



# Habitats Regulations Assessment of the Malton and Norton Neighbourhood Development Plan

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## SUMMARY

The Malton and Norton-upon-Derwent Town Councils are together preparing their Neighbourhood Development Plan for submission to the competent authority, Ryedale District Council. This Habitats Regulations Assessment (HRA) evaluates the Plan as required by the Conservation of Habitats and Species Regulations 2017 (the *Habitats Regulations*).

Its role is to test the impact of the proposed policies and allocations on the internationally important sites for biodiversity in and around the neighbourhood. Together, these Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar sites are known as European sites.

HRA asks very specific questions of a neighbourhood plan (and all local plans). 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 find out if it may result in an *adverse effect on the integrity* (AEOI) of the European sites. Again, if AEOI can be ruled out, the plan may be adopted. At this stage, but only if necessary, the plan should be amended to *mitigate* any problems, which typically means that some policies or allocations need to be modified or, more unusually, may have to be removed altogether. If mitigation is unable to rule out AEOI then derogations may be sought but only as a last resort and few local plans would be expected to pass these additional tests.

This document follows best practice, drawing heavily on guidance contained within the Habitats Regulations Assessment Handbook, and takes full account of current Government policy and law.

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 that provided mitigation measures were adopted, including the removal of some types of proposed development, adverse effects on the integrity on the River Derwent SAC could be ruled out for Policies RC1, RC2 and N1. Adverse effects from Policy CF1 could be ruled out without the need for mitigation.

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 their Neighbourhood Development Plan (*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 Habitats Directive requires local (or 'competent') authorities to assess the impact of development plans on the Natura 2000 network of protected sites. The Directive is given domestic effect by the Habitats and Species Regulations, 2017<sup>1</sup> (the '*Habitats Regulations*'). In England, this requirement is implemented via a *Habitats Regulations Assessment (HRA)* which comprises a series of mandatory tests.
- 1.3. The production of this HRA draws heavily on guidance provided by the Habitats Regulations Assessment Handbook<sup>2</sup> (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. Defra guidance<sup>3</sup> allows competent authorities to reduce the duplication of effort by drawing on earlier conclusions of other relevant plans where there has been no material change in circumstances. If there is any doubt, the allocation or policy is assessed normally. Consequently, this current HRA draws on the findings of previous documents where possible but evaluates the Plan in the context of contemporary evidence and best practice..

## Habitats Regulations Assessment of Neighbourhood Plans, Natura 2000 and European sites

- 1.5. Natura 2000 is the cornerstone of European nature conservation policy; it is an EU-wide network of Special Protection Areas (SPA) classified under the 1979 Birds Directive and Special Areas of Conservation (SAC) designated under the 1992 Habitats Directive. Together, the network comprises over 27,000 sites<sup>4</sup> and safeguards the most valuable and threatened habitats and species across Europe; it represents the largest, coordinated network of protected areas in the world.
- 1.6. In the UK, these sites are commonly referred to as 'European sites' which, according to Government policy<sup>5</sup>, also comprise 'Wetlands of International Importance', or Ramsar sites. Importantly, European sites also include the relevant 'proposed' or 'potential' sites which have not yet been formally designated. Each is 'classified' or 'designated' for a range of habitats and species which are referred to as 'qualifying features'.
- 1.7. Over 8.5% of the UK land area forms part of this network including, locally, sites such as the River Derwent, the Lower Derwent Valley and Strensall Common. Further afield, it also incorporates such well known sites as the Yorkshire Dales and the North York Moors.

<sup>1</sup> *Conservation of Habitats and Species Regulations 2017*  
Tyllesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook*, November 2019 edition UK: DTA Publications Ltd

<sup>3</sup> Habitats Directive – Guidance on competent authority coordination under the Habitats Regulations, Defra (July 2012).

<sup>4</sup> Natura 2000 Barometer

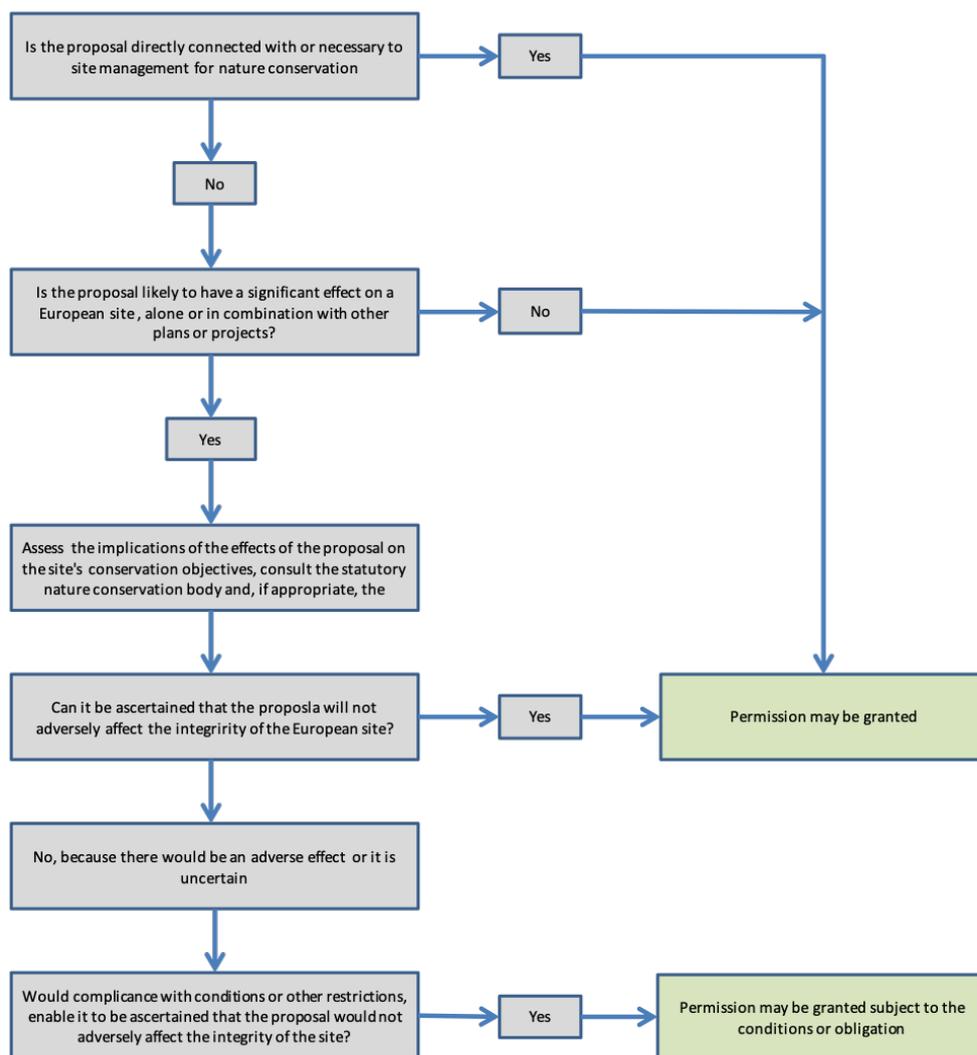
<https://view.officeapps.live.com/op/view.aspx?src=http://ec.europa.eu/environment/nature/natura2000/barometer/docs/Natura%202000%20barometer.xlsx> accessed 4 April 2020

