

ADVICE TO NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

**SHADOW HABITATS REGULATIONS ASSESSMENT
TO INFORM THE HABITATS REGULATIONS ASSESSMENT OF THE
LOCAL DEVELOPMENT PLAN BY
NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL**



DTA Ecology

*...continuing the work of
David Tyldesley & Associates*

FINAL VERSION

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1. Introduction

1.1. North West Leicestershire District Council (NWLDC) is preparing a new Local Plan for the District. This plan will set out a series of overarching objectives together with policies concerning where development will take place over the next 15 to 20 years and how such development might be delivered. The Council previously published a draft Core Strategy¹ where some of the proposed developments identified in this new Local Plan were first formally considered, and subject to extensive consultation.

1.2. This Local Plan consists of:

- Introductory text, including a profile of North West Leicestershire and the issues facing the District
- A series of 15 overarching objectives which identify what the Local Plan is seeking to achieve
- The *strategic* development policies (S1 – S5)
- The *housing* development policies (H1-H7)
- The *economic* development policies (Ec1 – Ec15)
- The *infrastructure and services* development policies (IF1 – IF7)
- The *environment* development policies (En1 – En6)
- The *historic environment* development policy (He1)
- The *climate change* development policies (Cc1 – Cc4)
- The *implementation and monitoring* development policy (IM1)

Habitats Regulations Assessment (HRA) of Local Plans generally

1.3. NWLDC is a competent authority under the Conservation of Habitats and Species Regulations 2010² (as amended), commonly referred to as the Habitats Regulations. In accordance with Regulation 102 of those regulations, NWLDC must make an assessment of the implications of their Local Plan as a matter of law before it is adopted. This assessment is generally referred to as a ‘Habitats Regulations Assessment’ or ‘HRA’ and the regulations set out a clearly defined step-wise process which must be followed.

1.4. Under the regulations, HRA is required in respect of both ‘plans’ and ‘projects’. Where a project is subject to assessment, there is generally sufficient detailed *project specific* information against which to make a comprehensive assessment. A plan based assessment is different; in most cases a plan is a strategic level document setting out broad intentions and often lacking the project specific details which may not be developed until after the plan has been published. Indeed, it is the plan itself which frequently steers the detail of the projects which it envisages. As such the HRA of a ‘plan’ is recognised to require a different approach to that of a ‘project’.

¹ Draft Core Strategy North West Leicestershire District Council 2012

² The Conservation of Habitats and Species Regulations 2010 SI No 490 (as amended)

- 1.5. In the case of the EC v UK³ the European Court of Justice (the ECJ) required the UK Government to secure the assessment of Britain's land use plans under the provisions of the Habitats Directive. In that judgment the Advocate General, and the Court itself, recognised that although they considered Britain's land use plans could potentially have significant effects on European sites, despite the subsequent need for planning permission at 'project' level stage, the assessment of plans had to be tailored to the stage in plan making.
- 1.6. The Advocate General's opinion⁴ which informed the judgment of the court acknowledged the difficulties associated with an assessment of a plan. In paragraph 49 of her opinion Advocate General Kokott stated that adverse effects:

"...must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure"

Consistently, in the UK High Court case of Feeney⁵ the judge said:

"Each appropriate assessment must be commensurate to the relative precision of the plans at any particular stage and no more. There does have to be an appropriate assessment at the Core Strategy stage, but such an assessment cannot do more than the level of detail of the strategy at that stage permits"

- 1.7. In undertaking plan based HRAs, it is therefore important to get the balance right; too severe an approach may be excessive. It is important, even adopting a precautionary approach, not to assign a 'likely significant effect' to policies and proposals that could not, realistically, have such an effect, because of their general nature. It is important to apply the precautionary principle in the 'likely significant effect test' in the Regulations, but the European Commission in its own guidance on the application of the test⁶, accepts that policies in a plan that are no more than general policy statements or which express the general political will of an authority cannot be likely to have a significant effect on a site.
- 1.8. To include such policies or general proposals in a formal 'appropriate assessment' is likely to generate a considerable amount of abortive or unnecessary work. It could even lead to the plan failing the 'integrity test'. Not because, in practice, any policy or proposal might adversely affect the integrity of any European site, but because policies have been 'screened in' which

³ Case C-6/04: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland judgment of the Court 20 October 2005.

⁴ Opinion of advocate general Kokott, 9th June 2005, Case C-6/04. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

⁵ Sean Feeney v Oxford City Council and the Secretary of State CLG para 92 of the judgment dated 24 October 2011 Case No CO/3797/2011, Neutral Citation [2011] EWHC 2699 Admin

⁶ European Commission, 2000, *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC* section 4.3.2 at http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf

generate no more than theoretical risks, or vague or hypothetical effects, and for which no meaningful assessment can be made at this stage, because no particular significant effect on any particular European site can actually be identified. Such an approach is not believed to be in the interests of the plan or the European sites. In the Boggis judgment⁷, the Court of Appeal ruled that there should be “*credible evidence that there was a real, rather than a hypothetical, risk*”. What the assessment needs to concentrate on are those aspects of the plan that could, realistically, be likely to have a significant effect.

1.9. Too lenient a view however can be equally problematic. For example, in respect of proposed mitigation measures, the intention to simply rely on a general European ‘site protection policy’ in the eventual plan would not form a compliant basis for the HRA. Reliance on a general European site safeguard policy as the ‘mitigation measure’ in the HRA of this Local Plan is insufficient to resolve any tensions or conflicts in the Plan between site protection and policies or proposals which could significantly affect European sites. In the EC v UK, the ECJ found that it was the requirement to determine planning applications in accordance with the development plan (unless material considerations indicate otherwise) that made Britain’s land use plans capable of significantly affecting European sites. Consequently, policies or proposals which could have a high potential for significant adverse effects on European sites should be removed from the plan, or policy-specific, or proposal-specific, mitigation measures must be introduced to the plan. This is in preference to a general protection policy which merely creates an internal conflict between plan policies, rather than avoiding the potentially significant effects. Any tension in the plan must be resolved in favour of protecting the European sites from harm which may be caused by the effects of the policies or proposals in the plan.

1.10. Consequently a general policy cannot form a mitigation measure in order for NWLDC to ascertain no adverse effects on the integrity of any European sites. A safeguard condition or policy qualifying a particular proposal in the plan would however be permissible, because it would refer to specific details of future particular development⁸. There is nothing wrong in adopting something in principle which may not happen in the future if the condition or qualification is not satisfied⁹. But this principle cannot be stretched so far that the condition or qualification is merely a general policy aspiring to protect all European sites from all and any effects of the plan.

Scope of this assessment

1.11. This report is a *shadow* Habitats Regulations Assessment as required under regulation 102 of the Habitats Regulations. It is the responsibility of NWLDC as the competent authority to actually apply the specific legal tests and make the decisions which are required to be taken. This report sets out advice to NWLDC as to how a Habitats Regulations Assessment of the Local

⁷ Peter Charles Boggis and Easton Bavants Conservation v Natural England and Waveney District Council, High Court of Justice Court of Appeal case C1/2009/0041/QBACF Citation No [2009] EWCA Civ. 1061 20th October 2009

⁸ Feeney paragraphs 88, 90 and 92

⁹ Feeney paragraph 96

Plan might be completed. NWLDC, as the competent authority, are then able to adopt the conclusions and findings set out in this report, should they consider it appropriate to do so.

1.12. The scope of this assessment is unusual. Due to its strategic nature, in most cases a development 'plan' precedes and provides for subsequent 'project' level development. A plan would therefore normally be subject to assessment under the regulations *before* the development it provides for is considered for planning permission. In the case of the current Local Plan, it was preceded by a Core Strategy¹⁰ which was drafted in 2012 but never fully adopted. However, much of the development provided for within the current Local Plan was initially proposed, and subject to preliminary assessment back in 2012.

1.13. Furthermore, since 2012, much of the development proposed in the Core Strategy has subsequently been applied for and either planning permission has been given or there is a 'resolution' to grant permission. To reflect this situation in respect of housing provision, the Local Plan refers to three types of provision which are identified as 'permissions' (policy H1), 'resolutions' (policy H2) or 'new allocations' (H3). Likewise, the employment provision within Ec1 are identified as 'permissions' (Ec1), whilst Ec2 allocations are 'new allocations'. Ec3 is different as it includes areas which have been fully developed as well as areas where most of the site has been developed but there remains provision for further development (with or without planning permission).

1.14. Of particular relevance to this HRA, the development provided for in policies H1, H2, Ec1 and to a certain extent Ec3 (those areas already subject to planning permission) have already been subject to assessment under the Habitats Regulations at the project stage, including consultation with Natural England as the statutory nature conservation body.

1.15. There is no requirement to re-assess such allocations under the provisions of the Regulations, where they have already been found to be acceptable by NWLDC as the competent authority, at a project level, in consultation with Natural England as the statutory nature conservation body. Natural England have indicated that they are in agreement with this proposed approach¹¹ which is consistent both with the approach endorsed by the Defra guidance on competent authority co-ordination¹², and Part C12 of the Habitats Regulations Assessment Handbook which states in Section C.12.1 that:

'When considering an individual plan or project which only requires authorisation of one competent authority, that authority may recognise that there is another plan or project (whether or not undertaken, or authorised, by it or by another competent authority);... which is directly relevant to the assessment of the subject proposal. Under such a scenario,

¹⁰ Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook*, May 2015 edition UK: [DTA Publications Ltd](#).

¹¹ Email from Natural England dated 18th May 2015

¹² Habitats Directive – Guidance on competent authority coordination under the Habitats Regulations, Defra (July 2012).

regulation 65 would not apply as a matter of law but a coordinated approach might nevertheless be beneficial. It would be good practice for the competent authority to 'adopt' the reasoning and conclusions of the earlier assessment where it can. That is to say, if the conditions in paragraph 6 of the Defra guidance are met.'

1.16. The conditions in paragraph 6 of the Defra guidance referred to relate to the competent authority looking to adopt an earlier decision being satisfied that a) no material information has emerged that means that the reasoning, conclusion or assessment they are adopting has become out of date, and b) that the analysis underpinning the reasoning, conclusion or assessment they are adopting is sufficiently rigorous and robust.

