



Stockton-on-Tees
BOROUGH COUNCIL



Statement of Common Ground

North Tees & Environmental Designations

This is a Statement of Common Ground produced and agreed by the following parties:

Natural England

Stockton on Tees Borough Council

This statement has been signed on behalf of the above parties by the following representatives:

**Andrew Whitehead – Team Leader, Sustainable Development, Marine & Wildlife Licensing,
Northumbria Area (Natural England)**

A handwritten signature in blue ink that reads 'A Whitehead'.

Signature:

Date: 22nd May 2018

**Richard McGuckin – Director of Economic Growth and Development (Stockton on Tees Borough
Council)**

A handwritten signature in blue ink that reads 'R. McGuckin'.

Signature:

Date: 22.05.18

1 Introduction

Purpose of the Statement of Common Ground

- 1.1 This Statement of Common Ground has been produced and agreed by Natural England and Stockton-on-Tees Borough Council.
- 1.2 During the preparation of this statement the Council sought to involve the Royal Society for the Protection of Birds (RSPB). However, it was not possible for the RSPB to be a signatory to this document.
- 1.3 It is intended that this statement will assist all parties during the examination of the Stockton on Tees Local Plan as it provides a simple statement regarding the protection of the environment, in particular where economic development might have an adverse impact on the integrity of the Teesmouth and Cleveland Coast Special Protection Area (SPA), and those features proposed for inclusion in an extension to the SPA.

Background

- 1.4 Stockton on Tees Borough Council has a long history of positive engagement with Natural England, its predecessor organisations, and the RSPB. The organisations understand the sensitivities around existing habitats in the Tees Estuary area, but also recognise the aspiration for further economic growth.
- 1.5 The issue of economic growth at Seal Sands and North Tees has been a key issue for decades. This matter was last discussed at length as part of Council strategy during the Council's Core Strategy examination in October 2009. The organisations agreed an amendment to the Core Strategy, including introducing the following to paragraph 9.7:

'To inform site allocations in the Seal Sands, North Tees Pools and River Tees Corridor areas in the Regeneration Development Plan Document, the Council has agreed to undertake a study in partnership with Natural England and the RSPB, to assess the potential for development in those areas to adversely affect the integrity of the SPA/Ramsar site. The study will involve detailed assessment of the usage of these and adjacent areas by SPA and Ramsar site bird species. This will be used to develop a strategic framework for development in these areas by identifying where land can be allocated for development without adverse impact on the SPA/Ramsar site, whilst taking an integrated approach to habitat creation to ensure sufficient mitigation can be delivered. Further studies will investigate the precise extent of site allocations in these areas.'
- 1.6 The study referred to was published by INCA in December 2011 and titled 'Use of land at Seal Sands and North Tees by birds of the SPA'. It concluded that there were a number of areas of land which had previously been allocated, which were functionally important to the integrity of sites within the SPA (red-plots) and that there were a number of sites (green plots) which individually were not functionally important to the SPA, but development could have a cumulative impact which would require strategic mitigation. It should be born in mind that functionally linked land is land that is outside that SPA but plays such a critical role to the functioning of the SPA that if it were made unavailable to the birds it would threaten the integrity of the SPA.

- 1.7 Following the agreement and publication of the study, the Council sought to de-allocate the land identified as 'red plots' and over the following years, the Council and INCA explored a number of locations for strategic mitigation through engagement with land-owners in the area. However, no locations could be secured.
- 1.8 A comprehensive summary of the engagement between the Stockton on Tees Borough Council and Natural England between 2009 and 2015 is set out in Appendix C of the Stockton on Tees Borough Duty to Cooperate Statement of Compliance. In many instances this document also refers to RSPB.
- 1.9 From 2015 to the present day the Council, Natural England and the RSPB have collaborated as part of the Tees Estuary Partnership (TEP), a group established to discuss the implications of an extension to the Teesmouth and Cleveland Coast Special Protection Area, and to pursue a mechanism for strategic mitigation. Further detail on the TEP is included in sections 4 and 6 below.

Key Issues Summary

- 1.10 The Council consulted both Natural England and the RSPB throughout the production of the Submitted Local Plan. The following is a summarised list of the key issues raised during the consultation and subject to further dialogue through the production of this statement:
 - Approach to the Habitat Regulation Assessment
 - Environmental Protection Policies (Policy ENV5)
 - North Tees and Seal Sands (Policies SD4 and EG4)
 - Transport Infrastructure (Policy TI1)
 - pSPA
- 1.11 The remaining sections of this document discuss the above list in detail before concluding where there is agreement or disagreement on these matters.

