

Proposed amendments and additions for the final Purbeck Local Plan HRA 2019

Rachel Hoskin and Durwyn Liley, 17th July 2019

This note provides a summary of proposed amendments and additions to the Habitats Regulations Assessment (HRA) supporting the Purbeck Local Plan. The plan is currently the subject of an Examination in Public, taking place during the summer of 2019, following which any final modifications to the plan will be made for consultation prior to adoption. Footprint Ecology has been working with the Council and Natural England to prepare the HRA alongside the emerging plan. At the modifications stage, the HRA will check any proposed modifications to ensure that the conclusions of the HRA remain appropriate, and that any modifications do not pose any additional risks to European sites.

Work on the HRA to prepare a final version also allows an opportunity to incorporate any additional recommendations that may have been discussed during the Examination Hearings. A representation made on the HRA has highlighted that there are some gaps in the HRA narrative that need to be filled in order to explain the conclusion of no adverse effects on any European site.

The discussions have focused around:

- presenting further information and clarity in respect of the baseline condition of the relevant European sites;
- re-consideration of the way in which the HRA presents screening opinions on 'likely significant effects' (LSE), including more explicit reference to the potential for 'in combination effects' and explanation of how European site conservation objectives have guided the screening assessment; and
- adding further detailed explanations within the appropriate assessment in relation to those aspects of the plan where likely significant effects have been identified.

Footprint Ecology, Natural England and the Council consider that the HRA has been undertaken in accordance with the legislation and good practice. It is however recognised, with the benefit of representations made, that the in-depth discussions, earlier evidence relating to potential impact pathways and the iterative process of considering site allocations and mitigation requirements in liaison with the Council and Natural England are not fully explained. Furthermore, it is apparent that all conclusions drawn at the screening for likely significant effects are not clear to the reader of the HRA. Despite this, the parties do not consider that the further work to add clarity and additional explanation would lead to any changes in the overall conclusions relating to adverse effects on European sites. The parties are clear that there are effective avoidance and mitigation measures secured, which provide a credible approach to addressing the potential impacts, giving certainty in effective protection

of European site interest whilst recognising that some detail is more appropriately developed at a later stage.

In response to representations and discussions at the Hearings, the Council has engaged Footprint Ecology to add clarification to the HRA, which Footprint Ecology suggests would be best undertaken at the modifications stage when the final screening of proposed modifications will be undertaken. It is important that the HRA fully tells the decision-making story, and all parties therefore welcome the representations made.

Footprint Ecology has worked very closely with the Council and Natural England on HRA matters throughout the preparation of the plan through numerous meetings and telephone discussions, which in many respects is over and above what we normally find when working on plan level HRAs. This is very positive, but we recognise that, as a consequence, the HRA may not provide enough clarity on the progression story.

The HRA work has been iterative and rigorous, and the following proposals are to improve the narrative rather than alter any assessment made. The Council and Natural England are satisfied that there are no adverse effects on European site integrity and are also satisfied with the progression of the plan and the development of robust mitigation measures over time.

The following table summarises the proposed amendments and additions to the HRA supporting the Purbeck Local Plan, which it is proposed should be made as part of the final HRA report that will consider the potential impacts of any modifications prior to adoption of the Purbeck Local Plan.

Additionally, for assistance we have provided two appendices as follows:

- Appendix 1: Brief summary of guidance and caselaw highlighted by the HRA representation submitted
- Appendix 2: Explanation of the different mitigation approaches to heathland and coastal sites in relation to recreation pressure.

In response to Hearing session discussions, these appendices are provided to assist in giving confidence that the conclusions of the HRA are appropriate at the plan level, and accord with caselaw and good practice guidance, along with additional clarity on the specific approaches to mitigation.

A separate note has also been prepared by the Council, in response to Examination hearing discussions, to provide a strategic over-view of the SANGs/HIPs in Purbeck. This has been prepared following discussions around dealing with likely significant effects from windfall development, including small sites. Key aspects of the information within this separate note will also be added to the final HRA.