<sup>5</sup> ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (16 August 2005)

1.8. The Regulations employ a series of mandatory tests listed below and graphically represented in Fig 1<sup>6</sup> which set out a four-stage process.

Stage	Test	Task
1	Screening	Determines if the Plan will lead to a <i>likely significant effect</i> on a European site alone or in combination with other plans or projects.
2	Appropriate assessment	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 <i>adverse effect on the integrity of the site</i> ' (AEOI) or not.
3	Alternative solutions	If AEOI cannot be ruled out, the HRA must explore if less damaging <i>alternative solutions</i> could deliver the overall objective of the Plan
4	Imperative Reasons of Overriding Public Interest (IROPI) and Compensation	If no alternative solutions exist, the Plan can only proceed if IROPI apply and compensatory measures must be delivered

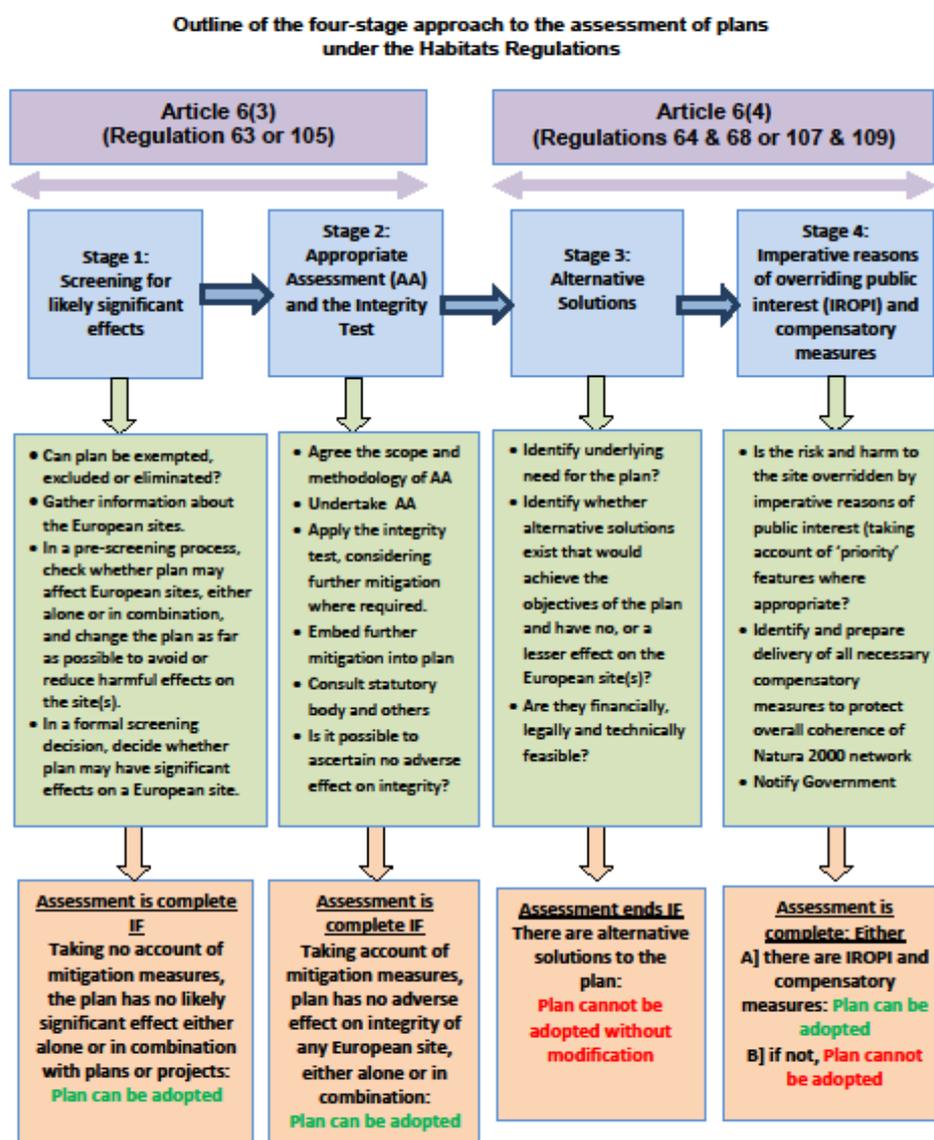
**Figure 1: Consideration of development proposals affecting European sites**



<sup>6</sup> Ibid

- 1.9. 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 2 where many of the component steps are given expression. It is the process described in Fig 2 that is followed in this HRA.
- 1.10. So, for example, the initial test adopted in this HRA (in Section 3) firstly explores if the plan can be excluded from the HRA simply because it is considered that it could not have any conceivable effect on a European site before exploring whether the plan is actually necessary for the management of a European site. Through the subsequent use of pro-forma and associated filters it refines the European sites at risk and the policies that may cause harm to arise.
- 1.11. If the plan cannot be ruled out at this stage, the competent authority (ie Ryedale District Council) must then move onto the formal screening process to identify whether the plan is '*... likely to have a significant effect on a European Site ... either alone or in combination with other plans or projects*'. The formal screening opinion is provided in Section 4. If significant effects are found to be absent or can be avoided, the plan may be adopted without further scrutiny. If not, an appropriate assessment is required.
- 1.12. Importantly, an in-combination assessment is only required where an impact is identified which would have an insignificant effect on its own ('a residual effect) but where likely significant effects arise cumulatively with other plans or projects. Together, these first few steps of Stage 1 (in Fig 2) are often referred to as 'Screening'.

