

## **Matter 1: Procedural and Legal Requirements**

### ***Issue-Whether the Council has complied with the relevant procedural and legal requirements.***

#### *Plan preparation*

#### ***1.1 Has the Plan, including the Addendum, been prepared in accordance with the Local Development Scheme in terms of its form, scope and timing?***

1.1.1 The Plan and Addendum has been produced in accordance with the Local Development Scheme, which has been updated throughout the process due to a number of factors that have impacted on the timing of different elements of the production.

1.1.2 The relevant iterations of the Local Development Scheme are:

- Copeland Local Development Scheme - November 2019
- Copeland Local Development Scheme – September 2020
- Copeland Local Development Scheme – December 2021
- Copeland Local Development Scheme – July 2022

1.1.3 The Council had been working on producing and adopting site allocations to complete the Copeland Local Plan 2013-2028 following the adoption of the Core Strategy in 2013. However a number of factors made this work less relevant and unlikely the Council would have an up to date Plan due to 5 year housing land supply issues from a very high housing target. It was therefore agreed by Full Council in 2019 to produce a new Copeland Local Plan that reflected:

- Updates to the National Planning Policy Framework (NPPF) (2019)
- The Council's new Housing Strategy (2018-2023)
- Production of the new Copeland Growth Strategy: *Copeland Vision*
- The Council's Corporate Plan
- Cumbria Local Industrial Strategy
- The pause of the Moorside project
- Changes to Sellafield's 'missions' and the opportunities that this can provide
- Availability of Government funding
- Changes to shopping patterns and the role and function of our town centres

1.1.4 This was reflected in the Local Development Scheme 2019 (PD01), which provided a programme to produce the new Local Plan by December 2021, with three drafts of the Plan being published for consultation as follows:

- Issues and Options consultation – November/December 2019
- Preferred Options consultation – May/June 2020
- Publication Draft consultation – December 2020

1.1.5 The timetable in the Local Development Scheme was updated in 2020 (PD02) to reflect the impact of Covid-19, and the delays that had occurred due to the lockdown in the UK and social distancing.

- 1.1.6 In December 2021 the Local Development Scheme was updated (PD03) to amend the timescales for producing the Local Plan to reflect delays in the completion of a number of evidence-base documents, such as the Playing Pitch Strategy and Gypsy and Traveller Accommodation (GTAA) Assessment, due to the Covid pandemic. It also highlighted the possibility of an additional, separate consultation on a gypsy and traveller allocation if the Gypsy and Traveller Accommodation Assessment (GTAA) was published before the Plan was submitted.
- 1.1.7 It also highlighted a five week informal focussed public consultation which took place in September 2021 that tested any significant changes to policies and sites that were likely to have occurred between the Preferred Options and Publication Drafts of the Local Plan.
- 1.1.8 The scope of the Local Plan was consistent throughout, and the updates to the Local Development Scheme enabled the timing to be updated to account for external factors. The form of the Plan was also consistent until the late publication of the GTAA which, together with the Government's letter in March 2022 regarding nutrient neutrality requirements for the Derwent and Bassenthwaite Lake SAC, required the production of the Addendum document. This Addendum document identified additional wording and a new site to be incorporated into the Local Plan, and went through the same assessments and consultation as the rest of the Local Plan throughout 2022.

***1.2 Have requirements been met in terms of the preparation of the Local Plan, notification, consultation and publication and submission of documents?***

- 1.2.1 The Council has followed Regulations 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 in relation to the preparation, notification and consultation of the Publication Draft of the Local Plan and the Local Plan Addendum Document.
- 1.2.2 The Local Plan was submitted in accordance with Regulation 22 of the above Regulations.
- 1.2.3 Full details of the measures taken at each stage can be found in the following Consultation Statements:
- Publication Draft – CD13 Appendix 2 Schedule 1
  - Focussed Pre-Publication Draft Consultation – CD13a Section 2
  - Preferred Options – CD13b Section 3 and Appendices

***1.3 Has the preparation of the Local Plan complied with the Statement of Community Involvement?***

- 1.3.1 The Issues and Options document was produced in 2019 and the consultation that took place met the requirements of the adopted Statement of Community Involvement (2016) that was in place at that time.

- 1.3.2 Subsequent iterations of the Local Plan (i.e. Preferred Options, the Pre-Publication Focused consultation and the Publication Draft) consultations were in conformity with the updated Statement of Community Involvement 2020, which was updated to enable Local Plan production during Covid-19 restrictions and social distancing rules.
- 1.3.3 Interestingly, whilst there was no face to face engagement on the Preferred options document we received a good response, and managed to speak with representatives from more parish councils and meetings than when traditional methods have been used in the past.
- 1.3.4 The consultation period for the Issues and Options was eight weeks, and ten weeks for the Preferred Options, which are greater than the minimum six weeks required and gave people more opportunity to get involved.

#### *Sustainability Appraisal*

#### **1.4 How has the Sustainability Appraisal (SA) informed the preparation of the Local Plan at each stage and how were options considered?**

- 1.4.1 The Scoping Report for the Integrated Assessment (Sustainability Appraisal/Strategic Environmental Assessment and Health Impact Assessment) was produced in 2018 and sent to statutory consultees<sup>1</sup> for comment in March 2018. An update was produced in 2019 which was sent to the same statutory consultees and Cumbria County council in August 2019 for comment; the report was subsequently updated in light of their responses<sup>2</sup>. The Scoping Reports identified a number of issues facing the borough and a list of sustainability objectives that could drive the Local Plan in order to address such issues.
- 1.4.2 The updated 2019 Scoping Report document was published alongside the Issues and Options consultation document in November 2019.
- 1.4.3 All potential reasonable options (sites and policies) identified in the Local Plan Issues and Option Draft were then assessed through a full Integrated Assessment and the findings informed which options were taken forward into the Local Plan Preferred Options Draft. The assessment also identified where policy wording could be strengthened to maximise positive effects or reduce negative effects. The IA Report, incorporating the results of the assessment of the Issues and Options and Preferred Options drafts, was produced in July 2020 and was sent to statutory consultees for comment in October 2020. The document was then made publicly available alongside the Local Plan Preferred Options Draft part way through the consultation on the Draft.
- 1.4.4 The recommended wording changes identified through the IA process can be found in Appendix 3 of the July 2020 IA Report; these were incorporated into Local Plan Publication Draft.

