



Habitats Regulations Assessment of the Malton and Norton Neighbourhood Development Plan

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Contents

SUMMARY

| | |
|--|----|
| 1. INTRODUCTION | 2 |
| 2. THE NEED FOR ASSESSMENT AND IDENTIFYING EUROPEAN SITES AT RISK..... | 9 |
| 3. SCREENING – PROCESS AND OUTCOMES | 15 |
| 4. APPROPRIATE ASSESSMENT | 26 |
| 5. FORMAL INTEGRITY TEST | 33 |

Figures

| | |
|---|---|
| Figure 1: The four stage assessment of Local Plans under the Habitats Regulations | 4 |
|---|---|

Tables

| | |
|---|----|
| Table 1: Pre-screening outcomes - Potential mechanisms and the initial list of European sites that could be affected - extract from Appendix A..... | 10 |
| Table 2: European sites at risk and list of potential threats | 12 |
| Table 3: European site characteristics | 13 |
| Table 4: Refined list of European sites and features at risk..... | 14 |
| Table 5: Pre-screening categories | 15 |
| Table 6: Features affected and relevant policies..... | 16 |
| Table 7: Summary of the Screening exercise by policy and feature | 23 |
| Table 8: Summary of the Screening exercise by category | 24 |

Figure 1 The four-stage assessment of plans under the Habitats Regulations

Appendices

- A. Identification of European sites at risk
- B. River Derwent Citation and Qualifying Features
- C. Record of preliminary screening of proposed policies

SUMMARY

The Malton and Norton-upon-Derwent Town Councils have together prepared the submission edition of the Neighbourhood Plan for Malton and Norton 2020-2027 for submission to the competent authority, Ryedale District Council.

The Conservation of Habitats and Species Regulations 2017 (as amended) require local authorities to assess the impact of their development plans on the internationally important sites for biodiversity in and around their administrative areas. Together, these Special Protection Areas, Special Areas of Conservation and Ramsar sites are known as 'European sites'. The task is achieved by means of a Habitats Regulations Assessment. This report is the Habitats Regulations Assessment for the Neighbourhood Plan. It follows the principles of case law, both UK and EU, takes account of Government policy and draws heavily on guidance contained within the Habitats Regulations Assessment Handbook.

A Habitats Regulations Assessment comprises a series of mandatory tests. Firstly, it "screens" the plan to identify which policies or allocations may have a *likely significant effect, alone or (if necessary) in combination* with other plans and projects, on the European sites. If likely significant effects can be ruled out, then the plan may be adopted but if they cannot, the plan must be subjected to the greater scrutiny of an 'appropriate assessment' to determine if the Plan can avoid *an adverse effect on the integrity* of the European sites. If *adverse effects* cannot be ruled out, the plan cannot be adopted. If necessary, a plan should be amended to avoid or mitigate any likely conflicts. This usually means that some policies or allocations will need to be modified.

Forty-two policies were screened; the individual outcomes of the pre-screening of each policy and allocation can be found in Appendix C and are summarised in Table 8. Overall, this HRA found that likely significant effects could be ruled out for thirty-eight. However, likely significant effects could not be ruled out for four policies alone: RC1, RC2, CF1 and N1 because of a range of possible effects on the River Derwent SAC. However, there were no residual effects and no need for an in-combination assessment.

Consequently, an appropriate assessment was required. This found (see section 4) that adverse effects on the integrity on the River Derwent SAC could be ruled out alone for all four. There was no need for bespoke mitigation, no residual effects and, therefore, no need for an in-combination assessment.

Although this HRA has been prepared to help Ryedale District Council discharge its duties under the Habitats Regulations, the Council remains the competent authority and must decide whether to adopt this report or otherwise.

1. INTRODUCTION

Background

- 1.1. The Malton and Norton-upon-Derwent Town Councils are together preparing the submission edition of the 'Neighbourhood Development Plan for Malton and Norton 2020 – 2027' (dated December 2021) (*the Plan* or *NDP*). Alongside the adopted Ryedale Local Plan, this will help to deliver strategic vision and objectives across the neighbourhood until 2027. When adopted, the NDP will influence all future development within the towns' boundaries.
- 1.2. The Conservation of Habitats and Species Regulations 2017 (as amended) (or *the Habitats Regulations*) require local (or *competent*) authorities to assess the impact of development plans on the network of internationally important protected areas comprising Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites (or *European sites*). This requirement is delivered via a Habitats Regulations Assessment (HRA) which comprises a series of mandatory tests.
- 1.3. This report is the Habitats Regulations Assessment for the Plan. It follows the principles of case law, both UK and EU, takes account of Government policy and draws heavily on guidance contained within the Habitats Regulations Assessment Handbook¹ (the *Handbook*) utilising charts, pro-forma, definitions and interpretation throughout. The Handbook draws on best practice and case law at home and across the EU to identify over 180 principles to inform the production of HRAs. Subscribers to the Handbook include Natural England, the Environment Agency and the Planning Inspectorate amongst others.
- 1.4. Government guidance² allows competent authorities to rely on the conclusions of other, relevant HRAs where there has been no material change in circumstances³. Consequently, but only where relevant, this new HRA draws on the findings of other HRAs.

HRA of Plans, Natura 2000 and European sites

- 1.5. The network of European sites forms the cornerstone of UK nature conservation policy. Each site forms part of a '*national network*' and each is afforded the highest levels of protection in domestic policy and law. They comprise SPAs classified under the 1979 Birds Directive and SACs designated under the 1992 Habitats Directive. As a matter of policy, potential SPAs (pSPAs), possible SACs (pSACs) and those providing formal compensation for losses to European sites, are also given the same protection⁴. In England, the network of SPAs and SACs (on land and at sea and including those shared with Scotland and Wales) comprises over

¹ Tyldesley, D., and Chapman, C., (2013) The Habitats Regulations Assessment Handbook, April 2021 edition UK: DTA Publications Ltd

² Habitats regulations assessments: protecting a European site. Defra and Natural England. 24 February 2021. <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site> (accessed 15 October 2021)

³ The suitability of earlier, or higher level assessments is subject to the decision of the CJEU in Cooperatie Mobilisation for the Environment UA v College van Gedeputeerde (C-293/17) [2019] Env. L.R. 27 ("Dutch Nitrogen").

⁴ For the avoidance of doubt, the list of statutory European sites also comprises: A site submitted by the UK to the European Commission (EC) before Exit Day (a candidate SAC or cSAC) as eligible for selection as a Site of Community Importance (SCI) but not yet entered on the ECs list of SCI, until such time as the Appropriate Authority has designated the site or it has notified the statutory nature conservation body that it does not intend to designate the site. After Exit Day, no further cSACs will be submitted to the EU. Statutory European sites also include SCI included on a list of such sites by the European Commission from cSACs submitted by the UK before the UK left the EU, until such time as the UK designates the site when it will become a fully designated SAC.

340 sites^{5,6} and safeguards the most valuable and threatened habitats and species across Europe. Locally, the network comprises sites such as the River Derwent, the Lower Derwent Valley and Strensall Common.

- 1.6. Prior to Brexit, these comprised part of the EU-wide Natura 2000 network of SPAs and SACs which formed the largest, coordinated network of protected areas in the world. The SPA and SAC designations made under the European Directives still apply and the term, 'European site' remains in use in law and elsewhere. Similarly, at present, EU case law still applies. According to long-established Government policy⁷, European sites also comprise 'Wetlands of International Importance' (or Ramsar sites listed under the Ramsar Convention) although these do not form part of the national network.
- 1.7. The overarching objective of the national network is to maintain, or where appropriate, restore habitats and species listed in Annexes I and II of the Habitats Directive to a Favourable Conservation Status, and contribute to ensuring, in their area of distribution, the survival and reproduction of wild birds and compliance with the overarching aims of the Wild Birds Directive. The appropriate authorities must have regard to the importance of protected sites, coherence of the national site network and threats of degradation or destruction (including deterioration and disturbance of protected features) on SPAs and SACs.
- 1.8. The Habitats Regulations apply a series of mandatory tests for the HRA of local development plans set out in Regulation 105 *et seq.* These have been interpreted by European and domestic case law, supported by policy and guidance issued by Government on their implementation notably paragraphs 174-177 of the National Planning Policy Framework, Planning Practice Guidance 'Appropriate Assessment'⁸ and Defra Guidance⁹.
- 1.9. In brief, the HRA process requires the competent authority (ie the Council) to first assess the plan to identify whether it is '*... likely to have a significant effect on a European Site ... either alone or in-combination with other plans or projects*'. If likely significant effects can be ruled out, the plan may be adopted without further scrutiny. Importantly, an in-combination assessment is only required where an impact is identified which would not have an insignificant effect on its own ('*a residual effect*') but where likely significant effects could arise cumulatively with other plans or projects. Together this step is often referred to as 'Screening'
- 1.10. If likely significant effects cannot be ruled out, a more thorough appropriate assessment (AA) must be carried out to assess whether it is possible to ascertain that the Plan will have '*no adverse effect on the integrity of the site*' (AEOI) or not. At this stage, mitigation can be applied to remove adverse effects. If mitigation is unable to rule out adverse effects, then a plan cannot normally be adopted. If this is the case, derogations may be sought but only as a last resort and few local plans would be expected to pass these additional tests.
- 1.11. In reality, experience gained from implementation of the process has encouraged the adoption of a 'pre-screening' process and the use of additional filters at the outset to explore if the plan even needs to be subject to HRA at all. This more pragmatic approach is laid out in Fig 1 where the component steps are given expression. It is the process described in Fig 1 that is followed in this HRA.

⁵ <https://jncc.gov.uk/our-work/special-protection-areas-overview/> (accessed 15 October 2021)

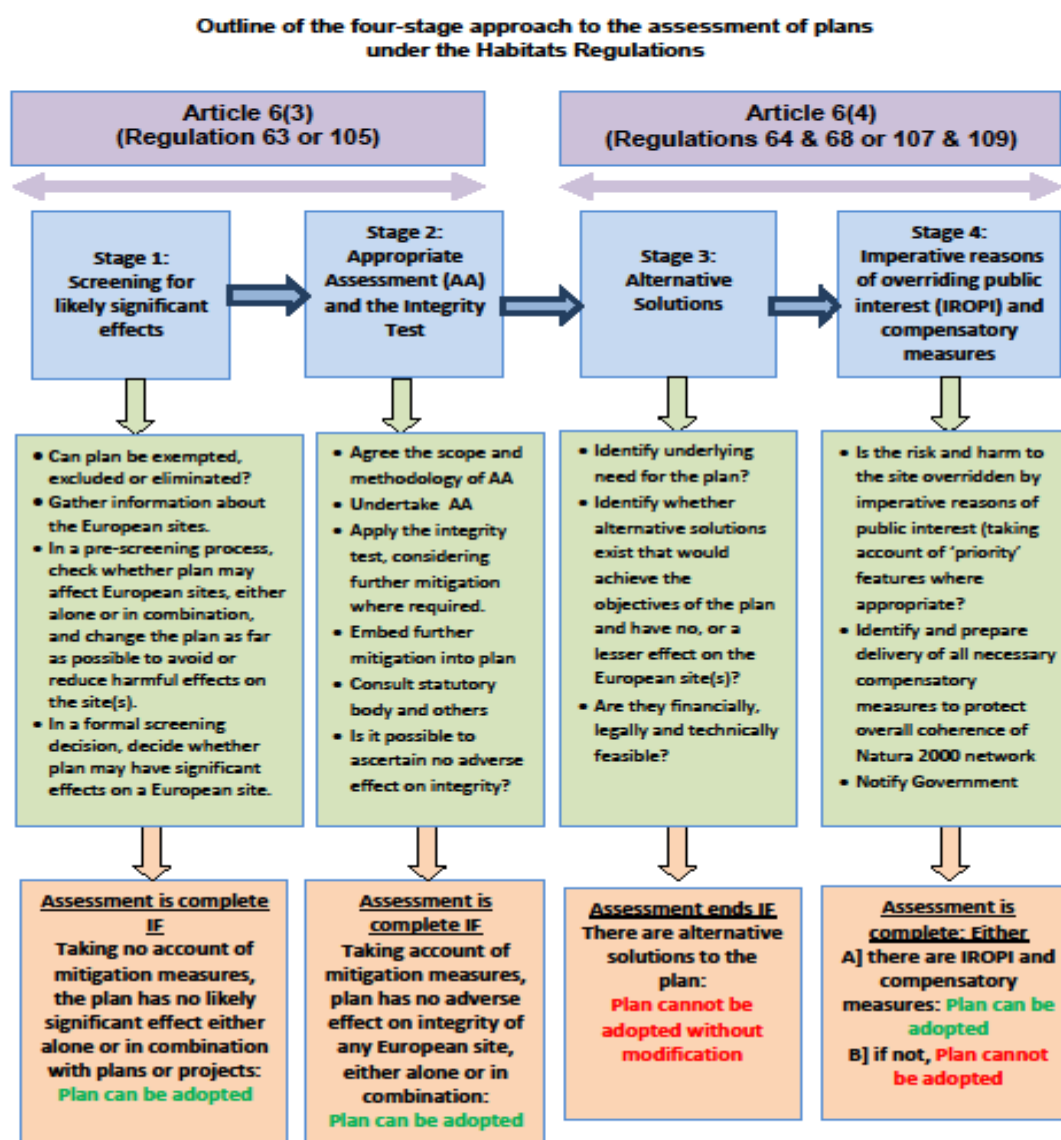
⁶ <https://sac.jncc.gov.uk/site/england> (accessed 15 October 2021)

