Habitats Regulation Assessment (HRA)

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Latest changes	July 2026 – Updated advice about when to undertake an Appropriate Assessment on Report cases. Revised version to take account of WG policy on 'integrated approaches' to mitigation / improvements.

Key legislation and policy

Legislation	• Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) • Conservation of Habitats and Species Regulations 2010 (Regulation 73 applicable to Wales) • Conservation of Offshore Marine Habitats and Species Regulations 2017
National policy and guidance	• Technical Advice Note 5: Nature Conservation and Planning • Interim Planning Policy Statement on Development in SAC Rivers and Reminder of Restrictions on Permitted Development Rights in SAC Rivers • Practical planning guidance to support development…in SAC river catchments affected by phosphorus (DTA Ecology for WG) • Associated 'Stage 3 report' (DTA Ecology for WG) • Dear CPO letter and associated WG clarification note on applying the tests of soundness to LDPs (March 2026) • WG Circular 008/2018 – Planning requirement in respect of the use of private sewerage in new development, incorporating septic tanks and small sewage treatment plants (July 2018)
Judgments	• The Dutch Nitrogen Cases (Joined Cases C-293/17 and C-294/17) • People over Wind (C-323/17) • The Compton Case (Compton Parish Council and others v Guildford Borough Council and another [2019] EWHC 3242 (Admin)) • The Wyatt Case (R (Brook Avenue RAD) v Fareham BC) • R (on the application of Alison Caffyn) v Shropshire County Council [2025] EWHC 1497 (Admin)

Other guidance	• ‘Habitats regulations assessments: protecting a European site’ (joint guidance from NRW and Defra) • Advice to planning authorities for planning applications affecting nutrient sensitive SACs (NRW) • Principles of nutrient neutrality in relation to development or water discharge permit proposals (NRW) • Mitigation Measures Menu available via River pollution summit action plan (Welsh Government) • Nutrient Budget Calculator for Wales and associated guidance (Welsh Government) • Marine and Estuarine DIN Mitigation Strategy Developer Handbook (Carmarthen CC and other Councils) • Natural Environment Chapter of the PINS ITM – Detailed advice on HRA to be read alongside this chapter. • Our work in Special Areas of Conservation water bodies (Dŵr Cymru) • The HRA Handbook (DTA Publications, subscription provided by the Welsh Government) • HRA Refresher Training (organised by Welsh Government, delivered June 2022) • HRA Phosphates Training (organised by Welsh Government, delivered October 2022)

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Introduction

1. This chapter is intended to provide an overview of HRA processes, but you are encouraged to consult the following for more detailed guidance:

    - Joint NRW and Defra guidance 'HRA: Protecting a European Site'
    - PINS ITM's Natural Environment chapter (part 2, section on HRA).

2. In the 'key legislation and policy' table, pay particular attention to the **applicable national policy and guidance**. A range of other useful resources are also listed.

The HRA process

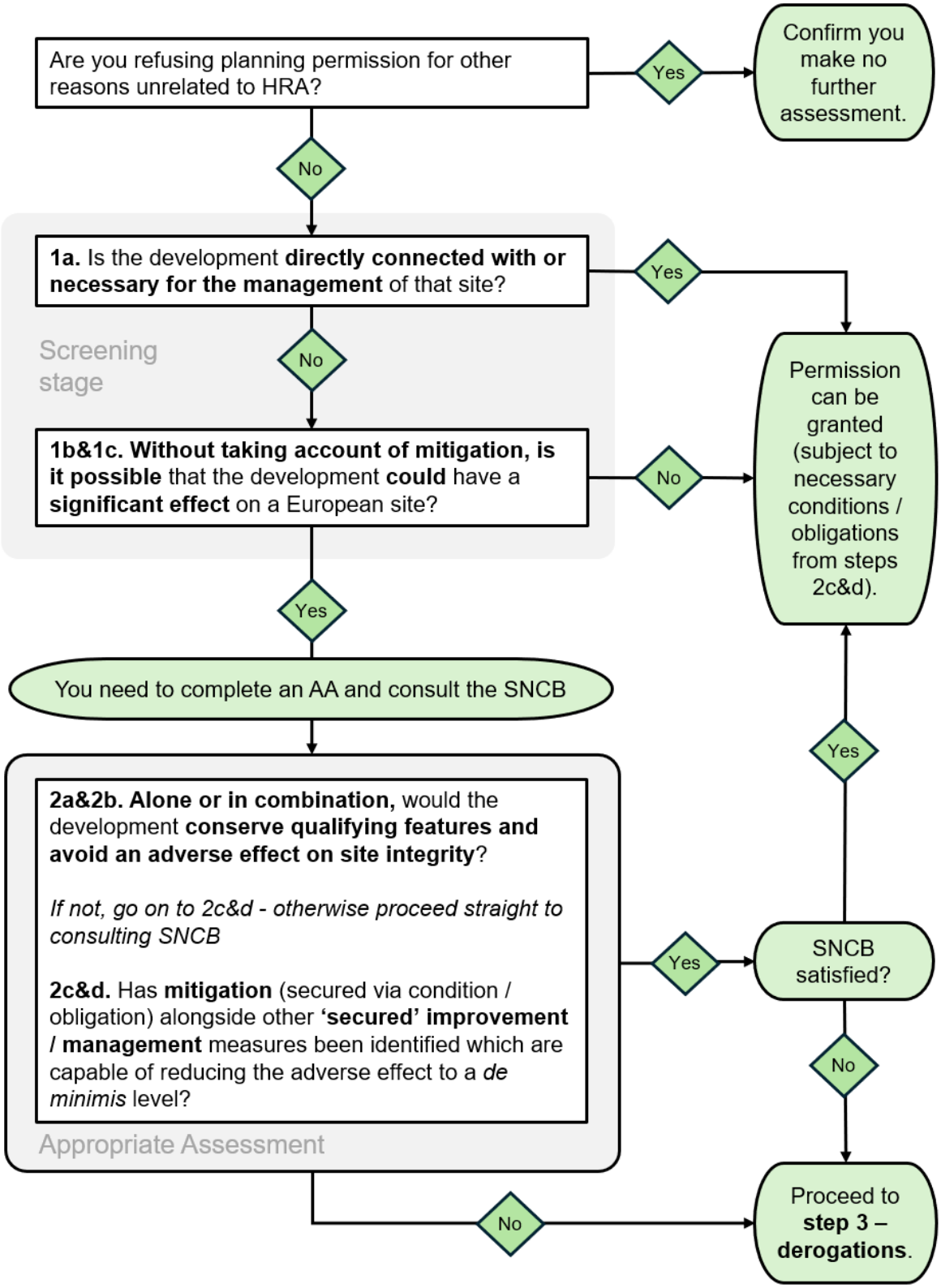
3. HRA applies by law to certain designated sites (see the ITM 'Ecology and terrestrial resources' chapter). The process stems from Articles 6(3) and 6(4) of the Habitats Directive 1992. The three main steps within the HRA process are:

    Step 1: Screening
    Step 2: Appropriate Assessment (AA)
    Step 3: Derogations

4. The first two steps are commonly encountered and are summarised in the flowchart below. The steps and tasks outlined are consistent with the process set out in the joint NRW/Defra guidance.

5. Example conclusions for the screening stage are provided in **Appendix 1** and an AA template is included in **Appendix 2**.

