

Council's response on Habitats Regulations Directive and Comments received from Natural England

1. Greater Manchester Ecology Unit (GMEU) undertook the council's HRA (as required by the Habitats Directive 2007) throughout the preparation of the LDF.
2. The **Greater Manchester Ecology Unit** (GMEU) provides specialist advice to, and on behalf of, the ten district councils that make up Greater Manchester on biodiversity, nature conservation and wildlife issues. Although hosted by Tameside MBC, GMEU works across the whole of Greater Manchester.
3. The Ecology Unit:
 - Prepares and helps to implement the Greater Manchester Biodiversity Action Plan.
 - Comments on the ecological impact of development proposals on behalf of planning departments, and provides advice on safeguarding wildlife on development sites.
 - Identifies, surveys and designates Sites of Biological Importance in Greater Manchester.
 - Advises other council departments and the general public on wildlife issues.
 - Provides specialist ecological advice for, and presentation of evidence at, public inquiries.
 - Inputs into the preparation of Local Development Frameworks and other plans and strategies.
 - Provides advice on national and international legislation and planning guidance relating to wildlife and nature conservation, including protected species.
 - Advises on the management of local authority owned land, including the preparation of site management plans.
 - Provides training for local authority staff and others.
4. The lead on the HRA throughout the whole LDF process has been Derek Richardson MIEEM, who is the Principal Ecologist at GMEU. Derek has also taken the lead on liaising with Natural England on the HRA.
5. A HRA was required as the council has the following two European Sites within the borough:
 - South Pennine Moors Special Area of Conservation (SAC) / Special Protection Area (SPA)
 - Rochdale Canal Special Area of Conservation (SAC)
6. GMEU are familiar with the above two European Sites and with developments affecting them.
7. Paragraph 1.7 of the submitted HRA (CD008) states:

"There is no statutory guidance on what stage of Plan production to best prepare an HRA but Natural England recommends that HRA begins at an early stage and if necessary continues through all the stages of plan production. HRA Methodologies are at a relatively early stage of development and examples of Best Practice have

not yet emerged. As Best Practice emerges the methodology undertaken for this HRA may develop.”

8. The HRA was prepared with Natural England’s involvement. The stages of the HRA are set out below:

Issues and Options

9. A HRA was carried out at the Joint DPD ‘Issues and Options’ stage (November 2007 – CD059). This provided an initial screening of the impact of the Joint DPD on the Rochdale Canal SAC and the South Pennine Moors SAC/SPA. The HRA concluded “that necessary steps have been taken to ensure that the emerging Core Strategy gives due consideration to the presence of European protected sites in the Borough and is consistent with national statute and policy for the conservation of these sites.” The HRA recommended a further assessment be undertaken at the ‘Preferred Options’ stage (CD059, Page 23)
10. At this stage Natural England’s (Janet Belfield, Planning Specialist) comments just made reference to a separate letter from its Cheshire to Lancashire team. The council responded in the Issues and Options ‘Public Schedule of Representations and Responses’ (CD061) that a CD was received on European Sites and the HRA process but there was no separate letter. The council made enquiries with Natural England regarding the letter; however Natural England were not able to locate the letter referred to.

Preferred Options

11. A HRA was prepared on the Joint DPD ‘Preferred Options’ stage (CD048) and published alongside the Preferred Options consultation documents in spring 2009.
12. This concluded that initial screening has established that no significant impacts are considered likely to arise from development within the Broad Locations on the South Pennine Moors SAC/SPA. The screening of broad locations at Hollinwood, Foxdenton and Chadderton Technology Park established a potential impact on the Rochdale Canal SAC. Further assessment of the impacts on the Rochdale Canal SAC concluded that:

“providing mitigating plans, policies and strategies are implemented appropriately through the development management process, development within the Broad Locations could proceed without harm being caused to the special interest of the Canal. It is recognised that the implementation of such plans, policies and strategies may restrict the scale and type of development brought forward in the identified Broad Locations, but that it is not justifiable to restrict development per se in these areas” (HRA, paragraph 9.4, 2009).

13. The HRA recommended that any developments coming forward within these broad locations be referred for possible HRA as part of the development management process (CD048, paragraph 9.5). It was also recommended that if the boundaries of the broad locations or types of development that may be permitted within them change then a further HRA should be undertaken (CD048, paragraph 9.6).
- Natural England made comments on the HRA Screening Report in November 2008.

