

SEA for local and neighbourhood plans in England

Mark Fessey

Principal Consultant, AECOM


April 2015

This presentation

- Introduction
- Background to SEA for Local Plans and Neighbourhood Plans
- The plan-making / SEA process - **challenges** created by plan-making legislation
- Learning lessons and ‘demystifying’ the process

Introduction

- Over the past 11 years, AECOM has supported almost 100 local authorities through direct commissions, plus we are the leading providers of support to neighbourhood groups.
- Local Plan-making in England is challenging, given engaged, knowledgeable and often well funded plan objectors.
- Our experience is that plan-makers do not view SEA positively, and are not confident in their ability to discharge requirements.
- Often a concern that a failure to meet SEA requirements will result in the plan ‘falling at the last hurdle’ (Examination) or being legally challenged post adoption.



STRATEGIC ENVIRONMENTAL ASSESSMENT / SUSTAINABILITY APPRAISAL: DEMYSTIFYING, EASING AND IMPROVING EFFECTIVENESS

REGISTER
Two Day »
One Day »
Conference Dinner »

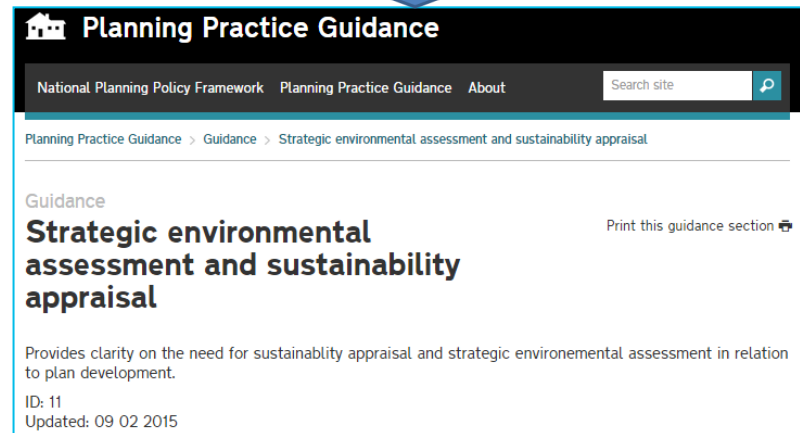
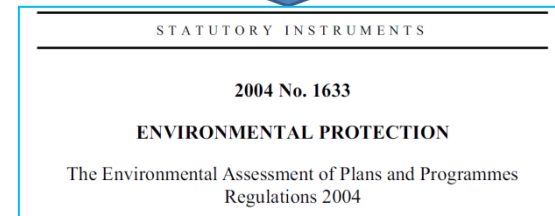
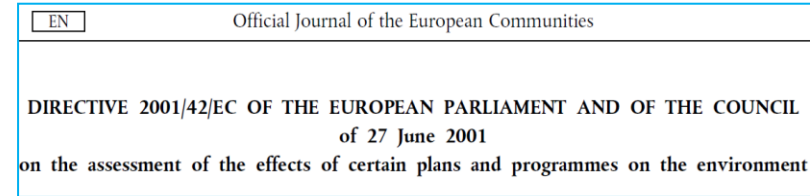
STRATEGIC ENVIRONMENTAL ASSESSMENT / SUSTAINABILITY APPRAISAL: DEMYSTIFYING, EASING AND IMPROVING EFFECTIVENESS

Conference at Oxford Brookes University, 1-2 June 2015

Please let us know what you would like to see/hear/do at this conference ...
Contact Riki Therivel at riki@levelt-therivel.co.uk or Steve Smith at steve.smith02@urs.com

Background to SEA for Local Plans

- Through legislation (2004) Local Plans require **Sustainability Appraisal (SA)**, with guidance clarifying that SA should meet the requirements of the SEA Directive.
 - *“All references to SA must be taken to include the requirements of the SEA Directive.”*
 - *“An SA which meets the requirements of the SEA Directive should be an integral part of the plan preparation process.”*
- **The SA process = the SEA process.** SA is simply SEA undertaken with no starting assumptions re. a substantive focus on environmental issues
- The SEA / SA process is understood from the Regulations (which transpose the Directive almost verbatim), and also guidance.



Background to SEA for Local Plans

- SEA practice must also account for precedents set by Planning Inspectors and legal judgements.

“The evaluation of reasonable alternative options is a fundamental part of plan making. It is necessary for soundness, and a Plan can only be justified when it has been formulated on such a basis. On the whole it is the SA process which performs this function.”

PINS, 2014



“If the methodology for choosing the best locations for new development is soundly based, then it follows that the Council’s decisions on which sites to allocate should also be sound”

PINS, 2014



“Consulting about a proposal does inevitably involve inviting and considering views about possible alternatives.”