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<sup>1</sup> Historic England, Environment Agency and Natural England

<sup>2</sup> <https://www.copeland.gov.uk/content/sustainability-appraisal-integrated-assessment>

- 1.4.5 An Integrated Assessment was carried out of the draft policies and site allocations within the Local Plan Publication Draft (CD1) as they were being taken developed following the Preferred Options consultation. A number of recommended additions/amendments to policies were identified to improve positive effects and reduce negative effects. These are shown on pages 14, 17, 25, 53, 71, 82 and 83. These changes were incorporated into the final Publication Draft where they were considered to be appropriate. Comments on the IA were sought during the public consultation which ran from January to March 2022.
- 1.4.6 A separate IA was carried out to inform the Local Plan Addendum document; this considered two potential Gypsy and Traveller Sites being considered at the time and amendments to policy N5 (Water Resources) to incorporate nutrient neutrality. A draft of the IA Report was produced in May 2022 and the views of statutory consultees were sought that same month. The final version (CD8) was produced in July 2022. The IA helped the Council identify negative effects which may result from taking either site forward and helped inform the decision regarding which to allocate

**1.5 Are reasons for rejecting alternatives and discounting unreasonable options clearly given?**

- 1.5.1 Page 14 of the Local Plan Publication Draft Integrated Assessment states the following:

*“The SEA Directive requires that ‘...the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and geographic scope of the plan or programme, are identified, described and evaluated’ (Article 5.1).*

*Any alternative options have been assessed so that their relative performance can be compared against the IA objectives. The alternative reasonable options considered along with the assessment of those can be found in the IA Report supporting the Local Plan Preferred Options Draft available here:*

*<https://www.copeland.gov.uk/attachments/integrated-assessment-report>”*

- 1.5.2 The IA supporting the Preferred Options draft (PLP07) lists all alternative options considered, provides an assessment of each and gives reasons why they have not been taken forward. Alternative policy approaches can be found in Appendix 1 and alternative sites considered can be found in Appendix 2.

- 1.5.3 The IA supporting the Local Plan Addendum document (CD4) assesses the only other site (site GTW3) that was considered to be a reasonable alternative to the site being taken forward through the Addendum document as an allocation (site GTW5). The IA, paragraph 4.3.2, notes the following:

*“A number of site options have been identified but only two sites are considered to be suitable and therefore reasonable. All other options have been ruled out and have therefore not been assessed through the IA. Further details can be found in the Gypsy and Traveller Site Assessment document available here: <https://www.copeland.gov.uk/content/gypsy-and-traveller-siteallocation-consultation>.”*

- 1.6 Has the methodology for the SA been appropriate? What concerns have been raised and what is the Council’s response to these? Have the requirements for Strategic Environmental Assessment been met?**

- 1.6.1 SA in the UK is mandatory under section 19 (5) of the Planning and Compulsory Purchase Act 2004, which requires a Local Planning Authority to carry out a sustainability appraisal of each of the proposals in a Local Plan during its preparation. SEA is mandatory under the Environmental Assessment of Plans and Regulations 2004. Schedule 2 of these regulations describes “Information for Environmental reports”. The IA contains the information required by Schedule 2.
- 1.6.2 The methodology for the SA is appropriate and has been followed at each stage of the Local Plan process. The structure of the IA follows the process contained in the ODPM best practice guidance from 2005 on Strategic Environmental Assessment<sup>3</sup> and Planning Practice Guidance on SEA and SA, updated in 2015 by DCLG<sup>4</sup>.
- 1.6.3 During the consultation on the Local Plan Publication Draft (CD1) a number of comments relating to the Sustainability Appraisal were received from Historic England. These can be summarised as follows:
- Historic England: In their response of 8<sup>th</sup> March 2022, Historic England stated that they disagreed with some of the results in the IA. Their comments can be found in document RF6, pages 44 onwards. Following receipt of these comments the Council met with Historic England to discuss the issues further and the Heritage Impact Assessment (EB42) was updated in light of these discussions. Historic England no longer appear to have concerns regarding the IA and both parties have signed a Statement of Common Ground (DTC7).

**1.7 Has the SA for the Addendum been subject to consultation with the consultation bodies? What concerns have been raised and what is the Council’s response to these?**

- 1.7.1 The IA supporting the Addendum was shared with statutory consultees (Environment Agency, Historic England and Natural England) on 16<sup>th</sup> May 2022.
- 1.7.2 Historic England responded to the consultation on 22<sup>nd</sup> May stating the following: *“In view of our response to the potential Gypsy and Traveller Site consultation, we do not have any comments to make on the Integrated Assessment on this matter as we agreed with the Council’s position on the impacts on the historic environment. We agree with the integrated assessment that the amendments to Policy N5 (Water Resources) is likely to have a neutral impact on the landscape/heritage objective or could be positive or negative impact depending on implementation.”*
- 1.7.3 Natural England responded to the consultation on 27<sup>th</sup> June stating: *“Natural England concur with the conclusions in both the HRA and Interim Assessment”*.

*Habitats Regulations Assessment*

**1.8 How was the Habitats Regulations Assessment (HRA) carried out and was the methodology appropriate?**

- 1.8.1 A screening assessment was carried out of all draft policies and proposals in the Local Plan Preferred Options Draft in 2020. The assessment identified that not all policies/proposals

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<sup>3</sup> A Practical Guide to the Strategic Environmental Assessment Directive (ODPM September 2005)

<sup>4</sup> HM Government (2015) Planning Practice Guidance: Strategic Environmental Assessment and Sustainability Appraisal. Available at: [Strategic environmental assessment and sustainability appraisal - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/424242/Strategic_environmental_assessment_and_sustainability_appraisal_-_GOV.UK.pdf)

could be “screened out” and some may lead to likely significant effects on Natura 2000 sites (now known as National Site Network sites). An Appropriate Assessment was therefore carried out. The methodology and results of both assessments were included within the HRA Report October 2020<sup>5</sup>. The Report was subject to consultation with the relevant statutory bodies and was made publicly available alongside the Local Plan Preferred Options Draft<sup>6</sup>.

