

Allerdale Borough Council Local Plan Part 2 Examination HRA

Response to Walker Morris LLP Note of Advice

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This information note has been prepared in connection with queries raised in a Note of Advice received from Walker Morris LLP in relation to the HRA supporting the Allerdale Borough Council Local Plan Site Allocations. Please note this is an initial summary response to the Inspector and more detailed information is to be supplied in the form of an Addendum to the HRA (WYG, Sept 2018).

The Walker Morris LLP Note of Advice claims there are fundamental flaws in the Council's approach to assessment of potential impacts of the emerging Local Plan Site Allocations on European Protected Sites. Each of the points raised in the advice note has been addressed below. The HRA has been conducted according to current legislation and guidance and we consider it to be sound. Natural England has been involved in the HRA process throughout the development of the Local Plan over the last few years, providing iterative advice as the process proceeded; they agreed our approach and methodology in advance, and then approved and accepted both the HRA for the Local Plan Part 1 (adopted in July 2014) and the more recent HRA for the Local Plan Part 2 Site Allocations.

Issue 1 – Adequacy of the HRA

'Is the Allerdale Local Plan (Part 2) Site Allocations Document (ALPP2) legally compliant with respect to the Habitats Regulations and any requirement for Appropriate Assessment? Was the approach in accordance with Regulations and the judgement of the Court of Justice of the European Union in the Holohan case (Case C-461/17) as referred to in the Note of Advice from Walker Morris LLP?'

Items 1 and 2 - Walker Morris LLP claim that the most recent document Habitats Regulations Assessment FINAL of 27th September 2018 is seriously flawed and does not comply with Regulation 63 of the Conservation of Habitats and Species Regulations 2017. We do not agree with this assertion. Please see our commentary below under the paragraph numbers referred to in the Walker Morris advice note (Items 3 to 17).

Item 3

63 (1a) On behalf of Allerdale Borough Council WYG has undertaken a screening exercise, or Assessment of Likely Significant Effect, to determine whether or not individual site allocations within Part 2 of the Local Plan are likely to have a significant effect on a European site or European offshore site. This HRA screening stage is covered in detail in Chapter 4.0 together with the screening tables in 4.2. The HRA also assesses the individual Policies in Chapter 5.0 together with the screening matrix in 5.2.

63 (1b) an Appropriate Assessment of the implications of the Site Allocations and additional policies which have been identified as having potential for likely significant effect has then been carried out in Chapter 7.0 of the HRA.

63 (2) Sufficient baseline evidence has been prepared to enable determination of the need for AA; in fact the baseline collated for each individual site is over and above the requirements for assessment at the Plan level, including individual site walkovers.

63 (3) Natural England has been involved for many years throughout the process, and at no time have they criticized our approach to the assessment.

63 (5) The Local Plan Part 2 has been subjected to Appropriate Assessment (AA) and the conclusions of this are contained in the 2018 HRA. The majority of sites have only tenuous links to Natura 2000 sites, for example via watercourses, or have potential to support SPA birds in inland roost sites. These have all been assessed under AA in 4.2, with the overall conclusion in the final column. In some instances, the table emphasises the need for Project Level HRA's to be completed when the land is taken for development and more detailed ecological surveys will then be required to support that. This in effect provides the European sites with three tiers of protection – at Local Plan Part 1 where the Policies have been subject to HRA/AA in order to protect the European sites from future development policy; at the Site Allocations Part 2 level where each site put forward by Allerdale has been looked at in relation to potential for likely significant effect and then considered as necessary at AA stage; and then at the planning stage where more detailed site specific surveys will be required, for those sites which have been highlighted as requiring Project Level HRA.

63 (6) It is very unlikely that any of the sites put forward could adversely affect the actual 'integrity' of any European site due to the location and size of each development proposed in Allerdale. Where there is any potential for significant effects after mitigation (not adverse effect on site integrity) the HRA dictates that Project Level HRA for the allocation site will be required during the detailed planning process. ABC and Natural England will be involved in the decision process at this planning stage, and will only provide consent to a proposal once a Project Level HRA has been submitted and satisfactorily concluded and adopted by the Competent Authority.

The European Court of Justice Case C-6/04 European Commission v. United Kingdom confirmed the progression of HRA assessment that must take place from higher to lower level plans or as the plan becomes more specific and detailed. The '*adverse effects on areas of conservation must be assessed at every relevant stage in the procedure to the extent possible on the basis of the progression of the plan. This assessment is to be updated with increasing specificity in subsequent stage of the procedure.*' The higher level plan cannot reasonably predict all effects until the lower level details at the planning application stage have provided the exact nature of development on each allocated site. Hence the Local Plan Part 2 HRA already clearly states where a Project Level HRA will be required. This does not mean that there is likely to be any adverse effect on integrity of the sites but provides an additional stage of assessment, once the exact details of the development are known.