Summary of Common Ground

- Agreed that the Habitats Regulation Assessment provides a robust assessment of the implications of the emerging Local Plan
- Agreed that the legal tests related to the Habitats Regulation Assessment do not necessarily mean that a plan passes the Local Plan tests of soundness.
- Natural England support the relevant 'suggested modifications' made to the Environmental Policies of the Local Plan.
- Agreed that the Environmental policies in the Local Plan are legally compliant and sound.
- The Council and Natural England agree and reaffirm the commitment to the Tees Estuary Partnership vision.
- It is hoped that the Tees Estuary Partnership will provide an opportunity to deliver a strategic mitigation process which is consistent with this vision and will help to maximise development on the site allocations in the area. However, considerable work is required to ensure that the adopted habitat banking system meets all legal and policy drivers/requirements

- Prior to the identification of strategic mitigation, individual projects would be required to deliver mitigation on an individual basis, the current system.
- That should strategic mitigation not be identified, individual projects would be required to deliver mitigation on an individual basis, the current system.
- That policy ENV5 should be considered alongside policy EG4 and other relevant policies in the plan. This provides a suitable back-stop which prevents project level developments from having a negative impact on SPA.
- That the approach in the Local Plan is sound in accordance with paragraph 182 of the NPPF.
- That the Habitats Regulation Assessment of the Local Plan provides a robust assessment of the impact of policy EG4
- That policy ENV5 should be considered in parallel to policy T11 and other relevant policies in the plan. This provides a suitable back-stop which prevents project level developments from having a negative impact on SPA.
- That policy ENV5 should be considered in parallel to policy T11 and other relevant policies in the plan. This provides a suitable back-stop which prevents project level developments from having a negative impact on SPA.
- Agreed that Tees Crossing and Portrack Relief Road do not relate to key projects within the Local Plan that create soundness issues.
- That the Habitats Regulation Assessment of the Local Plan provides a robust assessment of the impact of policy T11.
- The approach taken by Stockton on Tees Borough Council for the HRA of the Local Plan has adequately considered the potential implications on the extended SPA boundary.

2 Approach to the Habitat Regulation Assessment

The Issue

- 2.1 In addition to concerns set out elsewhere in this statement, RSPB was concerned that the HRA does not fully address the potential for the construction and operational phases of development proposals on allocated sites to impact the SPA by permanently displacing interest features through new structures, human presence, noise or other visual disturbance.
- 2.2 During the development of this statement RSPB raised concerns focused around the interaction between the tests of soundness for the Local Plan and the tests required by the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). In order to secure a Local Plan that will work effectively the RSPB consider that it is essential to evaluate potential implications for the delivery of development that arise from this interaction at the earliest possible opportunity.
- 2.3 The RSPB noted the Council's point that the Plan, read as a whole, cannot give rise to impacts upon European sites due to the inclusion of Policy ENV5. However, this statement is different from saying that the Plan will be deliverable. We set out below the comparative sequence of testing for first the Habitats Regulations and secondly the tests of soundness.
- 2.4 Viewed through the lens of the Habitats Regulations, the following sequence holds true:
- I) Proposal is included in the Plan
 - II) Proposal is subject to an Appropriate Assessment tested under the Habitats Regulations and cannot go ahead
 - III) The Plan has not given rise to impacts upon European sites
- 2.5 However, when viewed through the lens of the tests of soundness, the same issue has different outcomes:
- I) Proposal is included in the Plan
 - II) Proposal is tested under the Habitats Regulations and cannot go ahead
 - III) **The Plan contains elements which are not deliverable**
- 2.6 The implications for the overall Plan of outcome III under the tests of soundness lens will depend upon how integral to the delivery of the entire plan that a particular proposal is. This issue is discussed in more detail below.

The Council's Approach

- 2.7 The North Tees and Seal Sands section of this statement sets out the Council's approach to the principle of developing land allocations. Whilst land is allocated in various sections of the document (see below) policy ENV5 provides a backstop position that at the project stage development will be assessed in line with that policy and the established legal tests. This will mean that development has to be carefully designed at the project stage to ensure that the proposal will not have an adverse effect on the integrity of the European site.
- 2.8 Examples of this at the project stage have included:

- The scale and nature of the development being acceptable in terms of impact on the SPA as when it is operational it will have a low-employment density; limited lighting; is generally limited in height; careful control of noise and the timing of operations, with on-site access to visitors and deliveries strictly controlled.
- Preventing larger features of development from impacting the SPA through obstruction of bird flight /sight-lines, and creation of “shadow effects” that may inhibit bird usage of adjacent habitats. Developments being designed appropriately to prevent indirect impacts on adjacent habitats.
- To limit the impact of construction activity, planning applications being approved subject to conditions either:
 - i) Linking development to a CEMP (Construction and Environment Management Plan); or
 - ii) Prescribing specific conditions limiting working practices to minimise disturbance to important SPA features.

