix 2**.

Determination

The Bisley with Lypiatt Neighbourhood Development Plan is unlikely to give rise to significant environmental effects which would require Strategic Environmental Assessment, or have significant effects on European Designated Sites that would require consideration under the Habitats Directive. This determination has been arrived at in agreement with relevant statutory consultees.

For the purpose of demonstrating that the NDP is unlikely to have significant effects on the environment; as required by regulation 15 of the Neighbourhood Planning (General) Regulations 2012 (as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015), pages 3 to 29 of this document could be considered to form the statement of reasons.

Yours Faithfully



Head of Strategic Planning and Economic Development

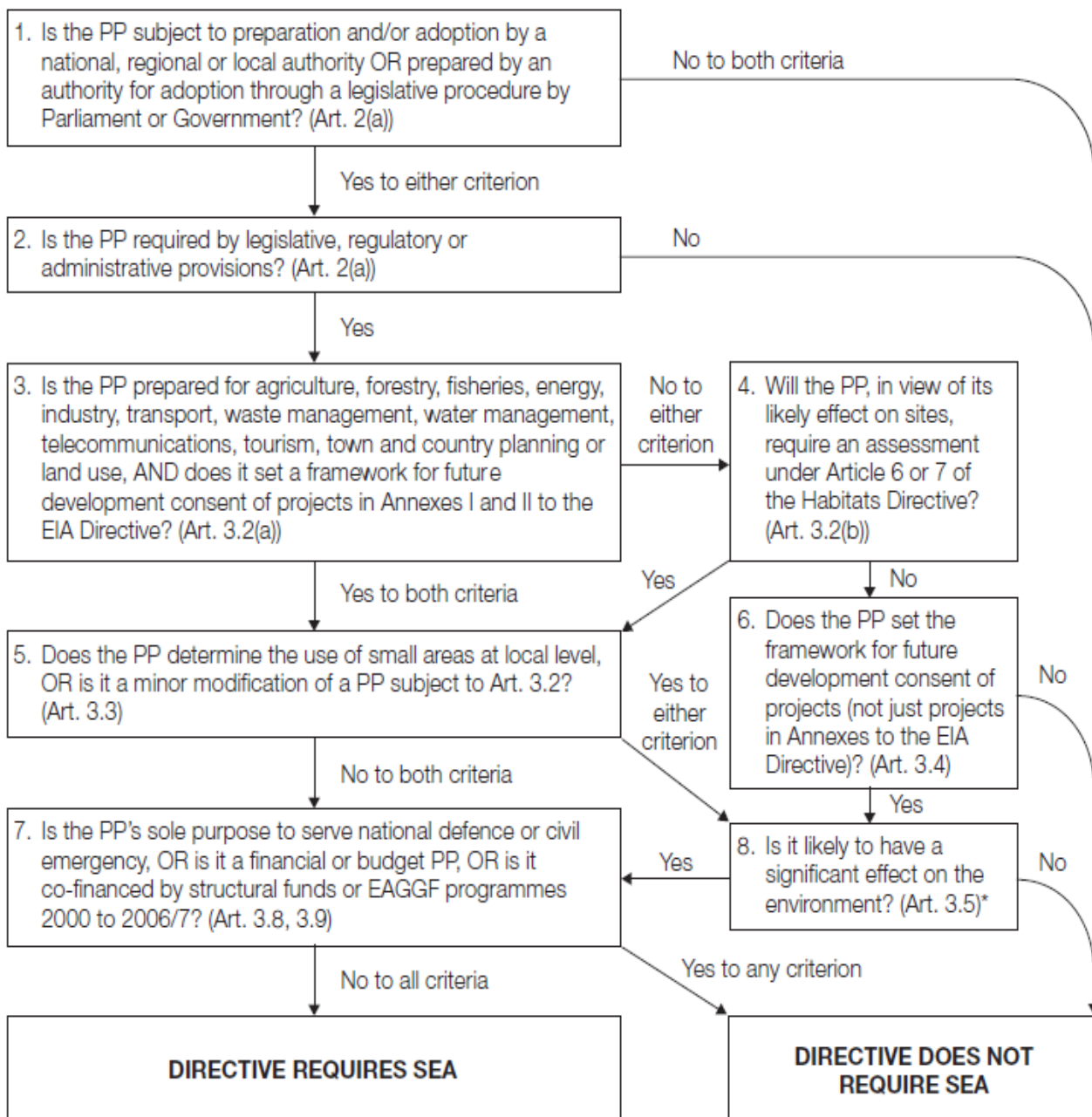
Stroud District Council

REASONS FOR DECISION

Extract from 'A Practical Guide to the Strategic Environmental Assessment Directive', DCLG 2005:

Figure 2 – Application of the SEA Directive to plans and programmes

This diagram is intended as a guide to the criteria for application of the Directive to plans and programmes (PPs). It has no legal status.



*The Directive requires Member States to determine whether plans or programmes in this category are likely to have significant environmental effects. These determinations may be made on a case by case basis and/or by specifying types of plan or programme.