Supreme court, 2015



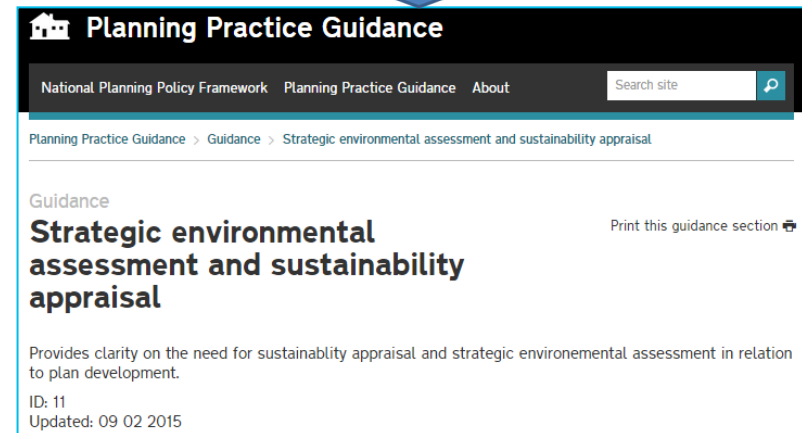
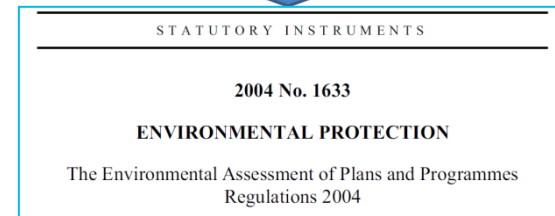
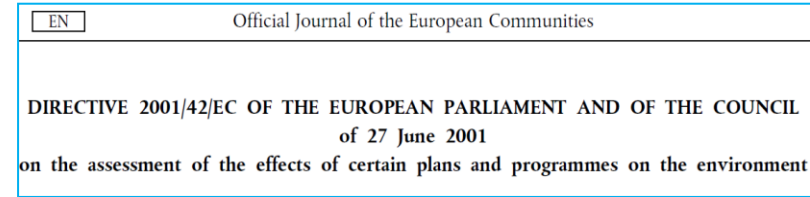
*“As to the substance of the work to be done by a local planning authority in identifying **reasonable alternatives** for environmental assessment, the necessary choices to be made are **deeply enmeshed with issues of planning judgment**, use of limited resources and the maintenance of a balance between the objective of putting a plan in place with reasonable speed... and the objective of gathering relevant evidence and giving careful and informed consideration to the issues to be determined. The effect of this is that **the planning authority has a substantial area of discretion** as to the extent of the inquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail...”*

High Court, 2014



Background to SEA for Neighbourhood Plans

- There is not an automatic requirement for SEA.
- So, there is a need to ‘screen’ all NPs
 - *“Alongside the Neighbourhood Plan, ‘qualifying bodies’ must submit to the Local Authority either: an environmental report; or where it has been that the plan proposal is unlikely to have significant environmental effects (and, accordingly, does not require an environmental assessment), a statement of reasons for the determination.”*



The required SEA process

- The SEA process can be understood from reading three articles, and closely examining Annex 1

Article 5: The Environmental Report

21.7.2001	EC	Official Journal of the European Communities	L 197/13
Article 4			
General obligations			
1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.			
2. The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.			
3. Where plans and programmes form part of a strategy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of this article, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).			
Article 5			
Environmental report			
1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and explained. The information to be given for this purpose is set out in Annex 1.			
2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the context and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.			
3. Relevant information available on environmental effects of the plan and programme and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex 1.			
4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which may be included in the environmental report.			

Article 6: Consultations

21.7.2001	EC	Official Journal of the European Communities	L 197/13
Article 5			
Environmental report			
1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and explained. The information to be given for this purpose is set out in Annex 1.			
2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the context and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.			
3. Relevant information available on environmental effects of the plan and programme and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex 1.			
4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which may be included in the environmental report.			
Article 6			
Consultations			
1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.			
2. The authorities referred to in paragraph 3 and the public, especially within appropriate time limits to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure—			
3. Member States shall designate the authorities to be consulted, which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.			
4. Member States shall identify the public for the purpose of paragraph 2, including the public, allowed or likely to be affected by, or having an interest in, the development subject to this Directive, including relevant non-governmental organisations, and shall ensure that the public is consulted in a timely and effective manner.			
5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the Member States.			
Article 7			
Transboundary consultations			
1. Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requires, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.			
2. Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or to submission to the legislative procedure and, if so indicates, the Member State concerned shall enter into consultations, concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.			
3. Where such consultations take place, the Member State concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.			
4. Where Member States are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timetable for the duration of the consultations.			

Article 8: Decision making

1.10.2004	EC	Official Journal of the European Communities	L 242/1
Article 8			
Decision making			
The environmental report prepared pursuant to Article 5, the opinion expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.			
Article 9			
Information on the decision			
1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3) and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:			
(a) the plan or programme as adopted;			
(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinion expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives that were considered;			
(c) the measures decided concerning monitoring in accordance with Article 10.			
2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States.			
Article 10			
Monitoring			
1. Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, first, to identify, at an early stage, unforeseen adverse effects, and to be able to undertake appropriate remedial action.			
2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.			
Article 11			
Relationship with other Community legislation			
1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under			