HRA Screening (step 1) and Appropriate Assessment (step 2)



Nutrient-sensitive river/marine Special Areas of Conservation (SACs) – background and key concepts

6. NRW has a duty to monitor the health of designated sites against Common Standards Monitoring targets, which are set by the UK conservation agencies to determine if sites are in a 'favourable condition'. Water-related SACs have both conservation objectives and Water Framework Directive (WFD) targets. The most stringent target of the two is applied.

7. Condition and compliance assessments are available for both River SACs and Marine SACs. These show some SACs to be in an unfavourable condition due to an excessive enrichment of water with nutrients (eutrophication), which can lead to harmful algal blooms, oxygen depletion (hypoxia), and biodiversity loss.

8. An exceedance of phosphorus (P) targets in freshwater is affecting river SACs. In marine SACs (particularly estuarine environments), an excess of dissolved inorganic nitrogen (DIN, or N) is the issue.

9. River and marine SACs are composed of distinct 'waterbodies' (e.g. the River Dee SAC comprises eight waterbodies). As these have their own characteristics and pressures, NRW sets nutrient targets for specific waterbodies.

10. WG and NRW have published various policy and guidance relating to river and marine SACs. The key ones to be aware of are:

    - WG **Interim Planning Policy Statement** (IPPS) on Development in SAC rivers (5 August 2025). This effectively amends PPW.
    - **Practical planning guidance** (for SAC river catchments) prepared for WG by DTA Ecology (5 August 2025). This accompanies the IPPS.
    - A **'Stage 3 report'** by DTA Ecology (27 March 2026) confirms that the 'practical planning guidance' applies to all uses (not just affordable housing) and to all nutrient-sensitive SACs (including marine SACs affected by N).
    - **NRW's Advice for planning authorities on nutrient sensitive SACs** (updated periodically). Provides advice on the practical effects of types of development and steps to be taken in HRA. Initially covering river SACs, it has been extended to include advice on N affecting marine SACs. To be read in conjunction with NRW's **Principles of nutrient neutrality in relation to development or water discharge permit proposals**.
    - A **Dear CPO letter** (27 March 2026) and associated **clarification note** on applying the tests of soundness to LDPs.
    - The WG's **Nutrient Budget Calculator** (2 June 2025, prepared by Arup and Ricardo) is used to calculate P and N mitigation requirements for development within affected catchments.

11. Eutrophication is driven by **cumulative loading** rather than instantaneous concentration, so if a site is already in unfavourable condition any additional loading risks further deterioration or delaying restoration. This principle may affect all land within the catchment of SAC waterbodies, making this a particularly complex issue to grapple with.

12. Articles 6(1) and 6(2) of the Habitats Directive commit states to taking 'appropriate steps' to avoid the deterioration of, and restore, sites. In accordance with the duty on competent authorities to protect, conserve and restore European sites issued in March 2021, the Interim Planning Policy Statement, which amends PPW chapter 6, confirms that it is WG's expectation that the relevant statutory public bodies must work together to reduce nutrient loading to SAC river catchments, using all powers available to them. **Nutrient Management Boards (NMBs)** bringing together NRW, local authorities, Dŵr Cymru, farming representatives, national parks and others, have been established and are funded by WG to oversee these actions in relation to aquatic SACs and SPAs.

13. Where a site is currently in unfavourable condition, it is important to recognise that your focus will be on understanding the effect of the plan/project on **conservation objectives to 'restore'**. This requires a different approach to considering effects on an objective to 'maintain' a site. Essentially, you will be seeking to understand how (or whether) the plan/project would impede or undermine measures being taken by NRW/NMB under Articles 6(1) and 6(2) to get the site back to favourable condition.

14. The measures under Articles 6(1) and 6(2) are **proactive conservation and preventative measures by statutory bodies to achieve compliance within the wider catchment**. They are not mitigation measures, which are dealt with under Article (6(3). They may include:

    - Enforcement of agricultural pollution by NRW under the Water Resources (Control of Agricultural Pollution) (Wales) Regs 2021
    - Farms signing up to the Sustainable Farming Scheme
    - Nutrient management plans, river restoration plans, catchment management plans, river basin management plans and similar (involving NRW but possibly under the oversight of the Nutrient Management Boards)
    - Implementation of land conversion schemes (including riparian buffers and field margins)
    - Treatment wetlands for wastewater treatment works (WwTWs)
    - Schemes for the removal ('stripping') of N or P at WwTWs as part of water companies' Asset Management Plans
    - Implementation of nutrient trading schemes

15. If the suite of measures is 'secure' (i.e. there is evidence of a commitment to delivery by the relevant statutory bodies) and is based on appropriate assumptions about future growth within the catchment, you may attach significant weight to them in the HRA. There is no need to 'go behind' this evidence unless you have good reason to.

16. Additional mitigation may then need to be considered for development proposals (as an Article 6(3) measure). This may include:

    - Wetlands/SUDs for development (see NRW's mitigation measures menu)
    - The use of package treatment plants or septic tanks

- Developer contributions to secure quicker delivery of the Article 6(1) and 6(2) measures.

17. Some key concepts introduced in WG policy and related guidance are summarised below.

Integrated approach

This is WG's preferred/default approach. It relies on action being taken to **deliver a long-term improving trend in nutrient levels** within the catchment of a SAC in unfavourable condition whilst also managing growth and change. The actions required to achieve this may be described in a Nutrient Management/Reduction Plan or other catchment-specific action plan(s). This approach can only have effect if the actions required to improve the condition of the site (with the long-term aim to restore favourable condition) are 'secure'. Crucially you will also need to ensure that any required 'mitigation' measures are inherently linked to the expedited delivery of already-committed 'restoration' measures – i.e. that the two are **integrated**.

Nutrient neutrality approach

This is an approach to managing new development and water discharge permit proposals to prevent them from **causing any net increase in nutrients** for the duration of the permission/authorisation. In practice this means that some form of direct mitigation at source, or 'offsetting' arrangement, will be required. Nutrient neutrality is necessary in the catchment of a SAC in unfavourable condition if there is no strategy, or the actions described in it are not sufficiently secure, prior to the adverse effects of the plan/strategy arising.

Threshold-based (i.e. *de minimis*) approach

This approach can only be utilised at a strategic catchment-wide level, where it has been established that a **specified amount of development could take place without causing an adverse effect on site integrity**. Ideally this would be established via a local development plan where the amount of development was subject to annual monitoring, enabling planning applications to be approved prior to a threshold being reached.

18. The integrated and threshold-based approaches are informed by the 'fair share' concept, which focuses actions on reducing nutrient loads **proportionate to a sector's contribution to overall loading**. This concept has informed NRW's review of WwTW permits, where more stringent nutrient discharge limits are applied if that WwTW is contributing significantly to the problem. This will require investment in the most problematic WwTWs to strip nutrients. (Details of new phosphorus permit limits can be found here.)

Integrating HRA into your decision or report

19. In our work the 'competent authority' is the Inspector other than report cases where Welsh Ministers are the competent authority.

20. For an Inspector decision, if you are dismissing the case for other reasons, you do not need to undertake the HRA process.

21. When reporting to Welsh Ministers, if you are recommending refusal of planning permission for other reasons, you do not need to undertake the HRA process and you should explain this in your report. If the Welsh Ministers are minded to grant planning permission, as the competent authority they will need to undertake HRA to its logical conclusion, and explain this in their decision letter.

22. If you are recommending approval you will need to undertake HRA to its logical conclusion, consistent with your recommendation. This means setting out reasoning for a finding of no likely significant effects at screening stage; or no adverse effect on site integrity at the Appropriate Assessment stage; or whether derogation tests are met.