APPLICATION OF SEA DIRECTIVE AS SHOWN ABOVE

	Question	Response
1	Is the plan subject to preparation and/or adoption by a national, regional or local authority OR prepared by an authority for adoption through a legislative procedure by Parliament or Government?	YES. The preparation of the Bisley with Lypiatt NDP is allowed under the Town and Country Planning Act 1990 as amended by the Localism Act 2011. The NDP will be “made” (adopted) by Stroud District Council once it has passed through the formal stages of its preparation under the Neighbourhood Planning (General) Regulations 2012 (As Amended). Go to stage 2
2	Is it required by legislative, regulatory or administrative provisions?	NO. There is no legal, regulatory or administrative requirement to produce a neighbourhood plan. The preparation of a NDP is an option for communities under the Town and Country Planning Act 1990 as amended by the Localism Act 2011. However, If the NDP passes all the stages required under the Neighbourhood Planning (General) Regulations 2012, it will be “made” by the District Council and will become part of the development plan for the District. It therefore important that the screening process considers whether it is likely to have significant environmental effects and hence whether SEA is required. Go to Stage 3
3	Is it prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive?	YES. The NDP is being prepared for town and country planning purposes. The plan sits within a wider framework, set by National Planning Policy Framework and the Stroud District Local Plan. The framework set by this draft NDP is for localised projects and activities, with limited effects and resource implications. Go to stage 5
4	In view of its likely effect on sites, will it require an assessment under Article 6 or 7 of the Habitats Directive?	NO. See Table 1 Go to stage 6

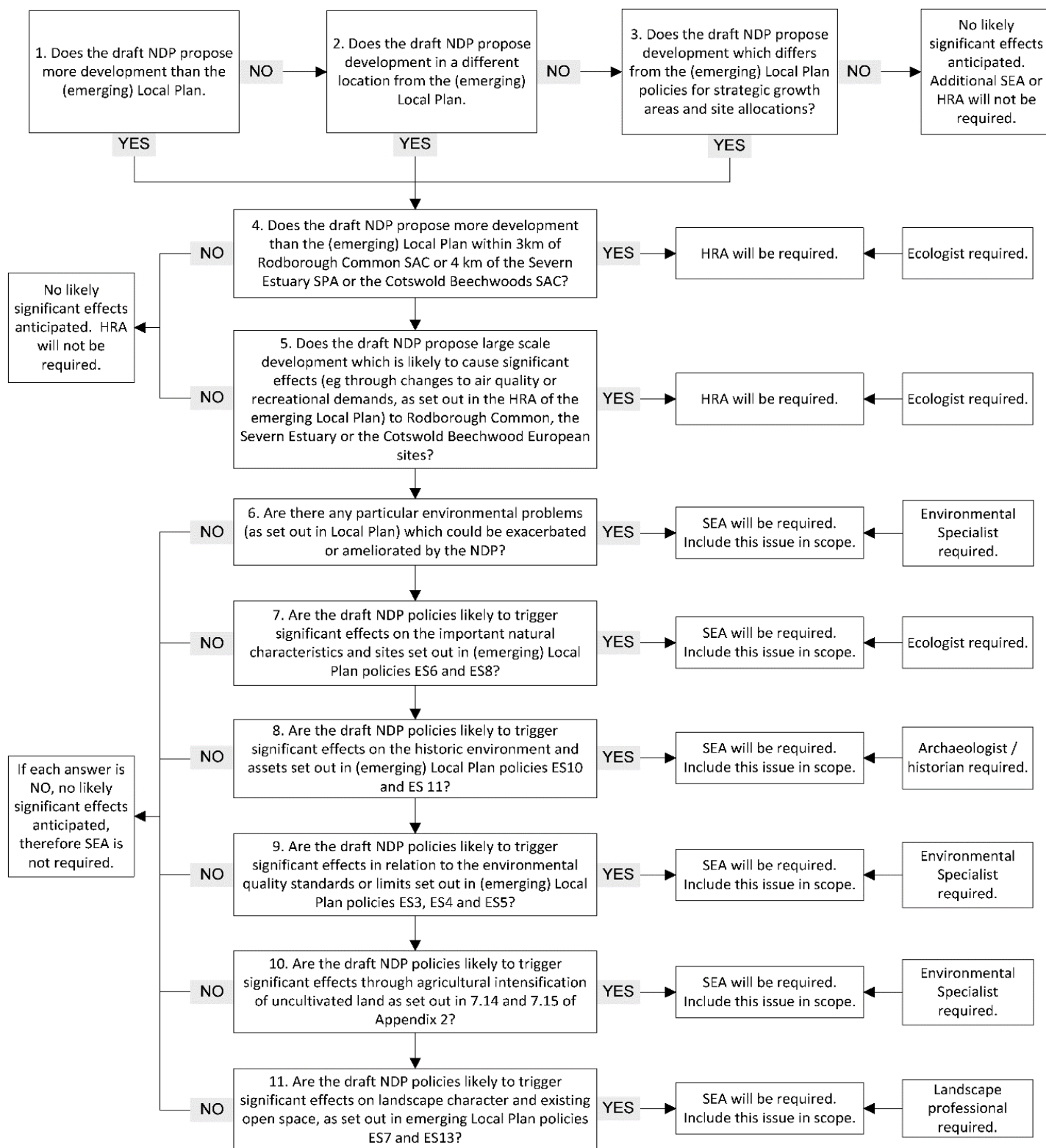
5	Does it determine the use of small areas at local level, OR is it a minor modification of a plan?	YES. The NDP will guide the determination of planning applications relating to the use of land within the neighbourhood area boundary. Go to stage 8
6	Does it set the framework for future development consent of projects (not just projects in Annexes to the EIA Directive)?	YES. The NDP will be used to determine future planning applications. Go to stage 8
7	Is its sole purpose to serve national defence or civil emergency, OR is it a financial or budget plan, OR is it co-financed by structural funds or EARDF programmes?	NO. The NDP does not relate to defence, civil emergency or financial planning. Nor is its purpose to secure European funds. Go to stage 8
8	Is it likely to have a significant effect on the environment?	NO. The framework set by this NDP is for localised projects and activities, with limited effects and resource implications. The likely significance of effects is explored further in appendix 1.