⁷ ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (16 August 2005), to be read in conjunction with the current NPPF, other Government guidance and the current version of the Habitats Regulations.

⁸ Planning Practice Guidance <https://www.gov.uk/guidance/appropriate-assessment> (accessed 15 October 2021)

⁹ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#appropriate-assessment> (accessed 15 October 2021)

Figure 1 The four stage assessment of Local Plans under the Habitats Regulations



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Definitions, the Precautionary Principle and Case Law

Context

- 1.12. The overall approach to screening and appropriate assessment was summarised by Advocate General Sharpston in the Sweetman case¹⁰.

“47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of article 6(3) In para 44¹¹, it uses the term “in case of doubt”. It is the last of these that seems to me best to express the position. The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect ...

49. The threshold at the first stage of article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken of the implications of the plan or project for the conservation objectives of the site. The purpose of that assessment is that the plan or project in question should be considered thoroughly, on the basis of what the court has termed “the best scientific knowledge in the field”. ...

50. The test which that expert assessment must determine is whether the plan or project in question has “an adverse effect on the integrity of the site”, since that is the basis on which the competent national authorities must reach their decision. The threshold at this (the second) stage is noticeably higher than that laid down at the first stage. That is because the question (to use more simple terminology) is not “should we bother to check?” (the question at the first stage) but rather “what will happen to the site if this plan or project goes ahead; and is that consistent with ‘maintaining or restoring the favourable conservation status’ of the habitat or species concerned?”

Stage One - Screening

- 1.13. The screening test is defined in Regulation 105(1) which states:
- 1.14. Where a land use plan ... (a) is likely to have a significant effect on a European site ... (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of the site, the plan-making authority ... must ... make an appropriate assessment ... in view of that site’s conservation objectives”.
- 1.15. Taking (b) first, this allows plans, where the sole focus is the management for the benefit of the one or more of the qualifying features without detriment to the others, can be excluded from the need for HRA. However, this rarely applies. Where it does not, an HRA is required.
- 1.16. A likely significant effect is described in Waddenzee as follows: ‘likely’ is a I ‘risk’, ‘the occurrence of which cannot be excluded on the basis of objective information’ and ‘significant’ as ‘any effect that would undermine the conservation objectives’ of a European site¹². It can be seen that where there is any ‘doubt’ as to an effect, an appropriate assessment is required.

¹⁰ Sweetman v An Bord Pleanála (C 258-11) [2012]. Opinion of the Advocate General.

¹¹ The CJEU in Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij (C127-02) [2005] 2 CMLR 31 (“the Waddenzee case”)

¹² Waddenzee: European Courts C-127/02 Waddenzee 7th September 2004, reference for a preliminary ruling from the Raad van State at paras 44, 47 and 48.

1.17. In other words, this means the initial screening phase should not be exhaustive, a point candidly described by Advocate General Sharpston in paragraphs 49 and 50 of the Sweetman case¹³ when describing the levels of scrutiny to be applied to each test as follows:

'The threshold at the first stage [the test for LSE] ... is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken ... The threshold at (the second) [the appropriate assessment] stage is noticeably higher than that laid down at the first stage. That is because the question (to use more simple terminology) is not 'should we bother to check?' (the question at the first stage) but rather 'what will happen to the site if this plan or project goes ahead ...'.

1.18. This was amplified in the Bagmoor Wind case¹⁴ as follows:

'If the absence of risk ... can only be demonstrated after a detailed investigation, or expert opinion, that is an indicator that a risk exists, and the authority must move from preliminary examination to appropriate assessment'.

1.19. However, Boggis¹⁵ clarifies there should be "credible evidence that there was a real, rather than a hypothetical, risk" that the conservation objectives of a European site could be undermined so requiring only the assessment of plausible effects and not the extremely unlikely.

Stage Two – Appropriate Assessment and the Integrity Test

1.20. Fundamentally, the HRA process employs the precautionary principle and Regulation 105 ensures that where a plan is 'likely to have a significant effect', it can only be adopted if the competent authority can ascertain (following an appropriate assessment) that it 'will not adversely affect the integrity of the European site'. In simpler terms, it is not for the competent authority to prove harm but for the plan proposer to demonstrate that adverse effects have been avoided.

1.21. The integrity of a European site was described by Government¹⁶ as:

'the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated'.

1.22. Elsewhere, the Court of Justice of the European Union (CJEU) (Sweetman)¹⁷ defined integrity as:

'the lasting preservation of the constitutive characteristics of the site ... whose preservation was the objective justifying the designation of that site'.

1.23. Drawing on this, the European Commission¹⁸ defined it more recently as follows:

¹³ C-258/11 Sweetman reference for a preliminary ruling from the Supreme Court of Ireland. Opinion of the Advocate General 22 November 2012

¹⁴ Bagmoor Wind Limited v The Scottish Ministers Court of Sessions [2012] CSIH 93

¹⁵ 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

¹⁶ Habitats regulations assessments: protecting a European site. Defra and Natural England. 24 February 2021. <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site> (accessed 15 October 2021)

¹⁷ Sweetman EU:C:2013:220 para 39

¹⁸ Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC", European Union. 2019.

'The integrity of the site involves its constitutive characteristics and ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the habitats and species for which the site has been designated and the site's conservation objectives'.

- 1.24. Whilst the Supreme Court (Champion)¹⁹ has found “appropriate” is not a technical term and indicates no more than that the assessment should be appropriate to the task in hand, it can be seen that when compared with the test at the screening stage for likely significant effect, the ‘appropriate assessment’ is more thorough.

Stages Three and Four – The Derogations

- 1.25. If an adverse effect on the integrity of the site can be avoided, the plan can be adopted (Fig 1). If not, derogations would have to be sought to allow the plan to continue; these are regarded as a last resort and considered only in exceptional circumstances. For these to be successful it has to be shown that there are no less damaging *alternative solutions*. If there are none, *imperative reasons of overriding public interest* must apply. If they do, compensatory measures but be delivered. These stages are summarised in Stages 3 & 4 of Fig 1.

Overall approach

- 1.26. The HRA of development plans was first made a requirement in the UK following a ruling by the European Court of Justice in EC v UK²⁰. However, the judgement²¹ recognised that any assessment had to reflect the actual stage in the strategic planning process and the level of evidence that might or might not be available. This was given expression in the UK High Court (Feeney²²) which stated:

'Each ... assessment ... cannot do more than the level of detail of the strategy at that stage permits'.

- 1.27. This is where a way has to be found that whilst mindful of the need for the precautionary principle to be applied, the HRA must strive to identify only those plausible effects and not the extremely unlikely.
- 1.28. Because this is a strategic plan, the ‘objective information’²³ required by the HRA is typically only available at a strategic or high level, without the detail that might be expected at the planning application stage.

Mitigation and recent case law

- 1.29. The *People Over Wind*²⁴ in April 2018 the CJEU set out clear guidance as to the role of mitigation measures in an HRA. In taking a different approach from previous decisions in the UK courts, it held that measures embedded within a plan or project specifically to avoid or reduce the magnitude of likely significant effects should not be taken into account at the screening stage but reserved for the appropriate assessment.. This HRA therefore restricts consideration of mitigation measures to the appropriate assessment.

¹⁹ R (on the application of Champion) v. North Norfolk District Council [2015] UKSC 52.

²⁰ 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.

²¹ 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

²² 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

²³ European Court of Justice Case C – 127/02 *Waddenzee* 7 September 2004

²⁴ *People Over Wind and Sweetman v Coillte Teoranta* (C 323/17) [2018] PTSR 1668

- 1.30. The Court also considered the approach to mitigation at the appropriate assessment stage in *Grace & Sweetman*²⁵. Here, it held that it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration”.
- 1.31. In the *Dutch nitrogen case*²⁶, the CJEU confirmed that an appropriate assessment is not to take into account the future benefits of mitigation measures if those benefits are uncertain, including where the procedures needed to accomplish them have not yet been carried out or because the level of scientific knowledge does not allow them to be identified or quantified with certainty. It is recognised that the ruling also covered the approach to “autonomous” measures which are not mitigation measures adopted as part of the plan in question, but measures which are taken outside that plan (in that case to reduce nitrogen deposition). The CJEU held that the effect of those measures could not be taken into account either, if their expected benefits are not certain at the time of that assessment²⁷.

Brexit

- 1.32. The requirement for the HRA derives from the EU Habitats Directive and, notwithstanding the UK’s withdrawal from the EU, UK law and policy remains currently largely unchanged, and the Conservation of Habitats and Species Regulations 2017 remain in force²⁸, other than to accommodate amendments made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

Role of the competent authority

- 1.33. Lastly, although this HRA has been prepared to help Ryedale District Council discharge its duties under the Habitats Regulations, it remains the competent authority and it must decide whether to adopt this report or otherwise. Further, it should be noted that this HRA has been prepared for the purposes of preparing and examining the Neighbourhood Plan. Individual allocations will need to be reviewed when they become the subject of an individual planning application, to ensure that if further assessment under the Conservation of Habitats and Species Regulations 2017 as amended is necessary²⁹, it is undertaken in accordance with the requirements of appropriate assessment.

²⁵ *Grace & Sweetman v An Bord Pleanala* (C-164/17) [2019] PTSR 266 at paragraphs 51-53 and 57.

²⁶ *Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu* (C 293/17, C 294/17) [2019] Env. L.R. 27 at paragraph 30

²⁷ See too the *Compton Parish Council* case, referred to above, at paragraph 207.

²⁸ See the EU (Withdrawal Agreement) Act 2020 Sch. 5(1) para. 1(1) and section 39(1). The amending regulations come into force at the end of the implementation period they generally seek to retain the requirements of the 2017 Regulations but with adjustments for the UK’s exit from the EU, for example by amending references to the Natura 2000 network so that they are construed as references to the national site network: see regulation 4, which also confirms that the interpretation of these Regulations as they had effect, or any guidance as it applied, before exit day, shall continue to do so.