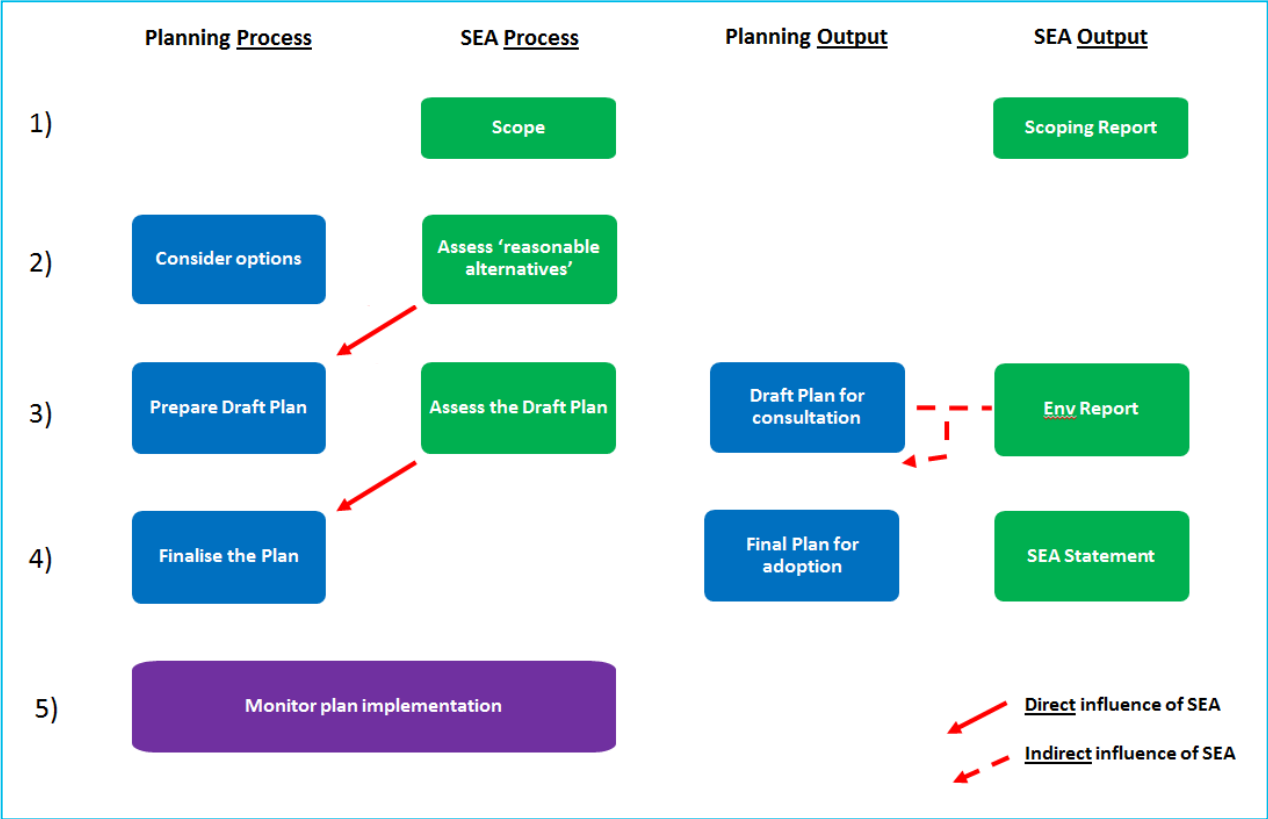
Annex 1: Information to include in the Env Report

1.10.2004	EC	Official Journal of the European Communities	L 242/1
ANNEX I			
Information referred to in Article 5(1)			
The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:			
(a) an outline of the context, main objectives of the plan or programme and relationship with other relevant plans and programmes;			
(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;			
(c) the environmental characteristics of areas likely to be significantly affected;			
(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any one of a particular environmental component, such as areas designated pursuant to Directive 79/409/EEC and 92/43/EEC;			
(e) the environmental protection objectives established at international, Community or Member State level, which are relevant to the plan or programme and the interrelationship between the above factors;			
(f) the likely significant effects of the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climate factors, material assets, cultural heritage, including architectural and archaeological heritage, landscape and the interrelationship between the above factors;			
(g) the measures envisaged in practice, under and as far as possible offset any significant adverse effects on the environment of implementing the plan or programme;			
(h) an outline of the measures for achieving the information dealt with and a description of how the assessment was undertaken including any difficulties that were encountered or that are likely to have been encountered in compiling the required information;			
(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;			
(j) a non-technical summary of the information provided under the above headings.			

7. The assessment shall include sensitive receptors, impacts, their evolution and mitigation measures and appropriate provisions for monitoring.