ASSESSMENT

The diagram below was designed to assist the consideration of whether an emerging NDP requires Strategic Environmental Assessment under the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regs) and/or Habitats Regulations Assessment under the Conservation of Habitats and Species Regulations 2010 (the HRA Regs):

**Neighbourhood Development Plans (NDP) -
is an Habitat Regulations Assessment (HRA) or Strategic Environmental Assessment (SEA) required?**

Apply all questions in order of 1 to 11



The table below contains the assessment of whether the Brimscombe and Thrupp NPD will require a full SEA/HRA. The questions below are drawn from the diagram above:

Table 1	
Question	Response
1. Does the Draft NDP propose more development than the Stroud District Local Plan (SDLP)?	NO The NDP does not allocate sites or propose development in any particular location. As such, no likely significant effects are anticipated.
2. Does the NDP propose development in a different location from the SDLP?	NO. The NDP recognises the role of the Parish in providing Strategic sites for the emerging SDLP but does not specify additional locations. As such no likely significant effects are anticipated.
3. Does the NDP propose development which differs from the SDLP policies for strategic growth areas and site allocations?	NO. See 1 and 2. No likely significant effects are anticipated.
4. Does the NDP propose more development than the SDLP within 3km of Rodborough Common SAC, 4km of the Cotswold Beechwoods SAC, or within the proposed 7.7km catchment zone of the Severn Estuary SPA?	NO See 1 and 2. No likely significant effects are anticipated.
5. Does the NDP propose large scale development which is likely to cause significant effects (e.g. through changes to air quality or recreational demands, as set out in the HRA of the SDLP) to Rodborough Common, the Severn Estuary or the Cotswold Beechwood European sites?	NO See 1 and 2. No likely significant effects are anticipated.
6. Are there any particular environmental problems (as set out in the SDLP) which could be significantly exacerbated or ameliorated by the NDP?	NO The SDLP identifies the following environmental issues for the Cotswold Cluster area which are relevant to the Parish of Bisley-with-Lypiatt: <ul style="list-style-type: none"> • Maintaining and improving the sustainability of our villages

	<ul style="list-style-type: none"> • Conserving and enhancing Stroud District's countryside and biodiversity <p>The NDP sets out the following objectives:</p> <ul style="list-style-type: none"> • Support and encourage sustainable development that is in keeping with the character of the built and natural environment and ensure any development meets community demand. • Enhance and increase biodiversity. • Conserve, protect and enhance our distinctive landscape • Create, enhance and maintain existing open green public spaces. • Promote and enable sustainable transport including active travel • Encourage and support enterprise development and opportunities. • Promote local energy saving and generation measures, both individual small scale and larger community schemes. <p>The SDLP provides an appropriate policy mechanism that allows the pursuit of the above objectives whilst avoiding any significant impact. Therefore, no likely significant effects are anticipated.</p>
<p>7. Are the draft NDP policies likely to trigger significant effects on the important natural characteristics and sites set out in the SDLP policies ES6, ES7 and ES8?</p>	<p>NO</p> <p>The identified important natural characteristics are:</p> <ul style="list-style-type: none"> ❖ Policy ES6 - Providing for biodiversity and geodiversity <ul style="list-style-type: none"> ▪ Agricultural Land Classification (Provisional) – The NDP area falls mostly within category 3 with pockets of 4 and 5. ▪ Local Wildlife Sites – numerous sites within and neighbouring the NDP area, including: <ul style="list-style-type: none"> ▪ Toadsmoor Wood LWS ▪ River Frome Mainstream and Tributaries LWS ▪ Abbeywood and Pond Grove LWS ▪ Frampton Common LWS ▪ Siccaridge Wood LWS <p>-See GCER data for full list-</p> ❖ Policy ES7 – Landscape Character