Figure 2: The four stage assessment of plans under the Habitats Regulations<sup>7</sup>



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<sup>7</sup> The HRA of Neighbourhood Plans is required under Reg. 106. Although this figure does not refer to Reg. 106, the same process still applies.

## Definitions, Evidence, Precautionary Principle and Case Law

1.13. The specific meaning of the key terms and tests in HRA is of considerable importance. Drawing on Section C.7 of the Handbook and other sources the following definitions, embedded in case law, apply to key words, phrases and stages throughout the HRA:

### Stage One - Screening

- *Likely* in the context of 'a likely significant effect' means a 'a possible significant effect; one whose occurrence cannot be excluded on the basis of objective information'<sup>8</sup>; therefore, 'likely' can be interpreted as a risk and so differs from the normal English meaning of a probability.
- *Significant*, in the same context, means 'any effect that would undermine the conservation objectives for a European site ...'<sup>9</sup>
- *'Objective information'*, in this context, means clear verifiable fact rather than subjective opinion.
- *There should be credible evidence to show that there is a real rather than a hypothetical risk<sup>10</sup> of effects that could undermine the site's conservation objectives. Any serious possibility of a risk that the conservation objectives might be undermined should trigger an 'appropriate assessment'*.

1.14. 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 case<sup>11</sup> 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 ...'.*

1.15. This was amplified in the Bagmoor Wind case<sup>12</sup> 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'.*

1.16. In other words, if there is any serious possibility of a risk that the conservation objectives might be undermined this should trigger an appropriate assessment.'

### Stage Two – Appropriate Assessment and the Integrity Test

1.17. 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

<sup>8</sup> European Court of Justice Case C – 127/02 *Waddenzee* 7 September 2004

<sup>9</sup> 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

<sup>10</sup> 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

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

<sup>12</sup> Bagmoor Wind Limited v The Scottish Ministers Court of Sessions [2012] CSIH 93

*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.

1.18. The *integrity* of a European site was described in para 20 of ODPM Circ. 06/2005 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 classified.*

1.19. Elsewhere, the CJEU (Sweetman)<sup>13</sup> defined integrity as:

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

1.20. Drawing on this, the European Commission<sup>14</sup> defined it more recently as follows:

*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.*

1.21. Whilst the Supreme Court (Champion)<sup>15</sup> 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 a '*appropriate assessment*' is more thorough.

## Stages Three and Four – The Derogations

1.22. 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 must be delivered. These latter stages are not shown in Fig 1, but the entire process is summarised in Stages 2, 3 & 4 of Fig 2.

## Overall approach

1.23. 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 UK<sup>16</sup>. However, the judgement<sup>17</sup> 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 (Feeney<sup>18</sup>) which stated:

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

1.24. 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.

1.25. Because this is a strategic plan, the '*objective information*'<sup>19</sup> 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.

<sup>13</sup> Sweetman EU:C:2013:220 para 39

<sup>14</sup> "Managing Natura 2000 sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC", European Union. 2019.

<sup>15</sup> R (on the application of Champion) v. North Norfolk District Council [2015] UKSC 52.

<sup>16</sup> 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.

<sup>17</sup> 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

<sup>18</sup> 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

<sup>19</sup> European Court of Justice Case C – 127/02 *Waddenzee* 7 September 2004

## Mitigation and recent case law

- 1.26. In *People Over Wind*<sup>20</sup> 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 decisions in the UK courts, the CJEU 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.
- 1.27. This HRA therefore restricts consideration of mitigation measures to the appropriate assessment.
- 1.28. In *Grace & Sweetman*<sup>21</sup> the ECJ considered the approach to mitigation at the appropriate assessment stage and 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”.
- 1.29. In the *Dutch nitrogen* case,<sup>22</sup> 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. The same approach was applied to “autonomous” measures taken outside that plan.<sup>23</sup>

## Brexit

- 1.30. 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, the need for HRA remains and until the end of the implementation period on 31st December 2020 (“IP Completion Day”) the Conservation of Habitats and Species Regulations 2017 remain in force without amendment<sup>25</sup>, following which amendments made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 will take effect.

## Role of the competent authority

- 1.31. Lastly, although this HRA has been prepared to help Ryedale District Council discharge its duties under the Habitats Regulations, the Councils remain the competent authorities and they 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 is necessary<sup>26</sup>, it is undertaken in accordance with the requirements of appropriate assessment.

<sup>20</sup> *People Over Wind and Sweetman v Coillte Teoranta* (C 323/17) [2018] PTSR 1668

<sup>21</sup> *Grace & Sweetman v An Bord Pleanala* (C-164/17) [2019] PTSR 266 at paragraphs 51-53 and 57.

<sup>22</sup> *Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu* (C 293/17, C 294/17) [2019] Env. L.R. 27 at paragraph 30

<sup>23</sup> See too the *Compton Parish Council* case, referred to above, at paragraph 207.

<sup>25</sup> 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.