If screening a plan/project out of HRA

23. If you screen a proposal out of HRA, this should be recorded as a Procedural Matter. Give brief reasons as to why it was screened out – see examples in Appendix 1. Having done this, there is no need to refer to it again.

If an AA is needed

24. A template for an AA is included at Appendix 2. This should be appended to the decision or report.

25. The need for AA will normally signify that ecology is a main issue / consideration. You should define this broadly (e.g. "the effect on ecology") rather than specifically defining effects on a site as the issue. This will help to distinguish your core 'planning' reasoning/balancing from the statutory 'site integrity' test.

26. In your reasoning/conclusions you should identify any adverse effects on habitats and species (including any that may be qualifying features of a SAC) and attribute weight to those effects in the balance. For example, you could find that mortality to a fish species may harm the extent/distribution of the local population, but that the benefits of the proposal outweigh that harm.

27. Having done that, you should refer to the AA in the appendix – there is no need to repeat its content – indicating what its implications are for your decision or recommendation. E.g.:

    "As I was minded to grant permission for the development based on the merits of the case, and likely significant effects on qualifying features of the SAC/SPA could not be ruled out, I undertook an AA. This is set out in the Appendix. The

conclusion of the AA is that there would not be an adverse effect on the integrity of the SAC. For the stated reasons I therefore grant planning permission."

28. If the outcome of the AA is that there would be an adverse effect on site integrity, you will need to proceed to the 'derogation' tests (as far as is needed). E.g.:

    "As I was minded to grant permission for the development based on the merits of the case, and likely significant effects on qualifying features of the SAC/SPA could not be ruled out, I undertook an AA. This is set out in the Appendix. It finds that there would be an adverse effect on the integrity of the SAC. The applicant has not demonstrated that there are alternative solutions which would have a lesser effect on site integrity. Consequently, I am unable to grant planning permission. The application is refused."

Screening

29. Plans and projects not directly connected with, or necessary for, the conservation management of a European site require consideration of whether there is a likely significant effect on that site, either alone or in combination with other plans or projects.

30. The purpose of the screening stage is to establish whether there is a need to subject a plan or project to AA. It is essentially a **risk assessment of potential impact pathways on a site's qualifying features**. You are not evaluating the magnitude of 'harm' in the ordinary planning sense but deciding whether **harm could not be ruled out** based on the level of evidence currently before you.

31. Caselaw confirms that in HRA you should treat a '**likely** significant effect' as meaning a '**possible** significant effect'. The bar is lower than the language suggests, although the risk must be real and scientifically credible rather than hypothetical. NRW's views may be a weighty consideration in establishing whether a significant effect is likely or possible.

32. In HRA, a **significant** effect is one where there would be a **clear causal link** between the plan or project and a **qualifying feature** which would undermine a site's **conservation objective** (using the **'source-pathway-receptor'** logic).

33. **Conservation objectives** for qualifying features are identified in each site's management plan (available on NRW's website). They normally comprise a 'vision' for the qualifying feature, and 'performance indicators' which collectively describe the conditions under which the favourable condition of that feature would be either **maintained** or **restored**.

34. When screening for HRA you should therefore be clear about what the **qualifying features** and **conservation objectives** for the site are, and the potential for indirect and direct effects on each feature. For example:

Qualifying feature: Southern Damselfly
Conservation objective:

Vision: The density of adult males will be at least 1 male per 10sqm of breeding habitat. There will be at least 3,500sqm of breeding habitat. Performance indicator: F1: Livestock grazing – flush/stream habitat has been maintained by traditional grazing. Shading of flushes/streams by tall plants reduces their suitability for the species. Light grazing by animals (ideally sheep, cattle and ponies from April-Nov) is essential for maintaining this feature. *(NB Normally there will be several performance indicators)*
Source and pathway: Land: The proposed factory would be located on grassland in the SAC. Possible reduction in extent of breeding habitat. Air: Emissions from the proposed factory would discharge to the air. Possible indirect effects resulting from the deposition of nitrogen onto flush habitat.

35. Although it will depend on the case, this information should have been provided to a level of detail that would satisfy you for screening purposes. If it has not, you should seek information on receptors and source pathways from the parties (including the SNCB if necessary) to enable you to fulfil a screening assessment.

36. If you are unable to establish a credible link between receptors and sources, you may screen the plan or project out of HRA. Otherwise, an AA will be needed.

37. Significant effects on a site may extend beyond its boundary, including transnationally. For example, development could affect water quality upstream of a protected waterbody, or it could affect the local population of a species of bat, bird or butterfly which is a qualifying feature of a site. If the evidence is poor or scant, and you consider there to be a credible scientific risk of a significant effect on a qualifying feature, apply the precautionary principle and do an AA.

Mitigation measures (e.g. conditions) at the screening stage

38. Other than measures integral to a development (e.g. design, layout and timing of activities), **mitigation** explicitly intended to avoid or reduce harmful effects (e.g. conditions) **cannot be considered at the screening stage** in HRA.

39. Consider more nuanced guidance about 'other' conditions and definition of project vs description of dev in a planning sense. However, if in doubt whether mitigation is integral, take a precautionary approach and do an AA.

'De minimis' effects

40. If an effect is so trivial or minor that it would not merit consideration (*de minimis*) – such that harm to a qualifying feature can be ruled out on scientific grounds – a more detailed AA should not be needed.

41. That said, the test at screening stage is precautionary and low-threshold. If, for example, qualifying features are already in unfavourable condition and the conservation objective is to avoid further deterioration or to restore them, it may be difficult conclude that an effect of an individual development is *de minimis*. In such scenarios the best approach may be to proceed to AA (see also the below section on marine/riverine SACs). However, you may attach weight to NRW's

view that an effect would be trivial, and/or to any scientifically-derived *de minimis* threshold.

Screening for 'in combination' effects

42. If there is credible evidence to suggest that there would be no (or *de minimis)* individual likely significant effects, an 'in combination' assessment is not needed. Otherwise, you will need to undertake AA.

Undertaking screening in nutrient-sensitive river/marine SAC catchments

43. Currently affected catchments are shown on the map opposite. Detailed maps are available on DataMapWales for river SACs and marine SACs. The river SACs layer on DataMapWales includes catchments for each SAC waterbody, but for screening purposes the whole catchment (within the black line) should be considered.



44. NRW's 'Advice to planning authorities' ('NRW's Advice') sets out guidance on undertaking screening in nutrient-sensitive SAC catchments. Section 5 identifies types of developments which NRW considers unlikely to generate a source of additional nutrients or a pathway for impacts, and so can be screened out of AA. Note that this is merely advice and you should be guided by the case-specific evidence.

45. The advice indicates that developments proposing new connections to a public sewer could be screened out of AA where the WwTW would continue to operate within its (newly) permitted discharge limits. However, it also cautions that an HRA may need to be wider in scope than the WwTW permit review.