Table summarising proposed amendments to the HRA

LSE = likely significant effects AA = appropriate assessment

Proposed amendment	Reason	Implications for the HRA
Explicitly state which potential impacts have been ruled out at the screening for LSE stage	The screening table states where a risk is going to AA, but it does not explicitly state which risks are ruled out	A clearer explanation of screening conclusions, does not alter the screening conclusions drawn
Additional explanation of how in-combination effects are factored into the strategic mitigation approaches	In-combination considerations are implicit within the strategic approaches, but this is not specifically highlighted as part of the description of strategic approaches within the HRA	Recognition within the HRA of consideration of in-combination effects as part of the strategic approaches, in accordance with the legislation, does not alter the screening conclusions drawn
Specifying which adverse effects are ruled out by the avoidance and mitigation measures	Greater clarity required on which effects have been ruled out within the AA	Better narrative from LSE screening to AA and then to conclusions drawn. Adverse effects ruled out will be more clearly stated, and conclusions remain the same
Clearer explanation of the way in which strategic mitigation functions in principle	To avoid any confusion as to how strategic approaches to mitigation work and the benefits over case by case approaches to mitigation	Adds explanation for the reader only, does not alter any assessment undertaken
A description of the strategic mitigation approach, to include the role of the 400m buffer, types of measures HIP/SANG and SAMM. Explain further what measures SAMM includes	To give a better picture of how the measures work and the different strands that work in a combined way, including wardens on the ground, education, co-ordination of Police and Fire Brigade responses and operation Heathland and Dorset Dogs initiative, and how the annual monitoring report feeds back into the strategy	Adds explanation for the reader only, does not alter any assessment undertaken

Proposed amendment	Reason	Implications for the HRA
Add a clearer narrative from previous HRA work, strategic mitigation evidence and the current HRA	To improve the narrative with additional explanation of any conclusions carried forward from earlier HRA work, and how they can still be relied upon (new evidence or evidence continues to be robust)	Clearer narrative of the linkages between different aspects of HRA work and evidence over time, and confidence in conclusions drawn, but does not alter conclusions made
Include a better narrative in relation to previous conclusions re employment sites, air quality, water resources, coastal sites and the New Forest	To improve the narrative with additional explanation of any conclusions carried forward and how they can still be relied upon (new evidence or evidence continues to be robust). A cross reference to HRA work on the England Coast Path would also be beneficial.	Clearer narrative of the linkages between different aspects of HRA work and evidence over time, and confidence in conclusions drawn, but does not alter conclusions made. Reference to the England Coast Path will be informative only
Provide a more detailed explanation of the verbal and meeting related liaison work as site allocations were considered and SANG sites assessed	To provide a better 'progression story' for the HRA conclusions	Adds explanation for the reader only, does not alter any assessment undertaken
Add text to explain why potential risks to salmon outside designated site boundaries are ruled out	To ensure that the HRA includes consideration of habitat outside site boundaries that has the potential to support salmon populations linked to SAC populations	This is to confirm that risks have been ruled out for this impact pathway, with the benefit of expert opinion from Natural England and the Environment Agency

Appendix 1: Brief summary of guidance and caselaw highlighted by the HRA representation submitted

There is a recognised principle of good practice in HRA work that the tests set out within the Habitats Regulations in relation to HRA apply equally to both plans and projects. The legislation does not differentiate. However, the legislation is seeking certainty, and certainty at plan level can be reached with an understanding of the availability of viable mitigation, that can be effectively secured, without a level of detail that is better developed at the project level. If there is evidence based certainty in the effectiveness of mitigation, then it is deemed acceptable to develop any detail that does not alter the principle of certainty at a later and more appropriate HRA stage, which may be at a lower tier plan such as a masterplan, or as part of the project. The following EC guidance documents was referenced during the Hearing sessions, and the following extracts help to reiterate this point.

EC Guidance Document – Managing Natura 2000 sites – the provisions of Article 6 of the Habitats Directive 92/43/EEC – Nov 2018 (republished version)

Page 37 – explanation of plans and projects

Although land-use plans do not always authorise developments and planning permission must be obtained for development projects in the normal manner, they have great influence on development decisions. Therefore land-use plans must be subject to appropriate assessment of their implications for the site concerned.

