



Report to Inform a Habitats Regulations Assessment

Copeland Borough Council
Publication Draft Local Plan – Policy N5PU

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1 Summary

Site	Copeland Local Plan 2021-2038: Amended Policy N5PU
Report Commissioned by	Copeland Borough Council
Report Purpose	To inform policy within the Local Plan.
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Pathways of Impact Screened	Designated Sites	Impacts requiring Appropriate Assessment
Reduced Water Quality	River Derwent and Bassenthwaite Lake SAC	River Derwent and Bassenthwaite Lake SAC Reduced water quality

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2 Introduction

2.1 Background

David Archer Associates was commissioned by Copeland Borough Council to compile a shadow Habitats Regulations Assessment (HRA) in relation to an amendment to policy N5PU (Protection of Water Resources and Water Quality) within the emerging Local Plan, which is currently at Publication Draft stage consultation.

A review of the condition of River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC) has identified that some parts of the designated sites are failing to meet conservation targets due to levels of nitrogen and phosphorus present (Bassenthwaite catchment – nitrogen and phosphorus; River Marron catchment – phosphorus). Recent water quality measurements show that Bassenthwaite Lake, Derwent Water to be exceeding the targets for Total Phosphorus, and the River Marron is exceeding the target set for soluble reaction phosphorus (SRP) concentrations. Any nutrients entering the catchment upstream of the locations which are exceeding their nutrient targets, will make their way downstream and have the potential to further add to the current exceedance. For the River Derwent and Bassenthwaite SAC, although not all units within the catchment are exceeding the phosphorus targets, the catchments upstream of the Marron and Bassenthwaite Lake (which includes Derwent water) are included in the catchment maps (see **Figure 2.1**).

Figure 2.1: Nutrient neutrality SSSI catchments in relation to the River Derwent and Bassenthwaite Lake SAC



Natural England have advised relevant planning authorities that effects from additional nutrient inputs arising from new development via waste water, cannot be ruled out. As such, a precautionary approach is required.

2.2 The HRA Process

The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 transpose the European Union Birds Directive 1979/2009 and Habitats Directive 1992 into UK law. Under these regulations, competent authorities are required to consider whether plans or projects will have a likely significant effect on the integrity of a SAC, SPA or Ramsar site.

As part of the post-Brexit legislative updates, the Conservation of Habitats and Species Regulations has been updated to form The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Under this legislation update the protected SACs and SPAs, formerly known as Natura 2000 sites, European sites or internationally designated sites are now referenced as National Site Network (NSN) sites. The NSN absorbs existing SACs and SPAs and any future designations will occur under the new Regulations.

The Habitats Regulations Assessment process enables the competent authority to establish if the integrity of protected SAC, SPA and Ramsar sites is likely to be significantly impacted by a proposed plan or project by following a five-stage process as follows:

- **Stage 1:** Determine whether the proposal is directly connected to or necessary for the management of the NSN or Ramsar site.
- **Stage 2: Screening.** This stage identifies the potential effects of a plan or project on the qualifying features of NSN and Ramsar sites (without avoidance and mitigation) and assesses whether these effects will be significant alone or in combination with other plans or projects. Where there remains uncertainty, the potential effect is carried forward to the next stage.
- **Stage 3: Appropriate Assessment.** Where a likely significant effect (LSE) is found or uncertainty remains, more detailed assessment is carried out, considering adverse effects alone and in combination with other plans and projects. This stage considers avoidance and mitigation.
- **Stage 4: No Alternatives and Imperative reasons of overriding public interest (IROPI).** If Stage 3 concludes there is LSE that requires mitigation, but that mitigation is not deliverable, then the tests of no alternatives and IROPI must be met.
- **Stage 5: Compensatory Measures.** Where mitigation is not achievable and there are no alternatives, and IROPI applies, compensation to maintain the NSN or Ramsar conservation objectives must be delivered.

2.3 Objective

The objective of this report is to determine Stage 1 and then undertake Stage 2 Screening in order to ascertain whether Stage 3 Appropriate Assessment is required in relation to potential impacts of the

proposed policy wording on relevant designated sites, and then to apply Stage 3 Appropriate Assessment if necessary.

3 Methodology

3.1 Author

This report has been prepared by Principal Ecologist Graeme Down, who is a full member of the Chartered Institute of Ecology and Environmental Management (CIEEM) and subject to the CIEEM Professional Code of Conduct.

3.2 Assessment Methodology

The proposed policy is not directly connected to or necessary for the management of any NSN or Ramsar site.

