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# **Habitats Regulations Assessment of New Forest National Park Local Plan 2016-2036**

**Addendum to review implications of CJEU judgment in Case C-323/17 People Over Wind and Sweetman v. Coillte Teoranta for the HRA at Submission Draft stage**

Prepared by LUC  
July 2018

**Project Title:** HRA of the New Forest National Park Local Plan 2016-2036

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## Habitats Regulations Assessment of New Forest National Park Local Plan 2016-2036

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# 1 Introduction

## Background

1.1 This addendum report has been prepared in response to a request from New Forest National Park Authority (NFNPA) that LUC reviews the Habitats Regulations Assessment (HRA) of the New Forest National Park Local Plan 2016-2036 in light of the 12 April 2018 Court of Justice of the European Union (CJEU) judgment in the case of People over Wind and Peter Sweetman v Coillte Teoranta<sup>1</sup>. The Examiners of the Local Plan have requested that the National Park Authority carries out such a review.

1.2 The CJEU judgment ruled that Article 6(3) of the Habitats Directive<sup>2</sup> must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an Appropriate Assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage of HRA. The reasons given for this are:

*"Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.*

*In that regard, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned..."*

1.3 The precise wording of the ruling is as follows:

*"Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."*

1.4 As the planning consultants commissioned to undertake the HRA on behalf of NFNPA, LUC is not able to provide a legal opinion. Instead, we have provided below an opinion on the implications of the CJEU judgment for the HRA work undertaken to date on the Local Plan, based on our professional expertise in HRA and our interpretation of the CJEU judgment, and amended it as deemed necessary.

## HRA work undertaken to date for the New Forest NPA Local Plan 2016-2036

1.5 The HRA process for the New Forest NPA Local Plan began with the production in April 2016 by LUC of a non-statutory HRA Scoping Report, which was jointly prepared with New Forest District Council (NFDC) to inform the approach to HRA of both the NFNPA Local Plan and the NFDC Local Plan Part 1. The proposed approach to HRA set out in this joint scoping document was subject to

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<sup>1</sup> Available from <http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

consultation with Natural England, the Royal Society for the Protection of Birds (RSPB), Hampshire and Isle of Wight Wildlife Trust (HIWWT), Dorset Wildlife Trust, Wiltshire Wildlife Trust, and NFDC during April-May 2016.

- 1.6 In August 2016 LUC then prepared an HRA Discussion Document that responded to consultation comments on the HRA Scoping Report and provided initial observations on the potential for development proposals in NFNPA's Draft Local Plan to have adverse effects on European sites, as well as commenting on mitigation available from the emerging Local Plan and from NFNPA's existing habitat mitigation strategy. This supported further informal consultation with Natural England.
- 1.7 In January 2018, an HRA report was produced by LUC to accompany consultation on the Submission draft of the Local Plan. An air quality assessment<sup>3</sup> and linked ecological assessment<sup>4</sup> carried out by third party consultants and reported on separately also formed part of the HRA, providing the Appropriate Assessment of air quality effects for both the New Forest National Park and New Forest District Local Plans.
- 1.8 In May 2018, LUC prepared an addendum to the HRA of the Submission draft Local Plan to provide:
  - an assessment of the implications for the HRA of the modifications to the Submission draft Local Plan being proposed by the Authority prior to Examination; and
  - responses to representations received by the Authority from Natural England relating to the HRA of the Submission draft Local Plan.
- 1.9 This current document now provides a review of the HRA of the Submission draft HRA (incorporating the linked Appropriate Assessment of air quality effects), as amended by NFNPA's proposed modifications.

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<sup>3</sup> Air Quality Consultants (2017) Air quality input for Habitats Regulations Assessment: New Forest – Draft Report provided 21 December 2017

<sup>4</sup> BSG Ecology (2018) Ecological Consultancy Advice on Air Quality Risks – Draft Report provided 3 January 2018

## 2 Approach to the review of the HRA

- 2.1 The HRA for the Submission draft Local Plan<sup>5</sup> has been reviewed as follows to determine whether the HRA Screening relied on avoidance and reduction measures to rule out the need for Appropriate Assessment, contrary to the direction of the CJEU judgment:
- If the HRA identifies that the plan is likely to have a particular type of significant effect on European site(s) and their designated features and an Appropriate Assessment of the plan has been carried out in relation to that type of effect then no reliance was placed on mitigation measures to rule out the need for Appropriate Assessment and therefore **no further action is required**.
  - If the HRA includes information that concludes that there are no pathways for the policies/allocations in the plan to cause a particular type of likely significant effect on European site(s) and their designated features then no reliance was placed on mitigation measures to rule out the need for Appropriate Assessment and therefore **no further action is required**.
  - If the HRA includes information that identifies particular types of likely significant effects on European site(s) and their designated features but concludes that they can be mitigated through avoidance or reduction measures (and does not go on to the Appropriate Assessment stage) then **action is required to amend the HRA in line with the CJEU judgment**. In this case the screening assessment has been revised in line with the methodology required by the CJEU judgment, any required Appropriate Assessment has been carried out, and consideration has been given to whether the Appropriate Assessment necessitates any modifications to the plan, in light of the avoidance and reduction measures already identified and secured.
- 2.2 As explained in the HRA of the Submission draft Local Plan, the potential was identified for the following types of effects on European sites:
- direct loss or physical damage to European sites;
  - loss or damage to offsite supporting habitat;
  - urban edge effects;
  - changes in air quality;
  - traffic collision risk;
  - recreation pressure;
  - changes in water quantity;
  - changes in water quality.
- 2.3 The screening stage of the HRA therefore came to a conclusion on the existence of likely significant effects and the need for Appropriate Assessment in relation to each of these types of potential effect. This review considers the HRA screening carried out for each of these types of potential effect, following the approach outlined above. If any type of likely significant effect was screened out by reliance on the mitigation provided by avoidance or reduction measures, the screening conclusion is restated to exclude the effects of mitigation and if likely significant effects can no longer be ruled out, an Appropriate Assessment undertaken.

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<sup>5</sup> Incorporating the linked Appropriate Assessment of air quality effects and as amended by the May 2018 HRA addendum



### 3 Review of the HRA screening

3.1 Table 3.1 applies the three step approach outlined in Chapter 2 to determine whether HRA screening of the New Forest National Park Local Plan relied on avoidance or reduction measures to rule out likely significant effects ('LSE' in the tables below).

**Table 3.1 Reliance of HRA screening on avoidance or reduction measures to rule out likely significant effects**

Effect type considered by HRA screening	1. LSE not ruled out - Appropriate Assessment carried out	2. LSE ruled out due to no pathways for significant effects	3. LSE ruled out by reliance on avoidance or reduction measures	Additional notes
Direct loss or physical damage to European sites;	x	✓	No further action required	LSE ruled out because no site allocation proposed by the Local Plan overlaps any European site.
Loss or damage to offsite supporting habitat	✓	No further action required		
Urban edge effects	x	x	✓	Reliance placed on mitigation within relevant site allocation policies - <b>further action required</b> (see below).
Changes in air quality	✓	No further action required		Appropriate Assessment of air quality effects is presented in air quality assessment <sup>6</sup> and linked ecological assessment <sup>7</sup> .
Traffic collision risk	✓	No further action required		
Recreation pressure	x	x	✓	Reliance placed on mitigation provided by Policy SP5 and linkage of this to separate habitat mitigation strategies - <b>further action required</b> (see below).
Changes in water quantity	x	x	✓	Reliance placed on mitigation provided by Policy DP8 and supporting text - <b>further action required</b> (see below).
Changes in water quality	x	x	✓	Reliance placed on mitigation provided by Policies DP8 and SP38, relevant site allocation policies, and the Environment Agency's environmental permitting regime - <b>further action required</b> (see below).

3.2 As shown in Table 3.1, the HRA screening of the Local Plan relied on mitigation measures to rule out likely significant effects in relation to urban edge effects, recreation pressure, changes in water quantity, and changes in water quality. The CJEU judgment states that such reliance on mitigation is not appropriate at the screening stage. The amended conclusions of the HRA

<sup>6</sup> Air Quality Consultants (2017) Air quality input for Habitats Regulations Assessment: New Forest – Draft Report provided 21 December 2017

<sup>7</sup> BSG Ecology (2018) Ecological Consultancy Advice on Air Quality Risks – Draft Report provided 3 January 2018

Screening of the Local Plan in relation to these types of effects in the absence of mitigation are set out in Table 3.2.

