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| **Subject:** | **ADOPTION OF DOVER DISTRICT LOCAL PLAN TO 2040** |
| **Meeting and Date:** | **Cabinet – 7 October 2024**<br>**Council – 16 October 2024** |
| **Report of:** | **Ashley Taylor, Planning Policy and Projects Manager** |
| **Portfolio Holder:** | **Councillor Edward Biggs, Portfolio Holder for Planning and Built Environment** |
| **Decision Type:** | **Key Decision** |
| **Classification:** | **Unrestricted** |

**Purpose of the report:** To advise on the outcome of the Independent Examination into the Dover District Local Plan to 2040, seek Cabinet endorsement for the adoption of the Dover District Local Plan to 2040 and recommend its adoption to Council.

**Recommendation:** Cabinet recommends to Council that:

1) The Inspectors' Report into the examination of the Dover District Local Plan be noted (Appendix 1a), and main modifications agreed (Appendix 1b).

2) The Dover District Local Plan to 2040, including Policies Map, as amended by the main modifications set out in Inspectors' Report and the Council's additional (minor) modifications, be adopted as part of the Development Plan for the district (Appendix 2).

3) The current adopted Development Plan documents consisting of Saved Policies from the Local Plan 2002, the Core Strategy 2010 and the Land Allocations Local Plan 2015, be superseded by the Dover District Local Plan to 2040 in accordance with The Town and Country Planning (Local Planning) (England) Regulations 2012 Regulation 8(5).

4) Authority be delegated to the Head of Planning and Development to make further additional modifications to the Dover District Local Plan to 2040 and SA Adoption Statement that relate exclusively to factual updates and grammatical and formatting corrections, prior to making the documents available for inspection.

Cabinet agrees that:

5) The Dover District Local Plan be modified in accordance with the recommended Main Modifications identified in the Inspectors' Report (Appendix 1b).

6) Up to £50,000 be taken from the Regeneration Reserve to cover costs arising from the examination process.

Council resolves that:

7) The Inspectors' Final Report into the examination of the Dover District Local Plan is noted (Appendix 1).

8) The Dover District Local Plan to 2040, including Policies Map, as amended by the main modifications set out in Inspectors' Final Report and the Council's additional (minor) modifications, is adopted as part of the Development Plan for the district (Appendix 2).

9) The current adopted Development Plan documents consisting of Saved Policies from the Local Plan 2002, the Core Strategy 2010 and the Land Allocations Local Plan 2015, is superseded by the Dover District Local Plan 2020 to 2040 in accordance with The Town and Country Planning (Local Planning) (England) Regulations 2012 Regulation 8(5).

10) Authority is delegated to the Head of Planning and Development to make further additional modifications to the Dover District Local Plan to 2040, and supporting documentation, that relate exclusively to factual updates and grammatical and formatting corrections, prior to making the documents available for inspection.

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## 1. Summary

1.1 The Dover District Local Plan to 2040 (the Local Plan) sets out a vision, strategic priorities and spatial planning policy framework for the development in the district. It positively plans for future development and infrastructure requirements to meet the needs of Dover District's communities and will be used to determine all planning applications submitted to the Council.

1.2 The Local Plan has been through an extensive preparation process, including evidence base production, public consultation and independent examination. In October 2022, Council approved the publication and submission of the Local Plan to the Secretary of State for Examination in Public.

1.3 Following Examination hearings in November and December 2023, at the request of the Inspectors, a public consultation on proposed Main Modifications to the Local Plan and the accompanying Policies Map took place in April to May of 2024.

1.4 The Inspectors' Final Report into the soundness of the Local Plan was received 20th September 2024. The report concludes that the Local Plan is sound and legally compliant, subject to the Main Modifications being made as set out in the appendix of their report.

1.5 The next step is now to adopt the Dover District Local Plan to ensure the Council has a robust and up-to-date planning policy framework for the district. The report seeks Cabinet endorsement for the adoption of the Local Plan and accompanying documents and recommends its adoption to Council.

## 2. Introduction and Background

2.1 The Council has a statutory duty to prepare a Local Plan under section 19 of the Planning and Compulsory Purchase Act 2004. The Local Plan is a development plan document that sets out the vision, framework and policies for guiding new development in Dover district up to 2040.