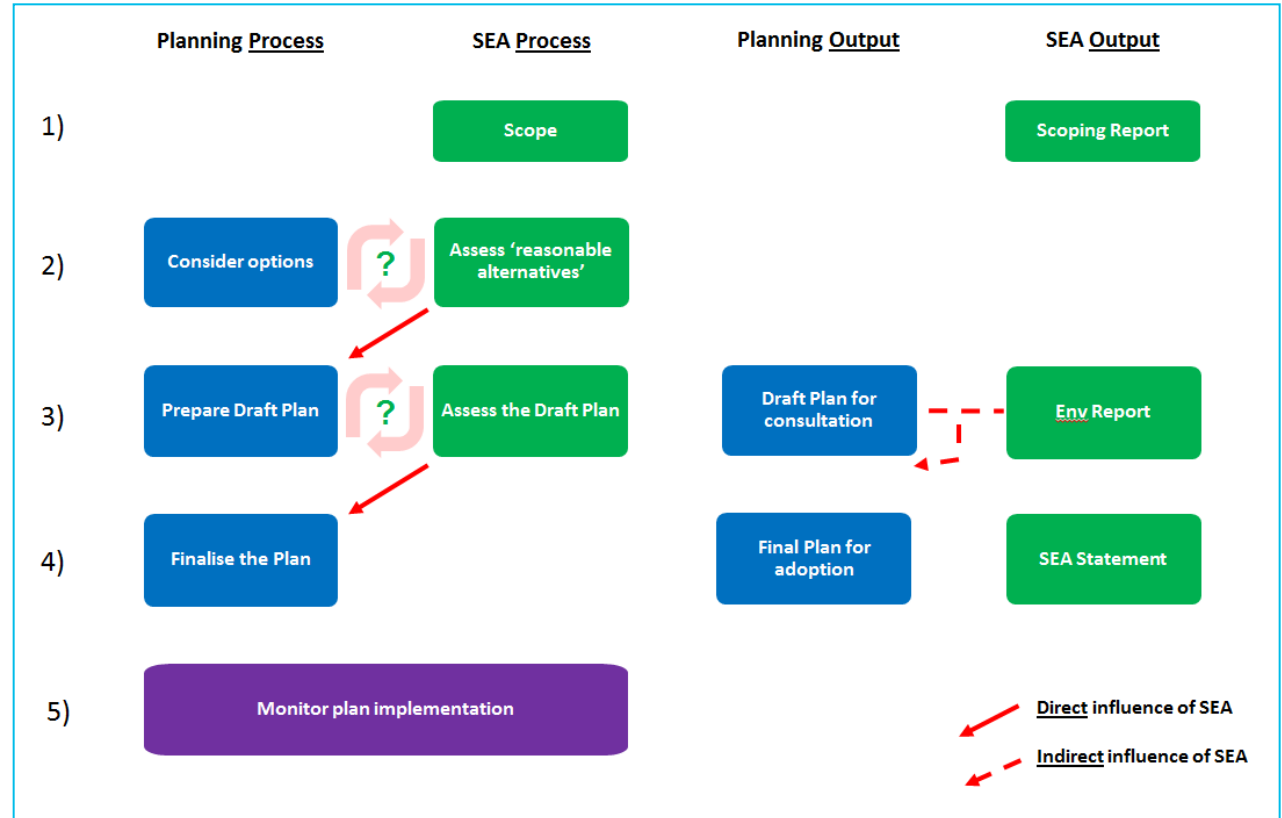
The required SEA process (as interpreted)

- Essentially, SEA involves influencing plan-making in two ways:
 1. Alternatives assessment... informs preparation of the draft plan; and
 2. Assessment of the draft plan... and consultation on the draft plan / Env Report... informs plan finalisation.



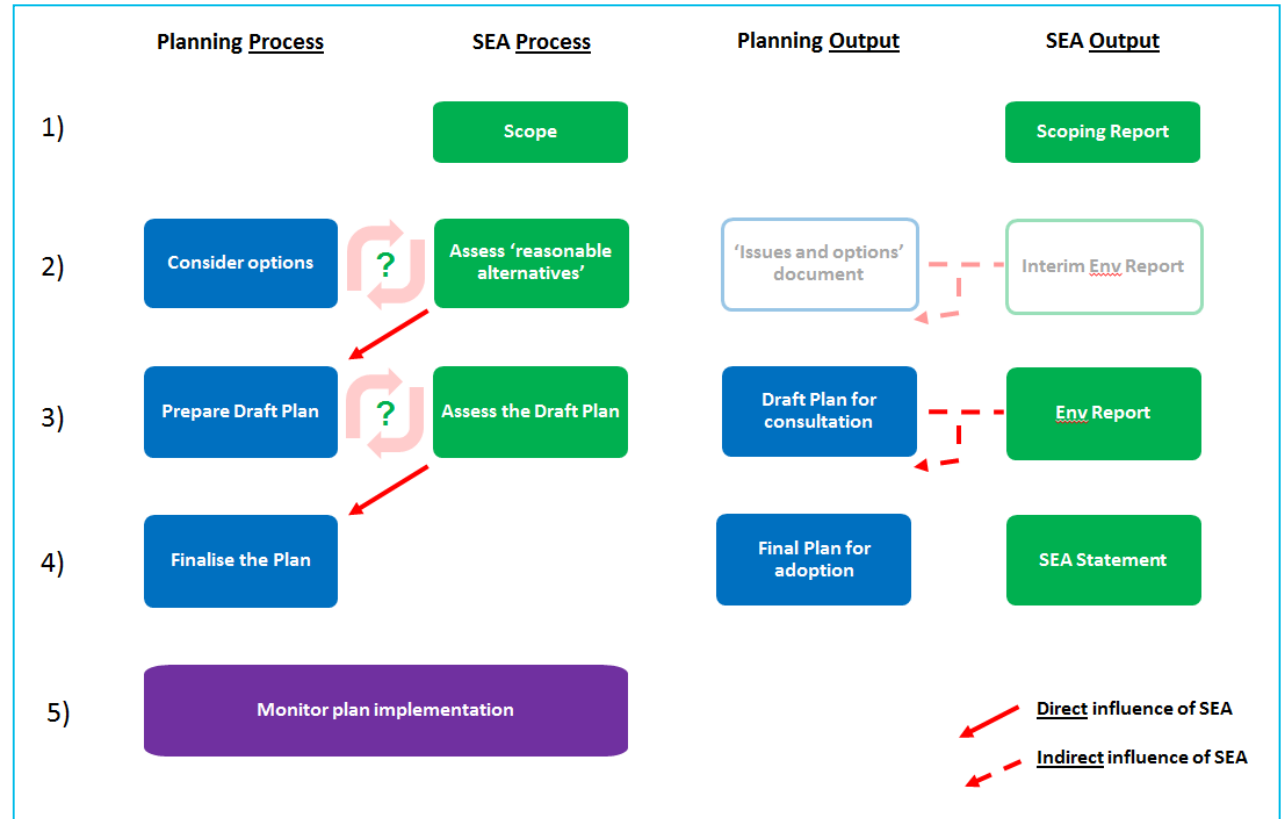
The required SEA process (as interpreted)