1.17. In the case of the development allocations provided within H1, H2 and Ec1, together with the development within Ec3 for which permission has been granted. It is the opinion of NWLDC as the competent authority that the conditions in paragraph 6 of the Defra guidance are met and that the earlier conclusions under the Habitats Regulations recorded as part of the individual project based assessments can be 'adopted' for the purpose of this HRA. All such development is considered to have no likely significant effect (either alone or in combination with other plans and projects) on any European site and the implications of development provided for within policies H1, H2 and Ec1 are not subject to further assessment. Ec3 is included within the scope of this HRA, but the assessment will only consider aspects of the policy which have not already been subject to assessment at a project level, on the basis of the justification set out above.

The scope of this HRA is therefore limited to:

- Introductory text, including a profile of North West Leicestershire and the issues facing the District
- A series of 15 overarching objectives which identify what the Local Plan is seeking to achieve
- The *strategic* development policies (S1 – S5)
- The *housing* development policies (H3-H7)
- The *economic* development policies (Ec2 – Ec15)
- The *infrastructure and services* development policies (IF1 – IF7)
- The *environment* development policies (En1 – En6)
- The *historic environment* development policy (He1)
- The *climate change* development policies (Cc1 – Cc4)
- The *implementation and monitoring* development policy (IM1)

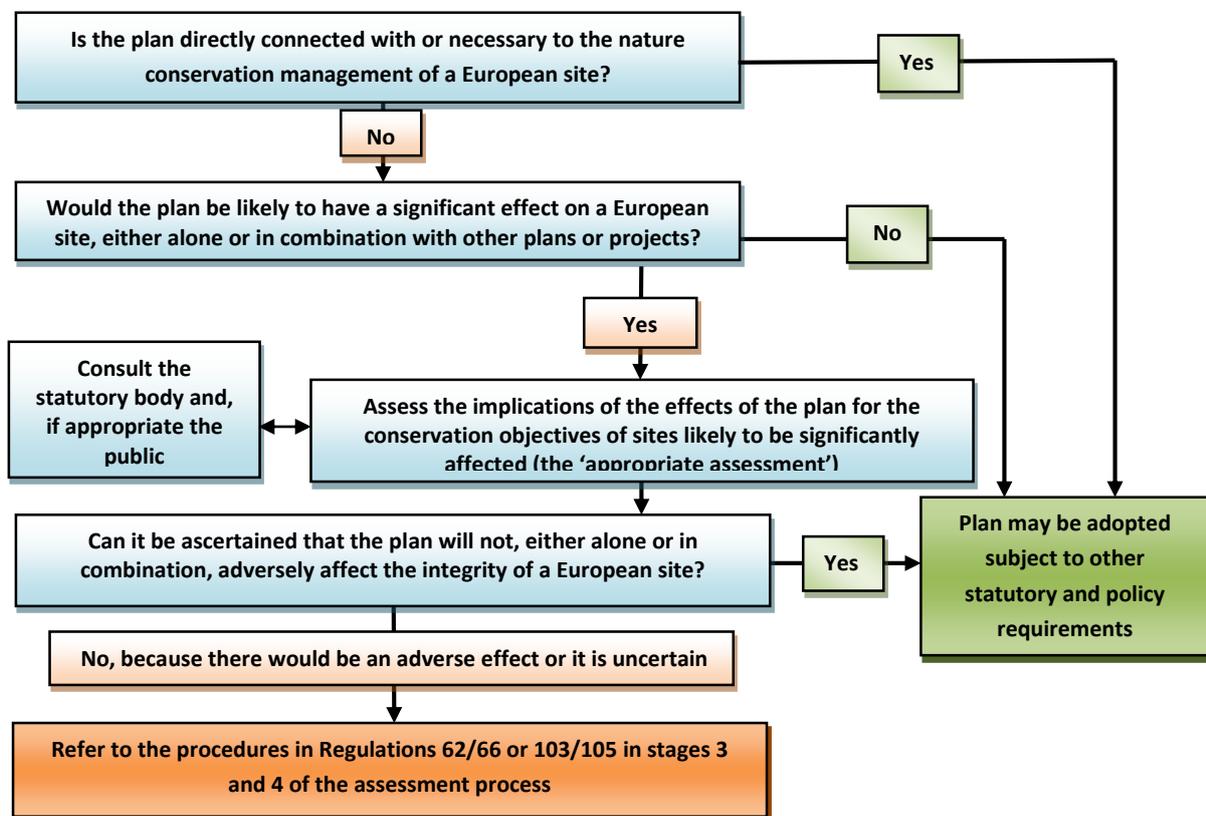
The HRA approach

1.18. This HRA follows the guidance set out in *The Habitats Regulations Assessment Handbook*¹³.

Current subscribers to the Handbook include Natural England and the Planning Inspectorate and the 'Practical Guidance for the Assessment of Plans under the Regulations' contained in Part F is considered to represent best practice as it is accepted by both these bodies as appropriate for their own staff to follow.

1.19. The process and method of assessment is summarised in the following three diagrams. Figure 1 illustrates the statutory procedures required by the regulations. Figure 2 is an outline of the four stage approach to the HRA of plans. Figure 3 illustrates how the HRA process is integrated into the plan making process.

Figure 1: Procedures required by regulations 61 and 102 of the Habitats Regulations



¹³ Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook*, May 2015 edition UK: [DTA Publications Ltd](http://www.dta-publications.co.uk).

Figure 2

Outline of the four stage approach to the assessment of plans under the Habitats Regulations

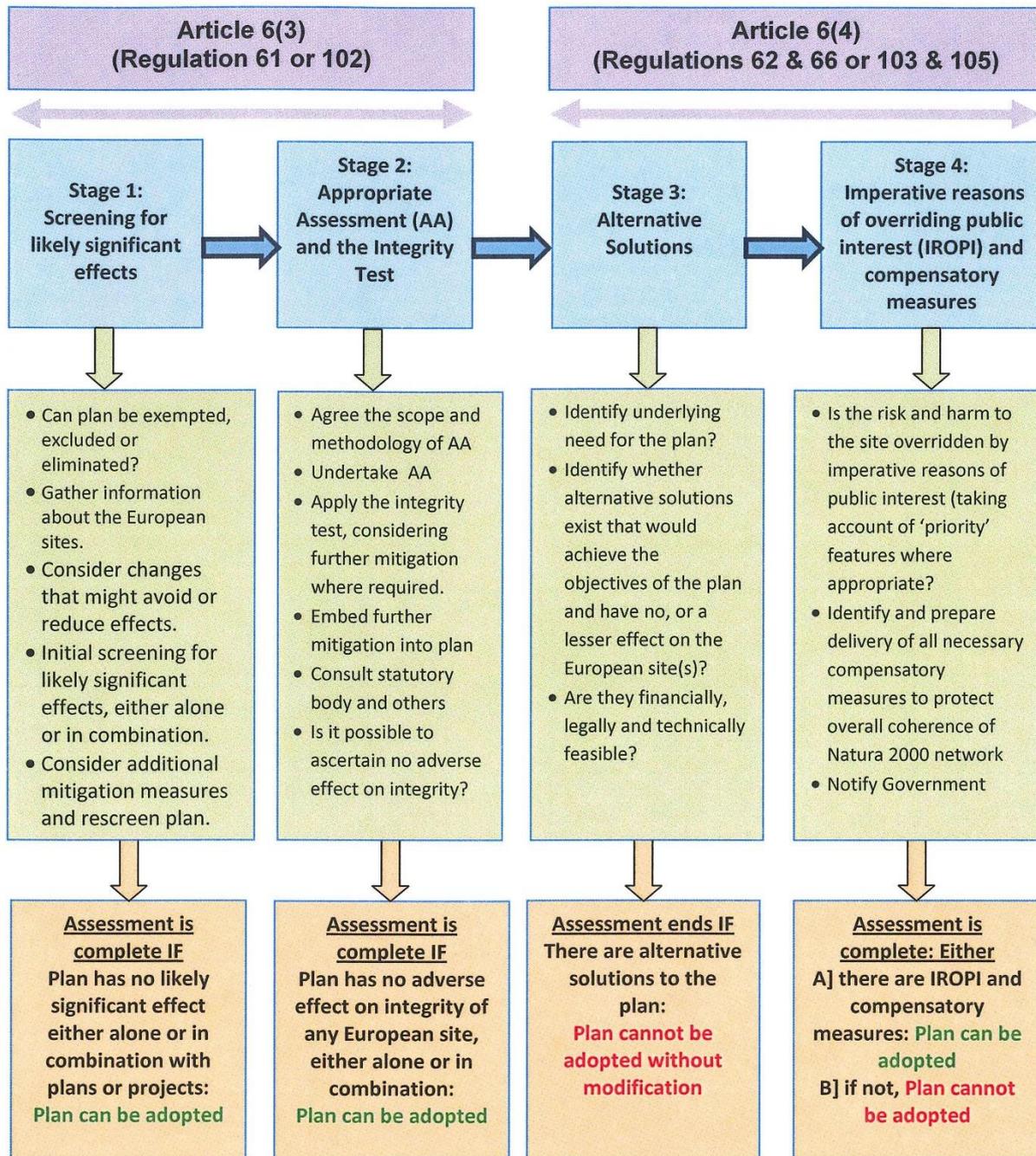
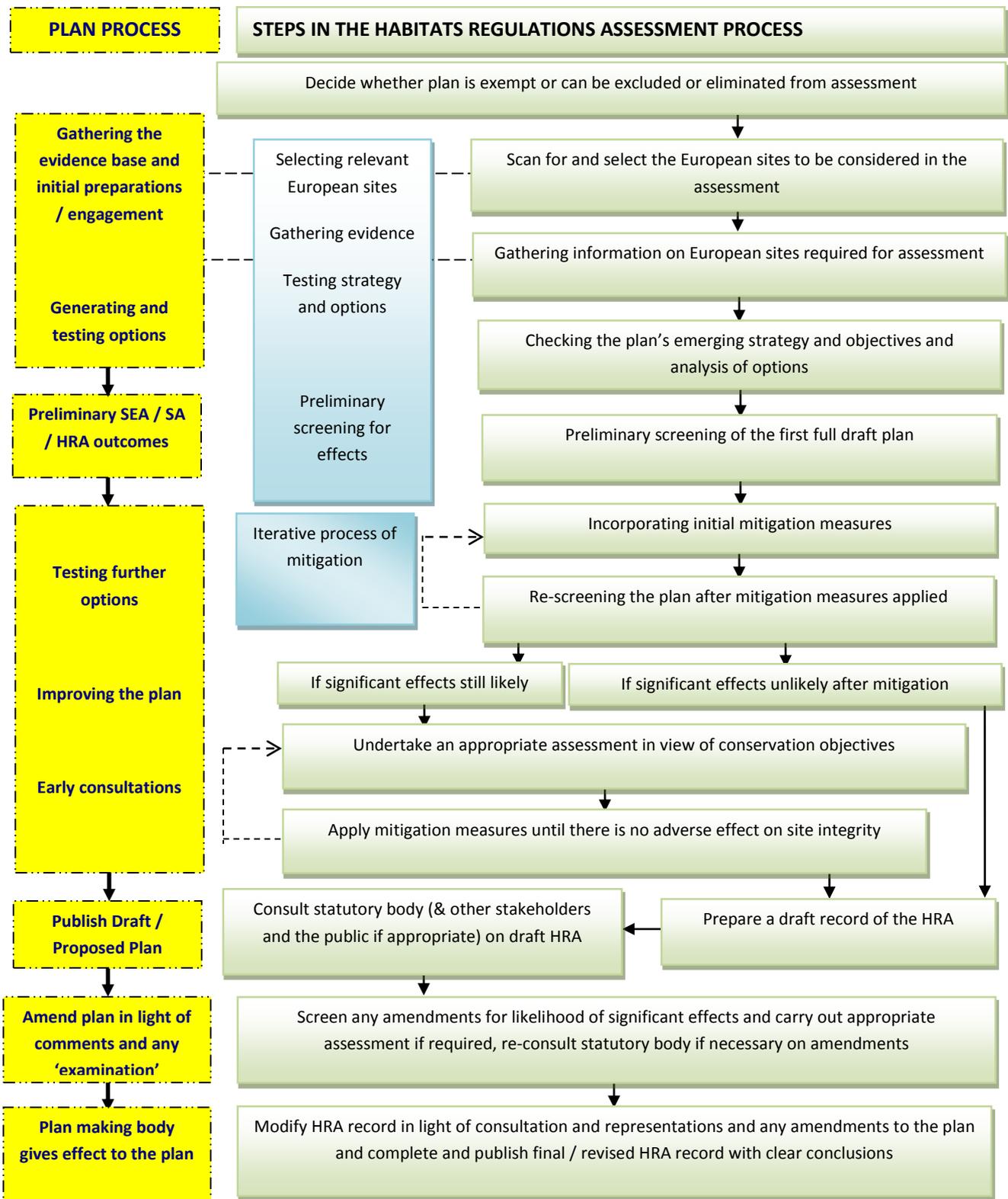