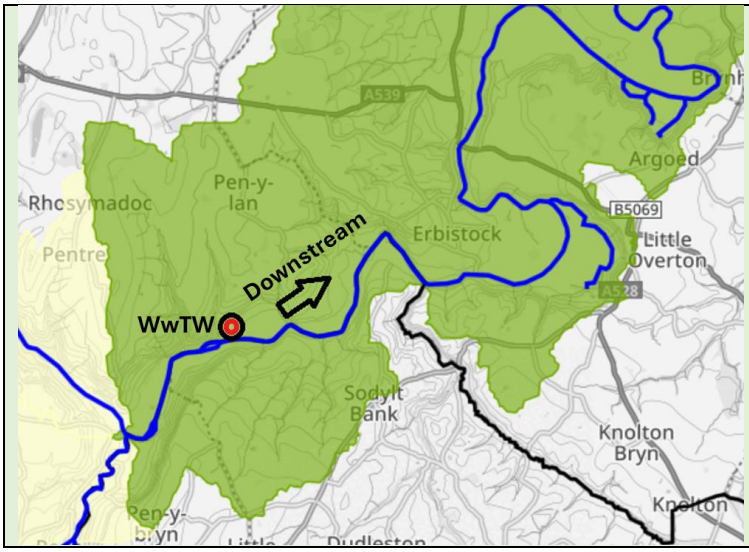
46. In catchments of SACs in unfavourable condition, even small nutrient loads cannot automatically be ruled out as insignificant with scientific certainty. Whether the objective is 'nutrient neutrality' or an 'integrated approach', you may need to find that mitigation will be required however minor the effect. As mitigation cannot be considered at the screening stage, you will need to carry out an Appropriate Assessment.

47. *'De minimis'* arguments should also be treated with caution for individual planning applications where a strategic 'threshold-based' approach has not been established. Unless there is evidence before you that a WwTW would remove 100% of the relevant nutrient before discharge, or there is no plausible source and pathway to the receiving environment (e.g. because there would be no credible net increase in foul flows), you will normally need to undertake an AA to

gain a more detailed understanding of the likelihood and significance of effects. (Although not scientific, as a rule of thumb a *de minimis* loading is likely to be a fraction of a percentage.)

48. If it is not clear whether a site or WwTW falls within a catchment, you should consider the type of development and whether information from the parties should be requested to inform the HRA.

49. The NRW advice says that, even if an SAC is unfavourable condition, if the relevant WwTW is discharging into a SAC waterbody that is meeting its individual water quality targets, and all downstream SAC waterbodies are also meeting their nutrient targets, it may be possible to conclude that no significant effects are likely (see box below). If the evidence is unclear or doubt remains, it is safest to undertake AA, particularly in the absence of a clear view from NRW.



In this example, although the SAC is evaluated as being in unfavourable condition as a whole, all waterbodies within the SAC downstream of the WwTW are meeting their P targets. Consequently, as there is no available pathway for the offending source pollutant to affect receptors (qualifying features), you could conclude that significant effects are not likely.

50. NRW's advice is principally aimed at river SACs but also contains interim advice for marine SACs. Some tips on using this advice are set out below.

Category	PEDW advice
Domestic extensions (Section 7)	Although NRW advise that such proposals can normally be screened out, if the extension will lead to an increase in occupancy, you should consider AA.
Development proposals involving connection to public WwTW (Section 8)	This section lists things the decision maker should seek. You should also check with the parties whether the relevant environmental permit has been reviewed and whether there is capacity for additional wastewater under revised permit limits.
Use of chemical pre-treatment to enable connection to a public sewer where P constraints apply (Section 9)	This approach can have adverse effects. The views of the water company should be sought.
Development proposals involving private sewage	NRW's detailed advice reinforces that the first presumption must always be to provide a system of

treatment systems (Section 10)	foul drainage discharging into a public sewer, in accordance with PPW and WG Circular 008/2018.
Whether additional wastewater can be discharged to existing private sewage treatment systems (Section 11)	NRW sets criteria for developments which are unlikely to lead to a significant effect.
Compost toilets (Section 12)	NRW advise that compost toilets that are well designed/maintained and separate urine/sanitary waste from solids are unlikely to increase P discharges. A proposal that does not separate solids and liquids should be considered a cesspool and collection by a registered waste carrier will be needed.
Use of phosphorus reduction technology in private sewage treatment systems (Section 13)	NRW's stance is that there are risks to this approach in small private treatment systems – refer to the detailed advice for things to consider.
How to consider the disposal of sludge from private wastewater treatment systems in a HRA (Section 14)	NRW indicate that disposal of sludge from new, private sewage treatment systems is unlikely to have a significant effect due to the regulatory framework. However, sealed cesspits are not a sustainable drainage solution (see Circular 008/2018) and NRW indicates that decision makers should carry out an AA for proposals involving use of sealed cesspits.

51. Other types of development need to be assessed on a case-by-case basis. Bear in mind that some developments may discharge nutrients into waterbodies through a direct link (e.g. agricultural buildings storing fertiliser). Read the relevant section of NRW's guidance in full to ensure you have considered all potential pathways and effects.

Appropriate Assessment

52. If likely significant effects cannot be ruled out with scientific certainty, unless you are the decision-maker and are refusing the application/appeal for other reasons, an AA must be appended to the decision. In reports, if you are recommending refusal of planning permission for other reasons, you do not need to undertake an AA and you should explain this in your report. If the Welsh Ministers are minded to grant planning permission, as the competent authority they will need to undertake the AA and append it to their decision letter.

53. An AA is more involved than a screening assessment, but that does not mean it has to be lengthy. **An AA template** is included as an appendix to this chapter.

Site integrity and conservation objectives

54. Whereas the screening stage is concerned with 'likely significant effects', an AA explores possible **adverse effects** on the **integrity of a site**, having regard to the conservation objectives for its qualifying features. The 'site integrity test' is a

statutory threshold, not guidance or policy. It requires a higher level of certainty than screening for likely significant effects.

55. To conduct the test, you must first establish the site's conservation objectives, as identified in the most recent management plan; and whether the conservation objectives for qualifying features are being met according to the most recent condition assessment.

56. An adverse effect on site integrity is likely to arise if, as a result of the plan/project, the achievement of a conservation objective for **any** qualifying feature would be undermined. I.e.:

    - If the objective is to 'maintain' – it would not be maintained or would be further degraded, **or**
    - If the objective is to 'restore' (which will be the case if the feature is in unfavourable condition) –the achievement of favourable condition would be impeded or undermined.

57. An adverse effect on site integrity is more likely where the feature is sensitive to change (e.g. nutrients, disturbance, hydrology). At the AA stage the onus is on the applicant to demonstrate, via credible evidence, that adverse effects on conservation objectives can be ruled out beyond all reasonable scientific doubt. Whilst a high bar, absolute certainty is not required; you may need to reach a view based on imperfect evidence.

58. The concept of integrity applies to the whole site. Even if only a small area would be affected, the conservation objectives associated with specific qualifying features could still be undermined, either directly or via indirect consequential adverse effects on qualifying features in other parts of the site. Conversely, if there is no credible pathway to risk deterioration to qualifying features, or to the restoration of features currently in unfavourable condition, an adverse effect on site integrity could be ruled out.

Mitigation, management and improvement measures

59. Development-specific mitigation measures secured via planning conditions and obligations (e.g. sustainable drainage/wetlands, turbine curtailment, restrictions of operating times, or financial contributions towards a mitigatory or offsetting measure) may need to be considered to avoid adverse effects to a site. You will need to ensure that any mitigation is effective, reliable, timely and in place for the lifetime of the development, and that it would:

    - avoid or offset adverse effects on the site (considering the predicted duration of the effects)
    - be consistent with strategic site management/improvement aims/objectives
    - be implemented, maintained and monitored (by responsible parties)
    - meet the relevant tests, including compliance with CIL Regulation 123 that no more than 5 obligations can be pooled for a single piece of infrastructure.

60. If you conclude, as part of the AA, that a planning condition or obligation is required to mitigate significant effects, then you will need to impose or recommend similar in the substantive decision/report.