- Essentially, SEA involves influencing plan-making in two ways:
 1. Alternatives assessment... informs preparation of the draft plan; and
 2. Assessment of the draft plan... and consultation on the draft plan / Env Report... informs plan finalisation.
- Additional steps / iterations **can be appropriate**; however, this is not a requirement.

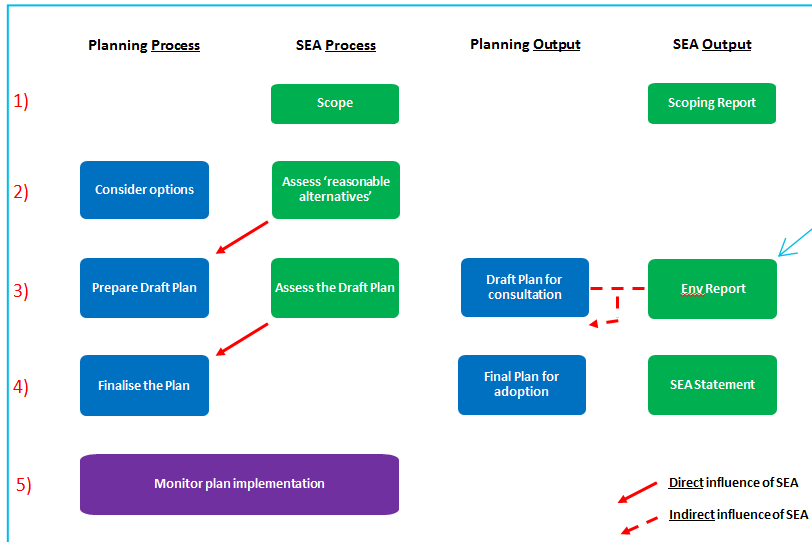


The required SEA process (as interpreted)

- Essentially, SEA involves influencing plan-making in two ways:
 1. Alternatives assessment... informs preparation of the draft plan; and
 2. Assessment of the draft plan... and consultation on the draft plan / Env Report... informs plan finalisation.
- Additional steps / iterations **can be appropriate**; however, this is not a requirement.
- Similarly, it **can be appropriate** to publish information on issues/ options/ alternatives in order to inform draft plan preparation.



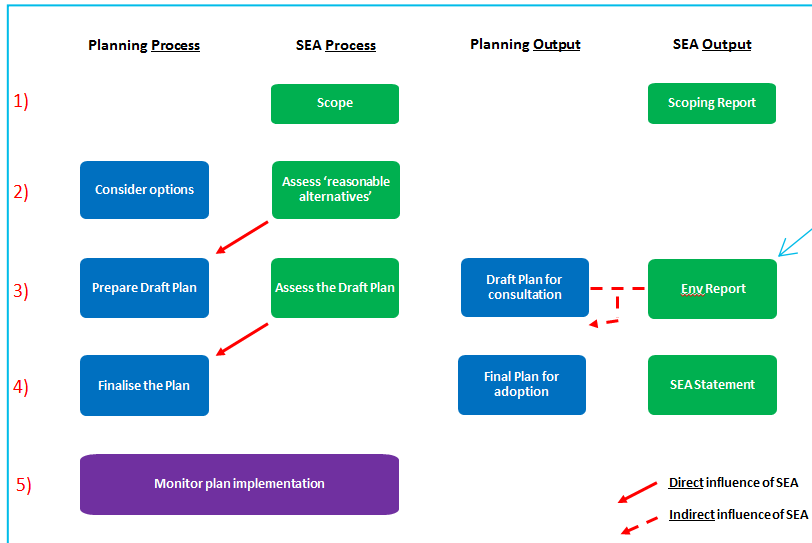
The required SEA process (as interpreted)



Env Report must answer four questions –

- 1) What's the scope of the SEA?
- 2) What has plan-making / SEA involved up to this point?
 - Including re. assessment of alternatives
- 3) What are the SEA findings at this stage?
 - i.e. in relation to the draft plan
- 4) What happens next?

The required SEA process (as interpreted)



Env Report must answer four questions –

- 1) What's the scope of the SEA?
- 2) What has plan-making / SEA involved up to this point?
 - Including re. assessment of alternatives
- 3) What are the SEA findings at this stage?
 - i.e. in relation to the draft plan
- 4) What happens next?

Annex 1

The report must include...

- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects on the environment including on issues such as...;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan;
- (h) an outline of the reasons for selecting the alternatives dealt with and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information

Interpretation of Annex 1

The report must include...

- An outline of the reasons for selecting the alternatives dealt with (i.e. an explanation of the 'reasonableness' of the approach)
- The likely significant effects associated with alternatives, including on issues such as...
... and an outline of the reasons for selecting the preferred approach in light of the alternatives considered / a description of how environmental objectives and considerations are reflected in the draft plan.