<sup>26</sup> 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.2 (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 2 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 (Columns 1 & 2), that when evaluated generate a preliminary and precautionary, 'long' list of European sites in Column 3 that could be affected by the Plan<sup>27</sup>. However, when considered further, using readily available information and local knowledge (Column 4) the list of plausible threats can be refined, and the list of potentially affected sites reduced (Column 5). Albeit a coarse filter, this complies with the Boggis case by focusing scrutiny only on realistic and credible threats whilst avoiding the hypothetical or exceedingly unlikely.
- 2.4. If Column 5 remains empty of European sites, then no European sites will be at risk and no further scrutiny will be required. Note that sites identified against the first criterion (ie '1. All plans') should be ignored as this is simply a checklist of European sites within the NBP boundary.
- 2.5. 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. However, only the River Derwent is found within the Town Councils' boundaries.
- 2.6. 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 (which follows later).
- 2.7. 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.

<sup>27</sup> 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
<b>2. Plans that could affect aquatic features</b>	(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>5. Plans that could affect mobile species</b>	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. Given the distance between the plan area and the Lower Derwent Valley European site (LDV), other populations which range along the entire length of the river, can be considered to be distinct from those found within the Plan area. Consequently, harmful effects 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>	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><b>6. Plans that could increase recreational pressure on European sites potentially vulnerable or sensitive to such pressure</b></p>	<p>(a) Such European sites in the plan area</p>	<p>River Derwent SAC (within the plan area)</p>	<p>However, given the development proposed in close proximity to the River Derwent, impacts on the otter, bullhead and lamprey populations of the river cannot be ruled out. 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. Therefore, possible impacts on the River Derwent require further consideration.</p> <p><b>Extract from <i>The Habitats Regulations Assessment Handbook</i>, <a href="http://www.dtapublications.co.uk">www.dtapublications.co.uk</a> © DTA Publications Limited (November) 2019 all rights reserved This work is registered with the UK Copyright Service</b></p>	<p>River Derwent SAC</p>

- 2.8. 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.
- 2.9. 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 citation<sup>28</sup>, conservation objectives<sup>29</sup>, supplementary advice<sup>30</sup> and site improvement plan<sup>31</sup>, 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.

<sup>28</sup> River Derwent SAC Citation. 14 June 2005

<sup>29</sup> Conservation Objectives for River Derwent SAC. 27 November 2018. (Version 3)

<sup>30</sup> Supplementary advice on conserving and restoring features. River Derwent SAC. 27 March 2017 (Version 2)

<sup>31</sup> 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><b>River Derwent SAC</b></p> <p>The River Derwent represents one of the best examples in England of a lowland river stretching from Ryemouth in the north to its confluence with the Ouse in the south of the District – a small section lies within the Lower Derwent Valley National Nature Reserve. Not all of the river is designated though 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><b>Qualifying habitats:</b> The site is designated under <b>article 4(4)</b> of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:</p> <ul style="list-style-type: none"> <li><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)</li> </ul> <p><b>Qualifying species:</b> The site is designated under <b>article 4(4)</b> of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Bullhead <i>Cottus gobio</i></li> <li><input type="checkbox"/> River lamprey <i>Lampetra fluviatilis</i></li> <li><input type="checkbox"/> Otter <i>Lutra lutra</i></li> <li><input type="checkbox"/> Sea lamprey <i>Petromyzon marinus</i></li> </ul>	<ol style="list-style-type: none"> <li>1. Physical modification (P/T);</li> <li>2. Water pollution (T);</li> <li>3. Invasive species (T);</li> <li>4. Change in land management (T);</li> <li>5. Water abstraction (T).</li> </ol>

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 6.3 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 (either alone or in-combination with other aspects of this or other plans or projects)	Screened out
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

Extract from *The Habitats Regulations Assessment Handbook*, [www.dtapublications.co.uk](http://www.dtapublications.co.uk)

- 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 Appendix C. However, Appendix C goes further and identifies which proposals are associated with each threat as shown in Table 6.

**Table 6: Features affected and relevant policies**

Policy	Potential effect	Feature
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
	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
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 outcome of this exercise are summarised in Tables 7 and 8.
- 3.5 Where policies are ‘screened-’ or ‘ruled-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)<sup>32</sup> 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 Exercise

- 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

<sup>32</sup> Ministry of Housing, Communities and Local Government HRA Planning Guidance <https://www.gov.uk/guidance/appropriate-assessment> 22 July 2019 (accessed 14 August 2019)

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. A similar range of effects can also result from boat moorings (from fuel spillages, for example) and the creation of fishing pegs which can lead to erosion.
- 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 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. Again, this is typically associated with new, built development but they 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 wide areas of land.
- 3.12. 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).

### **Recreational pressure**

- 3.13. 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.
- 3.14. 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.
- 3.15. 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.
- 3.16. Table 4 shows that only the otter population could be affected and potentially by Policies RC1, RC2 and N1 though CF1 is ruled out. However, 'disturbance' is not identified as a threat in the River Derwent SIP (Table 3).

## Screening opinions

- 3.17. Importantly, 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.
- 3.18. Furthermore, it can be seen that there is considerable overlap between the threats associated with aquatic features, mobile species and recreational pressure. Similarly, there is a high degree of commonality between the features affected. All bar Policy CF1 has the potential to affect all three potential threats. Consequently, rather than subjecting each policy to individual scrutiny against each threat, each will be subjected to formal screening against the entire complement of features of the River Derwent SAC; individual features are referred to as necessary. This will make for less repetition, a shorter screening exercise and greater clarity.
- 3.19. None of the policies provide any mitigation measures to safeguard the European site however, even if provided, none could be considered at this stage of the HRA in order to comply with the People Over Wind decision. Each policy is considered in turn below.