2.9 Throughout the Local Plan process, the Council has sought to involve a number of parties to ensure that the HRA provides the most robust assessment of the Local Plan. The Council has cooperated constructively and proactively with Natural England to take on board comments, for example considering the impact of residential development within a 6km buffer in respect of coastal / leisure impact.

2.10 This cooperation has extended beyond submission to consider issues raised as part of the drafting of this statement. A revised HRA has been passed to the Inspector alongside this statement.

Natural England's Approach

2.11 Natural England agree the proposed approach to the HRA and support the Council's position.

Common Ground

2.12 The following is agreed by the Council and Natural England parties:

- Agreed that the Habitats Regulation Assessment provides a robust assessment of the implications of the emerging Local Plan
- Agreed that the legal tests related to the Habitats Regulation Assessment do not necessarily mean that a plan passes the Local Plan tests of soundness.

3 Environmental Protection Policies

The Issue

- 3.1 RSPB advised that the sequencing of the alternative solutions and IROPI test in the Publication Draft Local Plan is incorrect. RSPB considered it important that the wording in the Plan clearly reflected (and accurately interpret) the wording within the Habitats Directive in order to avoid any confusion or uncertainty. RSPB did not consider this to require anything more than a simple textual correction at this stage.

The Council's Approach

- 3.2 The Council accepts the suggested changes and has suggested modifications to the Local Plan to address these issues. These were passed to the Inspector in the 'Suggested Modifications Document in February 2018.

Natural England's Approach

- 3.3 Natural England agree and support the Council's approach.

Common Ground

- 3.4 The following is agreed by all parties:
- Natural England support the relevant 'suggested modifications' made to the Environmental Policies of the Local Plan.
 - Agreed that the Environmental policies in the Local Plan are legally compliant and sound.

4 North Tees and Seal Sands (Policies SD4 and EG4)

The Issue

- 4.1 Subject to suggested modifications to the extent of the site allocations (Appendix A) which are agreed by all parties, site allocations in the plan avoid:
- Land designated as a SPA
 - Land which is likely to be included in the extension to the SPA, the pSPA
- 4.2 RSPB raised concerns that there is the potential that if all of the allocated land at the SPA is developed that there will be a cumulative impact on bird species within the SPA/pSPA as identified in the INCA Bird Study (2011).
- 4.3 All parties have been involved in the Tees Estuary Partnership which has the following vision:
- “Our shared vision for the Tees Estuary is to create an estuary that is an exemplar for nature conservation, with thriving habitats and populations of birds and animals, and which drives sustainable economic growth and business investment in the area.”*
- 4.4 Through the Tees Estuary Partnership (TEP), the Government Agencies, Tees Valley councils, the RSPB, businesses and other stakeholders are pursuing strategic mitigation which could mitigate any adverse impact on the integrity of the SPA/pSPA, and also have additional net biodiversity benefits. However, at the time of the Local Plan Examination in Public there is no firm mechanism for strategic mitigation in place.
- 4.5 As noted in section 2 whilst the approach in the HRA holds true, through the lens of the tests of soundness, the same issue has different outcomes:
- I) Proposal is included in the Plan
 - II) Proposal is tested under the Habitats Regulations and cannot go ahead
 - III) **The Plan contains elements which are not deliverable**
- 4.6 The implications for the overall Plan of outcome III under the tests of soundness lens will depend upon how integral to the delivery of the entire plan that a particular proposal is.
- 4.7 The RSPB are of the view that the Inspector should consider the importance of the schemes that have been highlighted in their response and their role within the overall Plan. These include allocations for industrial development detailed within Policy EG4 (Specialist Uses - Seal Sands, North Tees and Billingham).
- 4.8 The key question is the implication that failure to deliver a particular scheme has for delivery of wider elements of the Plan – for instance if a particular scheme is required to “unlock” significant development which is a key element of the Plan its failure to come forward would be serious for the overall deliverability of the Plan, whereas the failure of, for instance, a small housing site, is unlikely to have significant consequences for the Plan’s deliverability.
- 4.9 The RSPB noted that schemes may not be sufficiently advanced in terms of their design for it to be possible to fully assess the likely impacts arising from them. However, it is often

possible to get a clear idea of the level of risk to the deliverability of a scheme from the information that is available.