	<ul style="list-style-type: none"> ▪ The NDP Area is within the Cotswold National Landscape (AONB) ▪ Section B of the Stroud District Landscape Assessment (2000) identifies the landscape character type of the NDP area as: <ul style="list-style-type: none"> ▪ <i>Wold tops</i> – covering a large area at the centre NDP Area. ▪ <i>Secluded Valleys</i>– covering the rest of the NDP area <p>❖ Policy ES8 - Trees, hedgerows and woodlands</p> <ul style="list-style-type: none"> ▪ The NDP area contains Ancient Woodlands and a number of individual and groups of trees protected by Tree Preservation Orders. <p>The NDP does not make any site specific allocations or identify any quantum outputs. The SDLP provides the appropriate policy mechanism to avoid any significant effects on the important natural characteristics and sites set out in SDLP policies ES6, ES7 and ES8.</p> <p>Therefore, no likely significant effects are anticipated.</p>
8. Are the draft NDP policies likely to trigger significant effects on the historic environment and assets set out in the SDLP policies ES10 and ES11?	<p>NO.</p> <p>The NDP does not make any site specific allocations or identify any quantum outputs.</p> <p>Policies ES10 and ES11 of the SDLP provide an appropriate framework for the assessment and evaluation of potential development in advance of the determination of planning applications.</p> <p>Therefore, no likely significant effects are anticipated.</p>
9. Are the draft NDP policies likely to trigger significant effects in relation to the environmental quality standards or limits set out in the SDLP policies ES3, ES4 and ES5?	<p>NO.</p> <p>The environmental quality standards or limits identified by the SDLP are:</p> <ul style="list-style-type: none"> • Noise, general disturbance, smell, fumes, loss of daylight or sunlight, loss of privacy or an overbearing effect

	<ul style="list-style-type: none"> • Environmental pollution to water, land or air and an unacceptable risk to the quality and quantity of a water body or water bodies • Noise sensitive development in locations where it would be subject to unacceptable noise levels • Increased risk of flooding on or off the site, and no inclusion of measures to reduce the causes and impacts of flooding • A detrimental impact on highway safety • An adverse effect on contaminated land where there is a risk to human health or the environment. • Water resources, quality and flood risk • Air Quality <p>The valley bottom corridor running along the southern boundary of the NDP area, where the River Frome and Stroudwater Canal is located, is located within Flood Zones 2 and 3. Potential development within the NDP area could bring positive and/or negative effects in relation to the environmental quality standards or limits identified by the SDLP.</p> <p>However, since the NDP is void of firm site-specific allocation policies where physical change is advocated and quantum outputs identified, it is considered that Policies ES3, ES4 and ES5 provide the appropriate policy mechanism to avoid any significant environmental impact to living conditions.</p> <p>Therefore, no likely significant effects are anticipated.</p>
10. Are the draft NDP policies likely to trigger significant effects through agricultural intensification of uncultivated land as set out in 7.14 and 7.15 of appendix 2 of Environmental Impact Assessment (Agriculture) (England) Regulations 2006?	<p>NO.</p> <p>The NDP does not have policies promoting the agricultural intensification of uncultivated land as set 7.14 and 7.15 of appendix 2 of the Environmental Impact Assessment (Agriculture) (England) Regulations 2006</p> <p>Therefore, no likely significant effects are anticipated.</p>
11. Are the draft NDP policies likely to trigger significant effects on landscape character and existing open space, as set out in the SDLP policies ES7, ES13 and ES15?	<p>NO.</p> <ul style="list-style-type: none"> ❖ Policy ES7 – Landscape Character <ul style="list-style-type: none"> ▪ The NDP Area is within the Cotswold National Landscape (AONB).

- Section B of the Stroud Landscape Assessment identifies the landscape character type of the NDP area as:
 - *Wold tops – covering a large area at the centre NDP Area.*
 - *Secluded Valleys– covering the rest of the NDP area*

The NDP does not make any site specific allocations or identify any quantum outputs.

Draft policies LW1 and LW2 of the draft NDP set out a framework for protecting the landscape character of the NDP area.

Policy ES7 of the SDLP puts in place an appropriate policy mechanism to guide the assessment of potential future development and ensure that significant effect on the wider landscape character is avoided.

Therefore, **no likely significant effects are anticipated.**

APPENDIX 1

LIKELY SIGNIFICANCE OF EFFECTS ON THE ENVIRONMENT

SEA DIRECTIVE CRITERIA FOR DETERMINING THE LIKELY SIGNIFICANCE OF EFFECTS	RESPONSE IN RELATION TO: NDP	LIKELY SIGNIFICANT ENVIRONMENTAL EFFECT?
<p>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.</p>	<p>The Bisley-with-Lypiatt NDP would, if adopted, form part of the Statutory Development Plan. As a result the document would contribute to the framework for future development consents of projects. However, this neighbourhood plan sits within a wider framework, set by National Planning Policy Framework and Stroud District Council Local Plan documents, the adopted Stroud District Local Plan (SDLP). Therefore, the framework that is set by the NDP is for localised projects and activities, with limited effects and resource implications.</p>	<p>There will be no likely significant positive or negative environmental effect</p>
<p>The degree to which the plan or programme influences other plans and programmes including those in the hierarchy.</p>	<p>The NDP adds local level detail to assist in determining planning applications within the neighbourhood area boundary and does not influence higher level plans. The plan will become a material consideration in the determination of applications for planning permission.</p> <p>The policies within the NDP are considered to be in conformity with the wider framework and strategic direction of the SDLP.</p> <p>The SDLP has been subject to a full Sustainability Appraisal incorporating a Strategic Environmental Assessment.</p>	<p>There will be no likely significant positive or negative environmental effect</p>
<p>The relevance of the plan or programme for the integration of environmental consideration in particular with a view to promoting sustainable development</p>	<p>The NDP sets out local level policies, which are in general conformity with the SDLP.</p> <p>SDLP policies have been subjected to a Sustainability Appraisal incorporating a Strategic Environmental Assessment.</p>	<p>There will be no likely significant positive or negative environmental effect</p>