Figure 3: Relationship of steps in the Habitats Regulations Assessment with a typical plan making process



2. Identification of European Sites potentially affected

2. The first preliminary step in the HRA process is to identify the European sites for which there is a credible risk from the Local Plan.

2.1. Figure 2.1 considers all the potential ways in which a generic ‘plan’ might potentially exert an influence over a European sites. This table is relevant to all ‘plans’ and is not specific to land use plans such as the Local Plan under consideration. Each potential impact mechanism is considered against the Local Plan for NWLDC. It should be noted that this step identifies where there is any *potential* threat of an impact which needs to be subject to some closer scrutiny.

European Sites potentially affected

Figure 2.1 Scanning and site selection list for sites that could *potentially* be affected by the plan

Types of plan	Sites to scan for and check	Names of sites selected
1. All plans (terrestrial, coastal and marine)	Sites within the geographic area covered by or intended to be relevant to the plan	River Mease SAC
2. Plans that could affect the aquatic environment	Sites upstream or downstream of the plan area in the case of river or estuary sites	River Mease SAC
	Open water, peatland, fen, marsh and other wetland sites with relevant hydrological links to land within the plan area, irrespective of distance from the plan area	None
3. Plans that could affect the marine environment	Sites that could be affected by changes in water quality, currents or flows; or effects on the inter-tidal or sub-tidal areas or the sea bed, or marine species	None
4. Plans that could affect the coast	Sites in the same coastal ‘cell’, or part of the same coastal ecosystem, or where there are interrelationships with or between different physical coastal processes	None
5. Plans that could affect mobile species	Sites whose qualifying features include mobile species which may be affected by the plan irrespective of the location of the plan’s proposals or whether the species would be in or out of the site when they might be affected	River Mease SAC
6. Plans that could increase recreational pressure on European sites potentially vulnerable or sensitive to such pressure	Such European sites in the plan area	None (River Mease not sensitive to recreational pressure due to channel size and land ownership heavily restricting public access)

Types of plan	Sites to scan for and check	Names of sites selected
	Such European sites within an agreed zone of influence or other reasonable and evidence-based travel distance of the plan area boundaries that may be affected by local recreational or other visitor pressure from within the plan area	Cannock Chase SAC
	Such European sites within an agreed zone of influence or other evidence-based longer travel distance of the plan area, which are major (regional or national) visitor attractions such as European sites which are National Nature Reserves where public visiting is promoted, sites in National Parks, coastal sites and sites in other major tourist or visitor destinations	None
7. Plans that would increase the amount of development	Sites in the plan area or beyond that are used for, or could be affected by, water abstraction irrespective of distance from the plan area	None (water supply for development provided for within the plan is from beyond the Mease SAC catchment)
	Sites used for, or could be affected by, discharge of effluent from waste water treatment works or other waste management streams serving the plan area, irrespective of distance from the plan area	River Mease SAC
	Sites that could be affected by the provision of new or extended transport or other infrastructure	None
	Sites that could be affected by increased deposition of air pollutants arising from the proposals, including emissions from significant increases in traffic	None (River Mease SAC not considered to be sensitive to the effects of air pollution)
8. Plans for linear developments or infrastructure	Sites within a specified distance from the centre line of the proposed route (or alternative routes), the distance may be varied for differing types of site / qualifying features and in the absence of established good practice standards, distance(s) to be agreed by the statutory nature conservation body	None
9. Plans that introduce new activities or new uses into the marine, coastal or terrestrial environment	Sites considered to have qualifying features potentially vulnerable or sensitive to the effects of the new activities proposed by the plan	None

Types of plan	Sites to scan for and check	Names of sites selected
10. Plans that could change the nature, area, extent, intensity, density, timing or scale of existing activities or uses	Sites considered to have qualifying features potentially vulnerable or sensitive to the effects of the changes to existing activities proposed by the plan	None
11. Plans that could change the quantity, quality, timing, treatment or mitigation of emissions or discharges to air, water or soil	Sites considered to have qualifying features potentially vulnerable or sensitive to the changes in emissions or discharges that could arise as a result of the plan	River Mease SAC
12. Plans that could change the quantity, volume, timing, rate, or other characteristics of biological resources harvested, extracted or consumed	Sites whose qualifying features include the biological resources which the plan may affect, or whose qualifying features depend on the biological resources which the plan may affect, for example as prey species or supporting habitat or which may be disturbed by the harvesting, extraction or consumption	None
13. Plans that could change the quantity, volume, timing, rate, or other characteristics of physical resources extracted or consumed	Sites whose qualifying features rely on the non-biological resources which the plan may affect, for example, as habitat or a physical environment on which habitat may develop or which may be disturbed by the extraction or consumption	None
14. Plans which could introduce or increase, or alter the timing, nature or location of disturbance to species	Sites whose qualifying features are considered to be potentially sensitive to disturbance, for example as a result of noise, activity or movement, or the presence of disturbing features that could be brought about by the plan	River Mease SAC
15. Plans which could introduce or increase or change the timing, nature or location of light or noise pollution	Sites whose qualifying features are considered to be potentially sensitive to the effects of changes in light or noise that could be brought about by the plan	None
16. Plans which could introduce or increase a potential cause of mortality of species	Sites whose qualifying features are considered to be potentially sensitive to the source of new or increased mortality that could be brought about by the plan	None

2.2. Figure 2.1 shows that the site which is most at risk from the Local Plan is the River Mease SAC. This is not surprising considering that this is the only European Site within the administrative boundary. Cannock Chase SAC has also been identified as *potentially* being sensitive to effects associated with increased recreational pressure. Other European sites are within a 40km radius of NWLDC, these sites are listed below for purpose of clarification.

- West Midland Mosses SAC (28km from nearest NWLDC boundary)
- Midlands Meres and Mosses Ramsar (28km from nearest NWLDC boundary)
- Pasturefields Salt Marsh SAC (31km from nearest NWLDC boundary)
- Ensor’s Pool SAC (18km from nearest NWLDC boundary)
- Rutland Water SPA/Ramsar (37km from NWLDC boundary)

2.3. In the absence of any hydraulic links in terms of water supply and the disposal of wastewater between the delivery of the policies contained within the Local Plan and these sites, all five sites are *eliminated* from the need for further assessment. In all cases, in light of the distance from the administrative boundary, there are no conceivable impact mechanisms through which the Local Plan might present any credible risk of any adverse effects upon the integrity of these sites. **It is the conclusion of NWLDC therefore that there is no effect at all upon these sites. In the absence of there being any effect upon these sites, which might act in combination with the effects from other plans and projects there is no need to consider the potential for effects in combination. There is no likely significant effect either alone or in combination from the Local Plan upon any of these sites and they are screened out from further consideration.**

2.4. The effects which are considered to represent a credible risk to a European site, and which will be considered as part of the preliminary screening are summarised in table 2.1 below.

European Site	Potential impact mechanism
River Mease SAC	Discharge of wastewater associated with new development
	Emissions to air, water or soil
	Disturbance effects from proximity of development
Cannock Chase SAC	Recreational pressure

Table 2.1: Potential effects which require further consideration through the subsequent screening steps

European sites potentially affected

River Mease SAC

- 2.5. The River Mease is designated as a Special Area of Conservation (SAC), the SAC incorporates the Gilwiskaw Brook downstream of Packington village and the River Mease from its confluence with the Gilwiskaw Brook to its confluence with the River Trent downstream of Croxhall (see figure 2.2 below). It is designated for its internationally important habitats and species, which are collectively referred to as its 'qualifying features'.

Qualifying Features of the River Mease SAC

H3260. Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation; Rivers with floating vegetation often dominated by water-crowfoot

S1092. *Austropotamobius pallipes*; White-clawed (or Atlantic stream) crayfish

S1149. *Cobitis taenia*; Spined loach

S1163. *Cottus gobio*; Bullhead

S1355. *Lutra lutra*; Otter

- 2.6. Natural England has drawn up conservation objectives for these features which are set out below:

Conservation Objectives for the River Mease SAC

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats and habitats of qualifying species
- The structure and function (including typical species) of qualifying natural habitats
- The structure and function of the habitats of qualifying species
- The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely
- The populations of qualifying species, and, The distribution of qualifying species within the site

- 2.7. The Conservation objectives for the River Mease SAC state that they 'should be read in conjunction with the accompanying 'Supplementary Advice' document, which provides more detailed advice and information to enable the application and achievement of the objectives set out above'. Unfortunately, at the time of writing, the supplementary advice for the River Mease is yet to be

published and cannot therefore be referred to in this HRA. There is however a document available setting out the ‘Proposed Targets for SAC Conservation Objectives’¹⁴ which has been referenced.