2.2 The new Local Plan will replace existing 'Development Plan' documents of the Core Strategy (2010), the Land Allocations Local Plan (2015), and the saved policies from the 2002 Local Plan. The adopted Ash and Worth Neighbourhood Plans and KCC's Minerals and Waste Plan and Partial Early Review will still form part of the district's development plan and the weight afforded to them in decisions will depend upon their degree of consistency with the new Local Plan.

2.3 It is essential that the district has an up-to-date Local Plan which sets out the vision and framework for the future development of the area, and to explain how the Council intends to deliver its housing need, as well as employment land need, delivering jobs, leisure and community facilities and open spaces, and balancing this need against a range of environmental and natural constraints. The Plan is therefore central to delivering the strategic priorities set out in the Council's Corporate Plan.

2.4 The Local Plan must be prepared in accordance with Section 20 (5) of the Planning and Compulsory Purchase Act 2004 (as amended) ('2004 Act') and the Town and Country Planning (Local Planning) (England) Regulations 2012 as amended ('2012 Regulations'). These require the Local Plan to be (amongst other things), subject to public consultation, submitted to the Secretary of State to undergo an independent examination, subject to a Sustainability Assessment and Habitats Regulation Assessment to test the impacts of the Plan throughout its preparation, and meet the tests of soundness.

2.5 Paragraph 35 of the National Planning Policy Framework ('the Framework') (2021) states that to be sound, a Local Plan should be positively prepared, justified, effective and consistent with national policy.

## 3. Preparation of the Plan

3.1 The Local Plan has been through an extensive preparation process, including evidence base production, public consultation and independent examination, as explained below.

*Evidence base*

3.2 A proportionate evidence base has been prepared to support and justify to the policies and proposals set out in the Plan. The evidence base submitted with the Plan is published on the Local Plan website.

3.3 During the examination process further documentation was produced where it was necessary to update evidence at that stage, or at the request of the Inspectors. These documents are published as Examination Documents on the Local Plan website.

*Consultation*

3.4 Consultation has been carried out in accordance with the adopted Statement of Community Involvement (SCI). Full details of consultation and engagement that has taken place and how it has informed the Plan is set out in the Consultation Statement

(Reg 22 Statement) that has been prepared in accordance with Regulation 22 (1) (c) of the 2012 Regulations and is available on the Local Plan website.

3.5 In summary, two periods of formal consultation took place prior to the Plan being submitted for examination. This included a consultation at Regulation 18 stage, which set out the issues, options and draft policies and site allocations (January 2021), and consultation on the Regulation 19 Submission Version of the Plan (October 2022). In addition to the formal periods of consultation, informal consultation and engagement activities also took place through the period of preparation, to inform the Plan and its evidence base.

3.6 Where possible, the issues raised through consultation have been addressed and informed the Plan. However, it is not possible to address all issues, as consultation responses must be balanced against the requirements to meet national policy and guidance, and the evidence base that informs the plan.

*Submission*

3.7 Following completion of the Regulation 19 consultation, the Local Plan was submitted for independent examination on 31st March 2023.

3.8 A schedule of additional modifications (SD06) was also prepared and submitted, which sought to address issues raised by representations to the Regulation 19 consultation, for consideration by the Inspectors during the examination process.

*Examination and Main Modifications Consultation*

3.9 The purpose of the examination is to assess whether the Plan has been prepared in accordance with the relevant legal requirements, and whether it is sound. Public hearing sessions took place in November and December 2023.

3.10 Following close of the hearing sessions, the Inspectors wrote to the Council to set out their recommendations on any soundness matters which were not agreed in the hearing sessions. Consultation on the Main Modifications, which the Inspectors considered necessary to make the Local Plan sound, took place in April and May 2024. A summary of the modifications was produced at the time of the consultation and is published on the Local Plan website (ED49).

3.11 Alongside the Main Modifications, a schedule of Additional Modifications was prepared at that time which set out minor and/or factual changes to text in the plan which are not required for 'soundness' reasons. The Inspectors' Final Report was received on 20th September 2024. Further detail is provided in Section 4.