Environmental problems relevant to the plan or programme	Please refer to question 6 of table 1	There will be no likely significant positive or negative environmental effect
The relevance of the plan or programme for the implementation of community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).	<p>The plan is not considered to be directly responsible or related to implementing community legislation on the environment.</p> <p>The SDLP working with the relevant statutory agents provide the appropriate framework to avoid significant harmful effects.</p>	There will be no likely significant positive or negative environmental effect
The probability, duration, frequency and reversibility of the effects	The NDP is void of site-specific allocation policies where physical change is advocated and quantum outputs identified	There will be no likely significant positive or negative environmental effect
The cumulative nature of the effects	<p>The NDP is void of firm site-specific allocation policies where physical change is advocated and quantum outputs identified</p> <p>The SDLP working with the relevant statutory agents provide the appropriate framework to avoid significant harmful effects.</p> <p>Due to its scope and coverage, the plan is not considered to create any cumulative effects of significance.</p>	There will be no likely significant positive or negative environmental effect
The trans boundary nature of the effects	<p>The are 2 SSSI within the NDP area and 3 SSSI immediately bounding the NDP area:</p> <ul style="list-style-type: none"> • Strawberry Banks SSSI • Daneway Banks SSSI • Juniper Hill Edgeworth SSSI • Rough Bank Miserden SSSI • Swift's Hill SSSI <p>The NDP area is approximately:</p> <ul style="list-style-type: none"> • 1.5km away from Rodborough Common SSSI • 2.5 km from Minchinhampton Common SSSI • 14km from Upper Severn Estuary –SAC/SPA/RAMSAR 	There will be no likely significant positive or negative environmental effect

	<p>Development within the NDP area could increase visitor pressure on the above sites leading to potential habitat degradation.</p> <p>However, the NDP does not make any - specific allocation or identify any quantum outputs.</p> <p>Potential growth within the NDP area could, if necessary, be accommodated by using policy ES6 of the SDLP.</p> <p>Therefore, the NDP is not considered to create significant trans-boundary issues.</p>	
The risks to human health or the environment (e.g. due to accidents)	<p>The NDP is not considered to create significant risks to human health or the environment.</p> <p>The NDP encourages the use of best environmental standards and mitigation measures where possible and appropriate.</p> <p>The SDLP provides an appropriate framework to avoid significant harmful effects.</p>	There will be no likely significant positive or negative environmental effect
The magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected).	<p>The NDP relates to the Parish of Bisley-with-Lypiatt. It covers an area of approximately 2900 hectares with a population of under 2500.</p> <p>Effects arising from the NDP policies are considered to have very localised effects such as on immediately adjacent buildings, building users or localised areas within the Brimscombe and Thrupp neighbourhood.</p> <p>The magnitude and spatial extent of any potential effects are very limited and not considered to be of significance to warrant Strategic Environmental Assessment.</p>	There will be no likely significant positive or negative environmental effect
<p>The value and vulnerability of the area likely to be affected due to:</p> <p>Special natural characteristics or cultural heritage;</p>	Please refer to assessment in table 1	There will be no likely significant positive or negative environmental effect

Exceeded environmental quality standards or limit values; Intensive land uses.

And;

The effects on areas or landscapes, which have a recognised national, Community or international protection status.

APPENDIX 2 RESPONSE FROM STATUTORY CONSULTTEES

HISTORIC ENGLAND

From: [REDACTED]@HistoricEngland.org.uk>
Sent: 21 April 2025 12:21
To: [REDACTED]
Subject: Stroud District Council SEA/HRA Screening Opinion - Bisley-with-Lypiatt NDP

Follow Up Flag: Follow up
Flag Status: Flagged

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Simon

Thank you for your consultation on the SEA Screening associated with the emerging Bisley-with-Lypiatt NDP.

This is our first involvement with the preparation of this Plan so we also appreciate the opportunity provided by this consultation to familiarise ourselves with the community's policy aspirations and identify any matters of interest to us.

Our interest tends to focus on where such Plans propose to allocate sites for development as experience has shown that these have the greatest likelihood of generating impacts on the historic environment and the biggest challenges for the community in producing appropriate evidence to support them.

We note that the Bisley-with-Lypiatt Plan does not propose to allocate any sites for development, and there are no other issues upon which we would wish to comment based on the policy schedule as shared.

We therefore have no objection to the view that a full SEA is not required.