2.8. Further background information which is relevant to this assessment can be found in the Site Improvement Plan¹⁵. Site Improvement Plans (SIPs) have been developed for each European site in England as part of the Improvement Programme for England’s Natura 2000 sites (IPENS). The River Mease SIP provides a high level overview of the issues (both current and predicted) affecting the condition of the qualifying features of the SAC, and outlines the priority measures required to *improve* the condition of these features.

2.9. The River Mease SIP therefore provides valuable information regarding pressures which are known to be currently affecting (or predicted to affect) the qualifying features for which the SAC has been designated. Any potential effects from this Local Plan which might contribute to or exacerbate these existing pressures will need to be carefully considered. The six main pressures identified in the SIP are as follows:

- a) Water Pollution
- b) Drainage
- c) Inappropriate weirs, dams and other structures
- d) Invasive species
- e) Siltation
- f) Water abstraction



Figure 2.2: Map showing the boundaries of the River Mease SAC and Cannock Chase SAC (source: NBN Gateway)

¹⁴ Refer <http://publications.naturalengland.org.uk/publication/6637921171931136>

¹⁵ Refer <http://publications.naturalengland.org.uk/publication/6640857448972288>

Cannock Chase SAC

2.10. Cannock Chase is also designated as a special area of conservation (SAC) and is located to the west of Rugeley (see figure 2.2 above), the qualifying features for this site are as follows:

Qualifying Features of Cannock Chase SAC

H4010. Northern Atlantic wet heaths with *Erica tetralix*; Wet heathland with cross-leaved heath

H4030. European dry heaths

2.11. Natural England has drawn up conservation objectives for these features which are set out below:

Conservation Objectives for Cannock Chase SAC

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- The extent and distribution of qualifying natural habitats
- The structure and function (including typical species) of qualifying natural habitats; and
- The supporting processes on which qualifying natural habitats rely

2.12. As with the River Mease, the Conservation objectives for Cannock Chase SAC state that they '*should be read in conjunction with the accompanying 'Supplementary Advice' document, which provides more detailed advice and information to enable the application and achievement of the objectives set out above*'. Unfortunately, at the time of writing, the supplementary advice for Cannock Chase is yet to be published and cannot therefore be referred to in this HRA.

2.13. Further background information which is relevant to this assessment can be found in the corresponding Site Improvement Plan¹⁶. The SIP for Cannock Chase identifies seven main pressures affecting the site.

- a) Undergrazing
- b) Drainage
- c) Hydrological changes
- d) Disease
- e) Air pollution
- f) Wildfire / arson
- g) Invasive species

2.14. Whilst recreational pressure is not listed within the SIP for Cannock Chase SAC, the site is currently subject to an agreed strategic approach implemented through a 'SAC Partnership' involving a coordinated approach across six local planning authorities. The Evidence base shows that

¹⁶ Refer <http://publications.naturalengland.org.uk/publication/4957799888977920>

development within 15km of the SAC boundary may have a significant impact on the site. By way of example Lichfield District Council, as the nearest of the planning authorities with responsibility for Cannock Chase to NWLDC, operate a strategic approach to mitigate for the impact of new residential development¹⁷. This interim guidance, agreed with Natural England, identifies a 15km zone of influence. The agreed approach states that:

'All development that results in a net increase in dwellings within 15km of Cannock Chase SAC is likely to have an adverse impact upon the SAC and therefore suitable mitigation, proportionate to the significance of the effect, will be required in line with ongoing work by partner authorities to develop a Mitigation and Implementation strategy SPD...

Development proposals more than 15km from Cannock Chase SAC may be required to demonstrate that they will have no adverse effect on the integrity of the SAC.'

2.15. The development provided for within the NWLDC Local Plan all lies out-with the 15km zone of influence.

¹⁷ Cannock Chase SAC Interim Guidance to mitigate the impact of new residential development. Refer http://www.lichfielddc.gov.uk/info/856/local_plan/1014/evidence_base/24

3. Screening the Objectives

3. Having identified the sites which might potentially be affected by aspects of the Local Plan, the first stage in the HRA process is commonly referred to as the 'screening' stage.
- 3.1. 'Screening' is not a term used in the Directive or Regulations but is widely used for convenience to describe the first step of the HRA process. The purpose of the screening stage is to consider each aspect of the plan and identify whether it is:
 - a) Exempt from the need for assessment (where a plan is directly connected with or necessary for the management of the European site concerned)
 - b) Excluded from the need for assessment (where a document under consideration is not a 'plan' within the context of the Habitats Regulations)
 - c) Eliminated from the need for assessment (where it is obvious from the beginning that there is no conceivable effect upon any European sites)
 - d) Subject to assessment and screened out from further consideration (that is the case where an aspect of the plan is considered not 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects')
 - e) Subject to assessment and screened in for further assessment (that is the case where an aspect of the plan is considered 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects')
- 3.2. For aspects of the plan which are subject to assessment, the screening test requires a decision to be made as to whether that aspect of the plan has a 'likely significant effect, either alone or in combination with other plans and projects', or not.
- 3.3. The Habitats Regulations Assessment Handbook contains further guidance regarding this practical interpretation of this step, with reference to case law and government guidance. Section C.7.1 sets out a series of principles relevant to the screening decision; key extracts are set out below:
 - *As a result of European case law in Waddenzee, irrespective of the normal English meaning of 'likely', in this statutory context a 'likely significant effect' is a possible significant effect; one whose occurrence cannot be excluded on the basis of objective information. In this context it is permissible to ask whether a plan or project 'may have a significant effect'...(principle 3)*
 - *A significant effect is any effect that would undermine the conservation objectives for a European site... (principle 4)*
 - *An effect which would not be significant can properly be described as : as 'insignificant effect'; or a 'de minimis effect; or a 'trivial effect'; or as having 'no appreciable effect'; but it is important to bear in mind that, in this context, all the terms are synonymous and are being used to describe effects which would not undermine the conservation objectives'....(principle 8)*
 - *'Objective', in this context, means clear verifiable fact rather than subjective opinion. It will not normally be sufficient for an applicant merely to assert that the plan or project will not have an adverse effect on a site, nor will it be appropriate for a competent authority to rely*

on reassurances based on supposition or speculation. On the other hand, there should be credible evidence to show that there is a real rather than a hypothetical risk of effects that could undermine the site's conservation objectives. Any serious possibility of a risk that the conservation objectives might be undermined should trigger an 'appropriate assessment' (principle 11).

3.4. The early sections of the Local Plan include introductory text and administrative text setting out a 'profile of North West Leicestershire' together with a table summarising the 'key issues'. This part of the plan is factual and not proposing any change *per se*, these sections cannot conceivably have any effects on a European site and are screened out of further assessment.

Element of the plan	Assessment and reasoning	Screening conclusion
Introduction and Profile of NW Leicestershire	Administrative text	Screened out
Key issues	Administrative text	Screened out

3.5. The Local Plan then continues to set out 15 overarching objectives and a list of supporting policies. In accordance with the approach adopted for this assessment (refer 1.18-1.19 above) a list of 'screening categories' have been used to provide a rigorous and transparent approach to the screening process.

3.6. The screening categories are as follows:

- A. General statement of policy / general aspiration (screened out).
- B. Policy listing general criteria for testing the acceptability / sustainability of proposals (screened out).
- C. Proposal referred to but not proposed by the plan (screened out).
- D. Environmental protection / site safeguarding policy (screened out).
- E. Policies or proposals which steer change in such a way as to protect European sites from adverse effects (screened out).
- F. Policy that cannot lead to development or other change (screened out).
- G. Policy or proposal that could not have any conceivable effect on a site (screened out).
- H. Policy or proposal the (actual or theoretical) effects of which cannot undermine the conservation objectives (either alone or in combination with other aspects of this or other plans or projects) (screened out).
- I. Policy or proposal with a likely significant effect on a site alone (screened in)
- J. Policy or proposal with an effect on a site but not likely to be significant alone, so need to check for likely significant effects in combination
- K. Policy or proposal not likely to have a significant effect either alone or in combination (screened out after the in combination test).
- L. Policy or proposal likely to have a significant effect in combination (screened in after the in combination test).

3.7. The 15 objectives were screened against these categories and all were screened out of the need for further assessment under category A.

4. Preliminary screening of the policies

4. The next step in the screening process is to consider the individual policies which fall within the scope of this HRA (refer para 1.17 above). **Each policy has been screened against the screening categories set out above and detailed policy based conclusions are provided in appendix 1.** In many cases the justification included in appendix 1 is sufficient in its own right, in some cases however the justification recorded in appendix 1 requires further explanation. Paras 4.1-4.24 below seek to set out this further detail on the basis of the two European sites identified in section 2. The risks for each site are considered in turn and a summary of the *preliminary* screening decisions is provided in table 4.2 at para 4.25.

Potential effects upon the River Mease SAC

- 4.1. As identified in Table 2.1 above there are three potential impact mechanisms through which the development provided for within the Local Plan might affect the River Mease SAC. These are listed in table 4.1 below alongside the qualifying features of the SAC which are considered to be potentially sensitive to each effect:

Impacts mechanism	Qualifying features potentially affected
Discharge of wastewater	All
Disturbance associated with proximity of development	Otter
Emissions to air, water or soil	All

Table 4.1: Impact mechanism potentially affecting the River Mease SAC and qualifying features at risk

Discharge of wastewater

- 4.2. In view of the conservation objectives for the River Mease SAC, and with reference to the main pressures identified in the Site Improvement Plan (refer para 2.13 above) the potential effects on water quality associated with the discharge of wastewater from new development is the impact which is considered to represent the highest risk to the SAC.
- 4.3. As set out in 1.11-1.17 above the scope of this HRA is limited to the effects associated with 'new allocations' only (policies H3 and Ec2 in particular).
- 4.4. The River Mease SAC currently exceeds the appropriate water quality targets for phosphorous and the effects of water quality are considered to be the pressure of highest priority within the Site Improvement Plan. Discharge from sewage treatment works is a major contributor of phosphorous to the river and the proposed new development in H3, Ec2, Ec3, Ec4 and IF5 connecting to wastewater treatment works that discharges into the catchment of the River Mease would add further phosphorous, potentially exacerbating this existing pressure.