²⁹ See *Dutch Nitrogen*, above, at paragraphs 100-104 and 120.

2. THE NEED FOR ASSESSMENT AND IDENTIFYING EUROPEAN SITES AT RISK

Exclusion, Elimination and Exemption from the need for Assessment

- 2.1. As part of the pre-screening exercise, prior to the identification of vulnerable European sites, Stage 1 of Fig.1 (elaborated in F3.2 – F3.4 of the Handbook) encourages a brief review of the plan to explore if it can be:
- Excluded from the HRA because 'it is not a plan within the meaning and scope of the Habitats Directive', or
 - Eliminated from the HRA because it can easily be shown that although 'it is a plan ... it could not have any conceivable effect on any European site', or
 - Exempted from the HRA because it is '... directly connected with or necessary to the management of the ... European site' (ie the first formal stage of the HRA - Fig 1).
- 2.2. Taking these in turn, it is clear the Neighbourhood Plan represents a plan within the meaning and scope of the Habitats Directive with the potential to harm European sites and so can neither be excluded nor eliminated from the HRA. Likewise, the purpose of the Plan is not the nature conservation management of any European sites and so it cannot be made exempt from further assessment. Consequently, the next steps in Stage 1 of Fig 1 need to be pursued by identifying which European sites and which features may be vulnerable as follows.

European sites at risk

- 2.3. To encourage a consistent, reliable and repeatable process, the Handbook (Figure F4.4) identifies 16 generic criteria, listed in full in Appendix A that when evaluated generate a precautionary, 'long' list of European sites that could be affected by the Plan³⁰. However, when considered further, using readily available information and local knowledge the list of plausible threats can be refined, and the list of potentially affected sites reduced. Albeit a coarse filter, this complies with Boggis by focusing scrutiny only on realistic and credible threats whilst avoiding the hypothetical or exceedingly unlikely. If Column 5 remains empty of European sites, then no European sites will be at risk and no further scrutiny will be required.
- 2.4. The search was restricted to those European sites found within 20km of the Neighbourhood Plan boundary as this was considered to be the maximum extent that policies and allocations could seriously be considered to generate measurable effects. This focuses the attention of this HRA on the River Derwent, Lower Derwent Valley, Strensall Common, Ellers Wood and Sand Dale and the North York Moors; only the River Derwent is found within the Plan area.
- 2.5. It is important to note that although the outcomes of this site identification task will reflect the type and location of activities proposed within the plan and/or the ecological characteristics of the European sites, it does not represent the test for likely significant effect (see section 3).
- 2.6. The exercise identified that only three of the 16 criteria, 'aquatic features' (2), 'mobile species' (5a) and recreational pressure (6) represented a credible threat to European sites in the area. For reasons of brevity, only relevant extracts from Appendix A are presented in Table 1 below. None of the remaining 13 criteria were considered to represent a credible threat and are removed from any further scrutiny as are all other European sites.

³⁰ This table is taken from the Handbook albeit with changes to the number and titles of Columns appropriate to this HRA.

Table 1: Pre-screening outcomes - Potential mechanisms and the initial list of European sites that could be affected - extract from Appendix A

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|--|---|--|--|-------------------------|
| 2. Plans that could affect aquatic features | (a) Sites upstream or downstream of the plan area in the case of river or estuary sites | Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC | <p>Effects considered are those associated with the physical presence of built development and the <i>localised</i> effects on surface/groundwater resources and quality, resulting from changes in run-off, sedimentation, erosion etc.</p> <p>Given that the Lower Derwent Valley lies around 20km as the crow flies from the plan area, localised effects on aquatic features can be confidently ruled out from any further consideration for this European site.</p> <p>However, given that the River Derwent flows through the Plan area, all features of the River Derwent SAC remain vulnerable to development proposed in the NDP even though the section within the town centres is not designated.</p> <p>Note that the <i>indirect</i> effects of changes to wastewater disposal are assessed separately under '7b'.</p> | River Derwent SAC |
| 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 | Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC | <p>This considers direct impacts of plan proposals on mobile species. Although otters can range widely along suitable waterways, given the distance to those which occupy the Lower Derwent Valley 20km to the south can be considered distinct from those which make frequent and regular use of the stretch of the River Derwent in around Malton and Norton. Therefore, impacts on the Lower Derwent Valley SAC can be ruled out.</p> <p>Similarly, impacts on both the breeding and wintering bird populations which use 'functionally-linked land' outside the LDV are highly unlikely given the distances involved and so too can be ruled out.</p> <p>However, given the development proposed in close proximity to the River Derwent as part of the Plan, impacts on the otter, bullhead and lamprey populations of the river cannot be ruled out.</p> | River Derwent SAC |

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|---|---|---|--|--------------------------|
| <p>6. Plans that could increase recreational pressure on European sites potentially vulnerable or sensitive to such pressure</p> | <p>(a) Such European sites in the plan area</p> | <p>River Derwent SAC (within the plan area)</p> | <p>Therefore, these features of the River Derwent will be considered further.</p> <p>The Plan makes provision for unspecified development in a small number of locations in proximity to the River Derwent SAC. Although residential development is not specified, it is not ruled out either. If pursued, this could result in an increase in recreational pressure on the SAC and so this requires further consideration.</p> <p>The plan encourages the development of both horse racing and other tourist attractions but does not allocate land for either and at present these remain aspirations. Even if pursued, it is not anticipated that visitors to those destinations would increase pressure on the River Derwent to which there is only limited access through much of the plan area. Consequently, the impact of these proposals can be discounted.</p> <p>Modest proposals are encouraged on land adjacent to the river in the town centre albeit adjacent to a stretch that isn't designated. Despite this, the potential exists for an increase in recreational pressure from existing residents to harm the qualifying features.</p> <p>Therefore, possible impacts on the River Derwent require further consideration.</p> | <p>River Derwent SAC</p> |

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- 2.7. The outputs of the review carried out in Table 1 rule out the possibility of any credible effects from any aspect of the Plan on the Lower Derwent Valley or, indeed, any more distant European Strensall Common, Ellers Wood and Sand Dale and the North York Moors. These sites will therefore be ruled out of any further scrutiny in this HRA.
- 2.8. In addition, the exercise reduces the number of factors at play and begins to clarify the nature of potential impacts and the features most vulnerable. Importantly, it confirms that the focus of this HRA should be restricted entirely to the River Derwent SAC and the following issues as shown in Table 2:

Table 2: European sites at risk and list of potential threats

| European sites | Potential threats |
|-------------------|----------------------------|
| River Derwent SAC | (2a) Aquatic features |
| River Derwent SAC | (5) Mobile species |
| River Derwent SAC | (6a) Recreational pressure |

- 2.10. The net result, and benefit to the HRA, is that the list of issues and sites potentially affected is reduced, making for a shorter and more focused HRA than would otherwise be the case.
- 2.11. However, as impacts on the River Derwent European site cannot be ruled out, further ecological information needs to be gathered to inform subsequent tests in the HRA. Drawing on the citation³¹, conservation objectives³², supplementary advice³³ and site improvement plan³⁴, the characteristics of the River Derwent SAC are described in Table 3 and are accompanied by observations on their sensitivity to external factors – the latter informed by Table 1. Conservation objectives, qualifying features and threats and pressures extracted from the SIP are provided in full. The citation is provided in Appendix B.

³¹ River Derwent SAC Citation. 14 June 2005

³² Conservation Objectives for River Derwent SAC. 27 November 2018. (Version 3)

³³ Supplementary advice on conserving and restoring features. River Derwent SAC. 27 March 2017 (Version 2)

³⁴ River Derwent SAC Site Improvement Plan. Natural England. V1.0. 8 October 2014.

Table 3: European site characteristics

| Description (including summary of qualifying features) | Conservation objectives | Pressures and threats (P/T) |
|--|---|--|
| <p>River Derwent SAC</p> <p>Stretching from Ryemouth in the north to its confluence with the Ouse in the south, the River Derwent is considered to represent one of the best examples in England of a lowland river. Whilst a relatively short length also lies within the Lower Derwent Valley National Nature Reserve, not all of the river is designated, and a small stretch through Malton and Norton-upon-Derwent is excluded, reflecting its urbanised location here.</p> <p>It supports diverse communities of flora, notably floating vegetation dominated by water crowfoot, and fauna, comprising river lamprey, sea lamprey, bullhead and otter. The latter are mobile species with the potential/need to utilise extensive stretches of the river throughout the catchment beyond the boundaries of the SAC, and are critically dependent on the maintenance of a favourable hydrological (including physical and chemical) conditions throughout their range. They are therefore vulnerable to pollution events and the creation of physical or chemical barriers; for instance, lamprey migrate to the open sea via the Humber Estuary. In addition, otters also exploit riparian habitats for resting and breeding.</p> <p>The Derwent is meso/eutrophic and carries a high nutrient load providing a degree of resilience against air pollution, and whilst otter can be considered resilient, the floating vegetation communities and fish populations may be vulnerable. Overall though, the site can be considered relatively robust but vulnerable to changes in water quality (especially inputs of phosphate) from wastewater disposal, for instance.</p> <p>Restricted access to the river along much of its length reduces the impact of existing recreational pressure and the simple width of the channel effectively rules out harmful impacts on bullhead, both species of lamprey and the floating vegetation community. However, the otter population remains more vulnerable to disturbance.</p> <p>Natural England has assessed 99.2% of the River Derwent SSSI to be in 'favourable' or 'unfavourable recovering' condition; 0.8% is 'unfavourable no change' but the threat level is considered to be 'high' across a much wider area.</p> | <p>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:</p> <p>The extent and distribution of qualifying natural habitats and habitats of qualifying species;</p> <p>The structure and function (including typical species) of qualifying natural habitat;</p> <p>The structure and function of the habitats of qualifying species;</p> <p>The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;</p> <p>The populations of qualifying species, and,</p> <p>The distribution of qualifying species within the site.</p> <p>Qualifying habitats: The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation. (Rivers with floating vegetation often dominated by water-crowfoot) <p>Qualifying species: The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Bullhead <i>Cottus gobio</i> <input type="checkbox"/> River lamprey <i>Lampetra fluviatilis</i> <input type="checkbox"/> Otter <i>Lutra lutra</i> <input type="checkbox"/> Sea lamprey <i>Petromyzon marinus</i> | <ol style="list-style-type: none"> 1. Physical modification (P/T); 2. Water pollution (T); 3. Invasive species (T); 4. Change in land management (T); 5. Water abstraction (T). |

2.12. The outputs of Table 1 allow this HRA to focus solely on a restricted number of possible impacts on just one European site: the River Derwent SAC. However, by drawing on the additional information provided in Table 3, the HRA is able to further refine the possible impacts to specific features, habitats and species. These, the key issues for the next, formal stage of this screening exercise are presented in Table 4.

Table 4: Refined list of European sites and features at risk

| European site | Potential effects | Qualifying features at risk |
|-------------------|--|---|
| River Derwent SAC | (2) Impacts on aquatic features | Otter, river and sea lamprey, and bullhead, and Floating vegetation dominated by water crowfoot |
| | (5) Impacts on mobile species | Otter, river and sea lamprey, and bullhead |
| | (6) Impacts from recreational pressure | Otter |

3. SCREENING – PROCESS AND OUTCOMES

Methodology

- 3.1. Section 2 confirmed that the NDP could not be excluded, eliminated or exempted from the need for HRA and clarified which European sites and which features might be vulnerable. The next step is to explore if proposals in the Plan may represent a credible risk to the River Derwent by evaluating policies and allocations to identify if they should be:
- **Screened out from further scrutiny** (because the individual policies or allocations are considered not 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects'), or
 - **Screened in for further scrutiny** (because the individual policies or allocations are considered 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects').
- 3.2. To achieve this, all 42 policies within the Plan are scrutinised in terms of the key issues from Table 4 (based on an approach drawn from section F6.3 of the Handbook) and allocated to one (or more) broad, 'pre-screening categories' (summarised in Table 5 below).