- Natural England (Janet Belfield) made comments on the Preferred Options HRA on 30 April 2009.
- Council officers (Mr McGrath and Mrs Brownridge) met with Natural England (Janet Belfield and Mick Holding) and Greater Manchester Ecology Unit (Derek Richardson and Suzanne Waymont) on 8 June 2009 to address the comments made. Greater Manchester Ecology Unit agreed to consider the advice given from Natural England and feed any changes into the HRA in line with the next stages of the LDF.

Refining Options

14. A HRA was prepared for the 'Refining Options' Joint DPD. The HRA (CD036) was published alongside the 'Refining Options' documents in Spring 2010 for comments.
15. The HRA concluded that the implementation of the Plan will not have a significant impact on the special interests of the South Pennine Moors SAC/SPA. It stated:

"Development proposed in areas of the Borough closest to the SAC/SPA are relatively small scale and remain distant from important habitats. Diffuse water and/or air pollution from development in the Borough is considered very unlikely to affect important upland habitats within the SAC" (CD036, page 17, paragraph 6.3).

16. The HRA concluded that the screening opinion of the Joint DPD 'Refining Options' showed that the Rochdale Canal SAC has the potential to be affected by development in the Joint DPD. Further Assessment concluded that:

"although development is proposed in areas relatively close to the Canal, providing mitigating plans, policies and strategies are adopted and implemented appropriately through the development management process, in principle development areas planned for in the Joint Core Strategy and Development Management Policies DPD; Refining Options can be allowed to go forward without harm being caused to the special interest of the Rochdale Canal SAC" (CD036, page 23).

17. It was recommended that any developments coming forward within the areas identified in the Plan (Hollinwood, Chadderton Technology Park, Foxdenton, and Failsworth District Centre) be referred for possible further HRA as part of the development management process. It was also recommended that the GM Waste Plan and the GM Minerals Plan be assessed as part of the HRA when available (CD036, page 23). These are being prepared separately to the joint DPD by the Greater Manchester Geological Unit (GMGU).
18. Natural England (Ruth Critchley, Planning and Conservation Advisor and Janet Belfield) made comments on the Joint DPD 'Refining Options' stage, including the HRA.
19. Following this response the council liaised, by email, with Natural England to move forward and ensure that Natural England was satisfied with the Joint DPD. This ongoing dialogue is set out below.
20. At Refining Options stage Natural England set out what the joint DPD should cover:
 - to set out clearly the hierarchy for site protection.

- to make clear the hierarchical principals, as expressed in PPS9 to conserve, enhance, avoid harm and as a last resort mitigate and compensate.
- that geodiversity be added alongside biodiversity in the first sentence of Policy 21.
- that the second sentence is amended to “protect, conserve and enhance”, to reflect the wording in the first sentence of Policy 21.
- That reference is made to Regionally Important Geological and Geomorphological Sites (RIGS) (reference was added to the vision as Policy 21 already included reference to geodiversity).
- To improve the presentation of Policy 21 by splitting bullet point b and making clear reference to legally protected species.

21. Natural England also suggested that the canal element of this policy could mention the SAC status of the Rochdale Canal and conservation requirements (paragraph 6.131 in the proposed submission document deals with this).

22. In response to these comments the council worked with Natural England (Janet Belfield and Ruth Critchley) and GMEU (Derek Richardson) to amend the policy. Revised text was sent to Natural England on 8 July 2010.

23. This explained that the council had added “enhance” to the opening paragraph in response to the fourth bullet point above. So the second sentence of Policy 21 read “The council will value, protect, conserve **and enhance** the local natural environment...” (CD001).

24. The council added a specific sentence in the opening paragraph of the policy which makes reference to PPS9. The policy was amended to include the hierarchy for site protection in criteria b. Criteria b was also amended to pick up Natural England’s point about exceptional circumstances and the need to avoid harm in the first instance so it read:

“In exceptional circumstances where development is unavoidable and cannot be accommodated elsewhere:

v. the applicant must demonstrate the need for, and the over-riding public interest and benefits of, the development.

vi. the development must set out how the proposals will protect and enhance the nature conservation, including how any harm will be minimised effectively through design and mitigation measures.”

25. Paragraph 6.130 further explained this sequential approach.

“Where the development cannot be accommodated elsewhere it is the applicant’s responsibility to demonstrate the exceptional circumstances to justify the development. The applicant must set out how the proposals will protect and enhance the nature conservation, including how any harm will be minimised through design and mitigation measures. The council will consider the use of planning conditions and/or planning obligations to ensure the protection of species and habitats.” (CD001, page 115).

26. The council also added a sentence in the supporting text to show the policy links to Core Policy 6 (Green Infrastructure) (paragraph 6.124).