- 4.5. The phosphorous issue has been subject to a high degree of scrutiny over recent years and a long term Water Quality Management Plan (sometimes referred to as the Nutrient Management Plan) was finalised in June 2011. The primary purpose of the WQMP is *'to reduce the levels of phosphorous within the river, to enable the Conservation Objectives for the SAC to be met and an adverse effect upon the SAC avoided'*. The primary objective of the plan is *'that the combined actions will result in a reduction in phosphate in the River Mease to no more than 0.06mg/l.'*¹⁸
- 4.6. One of the agreed actions of the WQMP was to establish a developer contributions scheme (DCS)¹⁹ to facilitate the delivery of new development within the catchment, the DCS was finalised in October 2012. Sections A-C provide relevant background explaining the scope of the DCS and the basis upon which the developer contributions are required. There is no need to repeat these sections within this report; readers wanting to get a better understanding are referred to the original document and its supporting appendix which can be viewed from the web link provided in the footnote below.
- 4.7. The important aspect of the DCS which is of particular relevance to this HRA is that the contributions secured fund a programme of measures aimed to offset the effects of new development such that development has no net effect on phosphorous levels within the SAC. In this way the DCS acts as an avoidance measure and development which contributes to the scheme can be regarded as compliant with the requirements of the Habitats Regulations. This approach is agreed by Natural England (as the statutory nature conservation agency under the Habitats Regulations) and the Environment Agency (as the competent authority responsible for ensuring that sewage treatment works discharge consents are compliant with the Habitats Regulations).
- 4.8. The fact that the DCS avoids any effect (rather than merely reducing an effect) is important as this means that development which contributes to the DCS does not need to be considered *in combination* with other plans and projects. Adding the effects of other plans and projects would not make the effects of such development either more *likely* or more *significant* because the development has no effect at all²⁰ and cannot contribute to an effect in combination with other plans and projects.
- 4.9. If the 'new' development provided for in H3, Ec2 and Ec4 (and to a certain extent Ec3) can be accommodated within the currently agreed DCS approach then it would be possible, on the basis of the avoidance measures to be delivered through the DCS, to conclude that such development will have no likely significant effect (either alone or in combination) on the River Mease SAC.
- 4.10. Whilst the DCS therefore provides a clear mechanism through which development might be delivered in a manner which is compliant with the Habitats Regulations, there is little reference to the DCS within the Local Plan. Policy En2 of the draft plan is the first instance that the implications of the Habitats Regulations for development within the catchment of the River Mease SAC are

¹⁸ River Mease SAC Water Quality (Phosphate) Management Plan, version 1, dated 27th June 2011.

¹⁹ See

http://www.nwleics.gov.uk/pages/developments_within_the_catchment_area_of_the_river_mease_special_area_of_conservation

²⁰ Refer section C.7.1 (principle 10) in *The Habitats Regulations Assessment Handbook*.

clearly set out. Whilst policy En2 sets imposes potential restrictions upon such development, the policies earlier in the plan which provide for such development make no reference to these potential limitations. As set out in para 1.9 this creates an internal conflict within the plan; it is unclear which policy would prevail if, during the plan period, the restrictions in policy En2 meant that the development provided for in earlier policies could not be delivered.

- 4.11. This uncertainty does not provide the assurances required by the Habitats Regulations. Effects which ‘undermine the conservation objectives’ cannot be ‘excluded on the basis of objective information’. With regards the effects associated with the discharge of wastewater, **in the absence of a clear position regarding the potential restrictions imposed by En2, the policies within the plan which provide for new development within the Mease catchment (S3, H3, H5, H7, Ec2, Ec3, Ec4, and IF5) are all considered to have a likely significant effect ‘alone’ on the River Mease SAC.**

Disturbance associated with proximity

- 4.12. Disturbance associated with proximity of development is relevant to the qualifying species *Lutra lutra* (otter). Otters are naturally shy creatures and a proximity of human activity to their natural habitat will result in disturbance. A recent integrated assessment of the River Mease²¹ indicates that the majority of the watercourse is used by otters. The risk from disturbance associated with proximity would only be relevant to development allocations which are adjacent to the river, or which would lead to increased levels of public access.

- 4.13. In addition to the new development provided through policies H3 and Ec2, policy Ec3 includes the ‘primary employment areas’. Most of these are already built out or subject to existing planning permission (and hence not within the scope of this HRA). However whilst there is outline planning permission in respect of 2.52ha of land within the Ashby Business Park and 4ha of land within the Ivanhoe Business Park (both in Ashby de la Zouch) the permissions pre-date the designation of the SAC. As a result, in spite of benefitting from outline planning permission, these allocations have not yet been subject to prior assessment under the Habitats Regulations and need to be included within the scope of this HRA. Furthermore, a site at Westminster Industrial Estate in Measham does not yet benefit from any planning permission and has also not therefore been subject to prior assessment under the Regulations at a project level and is also included within the scope of this HRA.

- 4.14. The development provided for in H3, Ec2 and that within Ec3 which requires further assessment is located at:

- a) ‘Land north of Ashby de la Zouch’ (H3a)
- b) ‘land off Ashby road / Leicester Road, Measham’ (H3b)
- c) ‘Land North of Ashby de la Zouch’ (Ec2)
- d) Ashby Business Park, Nottingham Road (south), Ashby de la Zouch. (Ec3)
- e) Ivanhoe Business Park, Smisby Road, Ashby de la Zouch (Ec3)
- f) Westminster Industrial Area (Ec3)

²¹ Integrated Assessment of the River Mease SSSI, Final Report March 2014. JBA Consulting.

- 4.15. Sites (a-e) are all located at least 1.5km away from the SAC and it is reasonable to conclude, in terms of disturbance associated with proximity, these sites will have no effect at all upon the qualifying features of the River Mease SAC, effects in combination can also therefore be excluded. With reference to disturbance effects associated with proximity, **it is the conclusion of NWLDC that policies H3, Ec2, and the allocation within the Ashby and Ivanhoe Business Parks in Ec3 will have no likely significant effect on the River Mease SAC (either alone or in combination with other plans and projects).**
- 4.16. The Westminster Industrial Estate allocation (f) included under policy Ec3 identifies a block of land to the south east of Huntingdon Way, Measham. This land is in very close proximity to the SAC and runs adjacent to the SAC boundary. Associated development will therefore generate significant risks associated with proximity related to disturbance; the stretch of river adjacent is regularly used by otter²² which are known to be sensitive to disturbance. **It is the opinion of NWLDC that, in terms of disturbance related to proximity, the land allocated for development under Ec3 within the Westminster Industrial Estate which is located adjacent to the SAC (to the south east of the Huntingdon Way) will have a likely significant effect on the River Mease SAC 'alone'.**
- 4.17. Policy Ec4 includes provision for the redevelopment of existing brickworks and pipeworks. The redevelopment locations are considered to be sufficiently distant from the SAC to screen out potential disturbance effects associated with proximity. With reference to disturbance effects associated with proximity, **it is therefore the conclusion of NWLDC that policy Ec4 will have no likely significant effect on the River Mease SAC (either alone or in combination with other plans and projects).**

Emissions to air, water or soil.

- 4.18. As set out above, in addition to the new development provided through policies H3 and Ec2, policy Ec3 includes the 'primary employment areas', some of which have not yet been subject to prior assessment under the Regulations and need to be considered. The development provided for in H3, Ec2 and that within Ec3 which requires further assessment is as listed in (a-f) in para 4.14 above.
- 4.19. Sites (a-e) are located at least 1.5km away from the SAC, and it is reasonable to assume that standard controls regarding emissions to air, soil and water (including during construction) will be sufficient to ensure protection of the SAC. It is therefore the view of NWLDC that, in terms of emissions to air, soil or water **policies H3, Ec2 and the allocations at Ashby Business Park and Ivanhoe Business Park in Ec3 will have no likely significant effect on the River Mease SAC (either alone or in combination with other plans and projects).**
- 4.20. The Westminster Industrial Estate allocation (f) under policy Ec3 includes land to the south east of Huntingdon Way, Measham, in close proximity to the SAC. Associated development will therefore generate significant risks associated with emissions to air, soil and water. The control of surface water from the site will also be a significant consideration. **It is the opinion of NWLDC that the land allocated for development under Ec3 within the Westminster Industrial Estate will have a likely significant effect on the River Mease SAC 'alone' in terms of emissions to soil, air and water.**

²² Integrated assessment of the River Mease SSSI. Final report, March 2014, JBA Consulting

4.21. Policy Ec4 includes provision for the redevelopment of existing brickworks and pipeworks. The locations are considered to be sufficiently distant from the SAC to screen out potential effects associated with emissions to air, water or soil. With reference to these effects, **it is the conclusion of NWLDC that policy Ec4 will have no likely significant effect on the River Mease SAC (either alone or in combination with other plans and projects).**

Potential effects upon Cannock Chase SAC

4.22. Cannock Chase SAC is considered to be sensitive to the effects of increased recreational pressure associated with new residential development. To this end, the site is currently subject to an agreed joint approach amongst local planning authorities whose administrative boundaries lie within 15km of the SAC. All development provided for by this Local Plan lies beyond this 15km radius but the interim guidance for Lichfield District Council (the closest neighbouring authority affected by the policy) goes onto state (emphasis added) *'Development proposals more than 15km from Cannock Chase SAC may be required to demonstrate that they will have no adverse effect on the integrity of the SAC'*

4.23. The closest boundary of NWLDC is just beyond this 15km radius; as a result the potential effects of development provided for within policy H3 have been subject to further scrutiny, to ensure that it will not result in a disproportionately large increase in residents just beyond the 15km zone. The development within policy H3 would be located entirely within Ashby de la Zouch and Measham which are located 35km and 32km respectively from nearest boundary of Cannock Chase SAC. On the basis of this distance being significantly beyond the 15km radius proposed in the interim guidance, it is the view of NWLDC that, with regards recreational pressure, the effects from development provided for within policy H3 within the Cannock Chase SAC, will be insignificant.