### RC1 – Malton and Norton River Corridor Development

- 3.20. 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.
- 3.21. There are two broad elements to this policy – the provision of open space allied with proposals for a picnic area, seating, mooring points and fishing pegs, and built development comprising the construction of a café, bandstand and the unspecified conversion of existing buildings.
- 3.22. Fundamentally though, the land is not allocated for this purpose in the Ryedale local plan.
- 3.23. As currently proposed, 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 which could have the potential to disturb otters when commuting along the river corridor. Whilst daytime activities should not represent a threat, the proposed attractions include a bandstand which suggests that organised activities could extend into the evening when otters will be more active. The degree of lighting, noise and human presence could all be expected to increase.
- 3.24. Similarly, disturbance from an unspecified number of fishing pegs and moorings could also prompt disturbance throughout much of the day and night, and lead to erosion and pollution from fuel spillages, for instance.
- 3.25. In contrast, impacts on the floating vegetation community and the three fish species from recreational activities have, however, been ruled out given their physical separation and relative immunity from these riparian activities.
- 3.26. These potentially significant effects could be exacerbated if the unspecified redevelopment of existing buildings included residential development, further increasing the population in closest proximity to the river and of those most likely to make use of it; public open space, especially in the vicinity of the river, is a scarce resource in both towns. Commercial development is likely to be less of a threat.
- 3.27. Whilst it is not suggested that impacts from this policy will adversely affect the entire SAC, it is possible that changes could extend across localised but significant areas of the SAC. This would 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*

- 3.28. Therefore, likely significant effects cannot be ruled out at this stage and an appropriate assessment is required.
- 3.29. It should be noted that concern regarding pollution events during construction relates to the possible (re)development of buildings within the site beyond the primary use as a recreational area. Should the former not be pursued, the majority of pollution related threats would be removed although would still apply, in a more modest scale, in terms of boat moorings and fishing pegs. However, at this stage, it is not possible to make this assumption.

#### Screening test – Policy RC1

**There is a credible risk that recreational pressure and pollution/erosion etc from Policy RC1 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 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.

### RC2 – Regeneration of Land North and South of County Bridge

- 3.30. 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.
- 3.31. Fundamentally though, the land is not allocated for this purpose in the Ryedale local plan.
- 3.32. For reasons very similar, to Policy RC1 above, there is a credible risk that if the unspecified development including an expansion in dwellings, this could increase the number of visitors to the riverside given the proximity to it and the proposed expansion of recreational space in RC1. This could, in turn, increase the disturbance of otter populations.
- 3.33. 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.
- 3.34. Whilst it is not suggested that impacts from this policy will adversely affect the entire SAC, it is possible that changes could extend across localised but significant areas of the SAC. This would 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.'*
- 3.35. 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 recreational pressure and pollution from construction from Policy RC2 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 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.

### CF1 – Norton’s swimming pool

- 3.36. 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 one facility could result in any harmful effects on the SAC.
- 3.37. However, 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.
- 3.38. Fundamentally though, the land is not allocated for this purpose in Ryedale local plan.
- 3.39. Whilst it is not suggested that impacts from this policy will adversely affect the entire SAC, it is possible that changes could extend across localised but significant areas of the SAC. This would 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.’*
- 3.40. 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 pollution from construction from Policy CF1 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 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.

### N1 – Land to the Rear of Commercial Street

- 3.41. This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre. The establishment of a car park appears to be the main objective but further, unspecified development is not ruled out. Although located in close proximity to the undesignated stretch of the River Derwent, it is considered almost inconceivable that this could result in any harmful effects on the SAC.
- 3.42. Fundamentally though, the land is not allocated for this purpose in the Ryedale local plan.

3.43. Whilst it is not suggested that impacts from this policy will adversely affect the entire SAC, it is possible that changes could extend across localised but significant areas of the SAC. This would 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.'*

3.44. Therefore, likely significant effects cannot be ruled out at this stage and an appropriate assessment is required.

3.45. 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 recreational pressure 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 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

3.46. 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	Aquatic features Mobile species Recreational pressure	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	

3.47. 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 E5, E6 CF2 TC2, TC4 HR I1, HR I2, HRI3 M1, M2	TM1, TM2, T3, TM4, TM5, TM6 E5, E6 CF2 TC2, TC4 HR I1, HR I2, HRI3 M1, M2
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

- 3.48. This exercise found that all 38 of the 42 policies 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.
- 3.49. Some of these policies were screened against category H and include those which lack spatial specificity and, by way of precaution, rely on the specific protection for European sites afforded through strategic policy SP14 of the Ryedale Local Plan to ensure that any effects which might undermine the conservation objectives (should development be pursued in a sensitive location) will be avoided. This does not conflict with the People Over Wind decision.
- 3.50. 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.
- 3.51. 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 and Approach

- 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 C5.5 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 is taken in turn (or in groups where the issues are similar) and each issue dealt with accordingly (or again in groups if more convenient). 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; the scale is described as *minor* in the supporting text.
- 4.11. There are two broad elements to this policy – the provision of open space allied with proposals for a picnic area, seating, mooring points and fishing pegs, and built development comprising the construction of a café, bandstand and the unspecified conversion of existing buildings.
- 4.12. 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 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; the floating vegetation, and all three fish species can be considered immune to disturbance from recreational pressure.
- 4.13. Low key recreational opportunities supported by picnic areas and seating can be considered to be in keeping with the ecological interest 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 this is addressed elsewhere against other policies where relevant.
- 4.14. Otters are resilient. Though their nocturnal habits and their selection of resting places and holts are typically sited far distant from human disturbance, there are frequent examples of their 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 is that otters already make frequent use of this stretch of river even though it is exposed to the typical disturbance associated within any busy town with road bridges, railway lines, industry and people all in close proximity.
- 4.15. That said, the proposal for a bandstand does suggest that organised activities could take place in the evenings and the associated people, lights and noise could hinder the behaviour of otters. Given their large territories there is the real, if remote possibility that large-scale organised activities at night could disrupt this behaviour and an adverse effect on the integrity of the site may arise.
- 4.16. Given that no mitigation proposals have been made, **the only means of ensuring that this component of RC1 does not have the potential to cause an adverse effect on the integrity of the SAC is to amend the policy to ensure that time limits are imposed on organised events so that they do not extend beyond dusk.** This measure can be considered to be reliable,

effective in the short and long-terms and can be guaranteed through a suitable licensing system. There would be no residual effects and no need for an in-combination assessment.

