

**An Appropriate Assessment of the implications of a plan or project on
European sites in view of those site's conservation objectives.**

Background

- 1 Under the requirements of the Habitats Regulations the Council has a duty to ensure that the development proposed in its Plan does not have an adverse effect on the integrity of any European nature conservation designations. New Forest District is situated in an area with a number of European nature conservation designations within and adjoining the District as set out below.
- 2 The Habitats Regulations Assessment of the Local Plan 2020 identified potentially harmful recreational impacts arising from new residential development on both the New Forest European Sites ¹ and the Solent Coastal European Sites ². An increase in the residential population of the District through the provision of new homes is likely to lead to an increase in the number of residents visiting those parts of the New Forest, the coast, the Avon Valley and the Dorset Heaths which are designated for their nature conservation importance. Recreational visits for personal recreation and for dog walking may lead to disturbance to the habitat of ground nesting birds, overwintering waders and wildfowl which contribute to the designation of these areas as European nature conservation sites.
3. Under the terms of s.63 of the Habitats Regulations 2017, if a plan or project is likely to have a significant effect on a European site, either by itself or in combination with other plans or projects, an "Appropriate Assessment" (AA) has to be carried out of the implications of the project or plan in view of the European site's conservation objectives.
4. The Council, adopted the Local Plan Part 1 Planning Strategy in July 2020. The Habitat Regulation Assessment for the Local Plan Part 1 [Habitats Regulations Assessment of New Forest District Local Plan Part 1](#) concluded that the recreational impacts on designated sites arising from planned residential development, either alone or in combination with other plans or projects need to be addressed. To enable the planned residential development to proceed the Conservation of Habitats and Species Regulations require that appropriate mitigation measures are in place to ensure that the proposed development can take place without a harmful impact on the integrity of protected sites.

1 New Forest European Site comprising the New Forest SAC/SPARAMSAR site

2 Solent Coastal European Site comprising Southampton Water SPARAMSAR site, Solent & Isle of Wight Lagoons SAC, Solent Maritime SAC

5. For reference purposes, the final list of European sites that have been considered in the HRA of the Local Plan Part 1 is as follows:

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| • River Avon SAC. |
| • Avon Valley SPA. |
| • Avon Valley Ramsar site. |
| • Dorset Heaths SAC. |
| • Dorset Heathlands SPA. |
| • Dorset Heathlands Ramsar site. |
| • The New Forest SAC. |
| • New Forest SPA. |
| • The New Forest Ramsar site. |
| • River Itchen SAC. |
| • Solent and Dorset Coast SPA |
| • Solent and Isle of Wight Lagoons SAC; |
| • Solent Maritime SAC; |
| • Solent and Southampton Water SPA; |
| • Solent and Southampton Water Ramsar site. |

6. Revised Supplementary Planning Document on Mitigation of Recreational Impacts was adopted in May 2021. [Mitigation for Recreational Impacts On New Forest European Sites - New Forest District Council](#). The mitigation projects this strategy will deliver are fundamentally about restoring the 'status quo' in terms of impacts on the designated European sites resulting from development in the New Forest District outside of the National Park.

7. Mitigation for recreational impacts has four main elements:

- Provision of new areas of publicly accessible alternative natural recreational greenspace (ANRG);
- Enhancement of existing greenspace and footpaths/rights of way in all settlements where new residential development takes place;
- Access and visitor management - measures include the provision of rangers for the New Forest European sites;
- Monitoring - the gathering of further information, including about the condition of European sites' habitats and species and visitor patterns, and to gain a better understanding of the effects of visitors and other factors influencing the condition of the protected sites; and the monitoring of progress in implementing the mitigation strategy.