4.24. Nevertheless there is a *hypothetical* risk that the effects, although insignificant 'alone' might contribute to the effects from other plans and projects and act in an in combination manner. However, in accordance with policy 8 of section C.8.1 in the Habitats Regulations Assessment Handbook²³ it should be noted that in such a circumstance as that being considered *'the generally restrictive nature of local planning or other regulatory or policy context... might lead to a conclusion that the risk of the subject proposal contributing to a significant adverse effect in combination is hypothetical rather than realistic. Where this is the case, cumulative effects are taken into account and excluded on the basis of lack of credibility'*. It is the view of NWLDC, in light of the restrictions already placed upon development within 15km of the SAC, and with regards to this principle, NWLDC can conclude, in terms of disturbance associated with recreational pressure that **policy H3 will have no likely significant effect on Cannock Chase SAC (either alone or in combination with other plans and projects)**. In light of the protection afforded to the SAC through the implementation of the interim guidance for development within 15km, effects 'in combination' are excluded on the basis of a lack of credibility.

²³ Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook*, May 2015 edition UK: [DTA Publications Ltd](#).

Summary of preliminary screening decisions

4.25. Appendix 1 provides further details regarding the preliminary screening decisions for each policy and a summary of the screening decisions is provided in table 4.2 below:

Table 4.2: Summary of preliminary screening decisions	
Screening decision and category	Policies
Policies screened out of further assessment	
Category A (General statement of policy)	S2, Ec15, IF2, IF3, IF4(a-c) and IM1
Category B (General criteria for testing acceptability of proposals)	S1, S5, H4, H6, Ec6, Ec7, Ec10, Ec11, Ec12, Ec13, Ec14, IF1, IF7, En3, En4, En5, Cc1, Cc2, Cc3 and Cc4
Category C (Proposal referred to but not proposed by the plan)	IF6
Category D (Environmental protection policy)	S4, En1, En6, He1
Category E (European site protection policy)	En2
Category G (no conceivable effect on a European site)	Ec5, Ec8, Ec9, IF4(d-e) and IF5
Policies Screened in for further assessment	
Category I (Likely significant effect 'alone')	S3, H3, H5, H7, Ec2, Ec3, Ec4, IF5

5. Consideration of mitigation measure and re-screening of the policies

5. The next stage in the HRA process is to consider mitigation measures which might be applied to avoid or reduce the likely significant effects identified in the preliminary screening, and re-screen any policies affected.

5.1. The policies identified as having a likely significant effects following the preliminary screening are as follows:

Table 5.1: Policies identified as having a likely significant effects following preliminary screening		
Policy	Preliminary screening conclusion	Screening category and justification
S3 Settlement hierarchy	Screened in (likely to have a significant effect alone)	Category I: This policy steers development towards Ashby as a 'key service centre' and other locations where development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
H3 Housing provision: new allocations	Screened in (likely to have a significant effect alone)	Category I: This policy steers new development towards two locations in Ashby, with a third possible site in Measham (should policy H2m not be delivered). All such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
H5 Rural exception sites for affordable housing	Screened in (likely to have a significant effect alone)	Category I: This policy steers new development towards unnamed rural locations. It is reasonable to assume some such development will take place in locations which would discharge wastewater to the River Mease SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
H7 Provision for gypsies and travellers and travelling show people	Screened in (likely to have a significant effect alone)	Category I: This policy steers new gypsy and traveller development towards unnamed locations. It is reasonable to assume some such development will take place in locations which would discharge wastewater to the River Mease SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.

Ec2 Employment allocations: new allocations	Screened in (likely to have a significant effect alone)	Category I: This policy steers new employment provision to Ashby de la Zouche. All such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
Ec3 Existing employment areas	Screened in (likely to have a significant effect alone)	Category I: This policy steers new employment provision within existing employment areas. A proportion of such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality. Furthermore one of the sites (the Westminster Industrial Estate, Measham) has yet to be fully built out and new development carries risks associated with emissions to air, water or soil and disturbance due to proximity.
Ec4 Existing brickworks and pipeworks	Screened in (likely to have a significant effect alone)	Category I: This policy provides for re-development of the 'Wavin Forest Brickworks, Blackfordby'. Re-development of this sites will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
IF5 The National Forest Line	Screened in (likely to have a significant effect alone)	Category I: This policy refers to the provision of stations at appropriate locations, including 'ancillary facilities' which would likely include toilets. Such development might discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.

Mitigation measures relevant to the discharge of wastewater

5.2. In considering the potential for amendments to the draft Local Plan to address concerns relating to the discharge of wastewater, the protection afforded through policy En2 is important. Policy En2 'River Mease Special Area of Conservation' sets out the particular circumstances affecting development within the River Mease catchment and clearly states that any such development will only be allowed where a) there is sufficient headroom capacity available within the Wastewater Treatment Works to which it is proposed that flows from development will go; and b) the proposed development is in accordance with the provisions of the Water Quality Management Plan including, where appropriate, the provision of infrastructure or water quality improvements proposed in the Developer Contributions Scheme'.

- 5.3. There are two points which need to be addressed regarding the protection afforded through policy En2. Firstly, the internal conflict created within the Plan where earlier policies which provide for development within the Mease catchment make no reference to the possible limitations imposed by En2. Secondly, whether the level of 'new development' proposed within the plan (refer policies H3 and Ec2 and some aspects of Ec3) can be delivered in accordance with the specific restrictions set out in En2.
- 5.4. The first issue is reasonably straightforward to address. It is important that any conflict within the plan is resolved in favour of protection of the SAC. The inclusion of some standard text within any policies which provide for development within the Mease catchment, clearly stating that the delivery of such development is dependent upon the conditions set out in En2 would resolve any apparent conflict in an appropriate manner.
- 5.5. It is for NWLDC to agree a final form of words but text along the following lines might be sufficient:

'Any development provided for within this policy which discharges wastewater into the Mease catchment will be subject to the provisions of policy En2. Any such development which does not meet these provisions will not be permitted.'

- 5.6. Whilst the implication of development provided for within policies H1, H2 and Ec1 have specifically been excluded from the scope of this HRA, for reasons of consistency, and considering the Local Plan as a whole document, it is recommended that the proposed wording above is also inserted into these policies.

Recommendation 1

Further standard text (such as that proposed in 5.5) should be inserted into policies S3, H1, H2, H3, H5, H7, Ec1, Ec2, Ec3, Ec4 and IF5.

- 5.7. It has been established in principle that it is acceptable to include policies within a Local Plan which are conditional upon certain conditions being met. In the case of *Feeney v Oxford City Council*²⁴, in respect of the assessment of land use plans under the Habitats Regulations, the use of a 'safeguard' relating specifically to a particular policy within the Core Strategy was subject to considerable scrutiny. The High Court ruled, that:

'There is nothing wrong in approving something in principle which may not happen in the future, if the condition is not satisfied (para 96)...

The conditional approval is a permissible and lawful course of action' (para 99)

- 5.8. The second issue, whether the level of 'new development' proposed within the plan can be delivered within the restrictions set out in En2 is more complex. The currently agreed DCS is

²⁴ Feeney v Oxford City Council [2011] EWHC 2699 (Admin)

operating within what is referred to as the ‘first development window’; this development window corresponds to a level of development which would contribute an additional 700mg P/day to the river. The 700mg/day figure was derived from the amount of phosphorous which could be removed through the mitigation measures identified by the Steering Group prior to the DCS being implemented, and which would be delivered through the developer contributions secured. Section G.1 of the DCS states (emphasis added):

‘When the phosphorous allocation assigned to the initial development window is approaching the point where all the allocation will have been apportioned, a new development window will be considered. The development of the DCS does not imply that viable actions to mitigate the negative effects of development will continue to be available over the long term. At the end of each development window a decision will be taken as to whether sufficient viable mitigation measures are available to allow for further development to be delivered, through the assignment of a new development window’

5.9. This HRA therefore needs to consider whether the ‘new allocations’ provided for within H3 can be accommodated within the first ‘development window’ or not? If not, are sufficient viable mitigation measures available for the agreement of a second development window during the plan period?

5.10. In determining the remaining capacity within the first development window consideration will need to be given to those developments which discharge to the Mease catchment which *already* benefit from planning permission within H1 and H2, together with any other smaller scale development which has been permitted through the DCS to identify what capacity remains.

5.11. Table 5.1 below lists the allocations within policies H1 and H2 which discharge to the Mease catchment.

Table 5.1: Allocations within policies H1 and H2 which discharge to the Mease catchment				
Ref	Site	Capacity	STW	Dwelling mix
H1a	Off Measham Road, Appleby Magna	39 dwellings	Snarestone	14 x 4 bed, 18 x 3 bed, 3 x 2 bed, 4 x 1 bed
H1b	Off Top Street, Appleby Magna	29 dwellings*	Snarestone	7 x 4 bed, 14 x 3 bed, 11 x 2 bed
H1c	Tudor Motors site, New Packington, Ashby de la Zouch	14 dwellings	Packington	7 x 4 bed, 2 x 3 bed
H1p	New Street, Measham	20 dwellings	Measham	3 x 4 bed, 15 x 3 bed, 2 x 2 bed
H1q	Off Measham Road, Moira	80 dwellings	Donisthorpe	32 x 4 bed, 20 x 3 bed, 28 x 2 bed
H1r	Cresswells Coaches, Shortheath Road, Moira	24 dwellings	Donisthorpe	14 match current flow from site, remaining 10 unspecified. Assume 10 x 4 bed (worst case)
H1s	166 Spring cottage Road, Overseal	11 dwellings	Overseal	Replace existing pub assume 11 x 1 bed to provide a small increase

H2a	Holywell Mill, Ashby de la Zouch	44 dwellings	Packington	Net reduction from current use, no DCS contribution required
H2b	Off Leicester Road, Ashby de la Zouch	101 dwellings	Packington	47 x 4 bed, 27 x 3 bed, 26 x 2 bed, 1 x 1 bed
H2c	South of Burton Road, Ashby de la Zouch	275 dwellings	Packington	Unspecified Assume 100% 4 bed (worst case)
H2l	West of High Street, Measham	450 dwellings	Measham	Unspecified Assume 100% 4 bed (worst case)
H2m	Land at Blackfordby Lane, Moira	18 dwellings	Packington	Unspecified Assume 100% 4 bed (worst case)
H2n	Home Farm, Main Street, Oakthorpe	29 dwellings	Measham	12 x 4bed, 10 x 3 bed, 7 x 2 bed
		TOTAL = 1134 dwellings		

* now 32 dwellings

5.12. In addition to the development allocations provided for in policies H1, H2 and Ec1, which already benefit from planning permission or a resolution to grant permission, there has also been other smaller 'windfall' developments which have been consented and assigned to the first 'development window' within the DCS. Information provided by the DCS Technical Group²⁵ states that, in addition to the 1134 dwellings within the Mease catchment detailed within policies H1 and H2, a further 625 dwellings and further commercial development have also contributed to the DCS.