- 4.10 However, whilst clearer information for developers regarding design measures may go some way in addressing potential impacts of development allocated for in EG4 (e.g. displacement/disturbance of SPA interest features) the RSPB remained concerned that this does not address the issue of piecemeal loss of functional land arising in birds confined to smaller and smaller areas and ultimately undeliverability of remaining allocated sites. This is what the strategic mitigation approach (recommended by the 2011 report and referred to in paragraphs 1.4 to 1.6) was intended to address.

The Council's Approach

- 4.11 Policy SD4 recognises the specialist nature of the areas of Seal Sands and North Tees. They are part of the largest integrated chemical complex in the UK, and the second largest in Western Europe in terms of manufacturing capacity, but concentrated across a relatively small geographical area. It is a key economic market and of vital importance to the local, regional and national economy. In drafting EG4, the Council has sought to delicately balance the aim of conserving and enhancing biodiversity whilst securing sustainable economic growth in this sector in accordance with the NPPF.

- 4.12 The Council has considered three potential options for allocations in the North Tees area, which are summarised and critiqued in the table below.

Figure XXXX

Option	Commentary
<p>1. Maximising the amount of land allocated for economic growth purposes, whilst allocating sufficient sites for strategic mitigation and net biodiversity enhancement.</p>	<p>This is the Council's preferred approach. However, strategic mitigation is not within the Council's control and whilst the Tees Estuary Partnership provides the best opportunity to identify and deliver strategic mitigation, at the time of examination uncertainty remains.</p>
<p>2. Identifying in the Local Plan the maximum potential allocation of land for development, whilst recognising that environmental constraints may limit future development at the project stage.</p>	<p>This option takes a flexible approach which can respond to any progress the Tees Estuary Partnership may make. The Local Plan provides sufficient safeguards to ensure that project level development does not fail the tests set out in the Habitats Regulations.</p> <p>There is potential that areas of land allocated in the plan may not prove to be deliverable because the necessary mitigation cannot be secured. However, this could also be the case if no allocations are made as a lack of mitigation land may still prevent sites being delivered.</p> <p>In the absence of identified strategic mitigation (above) this approach is the</p>

	remaining approach which is most consistent with the TEP vision.
3. Do not allocate any land, as strategic mitigation has not been confirmed. Proposals to be considered on individual project basis having regard to the legal tests.	<p>This option is least consistent with the TEP vision as it leaves the consideration of development proposals to the project stage and does not drive economic growth. Indeed whilst all parties, including land-owners and developers, are committed to the TEP this approach could threaten this unity.</p> <p>It is also not required because the Local Plan includes backstop policies which signpost the established legal tests, preventing any impact on the SPA from option 2.</p>

4.13 Overall, the Council is of the opinion that option 2 is currently the most pragmatic and appropriate option to pursue. Policies EG4 and ENV5, plus a commitment to future working with neighbouring local authorities, and other bodies through the TEP is the Local Plan's interpretation of this approach. It is designed to be flexible in order to respond to changing circumstances:

- If Strategic Mitigation is identified, Option 2 will effectively become option 1; and,
- If Strategic Mitigation is not identified option 2 will have to be balanced against the established legal tests and will effectively be option 3.
- If environmental conditions on the ground change then this flexible approach can respond accordingly.

4.14 The RSPB have stated that the plan could potentially be considered 'unsound' if there is a risk that a large amount of the draft allocations are found to be undeliverable at the project stage. The Council considers that:

- The allocations at Seal Sands and North Tees are strategic allocations which may only come forward in full beyond the Local Plan period. However, in line with the TEP vision the Council is seeking to establish the maximum extent of deliverable employment land; the Council has monitored the suitability of allocations in the Tees Estuary since the adoption of the 1997 Local Plan, and before, taking in to account changes in habitat sensitivity. Appendix B to this report highlights where land originally allocated in the Local Plan 1997 has been deallocated because of habitat sensitivity.
- This is a matter which can be monitored following the adoption of the Local Plan and if necessary incorporated in to a review of the local plan; and
- Further deallocations may be required in the future.
- Until the pSPA consultation materials become available it is not clear if bird % in the 2011 INCA report is the only data used in determining which land is included in the pSPA, and therefore its functionality. Within the Seal Sands allocations, assessments will be required on a case by case basis taking into account the latest survey data. The overallocation of land provides a flexibility to ensure that the objectives of the Plan can be met (and is sound) while at the same time protecting what could be functional land.