- 1.8.2 Comments on the draft HRA were received from Natural England on 30<sup>th</sup> November 2020 (see Appendix A below). Changes were made to the Local Plan in light of the HRA findings and responses received; these were incorporated into the Local Plan Publication Draft (CD1). The changes made are set out in the Preferred Options Consultation Response Report (CD13b) and included the addition of a new policy relating to air quality, amendments to policy wording, the inclusion of cross-references to policy aspects that already provide protection to Natura 2000 sites (now NSN sites) and the insertion of additional text which highlighted the need for project-level HRAs.
- 1.8.3 A Screening Assessment and Appropriate Assessment was then carried out of the policies and proposals in the Local Plan Publication draft. The findings were included in the HRA Report January 2022 (CD9) which was sent to the statutory consultees for comment. A response was received from Natural England in March 2022 (See Appendix A).
- 1.8.4 A separate Screening Assessment of two potential Gypsy and Traveller Sites (GTW3 and GTW5) and amendments to Policy N5 (Water Resources) was carried out. The screening assessment identified that an Appropriate Assessment was required for both sites which was undertaken. A draft HRA Report was shared with statutory consultees and Natural England and Environment Agency made comments on 27<sup>th</sup> June 2022 and 30<sup>th</sup> May 2022 respectively (See Appendix A). Natural England’s comments suggested changes to Policy N5 (as did the HRA itself) and the updated policy formed part of the Local Plan Addendum consultation.
- 1.8.5 For completeness a further HRA report was produced in September 2022 (CD19) which took into account comments made by NE at the Preferred Options stage and which included both the assessments from the Publication Draft and Local Plan Addendum stages.
- 1.8.6 The methodology used during the screening assessments considered whether the quantum, type and location of development could lead to Likely Significant Effects (LSE) on National Site Network sites (previously known as Natura 2000 sites) through several pathways of impact both as a result of the Plan alone and in combination with other relevant plans and projects. The scope of the assessment in terms of the pathways and sites considered was agreed with Natural England at the start of the HRA process. The HRA report was compiled by Dr Graeme Down at David Archer Associates, who has 15 years’ worth of experience in undertaking plan-level HRAs.
- 1.8.7 The Appropriate Assessment stage then considered the effects further and identified potential mitigation to reduce/prevent effects. The methodology used is shown in section 2 of the October 2020 HRA Report<sup>7</sup>.
- 1.8.8 The structure followed in the HRA Report July 2022 in relation to screening and Appropriate Assessment was adopted directly as a result of consultation with Natural England (response

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<sup>5</sup> <https://www.copeland.gov.uk/attachments/habitats-regulations-assessment-2020>

<sup>6</sup> <https://www.copeland.gov.uk/attachments/copeland-local-plan-2017-2035-preferred-options-draft-report>

<sup>7</sup> <https://www.copeland.gov.uk/attachments/habitats-regulations-assessment-2020>

of 18<sup>th</sup> March 2022). The methodology complies with the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 which transpose the European Union Birds Directive 1979/2009 and Habitats Directive 1992 into UK law.

## **1.9 What were the relevant designated sites considered?**

1.9.1 The designated sites included within the HRA process were all those located wholly or partly within Copeland, and any outside of Copeland where it was considered possible that likely significant effects could arise from the Local Plan, alone or in combination with other plans and projects. The scoping of these sites for inclusion or exclusion was based on an approach assessing 'pathways of impact' – for example recreational pressure, air quality and water quality. The following National Site Network (formerly Natura 2000) and Ramsar sites were considered in the HRA:

- Borrowdale Woodland Complex SAC
- Clints Quarry SAC
- Drigg Coast SAC
- Duddon Mosses SAC
- Lake District High Fells SAC
- Morecambe Bay SAC
- North Pennine Dales Meadows SAC
- River Derwent and Bassenthwaite Lake SAC
- River Ehen SAC
- Roudsea Wood and Mosses SAC
- Subberthwaite, Blawith and Torver Low Commons SAC
- Wast Water SAC
- Yewbarrow Woods SAC
- Morecambe Bay and Duddon Estuary SPA
- Solway Firth SPA
- Duddon Estuary Ramsar
- Esthwaite Water Ramsar
- Morecambe Bay Ramsar

## **1.10 What potential impacts of the Local Plan were considered? What were the conclusions of the HRA and how has it informed the preparation of the Local Plan?**

1.10.1 The following potential impacts of the Local Plan were considered through the HRA process:

- Recreational pressure and disturbance
- Non-recreational disturbance
- Air quality

- Water availability and flows
- Water quality
- Loss of or disturbance to supporting habitats
- Urbanisation effects
- Coastal squeeze
- In combination effects

1.10.2 The latest HRA report (CD19), September 2022, concludes that the policies and sites included within the Local Plan will not lead to LSE on any Natura 2000 sites through the above pathways of impact, both alone and in combination with other plans and projects, with the exception of air quality. At present it is not possible to conclude that the levels and locations of growth within the Local Plan can be delivered without further Appropriate Assessment which focusses on the impact of the Plan on air quality. Work has commenced to support further AA with regards to the potential impact on three specific Special Areas of Conservation (all of which are outside the borough).

1.10.3 The way in which the HRA has informed the preparation of the Local Plan is set out in Table 1.1 of the HRA, September 2022 (CD19). In summary it has:

- Provided revised policy wording and additional supporting text in order to mitigate likely significant effects on the National Site Network
- Helped inform the decision to allocate Gypsy and Traveller site GTW5 as opposed to site GTW3 which was also previously under consideration.
- Confirmed that further assessments are required re potential air quality impacts

### **1.11 How have mitigation measures for potential impacts arising from new development on designated sites in terms of recreational disturbance and air and water quality been addressed?**

#### Recreational Disturbance

1.11.1 The HRA September 2022 (CD19), pages 2 and 296, conclude that the Local Plan on their own will not result in likely significant effects on National Site Network and Ramsar sites through this pathway. Table 3.1 of the HRA shows the sites which have been screened out and, through Appropriate Assessment, it has been highlighted that other policies, namely Policy N1 and DS3, would prevent adverse effects on the remaining NSN and Ramsar sites at policy level.