Table 5: Pre-screening categories

| Code | Category | Outcome |
|------|--|--------------|
| A | General statement of policy/general aspiration | Screened out |
| B | Policy listing general criteria for testing the acceptability/sustainability of the plan | Screened out |
| C | Proposal referred to but not proposed by the plan | Screened out |
| D | General plan-wide environmental protection/site safeguarding/threshold policies | 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 | Screened out |

| Code | Category | Outcome |
|------|---|--------------|
| | (either alone or in-combination with other aspects of this or other plans or projects) | |
| I | Policy or proposal which may have a likely significant effect on a site alone | Screened in |
| J | Policy or proposal with an effect on a site but unlikely to be significant alone, so need to check for likely significant effects in-combination | Check |
| K | Policy or proposal unlikely to have a significant effect either alone or in-combination (screened out after the in-combination test) | Check |
| L | Policy or proposal which might be likely to have a significant effect in-combination (screened in after the in-combination test) | Check |
| M | Bespoke area, site or case-specific policies intended to avoid or reduce harmful effects on a European site. Excluded from formal screening but re-considered in appropriate assessment | Screened out |

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- 3.3. This process provides a bespoke, precautionary and preliminary analysis for every policy in the Plan and identifies which proposals could pose a threat to the European site. This initial but lengthy exercise is provided in full Appendix C. Those policies which are considered to represent a threat to the vulnerable qualifying features of the River Derwent SAC are listed in Table 6 which also applies the outcomes of Table 4 to provide an effective summary of the issues at stake which will be subjected to formal screening.

Table 6: Features affected and relevant policies

| Policy | Potential effect | Features potentially at risk |
|--------|-----------------------|---|
| RC1 | Aquatic features | Otter, river and sea lamprey, and bullhead Floating vegetation dominated by water crowfoot |
| | Mobile species | Otter, river and sea lamprey, and bullhead |
| | Recreational pressure | Otter |
| RC2 | Aquatic features | Otter, river and sea lamprey, and bullhead Floating vegetation dominated by water crowfoot |

| Policy | Potential effect | Features potentially at risk |
|--------|-----------------------|---|
| | Mobile species | Otter, river and sea lamprey, and bullhead |
| | Recreational pressure | Otter |
| CF1 | Aquatic features | Otter, river and sea lamprey, and bullhead Floating vegetation dominated by water crowfoot |
| | Mobile species | Otter, river and sea lamprey, and bullhead |
| | Recreational pressure | Otter |
| N1 | Aquatic features | Otter, river and sea lamprey, and bullhead Floating vegetation dominated by water crowfoot |
| | Mobile species | Otter, river and sea lamprey, and bullhead |
| | Recreational pressure | Otter |

- 3.4 The relevant proposals are subjected to formal screening below where each preliminary outcome is evaluated in terms of the conservation objectives of the European sites affected (Table 3) and their vulnerable features (Table 4). Here, the initial assessment will be either confirmed or amended by identifying which would result in a likely significant effect alone or in combination. The outcomes of this exercise are summarised in Tables 7 and 8.
- 3.5 Where policies are ‘screened-out’, it is considered they pose no credible risk to the European site and so they can be removed from any further consideration in this HRA. If a credible risk remains, likely significant effects cannot be ruled out and an appropriate assessment of those policies will be required.
- 3.6. Importantly, this exercise complies with the People Over Wind decision and recent Ministry of Housing, Communities and Local Government HRA Planning Guidance (2019)³⁵ by distinguishing between the *essential features and characteristics* of the Plan, and, in Category M, those *mitigation measures* specifically embedded within the Plan to reduce impacts on European sites and which would be subject to appropriate assessment.

Screening - Context

- 3.7. Each potential effect is now described in turn and is followed by a screening opinion for each policy listed above. It should be remembered that case law demands that screening is not meant to represent a detailed impact assessment and should only identify if there is a *credible risk* that the conservation objectives may be undermined. In doing so, this should act as a *trigger* for more thorough scrutiny in an appropriate assessment.

Aquatic features

- 3.8. This potential effect is concerned with new built development and its localised effects on surface and sub-surface flows both in terms of water quality and water resources resulting from pollution events, and changes in run-off, sedimentation and erosion etc.
- 3.9. Table 4 shows that all the features of the River Derwent SAC, ie the otter, river and sea lamprey, and bullhead populations, and the floating vegetation community could be at risk.
- 3.10. The Council proposes development at four locations immediately adjacent or in close proximity to the River Derwent SAC (Policies RC1, RC2, CF1 and N1). All encourage at

³⁵ Ministry of Housing, Communities and Local Government HRA Planning Guidance <https://www.gov.uk/guidance/appropriate-assessment> 22 July 2019 (accessed 14 August 2019)

least some form of development and water pollution is identified as a threat in the River Derwent SIP (Table 3).

Mobile species

- 3.11. Mobile species are defined here as those that utilise ('functionally-linked') land or water beyond the European site boundary for some part of their lifecycle be it seasonally, diurnally or even intermittently. It is this aspect in particular which requires consideration of the non-designated stretch of the river that bisects the towns in this HRA.
- 3.12. Again, this is typically associated with new, built development but these species can be vulnerable to a range of both localised and strategic effects away from protected areas. Therefore, in the case of lamprey, bullhead and otter, effects on water quality and resources will have to be considered both up and downstream, and, in terms of otter populations, attention will also have to be paid to land-take, construction or disturbance on potentially wider areas of land.
- 3.13. Table 4 shows that all the mobile species, otter, river and sea lamprey, and bullhead could be affected and potentially, Policies RC1, RC2, CF1 and N1 could be implicated. However, whilst water pollution is listed as a threat in the SIP for the River Derwent, 'disturbance' is not (Table 3). For the avoidance of doubt, this does not apply to the floating vegetation community.

Recreational pressure

- 3.14. The most popular destinations can draw in visitors in great numbers from considerable distances and lead to erosion and disturbance. Less popular sites, or those with fewer facilities, have a smaller catchment, fewer visitors and the issue is typically less problematic. Alternatively, sites managed specifically to encourage large numbers of visitors can tolerate these pressures without causing significant harm.
- 3.15. Excessive recreational pressure typically leads to the disturbance of qualifying species, and a reduction in habitat quality/extent from trampling or other related activities. It can be particularly problematic on land or water with open or unauthorised access where which can compromise site management.
- 3.16. Of course, each site is different and other key factors will include the fragility of the feature, size of the development, the accessibility of alternative destinations, the availability of footpaths, public transport and so on.
- 3.17. Table 4 shows that all four policies, RC1, RC2, CF1 and N1 could be relevant though only the otter population could be affected. However, 'disturbance' is not identified as a threat in the River Derwent SIP (Table 3).

Approach

- 3.18. What is clear from preceding text is that the stretch of the River Derwent in closest proximity to all four proposals is not designated as a SAC. However, in terms of this HRA this is considered an irrelevance as the river provides an unbroken hydraulic link with adjacent designated stretches of the river that are and so all elements of the river are assessed equally in the screening exercise below.
- 3.19. What is also apparent is that there is considerable overlap between the three potential threats and a high degree of commonality between the features affected. This risks repetition and a loss of clarity. In effect, there are two main potential threats:

- the potential impact of disturbance on the otter population; and
 - the potential impact of pollution from any development that may arise on all the remaining qualifying features: floating vegetation, bullhead, both species of lamprey and otter.
- 3.20. A focus on these two issues, disturbance and pollution, will have the effect of simplifying the assessment process without overlooking the impact from any potential threats. Each policy identified in Table 6 is subject to formal screening below.

Screening opinions

RC1 – Malton and Norton River Corridor Development

- 3.21. Although apparently modest in scope, the aspiration behind this policy is to provide low-key recreational activities on a 1.2km stretch of land immediately adjacent to both designated and non-designated stretches of the river.
- 3.22. There are two broad elements to this policy – the provision of open space allied with proposals for a picnic area, seating and bridle/cycleways, and built development comprising the construction of a café and the unspecified conversion of existing buildings. Importantly, the land is not allocated for this purpose in the Ryedale local plan and has not been assessed in its HRA.
- 3.23. Taking these in turn, impacts on the floating vegetation community and all three fish species from disturbance (from recreational pressure) have already been ruled out in the pre-screening exercise given their physical separation and, consequently, their relative immunity from these riparian activities (see Tables 4 & 6). In contrast, the uncertainty surrounding the scale of the proposals ensures there is a credible risk that the establishment of the recreational area could increase the number of visitors to the riverside from across both towns public open space, especially in the vicinity of the river, is a scarce resource in both towns. In turn has the potential to disturb otters when commuting or foraging along the river corridor. Whilst daytime activities should not represent a threat, the degree of lighting, noise and human presence could all be expected to increase. Therefore, there is a risk that the conservation objectives could be undermined.
- 3.24. These potentially significant effects could be exacerbated should new development be required to deliver the ‘café/refreshment facilities’ specified. Unless of a very minor scale, this could introduce a credible threat of pollution of the river from construction unless of a very minor scale. In turn this has the potential to impact all qualifying features: floating vegetation, bullhead, both species of lamprey and otters.
- 3.25. Whilst it is not suggested that impacts from this policy could be expected to result in harm across the entire length of the SAC, it is possible that changes could extend across localised but significant areas of the river. This could conflict with the conservation objective for the River Derwent to:
- ‘maintain ... the extent and distribution ... the structure and function ... and the supporting processes ... of the qualifying natural habitats*
- 3.26. Therefore, likely significant effects from disturbance and pollution cannot be ruled out at this stage and an appropriate assessment is required.

Screening test – Policy RC1

There is a credible risk that disturbance and pollution from construction from Policy RC1 could undermine the conservation objectives of the River Derwent SAC and that likely significant effects cannot be ruled out (alone). Consequently, an appropriate assessment is required. This policy is considered capable of resulting in a likely significant effect alone and, therefore, there is no need for an in-combination assessment at this stage.

RC2 – Regeneration of Land North and South of County Bridge

- 3.27. This policy seeks to encourage the loosely defined, development-led regeneration of riverside land along both banks of the River Derwent although none lie directly adjacent to the SAC. As described on the proposals map, this also includes unspecified development on the bridge over the river although this is taken to comprise measures to improve the flow of people and traffic. Importantly, the land is not allocated for this purpose in the Ryedale local plan and has not been assessed in its HRA.
- 3.28. For reasons very similar to Policy RC1 above, there is a credible risk that the unspecified development could increase the number of visitors to the riverside given its proximity and the proposed expansion of recreational space in RC1. This could, in turn, increase the disturbance of otter populations. It is noted, however, that residential development is not proposed.
- 3.29. Construction in such close proximity to the river raises additional issues. The river is a fragile habitat, vulnerable to pollution events in particular or any changes in the local surface or sub-surface hydrological regime. Such changes are often associated with construction, especially in close proximity to wetland or riverine sites. Therefore, there is a risk that the conservation objectives could be undermined.
- 3.30. Whilst it is not suggested that impacts from this policy could be expected to result in harm across the entire length of the SAC, it is possible that changes could extend across localised but significant areas of the river. This could conflict with the conservation objective for the River Derwent to:
- ‘maintain ... the extent and distribution ... the structure and function ... and the supporting processes ... of the qualifying natural habitats.’*
- 3.31. Therefore, likely significant effects cannot be ruled out at this stage and an appropriate assessment is required.