Kind regards

[REDACTED]

[REDACTED]
Historic England | South West
1st Floor Fermentation North | Finzels Reach | Hawkins Lane | Bristol | BS1 6WQ
[REDACTED]
<https://historicengland.org.uk/southwest>

ENVIRONMENT AGENCY

From: WestMidsPlanning <WestMidsPlanning@environment-agency.gov.uk>
Sent: 17 April 2025 14:18
To: [REDACTED]
Subject: RE: Stroud District Council SEA/HRA Screening Opinion - Bisley-with-Lypiatt NDP

Follow Up Flag: Follow up
Flag Status: Flagged

[REDACTED]

Thank you for your email relating to SEA/HRA Screening of the Bisley-with-Lypiatt Neighbourhood Plan.

The Neighbourhood Planning Section of the NPPG (paragraph 073) states that:
A neighbourhood plan may require a strategic environmental assessment if the draft neighbourhood plan falls within the scope of the Environmental Assessment of Plans and Programmes Regulations 2004. This may be the case if it is likely to have a significant effect on the environment. This may be the case, for example, where a neighbourhood plan allocates sites for development.

Previous guidance indicated that:
A strategic environmental assessment may be required, for example, where:
a neighbourhood plan allocates sites for development
the neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan
the neighbourhood plan is likely to have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan

We would only make substantive further comments on the plan if the NDP were seeking to allocate sites in flood zone 3 and 2 (the latter being used as the 1% climate change extent), or if there were another significant environmental concern relating to matters within our remit (such as an allocation in Source Protection Zone 1).

I trust that the above is of assistance.

Regards

[REDACTED]

[REDACTED]

Sustainable Places
Environment Agency West Midlands Area

NATURAL ENGLAND

Date: 15 April 2022
Our ref: 505738
Your ref: Bisley-with-Lypiatt Neighbourhood Plan



Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear [REDACTED]

Bisley-with-Lypiatt Neighbourhood Plan - SEA/HRA Screening Opinion Consultation

Thank you for your consultation on the above dated and received by Natural England on 12 March 2025.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Screening Request: Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA)

It is Natural England's advice, on the basis of the material supplied with the consultation, that:

- **significant effects on statutorily designated nature conservation sites or landscapes are unlikely; and,**
- **significant effects on Habitats sites¹, either alone or in combination, are unlikely.**

The proposed neighbourhood plan is unlikely to significantly affect any Site of Special Scientific Interest (SSSI), Marine Conservation Zone (MCZ), Special Areas of Conservation (SAC), Special Protection areas (SPA), Ramsar wetland or sites in the process of becoming SACs or SPAs ('candidate SACs', 'possible SACs', 'potential SPAs') or a Ramsar wetland. The plan area is unlikely to have a significant effect on a National Park, Area of Outstanding Natural Beauty or Heritage Coast, and is unlikely to impact upon the purposes for which these areas are designated or defined.

Guidance on the assessment of Neighbourhood Plans, in line with the Environmental Assessment of Plans and Programmes Regulations 2004 is contained within the Planning Practice Guidance. This identifies three triggers that may require the production of an SEA:

- a neighbourhood plan allocates sites for development

- the neighbourhood area contains sensitive natural or heritage assets that may be affected by the proposals in the plan
- the neighbourhood plan may have significant environmental effects that have not already been considered and dealt with through a sustainability appraisal of the Local Plan.

Natural England does not hold information on the location of significant populations of protected species, so is unable to advise whether this plan is likely to affect protected species to such an extent as to require an SEA. Further information is included in Natural England's standing advice on protected species.

Furthermore, Natural England does not routinely maintain locally specific data on all environmental assets. The plan may have environmental impacts on priority species and/or habitats, local wildlife sites, soils and best and most versatile agricultural land, or on local landscape character that may be sufficient to warrant an SEA. Information on ancient woodland, ancient and veteran trees is set out in Natural England/Forestry Commission standing advice.

We therefore recommend that advice is sought from your ecological, landscape and soils advisers, local record centre, recording society or wildlife body on the local soils, best and most versatile agricultural land, landscape, geodiversity and biodiversity receptors that may be affected by the plan before determining whether a SEA is necessary.

Natural England reserves the right to provide further advice on the environmental assessment of the plan. This includes any third party appeal against any screening decision you may make. If a SEA is required, Natural England must be consulted at the scoping and environmental report stages.

Please send any new consultations, or further information on this consultation to

consultations@naturalengland.org.uk

Yours sincerely



Consultations Team

Appendix 3

Explanatory Memorandum to

THE ENVIRONMENTAL IMPACT ASSESSMENT (AGRICULTURE) (ENGLAND) REGULATIONS 2006

App 2
7.14 +
7.15

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL IMPACT ASSESSMENT
(AGRICULTURE) (ENGLAND) REGULATIONS 2006

2006 No. 2362

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
 - 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
 - 2.1 The Regulations implement the EIA Directive and the Habitats Directive in that they—
 - replace the existing EIA Regulations applying to projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes; and
 - introduce new rules applying to projects for the restructuring of rural land holdings.
 - 2.2 The Regulations require an assessment of whether such projects, above certain thresholds, are likely to have significant effects on the environment. If so, an environmental impact assessment and public consultation must take place before a final consent decision is made.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Regulation 38 revokes the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (England) Regulations 2001 (S.I. 2001/3966, amended by S.I. 2005/1430), which were reported for defective drafting by the Joint Committee in its 17th Report of the 2001–2002 Session.
4. **Legislative Background**
 - 4.1 The Regulations transpose Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended by Council Directive 97/11/EC and Directive 2003/35/EC) (“the EIA Directive”).
 - 4.2 They also transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (as last amended by the Act of Accession of the new Member States) (“the Habitats Directive”) to the extent that the projects

under consideration might have a significant effect on sites designated under that Directive.