Sectoral plans should also be considered as covered by the scope of Article 6(3), again in so far as they are likely to have a significant effect on a Natura 2000 site.

Where one or more specific projects are included in a plan in a general way but not in terms of project details, the assessment made at plan level does not exempt the specific projects from the assessment requirements of Article 6(3) at a later stage, when much more details about them are known.

The above paragraph then provides a link to the EC guidance below to further illustrate the point. The guidance below specifically relates to energy infrastructure projects, but adds to confirmation of the principle of certainty in European site protection at the plan level but allowing for details to be developed at later stages.

EC Guidance Document – Streamlining environmental assessment procedures for energy infrastructure projects of common interest (PCIs)

Page 21 Table setting out the integration of Appropriate Assessment at different levels of the planning and permitting process

The AA at the level of national energy or grid planning should focus on avoiding sensitive locations, i.e. locations where siting of the proposed energy infrastructure might jeopardise Natura 2000 site conservation objectives as well as Natura 2000 protected species outside Natura 2000 sites. This does not mean that energy infrastructure cannot be built inside Natura 2000 areas, nor that energy infrastructure outside Natura 2000 sites will not harm Natura 2000 site conservation objectives. This has to be investigated case-by-case. Cumulative impacts are also important at the strategic plan level; they are often not sufficiently taken into account in AA at all levels. Preparing an AA for a national energy or grid plan however offers an opportunity to consider potential cumulative biodiversity impacts that could be generated by the combined realisation of different energy infrastructure projects and to adapt the plan in order to avoid significant cumulative impacts. An example is the cumulative impact of power lines and wind farms on migratory birds.

At the level of project-driven spatial planning, AA should focus in greater detail on the potential Natura 2000 impacts of the more narrowly defined location alternatives. These may be routing alternatives which differ by as little as a few kilometres or less. In some cases, the AA at this level will allow identification of the need for compensation measures and even the location of these measures.

Finally the AA in the framework of the permit granting process for an even more concrete project will focus on additional fine-tuning of the type and significance of impacts and any required mitigation measures. This fine-tuning might involve defining a more suitable location as well as the precise nature of measures to reduce the impact. In case of projects justified for Imperative Reasons of Overriding Public Interest (IROPI), if the need for re-routing or compensation only arises at the very last phase of the planning and permitting process, considerable time may be lost. Therefore, such issues should be considered an early stage.

The Conservation of Habitats and Species Regulations 2017, as amended, are normally referred to as the Habitats Regulations. These domestic Regulations reflect and transpose the requirements European Habitats Directive and Wild Birds Directive. The Habitats Regulations have been amended and consolidated a number of times since 1994 when they first became domestic law. These changes have often been in response to points of law that have been clarified with cases considered by the European Court. Similarly, caselaw has influenced guidance and agreed practice in relation to undertaking HRAs of plans and projects.

Two European court cases have been cited by a representation and discussed at the Hearing Sessions. **Case C/323/17**, referred to as 'People over Wind' provides practitioners with a reminder of the specific steps in the HRA process, and the need to ensure that where mitigation measures are being applied, they should be properly tested at the appropriate assessment stage. Whilst this case relates to a development project, the principles are still applicable to a plan. The HRA for the Purbeck Local Plan recognises this and assesses mitigation requirements at the appropriate assessment stage. It is suggested however that the final HRA provides additional narrative to confirm adherence to this important recent European Court case.

CASE C-399/14 has also been specifically referenced in a representation on the HRA. This case again relates to a development project, which is a bridge over the Elbe River, Germany. The issue was that the authority carried out a preliminary survey which was more of a risk

assessment than a full survey. The Green League of Saxony applied to have the scheme approval annulled and for construction works to be suspended.