Screening test – Policy RC2

There is a credible risk that disturbance and pollution from construction from Policy RC2 could undermine the conservation objectives of the River Derwent SAC and that likely significant effects cannot be ruled out (alone). Consequently, an appropriate assessment is required. This policy is considered capable of resulting in a likely significant effect alone and, therefore, there is no need for an in-combination assessment at this stage.

CF1 – Norton’s swimming pool

- 3.32. This policy seeks to encourage the expansion of the size of and facilities available at Norton swimming pool. Although located in relatively close proximity to the River Derwent SAC, it is considered almost inconceivable that expansion of this single facility could result in any harmful effects on the SAC.
- 3.33. However, there is a credible risk that expansion of car park could allow an increase in the number of visitors to the riverside given its proximity and the proposed expansion of recreational space in RC1. This could, in turn, increase the disturbance of otter populations.
- 3.34. Similarly with RC1 and RC2, the remote possibility exists that construction work associated with the expansion of facilities could lead to localised pollution events which could potentially affect all features of the River Derwent. Therefore, there is a risk that the conservation objectives could be undermined. Importantly, the land is not allocated for this purpose in Ryedale local plan and has not been assessed in its HRA.
- 3.35. Whilst it is not suggested that impacts from this policy could be expected to result in harm across the entire length of the SAC, it is possible that changes could extend across localised but significant areas of the river. This could conflict with the conservation objective for the River Derwent to:
- 'maintain ... the extent and distribution ... the structure and function ... and the supporting processes ... of the qualifying natural habitats.'*
- 3.36. Therefore, likely significant effects cannot be ruled out at this stage and an appropriate assessment is required.

Screening test – Policy CF1

There is a credible risk that disturbance and pollution from construction from Policy CF1 could undermine the conservation objectives of the River Derwent SAC and that likely significant effects cannot be ruled out (alone). Consequently, and an appropriate assessment is required. This policy is considered capable of resulting in a likely significant effect alone and, therefore, there is no need for an in-combination assessment at this stage.

N1 – Land to the Rear of Commercial Street

- 3.37. This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre. The uses described comprise retail, light industrial uses and the development of a car park; residential development is not listed. Although located in close proximity to the undesignated stretch of the River Derwent, it is considered almost inconceivable that development of this type could result in any harmful effects on the SAC. However, the remote possibility exists that a new car park could increase the number of visitors to the riverside (and the level of disturbance) and that construction work associated with the expansion of facilities could lead to localised pollution events which could potentially affect all features of the River Derwent. Importantly, the land is not allocated for this purpose in the Ryedale local plan and has not been assessed in its HRA. It is noted that residential development is not proposed.
- 3.38. Whilst it is not suggested that impacts from this policy could be expected to result in harm across the entire length of the SAC, it is possible that changes could extend across localised but significant areas of the river. This could conflict with the conservation objective for the River Derwent to:

'maintain ... the extent and distribution ... the structure and function ... and the supporting processes ... of the qualifying natural habitats.'

- 3.39. Therefore, likely significant effects cannot be ruled out at this stage and an appropriate assessment is required.
- 3.40. It should be noted that concern regarding pollution events during construction relates to the possible development of the site (perhaps for residential development) beyond the suggested use as a car park. Should the former not be pursued, all potential threats related to pollution would be removed. However, at this stage, it is not possible to make this assumption.

Screening test – Policy N1

There is a credible risk that disturbance and pollution from construction from Policy N1 could undermine the conservation objectives of the River Derwent SAC and that a likely significant effect cannot be ruled out (alone). Consequently, and an appropriate assessment is required. This policy is considered capable of resulting in a likely significant effect alone and, therefore, no residual effects are anticipated and there is no need for an in-combination assessment at this stage.

Summary of the Screening Exercise and Next Steps

- 3.41. The outcomes of this stage of the formal screening assessment are brought together in Table 7 which lists those sites and issues where it has been found that the conservation objectives may be undermined and where likely significant effects cannot be ruled out. Table 8 lists all the policies in the Plan and summarises the outcome of both the preliminary screening assessment and how it has been modified by the screening exercise above.

Table 7: Summary of the Screening exercise by policy and feature

| European site | Issue | Policies | Feature affected | Conservation objectives* | Undermined? | Residual effects? | In-combination effect? | Outcome |
|-------------------|---------------------------|-------------------|---|---|-------------|-------------------|------------------------|--|
| River Derwent SAC | Disturbance and Pollution | RC1, RC2, CF2, N1 | Floating vegetation communities Otter, river and sea lamprey, and bullhead | Extent and distribution of qualifying habitats and those of qualifying species | Yes | None | None | |
| | | | | Structure and function (including typical species) of qualifying habitats | Yes | None | None | Likely significant effects cannot be ruled out (alone) |
| | | | | Structure and function of habitats of qualifying species | Yes | None | None | Appropriate assessment required |
| | | | | Supporting processes on which qualifying natural habitats and the habitats of qualifying species rely | Yes | None | None | No residual effects No in-combination assessment required |
| | | | | Populations of qualifying species | Yes | None | None | |
| | | | | Distribution of qualifying species | Yes | None | None | |

3.42. Table 8 summarises the outcome of the pre-screening and formal screening exercises and highlights changes of opinion accordingly. In this case, the screening exercise confirmed the outcome of the pre-screening exercise and there are, therefore, no changes.

Table 8: Summary of the Screening exercise by category

| Screening outcome | Pre-screening | Post-Screening |
|---|---|---|
| A General statement of policy Screened out | Vision EM1 | Vision EM1 |
| B General criteria for testing acceptability of proposals Screened out | HD1, HD2, HD3, HD4, HD5, HD6, HD7, HD8, HD9, HD10, HD11 H1 | HD1, HD2, HD3, HD4, HD5, HD6, HD7, HD8, HD9, HD10, HD11 H1 |
| C Proposal referred to but not proposed by the Plan Screened out | None | None |
| D Environmental protection policy Screened out | E1, E2, E3, E4 | E1, E2, E3, E4 |
| E Policies or proposals which steer change in such a way as to protect European sites Screened out | None | None |
| F Policy that cannot lead to development or other change Screened out | None | None |
| G No conceivable effect on a European site Screened out | TM1, TM2, T3, TM4, TM5, TM6, TM7 E5, E6 CF2 TC2, TC4 HRI1, HRI2, HRI3 M1 | TM1, TM2, T3, TM4, TM5, TM6, TM7 E5, E6 CF2 TC2, TC4 HRI1, HRI2, HRI3 M1 |
| H Policy or proposal with unspecified location which cannot undermine the conservation objectives (either alone or in combination with other aspects of this or other plans or projects) | CF3 TC1, TC3 HRI4 M1, M2 | CF3 TC1, TC3 HRI4 M1, M2 |
| I Likely significant effect alone cannot be ruled out Screened in | RC1, RC2, CF1, N1 | RC1, RC2, CF1, N1 |

| Screening outcome | Pre-screening | Post-Screening |
|---|---------------|----------------|
| J Likely significant effect in combination cannot be ruled out Screened in | None | None |
| K Policy or proposal with no likely significant effect alone but which lead to in combination effects | None | None |
| L Policy or proposal considered to have in combination effects | None | None |
| M Bespoke area, site or case specific policies or proposals intended to avoid or reduce harmful effects on a European site | None | None |

Screening conclusion

- 3.43. This exercise found that all 38 of the 42 policies (excluding the Vision) could be screened out of the need for further assessment in this HRA. In other words, it found that the majority would not lead to any likely significant effects on any European sites either within or beyond the Town Councils' boundary. There would be no residual effects and, therefore, no need for an in-combination assessment or, indeed, an appropriate assessment.
- 3.44. However, the screening exercise found it was not possible to screen out likely significant effects alone for Policies RC1, RC2, CF1 and N1 for a range of possible but credible impacts regarding effect on aquatic features and mobile species from construction and other activities, and the effect of recreational pressure affecting the River Derwent.
- 3.45. Consequently, an appropriate assessment is required to explore whether these policies will have an adverse effect on the integrity of the European site. Policies can normally only be adopted if it is certain, beyond reasonable scientific doubt, that adverse effects can be ruled out. Drawing on the recent People Over Wind ruling, this will explore if embedded or additional mitigation measures can avoid a negative outcome. This is presented in Section 4 below.

4. APPROPRIATE ASSESSMENT

Purpose, approach and assessment

- 4.1. The precautionary principle demands that where a plan is likely to have a significant effect, it can only be adopted if the competent authority can ascertain (following an appropriate assessment) that it *will not adversely affect the integrity of the European site*. This is the role of the appropriate assessment and represents the fundamental test of an HRA; competent authorities should not normally consent or adopt proposals unless they are certain that adverse effects can be ruled out.
- 4.2. Where it is not certain that an adverse effect can be avoided, and in line with the People Over Wind ruling, the appropriate assessment also considers whether any incorporated mitigation measures are sufficient to remove all reasonable scientific doubt about the risk of such an effect. Further explanation of the process is provided in section 1.
- 4.3. Mitigation performs a different role to compensation; the former comprises measures intended to avoid, cancel or reduce adverse effects on European sites whereas the latter can only be considered under the derogations – where an adverse effect cannot be avoided. Importantly, Principle C5.1.5 of the Handbook advises that any mitigation measures considered *should be effective, reliable, timely, guaranteed to be delivered and as long terms as they need to be to achieve their objectives*. Any doubt as to any of these criteria would introduce unhelpful uncertainty into the decision-making process.
- 4.4. The Handbook highlights the meaning of integrity in contemporary planning policy and guidance as defined by the CJEU (Sweetman) and European Commission as *the lasting preservation of the constitutive characteristics of the site* before adding that for a plan-making body to conclude the absence of an adverse effect **it should be convinced that no reasonable scientific doubt remains** as expressed in the Waddenzee ruling:

That is the case where no reasonable scientific doubt remains as to the absence of such effects (Para 59) and where doubt remains as to the absence of adverse effects ... the competent authority will have to refuse authorisation (Para 57).
- 4.5. This should be read in the context of case law that shows this need not be absolute (the Cairngorms case), that reliance on *probabilities and estimates* is sometimes required (Waddenzee, para 97) but, fundamentally it remains thus **“where doubt remains as to the absence of adverse effects ... the competent authority will have to refuse authorisation”** (Waddenzee, Para 57).
- 4.6. In addressing the burden of proof, the Handbook (F.10.1) states:

Because the integrity test incorporates the application of the precautionary principle as a matter of law, and because plan assessments are, by their nature, less precise than project assessments, it is important for the assessment process to eliminate the prospect of adverse effects on site integrity in so far as that is possible at the level of specificity inherent in the nature and purpose of the particular plan.
- 4.7. Bearing this in mind, each policy where likely significant effects could not be ruled out is taken in turn and each issue dealt with accordingly. The effectiveness of any mitigation embedded in the policies is considered. If an adverse effect on the integrity of the site cannot be removed even when site-specific mitigation measures are considered, the appropriate assessment will consider if other restrictions are available that could secure a

positive outcome; this could include the removal of an entire policy, or part of one, if other effective mitigation is not available.

- 4.8. Each concludes with a bespoke statement that represents the integrity test on that site. These individual outcomes are summarised in Table 9. The appropriate assessment concludes with a final statement that confirms the outcome of the HRA. Because of the similarity of the issues at stake, there is some unavoidable repetition.
- 4.9. In accordance with the *Waddenzee* decision, it should be noted that the appropriate assessment also explores if residual effects (as described in Section 1) remain. In this case, this refers to effects that would not result in an adverse effect on the integrity of the site alone but, when considered with other residual effects identified elsewhere in the appropriate assessment, could combine to harm the integrity of the site. If any arise, this could prompt the need for an in-combination assessment.