**Table 3.2 Revised HRA screening conclusions in absence of mitigation**

Effect type considered by HRA screening of SALP	Original screening conclusion	Revised screening conclusion
Urban edge effects	LSE ruled out	<b>Unable to rule out LSE</b> on The New Forest SAC; New Forest SPA;
Recreation pressure	LSE ruled out	<b>Unable to rule out LSE</b> on The New Forest SAC, New Forest SPA, Solent Maritime SAC; Solent and Southampton Water SPA; and Solent and Southampton Water Ramsar site
Changes in water quantity	LSE ruled out	<b>Unable to rule out LSE</b> on The New Forest SAC; New Forest SPA; The New Forest Ramsar site; River Itchen SAC; Solent Maritime SAC; Solent and Southampton Water SPA; and Solent and Southampton Water and Ramsar site
Changes in water quality	LSE ruled out	<b>Unable to rule out LSE</b> on River Avon SAC; Avon Valley SPA; Avon Valley Ramsar site; The New Forest SAC; The New Forest Ramsar site; Solent and Dorset Coast pSPA; Solent and Isle of Wight Lagoons SAC; Solent Maritime SAC; Solent and Southampton Water SPA; Solent and Southampton Water Ramsar site

3.3 The potentially affected European sites listed in Table 3.2 are those that:

- were scoped into the HRA<sup>8</sup>; and
- are potentially vulnerable to the type of effect, based on their designated features and the pressures and threats facing them<sup>9</sup>; and
- where a potential pathway for effects is judged to exist between the plan area and the European site.

3.4 Since likely significant effects on European sites cannot be ruled out for the effect types shown in Table 3.2 an Appropriate Assessment is required in relation to each of these types of effect and this is presented in Chapter 4.

<sup>8</sup> See para. 3.7 of HRA of Submission draft Local Plan (Jan 2018)

<sup>9</sup> See Appendix 1 of HRA of Submission draft Local Plan (Jan 2018)

## 4 Appropriate Assessment

- 4.1 The review of the HRA screening in Chapter 3 identified the need for Appropriate Assessment in relation to a number of types of effect, in light of the CJEU judgment. This chapter provides the Appropriate Assessment of the Submission draft Local Plan, as amended by NFNPA's proposed minor modifications, in relation to those types of effect.

### Urban edge effects

- 4.2 A variety of different types of effect are associated with increased human populations close to sensitive European sites (e.g. noise pollution, light pollution, increased numbers of predators such as foxes and crows, increased incidence of fires, etc.). This HRA topic considers the potential effects of the Local Plan relating to these 'urban edge effects'.

### HRA assumptions

- 4.3 Based on the HRA work carried out for adopted Local Plan documents plus discussion with Natural England, the most important types of urban edge effect in the context of development in the New Forest National Park are thought to be:

- Cat predation - hunting by domestic cats;
- Increased fly-tipping - particularly risk of introduction of invasive alien species from garden waste.

- 4.4 It was therefore assumed that the potential for urban edge effects to adversely affect integrity only exists for residential development (including gypsy and traveller sites and rural exception sites but excluding visitor accommodation/ tourism use as it is unlikely that these will be associated with cats on the premises or domestic garden waste). The HRA assumed that, prior to mitigation, a potential for adverse effects on integrity exists if residential development will occur within 400 m of European sites with qualifying features sensitive to these types of effect. Based on their designated features and the pressures and threats facing them these were judged to be:

- The New Forest SAC and New Forest SPA.

- 4.5 A distance of 400 m was chosen because:

- New Forest SPA is located within New Forest National Park and Policy CP1 of the adopted Core Strategy for New Forest NPA, which was agreed with Natural England, states that:

*"...any housing that is proposed to be located within 400 metres of the boundary of the New Forest Special Protection Area (SPA) will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the SPA."*

- Natural England's view, documented in The Dorset Heathlands Planning Framework 2015-2020<sup>10</sup>, is that residential development within 400 m of the Dorset Heathlands European designations is likely to have an adverse effect on integrity, either alone or in combination with other developments, due to a variety of 'urban effects' including cat predation of ground nesting birds.
- Natural England confirmed at a New Forest HRA stakeholder meeting on 9/8/16 that it is happy with the use of a 400 m distance when assessing potential 'urban edge effects from construction or occupation of buildings' on heathland sites.

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<sup>10</sup> The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document: An implementation plan to mitigate the impact of new housing development upon the Dorset Heaths Special Protection Area, 2016.

4.6 It should be noted that while the Dorset Heathlands SPA has a number of similar designated features to New Forest SPA, New Forest SPA is considered to be more resilient and hence less likely to suffer adverse effects on its integrity as a result of the potential harmful effects of housing within 400 m of its boundary. This is because New Forest SPA provides a larger (more than three times the area) and less fragmented area of habitat than the Dorset Heathlands SPA and therefore has a much lower edge to area ratio, so that urban edge effects are likely to be much less pronounced. As a National Park the New Forest National Park also has a more developed system of habitat and visitor management than Dorset Heathlands SPA. These important differences mean that a different approach to urban edge effects is justifiable in the New Forest compared to the virtual ban on housing development within 400 m of Dorset Heathlands SPA imposed by the Dorset Heathlands Planning Framework.

#### **Potential for adverse effects on integrity from Local Plan prior to mitigation**

4.7 In total, the Draft Local Plan (Policy 18) provides for 800 new dwellings to be delivered in the National Park between 2016 and 2036, comprising 300 dwellings on allocated sites, 100 dwellings from the implementation of extant planning permissions, and 400 dwellings from windfall development (unidentified or unallocated sites).

4.8 Three of the Local Plan residential or mixed-use allocations are located within the 400 m zone of influence for urban edge effects on New Forest SAC and SPA, and therefore have the potential for adverse effects on the integrity of that European site. These are:

- Land at the former Lyndhurst Park Hotel, Lyndhurst (Policy SP23) – wholly within 400 m zone;
- Land south of Church Lane, Sway (Policy SP24) – strip of land along north eastern edge of site within 400 m zone; and
- Gypsies, Travellers and Travelling Showpeople (Policy SP33) – existing gypsy site at Forest View, Landford is adjacent to the New Forest SAC.

4.9 Proposals with extant planning permissions will have been subject to project level HRA, if required, and will have been subject to the adopted Core Strategy Policy CP1 which requires that adequate measures are put in place to avoid or mitigate any potential adverse effects on the ecological integrity of the SAC and SPA so it is assumed that this development will not give rise to likely significant effects.

4.10 In addition to Local Plan allocations, some of the 400 dwellings estimated to come forwards within the plan period as windfall development are likely to be within the 400 m zone of influence for urban edge effects on New Forest SAC and SPA. This is particularly likely since *Policy SP4: Spatial Strategy* prioritises development in the four Defined Villages (Ashurst, Brockenhurst, Lyndhurst, and Sway), all of which are partially within the 400 m zone of influence. The housing provision to be met by windfalls equates to an average of 20 new dwellings per annum and individual windfall development proposals are therefore likely to be substantially smaller. In contrast, Local Plan allocations are used to bring forward larger scale developments with site allocations ranging in size from 30 dwellings to 120 dwellings.

4.11 Due to the expected small scale and wide distribution of individual windfall developments it was judged that these are not likely to give rise to adverse effects on the integrity of New Forest SAC or SPA, either individually or in combination with other windfall developments within 400 m of the New Forest SAC and SPA. This approach is also broadly consistent with the approach to 'Urbanisation' effects that was previously found to be acceptable in the HRA of the adopted NFNPA Core Strategy. In the event that a larger number of windfall dwellings were to come forward on a single site or closely related cluster of sites within 400 m of the New Forest SAC and SPA, reliance can be placed on the Habitats Regulations' requirement for individual projects to also be subject to HRA.

#### **Mitigation available**

4.12 It is not considered appropriate for the HRA to rely solely on the generic protection for European sites offered by *Policy SP5: Nature Conservation Sites of International Importance*. It is nonetheless relevant to note that the policy states that avoidance or mitigation may not be possible in some cases due to the scale, type, or proximity of the proposed development in relation to European sites and that each case will therefore be assessed on its merits. Supporting

text notes that if a larger number of windfall dwellings were to come forward on a single site or closely related cluster of sites within 400 m of the New Forest SAC and SPA, then the Authority will require the applicant to supply sufficient evidence for an Appropriate Assessment of the urban edge effects.