## 4. Report on the Examination of the Dover District Local Plan to 2040 ('the Inspectors' Report')

4.1 The Planning Inspectorate issued the Inspectors' Report on the Examination of the Dover District Local Plan to 2040 on 20th September 2024. The Inspectors' Report contains the Inspectors' assessment of the Local Plan in terms of Section 20 (5) of the Planning and Compulsory Purchase Act (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate. It then considers whether the Plan is compliant with the legal requirements and whether it is sound.

4.2 The Inspectors' Report concludes that the Dover District Local Plan to 2040 provides an appropriate basis for the planning of the district, provided that main modifications are made to it.

*Assessment of Legal Compliance*

4.3 The Inspectors' Report concludes that subject to the main modifications, the Plan complies with the relevant legal requirements in the 2004 Act (as amended) and the 2012 Regulations, including the requirements in relation to the duty to co-operate, sustainability appraisal, habitats regulations assessment, climate change and consultation.

*Strategic Environmental Assessment and Sustainability Appraisal*

4.4 The Planning and Compulsory Purchase Act 2004 requires local plans to be subject to a Sustainability Appraisal (SA). The purpose of Sustainability Appraisal is to ensure that the plan preparation process maximises the contribution that a plan makes to sustainable development and minimises and potential adverse impacts. The Sustainability Appraisal process involves appraising the likely social, environmental and economic effects of the policies and proposals within a plan from the outset of its development.

4.5 The Sustainability Appraisal incorporates the requirements of the Strategic Environmental Assessment (SEA) process. The Strategic Environmental Assessment Regulations require the formal assessment of plans and programmes which are likely to have significant effects on the environment and which set the framework for future consent of projects requiring Environmental Impact Assessment (EIA). Strategic Environmental Assessment and Sustainability Appraisal are separate processes but have similar aims and objectives. The Strategic Environmental Assessment focuses on the likely environmental effects of a plan, whilst Sustainability Appraisal includes a wider range of considerations, extending to social and economic impacts.

4.6 A key part of the Sustainability Appraisal process is an assessment of 'reasonable alternatives', to enable an assessment to be undertaken to find the most sustainable approach to each issue. This has been carried out for the levels of growth (housing and employment), spatial alternatives for delivering this growth, the 'green' and 'amber' rated sites identified in the Housing and Economic Land Availability Assessment (HELAA), as well as development management policy options. The Sustainability Appraisal is used to inform the decision on preferred options but is not the sole determinant on which options should be adopted. Other factors, such as the views of stakeholders and the public, and other evidence base studies, also help to inform the decision. The Sustainability Appraisal is an iterative process with initial conclusions of the assessment being used to refine the policies in the draft Local Plan at Reg 18 stage and subsequently at Reg 19 stage. An Addendum has been produced to the Sustainability Appraisal in relation to the Main Modifications and was consulted upon alongside the Main Modifications consultation.

4.7 The Council needs to take into account the final Strategic Environmental Assessment material including consultation responses, when deciding to adopt the Plan. A summary of this material is provided in the Sustainability Appraisal Adoption Statement (Appendix 3), and links provided therein to the full documentation.

4.8 The Sustainability Appraisal Adoption Statement has been prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 (16) (3) and (4), which require a statement to be produced on adoption of a plan or programme, to detail:

1. How environmental considerations have been integrated into the plan or programme;

2. How the Environmental Report has been taken into account;
3. How opinions expressed through public consultation have been taken into account;
4. The reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with;
5. The measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.

4.9 In respect of the Sustainability Appraisal, the Inspectors indicate at paragraph 23 of their report that the Council has carried out an adequate Sustainability Appraisal of the Plan and reasonable alternatives have been considered to a sufficient degree.

*Habitats Regulations Assessment*

4.10 The Habitats Regulations 2017 (as amended) requires Local Plans to be subject to a Habitats Regulation Assessment (HRA). The Habitats Regulations Assessment provides an assessment of the potential effects of a development plan on one or more European sites, including Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) and RAMSAR sites. The overall purpose of the Habitats Regulations Assessment is to conclude whether or not a proposal or policy, or the whole development plan, would adversely affect the integrity of the European site in question either alone or in combination with other plans and projects. The Council must only give effect to the land use plan after having ascertained that it will not adversely affect the integrity of the European site.