Policy RC1

- 4.10. Although apparently modest in scope, this policy seeks to provide low-key recreational activities on a 1.2km stretch of land immediately adjacent to both designated and non-designated stretches of the river. There are two broad elements to this policy – the provision of open space allied with proposals for a picnic area and seating, and built development comprising the construction of a café, and the possible, though unspecified conversion of existing buildings. However, the scale is described as *minor* in the supporting text.
- 4.11. Taking these in turn, the simple provision of open space alone cannot be expected to result in an adverse effect on the integrity of the site. Indeed, it is almost inconceivable that a green open space providing opportunities for low-key recreation adjacent to the river will pose a major threat to the achievement of the conservation objectives of the SAC. Furthermore, the features are relatively resilient with only otter potentially vulnerable to disturbance and this, only at dawn, dusk and during the night (see Tables 4 and 6).
- 4.12. Otters display very different behaviours at different stages of their life-cycle. Adults are known to frequently make use of busy stretches of water in towns in close proximity to large human populations when foraging or commuting within or between territories (which can be extensive). Too much emphasis can be placed on species' ability to habituate to new pressures but in the case of otters, it can be valid. Evidence of this in Malton and Norton is that otters already make frequent use of this stretch of river even though it is exposed to the typical disturbance associated within any urban setting with road bridges, railway lines, industry and people all in close proximity. Given that otters are predominantly nocturnal, and that activities associated with recreational use of this land will be largely restricted to daylight hours, the proposals cannot be considered to appreciably increase disturbance. Therefore, adverse effects on foraging and commuting otters from disturbance associated with this policy can be ruled out.
- 4.13. Contrasting with this resilience to human disturbance when foraging or commuting, resting places and breeding holts are almost always sited far from human disturbance. These settings are of critical importance to the maintenance of otter populations, with adults especially displaying an intolerance of human disturbance around their young. However, it is almost inconceivable that resting places or holts will be found in proximity to RC1 given its location in the centre of the two towns; circumstances that will have been evident since otters recolonised local waterways several decades ago. Therefore, adverse effects on resting places or holts as a consequence of this policy can be ruled out.

- 4.14. It is considered, therefore, that low-key recreational opportunities supported by picnic areas and seating can be considered to be in keeping with the conservation objectives of the SAC. This statement is made in full knowledge that open space in both towns is restricted and could prove popular with existing residents. An increase in the local population could change this opinion but none is proposed in the Plan. Where increases have been proposed in the Ryedale local plan, these have been assessed elsewhere. Policy RC1 is not considered to affect those conclusions.
- 4.15. Turning to the possible construction of a café or refurbishment of other buildings, the scale of development is described as *minor*, reflecting its location in the floodplain, the low-key approach to recreation on this site and the adjacent SAC. However, the SAC is fragile and potentially vulnerable to pollution incidents that could arise during any construction such as spillages of oil or cement dust which could, especially the former, result in harmful effects over a considerable distance of the river and affect all the qualifying features: the floating vegetation, bullhead, both species of lamprey and otters.
- 4.16. Mindful of the anticipated scale, all development has to comply with a range of pollution control mechanisms laid out in legislation and best practice, including oil and sediment traps, and the storage of materials amongst others to effectively reduce the risk. All are tried and tested and, if implemented correctly, provide effective guarantees that such incidents will either be prevented or, if they do occur, will be controlled before they enter the river. In addition the existing drainage infrastructure can also be expected to accommodate the management of wastewater when in use.
- 4.17. As these measures would be required by law and best practice to afford wide-ranging environmental safeguards, they can be considered to be reliable, effective in the short and long-terms and their implementation guaranteed. Together, these bring confidence that the threat could be removed from the types of built development proposed.
- 4.18. As these measures would be required with or without the presence of the SAC, they do not represent mitigation in the context of the People Over Wind decision. However, if the competent authority does regard these measures as mitigation, the consideration of these here, in the appropriate assessment would comply with People Over Wind. No further safeguards are considered necessary.
- 4.19. Consequently, it is considered that adverse effects from disturbance and pollution on the integrity of the River Derwent SAC can be ruled out, beyond reasonable scientific doubt. There would be no need for mitigation, no residual effects and no need for an in-combination assessment.
- 4.20. It should be noted though, that any development may well require the provision of the necessary information to allow the local planning authority (Ryedale District Council) to carry out an HRA of any application.

Integrity test for Policies RC1

It is considered that **the Council will be able to ascertain beyond reasonable scientific doubt that Policy RC1 will have no adverse effect on the integrity of the River Derwent SAC alone.** There would be no need for mitigation, no residual effects, and no need for an in-combination assessment.

Policy RC2

- 4.21. This policy seeks to encourage the loosely defined, development-led regeneration of riverside land along both banks of the River Derwent although none lie directly adjacent to the SAC.
- 4.22. It is anticipated that this will reflect similar commercial uses to that already present. Consequently, employees of commercial premises will have only restricted opportunities to visit the riverbank and the majority will only be present during the day when impacts on otters are less likely. In addition, the policy excludes residential development and so prevents any increase in the size of the local population and number of residents that might make use of the new open space along the riverbank promoted in RC1 above. Therefore, increased use of the riverbank and disturbance of otters can effectively be ruled out as associated activities with this kind of regeneration can safely be assumed to take place during the day and not at night when otters are more likely to be present; further justification regarding the habits of otters is presented for this under RC1 above and is not repeated here.
- 4.23. Construction of any kind in such close proximity to the river raises additional issues. The SAC is a fragile habitat, vulnerable to pollution events in particular or any changes in the local surface or sub-surface hydrological regime. It is anticipated that construction of the proposed development here, could be prolonged, extending over several months or even years and could comprise substantial earthworks, the installation of drains and the storage of fuel and other potential contaminants, all with the potential to adversely affect the local hydrological regime and water quality. These factors go beyond that anticipated for the café in RC1.
- 4.24. However, whilst the scale may be greater, the management of such risks is governed by the same legislation and best practice as described in RC1. This too is not repeated here but the same, positive outcomes can be assumed, that these bring confidence that the threat could be removed from the types of built development proposed.
- 4.25. Similarly, as these measures would be required with or without the presence of the SAC, they do not represent mitigation in the context of the People Over Wind decision. However, if the competent authority does regard these measures as mitigation, the consideration of these here, in the appropriate assessment would comply with People Over Wind. No further safeguards are considered necessary.
- 4.26. Consequently, it is considered that adverse effects from disturbance and pollution on the integrity of the River Derwent SAC can be ruled out, beyond reasonable scientific doubt. There would be no need for mitigation, no residual effects and no need for an in-combination assessment.
- 4.27. It should be noted though, that any development may well require the provision of the necessary information to allow the local planning authority (Ryedale District Council) to carry out an HRA of any application.

Integrity test for Policies RC2

The Council will be able to ascertain beyond reasonable scientific doubt that Policy RC2 will have no adverse effect on the integrity of the River Derwent SAC alone.

There would be no need for mitigation, no residual effects, and no need for an in-combination assessment.

Policy CF1

- 4.28. This policy seeks to encourage the expansion of the size of and facilities available at Norton swimming pool. However, despite being located in relatively close proximity to the (undesigned stretch of the) River Derwent, it was not possible to rule out the risk of harm arising from an increase in recreational pressure and from construction..
- 4.29. The scale of the proposals is unknown but is reasonably presumed to be in keeping with the modest extent of the existing facility. Importantly, the policy excludes residential development and so prevents any increase in the size of the local population and number of residents that might make use of the new open space along the riverbank promoted in RC1 above. Similarly, any increase in car parking capacity is likely to be accommodated by the allied expansion of the swimming pool/leisure centre. As a specific 'destination' it is unlikely measurable numbers of visitors will also use the opportunity to visit the new riverside greenspace, especially at night when otters could be considered vulnerable. Therefore, increased use of the riverbank and disturbance of otters can effectively be ruled out.
- 4.30. Similarly, should the facility be expanded, the same threats of pollution from construction as described in policies RC1 and RC2 above also apply here (but are not repeated). As before, though, the management of such pollution risks is governed by the same legislation and best practice as described in RC1 and RC2. This too is not repeated here but the same, positive outcomes can be assumed, that these bring confidence that the threat could be removed from the types of built development proposed. Furthermore, the site is separated from the river by the railway line making any incidents even less likely to arise in the river as it will not only provide a physical barrier, but will bring with it its own drainage infrastructure.
- 4.31. Similarly, as these measures would be required with or without the presence of the SAC, they do not represent mitigation in the context of the People Over Wind decision. However, if the competent authority does regard these measures as mitigation, the consideration of these here, in the appropriate assessment would comply with People Over Wind. No further safeguards are considered necessary.
- 4.32. Consequently, it is considered that adverse effects from disturbance and pollution on the integrity of the River Derwent SAC can be ruled out, beyond reasonable scientific doubt. There would be no need for mitigation, no residual effects and no need for an in-combination assessment.
- 4.33. It should be noted though, that any development may well require the provision of the necessary information to allow the local planning authority (Ryedale District Council) to carry out an HRA of any application.

Integrity test for Policies CF1

The Council will be able to ascertain beyond reasonable scientific doubt that Policy CF1 will have no adverse effect on the integrity of the River Derwent SAC alone.

There would be no need for mitigation, no residual effects, and no need for an in-combination assessment.

Policy N1

- 4.34. This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre. The uses described comprise retail, light industrial uses and the development of a car park; residential development is not proposed. The screening exercise

identified that an increase in disturbance could result from an increase in recreational pressure from use of the car park or from employees or shoppers, depending on the development proposed.

- 4.35. As with Policy RC2, employees of commercial premises or shoppers will have only restricted opportunities to visit the riverbank and the majority will only be present during the day when impacts on otters are less likely. Likewise, as with Policy CF1, any increase in car parking capacity is likely to be accommodated by the workforce or shoppers and it is considered unlikely measurable numbers of visitors will also use the opportunity to visit the new riverside greenspace, especially at night when otters could be considered vulnerable.
- 4.36. In addition, the policy excludes residential development and so prevents any increase in the size of the local population and number of residents that might make use of the new open space along the riverbank promoted in RC1 above.
- 4.37. Therefore, increased use of the riverbank and disturbance of otters can effectively be ruled out; further justification regarding the habits of otters is presented for this under RC1 above and is not repeated here.
- 4.38. Should development be proposed, the same threats of pollution from construction as described in policies RC1, RC2 and CF1 above also apply here (but are not repeated). As before, though, the management of such pollution risks is governed by the same legislation and best practice as described in the same. This too is not repeated here but the same, positive outcomes can be assumed, that these bring confidence that the threat could be removed from the types of built development proposed. Furthermore, the site is separated from the river by the railway line making any incidents even less likely to arise in the river as it will not only provide a physical barrier, but will bring with it its own drainage infrastructure.
- 4.39. Similarly, as these measures would be required with or without the presence of the SAC, they do not represent mitigation in the context of the People Over Wind decision. However, if the competent authority does regard these measures as mitigation, the consideration of these here, in the appropriate assessment would comply with People Over Wind. No further safeguards are considered necessary.
- 4.40. Consequently, it is considered that adverse effects from disturbance and pollution on the integrity of the River Derwent SAC can be ruled out, beyond reasonable scientific doubt. There would be no need for mitigation, no residual effects and no need for an in-combination assessment.
- 4.41. It should be noted though, that any development may well require the provision of the necessary information to allow the local planning authority (Ryedale District Council) to carry out an HRA of any application.

Integrity test for Policies N1

The Council will be able to ascertain beyond reasonable scientific doubt that Policy N1 will have no adverse effect on the integrity of the River Derwent SAC alone.

There would be no need for mitigation, no residual effects, and no need for an in-combination assessment.

