

# Executive Summary

## Review of the Further Proposed Changes to the East of England Plan

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This report discusses whether, as it claims, the Further Changes to the East of England (EoE) Regional Spatial Strategy (RSS) fulfils the requirements of the UK Habitats Regulations.

The Habitats Regulations require authorities to test plans, including RSSs, for their impacts on Special Protection Areas and Special Areas for Conservation (jointly called 'European sites'). Authorities may only adopt a plan after having ascertained that the plan will not adversely affect the integrity of any European site. If this cannot be shown, then an expensive and long-winded process of showing that there are no alternatives to the plan, that the plan is needed for 'imperative reasons of overriding public interest', and that compensatory measures will be provided is required.

The Habitats Regulations Assessment (HRA) for the EoE RSS is composed of three separate reports: on recreation, water (combining water quality, water resources and flooding), and local air pollution due to the transport projects in the RSS. The HRA does not consider other impacts that might be significant, such as those due to port expansion and offshore wind turbines; nor air pollution impacts not due to specific road projects.

The water report concludes that the integrity of three European sites could be significantly affected by flooding and water quality problems due to the RSS. The recreation report concludes that four European sites could be affected by recreational impacts. The air quality report concludes that no European sites will be affected by significant air pollution due to the RSS. Table 0.1 summarises likely key impacts of the RSS on European sites.

**Table 0.1. HRA issues**

Site affected	Reason
<b>Identified by the HRA as likely significant 'in combination' impacts of the RSS</b>	
Breckland SAC/SPA	recreational disturbance on stone curlew, nightjar, woodlark and general habitat
Great Yarmouth North Denes SPA	recreational disturbance on little terns
Lee Valley SPA/Ramsar	water quality, flooding, possible habitat loss, with impacts on bitterns and overwintering wildfowl
Ouse Washes SAC/SPA/ Ramsar	water quality, flooding
Portholme SAC	water quality, flooding
Stour and Orwell Estuaries SPA Ramsar	impacts of port expansion 'in combination' with recreation
<b>Potential additional issues identified by this report</b>	
Breckland SAC/SPA	N deposition and NOx levels from road,
Epping Forest SAC	N deposition and NOx levels from road
Norfolk Valley Fens SAC	N deposition from road
Portholme SAC	NOx levels from road
possibly other sites	air pollution
sites near London Gateway, Haven Gateway and King's Lynn ports	SOx, disturbance, water pollution from port development
sites affected by offshore wind power	disturbance to migrating birds
at least Breckland SAC/SPA and Portholme SAC	'in combination' impacts of different types of impacts: air pollution, water quality etc.

The Secretary of State published a schedule of further proposed changes to the RSS in October 2007, which respond to the HRA's findings.

Guidance exists on what is adequate mitigation for Habitats Directive purposes, how to deal with uncertainty in decision-making, and what is a 'sound' RSS. This report has brought this together

into seven tests, which indicate whether the RSS really does fulfill the requirements of the Habitats Regulations. It is quite possible that a RSS could fail several of these tests and still not have a significant impact on the integrity of European sites. However tests C, D and E (below) seem central to ensuring site integrity; and test A seems like a necessary precursor to the other tests.

The tests were applied to the EoE RSS, and the following conclusions were drawn.

- A. The HRA does *not provide sufficient evidence to ensure that the RSS does not have a significant impact on European sites*. For instance, it is unclear from the HRA whether Thetford can accommodate 6000-plus new homes without harming the Breckland SAC/SPA; whether capacity at the Rye Meads sewage treatment work (STW) can be increased without affecting the Lee Valley SPA/Ramsar; or whether it is financially and technically feasible to divert treated sewage away from the River Ouse and so not affect the Ouse Washes SAC/SPA/Ramsar and Portholme SAC. This lack of information makes it difficult to come to a full conclusion on some of the other tests.
- B. In most cases the *RSS has made an effort to first avoid and then reduce its impacts*. For instance the RSS includes policies on reducing water consumption (so reducing the need for wastewater treatment), and on behavioural change and pricing incentives to reduce car use (so avoiding some air pollution). However it makes no attempt to reduce shipping activity, and indeed promotes port development as a key economic driver for the region.
- C. The *mitigation measures in the RSS are generally proportional*: they relate to the factors causing the impacts on the European sites not just general caveats, and are clearly and powerfully phrased. The main exception is air quality: the RSS includes strong policies on reducing the need to travel and on less polluting modes of transport, but its limited remit does not allow it to ensure that traffic levels really do decrease.
- D. National government policies (or lack of policies) and individuals' actions are likely to make it *difficult for most of the RSS's mitigation measures to be fully secured*. For instance at Breckland SAC/SPA, government policies on increasing access to open space and practical difficulties in managing visitor access would make it almost impossible to prevent recreational impacts on the European site. At the Lee Valley and Ouse Washes, OFWAT policies, the timing of water companies' plans, and the difficulty of getting people to use less water mean that reducing the amount of wastewater needing treatment and providing appropriate infrastructure in time is very difficult.
- E. *Most of the RSS's impacts could not be rectified if they occurred*. Once houses, roads, ports and wind farms get built, it is extremely unlikely that they would be shut down even if they were found, in practice, to have significant impacts on European sites.
- F. In the absence of firmer evidence from the HRA, there is the potential for a several policies to be *internally inconsistent or inconsistent with each other*, leading to an unsound plan. These include RSS policy TH1 which states that 6000-plus dwellings should be built at Thetford whilst avoiding harm to the Breckland SPA/SAC; and policy HG2 which states that 50,000 additional jobs should be provided in Haven Gateway whereas policy E2 requires employment sites to be at locations which avoid any adverse impact on European sites.
- G. *The RSS is realistic*. It stays within the remit of RSSs and does not seem to recommend an infeasible level of resource use. That said, many of the RSS's aspirations are unlikely to happen because of the points raised at D.

In sum, the proposed changes to the EoE RSS are clearly a concerted effort to address the issues raised in the HRA, within the remit of an RSS and without changing the proposed housing or employment allocations. However we conclude that, **even with the further proposed changes, the RSS could still lead to significant impacts on the integrity of European sites**. The fact

that many of the RSS's impacts could not be rectified if they do occur stresses the need to get the RSS right now; **it won't be possible to turn things the right way around again.**

Because of this, we believe that further HRA information should be collected and taken into account in finalising the RSS, or as required by the Habitats Regulations 85C(1), alternative solutions to the RSS must be considered. Otherwise there may be grounds for a judicial review against that decision.

With respect to alternative solutions, the RSS could be reconsidered in terms of the location, number and phasing of development. We are well aware of the social, economic and political arguments that have been advanced for the scale and type of growth provided for in the RSS, and the objections that would be raised to constraining it in such ways. However we doubt whether these arguments would be enough to sustain a claim that the growth is justified by 'imperative reasons of overriding public interest'.

There is a further kind of 'alternative solution' that could potentially enable the proposed region wide scale of growth (though probably not all the specific locations set out in RSS) to avoid impacts not only on European sites but on our human quality of life. This is for new development to be required to reach much higher environmental standards than current building regulations: notably no *net* increase in mains water consumption, sewerage or motorised traffic generation.