- 4.13 Policy SP5 highlights the opportunity for proposals to avoid or fully mitigate any adverse effects on European sites by putting in place sufficient and effective measures and to secure mitigation via contributions to the Authority's Habitat Mitigation Scheme and/or the Solent Recreation Mitigation Partnership's Scheme. NFNPA's revised Habitat Mitigation Scheme<sup>11</sup> is, however, focussed on alleviating the potential in combination effects of recreation pressure on New Forest SAC, SPA and Ramsar site (which could arise from residential development or visitor accommodation anywhere in the Plan area) rather than urban edge effects (which could arise from residential development within 400 m of the New Forest SAC and SPA). The key elements of the revised scheme are: access management within the New Forest European designations; alternative recreation sites and routes outside the designated sites; education, awareness and promotion; monitoring and research; and in-perpetuity funding.
- 4.14 In LUC's view, it is not possible to rule out the potential for urban edge effects such as cat predation or fly-tipping from residential allocations within 400 m of New Forest SAC or SPA by reliance on contributions to NFNPA's Habitat Mitigation Scheme since it is not clear that any of the scheme elements would address these types of effect. More relevant mitigation is, however, provided by the allocation policies for the sites within the 400 m zone of influence as follows:
- *Policy SP23: Land at the former Lyndhurst Park Hotel, Lyndhurst* – the policy requires that development proposals incorporate measures to mitigate potential significant urban edge impacts on the adjacent protected habitats; supporting text notes that urban edge impacts to be considered include cat predation and the introduction of invasive species from fly-tipping of garden waste and that mitigation measures could include the use of legal covenants and arrangements for grounds maintenance.
  - *Policy SP24: Land south of Church Lane, Sway* - avoids the potential for likely significant urban edge effects by a stipulation that residential development on the site will be limited to the part of the site that is located more than 400 m from New Forest SPA; instead, informal recreation use is supported along the north eastern edge of the site that is within 400 m of the SPA.
  - *Policy SP33: Gypsies, Travellers and Travelling Showpeople* - due to the proximity of the New Forest SAC, measures must be put in place to adequately mitigate the potential for the introduction of invasive species from fly tipping of garden waste.

### Conclusions and recommendations

- 4.15 As described above, it was possible to rule out urban edge effects on New Forest SAC or SPA, from windfall development due to the expected small scale and wide distribution of individual windfall developments and the caveat within Policy SP5 that each case will be assessed on its merits and project level Appropriate Assessment of urban edge effects will be carried out, if required. Potential urban edge effects from the residential allocations within 400 m of New Forest SAC or SPA made by Policies SP23, SP24, and SP33 are adequately mitigated by the safeguards provided within those allocation policies.
- 4.16 Adverse effects on the integrity of any European site due to urban edge effects from the Local Plan alone, or in combination in with other plans and projects, can therefore be ruled out.**

### Recreation pressure

- 4.17 This HRA topic considers the potential effects of the Local Plan in terms of:

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<sup>11</sup> This mitigation scheme was previously set out in the adopted Development Standards SPD but reference here is to the Revised Habitat Mitigation Scheme currently in draft

- *Designated species mortality or disturbance*: direct mortality of ground nesting birds' eggs or young by visitor trampling or dogs off leads; disturbance of ground nesting birds by recreational visitors and their dogs; mortality due to increased incidence of fires; mortality due to tipping/littering.
- *Designated habitats loss or damage*: path erosion or soil compaction by walkers, cyclists, horse riders etc.; eutrophication of soils by dog faeces; increased incidence of fires; tipping/littering.

### HRA assumptions

4.18 European sites scoped into the HRA which are judged to be vulnerable to recreation pressure, based on their designated features and the pressures and threats facing them are:

- Avon Valley SPA;
- Avon Valley Ramsar site;
- Dorset Heaths SAC;
- Dorset Heathlands SPA;
- New Forest SAC;
- New Forest SPA;
- Solent Maritime SAC;
- Solent and Southampton Water SPA;
- Solent and Southampton Water Ramsar site.

4.19 The HRA therefore considered the potential for increased recreation pressure on these sites as follows.

#### *Avon Valley SPA and Ramsar site*

4.20 Dog walkers disturbing the designated population of Bewick's Swan in areas outside public rights of way are identified by the Site Improvement Plan as a concern. It is understood that Natural England has not previously been concerned about recreational pressure on this site arising from development in the New Forest, due in part to very limited public access. The Gadwall population for which the SPA is also designated is focussed on Blashford Lakes Gravel Pits which is managed as a nature reserve so access is controlled. It also seems likely that the extensive outdoor recreation opportunities within the New Forest National Park and Solent Coast European sites exert a stronger pull on many residents of the New Forest National Park than the Avon Valley.

4.21 The HRA therefore assumed that recreational users of the Avon Valley are overwhelmingly local and that a potential for a contribution to in combination recreational pressure on the Bewick's Swan population only exists for any residential development or visitor accommodation within 1.0 km of Avon Valley SPA and Ramsar site.

#### *Dorset Heaths SAC and SPA*

4.22 Based on research into the behaviour of visitors to the Dorset Heaths<sup>12,13</sup> and Natural England's views documented in The Dorset Heathlands Planning Framework 2015-2020<sup>14</sup>, the HRA assumed that prior to consideration of mitigation, all residential development or visitor accommodation within 5 km of Dorset Heaths SAC or Dorset Heathlands SPA has the potential to have adverse effects on integrity, in combination.

<sup>12</sup> R. T. Clarke, J. Sharp and L. D, "Access Patterns in South-east Dorset. The Dorset Household Survey: Consequences for Future Housing and Greenspace Provision," Footprint Ecology, Unpublished report, 2008.

<sup>13</sup> D. Liley, J. Sharp and C. R. T, "Access Patterns in South-east Dorset. Dorset Household Survey and Predictions of Visitor Use of Potential Greenspace Sites," Footprint Ecology, Unpublished report, 2008.

<sup>14</sup> The Dorset Heathlands Planning Framework 2015-2020 Supplementary Planning Document: An implementation plan to mitigate the impact of new housing development upon the Dorset Heaths Special Protection Area, 2016.

#### *New Forest SAC and SPA*

- 4.23 Prior HRA work for the NFDC Local Plan Part 2<sup>15</sup> which is also relevant to the HRA of the NFNPA Local Plan provides a detailed review of evidence on recreation pressure on New Forest SAC and SPA; key elements of this are reproduced in Appendix 2 of the HRA of the Submission draft Local Plan. The HRA of the NFDC Local Plan Part 2 concludes that whilst the best available evidence is inconclusive, application of the precautionary principle means that the risk of residential development in New Forest District leading to increased visitor pressure on the New Forest European sites cannot be ruled out for development anywhere within New Forest District. Given that the National Park is surrounded by New Forest District, it is consistent to assume that such effects cannot be ruled out for development anywhere within New Forest National Park. This evidence remains valid and the HRA of the Local Plan therefore assumed that prior to mitigation, the potential for adverse in combination effects on the integrity of New Forest SAC and SPA cannot be ruled out for any residential development or visitor accommodation within New Forest National Park.

#### *Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar site*

- 4.24 The Solent Disturbance and Mitigation Project (SDMP) has established that 75% of visitors to the Solent European sites come from within 5.6 km (as the crow flies) of Solent and Southampton Water SPA and recommends that avoidance and mitigation measures be sought for residential development within this zone of impact<sup>16</sup>. The HRA therefore assumed that prior to mitigation, the potential exists for adverse in combination effects on the integrity of Solent Maritime SAC and Solent and Southampton Water SPA and Ramsar site from residential development or visitor accommodation within this zone.

#### **Potential for adverse effects on integrity from Local Plan prior to mitigation**

##### *Avon Valley SPA and Ramsar site*

- 4.25 In line with the methodology described above, it is assumed that prior to mitigation, a potential for in combination recreation pressure on the Bewick's Swan population exists for any residential or visitor accommodation development within 1.0 km of Avon Valley SPA and Ramsar site. Only a few small areas of the National Park to the north of Ringwood and to the west of Bisterne fall within this distance of the Avon Valley SPA and Ramsar site. No development allocations are made to these areas and they are not identified by the spatial strategy as a focus for growth. Therefore it is concluded that the Local Plan will not result in adverse effects on integrity from recreation pressure on Avon Valley SPA and Ramsar site, either alone or in combination.

##### *Dorset Heaths SAC and SPA*

- 4.26 In line with the methodology described above it is assumed that, prior to mitigation, the potential exists for in combination adverse effects on integrity from recreation pressure as a result of any residential or visitor accommodation development within 5.0 km of Dorset Heaths SAC or SPA. Only a narrow band along the western edge of the National Park falls within this distance of the Dorset Heaths SAC or SPA. No development allocations are made to this area and it is not identified by the spatial strategy as a focus for growth therefore it is concluded that the Local Plan will not result in adverse effects on integrity from recreation pressure on Dorset Heaths SAC or SPA, either alone or in combination.

#### *New Forest SAC and SPA*

- 4.27 In line with the methodology described above it is assumed that, prior to mitigation, the potential exists for in combination adverse effects on integrity from recreation pressure as a result of any residential or visitor accommodation development within New Forest National Park. All of the 800 dwellings as well as the visitor accommodation provided for by the Local Plan therefore contribute to recreation pressure on New Forest SAC and SPA.

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<sup>15</sup> See Appendix 1 of Local Plan (Part 2) Sites and Development Management Habitats Regulations Assessment of Submission Document and Main Modifications, NFDC, 2013.

<sup>16</sup> Solent Disturbance and Mitigation Project (SDMP) Briefing Note, Solent Forum / SDMP Project Group, 2013.