- 4.3 The EIA Directive is implemented in the UK through a range of legislation dealing with land-use matters, including legislation relating to town and country planning, transport, afforestation and deforestation, land drainage and water management projects. The Habitats Directive is primarily implemented by the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716, as amended).
- 4.4 These Regulations implement the EIA Directive in respect of the projects listed in Annex II (I)(a) and (b)—
- projects for the restructuring of rural land holdings ("restructuring projects"); and
 - projects for the use of uncultivated land and semi-natural areas for intensive agricultural purposes ("uncultivated land projects").
- 4.5 Regulations in relation to uncultivated land projects were brought into force in England in February 2002 (see S.I. 2001/3966, amended by S.I. 2005/1430) ("the 2001 Regulations"). Similar Regulations were brought into force in Scotland, Wales and Northern Ireland at around the same time.
- 4.6 The 2001 Regulations were amended in 2005 to reflect the changes to the EIA Directive made by Directive 2003/35/EC on public participation.
- 4.7 These Regulations stem from a review of the 2001 Regulations (as amended), the need to legislate in respect of restructuring projects, and a public consultation on those issues. They revoke the 2001 Regulations.
- 4.8 A Transposition Note for the Regulations is attached at Annex 1.

5. Extent

- 5.1 These Regulations apply to England only. The Devolved Administrations are responsible for implementing the EIA Directive in their respective territories.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The purpose of the EIA Directive is to ensure that the environmental effects of a very broad range of development projects are considered before the projects are allowed to go ahead, and ensures that the consent procedure is open to public participation.

- 7.2 The Regulations are necessary because the town and country planning system does not consider any change in the use of land to agricultural use. Thus some projects were not subject to the assessment process required by the EIA Directive under its original transposition. The European Commission brought this point to the attention of the UK authorities in the late 1990s in relation to uncultivated land projects, and the 2001 Regulations were brought in to remedy the position.
- 7.3 The 2001 Regulations were prayed against and debated in the House of Commons in 2002 (see Hansard, House of Commons Debates, Volume 379, columns 482–503). During the debate, the Minister (Elliott Morley) made a commitment to review those Regulations once they had bedded-in.
- 7.4 The review was delayed until the outcomes of the reform to the common agricultural policy in 2003 and 2004 became clearer. The European Commission also made further representations in 2003 on the lack of legislation in respect of restructuring projects.

Consultation

- 7.5 The 2005 review of the 2001 Regulations recognised the need to bring in appropriate legislation on restructuring projects. After the review was completed, Defra engaged in a consultation with the public, industry and stakeholders on the policy in the Regulations. This includes a public consultation which was launched in August 2005. A copy can be found on Defra's website at this address—

<http://www.defra.gov.uk/farm/environment/land-use/eia>.

- 7.6 A summary of the responses to the consultation can be found on the same page.

The effect of the Regulations

- 7.7 The 2001 Regulations met one of the Department's objectives of protecting the countryside and natural resources. They were an effective partner to the more targeted regimes protecting sites of special scientific interest and specific species of animals and plants. The new Regulations are intended to continue to protect important natural resources and features of the landscape while meeting the Department's aims of reducing administrative burdens on farmers and producing better regulation.
- 7.8 The Regulations are similar in effect to the 2001 Regulations, which farmers and land managers are familiar with. But the following changes (some of which are outlined in more detail below) are significant—
- Natural England is the new regulator
 - restructuring projects are now part of the regime
 - the meaning of “uncultivated land” has been clarified
 - the meaning of “for intensive agricultural purposes” has been clarified

- projects only require assessment if they are above certain size thresholds ...
 - ... unless the use of thresholds has been removed by a "screening notice" applying to an area of land
 - "reinstatement notices" are now "remediation notices"
 - powers to issue stop notices have been re-drawn
 - appeals against decisions and notices lie to the Secretary of State
 - prosecutions can now be brought within six months of the discovery (instead of the commission) of an offence, as long as they are brought within 2 years
 - in prosecutions, there is a presumption that land is "uncultivated land" unless the defendant raises an issue that land is not uncultivated land, in which case the prosecution must prove that the land is uncultivated land beyond reasonable doubt
 - the Single Payment Scheme's cross-compliance rules are updated to reflect the changes.
- 7.9 In essence, the Regulations contain a two-stage consent process. First, if a farmer or land manager wishes to carry out a project of a scale equal to or above the threshold, he must apply to Natural England for a screening decision. Natural England will decide whether the project is likely to have significant effects on the environment. If the project is not likely to have significant effects, it can go ahead.
- 7.10 Secondly, if a project is likely to have significant effects on the environment, the applicant must submit an environmental statement assessing the effects of the project on the environment and the application must be subject to public consultation (which, if necessary, must extend to other EEA States). Following the consultation there is a final consent decision.