Therefore, Stage 2 Screening has been undertaken and aims to ascertain what factors should ‘trigger’ Stage 3 Appropriate Assessment. In order to determine if the proposed policy may have a ‘likely significant effect’ on the integrity of the relevant designated site, each qualifying feature (or group of qualifying features, where appropriate) is compared against each potential significant effect from the plan or project. Only those effects which are likely to be significant are then advised for progression through to Stage 3 Appropriate Assessment.

Case law provides important direction in defining and determining the meaning of the words ‘likely’ and ‘significant’ in the context of HRA (Boggis v Natural England [2009] EWCA Civ 1061, 20th October 2009, paras 36 & 37; Advocate-General Sharpston’s opinion in Sweetman v An Bord Pleanála [2011] C-258/11, 11th April 2013, para 48), as well as providing key information that confirms that mitigation measures must not be included in the Stage 2 Screening Assessment (People Over Wind & Sweetman v Coillte [2018] C-323/17, 12th April 2018).

For those effects that are unlikely to be significant with the policy considered in isolation, these are then considered as part of a cumulative assessment in relation to other plans or projects which may impose the same or interlinked effects on the same designated site. If such effects are likely to be considered significant in respect of in-combination impacts, these are then recommended for further consideration at Stage 3 Appropriate Assessment.

As this shadow HRA considers a single policy within the emerging Copeland Borough Local Plan, it is proportionate to assess the potential LSE that may arise in combination with other policies and allocations contained within the emerging Local Plan.

Where it is considered not possible to ‘screen out’ likely significant effects without detailed appraisal, or where mitigation is required that would not be implemented were it not for the need to protect the designated site, it is necessary to progress to the later ‘Appropriate Assessment’ stage to explore the adverse effects and devise mitigation. This stage may in some instances involve detailed data collection and analysis, and development of mitigation approaches, however, in other cases, where mitigation is already available, it may simply be a case of identifying the need to implement such mitigation. In short, the assessment detail should be ‘appropriate’ to the situation at hand.

4 Screening Assessment

4.1 Determination of Designated Sites for Consideration

4.1.1 River Derwent and Bassenthwaite Lake SAC

Qualifying Features

The River Derwent and Bassenthwaite Lake qualify as a SAC due to supporting the Annex I habitats:

- Clear-water lochs or lakes with aquatic vegetation and poor to moderate nutrient levels;
- Rivers with floating vegetation often dominated by water crowfoot;
- Plants in crevices on acid rocks; and
- Bog woodland.

The River Derwent and Bassenthwaite Lake qualify as a SAC due to supporting the Annex II species:

- Marsh fritillary *Euphydryas aurinia*;
- Sea lamprey *Petromyzon marinus*;
- Brook lamprey *Lampetra planeri*;
- River lamprey *Lampetra fluviatilis*;
- Atlantic salmon *Salmo salar*;
- Otter *Lutra lutra*; and
- Floating water plantain *Luronium natans*.
- Active raised bogs; and
- Degraded raised bogs.

4.2 HRA Screening

4.2.1 Water Quality

River Derwent and Bassenthwaite Lake SAC

The proposed amended wording of the policy N5PU (Protection of Water Resources and Water Quality) to consider nutrient neutrality is as follows:

“Where an affected development within the catchment of the Derwent and Bassenthwaite Lake SAC (or any other catchment identified by the Government as being affected by nutrient neutrality in the future) this must not result in adverse impacts on the integrity of the SAC through the creation of nutrient pollution, unless suitable solutions are identified through an Appropriate Assessment to ensure no residual harm remains following mitigation. Mitigation will need to be deliverable, certain and provided in perpetuity.”

Additionally, the following supporting text has been proposed:

“Nutrient pollution is harming our water environment, particularly in many of the country’s freshwater habitats and estuaries. Pollution comes from a number of sources including waste-water from development and certain agricultural practices. It has an adverse effect on biodiversity by increasing the growth of invasive plants which disrupts the natural cycle by reducing the amount of oxygen in the water and therefore water quality.

The Derwent and Bassenthwaite Lake SAC is a protected Habitat Site under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) which supports a number of habitats and species. Part of the SAC catchment area is located within the north of the borough and covers around 3.6% of the Copeland Local Plan area. The Conservation Objectives for the SAC states there is a need to 'restore stable nutrient levels appropriate for lake type' and that 'the natural nutrient regime of the river should be protected, with any anthropogenic enrichment above natural/background concentrations should be limited to levels at which adverse effects on characteristic biodiversity are unlikely'. Nitrogen and phosphorus levels are a particular problem within the catchment area.