### *Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar site*

- 4.28 In line with the methodology described above it is assumed that, prior to mitigation, the potential exists for in combination adverse effects on integrity from recreation pressure as a result of any residential or visitor accommodation development within 5.6 km of Solent Maritime SAC, Solent and Southampton Water SPA, and Solent and Southampton Water Ramsar site. The Local Plan allocates the following development sites for residential or visitor accommodation within this zone of influence:
- Policy SP22 - Land at Whartons Lane, Ashurst (60 dwellings);
  - Policy SP24 - Land south of Church Lane, Sway (40 dwellings);
  - Policy SP25 - Land adjacent to the former Fawley Power Station (120 dwellings);
  - Policy SP26 - Land at Calshot Village (30 dwellings).
- 4.29 Ashurst, Sway and most of Brockenhurst are within 5.6 km of the Solent designations – all forms of development including housing are directed to these Defined Villages (as well as to Lyndhurst, which is outside the 5.6 km zone) by *Policy SP4: Spatial Strategy*, making it likely that a significant proportion of the 400 windfall dwellings will be developed at these settlements. In addition visitor accommodation is supported at the Defined Villages by *Policy SP46: Tourism Development*. This development is also likely to add to recreation pressure on the Solent and Southampton Water European sites.

### **Mitigation available**

- 4.30 No reliance is placed by the HRA on the generic protection for European sites offered by *Policy SP5: Nature Conservation Sites of International Importance*. However, Policy SP5 also refers to more specific mitigation, noting the opportunity for developers to avoid or fully mitigate any adverse effects on European sites by putting in place sufficient and effective measures, as well as the opportunity to secure mitigation via contributions to the Authority's Habitat Mitigation Scheme and/or the Solent Recreation Mitigation Partnership's Scheme.
- 4.31 NFNPA's revised Habitat Mitigation Scheme is described in the Authority's Habitat Mitigation Guidance Note<sup>17</sup>. The scheme is focussed on alleviating the potential in combination effects of recreation pressure on New Forest SAC, SPA and Ramsar site. The key elements of the revised scheme are access management within the New Forest European designations; alternative recreation sites and routes outside the designated sites; education, awareness and promotion; monitoring and research; and in-perpetuity funding. This revised scheme has been developed in discussion with the Authority's Habitat Mitigation Steering Group, which includes representatives from Natural England, HIWWT and the RSPB.
- 4.32 The Authority's Solent Recreation Mitigation Project Explanatory Note<sup>18</sup> explains that the Solent Scheme is based on evidence that residential development within 5.6 km of the Solent Maritime SAC, Solent and Southampton Water SPA, or Solent and Southampton Water Ramsar site will require mitigation. The Strategy<sup>19</sup> proposes:
- a team of 5-7 coastal rangers to advise people on how to avoid bird disturbance, liaise with landowners, host school visits, etc.;
  - communications, marketing and education initiatives and an officer to implement them;
  - initiatives to encourage responsible dog walking and an officer to implement them;
  - preparation of codes of conduct for a variety of coastal activities;
  - site-specific projects to better manage visitors and provide secure habitats for the birds;
  - providing new/enhanced greenspaces as an alternative to visiting the coast;

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<sup>17</sup> This mitigation scheme was previously set out in the adopted Development Standards SPD but reference here is to the Revised Habitat Mitigation Scheme currently in draft

<sup>18</sup> Solent Recreation Mitigation Partnership - Mitigating impacts on designated nature conservation sites in the Solent, Explanatory Note, May 2015, New Forest National Park Authority

<sup>19</sup> Solent Recreation Mitigation Strategy, Solent Recreation Mitigation Partnership, December 2017.



- a partnership manager to coordinate and manage all the above.

4.33 The supporting text to Policy SP5 also notes that mitigation may not be possible in all cases and that applicants are not precluded from assessing the potential impact of their proposal on the designated sites and devising their own appropriate mitigation measures rather than contributing to the Authority's Habitat Mitigation Scheme and/or the Solent Recreation Mitigation Partnership's Scheme.

4.34 *Policy SP9: Green Infrastructure* supports creation and enhancement of green infrastructure, particularly where it increases habitat connectivity or relieves recreational pressure on internationally important nature conservation sites. It also creates a presumption against the provision of new Suitable Alternative Natural Green space (SANG) within the protected landscape of the National Park to mitigate the impacts of development outside the National Park, other than in exceptional circumstances. In addition, it commits NFNPA to working with adjoining authorities and other partners to develop green infrastructure and supporting text states that the Authority will work with Natural England and other local authorities, as well as a range of relevant stakeholders, to develop a strategic approach to prevent adverse effects on internationally designated nature conservation sites in the New Forest.

### Conclusions and recommendations

4.35 Prior to consideration of mitigation, adverse recreation pressure effects on the integrity of New Forest SAC; New Forest SPA; Solent Maritime SAC; Solent and Southampton Water SPA; and Solent and Southampton Water Ramsar site from the Local Plan in combination with other plans and projects cannot be ruled out.

4.36 LUC believes that it is not a realistic prospect to create new accessible natural greenspace of a scale and character that would effectively deflect all potential additional visits from the residents of new housing development away from the New Forest or Solent coast European designations, as new greenspace could not recreate the vast open character and visitor experience of the New Forest or an alternative coastal experience which draws people from such a large area. We therefore support use of the more diverse packages of measures set out in NFNPA's revised Habitat Mitigation Scheme and in the Solent Recreation Mitigation Partnership's scheme and believe that these are capable of providing effective mitigation of the recreation pressure that might otherwise occur as a result of the development proposed in the Local Plan in combination with that provided in New Forest District and other neighbouring authorities.

4.37 In light of the above, it is concluded that reliance can be placed on Policies SP5 and SP9 and on the NFNPA and Solent schemes to adequately mitigate potential recreation pressure from development within the New Forest National Park and that **adverse effects on integrity on any European site due to recreation pressure can be ruled out, both alone and in combination.**

## Changes in water quantity

4.38 This HRA topic considers the potential effects of the Local Plan in terms of water abstraction to supply new development resulting in harmful changes to water levels or flows at European sites.

### HRA assumptions

4.39 A potential for adverse effects on integrity exists if the Local Plan proposals would affect the water levels and flows at European sites that are vulnerable to changes in water levels and flows. These sites may be located outside of the Plan area and the 10 km buffer used in the HRA Scoping Report to establish the study area. In this regard, it was noted that Southern Water supplies the eastern half of the New Forest which falls within their 'Hampshire South' Water Resources Zone. Much of the water supply for this comes from the River Itchen SAC and this European site was therefore added to the list of European sites scoped into the HRA. Based on the New Forest Catchment Abstraction Management Strategy (CAMS)<sup>20</sup>, other European sites that could

<sup>20</sup> New Forest Abstraction Licensing Strategy, March 2013, Environment Agency

potentially be affected by abstractions within the New Forest include New Forest SAC, SPA and Ramsar sites; Solent Maritime SAC; and Solent and Southampton Water SPA and Ramsar site. It was assumed that the very large, marine extent of Solent and Dorset Coast pSPA means that it is not sensitive to changes in changes in water flows in the rivers supplying New Forest National Park's water resources.

### **Potential for adverse effects on integrity prior to mitigation**

#### *Regulation of water abstraction by the Environment Agency*

- 4.40 In 2013, the Environment Agency<sup>21</sup> looked at current and future water usage against climate change scenarios to provide an indicative assessment of the water stress situation for each water company. Southern Water is identified as being in both current and future water stress. The South Hampshire area of Southern Water takes approximately two-thirds of its water from the River Test (drains to Solent and Southampton Water European sites) and the River Itchen (designated as a SAC and drains to Solent and Southampton Water European sites). Southern Water's Water Resource Management Plan 2015-2040 sets out a number of initiatives to reduce water usage and improve efficiency in supply.
- 4.41 The Environment Agency is responsible for regulating the use of water resources in England and uses the Catchment Abstraction Management Strategy (CAMS) process and abstraction licensing to do this. Where abstractions cause or potentially cause actual flows to fall short of Environmental Flow Indicators (EFIs) and result in environmental damage, the Environment Agency may change or even revoke existing abstractions to achieve a sustainable abstraction regime. The CAMS covering the New Forest<sup>22</sup> reports there is one water body in which recent actual flows have fallen below the EFI and two waterbodies where fully licensed flows might fall below the EFI. The abstraction licences within these water bodies that cause these environmental issues have been identified by the CAMS and are being investigated as part of the Environment Agency's Restoring Sustainable Abstraction (RSA) programme to better understand the impacts caused by these licences, individually or cumulatively, and to develop mitigation options with licence holders.
- 4.42 Under the Habitats Regulations, the Environment Agency also assesses the effects of existing abstraction licences and applications for new abstractions to make sure they are not impacting on European sites. The New Forest CAMS states that a review of consents in the New Forest was undertaken in 2005 and concluded that no licences were having an adverse effect on the riverine and wetland (groundwater dependent) New Forest SAC, SPA and Ramsar sites. It also states that Site Action Plans for Solent Maritime SAC and Solent and Southampton Water SPA and Ramsar site were published in 2007, setting out the changes needed to abstraction licences.