4.11 Dover District and the surrounding area contains several European sites which have the potential to be impacted by proposals set out the Local Plan. As required by the Habitats Regulations 2017, the Council has consulted Natural England and the general public on the Habitats Regulations Assessment. The Habitats Regulations Assessment that was prepared to support the Regulation 19 Submission Version of the Local Plan has been updated to respond to consultation responses received at the Regulation 19 stage, mostly to address comments received from Natural England. The Final Version of the Habitats Regulations Assessment is published on the Local Plan website (ED53 Habitats Regulations Assessment April 2024) and was consulted upon during the Main modifications consultation.

4.12 The potential for likely significant effects has been identified from a loss of functionally linked habitat, recreational disturbance and pollution. The Habitats Regulations Assessment concludes that no adverse effects on integrity will occur to European sites (either alone or in combination with other plans or projects) subject to the provision of safeguarding and mitigation measures which are set out in Chapter 5 of the Habitats Regulations Assessment and addressed in the Local Plan (including Main Modifications). A summary of the main issues is set out at pages 67 to 69 of the Habitats Regulations Assessment.

4.13 In respect of the Habitats Regulations Assessment, the Inspectors' Report concludes at paragraph 38 that, subject to the identified mitigation measures, which the Plan provides for, the policies and allocations in the Plan will not have a significant adverse impact on the integrity of relevant European sites.

*Kent Downs National Landscape (formerly Kent Downs Area of Outstanding Natural Beauty)*

4.14 Local authorities, along with other public bodies and statutory undertakers, have a statutory duty under Section 85 of the Countryside and Rights of Way Act (amended by the Levelling Up and Regeneration Action 2023) to seek to further the purposes of conserving and enhancing the natural beauty of the National Landscape (formerly Areas of Outstanding Natural Beauty) in carrying out their planning and other functions. This revised duty was brought in whilst the Local Plan was at examination. Modifications are therefore recommended by the Inspector to bring the Plan up to date on adoption and make it effective in relation to the statutory duty. It is therefore considered that the Council will have complied with this duty in relation to adopting the Plan with the Main Modification to Policy NE2 (MM168 and MM169).

*Assessment of Soundness*

4.15 The Inspectors' Report addresses soundness matters across ten issues which they have identified taking account of all the representations, written evidence and discussions that took place at the examination heading. It concludes that with the recommended main modifications the Plan is sound.

*Main Modifications*

4.16 Following the close of the hearing sessions, a schedule of the proposed main modifications was prepared, and a Sustainability Appraisal and Habitats Regulations Assessment of them was carried out. The Inspectors' Report recommends their inclusion in the Plan after considering all representations made in response to the consultation. The main modifications are set out in the Appendix to the Inspectors' Report (Appendix 1a of this report), with a summary being provided in the Inspectors' Report at page 4. The Inspectors have taken account of the consultation responses in coming to their conclusions, including making some amendments to the detailed wording of the main modifications where necessary.

4.17 There are 182 main modifications required to be made to the Plan to make it sound. The majority of the changes are considered to be relatively minor in nature, and do not fundamentally change the Plan's overall strategy or original policy intentions. The most significant change is the deletion of site STM010 (SAP40) for 10 dwellings in St Margaret's at Cliffe.

## 5. Public Sector Equality Duty

5.1 As set out in the Inspectors' Report (paragraph 13), in examining the Plan, due regard has been given to the aims expressed in S149 (1) of the Equality Act 2010, including consideration of matters relating to the provision of accommodation to meet the needs of gypsies and travellers and travelling showpeople, the needs of older people and those with disabilities.

5.2 The Equalities Impact Assessment (EIA) that was carried out of the Regulation 19 Submission Local Plan has been updated and is included at Appendix 4, with due regard for the need to provide for the needs and interests of all residents of the district. This Assessment examines the vision, strategic objectives and policies of the Plan (including main modifications) against the nine Protected Characteristics in accordance with the Public Sector Equality Duty, as set out in section 149 of the Equality Act 2010. No negative impacts have been identified.