27. Natural England (Janet Belfield and Ruth Critchley) provided further comments on these changes on 20 July 2010. Natural England confirmed that they agreed with much of what has been set out by the HRA, however Natural England requested more words to be added to the joint DPD to provide more certainty.

28. The council liaised with GMEU to address these further comments. The council suggested the following text to GMEU as part of amended Policy 21 (part b):

“The council will ensure development does not have an adverse effect on the integrity of a European designated site on the basis of objective information. The council will work with Natural England and Greater Manchester Ecology Unit to assess proposals that may have an adverse effect on the integrity of the European site and where appropriate, ensure effective mitigation measures are put in place before permission is granted.”

29. GMEU confirmed by telephone they were happy with the above text for Policy 21.

30. This revised text was sent to Natural England on 30 July 2010 by email as part of the ongoing dialogue. Natural England made no further comments.

31. In addition paragraph 6.125 was added to add further emphasis on the principals of PPS9:

“The council will have regard to PPS9, including its key principles, when allocating sites and determining planning applications. The council will seek to ensure that proposals avoid loss or harm to biodiversity resource before considering the need for mitigation and satisfactory compensatory measures” (CD001, page 114).

32. The HRA was also amended and updated for proposed submission stage (e.g. paragraph 9.5, CD008) along with the amendments to Policy 21 which GMEU had agreed with.

Proposed Submission

33. A HRA (CD008) was published at the publication stage. This confirmed that “Screening has concluded that the implementation of the Plan will not have a significant impact on the special interests of this European Site” (South Pennine Moors SAC/SPA) (CD008, page 17). The summary and recommendations section (CD008, page 23) explains that through the screening of European sites the Rochdale Canal SAC has the potential to be affected by development in Oldham, however the HRA further goes on to state:

“It is recognised that there is a degree of reliance placed on the operation of overarching policy objectives, development management policies and other strategies and plans to ensure that no significant impacts on the Rochdale Canal arise from the implementation of the Plan. I am however convinced that sufficient safeguards exist in the Joint DPD and other plans and strategies to justify this reliance that there are enough safeguards in place in the Joint DPD to ensure that no significant impacts on the Rochdale Canal arise from the implementation of the Plan” (CD008, page 23, paragraph 9.4).

34. The HRA goes on to state:

“Recent (last ten years) developments along the Rochdale Canal corridor have shown that it is possible to allow for relatively large-scale developments close to the Canal (and affecting the Canal directly) without causing significant harm to the special interests of the SAC, providing that appropriate precautions are taken. I would therefore consider it unreasonable (over-cautious) for this Assessment to conclude that all development in areas of Oldham close to the Canal should be avoided. In reaching this conclusion I have considered the likely type of development that will be brought forward in these areas, (that is, development will not be related to potentially polluting heavy industries). The Assessment has therefore concluded that, although development is proposed in areas relatively close to the Canal, providing that mitigating plans, policies and strategies are adopted and implemented appropriately through the development management process, in principle development areas planned for in the Joint DPD can be allowed to go forward without harm being caused to the special interest of the Rochdale Canal SAC. This Opinion is based on this Screening Opinion supplemented by the experience and knowledge of the author in assessing the impacts of developments considered to have the potential to affect the special interest of the Canal” (CD008, page 23, paragraph 9.5).

35. The HRA recommended that any development coming forward in areas within the plan as Hollinwood, Chadderton Technology Park, Foxdenton, and Failsworth District Centre be referred for Appropriate Assessment as part of the development management process so that appropriate mitigation for any damaging impacts can be properly planned and implemented (HRA, page 23, paragraph 9.6). This recommendation has been carried through into the DPD (see paragraph 6.132, page 115, CD001).
36. It was also recommended that any further development of the HRA of the GM Waste Plan and the HRA of the GM Minerals Plan be considered as part of this assessment when made available (CD008, page 23, paragraphs 9.7- 9.8).
37. The Waste Development Plan Document is being prepared by Greater Manchester Geological Unit (GMGU) and has been submitted for independent examination. The Oldham HRA took into account the Waste DPD HRA (prepared by Scott Wilson). The latest Oldham HRA (CD008) confirmed there would be no significant negative impacts on the South Pennine Moors anticipated from the operation of the Waste DPD. On the Rochdale Canal the HRA stated that the Waste DPD HRA concludes there will be no significant impact arising on European protected sites from the implementation of the waste plan. The HRA on the Waste Plan was updated following the Waste Plan Publication, with the last amendments made in December 2010. The amendments were minor and have no implications for the joint DPD.
38. The Minerals Development Plan Document is also being prepared by GMGU on behalf of Greater Manchester. Publication stage is scheduled for July 2011. The latest HRA for the Minerals Plan (March 2011) concludes that ‘None of the Policies within this (Minerals) Plan have been identified as potentially having a damaging effect any of these European Sites. All recommendations made in previous iterations of the HRA have been incorporated into the Plan’ (page 18, paragraph 7.2-7.3).