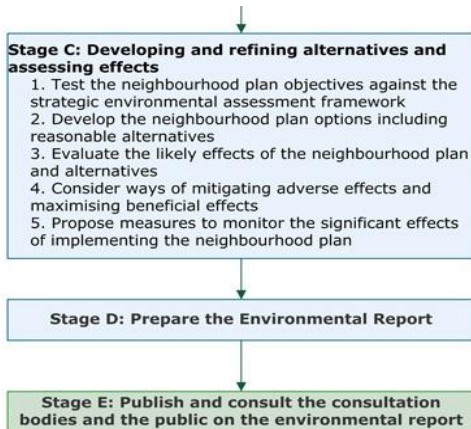
i.e. answer -
What has Plan-making / SA involved up to this point?

- The likely significant effects associated with the draft plan
- The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects of implementing the plan

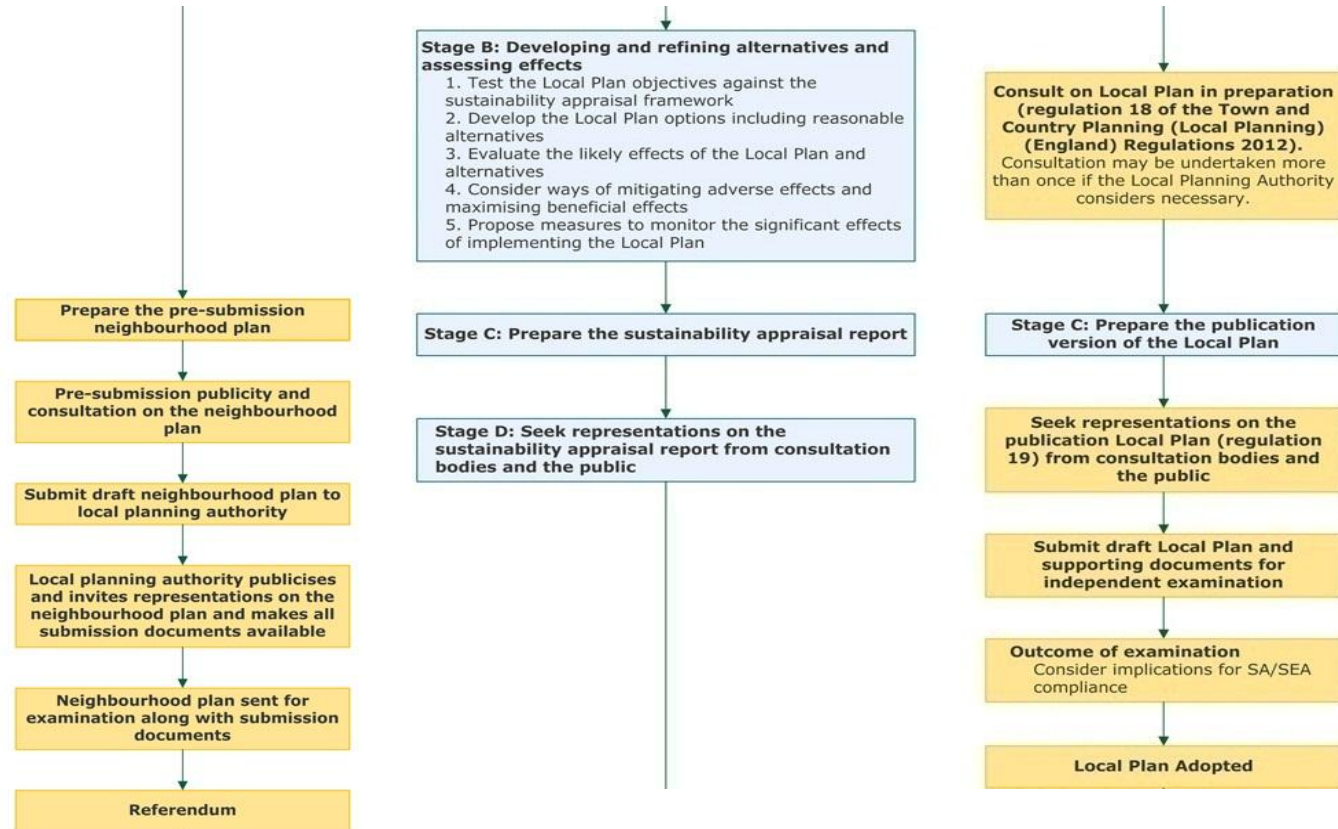
i.e. answer -
What are the appraisal findings at this current stage?