1.11.2 Throughout the HRA its noted that a small number of policies and allocations, in combination with other development outside the Local Plan area, could contribute to increased recreational pressure and disturbance on National Site Network sites outside the borough. The screening of the relevant allocations (Table 3.13) states that:

*“The protection of NSN and Ramsar sites requires Plan-level avoidance and mitigation, with the policy wording within the Plan seeking to ensure this is in place. Strategically, the issue of recreational disturbance on these designated sites will require identification of the sources and locations of disturbance, involving partnership working which will then inform any mitigation approaches at the strategic level. Until such time as an overarching approach is developed to management of recreational pressure on Morecambe Bay and Duddon Estuaries SPA and Duddon Estuary Ramsar and other NSN and Ramsar sites to which increased housing within Copeland could contribute, then the Local Plan could commit to*



*working with partners and stakeholders to implement approaches to management of recreational pressure as and when such approaches may be agreed.”*

#### Air Quality

1.11.3 Further work is required to determine the effects of Local Plan policies and proposals on air quality in parts of the following three Special Areas of Conservation (SAC):

- Subberthwaite, Blawith and Torver Low Commons
- Duddon Mosses
- Lake District High Fells

1.11.4 This is highlighted in Natural England’s response to the Local Plan Publication Draft (CD1) and the joint Statement of Common Ground (DTC11). Further details regarding the work that is required can be found in paragraphs 1.14.3-1.14.6 below.

1.11.5 The findings from the additional work will allow the HRA consultants to assess whether the Local Plan will have likely significant effects on National Site Network sites i.e. whether the proposal will affect the integrity of the SAC.

1.11.6 Until this work has been carried out the Council and Natural England do not know whether mitigation is required and if it is, what form this should take. This information should be available to discuss at, if not before, the hearing sessions begin.

#### Water Quality

1.11.7 The HRA September 2022 (CD19) (pages 2 and 296) concludes that the Local Plan will not result in likely significant effects on National Site Network and Ramsar sites through this pathway. Table 3.3 shows the sites which have been screened out and through Appropriate Assessment it has been highlighted that other policies, namely Policy N1, N5 and D8 would prevent adverse effects on the remaining NSN and Ramsar sites at policy level along with the addition of supporting text relating to project-level HRAs. A number of Minor Modifications are proposed to the Local Plan relating to the addition of such text:

- Minor Modifications to the Local Plan (CD15)
  - MI-LP110, 111, 114, 119, 201, 224
- Main Modifications to the Local Plan Appendices doc (CD16)
  - MA-APP58 (inclusion of new Appendix H document (CDC11))

**1.12 Have the specific recommendations of the HRA been taken into account in the Plan? If not, is it intended to implement these recommendations through modifications.**

1.12.1 Yes, suggested wording changes to policies and supporting text recommended in the HRA have been incorporated into the Local Plan or are suggested as main or minor modifications – see paragraph 11.11.8 above.

1.12.2 Additional modifications may be required should the additional air quality assessments indicate that policies and sites are likely to have significant effects on NSN sites which would require mitigation.

**1.13 How have the specific concerns raised by Natural England been addressed in the revised HRA?**

1.13.1 Natural England provided consultation responses to the HRA of the Preferred Options Draft Local Plan on 30<sup>th</sup> November 2020. These were then taken forward into the Local Plan Publication Draft as previously indicated and were therefore subsequently effectively addressed in production of the HRA Report January 2022 (CD5) that assessed the Publication Draft Local Plan.

1.13.2 Natural England's consultation responses received on 18<sup>th</sup> March 2022 then informed an updated HRA Report July 2022 (CD9). The major concerns addressed were:

- Amendments to the process of screening and Appropriate Assessment to consider the Plan as a whole when screening policies and allocations in determining whether these would be screened out or taken forward to Appropriate Assessment. Sites and policies determined to have no likely significant effects alone were subjected to the same process in combination with other plans and projects. The HRA Report was amended to make this process clearer and presents the screening process for each pathway of impact considered.
- Allocations screened in were considered at AA with greater specificity as to the mitigation that would be required (generally at project-level HRA) to ensure no likely significant effects.
- The potential for likely significant effects through reduced air quality in combination with other plans and projects was considered in greater detail. This work is ongoing and has included further dialogue with Natural England. The further work being undertaken is discussed in answer to question 1.14 below. Natural England raised other queries in relation to air quality and designated sites and these will also be discussed in the updated HRA that will focus on air quality issues.

**1.14 Have Natural England's concerns been addressed regarding the effect of the Local Plan on the integrity of the National Site Network in terms of air quality?**

1.14.1 Not yet, the Council is currently working with Natural England in order to address their concerns regarding air quality.

1.14.2 A new Local Plan policy (Policy DS11) relating to air quality was added to the emerging Plan between Preferred Options and Publication Draft stage in light of Natural England comments. The Council had hoped at the time that this would mitigate any potential adverse effects at the plan making stage meaning the HRA could conclude that air quality pathway would result in no LSEs. Further discussions with Natural England have indicated that this is not the case and additional work is required to ascertain whether LSEs are likely.

1.14.3 Additional traffic and air quality modelling was carried out by Redmore Associates (CD19a) on behalf of the Council between the HRA January 2022 and the HRA September 2022. This was based upon traffic flow projections (based on average weekday traffic) provided by Cumbria County Council. The projections were based on average weekday traffic (AWT) flows taken at peak times of the day in 2019 (mornings and evening - Monday to Friday). The projections are therefore considered to be a "worst case scenario" and looking at average daily traffic (ADT) flows may yield different results.

1.14.4 It should also be noted that, as part of the HRA process, the traffic data also considers the "in combination" effects of not only Copeland Local Plan growth but also of growth elsewhere in the county.

1.14.5 The HRA was updated to include the additional information relating to this latest air quality modelling and the draft was shared with Natural England in July 2022 for their comments. These were received on 12<sup>th</sup> August 2022 and a meeting was held to discuss the issues raised further (see Appendix A).

1.14.6 In light of the discussions, it was agreed with Natural England that the Council would commission the following work to explore these issues further:

- Review of alternative traffic modelling which looks at average daily traffic flows (ADT - Mon-Sun) flows as opposed to average weekday flows (AWT - Mon-Fri flows)
- Additional HRA assessment (based on site assessments) to determine the following:
  - Whether there are qualifying features within these parts of the SAC;
  - Whether any qualifying features within these parts of the SAC that are susceptible to air quality impacts
  - Whether if there were susceptible qualifying features, whether Local Plan impacts would harm the overall integrity of the National Site Network
  - What mitigation would be required to prevent the above and can this be implemented

1.14.7 The additional HRA work relates to the following areas, all of which lie outside of the Copeland borough. Maps of these potentially affected areas are shown in Appendix B:

- Duddon Mosses Special Area of Conservation (SAC) – 200 m buffer of A595 Foxfield, Broughton-in-Furness;
- Subberthwaite, Blawith and Torver Low Commons SAC – 200 m buffer of A5092 Grizebeck Brow, Grizebeck 'Hill Farm';
- Lake District High Fells SAC – 200m buffer of A66 between A592 and A5091.