5.13. It is therefore possible to conclude that the mitigation measures provided through the currently agreed DCS 'first development window' have already been assigned to the avoidance of effects from 1759 dwellings (1134 + 625) plus further commercial development. Whether there is any further capacity within this development window for further allocations within the Mease catchment depends upon the P loading to the Mease from this development. On the basis of the approach set out within section F.6 of the DCS the P loading to the river from a dwelling is dependent on the size of the dwelling and the average occupancy. Table 5.2 below is taken directly from the DCS.

Size of dwelling	Average occupancy	P loading to river (mg/day)		
		Level 1/2 (120 l/h/d)	Level 3/4 (105 l/h/d)	Level 5/6 (80 l/h/d)
1 bed	1.17	140	123	94
2 bed	1.72	206	181	138
3 bed	2.32	278	244	186
4 bed +	3.24	389	340	259

5.14. The DCS Technical Group maintain a spreadsheet which lists all 1759 dwellings together with some commercial development, but the breakdown of the mix of dwellings in some of the H1 and H2 allocations is not yet available (refer table 5.1). Where the housing mix is unspecified an assumed

²⁵ Pers comm during May 2015

100% 4 bed has been assumed to represent a worst case scenario. On the basis of the housing mix set out in table 5.1 and the P loading values in table 5.2 above, together with information held by the Technical Group in respect of commercial development, **the estimated P loading to the river from the 1759 dwellings and further employment provision is 617g/day.**

5.15. In making an assessment of the effects of the new allocations included within policy H3, Ec2 (and a proportion of that within Ec3), on the basis of the estimate above, the additional 1300 dwellings, together with the further employment allocations would not also be deliverable within the first development window. Allowing for a degree of ongoing development to come forwards before the adoption of this plan (the remaining 83g within the first development window providing for the equivalent of 213 x 4 bed houses), it is clear that **a second development window will be required.**

5.16. This in itself is not necessarily an obstacle to such development being acceptable in terms of the specific legal tests within the Habitats Regulations. Whilst at the time of drafting in 2012 the DCS does not commit to further development windows, it is clear from section G.1 that future development windows are anticipated.

5.17. In light of the figures set out above, without any further information regarding the likelihood of a second development window being progressed, simply inserting the standard text suggested above (see para 5.5) against these policies would not be appropriate. Without a sufficient degree of confidence in the delivery of the second development window, the restrictions imposed by En2 might render the allocations in H3, Ec2 and Ec4 entirely undeliverable which would compromise the soundness of the Plan.

5.18. The acceptability of a 'conditional approval' approach established in the case of *Feeney* (see para 5.7 above) cannot be applied blindly, to justify the 'generic' use of conditional approval without any real prospect of that condition being met. In the case of *Feeney* the 'Northern gateway' development aspect of the Core Strategy was the subject of a joint statement between Oxford City Council, Natural England and BBOWT (Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust). The parties involved all felt that there was sufficient confidence that all necessary mitigation measures could reasonably be secured but, in the absence of the particular project specific details, they could not be certain of this at the time the Core strategy was subject to assessment.

5.19. At a meeting held on 5th June 2015, the need for a second development window was agreed by members of the DCS Technical Group, and work is already underway to gather the information required to facilitate this. The DCS Technical Group made appropriate recommendations to the DCS Programme Board which met on the 17th June 2015. A joint statement from the DCS Programme Board was requested to inform this HRA regarding the degree of confidence in the delivery of a second development window.

5.20. A statement from the Programme Board was subsequently provided which states:

'On the recommendations of the Technical Group, the DCS Programme Board agrees that a second development window is necessary to facilitate the development provided for within the NWLDC Local Plan. The Programme Board is confident that a second development window is

feasible in a timescale which will enable the Local Plan to demonstrate that development can be accommodated up to 2031 without an adverse effect upon the integrity of the SAC’.

5.21. It also needs to be recognised that this HRA is made in respect of the *Draft* Local Plan and the timetable for delivery would not see this plan finalised until late 2016. **For the purpose of this HRA the final assessment decisions set out below assume, on the basis of the statement provided by the Technical Group above, that the second development window would be available before the Local Plan is adopted, and certainly before the development provided for within policies H3, Ec2 and Ec4 (and a proportion of that within Ec3) is delivered.**

5.22. On the basis of the joint statement provided by the Steering Group, it is reasonable to assume the ‘new’ development allocations can rely upon a second development window through the DCS being available. Whilst it cannot be discounted that development provided for within H3 *might* be delivered before some of the allocations provided for within H1 and H2, the first development window has already been assigned to development in H1 and H2, irrespective of whether such development has been delivered or not, and cannot be double counted. To ensure that the mitigation measures to be delivered to offset the effects of the increase P levels are in place, ‘new development’ allocations specifically provided for in H3, Ec2, Ec4, IF5 (and Ec3) must be dependent not only upon En2 but also upon the availability of the second development window.

5.23. The inclusion of the following *additional* extra text (immediately after the text in Recommendation 1) within these policies would provide such reassurance.

[Recommendation 1 text] ***‘Development provided for within this policy which discharges wastewater to the Mease catchment must be assigned to the second ‘development window’ within the Developer Contributions Scheme. Proposed development will not therefore be permitted until a second ‘development window’ for the DCS has been agreed.’***

Recommendation 2

Further standard text (such as that suggested in 5.23) should be inserted into policies H3, Ec2, Ec4 and IF5.

5.24. An approach which potentially relies upon matters being finalised after the adoption of the plan was specifically endorsed by the High Court in the case of *Abbotskerswell v Teignbridge (2014)*²⁶. In this case the Inspector ‘*did not consider that safeguards proposed in the plan – the strategic mitigation strategy, settlement and site mitigation plans – had to be in place in advance of adoption of the Local Plan*’. The Court ruled in para 84 that ‘*the Inspector was entitled to conclude that the Local Plan met the statutory requirements and was sound*’.

5.25. More recently, in the case of *NANT v Suffolk Coastal District Council (2015)*, the Court of Appeal ruled that ‘*the important question in a case such as this is not whether mitigation measures were considered at the stage of CS in as much detail as the available information permitted, but whether*

²⁶ *Abbotskerswell Parish Council v Teignbridge District Council [2014] EWHC 4166 (Admin)*

*there was sufficient information at that stage to enable the Council to be duly satisfied that the proposed mitigation measures could be achieved in practice*²⁷.

5.26. Policy Ec3 is complicated by the fact that it provides both for development which benefits from an existing planning permission (already allocated to the first development window) and development which is not yet subject to planning permission or which was granted outline permission prior to the Habitats Regulations coming into force. The text drafted above would not be appropriate for Ec3 as only some of the development would need to be allocated to the second development window, more specificity is required. The inclusion of the following *additional* text (immediately after the text in Recommendation 1) within Ec3 only would provide the necessary clarity. Please note that reference to Westminster Industrial Estate (in square brackets) could be removed upon implementation of recommendation 4.

[Recommendation 1 text] ***“In addition new development provided for within this policy (i.e. that which does not already have planning permission) will not be permitted until a second ‘development window’ for the Developer Contribution Scheme has been agreed.*”**

Recommendation 3

Further policy specific text (such as that suggested in 5.26) should be inserted into policy Ec3.

Mitigation measures relevant to disturbance related to proximity

5.27. Policy Ec3 provides for further employment provision within the Westminster Industrial Estate in Measham. The proximity of the land identified to the south east of Huntingdon Way (adjacent to the River Mease SAC) raises significant concerns of effects relating to disturbance. The stretch of river running alongside the Industrial Estate is known to be used by otter; a recent report to inform the condition assessment for the river concluded that *‘Otters are extensively using the River Mease and are a permanent presence on the watercourse with some sites clearly being used multiple times’*.

5.28. In accordance with the principles for mitigation measures set out in the Habitats Regulations Assessment Handbook (refer section C.5), to be taken fully into account *‘mitigation measures should be effective, reliable, timely, guaranteed to be delivered and as long term as they need to be’*²⁸. Mitigation measures to adequately address the effects or proximity related disturbance when development is this close to the river are limited, and of varying success and the long term enforcement of such measures would be challenging.

5.29. Mitigation measures at the screening stage need to be sufficient to enable a conclusion of no likely significant effect (either alone or in combination) to be recorded. In accordance with case law, an effect is *likely* if it ‘cannot be excluded on the basis of objective information’ and it is *significant* if it

²⁷ No Adastral New Town v Suffolk Coastal District Council [2015] EWCA Civ 88

²⁸ Refer principle 2, section C.5.1 of the Habitats Regulations Assessment Handbook.

'undermines the conservation objectives'. The land allocated for development to the south of Huntingdon Way, runs adjacent to the SAC. The effects of proximity based disturbance to otters within the reach of the SAC, should the site be redeveloped, would undermine the conservation objectives for the river (which refer to maintaining or restoring the population and distribution of qualifying species).

5.30. Whilst it might be possible to develop a proportion of the land allocated within the Westminster Industrial Estate (that closest to Repton Road) to allow a sufficient buffer zone in terms of proximity based disturbance, the additional risks relating to emissions to air, water and soil would still need to be addressed. Control of surface water would be particular concern given the proximity of the development site to the River, even if it were to be reduced in overall size. On balance, the implications for development at this site, and the likely costs upon the project proposer associated with securing and delivering the necessary mitigation to ensure that there would be no adverse effects upon the integrity of the River Mease SAC, significantly calls into question the appropriateness of this location for development.

Recommendation 4

Policy Ec3 should be amended to remove the land allocated to the south east of Huntingdon Way which lies adjacent to the River Mease SAC.

Mitigation measures related to emissions to air, water or soil.

5.31. Policy Ec3 provides for redevelopment of the Westminster Industrial Estate, assuming the implementation of recommendation 3 above and the removal of land to the south east of Huntingdon Way, **no further mitigation measures are required to address concerns relating to emissions to air, water or soil from policy Ec3.**

Summary of recommendations

5.32. Having considered the potential mitigation measures which might be incorporated into the plan, there are four recommendations which are summarised below.