Further details of some changes

- 7.11 Natural England, the new agency comprising English Nature, the Countryside Agency and Defra's Rural Development Service ("RDS"), will be the regulator. Natural England will take over the role of administering the regime from RDS, which administered the 2001 Regulations.
- 7.12 Restructuring projects are a new aspect of the regime. The Department takes the view that restructuring projects include physical operations which give a significantly different physical structure to the arrangement of one or more agricultural land holding, and include—
- the removal or addition of substantial lengths of field boundaries such as hedges, hedge-banks, walls, fences, and ditches; and
 - the re-contouring of rural land, for instance by moving large quantities of earth and rock.
- 7.13 The Regulations avoid overlap with similar regulatory regimes by specifically excluding work which is covered by other regimes: forestry projects,

development under the planning system, land drainage and water management projects, removal of hedgerows and work on common land.

7.14 Uncultivated land projects are subject to two clarifications—

- The definition of “uncultivated land” has been changed to mean land which has not been cultivated in the last 15 years, in order to make the Regulations easier to understand and apply; this is intended to reduce the number of wasted applications. Cultivation operations include any agricultural activity which physically affects the land, such as ploughing, harrowing, slot seeding, adding chemical fertilisers and adding slurry or manure. Cultivation does not include operations such as cutting grass, which does not affect the land itself.
- The meaning of “for intensive agricultural purposes” is given as “to increase the productivity for agriculture”. This is wider than the interpretation given to the phrase “for intensive agricultural purposes” in the case of Alford v. Defra [2005] EWHC 808 (Admin), which did not enable the UK to meet the aims of the EIA Directive.

7.15 The introduction of thresholds before projects are caught by the Regulations reduces the administrative burden imposed on land managers. Many projects which were formerly subject to the regime were found to be unlikely to have significant effects on the environment, and those projects should be excluded by the thresholds. The introduction of thresholds also bring the Regulations into line with other EIA regimes in the UK. The following thresholds apply—

- | | |
|---|-----------------------------|
| • uncultivated land project | 2 (2) hectares |
| • restructuring affecting an area of land | 100 (50) hectares |
| • restructuring affecting boundaries | 4 (2) kilometres |
| • restructuring involving a volume of earth | 10,000 (5,000) cubic metres |

(The figures in brackets apply in sensitive areas: National Parks, areas of outstanding natural beauty, the Broads, scheduled monuments)

7.16 Natural England may use screening notices to remove the application of thresholds from relatively modest areas of land: 20 hectares for uncultivated land projects, 150 hectares for restructuring projects. This enables the UK to meet the requirement of the EIA Directive to avoid cumulative significant effects on the environment caused by several projects and to ensure that smaller projects which are still likely to have significant effects are caught. Screening notices can only be applied in limited circumstances, requiring an assessment of the facts and risks in each case.

7.17 The extension of the time limit for prosecutions reflects the difficulty in discovering breaches of the Regulations and the need to gather expert evidence before bringing charges. Such an extension is now normal for environmental offences. The reversed burden of proof on the question of whether land is uncultivated land has been introduced because question usually turns on facts known to the land manager, who will be in the best position to raise an issue that the land is in fact uncultivated land.

Cross Compliance

- 7.18 Farmers in the Single Payment Scheme are required to comply with certain aspects of the Regulations as part of 'cross compliance'. Under that scheme, the payment of a full farm subsidy is dependent on adherence to certain laws and rules – the cross compliance conditions. Compliance with the 2001 Regulations was part of GAEC 5 (Good Agricultural and Environmental Condition 5) in the cross compliance handbook. A breach of the 2006 Regulations by beginning or carrying out an uncultivated land project, or by breaching a stop or remediation notice, could mean that the farmer's payments are reduced or withheld. But a person who begins or carries out a restructuring project will not be in breach of cross compliance (for the time being). The Regulations amend the relevant Regulations to make appropriate changes – essentially, the cross compliance condition is unchanged (but takes on board the introduction of thresholds, etc).

Guidance

- 7.19 Farmers and land managers will be provided with a summary of the effect of the rules and full guidance will be available to farmers wishing to make applications under the Regulations. Farmers will also be given guidance on the effects of the changes to cross compliance.

8. Impact

- 8.1 A Regulatory Impact Assessment has been prepared for this instrument and is attached at Annex 2.
- 8.2 Copies of the RIA are available from: Environmental Land Management Division, Defra, Ergon House (Area 5B), Horseferry Road, London SW1P 2AL (or from <http://www.defra.gov.uk/farm/environment/land-use/cia>).

9. Contact

- 9.1 Tom Coles (Environmental Land Management Division, Defra, Ergon House (Area 5B), Horseferry Road, London SW1P 2AL) with any queries regarding the instrument. Tel: 020 7238 5484 or e-mail: tom.coles@defra.gsi.gov.uk.