1.14.8 The on site assessments will take place in early January. The additional air quality modelling will then follow shortly afterwards and an updated HRA will then be produced. This information is unlikely to be available in full prior to the hearing sessions where this matter is discussed, however it is hoped that it will demonstrate that the Local Plan will have no significant impact upon the integrity of the National Site Network.

1.14.9 If the appropriate assessment is unable to rule out likely significant effects then the Council will continue to work with Natural England in order to identify appropriate measures to mitigate such effects.

#### **1.15 Have Natural England's concerns regarding nutrient neutrality been fully addressed?**

1.15.1 The Council believes that Natural England's concerns about nutrient neutrality have been addressed through amendments to Policy N5 (Water Resources); the amended policy is included in the Local Plan Addendum document (CD7). Nutrient neutrality only affects a small proportion of the Local Plan area (3%), all of which falls outside the identified settlement boundaries and site allocations, therefore development within the affected area will rarely be supported.

1.15.2 Given the above, the Viability Study Stage 2 document (EB20) does not consider the impacts of nutrient neutrality and there are unlikely to be any financial implications arising from the HRA relating to this matter.

**1.16 Are there any financial implications arising from the HRA and any financial contributions towards strategic access management and monitoring measures? Does the plan wide viability assessment make any assessment for this or contain any headroom/contingency that could absorb likely costs?**

- 1.16.1 The HRA identifies sites where a site specific, project-level HRA will be required; this will impact upon development costs, particularly if that assessment identifies the need for mitigation measures. The instances where such a HRA will be required are identified in the new Appendix H (CDC11) to the Local Plan.
- 1.16.2 This requirement has not been considered specifically in the Viability Study, however Appendix 15 does identify sites where there is likely to be sufficient headroom that could absorb such costs.

**1.17 Are there any further amendments to the Plan required as a consequence of the 2022 HRA, Natural England's correspondence, Statement of Common Ground (draft) with Natural England necessary for legal compliance with the Habitat Regulations and for soundness?**

- 1.17.1 The Council have identified a number of further amendments required to the Plan as a consequence of the above; these are listed in paragraph 1.11.8.
- 1.17.2 Should the additional assessments referred to in paragraphs 1.14.6 above indicate likely significant effects on the National Site Network the Council will work with Natural England to identify the most appropriate mitigation. Such mitigation may need to be referred to within the Local Plan.

*Strategic Policies and Neighbourhood Plans*

**1.18 What progress is there with Neighbourhood Plans in the Borough?**

- 1.18.1 There are no active Neighbourhood Plans in the Copeland Planning Area. Two parishes (St Bees and Millom Without) were designated as Neighbourhood Planning Areas in December 2012.
- 1.18.2 Millom Without did produce an early draft of their Neighbourhood Plan, which focussed largely on design matters, but neither parish has progressed to any further official milestone in the Neighbourhood Planning process.
- 1.18.3 We are not aware of any further work to produce Neighbourhood Plans in these parishes, or elsewhere in the borough.

**1.19 Does the Plan set an appropriate framework, and allow an appropriate role, for neighbourhood plans having regard to current progress in their preparation in the Borough? In particular: a) Does the Plan appropriately identify 'strategic policies'? b) Does the Plan need to include a housing requirement for each designated neighbourhood area?**

- 1.19.1 The Publication Draft (CD1) identifies those policies that are Strategic Policies, both in terms of their name in the policy boxes and Index (pages iv to vi), and also through the colour of the boxes around each policy – with purple boxes for Strategic Policies and green boxes for the remaining policies.

- 1.19.2 The Plan does not need a separate and specific housing requirement for the two designated areas.
- 1.19.3 In the case of St Bees, this is because St Bees is already identified as a Local Service Centre in Policy DS3PU of the Local Plan Publication Draft (CD1) and has two proposed housing allocations. The parish council have not proposed to allocate additional housing land in any of the responses they have made or during any meetings the Council has held with them during the Local Plan process.
- 1.19.4 In the case of Millom Without, Hallthwaites and The Green are identified as Rural Villages in Policy DS3PU. This gives them greater scope for housing development than is the case in the current adopted Copeland Local Plan 2013-2028 in which they are classified as Open Countryside. The Neighbourhood Plan that was being drafted for Millom Without in 2013 was focussed on the design of development, and not increasing supply, and as with St Bees the parish council have not proposed to allocate additional housing land in any of the responses they have made or during any meetings the Council has held with them during the Local Plan process.

*Other matters*

**1.20 Has the Council had regard to the specific matters set out in S19 of the 2004 Act (as amended) and Regulation 10?**

- 1.20.1 Regarding 1a) of S19: The Copeland Local Plan is resonant with the presumption of sustainability in the NPPF throughout. This is reflected in specific climate criterion within various policies. It also has a Strategic Policy dedicated to the mitigation of, and adaptation to, climate change (DS2).
- 1.20.2 Regarding 1b) of S19: The Copeland Local Plan identifies several strategic priorities for development that are expressed through its strategic policies and allocations; these include, employment, housing, infrastructure, ecology, heritage, and long-term economic development
- 1.20.3 Regarding 1c) of S19: The Copeland Local Plan has policies written that enable the pragmatic realisation of the Strategic Priorities outlined above.
- 1.20.4 Regarding A) of the Act: The Copeland Local Plan has been produced in careful consideration of all guidance that carries statutory weight in planning; this includes, but is not limited to, the NPPF, PPG, and policy statements issued by the Secretary of State.
- 1.20.5 With regards to Regulation 10a the policies and proposals within the Local Plan do not contradict any policies developed by a local transport authority in accordance with Section 108 of the Transport Act.
- 1.20.6 With regards to Regulation 10b, which has the objective of preventing major accidents involving dangerous substances and limiting the consequence of such accidents, has been taken into account. The proposals and policies within the Local Plan would not lead to an increased risk of major accidents.
- 1.20.7 With regards to Regulation 10c, the allocations within the Local Plan are within an appropriate distance of “establishments” listed within these Regulations.