61. For the purposes of an AA broader management or improvement measures may also be considered. This includes the effects of other permitting regimes (including their enforcement, or conditions attached to consents), the implementation of management and improvement plans (e.g. in relation to air quality), planned infrastructure investments or voluntary improvement activities. However, to rely on such management/improvement measures in the AA there will need to be a degree of confidence that they are 'secure' (i.e. there is evidence of a commitment to delivery by the relevant statutory bodies and are based on appropriate assumptions about future growth).

62. The level of detail relating to broader management or improvement measures should be proportionate to the plan or project in question – for example, for a Local Development Plan 'indicative' information will be sufficient if there is no realistic prospect of the LPA being able to obtain more detailed information.

Relying on a previous AA

63. It is possible to rely on a previous AA conducted by another competent authority, but to do so you must be satisfied that it was properly undertaken and there has been no change in circumstances. If there is a 'mere probability' (Waddenzee C-127/02) that the development could have a significant effect, a new AA should be undertaken. The joint NRW/Defra guidance has advice on this.

64. The issue of relying on a previous AA may arise on appeals involving conditions, approval of reserved matters and other cases where a consent has been previously granted. In such cases, it will be necessary to establish whether the original proposal had the potential to have a significant effect on a site; whether AA was undertaken at the time the consent was granted; and if there has been a change in circumstances that would necessitate a new AA.

In-combination effects

65. If you have established that there would be an adverse/harmful effect on a qualifying feature or site, but not to such an extent that it would jeopardise a conservation objective by itself, the effects of the scheme plus other plans and projects (including those which do not require planning permission) will need to be evaluated.

66. To do this you will need to understand combined impact pathways on qualifying features through the provision of information on the nature, duration and timing of effects caused by the other plans and projects. If this information is not before you, you should seek it from the applicant/appellant.

67. The Courts have confirmed that 'in combination' assessments need not include all possible hypothetical risks – a proportionate and realistic approach, focusing on credible risks to qualifying features, should be the aim. If the applicant has

adequately assessed in-combination risks to qualifying features, NRW is satisfied, and there is no other credible evidence pointing in a different direction, it is safe to rule out adverse in-combination effects on site integrity.

Consulting NRW and other Statutory Nature Conservation Bodies (SNCBs)

68. You must consult any relevant SNCB for the purposes of AA under Regulation 63(3). This will almost always be NRW, but other SNCBs may also need to be consulted depending on the location of the European site and any functionally linked pathway (land, water, air), habitat or species. The joint NRW/Defra guidance provides more advice on this.

69. Consultation should be undertaken only when you have sufficient information to undertake the AA, after the site visit, hearing or inquiry. All evidence and comments must have been submitted and published to the casework portal. If any evidence is environmentally sensitive information, this will have to be provided directly to the SNCB.

70. It is our policy not to consult SNCBs on a draft version of the final AA. Instead, you should highlight the matters the AA is likely to focus on before finalising it, using the letter templates available in iShare at the following links:

    - Onshore only
    - Off and onshore

71. When consulting the SNCB, set a realistic deadline for the receipt of comments. This is typically 28 days but should take account of the complexity of the issues in question. If any conditions or obligations have been suggested as mitigation, review these and seek the SNCB's views on the acceptability of these (in amended form if necessary).

72. You may need to seek comments in relation to the AA even if the SNCB has previously provided a representation on a case (e.g. if a different 'part' of the SNCB was consulted on a separate matter). However, if you are satisfied that NRW has clearly commented on the AA in their SNCB capacity (e.g. as it has been discussed at a hearing) it may be possible to avoid written consultation.

73. You must have regard to any representations made by the SNCB within the specified consultation period before finalising the AA.

Undertaking AA in nutrient-sensitive river and marine SAC catchments

74. Although the achievement of nutrient targets via an 'integrated approach' (or 'nutrient neutrality' if committed actions intended to restore a site's status have not been sufficiently identified) in 'unfavourable' SAC waterbodies is a guiding principle, conclusions drawn in the AA should focus on effects on conservation objectives. This allows for a more in-depth exploration of effects on qualifying features in the receiving waterbody and all those hydrologically connected to it.

75. As WwTWs are often not the main source of nutrients entering a waterbody, paragraph 2.5.3 of the DTA Ecology guidance indicates that the timely delivery of other actions to secure necessary reductions from other sources (e.g. agriculture) is also likely to be needed to achieve conservation objectives. This stance is also reflected in the IPPS, which indicates that an 'integrated approach' can be relied upon in an AA where it can be demonstrated that actions to reduce nutrient loading to SAC catchments are being taken (the 'appropriate steps' referred to in Article 6(2)). For the purposes of an AA, 'appropriate steps' will constitute various restoration and enhancement measures overseen by the responsible statutory body (see earlier summary).

76. You should first establish whether measures are in place to achieve reduced nutrient loadings within the catchment, in accordance with any targets intended to achieve (eventual) compliance. If so, then an **'integrated approach'** rather than 'nutrient neutrality' will be the objective.

77. You should then establish whether the measures towards the site's restoration are 'secure'. Normally these will be set out in a plan (or plans) overseen by the Nutrient Management Board (NMB) or NRW – e.g. a Nutrient Management or Reduction Plan.

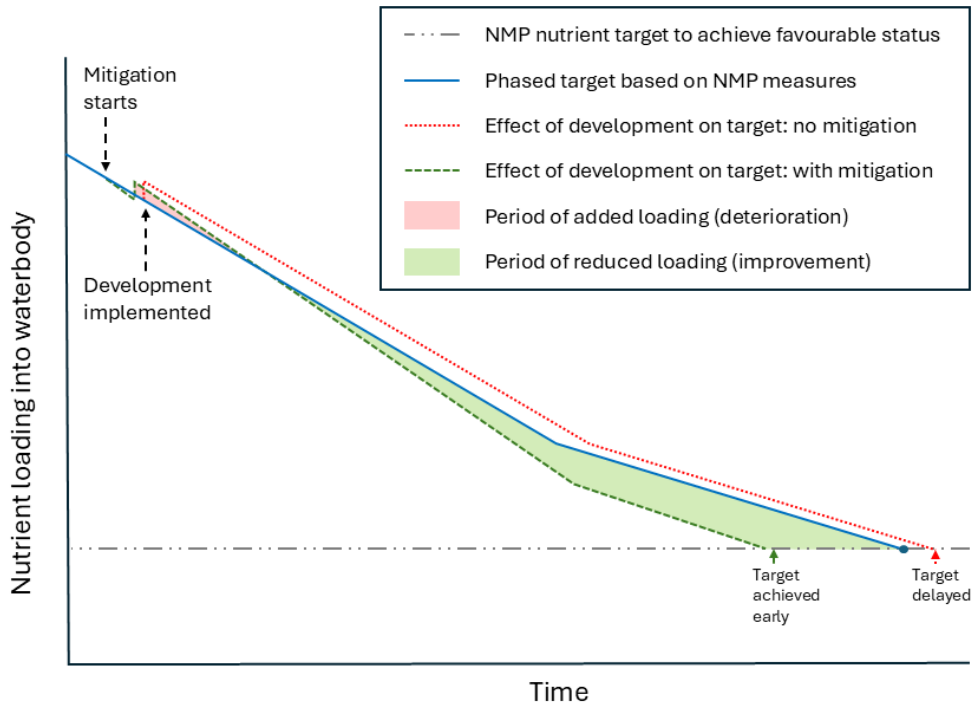
78. The DTA Ecology guidance 'Policy WG2' criteria (a)-(d) advises that measures are 'secure' if:

    - the scale of improvements necessary to avoid deterioration from existing/ongoing activities has been estimated
    - the 'appropriate steps' to be taken have been clearly identified and associated with a delivery mechanism
    - there is a clear timeframe for implementation associated with the achievement of nutrient targets, and
    - where development relies upon future action to be taken, there is a mechanism to ensure that development is conditional on specified delivery progress milestones being achieved.