- 4.17. Similar concerns apply to the proposals to introduce an unspecified number of fishing pegs and boat moorings. Given that the stretch of land identified by RC1 extends to 1.2km, part of which encompasses land within the SAC, the potential for numerous examples of both cannot be ruled out. Together, they introduce the potential for pollution, from fuel spills and litter, and disturbance of otters at all times of the day and night. Furthermore, fishing pegs can promote erosion of riverbanks depending on the number, design and method of construction. This could lead to impacts on all qualifying features. Whilst a modest number of pegs or moorings may be accommodated without adverse effects resulting, an upper limit isn't specified in the policy.
- 4.18. Given that no further details have been provided or mitigation proposals been made, **the only means of ensuring that these components of RC1 do not have the potential to cause an adverse effect on the integrity of the SAC is to amend the policy to ensure that the provision of both mooring points and fishing pegs are removed.** This measure can be considered to be reliable, effective in the short and long-terms and can be guaranteed. There would be no residual effects and no need for an in-combination assessment.
- 4.19. The policy also makes reference to the change of use of existing buildings. Given its location in the floodplain, any proposals are expected to be modest and comply with the context of the low-key approach to recreation on this site. No new construction appears to be promoted and no change on policy wording is required.
- 4.20. Should proposals come forward for all these activities, despite the adoption of this policy change, they would have to show that any threats to all the qualifying features from pollution, erosion, disturbance etc could be accommodated. Appropriate licences and consents may also have to be secured from the Environment Agency and/or other bodies as necessary.

#### Integrity test for Policies RC1

**Providing the policy is modified as suggested, the Council will be able to ascertain that Policy RC1 will have no adverse effect on the integrity of the River Derwent SAC.** There would be no, 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. As with Policy RC1 above, and N1 below, if subsequent development included an expansion in the number of dwellings, this could increase the size of the local population and number of visitors to the riverside given its proximity (especially if the proposed expansion of recreational space in RC1 is implemented). This could, in turn, increase the disturbance of otter populations (other features are considered resilient to recreational pressure).
- 4.23. Whilst daytime activities should not represent a threat, the degree of lighting, noise and human presence at night could all be expected to increase when otters, for instance, are most active. Conversely, commercial development is likely to be less of a threat as any workforce would typically have less time to visit the SAC and occasional trips would most likely be during the day.
- 4.24. Ryedale District Council's Local Plan has already allocated housing across the district but has not allocated the land in question for residential use. To avoid an adverse effect on the integrity of the

River Derwent from the anticipated increase in population, it has devised a series of open spaces to provide alternative destinations for recreational activities. Because RC2 has not been allocated for housing, the mitigating effects of these open spaces cannot be employed to justify housing here. Given its proximity to the European site and the lack of open space associated with this site to provide alternative recreational opportunities, there is reasonable doubt that adverse effects on the integrity of the River Derwent could be ruled out.

- 4.25. As there are no other mitigation options available, **the only means of ensuring RC2 does not have the potential to cause an adverse effect on the integrity of the SAC is to amend the policy to ensure that residential development is excluded from future uses of this land.** This measure can be considered to be reliable, effective in the short and long-terms and can be guaranteed. There would be no residual effects and no need for an in-combination assessment.
- 4.26. Should residential proposals come forward despite the adoption of this policy change, it would have to show that any increase in recreational pressure could be accommodated and the measures to ensure this would have to be compatible with the increase in population anticipated.
- 4.27. 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, would 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.
- 4.28. However, this can be managed by the adoption of tried and tested construction techniques including oil and sediment traps amongst many others to effectively reduce the risk. In addition the existing drainage infrastructure can also be expected to accommodate threats posed when in use. Together, these bring confidence that the threat could be removed from all types of built development.
- 4.29. As these measures would be required by law and best practice to afford wide-ranging environmental safeguards and would not be required specifically for the SAC, they can be considered to be reliable, effective in the short and long-terms and their implementation guaranteed.
- 4.30. Given that this could be considered to represent mitigation, this would be compliant with the People Over Wind judgement. Given that it would be required by other means, there is no need for these measures to be specified in the policy wording, however.
- 4.31. Therefore, **it can be ascertained that adverse effects on the integrity of the River Derwent from the construction of non-residential development associated with Policy RC2 can be avoided.** There is no need for mitigation, no residual effects and no need for an in-combination assessment.
- 4.32. Should residential proposals come forward despite the adoption of this policy change, they would not only have to it satisfy flood risk criteria (as the area sits within the flood plain) but would also have to show that any increase in recreational pressure could be accommodated and the measures to ensure this would have to be compatible with the increase in population anticipated.

#### Integrity test for Policies RC1

**Providing the policy is modified to remove the possibility of residential development as suggested, the Council will be able to ascertain that Policy RC2 will have no adverse**

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**effect on the integrity of the River Derwent SAC.** There would be no, no residual effects, and no need for an in-combination assessment.

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## Policy CF1

- 4.33. 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 is considered almost inconceivable that the relatively modest scale of development could result in any adverse effects on the SAC.
- 4.34. This is because the limited range of activities required to construct the facility would be unlikely to present a threat of any magnitude to groundwater resources and any fuel spills can be confidently expected to be accommodated by the existing drainage infrastructure. Furthermore, it 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.
- 4.35. Confidence in this outcome can be drawn from the need for any development of this scale to be accompanied by comprehensive construction techniques to effectively rule out any threat from pollution etc. As these measures would be required by law and best practice to afford wide-ranging environmental safeguards and would not be required specifically for the SAC, they can be considered to be reliable, effective and their implementation guaranteed.
- 4.36. Given that this could be considered to represent mitigation, this would be compliant with the People Over Wind judgement. Given that it would be required by other means, there is no need for these measures to be specified in the policy wording, however.
- 4.37. Therefore, it can be ascertained that adverse effects on the integrity of the River Derwent from Policy CF1 can be avoided. There is no need for mitigation, no residual effects and no need for an in-combination assessment.

### Integrity test for Policies CF1

**The Council will be able to ascertain that Policy CF2 will have no adverse effect on the integrity of the River Derwent SAC.** There would be no need for mitigation, no residual effects, and no need for an in-combination assessment.