1.20.8 Regulation 10d requires Local Plans to have regard to the National Waste Management Plan<sup>8</sup>. The Local Plan contains a number of policies that aim to minimise waste generated by new developments in support of the NWMP. These include Policies DS2, DS6 and H6. In addition, Table 1 in the Local Plan (CD1) outlines the relationship with other plans, including the Cumbria Minerals and waste Local Plan 2015-2030.

**1.21 Does the Local Plan include policies in relation to the mitigation of and adaptation to climate change? Which?**

1.21.1 The NPPF outlines that a key element of securing the principle of sustainability is environmentally considerate planning<sup>9</sup>. The Local Plan contains important references and actions regarding the mitigation of and adaptation to climate change, through both policies and supporting text. It also contains Policy DS2, a strategic policy that outlines a key strategic vision for Copeland's mitigation of and adaptation to climate change. This policy is supported through the findings of the Copeland People's Panel Report on Climate Change<sup>10</sup> and the wider countywide evidence base<sup>11</sup>.

**1.22 How have issues of equality been addressed in the Local Plan?**

1.22.1 The Copeland Local Plan is supported by and evidenced through an Equalities Impact Assessment (CD11). This document outlines that the Copeland Local Plan will have either a neutral or positive impact across all protected characteristics.

## Appendices

**Appendix A:** Natural England Responses to Local Plan and HRA consultations

**Appendix B:** Maps showing Special Areas of Consultation potentially affected by air quality impacts

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<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/955897/waste-management-plan-for-england-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/955897/waste-management-plan-for-england-2021.pdf)

<sup>9</sup> NPPF (2021) Paragraphs 7 and 8.


<sup>10</sup> [Copeland's People's Panel on Climate Change: Oversight Panel | Copeland Borough Council](#)

<sup>11</sup> [Zero Carbon Cumbria Programme - CAFS](#)

## **Appendix A**

Figure 1: Natural England Comments on Local Plan Preferred Options Draft and HRA

Date: 30 November 2020  
 Our ref: 327656  
 Your ref: Copeland Local Plan 2017-2035: Preferred Options Draft



Leanne Parr  
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**BY EMAIL ONLY**

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Dear Leanne,

Thank you for your consultation on the Preferred Options Draft Copeland Local Plan and Habitats Regulations Assessment which was received by Natural England on 23 September 2019.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England welcome the opportunity to comment on the Local Plan Review Preferred Options document at this draft stage of the Local Plan, and the associated Habitats Regulations Assessment.

Preferred Options Draft Plan comments

Section	Comment
<b>Figure 9 Places Assets and Aspirations Map - Copeland North</b>	The St. Bees Heritage Coast possible extension area, Solway Firth pSPA, and the Cumbria Coast MCZ should also be indicated on this map.
<b>Figure 10 Places Assets and Aspirations Map - Copeland Mid</b>	The Cumbria Coast MCZ should be indicated on the map.
<b>Policy DS1PO Presumption in Favour of Sustainable Development</b>	Natural England agree with the ambitions of this Policy
<b>Policy DS3PO 1a) Settlement Boundaries</b>	In our previous response to the Issues & Options consultation Natural England advised: Any extensions to settlement boundaries should not result in additional adverse impacts upon designated nature conservation sites or undermine the landscape character, landscape designations and definitions (including Heritage Coast). This also applies to the possible St. Bees Heritage Coast extension area. We reiterate these comments here in this consultation.
<b>Policy DS4PO Strategic Development Priority Projects</b>	With regards to the Former Marchon site Strategic Development Priority Project in Whitehaven we previously provided advice to Copeland on potential issues related to landscape impacts of development at this site. This advice should be taken into account in any Local Plan policy/allocation for this site.  Natural England would also welcome clarification on how the Council wish to progress with the proposed Heritage Coast extension adjacent to this site.
<b>Policy DS5PO Development Principles</b>	<u>Mitigation of and adaption to climate change</u> Natural England welcome the inclusion of green infrastructure within this policy, recognising the importance of healthy ecosystems in social, economic and environmental sustainability.



	<p>In addition, we recommend additional wording should recognise the need to minimise development in flood risk areas. This should also be referred to in Policy CC1PO</p> <p>Reusing previously developed land - You should ensure that the promotion of developing brownfield sites is informed by data on their biodiversity value, so that sites of high value aren't prioritised for development. Biodiversity-rich brownfield sites should be recognised for their potential to deliver high quality Green Infrastructure, for people and wildlife. Information on the amenity and biodiversity value of brownfield sites should also be taken into account within the Green Infrastructure Policy.</p> <p><u>Protection, enhancement and restoration of the Borough's valued natural and cultural assets</u>                  Natural England welcome the ambition of the Local Plan to protect, enhance and restore natural and cultural assets. We consider this policy could be strengthened by identifying the need to secure a measurable biodiversity net gain as a development principle. Additionally, the Local Plan should recognise opportunities to deliver multi-functional green infrastructure, minimise air pollution on sensitive habitats, and support the development of a nature recovery network.</p> <p><u>Healthy Communities</u>                  This should include the benefits of multi-functional Green Infrastructure.</p>
<p><b>Policy DS6PO Planning Obligations</b></p>	<p>Natural England recommend an additional point in this policy to identify that Planning Obligations may be required to secure biodiversity net gain, compensatory habitats and green infrastructure.</p>
<p><b>Policy DS7PO Design Standards</b></p>	<p>Local Landscape Character should be included with reference to Copeland Settlement Landscape Character Assessment and Policy DS10PO.</p>
<p><b>Policy DS8PO Reducing Flood Risk</b></p>	<p>Plans should positively contribute to reducing flood risk by working with natural processes and link with Green Infrastructure policies, and SUDs provision below.                  For more information, see <a href="#">PPG on Flood Risk and Water Supply, Waste Water and Water Quality</a>.</p>
<p><b>Policy DS11PO Soils and Contamination</b></p>	<p>As stated in our previous response to the Issues &amp; Options consultation:                  Where undeveloped/greenfield land is put forward for development Natural England would support soil management measures which avoid, mitigate and compensate, including a soil resource plan and adherence to the Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. All developments should seek to achieve pre-development or better levels of surface water drainage and ensure pollution prevention measures are in place for any surface water run-off into watercourses.</p>
<p><b>Policy E2PO Location of Employment</b></p>	<p>Biodiversity impacts should be given more weight and a separate bullet from Landscape and settlement character.</p>
<p><b>Policy E4PO Employment Sites and Allocations</b></p>	<p>In reference to Local Employment Site - Haigh Business park, Whitehaven - Natural England notes this is an already established Business Park but due to it's location adjacent to St Bees Heritage Coast proposed extension area (and within the proposed Heritage Gateway Site) Natural England advise that certain types of employment would be incompatible for this area. The policy should provide greater clarification on what appropriate employment types would be, and the environmental constraints on this site.</p> <p>Hensington Common Whitehaven and Whitehaven Commercial Park site are in a historically mapped area for Hen Harrier which is a Special Protection Area notified feature which should be assessed in the plan level HRA and these developments will need to be submitted with a project level HRA to assess any potential impacts.</p> <p>Any future developments at Cleator Mills will require an Appropriate Assessment under the Habitats Regulations 2017 as this site is adjacent to River Ehen.</p>
<p><b>Policy E5PO Opportunity Sites and Areas</b></p>	<p>As stated above for Policy E4PO the Cleator Mills site is adjacent to the River Ehen SSSI and SAC so will require assessment at both the Plan level and project level through a HRA. Any developments on this site should ensure there is no deterioration in water quality of the river and impedement of it's natural processes.</p> <p>Brownfield sites should be surveyed for their biodiversity value before being put forward for development. Open mosaic habitats on previously developed land are a Priority habitat in themselves. For more information see:</p>