79. You should first check that the overall quantum of development which these plans assume will take place in the catchment is reasonable. In most cases it will be reasonable for annual average 'housing requirement' figures and the spatial strategy of an adopted LDP to be used as a proxy to determine future growth patterns, even if the plan period has expired (or will expire, or if the plan is replaced during the time period for achieving the nutrient target). If there is no LDP in place, in the absence of better evidence it may still be acceptable to use an expired LDP as a benchmark, although you should carefully scrutinise the assumptions made.

80. If you are satisfied on this point, and there is a clear commitment by the responsible statutory bodies to ongoing and future delivery, you may regard the measures as 'secure' for the purposes of Articles 6(1) & 6(2) without having to delve further into the specifics of implementation. But if the picture remains unclear, you should seek the submission of relevant evidence.

81. If you consider the measures to be secure, you should then establish the extent to which **development would delay the achievement of any established target reductions in nutrients**. The 'no mitigation' line in the following diagram shows what this means in practice.



82. **For planning applications**, if the appropriate measures are secure your main consideration is **how the delay could be mitigated** to achieve no net effect or a betterment. This must be attained by the development securing mitigation to **speed up measures already planned** (e.g. contributions towards faster enforcement of agricultural activities by NRW; earlier implementation of a planned wetland). If the proposed mitigation is not specifically linked to already-planned measures, it cannot be considered 'integrated mitigation'.

83. You will need to consider the **timing of the mitigation**. In the example above, mitigation commences prior to loadings arising. However, if there is a risk of the development causing a net increase in loadings, even in the short term, you should seek to establish that this would not undermine long-term 'restore' objectives. If the mitigation would merely resolve a delay rather than achieve a betterment, the development would likely result in a net increase in nutrients entering the waterbody, potentially having an adverse effect on site integrity.

84. To ascribe weight to mitigation measures they must meet the tests set out in the Conditions and Planning Obligations Circulars. If financial contributions seek to secure accelerated enforcement by NRW under the Control of Agricultural Pollution) (Wales) Regs 2021, for example, there should be robust justification that:

    - There would be compliance with CIL Reg 123, potentially on the basis that although pooling of more than 5 obligations would be required, the funding

would contribute to an environmental measure rather than ‘a single piece of infrastructure’ as specified in the Regulation
- The financial contribution is proportionate to the development in question (in terms of anticipated effect of the funding on reducing loadings from agricultural pollution)
- There would be certainty that the timing and location of the enforcement activities would offset effects in the same catchment,
- If there has been past under-enforcement within the catchment (which is likely to be the case), there is a clear commitment and readiness from the enforcing authority (NRW) to commence robust enforcement, and
- The Local Planning Authority has a clear mechanism for pooling funds and passing these onto the enforcing authority.

85. If there is some uncertainty about the above, you may consider imposing a **condition** so that the implementation of the development is tied to a specific delivery milestone in the programme of committed ‘restoration’ measures. But this approach should not be taken if you have serious reservations that the measures have a realistic chance of being implemented as envisaged.

86. If you were content that this mitigation met the relevant tests and would avoid delaying targeted compliance with no net adverse effect, you could permit the application. Note that if a planning obligation would assist in meeting the nutrient target earlier than anticipated by the NMB, with overall lower loadings prior to the nutrient target being achieved, that could be afforded weight as a ‘biodiversity net benefit’.

87. **For LDPs**, your main consideration is what the relative contribution from WwTWs would be and whether mitigation could be secured from related developments to avoid adversely affecting committed actions intended achieve overall compliance within affected waterbodies. In line with DTA Ecology guidance ‘Policy WG2’ criterion (d), there should be evidence about the range of mitigation measures that may be needed to resolve any ‘delays’ to the achievement of waterbody targets (and any net additional loadings), linked to a relevant policy which ensures that development is not permitted without restoration actions from being delivered in accordance with agreed milestones.

88. If ‘secure’ actions to restore the condition of a SAC have not been established by NRW, actions to achieve downstream nutrient targets cannot be secured prior to the impacts of development commencing, or there is nothing to establish that the effects of the development would be *de minimis*, **nutrient neutrality** will be required. This applies to planning applications or to sites in an LDP which come forward in advance of an ‘integrated approach’ or ‘threshold-based approach’ being secured. The fact that a connected WwTW would be operating within its permit limit after a development has been connected to it is not evidence of nutrient neutrality if the development would increase nutrients entering the waterbody from that WwTW. In that scenario some form of mitigation will therefore still be needed – either direct mitigation at source, or some form of offsetting. You will need to consider the timing of any mitigation, and whether it would acceptably ‘neutralise’ nutrient pathways to the receiving waterbody, relative to the effects of the development.

89. If a **threshold-based (i.e. *de minimis)* approach is proposed in an LDP**, this must be founded on credible evidence and supported by NRW. Essentially, you should ensure that the delaying effect of planned development on the target would fall within a 'reasonable scientific doubt' buffer – i.e. that the delay would amount to only a matter of weeks within a period of several years.

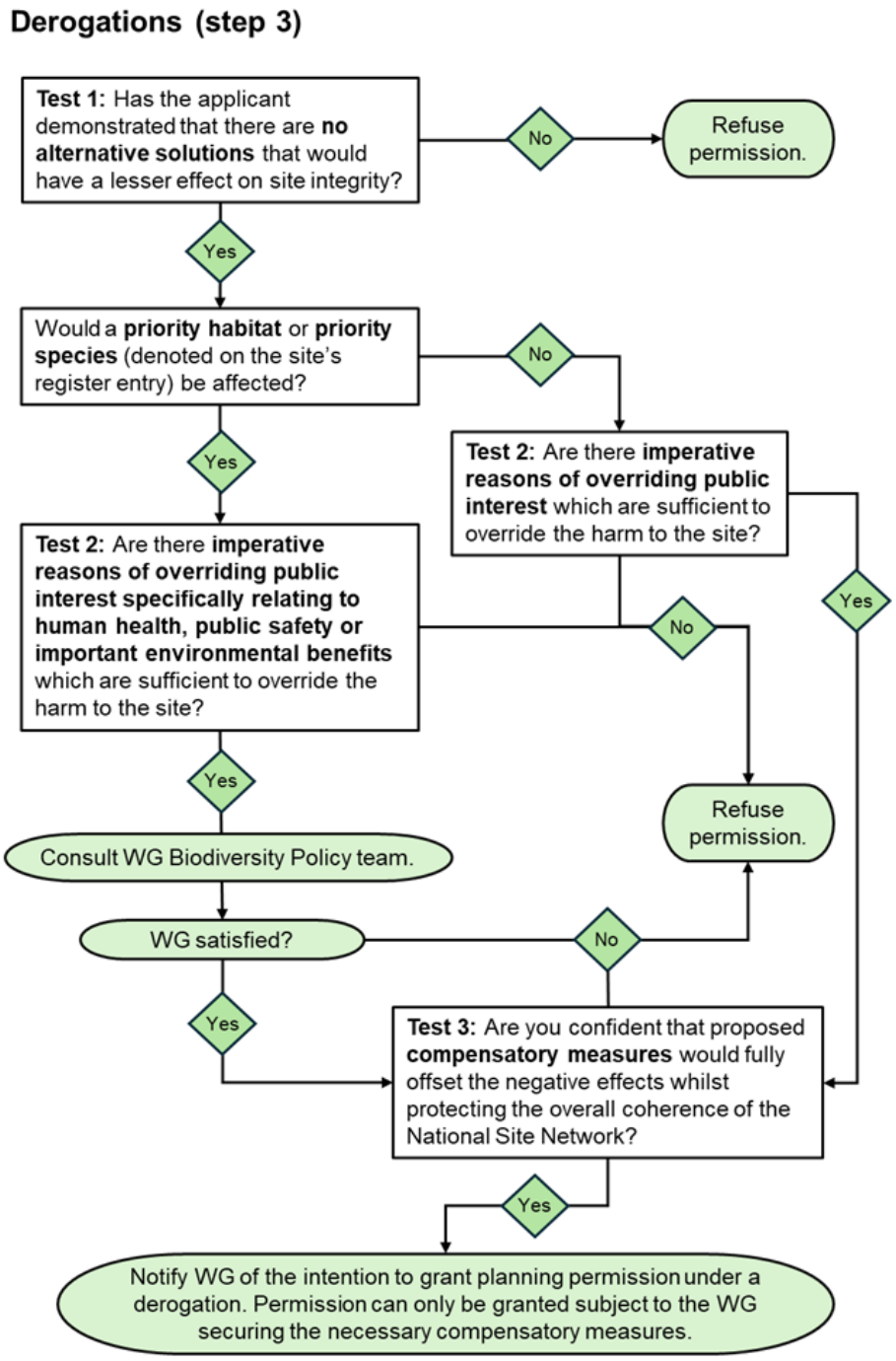
90. The Welsh Government's Nutrient Budget Calculator for Wales should normally be used to calculate nutrient loads and associated mitigation requirements. If there is unclear evidence about discharges from WwTWs (including future discharges) you may need to seek evidence from the relevant water company.