Proposed site allocations have only been deleted from the Local Plan in earlier consideration of allocations sites where an adverse effect on site integrity was determined to be a real possibility at this level. Allerdale BC have undertaken the Part 2 Local Plan based on an iterative process and have already deleted several sites based on earlier assessment of likely significant effect. Those left in Part 2 are not considered to have any risk to any European site integrity following mitigation, but will still be subject to further HRA at the Project Level, where it is considered necessary.

Item 4. – ABC has carried out the mandatory AA.

Item 5 – the HRA September 2018 was carried out applying the outcome of the April 2018 decision of the European Court of Justice in *People Over Wind*; this dictates that the initial screening exercise of likely significant effect must consider potential effects before applying any mitigation. Any instance where mitigation would be required to prevent a likely significant effect has therefore been subject to an AA.

Item 6 – due to the number of sites being considered and the same potential effects on European sites, we considered the AA under potential effects ‘topics’ rather than site by site analysis which would have been highly repetitive and lead to a very lengthy and unnecessarily complicated HRA document. We believe the AA to be adequate as it is, and do not consider there is a breach of the regulations.

Item 7 – this refers to the Halohan case judgement of the Court of Justice (Case C-461/17) dated 7th November 2018. The Allerdale Local Plan Part 2 HRA (Sept. 2018) obviously did not follow this judgement as it was produced and finalised prior to the Halohan case. Nonetheless the approach used by WYG in HRA always considers all the qualifying species and qualifying habitats for each European site, and other species and habitats listed on the site details, together with an assessment of these features which may occur outside the actual designated area but may still be impacted. HRA also includes assessment of other species and/or habitats which might influence the conservation objectives of the site. This is all part of the process and we have not knowingly neglected anything.

7 (a) Walker Morris LLP does not indicate what lacunae are being referring to and we do not consider there to be any lacunae; the HRA contains complete, precise and definitive conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected areas concerned. In fact the iterative HRA process over a number of years has resulted in ABC removing certain sites initially included, due to their potential for likely significant effects.

7 (b) The HRA provides full details of all habitats and species for which the sites are protected (all qualifying species and habitats, and those listed but not actually qualifying reasons for the designations).

7 (c) this clause relates to the Halohan judgement. The Local Plan Part 2 HRA has identified and examined the implications of the proposed site allocations and policies on the entirety of habitat types and species for which the European sites have been designated. The judgement then indicates that the implications of the site allocations and policies on other species and habitats, both within the designated site and outwith, should also be assessed in the AA. The Halohan case was a project HRA involving a road crossing over a European designated site and with EIA requirement. The detailed development site habitat information and protected species surveys accompanying the planning application would have provided background as to species and habitats important for the conservation status of the European site being crossed. At a plan level detailed protected species surveys and habitats surveys are not required to assess the likely significant effect of future development; these would be required later at the project level assessment. Instead each proposed site has been subject to walkover survey to determine potential for ‘pathways of effect’ between the development sites and the European sites, bearing in mind the qualifying features and the conservation objectives of the European sites. Any connectivity has been noted in the site reports, and then assessed if required under the AA stage. For any of the European sites, the identification of pathways of effect from individual development sites is crucial to the HRA. Once these have been

established the potential effects on the site will be common to all species or habitats present, so the assessment on qualifying features will also provide assessment for other species/habitats present. We have considered species which might be found outside the designated sites such as SPA birds, great crested newts, and natterjack toads in the HRA. At the Plan level it is not considered necessary to undertake detailed surveys of protected species and habitats for each development site as this will be carried out in the planning process. In most cases (apart from potential SPA birds) it is highly unlikely that there will be habitats and species on proposed development sites which will affect the conservation status or integrity of European sites, simply due to distance away and lack of connectivity. Sites proposed do not support valuable European habitats, as any sites which did have, were removed from the list of allocated sites during the iterative HRA process. The main process involved in site allocation assessment is the identification of the pathways of effect in each case, and this will indicate the likelihood of significant effect on any European site.

Item 8 – as the HRA predates the Halohan case there is no reference to it. We will add a paragraph to the HRA in the Addendum together with other relevant explanatory information.

Item 9 – detailed surveys do not form part of the HRA assessment of plans. They have a life span of 12 to 24 months and are provided as part of the planning application process to support detailed applications. In this instance site walkovers were undertaken on all the proposed development sites in the Local Plan as additional field evidence and to provide background information on the site and its surroundings only. They were used to identify potential ecological constraints for each site, and recommend surveys which might be required in order to submit planning applications at a later date, as reference material for use by ABC. It is not considered that update walkovers were necessary for HRA. Most of the assessment work involves desk study to determine pathways of effect, details of European site designations, qualifying species and conservation objectives, rather than field surveys of the ecology of the site itself.