	<a href="http://publications.naturalengland.org.uk/file/5329469874110464">http://publications.naturalengland.org.uk/file/5329469874110464</a>
<b>Policy CC1PO Reducing the impacts of development on climate change</b>	As stated in our response to the Issues & Options consultation development should seek to mitigate and adapt to the impacts of climate change by <ul style="list-style-type: none"> <li>• minimising development in flood risk areas and</li> <li>• securing nature-based solutions which improve the extent of tree cover and green infrastructure</li> </ul> This will help create connected and resilient wildlife corridors, sequester carbon, and help people adapt to climate change.
<b>Policy CC3PO Wind Energy Developments</b>	The Map at Appendix H indicates an area as Overall Suitable Location for Wind Energy. Much of the northern section overlaps with an area known to support Hen Harriers and a variety farmland birds such as curlew. This needs to be assessed in the accompanying Plan level HRA. At the project level suitable bird surveys would need to be undertaken before wind energy developments could be consented here. The Southern area on the map west of Millom would also require bird surveys and HRA due to the functional linkage and bird flightpaths around the SPA margins.
<b>Policy T3PO Coastal Development Outside of the Undeveloped Coast</b>	Any development should ensure the local landscape character is maintained and does not have a detrimental impact within the St Bees Heritage Coast or its surrounding setting, as well as the biodiversity features along the undeveloped coast.
<b>Policy T4PO: Caravans and Camping Sites for short term letting</b>	This Policy should include ensuring no unacceptable impacts on biodiversity. Specifically, any coastal caravan and camping sites will need to consider recreational disturbance impacts on SPA birds as a result of the increase in visitors.
<b>Policy RE1PO Agricultural Buildings</b>	Linked to the Air Quality comments for Policy N10PO below, reference should be made to ammonia emissions from agricultural developments and activities such as livestock housing, slurry stores and spreading of manures. Ammonia impacts upon sensitive habitats and several SSSI's within the Borough are currently over their critical threshold levels for ammonia (see Table 1 under Policy N10PO). Potential objectives and actions for the Local Plan could be seeking to support and assist landowners/farmers to implement ammonia reduction measures, improved infrastructure and exploring opportunities for ammonia reduction mitigation measures such as tree screening and green infrastructure. As nitrogen from ammonia settles (nitrogen deposition) it can impact upon the local natural environment and human health resulting in the general loss of plant diversity and health impacts. In combination with other impacts such as acidification of land and water, ammonia can lead to changes in ecosystem structure and function. To address this the Government's Clean Air Strategy (2019) aims to reduce ammonia by 16% by 2030. In Copeland several designated sites (SSSI's and SAC's) are at risk of ammonia pollution, listed below under the Air Quality comments (for further information on critical loads, please see APIS.). Natural England therefore recommend a separate policy to address Air Quality that would further strengthen this policy.
<b>Policy RE3PO Conversion of rural buildings to commercial or community use</b>	Natural England advise including the need to consider bat surveys for conversions of rural buildings.
<b>Strategic Development Priority Projects Table 14, p163</b>	Strategic regeneration sites - Former Marchon Site, Whitehaven. As above for Policy DS4PO Natural England previously provided advice to Copeland on potential issues related to landscape impacts of development at this site. This advice should be taken into account in any Local Plan policy/allocation for this site.
<b>Policy H5PO Housing Allocations</b>	Former Marchon Site – comments as above for Policy DS4PO. Housing allocations for Cleator Moor will require a HRA due to the proximity to the River Ehen SAC. Housing at St.Bees will require an assessment of recreational impacts on features of the nearby St.Bees SSSI as well as landscape impacts on the Heritage Coast. Housing at Millom will require a HRA to assess recreational impacts on the neighbouring SPA/Ramsar.
<b>H14 &amp; 15 PO Rural Exception Sites &amp; Essential Dwellings for Rural Workers</b>	This Policy wording should include no adverse impact on biodiversity, in addition to the character of the area or the surrounding landscape.
<b>Policy H16PO Conversion of Rural Buildings to</b>	As for Policy RE3PO Natural England advise including the need to consider bat surveys for conversions of rural buildings. If occupied by bats or other European Protected