4.15 In addition to the above the Council considers this approach to this matter to be sound because:

- The Local Plan allocations avoid designated land in the SPA / pSPA.
- The approach is consistent with the emerging work from the Tees Estuary Partnership.
- Policy ENV5 of the emerging Local Plan and the legal tests set out in the Habitats Regulations require any future project / proposal on the site allocations to demonstrate that the legal test of the Habitats Regulations are met for the pSPA/SPA.
- It is possible that some of the site allocations may increase/decrease in ecological importance, and in accordance with policy ENV5 and the legal tests may not be deliverable. The Council anticipates that the worst case cumulative impact, as identified in paragraph 3.2 above, could, at worst, lead to a small reduction in the allocation which would not threaten the deliverability of the Local Plan.

4.16 Should the Examination in Public find that the allocations should be removed from the area, the Council considers that the plan can be modified to be sound by selecting option 3. This would involve:

- Adopting the approach taken in the Regeneration and Environment Local Plan Publication Draft (February 2015). An approach recognised in paragraph 6.23 of the Regulation 18 Draft Local Plan which stated that the ecological constraints near the SPA could mean that allocations in the North Tees / Seal Sands area could be removed.
- Allowing development to be considered in accordance with planning applications and the tests in the Habitats Regulations. Whilst this may slightly affect certainty, it would not undermine the integrity of the SPA/pSPA and would not prevent economic growth.

Natural England's Approach

4.17 Natural England agree and support the Council's approach.

Common Ground

4.18 The following is agreed by all parties:

- The Council and Natural England agree and reaffirm the commitment to the Tees Estuary Partnership vision.
- It is hoped that the Tees Estuary Partnership will provide an opportunity to deliver a strategic mitigation process which is consistent with this vision and will help to maximise development on the site allocations in the area. However, considerable work is required to ensure that the adopted habitat banking system meets all legal and policy drivers/requirements
- Prior to the identification of strategic mitigation, individual projects would be required to deliver mitigation on an individual basis, the current system.
- That should strategic mitigation not be identified, individual projects would be required to deliver mitigation on an individual basis, the current system.

- That policy ENV5 should be considered alongside policy EG4 and other relevant policies in the plan. This provides a suitable back-stop which prevents project level developments from having a negative impact on SPA.
- That the approach in the Local Plan is sound in accordance with paragraph 182 of the NPPF.
- That the Habitats Regulation Assessment of the Local Plan provides a robust assessment of the impact of policy EG4

5 Transport Infrastructure (Policy TI1)

The Issue

- 5.1 The Habitats Regulations Assessment of the Publication Draft Local Plan concluded that the plan would not give rise to any likely significant effects upon European sites within the area.
- 5.2 Various policies within the plan include reference to plans that may arise from those policies. For example, Policy TI1 Transport Infrastructure refers to targeted improvements to the Highway Infrastructure such as a New Tees Crossing and the A1027 Portrack Relief Road. Neither of these projects are sufficiently advanced to allow detailed assessment of likely significant effects upon nearby European sites so a project level HRA cannot be undertaken at this stage.
- 5.3 Policy TI1 safeguards the route for additions to the highway network at TI1.7.b.i. A1046 Portrack Relief Road and TI1.7.a.v. New Tees Crossing. These routes have been identified through the Area Action Plan to relieve congestion on the strategic road network. Whilst the route of the Portrack Relief Road is fairly well established, feasibility work is ongoing for the Second Crossing.
- 5.4 During the Publication consultation on the Local Plan / Habitats Regulations Assessments, the RSPB raised the issues of whether the approach set out above:
- Will give rise to future adverse impact on the European Site;
 - Runs the risk that policies in the Local Plan will be undeliverable, therefore making the plan as a whole undeliverable.
- 5.5 As noted in section 2 whilst the approach in the HRA holds true, through the lens of the tests of soundness, the same issue has different outcomes:
- I) Proposal is included in the Plan
 - II) Proposal is tested under the Habitats Regulations and cannot go ahead
 - III) **The Plan contains elements which are not deliverable**
- 5.6 The implications for the overall Plan of outcome III under the tests of soundness lens will depend upon how integral to the delivery of the entire plan that a particular proposal is. The RSPB are of the view that the Inspector should consider the importance of the schemes that have been highlighted in their response and their role within the overall Plan. These include proposed new road schemes described in Policy TI1 (Transport Infrastructure).
- 5.7 The key question is the implication that failure to deliver a particular scheme has for delivery of wider elements of the Plan – for instance if a particular scheme is required to “unlock” significant development which is a key element of the Plan its failure to come forward would be serious for the overall deliverability of the Plan, whereas the failure of, for instance, a small housing site, is unlikely to have significant consequences for the Plan’s deliverability.
- 5.8 The RSPB noted that schemes may not be sufficiently advanced in terms of their design for it to be possible to fully assess the likely impacts arising from them. However, it is often possible to get a clear idea of the level of risk to the deliverability of a scheme from the information that is available.