## 6. Next Steps

6.1 Appendix 2 sets out the final version of the Local Plan that is recommended to be adopted. This is the Regulation 19 Submission version of the Plan with the main modifications recommended by the Inspectors, and additional modifications. The additional modifications are those set out in the schedule prepared at the main modifications stage and other minor changes that have been made subsequently to address grammatical and factual issues identified subsequently.

6.2 It is recommended that authority be delegated to the Head of Planning and Development to make further additional modifications to that relate exclusively to factual updates and grammatical and formatting corrections, prior to making the documents available for inspection.

6.3 If the Council chooses to adopt the Local Plan, it is required to produce a Local Plan Adoption Statement and a Sustainability Appraisal Report in accordance with Regulation 26 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Sustainability Appraisal Report comprises the documents which have already been produced during the preparation and examination of the Plan, as set out in section 3 above.

6.4 The Sustainability Appraisal Adoption Statement relating to Strategic Environmental Assessment in accordance with Regulation 16 (4) of the Environmental Assessment of Plans and Programmes Regulations 2004 also needs to be published (Appendix 3).

6.5 All documents will need to be made available for inspection and those people who asked to be notified will need to be informed. The regulations require deposit at the Council's principal office and to be available free of charge. Details of where the documents are available for inspection will be set out on the Local Plan Adoption Statement. As well as hard copies being available at the deposit points, the Council's website will be updated to reflect the changes to the Development Plan.

6.6 Following adoption of the Local Plan, there will be a statutory six week legal challenge period. The six week period commences from the date of adoption of the Local Plan, which will be the date of the meeting of Full Council at which the resolution to adopt is passed. Limiting the risk of challenge has been managed as far as possible, but it remains a possibility.

## 7. Identification of Options

7.1 By virtue of s. 23(2) to (4) of the 2004 Act, the local planning authority may adopt a local plan only if the Inspector has recommended that outcome, whether in relation to the plan as submitted for examination or with any main modifications to make that plan sound and/or satisfy the relevant legal requirements.

7.2 If the authority wishes to adopt the plan, it can only do so in accordance with the terms of the recommendations made by the Inspector, along with any other modifications that do not "materially affect" the policies in the plan (additional modifications). At this stage, the Council cannot propose any further main modifications, such as changes to policy wording or site allocations.

7.3 The Inspector has recommended adoption of the Local Plan, subject to main modifications. The authority therefore has the following two options:

7.4 Option 1 – Adopt the Dover District Local Plan 2020 to 2040 (with main modifications and additional modifications).

7.5 Option 2 – Withdraw the Dover District Local Plan 2020 to 2040.

## 8. Evaluation of Options

8.1 Government guidance states that while the local planning authority is not legally required to adopt its local plan following examination, it will have been through a significant process locally to engage communities and other interests in discussions about the future of the area, and it is to be expected that the authority will proceed quickly with adopting a plan that has been found sound.

8.2 Full Council agreed the Submission of the Local Plan for examination in October 2022, at that time resolving that the Plan was the legally complaint and sound. The main modifications recommended by the Inspectors are not considered to fundamentally alter the Plan's strategy or original policy intentions that have been previously agreed by the Council.

8.3 The preparation of the Plan has taken significant time and resource (both officer and financial), and not adopting it at this stage would result in a significant waste of those resources. Very significant further resource would be required to start all over again.

8.4 If the Plan is not adopted, the Core Strategy, Local Allocations Local Plan and 'Saved Policies' from the 2002 Local Plan will remain as the development plan. These documents are already out-of-date and therefore, particularly in relation to policies that relate to the delivery of housing, are no longer able to guide decision-making in the way they were originally intended to. The adoption of the Local Plan will provide the Council with an up-to-date policy framework to guide decisions on planning applications.

8.5 Future changes to the planning system are proposed through the Levelling Up and Regeneration Act (LURA) 2023, which would change the way in which Local Plan are produced. As part of this, there is a deadline to submit plans under the current system of May 2025. If the plan is withdrawn, there would be insufficient time to prepare a new plan to meet this deadline, leaving the authority at risk of intervention. Moreover, the Council would have to take account of the recent government consultation on changes to the national planning policy framework, which – once implemented – would increase the District's Local Housing Need by around 180 dwellings a year. Based upon the draft proposed changes, due to the progress made with the Local Plan, once adopted, the Council will be able to rely upon the housing requirement set out in the Local Plan for at least five years post adoption.