Natural England Comments

39. Natural England (Ruth Critchley) made the following comments on the HRA at the Publication stage, as submitted to the Planning Inspectorate.

“The HRA screening exercise has concluded that Policy 4, 13, 14 and 15 of the Joint Core Strategy and Development Management Policies DPD could have a significant effect on the special interest of the Rochdale Canal SAC. Mitigation has been suggested in the form of plans, policies and strategies which are considered in the HRA to provide sufficient safeguards to ensure that no significant impacts on the Rochdale Canal SAC arise from the Core Strategy. Reliance is made on conservation policies to work alongside the regeneration policies so conservation policies need to be sufficiently robust. However, Natural England is concerned that the HRA (and Policies 18 and 21 of the Joint DPD) does not sufficiently stress (e.g. in para. 9.5) the need to avoid impacts on the SAC in the first place (e.g. by designing them out of a development proposal), before ensuring that any unavoidable impacts are minimised to a level which is compatible with the conservation objectives of the SAC, using a sequential approach. We have made comments to this effect in relation to Policies 18 and 21 of the Joint DPD.

We note that under the assessment of ‘in-combination’ effects with other plans and proposals Para.8.4 states that one plan from Rochdale has been assessed as potentially having an effect on a European site. A reference is made to Appendix 4 (which should be Appendix 3) which contains a list of the plans and programmes assessed and a summary of the outcome of the assessment. It is not clear from this table which plan is considered to have an effect on a European site or which European site will be affected. Natural England consider further information on this potential ‘in combination’ effect and potential mitigation should be provided in the HRA report.

It should also be noted that the Conservation (Natural Habitats, &c.) (Amendment) Regulations (1997) is now replaced with The Conservation of Habitats and Species Regulations 2010.”

Council Response

Policy 21

40. The council has worked with Natural England in developing Policy 21 (see Refining Options stage above).
41. The council and GMEU are of the opinion that the policy and supporting text clearly addresses the matters raised by Natural England.
42. Natural England commented on Paragraph b (which is the amended paragraph previously sent to Natural England for comments).
43. The first element of paragraph b states “The council will ensure development does not have an adverse effect on the integrity of a European designated site on the basis of objective information”.
44. This means that the council will ensure that any harm is avoided.
45. Furthermore paragraph 6.125 states very clearly that “The council will seek to ensure that proposals avoid loss or harm to biodiversity resource before considering the need for mitigation and satisfactory compensatory measures.”
46. Paragraph 6.128 also states that “The council will take a precautionary approach to development that has the potential to harm important species and

habitats and the geological diversity of the borough. By harm, the council considers this to mean any impact which diminishes the scientific value for which the site was first designated or harm to the species or their habitats likely to be found on or adjacent to the site.”

47. Paragraph 6.130 continues to say: “Where the development cannot be accommodated elsewhere it is the applicant’s responsibility to demonstrate the exceptional circumstances to justify the development. The applicant must set out how the proposals will protect and enhance the nature conservation, including how any harm will be minimised through design and mitigation measures. The council will consider the use of planning conditions and/or planning obligations to ensure the protection of species and habitats.”

48. The council is of the opinion that the policy follows the sequential approach. GMEU, who were sent Natural England’s comments on the proposed submission, were of the view, taking into consideration paragraph 6.125 and the text of Policy 21, that:

“it is implicit in this statement that the Council will take the view that development proposals must first make significant efforts to **avoid** loss of harm before considering mitigation”. GMEU concluded that “there are significant safeguards in place in the Plan to ensure potential harm is avoided and would not consider that the Policy needs to be amended in line with Natural England’s advice” (email from GMEU dated 16 December 2010).

Policy 18

49. Natural England support this policy. In addition they made comments on the HRA and on Policy 18 that they consider the policy would be strengthened if explicit reference was made to directing development to the most sustainable locations.