- 5.9 For instance, the proposed New Tees Crossing, the A1027 Portrack Relief Road and EG4 allocations have clear geographical locations within Stockton Borough Council's area. Even at an early stage in their design, based on the need that the scheme is being promoted to address, it is usually possible to evaluate whether these schemes are likely to run close to, or indeed through, European sites. It is also possible to consider the European sites that may be affected and to consider the sensitivities of those sites to harm from the proposed schemes, using a source-pathway-receptor model. The findings of this strategic exercise will help to inform the plan making process as it will give a clear indication of design measures that may be required to address potential impacts in order to make these schemes acceptable and also a clear understanding of the likelihood that the requirements of the Habitats Regulations may prevent the scheme going forward in the future. At present we consider that these last two elements are missing from the evidence base that underpins Stockton Borough Council's draft Local Plan.
- 5.10 Regarding Policy T11, the RSPB noted that Stockton Borough Council's statement that the New Tees Crossing and the A1027 Portrack Relief Road are not necessary to deliver key housing and employment allocations, and consequently we anticipate that the Council will be able to provide clear evidence to the Inspector demonstrating the likely impacts to (i) economic growth across the Tees Valley if they do not proceed and (ii) the consequences of any diminished economic growth in the Tees Valley area upon the development proposed within Stockton Borough Council's draft Local Plan.

The Council's Approach

- 5.11 Read as a whole the Local Plan cannot give rise to future adverse effect upon European sites as it includes policy ENV5. This provides protection for internationally designated sites (SPA, SAC and Ramsar sites) and ensures the appropriate legal tests will be applied once the details of the project referred to in policy T11 come forward. As these tests are set out in legislation, they would have to be undertaken regardless of whether the Local Plan, and policy ENV5, is adopted or not.
- 5.12 Therefore, any project that comes forward that then fails the legal test set out in the Habitats Regulations could not go forward and the Policy cannot give rise therefore to adverse effects upon the European sites.
- 5.13 This approach is valid because the HRA assesses, as a whole, the impact of the *suite of policies* set out in the Local Plan, *not* the projects that may lead on from those policies. Therefore the HRA correctly recognised that policy T11 must be balanced against policy ENV5 which provides a robust backstop to ensure that the European sites are appropriately protected at the project stage. The HRA states that until the Portrack route is confirmed the policy does not give rise to any conflict. The policy has been screened in for LSE (habitat loss) as the proposed, but not final, route does cut across the potential pSPA at Portrack Marsh. Paragraphs 59 and 60 of the HRA discusses the LSE impact pathway, and paragraphs 105 to 111 discuss the impact pathway at Appropriate Assessment. Once the two boundaries are known, further Appropriate Assessment may be required.
- 5.14 The Council's view is that it is perfectly legitimate to mention projects within the plan even though there is a risk that they cannot be delivered because of a potential legal failure at the

project level HRA. The inability to deliver one project that is just one element of a policy does not in our view, mean that the entire policy would be undeliverable and would therefore fail.

- 5.15 Furthermore, the two projects in policy TI1 are not necessary to deliver key housing and employment allocations across the area. They are required to support continued economic growth across Tees Valley, beyond the plan period, and to meet the objectives of Highways England, who are seeking to improve travel times on the A19. Furthermore, it is not anticipated that these schemes will be delivered within the first five-years of the Local Plan. Therefore housing and employment allocations in the plan will not be undermined should future environmental assessment identify that the schemes cannot progress.
- 5.16 The Council is producing a Statement of Common Ground with Highways England regarding the implications of the Local Plan for the strategic road network. This will provide a position statement and agreement on the approach to the River Tees Crossing and Portrack Relief Road. This will explain that none of the key site allocations that are necessary to meet housing and employment needs are dependent on the successful delivery of this infrastructure.

Natural England's Approach

- 5.17 Natural England agree and support the Council's approach

Common Ground

- 5.18 The following is agreed by the Council and Natural England:
- That policy ENV5 should be considered in parallel to policy TI1 and other relevant policies in the plan. This provides a suitable back-stop which prevents project level developments from having a negative impact on SPA.
 - Agreed that Tees Crossing and Portrack Relief Road do not relate to key projects within the Local Plan that create soundness issues.
 - That the Habitats Regulation Assessment of the Local Plan provides a robust assessment of the impact of policy TI1.