8. The Council, advised by Land Use Consultants (LUC), has worked with [Natural England](#), the [New Forest National Park Authority](#), the [Hampshire and Isle of Wight Wildlife Trust](#) and the [Royal Society for the Protection of Birds](#), to develop an effective strategy for the mitigation of possible recreational impacts on the European nature conservation sites from residential development planned within the plan area over the plan period.
9. A review of available evidence shows a lack of conclusive evidence regarding the impact of recreation activities on designated features at the New Forest European sites, and it is not possible to isolate the impacts arising from development in this Plan from the in combination effect of growth in the wider sub region.
10. In respect of the New Forest European sites, LUC's review of evidence has however confirmed that whilst evidence of significant adverse effects from recreation is inconclusive, reliance can be placed on the mitigation provided by Policy ENV1, the New Forest (outside of the National Park) Recreational Mitigation Strategy, and the Solent Recreation Mitigation Strategy to adequately mitigate potential recreation pressure from development proposed by the Local Plan Part 1 and that adverse effects on integrity due to recreation pressure can be ruled out for all European sites both alone and in combination.
11. The provision of alternative natural recreational greenspace, integral to new residential development, may contribute to the mitigation of the potential effects on both the Southampton Water and Solent Coast and New Forest European Sites since its provision will divert the same new residents from either European site. However, whilst the HRA makes this conclusion, strategic mitigation measures for the New Forest sites and Solent sites remain separate and both need to be adhered to as appropriate to ensure compliance with Habitat Regulations. The impacts on the Solent Coast sites are specifically addressed through the [Solent Recreation Mitigation Strategy](#).

Implications of the 'People over Wind' [Peter Sweetman v Coillte Teoranta (Case C-323/17)] European Court of Justice judgement

12. On 12th April 2018, the Court of Justice of the European Union (CJEU) issued a judgment which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures should be assessed within the framework of an Appropriate Assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. This means that all proposals for residential development require an Appropriate Assessment to be undertaken before planning permission may be granted.
13. The Council acknowledges that The Habitats Regulations may require an Appropriate Assessment at the level of individual proposals (sections 63 and 70 of the Regulations) and at the level of land use plans (section 105). The Council relies on the evidence supplied for an Appropriate Assessment at the level of the land use plan to support its Appropriate Assessment at the level of individual planning applications. This is because objective analysis of the impact of recreational use is only possible when considering the scale of development anticipated at the land use plan level. It is not possible to isolate the likely impact of small numbers of dwellings on the conservation features of European sites; the unit of analysis is simply too small. The Habitat Regulations allows for analysis "either alone or in combination" (my emphasis). The following

Appropriate Assessment has been prepared on this basis.

The Assessment

This document provides an Appropriate Assessment to check and confirm that avoidance and mitigation measures can be secured to prevent adverse effects of the proposed development (a) on the integrity of the European sites identified below (b).

The “competent authority” for the purposes of the Habitat Regulations Part 1 Article 7 (3) (e) (i) is **New Forest District Council**.

a) The Planning proposal

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|--------------|--|
| LPA Ref | 21/10938 |
| Site Address | Former POLICE STATION, SOUTHAMPTON ROAD, LYMINGTON SO41 9GH |
| Proposal | Demolition of existing building and redevelopment of the site to form 32no. Retirement apartments including communal facilities, access, car parking and landscaping |

- b) The Council has considered the work undertaken as part of The Habitat Regulations Assessment of the Local Plan. In accordance with People Over Wind & Sweetman v Coillte Teoranta (Case C-323/17), New Forest District Council has screened the development proposal and has concluded that, in the absence of mitigation, the above application will have a likely significant effect on the following European sites.

The European sites affected

- The New Forest European site (The New Forest SAC, SPA and Ramsar sites)
- The Solent and Southampton Water European site (Solent and Isle of Wight Lagoons SAC, Solent Maritime SAC, Solent and Southampton Water SPA and Ramsar sites)
- The River Avon SAC, SPA and Ramsar
- Isle of Wight Lagoons SAC/Solent Maritime SAC (Solent Coastal European sites).
- Dorset Heathlands SAC, SPA and Ramsar

A plan showing the European sites is attached at **Appendix A**

A plan showing the location of the project site in relation to the nearest European sites is attached at **Appendix B**.