50. Natural England stated that they:

“consider the policy could go further to seek to direct development to the most sustainable locations, to include consideration of landscape, biodiversity, geodiversity, access and outdoor recreation. We do note in the supporting text to this policy that in applying the requirements of Policy 18 applicants must have regard for other policies in the Core Strategy which includes Policy 6 (Green Infrastructure), Policy 21 (Protecting Natural Environment Assets) and Policy 22 (Protecting Open Land) which seek (amongst other things) to conserve, enhance and protect the landscape and natural habitats in Oldham.

We are also concerned that a sequential approach to conserving our most valued environmental assets has not been applied in this policy. We would also advise the planning authority to amend the policy to “We will conserve our most valued environmental assets by seeking first to avoid loss or harm before considering the need for mitigation, with compensatory measures only as a last resort”. This sequential approach should be applied to all environmental assets including valued landscapes. In relation to nature conservation assets, Natural England believes that there should be no net loss of biodiversity.”

51. The council is of the opinion that the Joint DPD must be read as a whole. This is explained in paragraph 5.7 of the Joint DPD (CD001), which states:

"The policies in this joint DPD have been separated into two parts: part 1 forms the Core Strategy which sets out the way forward for the LDF, and part 2 contains the development management policies on how the key elements of the LDF will be implemented. Cross referencing of policies has been kept to a minimum and the policies should be read as a whole."

52. As such there is no merit in repeating matters on landscape, biodiversity, geodiversity etc when set out in Policies 6, 21 and 22. This approach accords with the advice from Government on the need to keep LDFs focussed and to avoid unnecessary repetition. GMEU agreed (email 16 December 2010) stating that "it is my view that the sequential approach recommended by Natural England is in fact described elsewhere in the Plan and therefore there is no need to repeat this approach in Policy 18."

HRA

53. GMEU stated they were happy to make the changes to the HRA. As the council was not proposing to republish documents for the submission stage, changes were included in the council's 'List of minor amendments' (CD004). The changes were:

- Page 22, Paragraph 8.4- Amend Appendix 3 to Appendix 4
- Page 45 Appendix 3 – Add additional row with text: District – "Rochdale MBC", Plan – "Core Strategy", Outcome of Assessment - "Potential effects on Rochdale Canal SAC".
- Page 24, References – Replace "Conservation (Natural Habitats, &c.) (Amendment) Regulations (1997)" with "The Conservation of Habitats and Species Regulations 2010".

54. The council and GMEU are of the view that the HRA satisfies the requirements of the Directive and is robust to ensure the continuing protection to the highest level nature conservation sites in the borough.

55. In summary:

- GMEU is the specialist advisor on Habitats Regulations.
- The author has experience and knowledge in assessing the impacts of developments.
- GMEU's overall conclusion is that in principle development areas planned for in the Joint DPD can be allowed to go forward without harm being caused to the special interest of the Rochdale Canal SAC (paragraph 9.5, CD008).
- There has been liaison with Natural England throughout the LDF process.
- Natural England has supported the Sustainability Appraisal, which incorporated the findings of the Habitats Regulations Assessment. Natural England stated "the absence of any negative effects is considered to be a positive attribute of the Core Strategy" (PSSA1).
- Natural England stated that they are inclined to concur with much of what has been set out by GMEU, that many developments could take place next to the canal without having an adverse impact, and we wouldn't expect the HRA to conclude that all developments close to the canal in Oldham should be avoided (email 20 July 2010).
- Natural England was given the opportunity to comment on Policy 21 before the Joint DPD was published for publication as part of ongoing, frontloading consultation.

- It is the council's opinion and GMEU's opinion that the Joint DPD has met the HRA requirements.

56. GMEU'S conclusions are summarised in paragraph 9.5 of the final HRA (CD008).

“Recent (last ten years) developments along the Rochdale Canal corridor have shown that it is possible to allow for relatively large-scale developments close to the Canal (and affecting the Canal directly) without causing significant harm to the special interests of the SAC, providing that appropriate precautions are taken. I would therefore consider it unreasonable (over-cautious) for this Assessment to conclude that all development in areas of Oldham close to the Canal should be avoided. In reaching this conclusion I have considered the likely type of development that will be brought forward in these areas, (that is, development will not be related to potentially polluting heavy industries). The Assessment has therefore concluded that, although development is proposed in areas relatively close to the Canal, providing that mitigating plans, policies and strategies are adopted and implemented appropriately through the development management process, in principle development areas planned for in the Joint DPD can be allowed to go forward without harm being caused to the special interest of the Rochdale Canal SAC. This Opinion is based on this Screening Opinion supplemented by the experience and knowledge of the author in assessing the impacts of developments considered to have the potential to affect the special interest of the Canal.”