#### *Water resources management by the water companies*

- 4.43 Water companies have a statutory duty to service planned development in their area; the eastern part of the New Forest lies within Southern Water's supply area whilst the western part lies within Sembcorp Bournemouth Water's (SBW) supply area. Water Resources Management Plans (WRMP)<sup>23</sup> set out how the water company intends to secure its water supply over a 25 year plan period to ensure that a balance between supply availability and forecast water demand is maintained and these WRMPs are subject to HRA. Investments to deliver the plans are based on five year planning cycles known as Asset Management Periods (AMP) so the water company programme for water infrastructure upgrades may constrain the rate at which residential growth can be supported.
- 4.44 HRA Screening of the Southern Water WRMP 2015-2040 concluded that likely significant effects could not be ruled out due to potential effects of the Candover groundwater scheme for river augmentation on the River Itchen SAC, and of the Ford Waste Water Treatment Works (WwTW) effluent transfer scheme on the Arun Valley SAC, SPA and Ramsar site. In light of legally enforceable abstraction licence conditions, a monitoring programme, and other considerations, Appropriate Assessment of the Candover scheme was able to rule out adverse effects on the

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<sup>21</sup> Water stressed areas – final classification, 2013, Environment Agency

<sup>22</sup> New Forest Abstraction Licensing Strategy, March 2013, Environment Agency

<sup>23</sup> WRMPs are statutory plans that set out how the water company intends to secure its water supply over a 25 year plan period to ensure that a balance between supply availability and forecast water demand is maintained.

integrity of the River Itchen SAC. Appropriate Assessment of the Ford WwTW effluent transfer scheme allayed water quality concerns with the water treatment process as well as potential adverse effects on flows.<sup>24</sup> Local Plan HRAs can usually rely on the agreed Water Resources WRMP, which is itself subject to HRA, to rule out adverse effects on integrity in relation to water resources. However, concerns have been raised by Natural England and the Environment Agency about Southern Water's existing WRMP14 and their emerging Draft WRMP19 options, in particular in relation to impacts on the River Itchen SAC. Changes to abstraction licences on the River Itchen imposed by the Environment Agency to remove the risk of an adverse effect on integrity to the SAC have been appealed by Southern Water and Natural England has advised<sup>25</sup> that the HRA for Southern Water's extant WRMP can therefore not be relied upon to ensure no adverse effects on designated sites arising from future development within Southern Water's area until the outcome of the public inquiry is known. As the Southern Water WRMPs are not yet finalised, Natural England has advised that:

- Local Plans acknowledge the uncertainty around delivery of water resources over the plan period; and
- whilst it is not the LPA's remit to plan to deliver water resources, policies requiring the highest standard of water efficiency and re-use should be adopted within the Southern Water area.

4.45 SBW's WRMP 2014-2039 states that as there is currently a surplus of supply versus demand within the SBW supply area, the SBW WRMP does not contain any proposals for the development of new water resource options. It further states that the potential effects of existing water abstraction operations on European sites have been assessed through the National Environment Programme (NEP) developed by the Environment Agency. The NEP assessment concluded that no sustainability reductions were necessary, i.e. reductions in permitted abstraction from surface or groundwater sources where abstraction has been found to be adversely affecting European sites, Sites of Special Scientific Interest (SSSIs), or sites identified under the Water Framework Directive (WFD). The WRMP states that it was screened for potentially significant environmental effects under the Strategic Environmental Assessment (SEA) Regulations and that it was agreed, in consultation with Natural England, the Environment Agency, and English Heritage, that the WRMP was not likely to have a significant effect on the environment. In light of the results of this SEA Screening and the fact that no new abstractions were proposed and no effects were identified from existing abstractions, adverse effects on European sites from the SBW WRMP will not arise.<sup>26</sup>

4.46 It is noted that the WRMPs above were completed prior to the increase in housing provision now being contemplated by NFNPA and that housing provision targets in other local authority areas within the supply network of Southern Water and Bournemouth Water may also have changed since those WRMPs were prepared. Comfort can, however, be taken from the following:

- Both WRMPs are based on Office for National Statistics (ONS) population projections rather than local authority housing provision targets, the SBW WRMP stating that these have performed well in predicting population growth at local area level.
- Both WRMPs were subject to sensitivity testing, including of population and household projections. For example, sensitivity testing of the SBW WRMP showed that water demand remained below water available for use in a dry year under all tested scenarios, including a 10% increase in the annual growth rate of households and population.
- An update to the SBW WRMP<sup>27</sup> did not identify the need to change any of its forecasts.

### Mitigation available

4.47 *Policy DP8: Safeguarding and Improving Water Resources* requires that development avoids harm to the quality and yield of water resources and requires all residential development within the part of the National Park supplied by Southern Water to be designed to achieve the Government's Optional Technical Standard for water efficiency (110 litres per person per day). This is the

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<sup>24</sup> Water Resources Management Plan 2015-40 Habitats Regulations Assessment (Summary), 2014, Cascade Consulting for Southern Water

<sup>25</sup> Consultation comments on the Submission draft HRA

<sup>26</sup> Water Resources Management Plan 2014: Para 2.5 and Appendix 6 SEA Position Paper, 2014, Atkins for Sembcorp Bournemouth Water

<sup>27</sup> Water Resources Management Plan annual review and annual data return, Bournemouth Water, June 2016

higher standard of water efficiency allowed by national planning policy and therefore consistent with Natural England's advice in relation to uncertainty around the delivery of water resources over the plan period in the Southern Water supply area. The Authority has further addressed the concerns about the abstraction levels by Southern Water in the Test and Itchen via proposed minor modification MIN-18 to the Local Plan which clarifies that the Authority is adopting the most efficient water use standard partly due to the potential risk of water abstraction creating problems for the designated sites.

- 4.48 Water companies are subject to the Environment Agency's licensing regime which regulates the amount of water that can be abstracted in order to protect the environment via the CAMS process and associated review of existing abstraction licences and granting of new ones. The ongoing operation of these controls, as described above, helps to ensure that water abstractions do not have a detrimental impact on European sites.

### Conclusions and recommendations

- 4.49 In light of the information above, **adverse water quantity effects on the integrity of any European site from the Local Plan alone or in combination with other plans and projects can be ruled out.**

## Changes in water quality

- 4.50 This HRA topic considers the potential effects of the Local Plan in terms of development leading to:
- increased volumes of treated wastewater discharges, resulting in nutrient enrichment of water and potential lowering of dissolved oxygen as well as increased water velocities and levels downstream of outfalls of WWTW or off-sewage-network private septic tanks and small 'packaged' sewage treatment systems;
  - overloading of combined sewer networks during storm events, resulting in overflows and contamination of water bodies;
  - contaminated surface runoff from urban surfaces and roads.

### HRA assumptions

- 4.51 Effects relating to changes in water quality only need to be considered in relation to the European sites that are potentially vulnerable to a reduction in water quality. Based on their designated features and the pressures and threats facing them, these were judged to be:
- River Avon SAC;
  - Avon Valley SPA;
  - Avon Valley Ramsar site;
  - The New Forest SAC;
  - The New Forest Ramsar site;
  - Solent and Dorset Coast pSPA;
  - Solent and Isle of Wight Lagoons SAC;
  - Solent Maritime SAC;
  - Solent and Southampton Water SPA;
  - Solent and Southampton Water Ramsar site.
- 4.52 Key information sources for the following assessments included representations received by NFNPA from the water companies and Environment Agency during consultation on earlier stages

of the Local Plan, a guidance note<sup>28</sup> on managing wastewater discharges to the Solent, and a Nutrient Management Plan<sup>29</sup> for the River Avon SAC.

#### *Treated wastewater discharges from wastewater treatment works (WwTWs)*

- 4.53 The HRA assumed that a potential for adverse effects on integrity exists unless there is sufficient evidence to conclude whether the development proposed is likely to affect water quality at hydrologically connected European sites due to increased volumes of treated wastewater discharged from WwTWs serving the Plan area.

#### *Sewer overflows*

- 4.54 The HRA assumed that a potential for adverse effects on integrity exists unless there is sufficient evidence to conclude that any sewer network capacity issues can feasibly be addressed.

#### *Discharges from private septic tanks or small sewage treatment plants*

- 4.55 Research commissioned by Natural England<sup>30</sup> has shown that phosphorus originating from septic tank discharges can move laterally through the soil profile for a distance of 20-30 m in a variety of soil types. It therefore concluded that the Building Regulations' legislative value of 10 m for the separation of a septic tank soakaway from a watercourse is probably insufficient to protect that waterbody from phosphorus pollution from this source, even where the local hydrology does not provide a shortcut for the delivery of septic tank discharges to water.
- 4.56 The HRA therefore assumed that, prior to mitigation, a potential for adverse effects on integrity exists where development is not likely to be connected to a public sewer and is within 30 m of a European site or a watercourse draining to a European site.