6 Proposed Special Protection Area Extension

The Issue

- 6.1 Since the SPA was originally designated in 1995, and then extended in 2000, further land has been identified which supports SPA interest features. Alongside this the populations of breeding Common Tern and Avocet have reached levels where they qualify for SPA status, as do the populations of non-breeding Ruff. The majority of the extension is off-shore to protect feeding grounds for SPA features; there are also some terrestrial sites proposed for inclusion which support feeding and roosting of SPA interests.
- 6.2 Natural England has submitted the proposed extension boundaries, Impact Assessment and Departmental Brief documentation to Defra. No confirmation has yet been provided as to when the consultation is expected to commence, but it is expected to be before Summer 2018.
- 6.3 The proposed changes to the SPA boundary potentially impacts upon some of the allocations within the Local Plan, particularly around Seal Sands and North Tees, where additional extensions are proposed.

The Council's Approach

- 6.4 The Council is aware of the potential consultation and has where possible sought to consider the implications in the Local Plan and the HRA.

Natural England's Approach

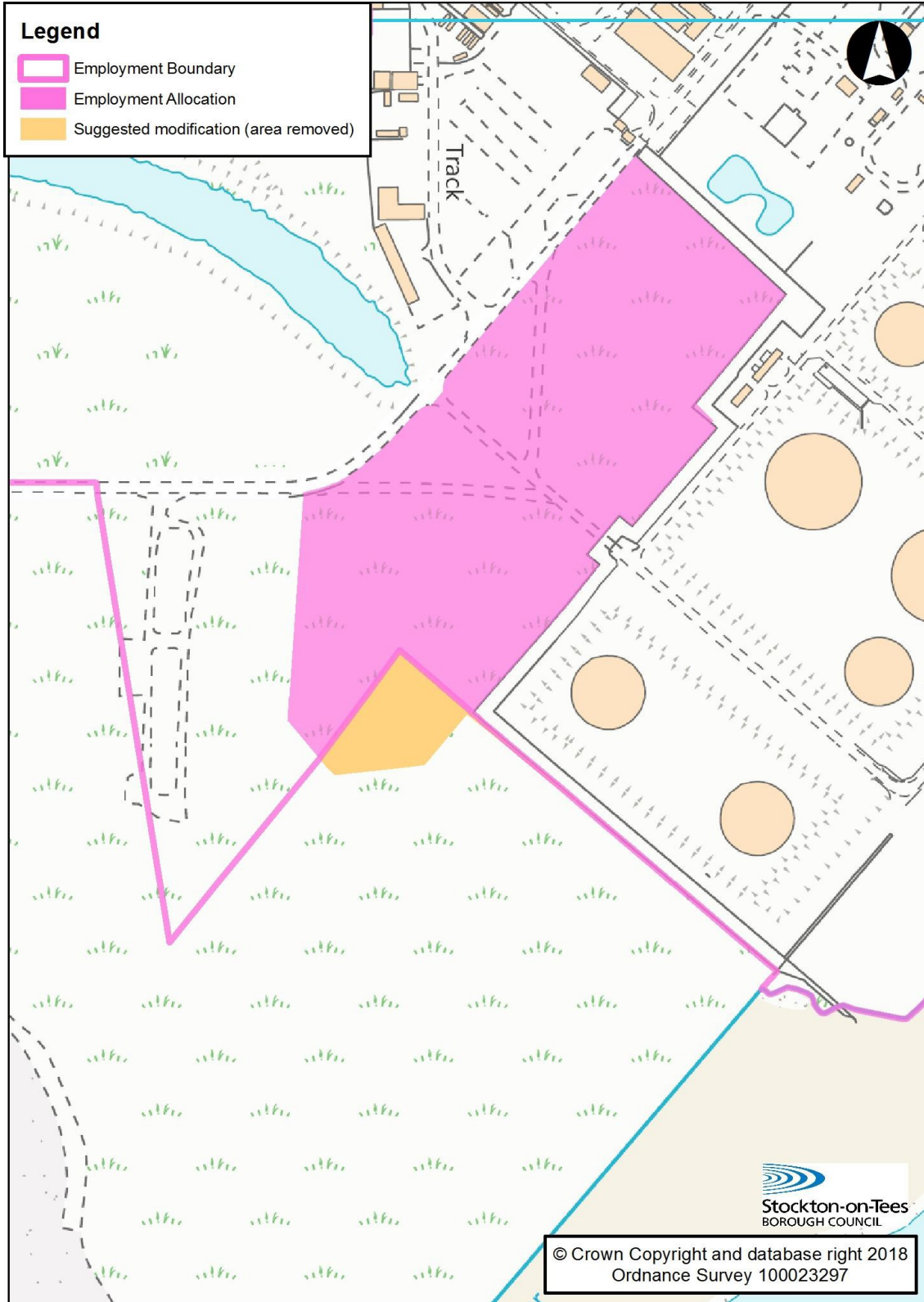
- 6.5 Natural England agrees that the approach taken by Stockton for the HRA of their Local Plan has adequately considered the potential implications on the extended SPA boundary.