SEA/SA guidance for Local and Neighbourhood Plans

SEA for Neighbourhood Plans



SA for Local Plans



SEA guidance for Neighbourhood Plans

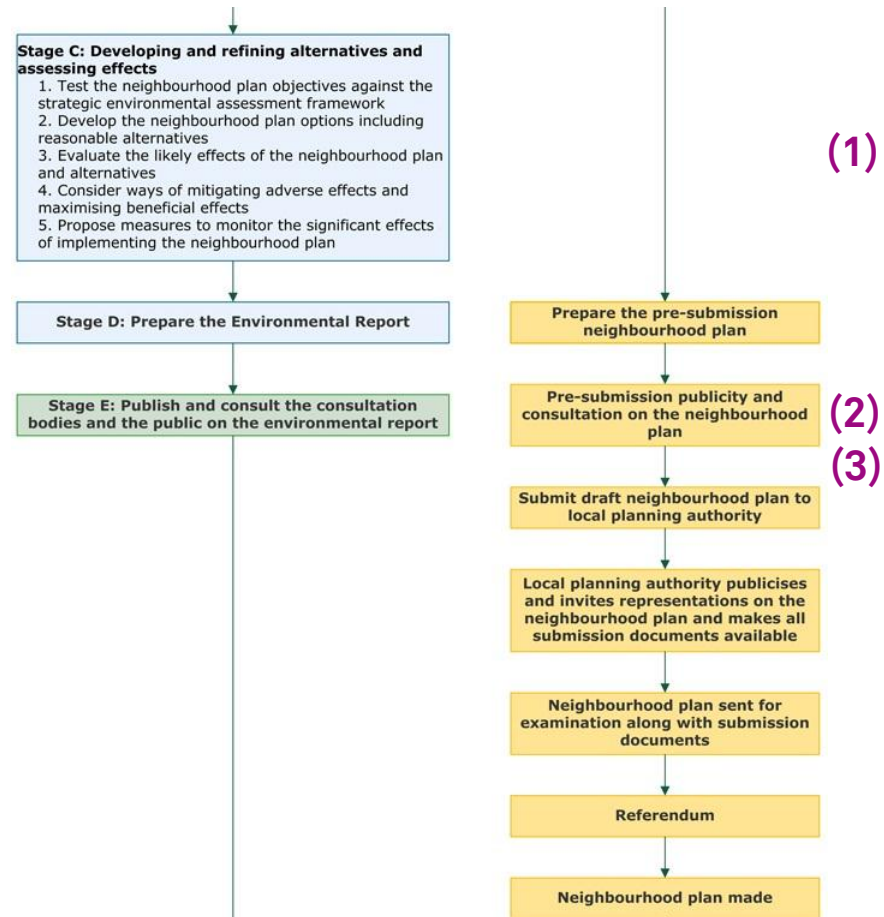
- The Neighbourhood Planning Regulations are sensible.
- They enable a ‘classic’ plan-making process along the lines of:

(1) Consider issues and options;

(2) Consult on a draft plan

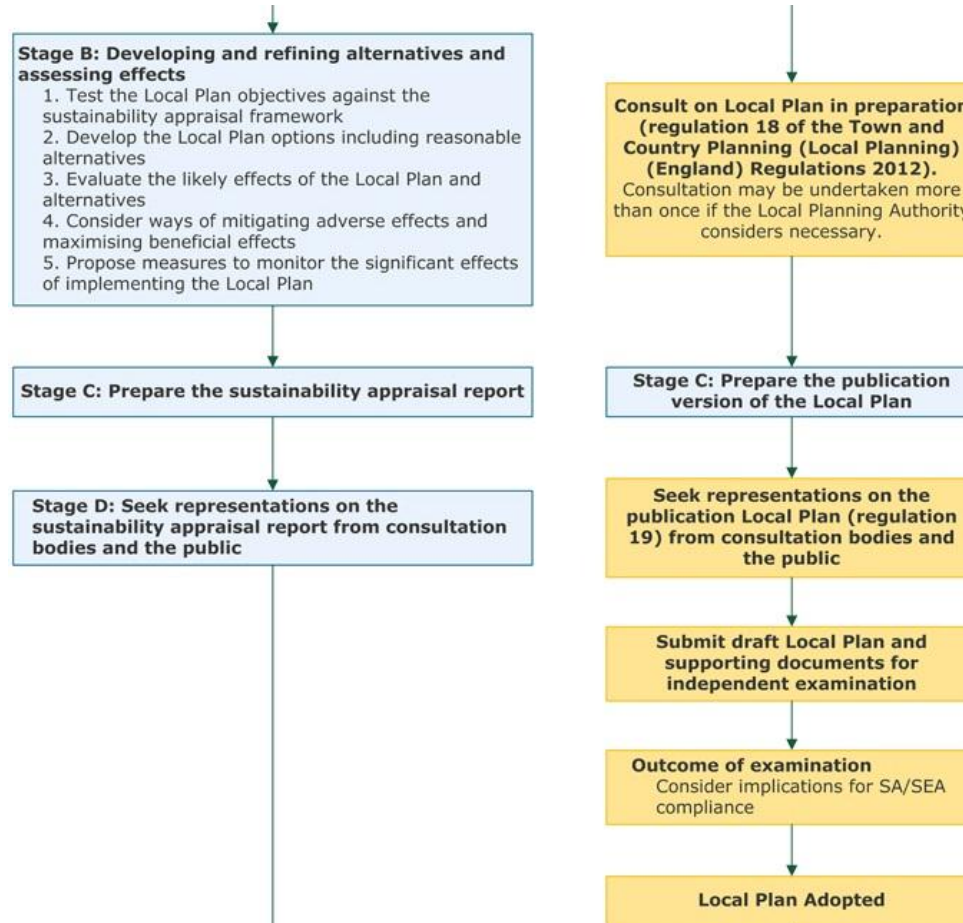
(3) Finalise the plan, giving consideration to alternatives shown to have merit.