Conclusion of the appropriate assessment

- 4.42. The appropriate assessment found that adverse effects on the integrity on the River Derwent SAC could be ruled out alone beyond reasonable scientific doubt for Policies RC1, RC2, CF1 and N1 could be ruled out without the need for mitigation.
- 4.43. The Plan cannot preclude speculative or windfall development in the future, but tests have been alluded to that any proposals would have to satisfy. Whilst only indicative, these do not necessarily represent an exhaustive list but could include Ryedale's local plan and the consenting regimes of the Environment Agency and Natural England amongst others.

5. FORMAL INTEGRITY TEST

- 5.1. This HRA 'subjected the Malton and Norton-upon-Derwent Town Councils' Neighbourhood Development Plan to an appropriate assessment according to the statutory procedures laid out in the Habitats Regulations 2017 as amended, and the methodology laid out in the Habitats Regulations Assessment Handbook. It ascertained that:
- 5.2. **Policy RC1: adverse effects on the integrity of the River Derwent SAC could be ruled out alone beyond reasonable scientific doubt.** There would be no need for mitigation, no residual effects and, therefore, no need for an in-combination assessment.
- 5.3. **Policy RC2: adverse effects on the integrity of the River Derwent SAC could be ruled out alone beyond reasonable scientific doubt.** There would be no need for mitigation, no residual effects and, therefore, no need for an in-combination assessment.
- 5.4. **Policy CF1: adverse effects on the integrity of the River Derwent SAC could be ruled out alone beyond reasonable scientific doubt.** There would be no need for mitigation, no residual effects and, therefore, no need for an in-combination assessment.
- 5.5. **Policy N1: adverse effects on the integrity of the River Derwent SAC could be ruled out alone beyond reasonable scientific doubt.** There would be no need for mitigation, no residual effects and, therefore, no need for an in-combination assessment.
- 5.6. Adverse effects were ruled out alone for all policies. There were no residual effects and, therefore, no need for an in-combination assessment. There is no need for any further scrutiny of the Plan under the Habitats Regulations.
- 5.7. The decision to adopt this HRA or otherwise now lies with the competent authority, Ryedale District Council.

Bernard Fleming CEcol MCIEEM

Director, Fleming Ecology Ltd

October 2021

APPENDICES

A. Identification of European sites at risk

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European 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 Derwent SAC | This 'test' simply identifies all the European sites in the Councils' administrative area. All sites present will be included. | River Derwent SAC |
| 2. Plans that could affect aquatic features | (a) Sites upstream or downstream of the plan area in the case of river or estuary sites | Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC | <p>Effects considered are those associated with the physical presence of built development and the <i>localised</i> effects on surface/groundwater resources and quality, resulting from changes in run-off, sedimentation, erosion etc.</p> <p>Given that the Lower Derwent Valley lies around 20km as the crow flies from the plan area, localised effects on aquatic features can be confidently ruled out from any further consideration for this European site.</p> <p>However, given that the River Derwent flows through the Plan area, all features of the River Derwent SAC remain vulnerable to development proposed in the NDP even though the section within the town centres is not designated.</p> <p>Note that the <i>indirect</i> effects of changes to wastewater disposal are assessed separately under '7b'.</p> | River Derwent SAC |
| | (b) 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 | Ellers Wood and Sand Dale SAC Lower Derwent Valley SPA, SAC, Ramsar North York Moors SPA, SAC Strensall Common SAC | <p>Effects considered are those associated with the physical presence of built development and the <i>localised</i> effects on surface/groundwater resources and quality, resulting from changes in run-off, sedimentation, erosion etc.</p> <p>Given the distances, involved, all the listed sites lie over 15km from the plan area, localised effects on wetland features from the type of development</p> | None |

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|--|---|--|--|-------------------------|
| | | | <p>proposed can be confidently ruled out from any further consideration.</p> <p>Note that the <i>indirect</i> effects of changes to wastewater disposal are assessed separately under '7b'.</p> | |
| 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 seabed, or marine species | None | No European sites with marine features are considered vulnerable to development proposed within the plan | 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 | No European sites with coastal features are considered vulnerable to development proposed within the plan | 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 | Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC | <p>This considers direct impacts of plan proposals on mobile species.</p> <p>Although otters can range widely along suitable waterways, given the distance to those which occupy the Lower Derwent Valley 20km to the south can be considered distinct from those which make frequent and regular use of the stretch of the River Derwent in around Malton and Norton. Therefore, impacts on the Lower Derwent Valley SAC can be ruled out.</p> <p>Similarly, impacts on both the breeding and wintering bird populations which use 'functionally-linked land' outside the designated site are highly unlikely given the distances involved and so too can be ruled out.</p> <p>However, given the development proposals in close proximity to the River Derwent SAC, impacts on the otter, bullhead and lamprey populations of the river cannot be ruled out.</p> <p>Therefore, these features of the River Derwent will be considered further.</p> | River Derwent SAC |
| 6. Plans that could increase | (a) Such European sites in the plan area | River Derwent SAC (within the plan area) | The Plan makes provision for unspecified development in a small number of locations in | River Derwent SAC |

Appendices

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|---|--|--|---|-------------------------|
| recreational pressure on European sites potentially vulnerable or sensitive to such pressure | | | <p>proximity to the River Derwent SAC. If pursued, this could result in an increase in recreational pressure on the SAC and so this requires further consideration.</p> <p>The plan encourages the development of both horse racing and other tourist attractions but does not allocate land for either and at present these remain aspirations. Even if pursued, it is not anticipated that visitors to those destinations would increase pressure on the River Derwent to which there is only limited access through much of the plan area. Consequently, the impact of these proposals can be discounted.</p> <p>Modest proposals are encouraged on land adjacent to the river in the town centre albeit adjacent to a stretch that isn't designated. Despite this, the potential exists for an increase in recreational pressure from existing residents to harm the qualifying features.</p> <p>Therefore, the River Derwent will be considered further.</p> | |
| | <p>(b) 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</p> | <p>River Derwent SAC (upstream and downstream but beyond the plan area)</p> | <p>Given that proposals for recreational facilities (see above) are rather modest, any impacts are likely to be very localised restricting impacts to those stretches of the River Derwent within the plan area. Therefore, impacts on all other, more distant sites can be ruled out.</p> <p>Therefore, only the River Derwent within the plan area will be considered further.</p> | <p>None</p> |
| | <p>(c) 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</p> | <p>Peak District SPA, SAC Flamborough Head SPA North York Moors SPA, SAC Yorkshire Dales SPA and SAC</p> | <p>The popular tourist destinations sites of the Peak District, Flamborough Head, North York Moors and Yorkshire Dales are considered too distant to be affected by any credible threats from the type of development proposed and are removed from any further consideration in this HRA.</p> | <p>None</p> |

Appendices

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|---|--|---|---|-------------------------|
| 7. Plans that would increase the amount of development | (a) 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 | <p>Ellers Wood and Sand Dale SAC</p> <p>Lower Derwent Valley SPA, SAC, Ramsar</p> <p>North York Moors SPA, SAC</p> <p>River Derwent SAC</p> <p>Strensall Common SAC</p> | <p>The plan does not promote intensive development and so the need for additional water abstraction does not arise.</p> <p>Furthermore, the HRA of Yorkshire Water's Water Resources Management Plan found that there were unlikely to be any significant effects on European sites from anticipated development in the region anyway, either alone or in combination with other plans or projects³⁶.</p> <p>Therefore, all potentially affected sites can therefore be ruled out from further scrutiny.</p> | None |
| | (b) Sites used for, or could be affected by, discharge of effluent from wastewater treatment works or other waste management streams serving the plan area, irrespective of distance from the plan area | <p>Lower Derwent Valley SAC, Ramsar</p> <p>River Derwent SAC</p> | <p>The plan does not promote intensive development and so the need for additional effluent discharge does not arise.</p> <p>Therefore, all potentially affected sites can be ruled out from further scrutiny.</p> | None |
| | (c) Sites that could be affected by the provision of new or extended transport or other infrastructure | River Derwent SAC | Although the plan seeks to safeguard land to allow for future transport infrastructure, no actual projects are proposed | None |
| | (d) Sites that could be affected by increased deposition of air pollutants arising from the proposals, including emissions from significant increases in traffic | <p>Lower Derwent Valley SPA, SAC, Ramsar</p> <p>River Derwent SAC</p> <p>Strensall Common SAC</p> | <p>The plan does not contain proposals that will meaningfully increase road traffic within the plan area or beyond.</p> <p>Therefore, all potentially affected sites can be ruled out from further scrutiny.</p> | None |
| 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 | River Derwent SAC | No such infrastructure proposed | None |

³⁶ Water Resource Management Plan 2014 Strategic Environmental Assessment Post Adoption Statement Cascade/Yorkshire Water

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|--|---|---|-----------------------------|-------------------------|
| 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 | River Derwent SAC | No such activities proposed | None |
| 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 | River Derwent SAC | No such activities proposed | 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 Derwent SAC | No such activities proposed | None |
| 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 | River Derwent SAC | No such activities proposed | None |

Appendices

| Types of plan (or potential effects) | Sites to scan for and check | Initial list of potentially affected European sites | Additional context | European sites selected |
|---|---|--|---|-------------------------|
| 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 | River Derwent SAC | No such activities proposed | 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 | Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC | For the purposes of this HRA, it is considered that the effects of this category will be captured effectively via the application of criteria 5 (mobile species) and/or 6 (recreation). Therefore, this criterion is screened out to avoid duplication and will be removed from further consideration in this HRA. | None |
| 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 | River Derwent SAC | For the purposes of this HRA, it is considered that the effects of this category will be captured effectively via the application of criteria 5 (mobile species) and/or 6 (recreation). Therefore, this criterion is screened out to avoid duplication and will be removed from further consideration in this HRA. | 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 | River Derwent SAC | No such activities proposed | None |

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B. River Derwent Citation and Qualifying Features

| River Derwent SAC | |
|--|--|
| SAC | EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora |
| Citation including qualifying features | Citation for Special Area of Conservation (SAC) Name: River Derwent Unitary Authority/County: East Riding of Yorkshire, North Yorkshire, York SAC status: Designated on 1 April 2005 Grid reference: SE704474 SAC EU code: UK0030253 Area (ha): 411.23 Component SSSI: River Derwent SSSI Site description: <p>The Yorkshire Derwent is considered to represent one of the best British examples of the classic river profile. This lowland section, stretching from Ryemouth to the confluence with the Ouse, supports diverse communities of aquatic flora and fauna. Fed from an extensive upland catchment, the lowland course of the Derwent has been considerably diverted and extended as a result of glacial action in the Vale of Pickering.</p> <p>The river supports an aquatic flora uncommon in Northern Britain. Several species, including river water-dropwort <i>Oenanthe fluviatilis</i>, flowering rush <i>Butomus umbellatus</i>, shining pondweed <i>Potamogeton lucens</i>, arrowhead <i>Sagittaria sagittifolia</i>, opposite-leaved pondweed <i>Groenlandia densa</i> and narrow-leaved water-parsnip <i>Berula erecta</i> are more typically found in lowland rivers in southern England.</p> <p>The Derwent is noted for the diversity of its fish communities, which include river <i>Lampetra fluviatilis</i> and sea lampreys <i>Petromyzon marinus</i> populations that spawn in the lower reaches, as well as bullhead <i>Cottus gobio</i>. The diverse habitats also support otters <i>Lutra lutra</i>.</p> <p>Qualifying habitats: The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation. (Rivers with floating vegetation often dominated by water-crowfoot) <p>Qualifying species: The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Bullhead <i>Cottus gobio</i> <input type="checkbox"/> River lamprey <i>Lampetra fluviatilis</i> <input type="checkbox"/> Otter <i>Lutra lutra</i> <input type="checkbox"/> Sea lamprey <i>Petromyzon marinus</i> |