#### *Contaminated surface runoff*

- 4.57 The HRA assumed that a potential for adverse effects on integrity exists unless there is sufficient evidence to conclude whether the development proposed is likely to result in an increase in contaminated surface water runoff in proximity to vulnerable European sites. In the absence of guidance and for consistency with the treatment of septic tank soakaways (above), a zone of influence of 30 m from a European site or a watercourse draining to a European site was used.

### **Potential for adverse effects on integrity from Local Plan prior to mitigation**

#### *Evidence from NFNPA consultation with Southern Water and the Environment Agency*

- 4.58 The Environment Agency and Southern Water made representations during the October 2016 consultation on the Draft Local Plan and June 2017 consultation on alternative housing sites as follows.
- 4.59 The Environment Agency<sup>31</sup> referred NFNPA to Southern Water as the sewerage undertaker to ensure that foul water arising from the proposed developments could be accommodated; Southern Water<sup>32</sup> did not raise any issues in relation to the capacity of its WwTWs to accommodate the development proposed in the National Park.
- 4.60 The Environment Agency also suggested that NFNPA determines whether there are any opportunities in the Sway and Lyndhurst drainage catchments to reduce diffuse pollution, thereby increasing the headroom of WwTWs in these catchments to discharge to water bodies which, under the Water Framework Directive, are currently failing to meet Good status in relation to nutrient levels. *Policy SP4: Spatial Strategy* directs development to both Sway and Lyndhurst as Defined Villages and allocations are made to these settlements (*Policy SP23: Land at the former Lyndhurst Park Hotel, Lyndhurst; Policy SP24: Land south of Church Lane, Sway*). Such

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<sup>28</sup> Addressing the needs of housing growth and protecting the Marine Environment in the Solent area, Environment Agency and Natural England, October 2015

<sup>29</sup> River Avon Special Area of Conservation Nutrient Management Plan for Phosphorus, Natural England, the Environment Agency and Wiltshire Council, 2015

<sup>30</sup> May, L., Withers, P.J., Stratford, C., Bowes, M., Robinson, D. & Gozzard, E. 2015. Development of a risk assessment tool to assess the significance of septic tanks around freshwater SSSIs: Phase 1 – Understanding better the retention of phosphorus in the drainage field. Natural England Commissioned Reports, NECR171.

<sup>31</sup> Letter to NFNPA re. 'New Forest National Park Local Plan Review – Consultation Draft, Environment Agency, November 2016

<sup>32</sup> October 2016 Draft Local Plan consultation response form

development would be likely to add to the volume of discharges from the WwTWs serving these settlements and hence to nutrient levels in the receiving waters.

- 4.61 Sway is assumed to be served by the WwTW on Flexford Lane, for which the receiving water appears to be a stream called Avon Water that drains to the Solent at Keyhaven. Lyndhurst is assumed to be served by the WwTW at Dunces Arch Inclosure off the A35 Southampton Road. The receiving water appears to be a headwater stream of the Beaulieu River that drains to the Solent to the west of Lepe. Both waters drain to parts of the Solent forming part of Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar site, and Solent and Dorset Coast pSPA. The designated features of these European designations are sensitive to water quality effects. While not mentioned in the consultation responses, it appears that development in the other two Defined Villages identified by *Policy SP4: Spatial Strategy*, Ashurst and Brockenhurst, would also be likely to be served by WwTWs that are hydrologically connected to these same Solent European sites.
- 4.62 Southern Water's representations on the Draft Local Plan<sup>33</sup> in relation to development sites still being allocated in the Regulation 19 Submission draft of the Local Plan identified limited capacity in those parts of the sewerage network in closest proximity to the development allocations at Wharton's Lane, Ashurst and South of Church Lane, Sway. The representation notes that Southern Water has limited powers to prevent new connections to the sewerage network, even when capacity is insufficient, and therefore recommends inclusion in the Local Plan allocation policies a requirement for development proposals to '*provide a connection to the nearest point of adequate capacity in the sewerage network, as advised by the service provider*'. The representation also requests generic support in the policy on Infrastructure Provision and Developer Contributions for new and improved utility infrastructure to meet identified community needs. No WwTW capacity issues were raised in Southern Water's representations on alternative housing sites<sup>34</sup>.

*Evidence on water quality issues in Southampton Water and the Solent European sites*

- 4.63 Natural England and the Environment Agency have produced a guidance note<sup>35</sup> on the challenges in the Solent area in managing nutrients and sewage discharges to the marine environment whilst meeting the need for growth. This states that:
- elevated nitrogen levels are contributing to the growth of opportunistic green seaweed mats in many parts of the Solent area and that these mats smother estuarine habitats and restrict the growth, distribution and variety of food available for wetland birds;
  - although much of this nitrogen is from agriculture, a smaller but still substantial proportion is from wastewater discharges;
  - there is currently little certainty that future development of the scale proposed in the Partnership for Urban South Hampshire (PUSH) area can ensure no adverse effect on the integrity of the Solent's European designations without mitigation;
  - while various actions to reduce nutrient inputs to the Solent have already been taken, further reductions are required from both agricultural and development growth sources and Natural England and the Environment Agency are keen to work with the PUSH authorities and water companies to develop a strategic solution.
- 4.64 While no water cycle study is available for New Forest National Park, the Partnership for Urban South Hampshire (PUSH) has commissioned an Integrated Water Management Strategy (IWMS)<sup>36</sup> to investigate whether the combined housing growth planned in the PUSH area (covers a large area immediately to the east of New Forest National Park and also drains to the Solent and Southampton Water) can be accommodated whilst protecting the water environment. The overall conclusion of the IWMS in relation to potential effects of growth on European sites and SSSIs is that:

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<sup>33</sup> October 2016 Draft Local Plan consultation response form

<sup>34</sup> June-July 2017 Local Plan Potential Alternative Housing Site Allocations consultation response form

<sup>35</sup> Addressing the needs of housing growth and protecting the Marine Environment in the Solent area, Environment Agency and Natural England, October 2015

<sup>36</sup> Integrated Water Management Study: Final Report, Amec Foster Wheeler for PUSH, August 2017

*"there are not many water quality issues for nitrate from WwTW and that in total nitrate loading from WwTWs only account for 3-18% of the loading to designated areas. As such, impacts from individual works may not be significant. However, Natural England have stated that the conditions of some of the areas are unfavourable due to current nitrate loading from continuous and intermittent discharges from WwTWs and sewer networks and that any future housing growth could exacerbate water quality issues and ecological impacts. This discrepancy in understanding of the baseline indicates that further study maybe required on nitrate impacts on designated areas on the South coast."*

- 4.65 The IWMS concludes with a phased action plan of recommended improvements in the PUSH area to support planned housing growth to 2036. These comprise upgrades to WwTWs and sewer networks as well as catchment solutions in the form of targeted agri-environment schemes to reduce nitrate levels and protect water quality in the WFD catchments within the PUSH area, including Southampton Water and the Solent.
- 4.66 Specific conclusions of the IWMS for the European sites relevant to this HRA are as follows:
- Solent Maritime SAC: *"Information provided by the EA and Natural England indicates that there is evidence of eutrophication within parts of the SAC."*
  - Solent and Southampton Water SPA: *"Information provided by the EA indicates that there is a eutrophication problem in the area and that measures are required now to reduce nitrate input."*
- 4.67 The IWMS has also identified that there is a gap in evidence and therefore some uncertainty with regard to achieving the full development growth throughout the plan period without adverse effects on designated sites. Natural England advises<sup>37</sup> that the IWMS will provide further information in due course and there is a potential for that to result in a requirement for additional water mitigation measures for new builds. In the meantime it advises a precautionary approach to these matters with the highest possible standards required for water efficiency while seeking appropriate methods to deliver as far as possible nitrogen and phosphate neutral development. The latter should include nutrient budgets for all EIA cases and, where possible, appropriate offsetting measures.
- 4.68 While the relatively small scale of development proposed by the NFNPA Local Plan is judged unlikely, on its own, to result in adverse water quality effects on the integrity of the Solent European sites, the information above indicates that prior to mitigation there is potential for such effects in combination with development in the PUSH area whose WwTWs are also hydrologically connected to the Solent and Southampton Water.