The conservation objectives of the European sites affected

- c) The conservation objectives of the identified European sites are set out in the Habitats Regulations Assessment of the Local Plan Part 1

[Habitats Regulations Assessment of New Forest District Local Plan Part 1](#)

Date of consultation with Natural England and any response

- d) Natural England has provided the Council with written confirmation that in cases where avoidance and mitigation measures are limited to collecting a funding contribution that is in line with the agreed strategic approach for the mitigation of impacts on European Sites as set out in the New Forest District Council Mitigation Strategy for European Sites SPD, then provided no other adverse impacts are identified in the Appropriate Assessment, Natural England “...*agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 Appropriate Assessment consultation*”.
- e) A copy of Natural England’s advice is attached at **APPENDIX C**.

Consideration of whether the plan or project, either alone or in combination with other plans or projects will adversely affect the integrity of the European site, having regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposed that the consent, permission or other authorisation should be given.

- f) The Habitat Regulations Assessment which was completed as part of the preparation of the Local Plan 2016-2036 Part 1 Planning Strategy (adopted July 2020) identified potentially harmful recreational impacts arising from residential development on designated sites. The proposed residential development the subject of this Appropriate Assessment forms part of the total level of development anticipated around 10,420 dwellings to come forward in the Local Plan period between 2006 – 2026. The Habitats Regulations Assessment of the Local Plan concluded that significant effects on both the New Forest and the Solent and Southampton Water SPA/SAC/Ramsar nature conservation designations associated with recreational impacts from the planned residential development cannot be ruled out. A precautionary approach is appropriate in line with the requirements of the Habitats Regulations until the evidence base is refined. The HRA concludes that mitigation is therefore required for all additional housing development within the Plan Area.
- g) Full details of the consideration the Council has given to the likely impact of this level of development is set out in the Habitats Regulations Assessment of the Local Plan Part 1 dated June 2018 which is available on the Council’s website:

Local Plan Part 1 HRA: [Habitats Regulations Assessment of New Forest District Local Plan Part 1](#)

- h) The Council has produced a Habitat Mitigation Strategy to deal with recreational impacts of the total housing provision planned for over the plan period between 2006 – 2026 of around 10,420 dwellings. The Council’s Mitigation Strategy (updated May 2021) is available on the Council’s website:
<https://www.newforest.gov.uk/article/1938/Recreational-Mitigation-Strategy>

All development within the Plan Area is required to provide or contribute to the projects set out in the Mitigation Strategy, or to provide mitigation to at least an equivalent mitigation effect. A legal agreement or Unilateral undertaking to secure the required contributions will be in place prior to the grant of permission.

The principle of requiring all new development to contribute to mitigation measures in proportion to its likely impact on the European sites is set out in policies of the Local Plan 2016-2036 Part 1: Planning Strategy, namely Policies ENV1, ENV3 and ENV4.