C. Record of preliminary screening of proposed policies

| Policy | Rationale | Screening outcome |
|---|---|-------------------|
| Vision | This policy represents a vision or aspirations for the Neighbourhood and provides a series of broad objectives. It does not directly lead to development and cannot have any effect on a on a European site. | A – Screened out |
| TM1: Protection and Enhancement of Pedestrian, Cycle and Bridleway Networks | This policy seeks to safeguard the existing pedestrian, cycle and bridleway networks before identifying criteria to evaluate possible future development proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | G – Screened out |
| TM2: New Pedestrian and Cycle River/Railway Crossing | This policy seeks to safeguard land from development that would prevent the possible, future construction of a new pedestrian and cycle crossing of the River Derwent (though outside the SAC) and adjacent railway line. It does not directly lead to development (ie construction of a new bridge) and therefore cannot have any effect on a on a European site. | G – Screened out |
| TM3: Highway Improvement Schemes | This policy seeks to safeguard land from development that would prevent the possible, future implementation of a number of highway improvements across a range of locations within and around both towns that range from relatively modest changes to junctions to the construction of a new by-pass. It does not directly lead to development (ie construction of the individual projects) and therefore cannot have any effect on a on a European site. | G – Screened out |
| TM4: County Bridge Level Crossing | This policy seeks to encourage improvements to the layout and functioning of the existing level crossing that lies almost adjacent to the SAC. Improvements would be provided by developer contributions. However, no specific project is promoted and this policy cannot directly lead to development and therefore cannot have any effect on a on a European site. No increase in traffic is promoted and a reduction in standing traffic may reduce nitrogen deposition on the SAC. | G – Screened out |
| TM5: New Vehicular River/Railway Crossing | This policy seeks to safeguard land from development that would prevent the possible, future construction of a new vehicular crossing of the River Derwent (though outside the SAC) and adjacent railway line. It does not directly lead to development (ie construction of a new bridge) and therefore cannot have any effect on a on a European site. | G – Screened out |
| TM6: Development of Non-allocated sites | This policy seeks to apply tests to new development above a minimum size to ensure that harmful effects on traffic management in the towns does not arise. It does not directly lead to development and therefore cannot have any effect on a on a European site. | G – Screened out |
| TM7: Electric Vehicle Charging Infrastructure | This policy seeks to secure the provision of vehicle chargers with new residential development. It does not directly lead to development therefore cannot have any effect on a on a European site. | G – Screened out |
| RC1: Malton and Norton River | This policy seeks to encourage the development of new open space and so increase recreational use of a 1.2km stretch of | I – Screened in |

| Policy | Rationale | Screening outcome |
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| Corridor Development | <p>both banks of land adjacent to the River Derwent; it occupies land adjacent to both designated and non-designated stretches of the river which provides a direct hydraulic link to the entire European site.</p> <p>Although relatively modest in scope the land is not allocated for this purpose in the Ryedale local plan and the desired effect is to increase recreational activities on land adjacent to the river and includes the possible change of use of existing buildings to provide, perhaps, a café.</p> <p>Consequently, harmful effects from construction and recreational pressure on the aquatic and mobile features of the SAC cannot be ruled out and so this policy is carried forward for formal screening.</p> | |
| RC2: Regeneration of Land North and South of County Bridge | <p>This policy seeks to encourage the loosely defined, development-led regeneration of riverside land either side of the River Derwent in the town centre including County Bridge. Although this lies adjacent to (and across) the undesignated stretch of the river, it remains intimately linked with the rest of the European site both up and downstream; there is no corresponding allocation in the Ryedale Local Plan.</p> <p>Given the lack of detail associated with this policy, harmful effects from construction and, potentially, recreational pressure on the aquatic and mobile features of the SAC cannot be ruled out and so this policy is carried forward for formal screening.</p> | I – screened in |
| E1: Protection of Local Green Space | This policy seeks to protect existing open space of recreational and/or environmental importance. It provides environmental benefits and cannot result in harmful effects on any European site. | D - Screened out |
| E2: Enhancement of Local Green Space | This policy seeks to encourage the management of existing open space of recreational and/or environmental importance. It provides environmental benefits and cannot result in harmful effects on any European site. | D - Screened out |
| E3: Open Space in New Development | This policy seeks to encourage the establishment of new open space of recreational and/or environmental importance within new development. It provides environmental benefits and cannot result in harmful effects on any European site. | D - Screened out |
| E4: Green and Blue Infrastructure | This policy seeks to protect the existing network of Green and Blue Infrastructure. The policy will provide environmental benefits and cannot result in harmful effects on any European site. | D – Screened out |
| E5: Gateways | This policy seeks to protect views of the built and semi-natural heritage. It does not directly lead to development (ie construction of the individual projects) and therefore cannot have any effect on a on a European site. | G – Screened out |
| E6: Development Affecting the Malton AQMA | This policy seeks to mitigate the impact of new development on the air quality of the town centres. It does not directly lead to development (ie construction of the individual projects) and therefore cannot have any effect on a on a European site. | G – Screened out |
| CF1: Norton's Swimming Pool | This policy seeks to expand the facilities at Norton swimming pool which lies in relatively close proximity to the River Derwent SAC. | I – Screened in |

Appendices

| Policy | Rationale | Screening outcome |
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| | Consequently, harmful effects from construction and, potentially, recreational pressure on the aquatic and mobile features of the SAC cannot be ruled out and so this policy is carried forward for formal screening. | |
| CF2: Malton Community Sports Centre | This policy seeks to expand the facilities at Malton Community Sports Centre. As it is located over 1km from the River Derwent SAC, it is considered almost inconceivable that this could result in any harmful effects on this or any other European site. | G – Screened out |
| CF3: Medical Centre Development | <p>This policy seeks to promote the construction of a new medical centre at an unspecified location within the two towns and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards.</p> <p>However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and that the conservation objectives of the European site will not be undermined, and harmful effects avoided especially when the modest scale of the proposal is also taken into account.</p> | H – screened out |
| TC1: New Museums and Visitor Facilities | <p>This policy seeks to promote the development of new museum and tourism facilities at unspecified locations within the two towns and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards.</p> <p>However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and that the conservation objectives of the European site will not be undermined, and harmful effects avoided especially when the modest scale of the proposals is also taken into account.</p> | H – Screened out |
| TC2: Orchard Fields | <p>This policy seeks to encourage the sympathetic development of visitor facilities on this greenfield site and ancient monument in relatively close proximity to the River Derwent.</p> <p>Given the nature and anticipated scale of the proposed development and that it is separated from the river by industrial development, it is considered almost inconceivable that this could result in any harmful effects on this or any other European site.</p> | G - Screened out |
| TC3: Hotel Development | <p>This policy seeks to promote the construction of a new hotel of an unknown scale at an unspecified location within or close to the two towns and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards.</p> <p>However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and ensure that adverse effects on the integrity of the European are avoided.</p> | H – Screened out |
| TC4: Wentworth Street | This policy allocates land for the development of a new hotel. Although not allocated in the Ryedale Local Plan as it is located several hundred metres from the River Derwent SAC, it is considered almost inconceivable that this could result in any harmful effects on this or any other European site. | G – Screened out |
| HRI1: Protection of Horse Racing Stables | This policy seeks to safeguard the functioning or similar equine use of existing horse stables and identifies criteria to be applied should different proposals threaten their continued | G – Screened out |

Appendices

| Policy | Rationale | Screening outcome |
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| | use. It does not directly lead to development and therefore can have no effect on any European site. | |
| HRI2: Horse Racing Zones and Development | This policy seeks to safeguard the functioning of existing horse stables and identifies criteria to be applied should other proposals threaten their continued use. It does not directly lead to development and therefore cannot have any effect on a on a European site. | G – Screened out |
| HRI3: Improved Accessibility to the Horse Racing Industry | This policy seeks to safeguard the functioning of existing horse stables and identifies criteria to be applied should other proposals threaten their continued use. It does not directly lead to development and therefore can have no effect on any European site. | G – Screened out |
| HRI4: Horse Racing Museum | This policy seeks to promote the construction of a new horse racing museum of an unknown scale at an unspecified location within or close to the two towns and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards. However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and ensure that adverse effects on the integrity of the European are avoided | H – Screened out |
| HD1: Development and Design – Conservation Areas | This policy seeks to promote high quality design for new or infill building within existing conservation areas by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD2: Development and Design – Area-wide Principles | This policy seeks to promote high quality design for new building across the neighbourhood plan area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD3: Shop Fronts | This policy seeks to influence the design of shopfronts across the neighbourhood plan area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD4: Malton Town Centre Conservation Area – Enhancement | This policy seeks to encourage the high-quality design of new development at specific and non-specific locations in both towns by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD5: Public Realm Improvements within Malton Town Centre Conservation Area | This policy seeks to encourage improvements to the public realm within the Malton Town Centre conservation area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD6: Norton-on-Derwent Conservation Area – Enhancement | This policy seeks to encourage the enhancement of the Norton conservation area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD7: Public Realm Improvements within Norton-on- | This policy seeks to encourage improvements to the public realm within the conservation area of Norton by identifying criteria to evaluate proposals. It does not directly lead to | B – Screened out |

Appendices

| Policy | Rationale | Screening outcome |
|---|---|----------------------|
| Derwent Conservation Area | development and so cannot have any effect on a on a European site. | |
| HD8: Malton Old Town Conservation Area – Enhancement | This policy seeks to encourage the enhancement of the Malton Old Town conservation area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD9: Public Realm Improvements within Malton Old Town Conservation Area | This policy seeks to encourage improvements to the public realm within the Malton Old Town conservation area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD10: Area-wide Public Realm Improvements | This policy seeks to encourage improvements to the public realm across the Neighbourhood Plan area by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site. | B – Screened out |
| HD11: Archaeology | This policy seeks to influence development that affects archaeological features by identifying criteria to evaluate proposals. It does not directly lead to development and so cannot have any effects on a European site. | B – Screened out |
| H1: Housing Mix | This policy seeks to influence the housing mix of future residential development. It does lead directly to development and so cannot have any effects on a European site. | B – Screened out |
| EM1: Encouragement of Local Employment Sectors | This policy represents a vision or aspirations for the Neighbourhood by providing a single, broad objective. It does not directly lead to development and cannot have any effect on a on a European site. | A – Screened out |
| M1: Wentworth Street Car Park | <p>This policy seeks to safeguard Wentworth Street car park from development. It does not directly lead to development and therefore cannot have any effect on a on a European site.</p> <p>However, this policy also seeks to encourage the possible construction of a new car park of an unknown scale at an unspecified location and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards.</p> <p>However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and ensure that the conservation objectives of the European site will not be undermined, and harmful effects avoided</p> | G & H – Screened out |
| M2: Malton Market Place | <p>This policy seeks to safeguard car parking facilities in Malton Market Place from development. It does not directly lead to development and therefore cannot have any effect on a on a European site.</p> <p>However, this policy also seeks to encourage the possible construction of a new car park of an unknown scale at an unspecified location and it is conceivable that harmful activities could arise if built in close proximity to the River Derwent SAC without the necessary safeguards.</p> | G & H – Screened out |

| Policy | Rationale | Screening outcome |
|--|---|------------------------|
| | <p>However, there can be confidence that Policy SP14 of the Ryedale Local Plan will apply and ensure that the conservation objectives of the European site will not be undermined, and harmful effects avoided</p> | |
| <p>N1: Land to the Rear of Commercial Street</p> | <p>This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre.</p> <p>The uses described comprise retail, light industrial uses and the development of a car park; residential development is not listed though the land is not allocated for this purpose in the Ryedale local plan.</p> <p>Given the lack of detail associated with this policy, harmful effects from construction and, potentially, recreational pressure on the aquatic and mobile features of the SAC cannot be ruled out and so this policy is carried forward for formal screening.</p> | <p>I – Screened in</p> |