8.6 The Plan has been subject to a comprehensive and lengthy process, with significant public and stakeholder consultation over the last six years and has met all legal and procedural requirements.

8.7 The robustness of the whole Local Plan process, and content of the Plan itself, is very clearly demonstrated in the fact that the Inspectors have said that only one site allocation needed to be removed, and that there are no requirements for us to undertake an early review of the Plan.

8.8 The Council's support to continue progressing the Local Plan through recent years, where there has been uncertainty about what is happening within the planning system, has meant we are in now in quite a unique, and strong, position - where we will not have to immediately implement the proposed revised local housing need (as proposed by government) and will not need to carry out an immediate review of the Plan.

8.9 The adoption of the Plan will provide stability for decision making and developer confidence in the district. As a strategic district-wide document that accommodates growth up to 2040, it will make a significant contribution to the aims of the Council set out in the Corporate Plan in relation to supporting high-quality employment, housing, and tourism to secure investment and support infrastructure, whilst ensuring that the natural and built environment can be protected and enhanced.

8.10 For these reasons it is recommended the Plan is adopted as set out in Option 1.

## 9. Resource Implications

9.1 The budget requirements for the Local Plan were agreed at the meetings of Cabinet held on 1st November 2021 and 5th September 2022. The current total budget agreed for the project is £932k.

9.2 There was a need to obtain further legal advice and representation during the examination process because of representations made. Most of this was covered by the agreed budget. There will be an overspend of circa £20-£50k, to be confirmed once we receive the final invoices from the Planning Inspectorate for the costs of the examination. These additional costs can be covered by the Regeneration Reserve.

9.3 The Regeneration Reserve has been generated from a variety of sources including New Homes Bonus funding, retained planning income and annual contributions to smooth the impact of the one-off costs of the Local Plan process. The reserve has sufficient funding to support the additional budget requirement for the current process. The on-going annual contributions will be reviewed as part of the 2025/26 budget setting process to assess the appropriate level to support future requirements.

## 10. Climate Change and Environmental Implications

10.1 The Plan includes policies designed to ensure that the development and use of land in the area contributes towards the mitigation of, and adaptation to, climate change.

10.2 Policy SP1 sets out the overarching strategic aim for all new development to contribute towards the mitigation of, and adaptation to, climate change. The Plan then includes various polices through CC1 to CC8 which set out specific requirements from reducing carbon emissions, managing water and flood risk to sustainable design and construction. The spatial strategy has also been informed by the Sustainability Appraisal and seeks to strike a balance between directing all new development to the main urban areas and supporting sustainable rural growth.

## 11. Corporate Implications

11.1 Comment from the Director of Finance (linked to the MTFP): Members are reminded that the Council's revenue and capital resources are under pressure and so they will wish to assure themselves that all proposals progress the Council's priorities, are the best option available and will deliver value for money. (SK)

11.2 Comment from the Solicitor to the Council: The Principal Solicitor has been consulted during the development of this report and has no further comments to make. (DT)

11.3 Comment from the Equalities Officer: The Equality Officer has been consulted during the development of this report and has no further comments to make, other than to remind members that in discharging their responsibilities they are required to comply

with the public sector equality duty as set out in section 149 of the Equality Act 2010 http://www.legislation.gov.uk/ukpga/2010/15/section/149

12. **Appendices**

Appendix 1a – Report on the Examination of the Dover District Local Plan to 2040
Appendix 1b – Schedule of Main Modifications (Appendix to Report on the Examination of the Dover District Local Plan to 2040)
Appendix 2 – Dover District Local Plan to 2040 (including Main and Additional Modifications)
Appendix 3 – Sustainability Appraisal Adoption Statement
Appendix 4 – Equalities Impact Assessment

13. **Background Papers**

Sustainability Appraisal/Strategic Environmental Assessment (SD03a, b, c and d)
Habitats Regulations Assessment April 2024 (ED53)
Regulation 19 Submission Local Plan (SD01)
Summary of Main Modifications consultation (ED49)
Schedule of Additional Modifications (ED50)
Schedule of Policies Map Modifications (ED51)
Local Development Scheme (SD10)
Statement of Community Involvement (SD11)

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