Recommendation	Justification
1. Further standard text (such as that proposed in 5.5) should be inserted into policies S3, H1, H2, H3, H5, H7, Ec1, Ec2, Ec3, Ec4 and IF5.	To address concerns relating to the effects of discharges to wastewater upon the River Mease SAC
2. Further standard text (such as that proposed in 5.23) should be inserted into policies H3, Ec2, Ec4 and IF5.	To address concerns relating to the effects of discharges to wastewater upon the River Mease SAC
3. Further policy specific text (such as that suggested in 5.26) should be inserted into policy Ec3.	To address concerns relating to the effects of discharges to wastewater upon the River Mease SAC
4. Policy Ec3 should be amended to remove the land allocated to the south east of Huntingdon Way which is adjacent to the River Mease SAC	To address concerns relating to the deliverability of this site in such close proximity to the River Mease SAC

Re-screening the plan following the implementation of the recommended mitigation measures

Effects upon discharge to wastewater

5.33. Following implementation of the mitigation measures recommended above (1 - 3), the risks identified to the River Mease SAC will have all been avoided. As set out in para 4.7 above, the fact that the DCS avoids any effect (rather than merely reducing an effect) is important as this means that development which contributes to the DCS does not need to be considered *in combination* with other plans and projects. Adding the effects of other plans and projects would not make the effects of such development either more *likely* or more *significant* because the development has no effect at all²⁹ and cannot contribute to an effect in combination with other plans and projects.

5.34. The implementation of recommendations 1 - 3 above would allow NWLDC to conclude that policies S3, H3, H5, H7, Ec2, Ec3, Ec4 and IF5 have no likely significant effects (either alone or in combination) upon qualifying features of the River Mease SAC with regards the effects of wastewater discharge.

²⁹ Refer section C.7.1 (principle 10) in *The Habitats Regulations Assessment Handbook*.

Effects relating to disturbance from proximity

5.35. Following implementation of the mitigation measure in recommendation 4 above the risks identified to the River Mease SAC can be addressed through the removal of the land adjacent to the SAC from the proposals map. The risks relating to disturbance from proximity will have been avoided entirely and there is no need to therefore consider 'in combination' effects.

5.36. The implementation of recommendation 4 above would allow NWLDC to conclude that policy Ec3 has no likely significant effects (either alone or in combination) upon qualifying features of the River Mease SAC with regards the effects of disturbance relating to proximity.

Effects relating to emissions to air, water or soil

5.37. Following implementation of the mitigation measure in recommendation 4 above the risks identified to the River Mease SAC can be addressed through the removal of the land adjacent to the SAC from the proposals map. The risks relating to emissions to air, water and soil will have been avoided entirely and there is no need to therefore consider 'in combination' effects.

5.38. The implementation of recommendation 4 above would also allow NWLDC to conclude that policy Ec3 has no likely significant effects (either alone or in combination) upon qualifying features of the River Mease SAC with regards emissions to air, water or soil.

Overall Screening Conclusion

5.39. It is the conclusion of NWLDC that, following implementation of recommendations 1-4, the Draft Local Plan will have no likely significant effects, either alone or in combination with other plans and projects, upon any European sites. An appropriate assessment is not required.

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DTA Ecology Ltd

24th June 2015

Appendix 1: Preliminary screening conclusions

Plan Policy	Screening Conclusion	Justification
S1 Presumption in favour of sustainable development	Screened out (no likely significant effect either alone or in combination)	Category B: This policy sets out general criteria for testing proposal, the supporting text includes specific clarification that National Planning Policy is clear that the presumption in favour of sustainable development is restricted where European sites may be affected.
S2 Future housing and economic development needs	Screened out (no likely significant effect either alone or in combination)	Category A: This policy does provide for change but effects on any given European site cannot be identified because the proposal is too general. The effects of the housing are better assessed in the later housing and economic policies.
S3 Settlement Hierarchy	Screened in (likely to have a significant effect alone)	Category I: This policy steers development towards Ashby as a 'key service centre' and other locations where development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
S4 Countryside	Screened out (no likely significant effect either alone or in combination)	Category D: The purpose of this policy is to protect those areas identified as countryside. The measures proposed within the policy will not be likely to have any adverse effects upon European sites.
S5 Design of new development	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
H1 Housing provision: planning permissions	N/A	Beyond scope of this assessment. Earlier project level screening conclusion can be adopted.
H2 Housing provision: resolutions	N/A	Beyond scope of this assessment. Earlier project level screening conclusion can be adopted.

H3 Housing provision: new allocations	Screened in (likely to have a significant effect alone)	Category I: This policy steers new development towards two locations in Ashby, with a third possible site in Measham (should policy H2m not be delivered). All such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
H4 Affordable housing requirements	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
H5 Rural exception sites for affordable housing	Screened in (likely to have a significant effect alone)	Category I: This policy steers new development towards unnamed rural locations It is reasonable to assume some such development will take place in locations which would discharge wastewater to the River Mease SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
H6 House types and mix	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
H7 Provision for gypsies and travellers and travelling showpeople	Screened in (likely to have a significant effect alone)	Category J: This policy steers new gypsy and traveller development towards unnamed locations. It is reasonable to assume some such development will take place in locations which would discharge wastewater to the River Mease SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
Ec1 Employment provision: permissions	N/A	Beyond scope of this assessment. Earlier project level screening conclusion can be adopted.
Ec2 Employment allocations: new allocations	Screened in (likely to have a significant effect alone)	Category I: This policy steers new employment provision to Ashby de la Zouche. All such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
Ec3 Existing employment areas	Screened in (likely to have a significant effect alone)	Category I: This policy seeks to protect existing employment areas from non –employment uses. A proportion of such development will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text

		includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality. Furthermore one of the sites (the Westminster Industrial Estate, Measham) has yet to be fully built out and new development carries risks associated with emissions to air, water or soil and disturbance due to proximity.
Ec4 Brickworks and pipeworks	Screened in (likely to have a significant effect alone)	Category I: This policy provides for re-development of the 'Wavin Forest Brickworks, Blackfordby'. Re-development of this sites will discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
Ec5 East Midlands Airport	Screened out (no likely significant effect either alone or in combination)	Category G: this policy makes provision for change within the East Midlands Airport but the change would have no conceivable effect upon any European site because there is no causal connection between the proposed development and any qualifying features of a European site.
Ec6 Safeguarding	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec7 East Midlands Airport Public Safety Zone	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec8 Donington Park	Screened out (no likely significant effect either alone or in combination)	Category G: this policy makes provision for change within the Donington Park racetrack area but the change would have no conceivable effect upon any European site because there is no causal connection between the proposed development and any qualifying features of a European site.
Ec9 Town and Local Centres: Hierarchy and Management of Development	Screened out (no likely significant effect either alone or in combination)	Category G: this policy makes provision for change within Coalville Town Centre but the change would have no conceivable effect upon any European site because there is no causal connection between the proposed development and any qualifying features of a European site.

Ec10 Town and Local Centres: Thresholds for impact assessment	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec11 Town and Local Centres: Primary Shopping Areas – Non shopping uses	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec12 Town and Local Centres: Primary Shopping Areas – Hot food takeaway balance	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec13 Primary and Secondary Frontages	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec14 Local Centres	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Ec15 Tourism and cultural development	Screened out (no likely significant effect either alone or in combination)	Category A: This policy does provide for potential change but effects on any given European site cannot be identified because the proposal is too general.
IF1 Development and Infrastructure	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
IF2 Community Facilities	Screened out (no likely significant effect either alone or in combination)	Category A: This policy does provide for potential change but effects on any given European site cannot be identified because the proposal is a general expression of policy.
IF3 Open Space, Sport and Recreation facilities	Screened out (no likely significant effect either alone or in combination)	Category A: This policy does provide for potential change but effects on any given European site cannot be identified because the proposal is a general expression of policy.

IF4 Transport Infrastructure and new development	Screened out (no likely significant effect either alone or in combination)	Category A and G: This policy IS4 (a-c) does provide for potential change but effects on any given European site cannot be identified because the proposal is a general expression of policy. IS4(d-e) makes provision for change regarding to specified road improvements but the change would have no conceivable effect upon any European site because there is no causal connection between the proposed development and any qualifying features of a European site.
IF5 The National Forest Line	Screened in (likely to have a significant effect alone)	Category I: This policy refers to the provision of stations at appropriate locations, including 'ancillary facilities' which would likely include toilets. Such development might discharge wastewater to the River Mease SAC catchment with associated effects upon water quality within the SAC. The supporting text includes no reference to either policy En2 or the sensitivity of the SAC to any deterioration in water quality.
IF6 Ashby Canal	Screened out (no likely significant effect either alone or in combination)	Category C: This policy refers to a specific proposal concerned with the restoration of the Ashby Canal. The work itself has already been consented through the Leicestershire County Council(Ashby de la Zouche Canal Extension) order 2005 No. 2786. It is therefore a proposal referred to but not proposed by this Plan and was considered separately by the Secretary of State when making the Order.
IF7 Parking provision and new development	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
En1 Nature Conservation	Screened out (no likely significant effect either alone or in combination)	Category D: The purpose of this policy is to protect and conserve the natural environment. The measures proposed within the policy will not be likely to have any adverse effects upon European sites.
En2 River Mease Special Area of Conservation	Screened out (no likely significant effect either alone or in combination)	Category E: The purpose of this policy is to steer changes in such a way as to specifically protect the River Mease SAC. The measures proposed within the policy will not be likely to have any adverse effects upon European sites.
En3 The National Forest	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.

En4 Charnwood Forest Regional Park	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
En5 Areas of Separation Policy	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
En6 Land and Air Quality	Screened out (no likely significant effect either alone or in combination)	Category D: The purpose of this policy is to protect the natural environment. The measures proposed within the policy will not be likely to have any adverse effects upon European sites.
He1 Conservation and enhancement of NW Leicestershire's historic environment	Screened out (no likely significant effect either alone or in combination)	Category D: The purpose of this policy is to protect the historic environment. The measures proposed within the policy will not be likely to have any adverse effects upon European sites.
Cc1 Renewable Energy	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Cc2 Sustainable design and construction	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Cc3 Flood Risks	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
Cc4 Sustainable Urban Drainage	Screened out (no likely significant effect either alone or in combination)	Category B: This policy establishes a general policy designed to test proposals in the plan for their general acceptability. The policy cannot have any effect on a European Site.
IM1	Screened out (no likely significant effect either alone or in combination)	Category A: This policy may provide for potential change but effects on any given European site cannot be identified because the proposal is a general expression of policy.