Item 10 – we consider the HRA to be compliant with the Halohan principles, despite the fact it was undertaken prior to this case.

Item 11 – a full AA has been carried out, and is further supported by the original Local Plan HRA which provides an overall protection of all Natura 2000 sites, and has been accepted by both Natural England and adopted with the Local Plan.

Item 12 - The Local Authority has provided an AA which has considered the '*full range of potential implications of the plan for European sites*'.

Item 13 – The HRA undertaken ascertains that the emerging plan will not adversely affect the integrity of any European site.

Item 14 – the only parameters left until a later stage within the assessment are detailed HRA of specific project level plans which are not available when dealing with site allocations. These Project Level HRAs actually provide a third tier of protection for European sites, and will be based on actual projects, with design details and other issues such as roads, layout, incorporation of green infrastructure, etc. At this project stage much more detailed ecological survey information will also be collated to enable a robust assessment and decision to be made by the planning authority. Leaving the Project Level HRA to the planning stage cannot therefore result in 'adverse effect on site integrity'.

Item 15 – The HRA provided is comprehensive and has considered both policies and site allocations. The data collated for each site allocation is considerably more detailed than would normally be necessary for a Plan HRA, which is based on pathways of effect from the sites to the designated areas, as opposed to a Project HRA which is based on much greater detail on the site and the intended development.

Item 16 – an Addendum to the HRA is being prepared to clarify certain points but will not change the outcome of the HRA.

Item 17 – apart from this no further detailed work is intended; we would welcome a precise indication of where and what the lacunae are mentioned by Walker Morris LLP, as we are not aware of any at this Plan level HRA. We are also certain based on information available at the present time, and adopting the precautionary principle, that the Local Plan Part 2 could not adversely affect the integrity of any European site.

Issue 2 – Adequacy of Mitigation Measures

'Is the Council content that the proposed mitigation measures identified in the final HRA (September 2018) for the individual site allocations and policies in ALPP2 are sufficient to avoid an adverse impact to the integrity of the European Protected Sites and relevant features? If you are not content then please specify their reasons and provide details of any additional measures they consider are necessary.'

No mitigation has been considered in the screening stage of the HRA, in accordance with the precedent set by the People v Over Wind case. Mitigation has only been addressed where a likely significant effect has been determined and the policy or site has then been taken forward to a full Appropriate Assessment.

Table 2 in section 4.2 provides a matrix which includes information from initial screening for likely significant effect alone and then in-combination with other plans or policies. It then (where necessary) provides the Appropriate Assessment summary together with avoidance or mitigation measures required to prevent adverse effects on Natura 2000 sites. In those instances where at the Plan Level it is not possible to conclude without any reasonable scientific doubt that there will be no adverse effect the final column indicates that Project Level HRA will be required to support the planning application once more specific detail on the proposed development is available. It is in fact unlikely that any of the preferred sites could result in adverse effect on site integrity, but due to the need to adhere to a precautionary principal, it is not possible at this higher level to be absolutely certain due to lack of actual detail for the site.

In the same way in Table 3 section 5.2 the Policies have been screened and where pathways of effect have been recognised, an Appropriate Assessment has been undertaken. For certain Policies it is not possible at the Policy level to provide absolute certainty of protection due to lack of specifics. In cases where the Policy is sound, and provides text to prevent adverse effects at Policy level, further precautionary assessment may still be required once at the Project level when a specific site has been put forward (e.g. for wind energy; along coastal areas). Project Level HRA for these developments would be required in any case due to future potential in-combination effects with other projects over the lifespan of the Local Plan. The Policies in the document have been assessed for in-combination effects with other relevant plans and projects but this cannot be done at the Local Plan stage for *Policy SA32 Tourism,*

Coastal and Countryside Recreation and *SA50 Wind Energy*, as they will need to include future in-combination assessments which are dependent on location and number of such developments over the lifetime of the plan. Therefore European sites are further protected under these Policies by stating in the AA that a Project Level HRA will be required at that point in time.

We consider that adequate mitigation is proposed in the HRA at this Plan Level. If the AA at this level provided a table to address every site allocation, listing every qualifying species and habitat and every other habitat and species which might affect conservation objectives, for each of the nine Natura 2000 sites potentially affected by Allerdale BC Local Plan, we would have a minimum of 3,500 entries to assess and the document would be unnecessarily cumbersome, and this would not increase the certainty of no adverse effect on integrity as the necessary specifics to allow this are simply not available at Plan Level HRA.