- Therefore, the Guidance on SEA for neighbourhood plans is... OK
 - (without wishing to get into the details)



SA guidance for Local Plans

- The Local Planning Regulations are not sensible, and therefore neither is the SA Guidance.
- There is no requirement to hold a *true* draft plan consultation.
- So, what is SEA's role in ensuring 'early, timely and effective opportunities for public participation, when all options are open' in line with SEA / Aarhus requirements?
- More generally, how exactly should SEA feed-in and influence plan-making?



There is actually no requirement to consult at Reg 18. It is a "broad requirement to... take what steps are necessary."

?

'Seek representations'?

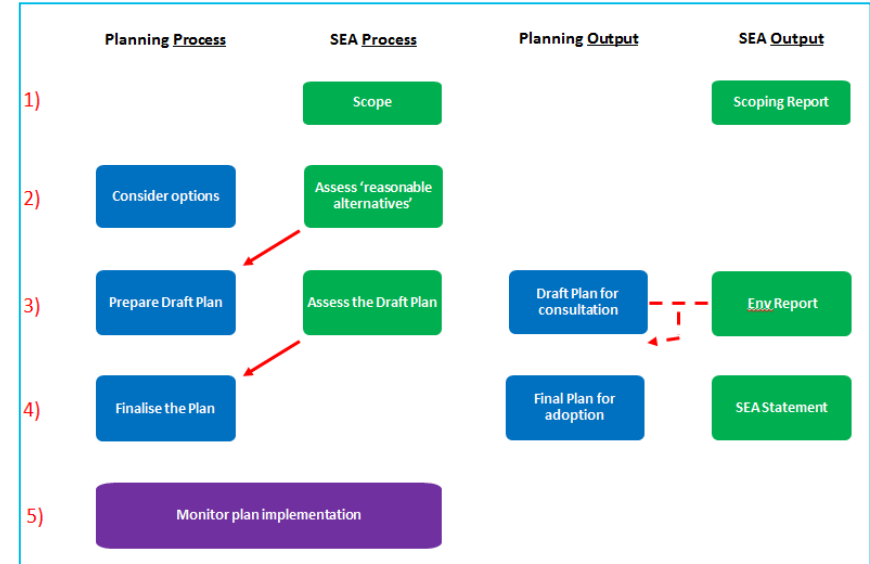
Opportunity to consider alternatives found to have merit??

There is a need to demystify what should be a logical and easily understood process (1)

- SEA requirements should be understood as supporting a ‘classic’ plan-making process that essentially involves **1) Work to prepare a draft plan; 2) Consultation on a draft plan; and then 3) Finalisation of the plan.**

- Specifically, the role of SEA is as follows:

- At **(1)** there is systematic consideration of ‘reasonable alternatives’
- At **(2)** an Environmental Report is published alongside the draft plan that provides certain information with a view to informing consultation and plan finalisation.



- This is what the Directive requires, and with a referendum on the horizon advocates of SEA cannot risk accusations of **gold plating the Directive**.
- However, plan-makers (and others involved in plan-making) will understand that it can be appropriate (i.e. necessary for soundness) to build in **additional iterative steps**.
 - We’re not trying to ‘make life easier for consultants’ or encourage a ‘race to the bottom’!

There is a need to demystify what should be a logical and easily understood process (2)

- Greater consistency around terminology and approach to reporting across plan-making contexts would also help (a lot) -
 - Be clear that SEA is a **process** and the required **output** is the Environmental Report, and as such do not refer to -
 - ‘SEA of [insert name of consultation document]’ ;or
 - ‘[insert number] of SEAs’ having been prepared for a plan
 - Label any output published prior to the draft plan consultation an ‘Interim’ Environmental Report.
 - Whatever the stage in the process, the report should be structured so as to clearly answer four questions:

TABLE OF CONTENTS

INTRODUCTION	1
1 BACKGROUND	2
2 SA EXPLAINED	2
3 STRUCTURE OF THIS SA REPORT	2
PART 1: WHAT IS THE SCOPE OF THE SA?	4
4 INTRODUCTION (TO PART 1).....	5
5 WHAT IS THE PLAN SEEKING TO ACHIEVE?	6
6 WHAT IS THE SUSTAINABILITY ‘CONTEXT’?	8
7 WHAT IS THE SUSTAINABILITY ‘BASELINE’?	12
8 WHAT ARE THE KEY ISSUES/OBJECTIVES THAT SHOULD BE A FOCUS OF SA?	18
PART 2: WHAT HAS PLAN-MAKING / SA INVOLVED UP TO THIS POINT?	22
9 INTRODUCTION (TO PART 2).....	23
10 REASONS FOR SELECTING THE ALTERNATIVE DEALT WITH	27
11 ALTERNATIVES APPRAISAL FINDINGS	34
12 REASONS FOR SELECTING THE PREFERRED APPROACH	37
PART 3: WHAT ARE THE APPRAISAL FINDINGS AT THIS STAGE?.....	45
13 INTRODUCTION (TO PART 3).....	46
14 APPRAISAL OF THE DRAFT LOCAL PLAN	47
15 CONCLUSIONS AND RECOMMENDATIONS AT THIS CURRENT STAGE	76
PART 4: WHAT ARE THE NEXT STEPS (INCLUDING MONITORING)?.....	78
16 INTRODUCTION (TO PART 4).....	79
17 PLAN FINALISATION AND ADOPTION	79
18 MONITORING.....	79
APPENDIX I - REGULATORY REQUIREMENTS	81

THANK YOU

Mark.fessey@aecom.com