The Judgment considers if a plan or project carried out prior to the site becoming a Site of Community Importance (SCI) should be subject to a review under Article 6(2) of the Habitats Directive, with a conclusion that it should, and clear reference is made to the assessment review needing to be capable of removing all scientific doubt (50). In the absence of a demonstration of no adverse effects, and further assessment of the effects of removal of the bridge concluding that the removal would not lead to adverse effects, it was concluded that the structure should be removed.

This case is about reviewing a permission which has been enacted, yet later found to be having an adverse effect on integrity, and what the authority needs to do about it in terms of the review and what it may or may not consider. The relevance to HRA in terms of the Purbeck Local Plan is therefore just ensuring application of the HRA principle of no scientific doubt. Recognising the extensive work undertaken to develop the strategic approach for recreation impacts, and the progression of work to develop suitable SANGs/HIP proposals, it is concluded that the HRA is in accordance with this case. As noted in the above table however, additional narrative in relation to the strategic approach can be added to the final HRA.

Appendix 2: Explanation of the different mitigation approaches to heathland and coastal sites in relation to recreation pressure

At the Examination Hearing there was some discussion relating to coastal European sites and potential recreation impacts. This appendix provides some additional information that can be incorporated into the final HRA.

The HRA for the PLP1 indicated that the new housing and new tourist accommodation, if implemented without mitigation measures, could result in an adverse effect upon the integrity of the Dorset Heaths (Purbeck & Wareham) and Studland Dunes SAC, the Isle of Portland to Studland Cliffs SAC and the St Alban's Head to Durlston Head SAC. Development in Swanage is likely to have the greatest impact, but development within much of the District may contribute to the numbers of people visiting the coast.

Whilst some of the impacts (such as trampling and eutrophication) are similar for coastal habitats and heathland ones, the impact of new local housing on coastal sites is less. This is because the interest features are less vulnerable, for example the sites are not SPA sites and do not support ground-nesting birds susceptible to disturbance. The impacts from increased housing are potentially 'diluted' in that the coastal sites are heavily visited by tourists, and receive many more visitors than, for example, the heaths. Furthermore, there is significant infrastructure in place at many coastal sites to manage the recreation, for example the National Trust at Studland have sections of dunes fenced off to protect from trampling; at Durlston Country Park there is a visitor centre with a ranger team, education facilities and marked routes. Further east along the coast, the National Trust have introduced a permit scheme for organised groups (coasteering etc.) and there have been changes to the parking – for example introducing parking charges at Langton.

The HRA for the PLP1 discussed the issues in considerable detail and suggested that the impacts of additional pressures on the dune and calcareous grassland SACs arising purely from recreational increase associated with local development may be slight or undetectable, in the context of considerable existing pressure and the infrastructure in place to manage it. This is clearly very different to the impacts on the heaths, where there is considerable evidence of recreation impacts and urban effects. As such a proportionate approach is necessary for coastal sites and recreation issues, involving a partnership approach whereby monitoring ensures that if any issues occur (and these will be localised) they can be resolved through additional ranger presence, path diversions, dog bins etc. Such an approach provides the confidence that adverse effects on integrity can be ruled out. This partnership approach is identified within the relevant site improvement plan¹.

Monitoring to date has included:

- SSSI condition monitoring undertaken by Natural England
- Automated counters recording visitor numbers at Durlston Country Park
- Some recording of visitors around the cliffs, caves and ledges (climbing, coasteering etc) as part of annual boat-based seabird monitoring

¹ See <http://publications.naturalengland.org.uk/publication/6737802813243392>

Checks with Natural England (in July 2019) of condition assessment monitoring undertaken and relevant issues show that the only identified issues from trampling are within Unit 45 of the Isle of Portland SSSI (Isle of Portland to Studland Cliffs SAC). This is at Portland Bill, well outside Purbeck and is a tourist hot-spot. Here vegetation restoration works have been put in place over a number of years and monitoring shows the vegetation to be recovering. Monitoring within Purbeck, at the sites likely to be regularly visited by Purbeck residents, has not as yet shown similar impacts. The mitigation approach for the coastal sites is therefore considered to be proportionate and appropriate, and is supported by Natural England.