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## Policy N1

- 4.38. This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre. The establishment of a car park appears to be the main objective but further, unspecified development is not ruled out.
- 4.39. Providing development is limited to construction and use of a car park, it is almost inconceivable that adverse effects on the integrity of the River Derwent could arise. This is because the limited range of activities required to construct the facility would be unlikely to present a threat of any magnitude to groundwater resources and any fuel spills can be confidently expected to be accommodated by the existing drainage infrastructure. Furthermore, it is separated from the river by the railway line making any incidents even less likely to arise in the river.
- 4.40. Confidence in this outcome can be drawn from the need for any development of this scale to be accompanied by comprehensive construction techniques to effectively rule out any threat from pollution etc. As these measures would be required by law and best practice to afford wide-ranging

environmental safeguards and would not be required specifically for the SAC, they can be considered to be reliable, effective in the short and long-terms and their implementation guaranteed.

- 4.41. Given that this could be considered to represent mitigation, this would be compliant with the People Over Wind judgement. Given that it would be required by other means, there is no need for these measures to be specified in the policy wording, however.
- 4.42. For the avoidance of doubt, it is not considered that the provision of a car park in this location would increase recreational pressure on the SAC because although in close proximity as the crow flies, access to the riverbank is restricted by the presence of the railway line and would necessitate a long walk to gain access via other means.
- 4.43. **Overall, therefore, in terms of the provision of a new car park, it can be ascertained that adverse effects on the integrity of the River Derwent from Policy N1 can be avoided. There is no need for mitigation, no residual effects and no need for an in-combination assessment**
- 4.44. In contrast, the policy as currently worded does not rule out other development of an unspecified nature. Whilst this could take a variety of forms, which could be considered along the same lines as the car park above, proposals for housing (depending on its form and density) could increase significantly the local population and lead to greater pressure on the SAC, especially if Policy CR1 is implemented.
- 4.45. Ryedale District Council's Local Plan has already allocated housing across the district but has not allocated the land in question for residential use. To avoid an adverse effect on the integrity of the River Derwent from the anticipated increase in population, it has devised a series of open spaces to provide alternative destinations for recreational activities. Because N1 has not been allocated for housing, the mitigating effects of these open spaces cannot be employed to justify housing here. Given its proximity to the European site and the lack of open space associated with this site to provide alternative recreational opportunities, there is reasonable doubt that adverse effects on the integrity of the River Derwent could be ruled out.
- 4.46. As there are no other mitigation options available, **the only means of ensuring N1 does not have the potential to cause an adverse effect on the integrity of the SAC is to amend the policy to ensure that residential development is excluded from future uses of this land.** This measure can be considered to be reliable, effective in the short and long-terms and can be guaranteed. There would be no residual effects and no need for an in-combination assessment.
- 4.47. Should residential proposals come forward despite the adoption of this policy change, it would have to show that any increase in recreational pressure could be accommodated and the measures to ensure this would have to be compatible with the increase in population anticipated.

#### Integrity test for Policies N1

**Providing the policy is modified as suggested, the Council will be able to ascertain that Policy N1 will have no adverse effect on the integrity of the River Derwent SAC.** There would be no, no residual effects, and no need for an in-combination assessment.

## Conclusion of the appropriate assessment

- 4.48. The appropriate assessment found that provided mitigation measures were adopted, including the removal of some types of proposed development and restrictions on others, adverse effects on the

integrity on the River Derwent SAC could be ruled out for Policies RC1, RC2 and N1. Adverse effects from Policy CF1 could be ruled out without the need for mitigation.

- 4.49. Certain proposals have been recommended for exclusion. This is partly because of the limited detail presented in the policies. In these cases, reasonable worst-case scenarios were adopted, and it is possible that some of the restrictions recommended above could be removed if the policies were refined. If the NDP is not modified, this does not necessarily 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: Initially, adverse effects on the integrity of the River Derwent SAC could not be ruled out. However, when mitigation in the form of changes to policy wording was considered, adverse effects on the integrity of the European site could be avoided beyond reasonable doubt.** There would be no residual effects and, therefore, no need for an in-combination assessment.
- 5.3. **Policy RC2: Initially, adverse effects on the integrity of the River Derwent SAC could not be ruled out. However, when mitigation in the form of changes to policy wording was considered, adverse effects on the integrity of the European site could be avoided beyond reasonable doubt.** There would be 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 beyond reasonable doubt without the need for mitigation.** There would be no residual effects and, therefore, no need for an in-combination assessment.
- 5.5. **Policy N1: Initially, adverse effects on the integrity of the River Derwent SAC could not be ruled out. However, when mitigation in the form of changes to policy wording was considered, adverse effects on the integrity of the European site could be avoided beyond reasonable doubt.** There would be 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. Providing the modifications are adopted, 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

June 2020

## 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
<b>1. All plans (terrestrial, coastal and marine)</b>	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
<b>2. Plans that could affect aquatic features</b>	(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	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.  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.  However, all features of the River Derwent SAC remain vulnerable to development in the Plan.  Note that the <i>indirect</i> effects of changes to wastewater disposal are assessed separately under '7b'.	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	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.  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 proposed can be confidently ruled out from any further consideration.	None

			Note that the <i>indirect</i> effects of changes to wastewater disposal are assessed separately under '7b'.	
<b>3. Plans that could affect the marine environment</b>	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
<b>4. Plans that could affect the coast</b>	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
<b>5. Plans that could affect mobile species</b>	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>Given the distance between the plan area and the Lower Derwent Valley European site, otter populations which range along the entire length of the river, can be considered to be distinct from those found within the plan area. Consequently, harmful effects 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
<b>6. Plans that could increase recreational pressure on European sites potentially vulnerable or</b>	(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 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.	River Derwent SAC

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sensitive to such pressure			<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>	
	(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	River Derwent SAC (upstream and downstream but beyond the plan area)	<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>	None
	(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	Peak District SPA, SAC Flamborough Head SPA North York Moors SPA, SAC Yorkshire Dales SPA and SAC	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.	None
<b>7. Plans that would increase the amount of development</b>	(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	Ellers Wood and Sand Dale SAC Lower Derwent Valley SPA, SAC, Ramsar	<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</p>	None