Derogation provisions

91. HRA provides for derogations (legal exemptions) which allows projects or plans to proceed despite causing, or potentially causing, an adverse effect on a site. The process involves three strict 'tests' and is summarised in the flowchart overleaf. The steps and tasks outlined are consistent with the process set out in the joint NRW/Defra guidance.

92. Where adverse effects cannot be ruled out, and there are no alternative solutions, the plan or project should only be permitted or approved if there are imperative reasons of overriding public interest (IROPI) and the necessary compensatory measures can be secured.

93. Consequently, if it is only the conclusion of the AA which would prevent you from granting planning permission (i.e. because you have otherwise found the proposal to be acceptable in the planning balance), you will need to apply the derogation tests in order. The NRW/Defra guidance provides more guidance on this.



Specific casework types

Section 73 casework

94. The principle of relying on a previous AA extends to appeals under Section 73 of the Town and Country Planning Act 1990. Although they can result in a new planning permission, it is possible that a previous HRA may be relied upon if a grant subject to the altered conditions sought by the appellant would not change the potential effects of the development in relation to the site that were considered earlier.

Permitted Development

95. Under Habitats Regulations 75 and 77, any permitted development (PD) which would be likely to have a significant effect on a site is subject to a form of HRA-specific prior approval (see TAN 5: Nature Conservation & Planning paragraphs 5.3.8 – 5.3.10 and Annex 5). This will be relevant in cases where lawfulness based on PD rights or PD-based fallback positions are argued.

96. Regulation 76 provides the mechanism for applicants to apply to the SNCB for a view on whether the PD would be likely to have a significant effect on a site. If the SNCB confirms that it would not, that is conclusive and no further approval is needed (unless required by other conditions imposed by the GPDO).

97. If the SNCB confirms that a significant effect is likely, or if the applicant has come to that view themselves, they must apply to the LPA for its written approval and cannot begin development without it. On receipt of an application, the LPA is required to consult the SNCB, to take account of its views and to carry out an appropriate assessment where necessary.

98. If dealing with cases where it is claimed that a particular development was or would be permitted by the GPDO and the information available suggests that it could affect a site, it will be necessary to establish whether the applicant has confirmation from the SNCB that a significant effect is not likely or has the written approval of the LPA. If they cannot provide either it would undermine any reliance on the GPDO, as the ability to implement the development would be dependent on obtaining one or the other, which would not be guaranteed.

99. The need for HRA-specific prior approval does not cross into appeals against the refusal to grant other forms of prior approval, as in those instances the matters before the Inspector are limited to the issues that require approval, rather than the question of whether the development as a whole would be lawful.

Listed Building Consent

100. Listed Building Consent (LBC) is a form of consent for a project and therefore falls within the scope of HRA, if the works proposed are likely to have a significant effect on a site. In that situation, HRA must be undertaken for the LBC itself, unless there is an accompanying planning appeal for the same development that will require the Inspector to undertake HRA, or an existing consent where HRA was carried out appropriately at the application stage, and the Inspector is satisfied that there has been no change in circumstances to necessitate a new HRA.

Local Development Plans

101. The approach to HRA for plans is the same as for projects (i.e. planning applications). However, given that LDPs prevail for a significant period of time and are more strategic in nature, it is reasonable to take a more flexible approach when establishing whether any required measures for avoiding

adverse effects on site integrity are ‘secure’. The nature and quantum of effects should nonetheless be estimated. If measures not directly related to planning permissions are required to avoid adverse effects, some form of infrastructure or action plan establishing indicative measures may be necessary to demonstrate deliverability and to show that a plan would not adversely affect site integrity.

Enforcement

102. In ground (c) appeals, Inspectors will need to satisfy themselves as to whether developments that would be lawful subject to prior approval (as detailed above) did benefit from such prior approval. Ground (a) appeals, and listed building enforcement appeals seeking consent, screening and appropriate assessment should be undertaken in the normal way.

Appendix 1: Example screening conclusions

No Likely Significant Effect (LSE)

On the basis of objective information, it can be excluded that the [plan/project] would have a likely significant effect on [European site], either alone or in combination with other plans or projects. An Appropriate Assessment is therefore not required.

LSE cannot be excluded

On the basis of objective information, and applying the precautionary principle, it cannot be excluded that the [plan/project] may have a likely significant effect on [European site], either alone or in combination with other plans or projects. An Appropriate Assessment is therefore required.

No LSE because pathway is absent

The [plan/project] has the potential to generate [effect/source], however there is no credible pathway by which such effects could affect [European site]. In particular, [state objective facts: e.g. the site lies outside the relevant catchment / there is no hydrological connectivity / prevailing winds and distance preclude deposition / users would not reasonably access the site]. Accordingly, a likely significant effect can be excluded.

LSE because pathway exists and significance cannot be excluded

The [plan/project] would introduce [effect/source] which has a plausible pathway to [European site] via [pathway mechanism]. The site is designated for [qualifying feature(s)] which are sensitive to [pressure]. In light of the site's conservation objectives and the existing baseline condition, it cannot be concluded with sufficient certainty at the screening stage that the effect would not be significant. A likely significant effect cannot therefore be excluded.

In-combination effects cannot be excluded

The potential for in-combination effects has been considered. However, the [plan/project] would contribute to the same impact pathway ([e.g. nutrient loading / recreational pressure / air emissions]) affecting [European site] as other consented and reasonably foreseeable development within [catchment/zone of influence]. In these circumstances, a likely significant in-combination effect cannot be excluded at screening and an Appropriate Assessment is required.

Mitigation/avoidance measures proposed but discounted at screening

The applicant has proposed measures intended to avoid or reduce effects on [European site], including [list]. However, avoidance/mitigation measures cannot be taken into account to exclude a likely significant effect at the screening stage. The screening conclusion is therefore reached on the basis of the [plan/project] as proposed, without reliance on those measures.