#### *Evidence of potential water quality effects on the River Avon/Avon Valley European sites*

- 4.69 River Avon SAC and Avon Valley SPA and Ramsar site are known to be sensitive to and already suffering from elevated phosphorus levels. This is confirmed by information on the Hampshire Avon catchment within the South West river basin management plan<sup>38</sup> which cites poor water quality, particularly diffuse sources of phosphorus, nitrate and sediment from rural areas. A Nutrient Management Plan<sup>39</sup> (NMP) has been published to facilitate reduction and management of phosphorus levels in the River Avon SAC. This is to comply with Habitats Directive obligations since phosphorus is identified as posing the most significant threat to the site's qualifying features. The effects of nitrogen and other pollutants are addressed in a separate plan for the Avon catchment but this is not considered further since it relates to diffuse sources (primarily agriculture) rather than WwTW discharges that are linked to housing growth.
- 4.70 Parallel HRA work by LUC on the New Forest District Local Plan Part 1 has identified the potential for water quality effects, in combination, on the European designations of the River Avon, giving rise to the need for additional assessment, which is ongoing. This work for New Forest District has identified that one or more of the STWs draining to the River Avon appear to have a catchment which also serves the National Park, for example Burley is served by Ringwood STW. However, *Policy SP4: Spatial Strategy* of NFNPA's Local Plan does not focus growth in the

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<sup>37</sup> Consultation comment on HRA of Submission draft Local Plan

<sup>38</sup> Part 1: South West river basin district river basin management plan, Environment Agency & Defra, Dec 2015.

<sup>39</sup> River Avon Special Area of Conservation Nutrient Management Plan for Phosphorus, Natural England, the Environment Agency and Wiltshire Council, 2015

western parts of the National Park that drain to the River Avon and none of the site allocations are in this area. Based on the spatial distribution of planned growth and the relatively small scale of growth proposed by the Local Plan as a whole, adverse water quality effects on the integrity of the River Avon European designations in relation to WwTW discharges would appear unlikely. However, Natural England has advised<sup>40</sup> that it and Environment Agency are now aware of new evidence that affects two aspects of the NMP as follows.

- Assumptions made in the plan around discharge concentrations from Sewage Treatment Works (STWs) - the evidence suggests that discharge concentrations from STWs should be assumed to be higher than the NMP assumed.
- The efficacy of Catchment Sensitive Farming (CSF) measures - the evidence suggests that CSF measures are less effective than assumed.

4.71 This new evidence will feed into a revised model, but this work will not be completed for some time. It is Natural England’s advice that the revised model may well conclude that some or all development will need to be phosphate neutral to achieve HRA compliance. As such prior to the completion of this work, permissions should now only be considered to be HRA compliant if phosphate neutrality can be achieved. It is comfortable for NFNPA to permit development provided it is assured by the authority that in the medium term, there will be no net increase in phosphate from development, and that the authority will take responsibility for addressing any short term phosphate “debt” that permitting development may incur.

*Discharges from private septic tanks or small sewage treatment plants or contaminated surface water runoff*

4.72 In line with the HRA assumptions described above, the Local Plan site allocations were reviewed to determine whether any of them was within 30 m of a European site or a watercourse draining to a European site, as set out in Table 4.1.

**Table 4.1 Proximity of site allocations to European sites or watercourses connected to these**

Allocation policy	Within 30 m of European site?	Within 30 m of watercourse draining to European site?
Policy SP22: Land at Whartons Lane, Ashurst	No	No
Policy SP23: Land at the former Lyndhurst Park Hotel, Lyndhurst	Yes – directly adjacent to New Forest SAC, SPA and Ramsar site	No
Policy SP24: Land south of Church Lane, Sway	No	No
Policy SP25: Land adjacent to the former Fawley Power Station	Yes - directly adjacent to Solent Maritime SAC, Solent and Dorset Coast pSPA, Solent and Southampton Water SPA and Ramsar site	No
Policy SP26: Land at Calshot Village	No	No
Policy SP33: Gypsies, Travellers and Travelling Showpeople	Yes – directly adjacent to The New Forest SAC	No

4.73 Prior to consideration of mitigation, this indicates a potential for allocations made by Policies SP23, SP25, and SP33 to have adverse water quality effects in the form of discharges from

<sup>40</sup> Consultation comment on HRA of Submission draft Local Plan



private septic tanks or small sewage treatment plants or contaminated surface water runoff. Such effects could also arise in relation to the unallocated residential development provided for by *Policy SP19: New residential development in the National Park* (400 windfall dwellings; rural exception sites; housing for New Forest Commoners; housing for estate workers; tied agricultural dwellings) and by *Policy SP20: Specialist Housing for Older People*.

### Mitigation available

- 4.74 *Policy DP8: Safeguarding and Improving Water Resources* states that development will not be permitted if it would risk harm to the quality of water resources, including abstraction sites, groundwater, rivers, streams and still waters. It also requires development to either implement appropriate Sustainable Drainage Systems (SuDS) or demonstrate that surface water run-off from the development will not adversely affect any European nature conservation sites.
- 4.75 In relation to potential water quality effects on the Solent and Southampton Water European sites, a commitment is made in the supporting text to Policy DP8, as modified by proposed minor modification MIN-17, to support the Environment Agency and Natural England in the development of any strategic solution to reducing nutrient inputs to the Solent from wastewater discharges. MIN-17 also states that: "*Developments that could affect these sites [includes Solent European sites] will be considered under Policy SP5.*" As noted above in relation to changes in water quantity, Local Plan policy DP8 requires development in the Southern Water supply area to achieve the higher standards of water efficiency allowed under the Building Regulations. Proposed minor modifications MIN-19 extends this requirement to development in the rest of the National Park; this is consistent with Natural England's representation on the Submission draft HRA's water quality findings for the Solent sites.
- 4.76 In relation to potential water quality effects on the River Avon European sites, proposed minor modification MIN-17 extends the Submission draft Local Plan's commitment to joint working to address nutrient inputs to also cover the River Avon European sites. This Local Plan text will allow the NFNPA to explore solutions (if they become necessary) to nutrient discharges to the River Avon. Whilst this will involve partner water companies and local authorities, it is sufficiently clear to commit the Authority to put in place any future mitigation strategy, if one becomes necessary. A memorandum of understanding (MoU) on the approach to mitigating the River Avon phosphate issues has been signed by the Authority, Natural England, the Environment Agency and other partners. As noted above, MIN-17 also states that: "*Developments that could affect these sites [includes River Avon SAC] will be considered under Policy SP5.*"
- 4.77 In line with the recommendations made by Southern Water during consultation on the draft Local Plan, *Policy SP22: Land at Whartons Lane, Ashurst* and *Policy SP24: Land south of Church Lane, Sway* both require that development proposals provide a connection to the nearest point of adequate capacity in the sewerage network.
- 4.78 *Policy SP38: Infrastructure Provision and Developer Contributions* requires development proposals to make provision for the infrastructure necessary to ensure that the development is acceptable in planning terms. NFNPA has also incorporated the support for utility infrastructure requested by Southern Water in its comments on the Draft Local Plan.
- 4.79 The volume and quality of treated wastewater discharges from WwTWs to receiving water courses is subject to regulation by the Environment Agency via the grant and review of environmental permits. This Environmental permitting regime operated by the Environment Agency should ensure that any development requiring variation in the discharge consent for a WRC does not result in deterioration in downstream water quality as a result of that variation.
- 4.80 Any new discharge to the ground from a septic tank or small sewage treatment plant within 50 m of a European site requires a permit from the Environment Agency.<sup>41</sup> Granting of such a permit would take into account the requirements of the Habitats Regulations.

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<sup>41</sup> Environment Agency. (2015) *General binding rules: small sewage discharge to the ground*. [Online] Available from: <https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

## Conclusions and recommendations

### *Treated wastewater discharges from wastewater treatment works (WwTWs) - Solent and Southampton Water European sites*

- 4.81 While the study area for the PUSH IWMS<sup>42</sup> does not extend to New Forest National Park (and NFNPA has not carried out its own water cycle study), it provides relevant information on in combination water quality issues in the Solent and Southampton Water. This study, together with the Natural England and the Environment Agency guidance note<sup>43</sup>, indicates that there is a eutrophication problem in the European sites of the Solent and Southampton Water to which WwTW discharges contribute. There is a potential for the housing growth proposed by the Local Plan to have adverse water quality effects in combination with that proposed by New Forest District Council and the other PUSH authorities on the integrity of Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC, Solent and Dorset Coast pSPA, Solent and Southampton Water SPA, and Solent and Southampton Water Ramsar site.
- 4.82 In recognition of the potential for the NFNPA Local Plan to contribute to these effects, the Local Plan includes a commitment to support the Environment Agency and Natural England in the development of any strategic solution to reducing nutrient inputs to the Solent from wastewater discharges. For planning applications that could impact the Solent sites before the outcome of ongoing joint working on these issues is known and a clear strategy agreed by the parties, developments that could affect the Solent sites will be considered under Policy SP5. This will allow NFNPA to refer to the approach advised by Natural England<sup>44</sup> when carrying out project-level HRA for applications, i.e. seek the highest possible standards required for water efficiency plus appropriate methods to deliver as far as possible nitrogen and phosphate neutral development.
- 4.83 In light of the fact that the majority of the nitrogen inputs to the Southampton Water and Solent European sites are from agriculture rather than WwTW discharges and that the scale of growth proposed in New Forest National Park over the 20 year Local Plan period is very small (40 dwellings per annum) relative to the total growth planned in the PUSH area (approximately 4,500 dwellings per annum<sup>45</sup>), it is judged that this mitigation provides sufficient certainty that the contribution of NFNPA's Local Plan to nutrient enrichment of the Southampton Water and Solent European sites will be negligible and that **adverse water quality effects on the integrity of the Solent and Southampton Water European sites from treated wastewater discharges associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can be ruled out.**