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		North York Moors SPA, SAC River Derwent SAC Strensall Common SAC	sites from anticipated development in the region anyway, either alone or in combination with other plans or projects <sup>33</sup> . Therefore, all potentially affected sites can therefore be ruled out from further scrutiny.	
	(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	Lower Derwent Valley SAC, Ramsar River Derwent SAC	The plan does not promote intensive development and so the need for additional effluent discharge does not arise. Therefore, all potentially affected sites can be ruled out from further scrutiny.	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	Lower Derwent Valley SPA, SAC, Ramsar River Derwent SAC Strensall Common SAC	The plan does not contain proposals that will meaningfully increase road traffic within the plan area or beyond. Therefore, all potentially affected sites can be ruled out from further scrutiny.	None
<b>8 Plans for linear developments or infrastructure</b>	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
<b>9. Plans that introduce new activities or new uses into the marine, coastal or terrestrial environment</b>	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

<sup>33</sup> Water Resource Management Plan 2014 Strategic Environmental Assessment Post Adoption Statement Cascade/Yorkshire Water

<b>10. Plans that could change the nature, area, extent, intensity, density, timing or scale of existing activities or uses</b>	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
<b>11. Plans that could change the quantity, quality, timing, treatment or mitigation of emissions or discharges to air, water or soil</b>	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
<b>12. Plans that could change the quantity, volume, timing, rate, or other characteristics of biological resources harvested, extracted or consumed</b>	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
<b>13. Plans that could change the quantity, volume, timing, rate, or other characteristics of physical resources extracted or consumed</b>	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

<b>14. Plans which could introduce or increase, or alter the timing, nature or location of disturbance to species</b>	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
<b>15. Plans which could introduce or increase or change the timing, nature or location of light or noise pollution</b>	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
<b>16. Plans which could introduce or increase a potential cause of mortality of species</b>	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 Citation including qualifying features	<p><b>EC Directive 92/43 on the Conservation of Natural Habitats and of Wild Fauna and Flora</b></p> <p><b>Citation for Special Area of Conservation (SAC)</b></p> <p><b>Name:</b> River Derwent</p> <p><b>Unitary Authority/County:</b> East Riding of Yorkshire, North Yorkshire, York</p> <p><b>SAC status:</b> Designated on 1 April 2005</p> <p><b>Grid reference:</b> SE704474</p> <p><b>SAC EU code:</b> UK0030253</p> <p><b>Area (ha):</b> 411.23</p> <p><b>Component SSSI:</b> River Derwent SSSI</p> <p><b>Site description:</b></p> <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><b>Qualifying habitats:</b> The site is designated under <b>article 4(4)</b> of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:</p> <ul style="list-style-type: none"> <li><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)</li> </ul> <p><b>Qualifying species:</b> The site is designated under <b>article 4(4)</b> of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Bullhead <i>Cottus gobio</i></li> <li><input type="checkbox"/> River lamprey <i>Lampetra fluviatilis</i></li> <li><input type="checkbox"/> Otter <i>Lutra lutra</i></li> <li><input type="checkbox"/> Sea lamprey <i>Petromyzon marinus</i></li> </ul>

## 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 the bridge) and therefore cannot have any effect on a on a European site.	G – Screened out
TM3: 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 the bridge) and therefore cannot have any effect on a on a European site.	G – Screened out
TM4: 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
TM5: County Bridge Level Crossing	This policy seeks to encourage the introduction of several highway management improvements such as traffic lights and pedestrian crossings around the County Bridge Level Crossing. 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
TM6: Traffic Management Plans	This policy seeks to encourage the development of Traffic Management Plans for new development. It does not directly lead to development and therefore cannot have any effect on a on a European site.	G – Screened out
RC1: Malton and Norton River Corridor Development	<p>This policy seeks to encourage the development of new open space and so increase recreational use of a 1.2km stretch of 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 unspecified change of use of</p>	I – Screened in

Policy	Rationale	Screening outcome
	<p>existing buildings. New moorings and fishing pegs are also suggested.</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 Infrastructure	This policy seeks to protect the existing network of Green 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	<p>This policy seeks to expand the facilities at Norton swimming pool which lies in relatively close proximity to the River Derwent SAC.</p> <p>Consequently, harmful effects from construction on the aquatic and mobile features of the SAC cannot be ruled out and so this policy is carried forward for formal screening. Effects from recreational pressure can be ruled out.</p>	I – Screened in
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	G – Screened out

Policy	Rationale	Screening outcome
	that this could result in any harmful effects on this or any other European site.	
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 Europeans 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 the conservation objectives of the European site will not be undermined, and harmful effects avoided.</p>	H – Screened out
TC4: Wentworth Street	<p>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.</p>	G – Screened out
HRI1: Protection of Horse Racing Stables	<p>This policy seeks to safeguard the functioning or similar equine use of existing horse stables and identifies criteria to be applied should different proposals arise ad threaten their continued use. It does not directly lead to development and therefore can have no effect on any European site.</p>	G – Screened out
HRI2: Horse Racing Zones and Development	<p>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.</p>	G – Screened out

Policy	Rationale	Screening outcome
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 the conservation objectives of the European site will not be undermined, and harmful effects 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-Derwent Conservation Area	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 development and so cannot have any effect on a on a European site.	B – Screened out
HD8: Malton Old Town Conservation	This policy seeks to encourage the enhancement of the Malton Old Town conservation area by identifying criteria to	B – Screened out

## Appendices

Policy	Rationale	Screening outcome
Area – Enhancement	evaluate proposals. It does not directly lead to development and so cannot have any effect on a on a European site.	
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> <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
N1: Land to the Rear of	This policy seeks to encourage the redevelopment of land to the rear of Commercial Street in Norton town centre. The establishment of a car park appears to be the main objective	I – Screened in

Policy	Rationale	Screening outcome
Commercial Street	<p>but further, unspecified development is not ruled out and 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>	