Guidance was produced by the Government in March 2022 relating to nutrient neutrality. The guidance requires that local planning authorities carefully consider the nutrient impacts of any new plans or projects on Habitat Sites through the Habitats Regulations process. Where adverse impacts on the integrity of a Habitats Site are identified then mitigation must be considered. Nutrient neutrality is the term used for the desired outcome either prior to or following such mitigation.

Before granting any new planning permissions, the Council¹ will need to be confident that the development in question does not require nutrient neutrality to be acceptable under the regulations or that nutrient neutrality is secured, as part of the proposal.

Developers will therefore be required to submit a Habitats Regulations Assessment which assesses the impact of nutrient pollution caused by particular developments² that would potentially generate additional nutrient inputs within the catchment area of the Derwent and Bassenthwaite Lake SAC. The HRA Screening stage will need to identify whether the development will have adverse effects upon the integrity of the Habitat Site through the use of a nutrient budget calculator. If adverse effects are identified an Appropriate Assessment will be required to identify the most appropriate solutions to ensure there are no residual effects following mitigation. This would also apply if additional catchments are identified as being affected by nutrient neutrality in the future.

As the issue of nutrient neutrality is new to the Copeland area, at present there are no strategic mitigation solutions in place or readily available and in order to demonstrate nutrient neutrality a number of different solutions may be appropriate. This could include nature-based solutions such as new wetlands, woodlands or riparian buffer strips. In many cases a combination of both hard and nature-based solutions will be required and these will usually be secured through a Section 106 or unilateral agreement with the developer. We appreciate that it may take time for applicants to secure mitigation, particularly where additional land outside the application site needs to be sourced. Mitigation will however need to be secured and delivered before housing and overnight accommodation can be occupied.

The Council has updated its validation list to help developers navigate the process by setting out what information will be required to support a planning application. We will also work with partners and developers to identify the most appropriate solutions.

DEFRA have published a policy paper on the subject which can be found here: [Nutrient pollution: reducing the impact on protected sites - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policies/nutrient-pollution-reducing-the-impact-on-protected-sites)

¹ Taking into consideration advice from Natural England

² Those that create additional overnight accommodation such as housing developments etc.

The Policy relates to “affected developments”. At present, this means all development that creates overnight accommodation within the catchment area. The Government have stated that nutrient neutrality is only an interim solution and further developments such as industrial developments may also be required to follow the same procedure in the future. The Policy will therefore also relate to any such development that is referred to within the Government’s nutrient neutrality policy.”

Within the emerging Local Plan, there are no housing allocations, employment sites and draft opportunity areas that lie within the catchment area identified as being affected by the issue of nutrient neutrality.

However, it is likely that the Council will be required to address planning applications for proposals that include sites that are not included within the Local Plan, through windfall allowances.

The policy text above is clear that new development proposals must not result in an adverse effect on the integrity of the SAC.

The supporting text clarifies that applicants will need to take into account Natural England’s standing advice on this issue and seek to demonstrate that their proposal will meet nutrient neutrality through the use of an appropriate nutrient budget calculator.

The supporting text also identifies that where a development proposal cannot demonstrate nutrient neutrality then mitigation options will need to be provided either on or off-site to ensure that there is no net increase in nutrient budget overall in terms of nutrients entering the catchment of the SAC. The Appropriate Assessment stage of the HRA process will be needed to demonstrate this. In order to be effective, the mitigation will need to be upstream of any nutrient discharge and within the nutrient neutrality catchment. Mitigation will need to be deliverable, certain and provided in perpetuity.

With the policy and supporting text in place it is considered that policy N5PU will not lead to likely significant effects on the River Derwent and Bassenthwaite Lake SAC as it defines mechanisms by which individual projects may demonstrate avoidance or mitigation of any such effects.

The policy addresses potential impacts that would apply as a result of growth within the scope of the Local Plan – i.e. through applications that may be submitted outwith allocated sites and opportunity areas identified within the Plan.

Policy N5PU forms part of a suite of policies, allocations and opportunity areas that encompass the Local Plan as a whole. The Plan itself is currently subject to ongoing HRA and the deliverability of policy N5PU lies within the deliverability of the Plan as a whole. However, as it can be concluded that policy N5PU will not result in any reduction in water quality on the River Derwent and Bassenthwaite Lake SAC then there are no additional policies, allocations or opportunity areas that would result in effects that would occur in combination.

5 Conclusion

This shadow HRA has been able to determine that as a result of the proposed amendments to policy N5PU, in relation to reduced water quality, there will be no likely significant effect on designated Natura 2000 sites, either as a result of the allocation alone, or in combination with any other plans or projects.