Case officer to delete as required

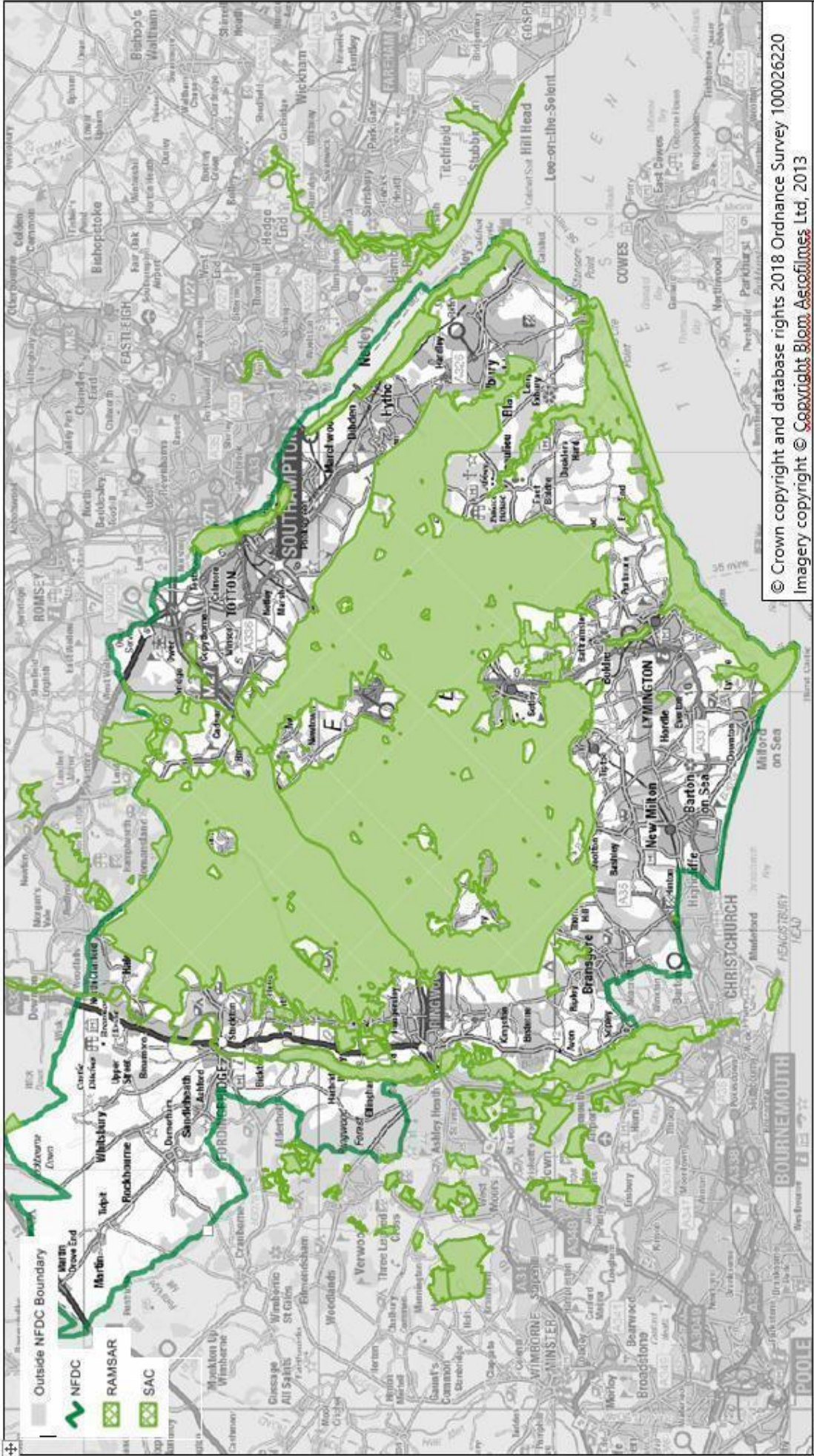
If to be granted:

i) Conclusion

The proposed project would, in combination with other developments, have an adverse effect due to the recreational impacts on the integrity of European sites, having regard to their conservation objectives but the adverse impacts would be avoided through completion of a legal agreement securing proposals for the mitigation of that impact in accordance with the Council's Mitigation Strategy or mitigation to at least an equivalent effect. Such an agreement should be secured in connection with this planning application.

22 September 2021

APPENDIX A overleaf



Notes



New Forest
DISTRICT COUNCIL

APPENDIX 1: European sites

Creator

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Date 25/06/18

Scale 1: 225000

APPENDIX B please see separate document listed on our website.

APPENDIX C

Sent: 12 Jul 2018 12:01:02 +0100

To: Development Control (Dev Control)

Subject: 18/10677 Change of Use as one dwelling (Appropriate Assessment included).
Headmasters Halls, The Square, Pennington, Lymington SO41 8GN

FAO Vivienne Baxter

Your ref: 18/10677

Our ref: 251239

Thank you for consulting Natural England on the above application.

No objection

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

Please note in future cases where the necessary avoidance and mitigation measures are limited to collecting a funding contribution that is in line with an agreed strategic approach for the mitigation of impacts on European Sites, the *New Forest District Council Mitigation Strategy for European Sites SPD*, then, provided no other adverse impacts are identified by your authority's appropriate assessment, you may be assured that Natural England agrees that the Appropriate Assessment can conclude that there will be no adverse effect on the integrity of the European Sites. In such cases Natural England will not require a Regulation 63 appropriate assessment consultation.

Should you need clarification of any points in this letter, please contact me.

Kind Regards

Sarah Skinner

Planning and Conservation Adviser

Dorset, Hampshire and Isle of Wight Team (Area 13)

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