### *Treated wastewater discharges from wastewater treatment works (WwTWs) - River Avon/Avon Valley European sites*

- 4.84 None of the Local Plan allocations are within the catchment of the River Avon and the scale of growth proposed by the Local Plan is relatively small. The information about the Avon NMP supplied by Natural England in its representation on the Submission draft HRA means, however, that it is not possible to rule out the possibility that the Local Plan could contribute to significant effects on water quality in-combination, due to increased phosphate discharges from STWs within the catchment of the River Avon European sites.
- 4.85 Natural England and the Environment Agency are in ongoing discussions with Wessex Water and the local planning authorities within the catchment of the River Avon European sites (including NFNPA) to further assess the likely effects of additional phosphate from planned development on the River Avon European sites and to identify solutions to prevent adverse effects on integrity. The findings and agreed solutions are the subject of an MoU between the parties. The existence of this partnership work is also recognised in the Statement of Common Ground (SoCG) between NFNPA and NFDC<sup>46</sup>.

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<sup>42</sup> Integrated Water Management Study: Final Report, Amec Foster Wheeler for PUSH, August 2017

<sup>43</sup> Addressing the needs of housing growth and protecting the Marine Environment in the Solent area, Environment Agency and Natural England, October 2015

<sup>44</sup> Consultation comment on HRA of Submission draft Local Plan

<sup>45</sup> PUSH Spatial Position Statement (2016) sets out plans for 104,000 new dwellings in the PUSH area between 2011-2034 which equates to just over 4,500 dwellings per annum.

<sup>46</sup> Statement of Common Ground between the New Forest National Park Authority and New Forest District Council, May 2018

- 4.86 While generic mitigation is available from the requirement in Policy SP5 for all development to comply with the Habitats Regulations, it is not appropriate to rely solely on the requirements of the Habitats Regulations when a specific risk to a European site has been identified. In recognition of the current uncertainty and potential for adverse effects on the River Avon designations, the Local Plan includes a commitment to support the Environment Agency and Natural England in the development of any strategic solution to reducing nutrient inputs to the River Avon. For planning applications that could impact the River Avon before the outcome of ongoing joint working on these issues is known and a clear strategy agreed by the parties, developments that could affect the River Avon will be considered under Policy SP5. This will allow NFNPA to refer to the approach advised by Natural England<sup>47</sup> when carrying out project-level HRA for applications, i.e. seek appropriate methods to deliver as far as possible phosphate neutral development in the medium term.
- 4.87 In light of the above, it is clear that mechanisms are in place for identifying and implementing appropriate solutions, should further evidence confirm the need to take action to avoid in-combination water quality effects on the River Avon SAC. On this basis, **adverse water quality effects on the integrity of the River Avon/Avon Valley European sites from treated wastewater discharges associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can be ruled out.**
- 4.88 For the avoidance of doubt, the above conclusions in relation to the Solent and Southampton Water and the River Avon/Avon Valley European sites mean that **adverse water quality effects on the integrity of any European sites from treated wastewater discharges associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can be ruled out.**

#### *Sewer overflows*

- 4.89 As described above, NFNPA's consultation with Southern Water identified capacity issues in the closest part of the sewerage network to development allocations at Wharton's Lane, Ashurst and South of Church Lane, Sway. In response to this, NFNPA has amended the corresponding Local Plan allocation policies (SP22, SP24) to require that development proposals provide a connection to the nearest point of adequate capacity in the sewerage network and has also added generic support for the provision of utility infrastructure to Policy SP38. The potential risk of sewer overflows from connection of other development provided for by the Local Plan to the sewerage network, including 400 windfall dwellings, is judged to be adequately mitigated by the requirement in Policy SP38 for development proposals to make provision for the infrastructure necessary to ensure that the development is acceptable in planning terms. It is therefore concluded that **adverse water quality effects on the integrity of any European site from sewer overflows associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can be ruled out.**

#### *Discharges from private septic tanks or small sewage treatment plants*

- 4.90 As described above, generic protection for water quality is provided by Policy DP8 and a generic requirement for developers to provide necessary infrastructure is provided by Policy DP38. It is judged that these policies adequately mitigate the risk to water quality from unallocated development provided for by the Local Plan as a result of potential discharges from private septic tanks or small sewage treatment plants.
- 4.91 It is judged that the specific risk identified from the allocations within 30 m of European sites (Policies SP23, SP25 and SP33) requires more specific mitigation but that this is provided by the fact that any new discharge to the ground from a septic tank or small sewage treatment plant within 50 m of a European site requires a permit from the Environment Agency.<sup>48</sup>
- 4.92 **Adverse water quality effects on the integrity of any European site in relation to discharges from private septic tanks or small sewage treatment plants associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can therefore be ruled out.**

<sup>47</sup> Consultation comment on HRA of Submission draft Local Plan

<sup>48</sup> Environment Agency. (2015) *General binding rules: small sewage discharge to the ground*. [Online] Available from: <https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

*Contaminated surface water runoff*

- 4.93 As described above, generic protection for water quality is provided by Policy DP8 and a generic requirement for developers to provide necessary infrastructure is provided by Policy DP38. It was judged that these policies adequately mitigate the risk to water quality from unallocated development provided for by the Local Plan as a result of contaminated surface water runoff. The specific risks from contaminated surface run-off identified from the allocations within 30 m of European sites (Policies SP23, SP25 and SP33) are subject to more specific safeguards in Policy DP8, as described above.
- 4.94 Adverse water quality effects on the integrity of any European site in relation to contaminated surface water runoff associated with the growth proposed by the Local Plan alone or in combination with other plans and projects can therefore be ruled out.**

## 5 Summary and conclusions

- 5.1 This addendum report to the HRA of the New Forest National Park Local Plan has reviewed the approach and findings of the HRA in light of the CJEU judgment in the case of *People over Wind and Peter Sweetman v Coillte Teoranta*. The HRA was reviewed to determine whether the screening stage relied on mitigation measures to rule out the need for Appropriate Assessment, contrary to the direction of the CJEU judgment. Where this was found to be the case, action was taken to amend the HRA in line with the approach required by the CJEU judgment.
- 5.2 The findings of the review and the amended conclusions of the HRA of the Submission draft plan, as modified by NFNPA's proposed modifications, are summarised Table 5.1.

**Table 5.1 Findings of HRA review and amended conclusions**

Effect type considered by HRA screening	Original conclusion of HRA	Implications of CJEU judgment for prior HRA screening findings	Revised conclusion of HRA
Direct loss or physical damage to European sites;	No LSE	None - LSE were ruled out due to no pathways for significant effects	N/A - original HRA conclusion remains valid
Loss or damage to offsite supporting habitat	No adverse effect on integrity	None - effect was subject to Appropriate Assessment	N/A - original HRA conclusion remains valid
Urban edge effects	No LSE	Reliance was placed on mitigation to rule out LSE - Appropriate Assessment is now required	No adverse effect on integrity
Changes in air quality	No adverse effect on integrity	None - effect was subject to Appropriate Assessment	N/A - original HRA conclusion remains valid
Traffic collision risk	No adverse effect on integrity	None - effect was subject to Appropriate Assessment	N/A - original HRA conclusion remains valid
Recreation pressure	No LSE	Reliance was placed on mitigation to rule out LSE - Appropriate Assessment is now required	No adverse effect on integrity
Changes in water quantity	No LSE	Reliance was placed on mitigation to rule out LSE - Appropriate Assessment is now required	No adverse effect on integrity
Changes in water quality	No LSE	Reliance was placed on mitigation to rule out LSE - Appropriate Assessment is now required	No adverse effect on integrity

- 5.3 Following the revisions to the HRA necessitated by the CJEU judgment, the overall conclusion of the HRA of the Submission draft New Forest National Park Local Plan 2016-2036, as modified by NFNPA proposed modifications, is that it will have **no adverse effect on the integrity of any European site, either alone or in combination with other plans and projects**. This is the same overall conclusion as that reached by the HRA Report for the Submission draft Local Plan, as amended by proposed minor modifications, in May 2018 and it is based on the same evidence. No modifications to the Local Plan are needed to secure additional mitigation and ensure compliance with the Habitats Regulations.

LUC

July 2018