Nutrient-sensitive river/marine catchments

LSE cannot be excluded

The [plan/project] would result in additional wastewater/nutrient loading to the [wastewater treatment works / catchment] which ultimately discharges to [European site] (hydrological connectivity is present). The site's qualifying features are sensitive to eutrophication and the site is [in unfavourable condition / subject to nutrient exceedance / reliant on restoration]. In these circumstances, it cannot be excluded on the basis of objective information that the proposal may have a likely significant effect, alone or in combination. An Appropriate Assessment is required.

LSE cannot be excluded (in-combination)

The proposal would introduce additional residential occupancy, increasing wastewater flows to [WwTW] which discharges to the [river/estuary] supporting [Site B SAC/SPA]. The site's conservation objectives require maintenance/restoration of conditions supporting [feature], which is sensitive to nutrient enrichment. Given the existing baseline pressure and the cumulative nature of nutrient inputs from other development in the catchment, it cannot be excluded on the basis of objective information that the proposal may have a likely significant effect, alone or in combination. Accordingly, Appropriate Assessment is required.

No LSE because no source or no pathway

The proposal would not give rise to additional nutrient loading to the [catchment] because [e.g. it is not residential / it is wholly off-grid with no discharge / it connects to a system discharging outside the European site catchment]. There is therefore no credible source-pathway-receptor linkage to [European site]. A likely significant effect can be excluded.

Recreation pressure (walking, dogs, disturbance, trampling)

LSE cannot be excluded

The [plan/project] would introduce [number/type] of new dwellings/bedspaces likely to increase visits to [European site] given its proximity ([distance] km) and accessibility via [routes/parking]. The site is designated for [ground-nesting birds / sensitive habitats] which are vulnerable to disturbance and/or trampling. Given the plausible pathway for increased recreational pressure, and the potential for in-combination effects with other nearby growth, a likely significant effect cannot be excluded. An Appropriate Assessment is required.

No LSE due to objective evidence of no functional link

Although the proposal would increase the local population, objective evidence indicates no realistic pathway for increased recreational pressure on [European site] because [e.g. the site is not publicly accessible / it is separated by physical barriers / there are closer alternative greenspaces / visitor access is restricted]. Accordingly, a likely significant effect can be excluded.

Air quality (traffic emissions, ammonia, NOx)

LSE cannot be excluded

The [plan/project] would generate additional traffic on [road] within [x] metres of [European site], and/or additional emissions of [NOx / NH3] with a plausible pathway for deposition affecting sensitive habitats within the site. The site is designated for [habitat/feature] which is sensitive to atmospheric nitrogen and/or acid deposition. Given the proximity and plausible mechanism, and the potential for in-combination effects from existing traffic flows and committed development, a likely significant effect cannot be excluded at screening. An Appropriate Assessment is required.

No LSE because no exposure pathway

The [plan/project] would not affect air quality within the zone of influence of [European site] because [e.g. no materially affected road links fall within the relevant distance / the site lies outside the affected airshed]. There is therefore no credible source-pathway-receptor linkage. A likely significant effect can be excluded.

Water abstraction / hydrology

LSE cannot be excluded

The proposal would require [abstraction / increased supply demand] from [source] which is hydrologically connected to [European site]. The site's qualifying features depend on [flow levels / groundwater regime / hydroperiod]. Given the sensitivity of those features and the uncertainty as to whether the additional demand could affect the site's supporting processes, a likely significant effect cannot be excluded. An Appropriate Assessment is required.

No LSE due to no connection

The proposal would not alter flows or groundwater levels relevant to [European site] because [e.g. supply is from an unconnected system / discharge is to a different catchment / no abstraction is required]. A likely significant effect can be excluded.

Appendix 2: Template for an AA

Appropriate Assessment

Introduction

The need for Habitats Regulations Assessment (HRA) is set out within Article 6 of the EC Habitats Directive 1992, which is transposed into UK law by the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Regulations require decision makers, in this case the Welsh Ministers, to undertake an Appropriate Assessment (AA) where significant effects on a national network site are likely and only to give consent if there are no adverse effects on the integrity of a national network site unless other legal tests have been met.

[Identify bodies consulted on the AA and confirm you have taken these into account.]

The proposed development

[For large and complex schemes this need only be a brief description. It is acceptable to refer the reader to the decision or report for a full description.]

Screening

A screening assessment considered likely significant effects on the following European sites:

[For each site:
- Site name and designation type(s)
- Qualifying features likely to be affected
- Reason for inclusion
- Impact pathway (e.g. water quality, hydrological change)

For any sites screened out, briefly explain why pathway is not credible]

Appropriate Assessment

Conservation objectives

[Set out the conservation objectives for sites proceeding to AA, focusing only on those relevant to the qualifying features affected. This should:

- Reference the statutory nature conservation body objectives
- Identify critical attributes (e.g. water quality thresholds, habitat extent, population viability)]

Effects on site integrity

[For each site and relevant impact pathway, assess:
- The condition of the site

- Type of effect
- Magnitude, extent, and duration
- Sensitivity of the qualifying feature
- Whether effects undermine the conservation objectives]

[Conclude whether there would be adverse effects on site integrity.]

In-combination effects

[Identify any other relevant plans and projects and assess cumulative effects, focusing on shared impact pathways. This should be proportionate, evidence-based and focused on realistic combinations.]

Mitigation, management and improvement measures

[Set out the measures proposed to avoid adverse effects on site integrity. These may include mitigation measures secured via planning condition or obligation, for example Construction Environmental Management Plan, biodiversity enhancement scheme, turbine curtailment, sustainable drainage, restrictions of operating times); the effects of other permitting regimes (including their enforcement, or conditions attached to consents), the implementation of management and improvement plans (e.g. in relation to air quality), or planned infrastructure investments.

Evaluate whether any measures required to avoid adverse effects on site integrity would be effective, reliable, timely and in place for the predicted duration of the effects, taking account of how and who would implement/maintain/deliver the measure, how it could be monitored or legally enforced, and (if relevant) if it would meet the tests in the relevant Circulars.]

Effects on site integrity taking account of mitigation

[Having regard to the mitigation measures identified above, assess whether the development would still adversely affect site integrity. Your conclusion should meet the test of there being no reasonable scientific doubt remaining.]

Conclusion

A review of conservation objectives and potential threats to site integrity for the SACs/SPAs was undertaken to identify whether they would be adversely affected by the proposed development. I have taken account of all available evidence and have adopted the precautionary principle in carrying out this AA. I have considered potential effects on site integrity as identified by the applicant and others.

I conclude that the scheme, alone and in combination with other projects, would/would not have an adverse effect on the integrity of the SAC/SPA. This conclusion is based on the circumstances of this case and subject to securing the mitigation measures [e.g. through the imposition of and compliance with the recommended planning conditions and Section 106 agreement].

INSPECTOR

Appendix 3: Role of the Planning and Environment Team

The PET will undertake initial identification of appeals where the development seems capable of increasing nutrient levels and is located within a nutrient-sensitive SAC catchment or is connecting to a WwTW within a catchment.

If the project falls within one of the categories that NRW consider to be unlikely to cause a significant effect, the PET will record their findings for the Inspector's attention but take no further action.

If the project has the potential to cause significant effects, the PET will issue standard 'triage' letters to the appellant and LPA to provide additional information to allow the Inspector to conduct an Appropriate Assessment.



Letter to Parties RE HRA on Riverine SAC - Letter for general developments



Letter to parties RE HRA on Riverine SAC - Letter for agricultural developments