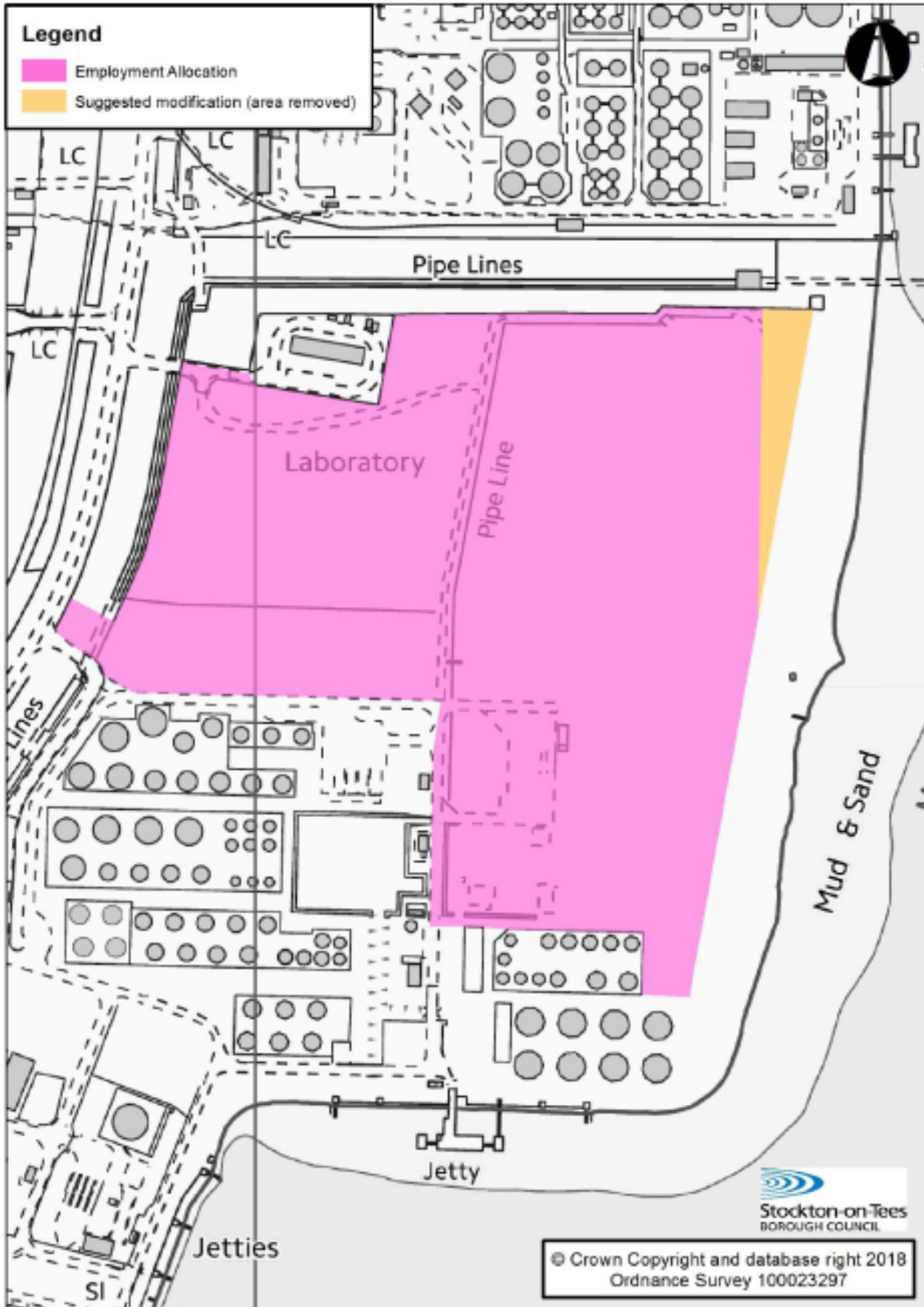
Common Ground

- 6.6 The Council and Natural England agree that:
 - The approach taken by Stockton on Tees Borough Council for the HRA of the Local Plan has adequately considered the potential implications on the extended SPA boundary

7 Appendix

Appendix A – Suggested Modifications to Policies Map





Appendix B –Local Plan (1997) Deallocations