<b>Residential Use</b>	Species, mitigation/compensation is secured and opportunities are taken to support those specific species in the conversion. The need for a European Protected Species Licence should be flagged if bats are present.
<b>Policy H21, &amp; 23 PO Sporting, Leisure and cultural Facilities &amp; Community Facilities</b>	As for Policy DS5PO When developing previously developed land - Natural England recommend the Local Plan should ensure that the promotion of developing brownfield sites is informed by data on their biodiversity value, so that sites of high value are not prioritised for development.
<b>Table 17 Natura 2000 Sites in Copeland</b>	Table 17 should also include: <ul style="list-style-type: none"> <li>• Morecambe Bay Special Area of Conservation (SAC) and the</li> <li>• River Derwent &amp; Bassenthwaite Lake SAC.</li> </ul> <p>There should be reference included to functionally linked land having the same status as international designations. Supporting habitats outside of the designated site boundary (and sometimes a considerable distance away) may be used by SPA populations or some individuals of the population for some or all of the time. These supporting habitats can play an essential role in maintaining SPA bird populations, and proposals affecting them may therefore have the potential to affect the SPA which needs to be addressed in the Local Plan.</p>
<b>Table 18: Sites of Special Scientific Interest in Copeland (Habitats)</b>	Table 18 identifies SSSI's within Copeland, however this list appears to only include sites within the National Park boundary area of Copeland, rather than the area that falls within the Local Plan. As stated in Natural England's response to the Issues & Options consultation other SSSI sites to include are: <ul style="list-style-type: none"> <li>• High Leys SSSI</li> <li>• Yeathouse Quarry SSSI</li> <li>• Black Moss SSSI</li> <li>• Silver Tam, Hollas and Hamsey Mosses SSSI</li> <li>• Florence Mine SSSI</li> <li>• St Bees Head SSSI</li> <li>• Haile Great Wood SSSI</li> <li>• Hallsenna Moor SSSI</li> <li>• Low Church Moss SSSI</li> </ul> <p>And also, a small section of</p> <ul style="list-style-type: none"> <li>• River Derwent &amp; Tributaries SSSI</li> </ul>
<b>Para 49.6.3</b>	Natural England welcome the proposal to produce a Biodiversity and Development Supplementary Planning Document. We recommend your Authority strongly commit to this and prioritise this SPD. We advise this also covers Net Gain as per below comments on the Net Gain Policy.
<b>Para 49.7.1</b>	Natural England often advise at the development management stage the submission of a Construction Environmental Management Plan to outline the pollution prevention measures that will be implemented to prevent impacts on the environment and biodiversity. It would be beneficial for this to be a stronger requirement in the Policy wording, and also included in the subsequent Biodiversity and Development Supplementary Planning Document to provide clearer guidance on when a CEMP is required to protect water quality.
<b>Policy N1PO Conserving and Enhancing Biodiversity and Geodiversity</b>	Change wording from 'should be' to 'must be' for the first paragraph. The wording 'Sustainable construction methods should be used where possible' needs strengthening also. Natural England recommend identifying the sequential steps as the 'mitigation hierarchy', as this is a recognised process in national planning policy.
<b>Section 49.8</b>	Natural England welcome this detailed supporting text outlining the biodiversity net gain approach and Local Nature Recovery Strategy, and consider further information about how the Council expect applicants to follow the biodiversity net gain approach should be provided within a SPD. Your plan should include requirements to monitor biodiversity net gain. This should include indicators to demonstrate the amount and type of Net Gain provided through development. The indicators should be as specific as possible to help build an evidence base to take forward for future reviews of the Plan, for example the total number and type of biodiversity units created, the number of developments achieving Net Gain and a record of on-site and off-site contributions.
<b>Para 49.8.6</b>	Whilst Natural England recognise that 10% is the minimum net gain that should be provided, we encourage the Council to support developers who wish to deliver net gain above 10%.
<b>Para 49.8.7</b>	Natural England advise you outline how you intend to link development to the habitat

	networks referenced in the policy and work with neighbouring Authorities to develop a nature recovery network.
<b>Para 49.8.9</b>	As above a separate SPD would be beneficial to outline this process in more detail once the Environment Bill is passed and more national guidance is available.
<b>Para 49.8.11</b>	Natural England recommend rewording 'Defra Metric 2.0' to just 'Government's Biodiversity Metric' to avoid wording going out of date. Biodiversity Metric 3.0 due to be released January 2021, improving upon Biodiversity Metric 2.0.
<b>Policy N2PO Biodiversity Net Gain</b>	<p>Natural England strongly welcome and support the proposed Biodiversity Net Gain policy. For alignment with national planning policy and best practice, we recommend the following amendments:</p> <ul style="list-style-type: none"> <li>• 10% biodiversity net gain should be secured, following application of the mitigation hierarchy in the planning of the proposed development e.g. Avoid (then net gain), Mitigate (then net gain), Compensate (then net gain).</li> <li>• Details of the biodiversity baseline and proposed net gain should be submitted to, and agreed with the Council in the 'Biodiversity Gain Plan', including Biodiversity Metric calculations.</li> </ul> <p>NE support the wording on monitoring of the gain sites and wording to stop deliberate damage of habitats. Due to net gain being a new and evolving requirement for developers, land owners, and their consultants, we advise you commit to an SPD which outlines in further detail the requirements of the approach. It will be easier to update an SPD and keep it up to date once the evidence base grows. This would benefit from being included as part of the proposed Biodiversity SPD referred to in Para 49.6.3.</p> <p>Natural England advise referencing that biodiversity net gain approach does change any existing protections upon protected sites or irreplaceable habitats. This Policy should link to other strategies for example Green Infrastructure. Natural England advise it is made clearer how Net Gain can be achieved alongside Green Infrastructure opportunities.</p>
<b>Policy N3PO Local Nature Recovery Networks</b>	Natural England support this policy. Consider this should also be included in SPD to allow it to evolve as national legislation, policy and local situation changes.
<b>Policy N4PO Marine Planning</b>	<p>Natural England support the inclusion of a section on Marine Conservation, however it is incomplete:</p> <ul style="list-style-type: none"> <li>• Missing the Drigg Coast SAC/SSSI, which is partly within Copeland</li> <li>• Missing the St Bees Head SSSI</li> <li>• The map of the Cumbria Coast MCZ is old and does not include the 2019 update.</li> </ul> <p>The up to date maps can viewed at <a href="https://magic.defra.gov.uk/magicmap.aspx">https://magic.defra.gov.uk/magicmap.aspx</a></p> <p>We advise a separate Marine Planning section, rather than incorporating it in with Marine Conservation. This is because whilst the Marine Plans themselves are subject to assessments of their environmental impact, they include many other considerations other than conservation. This section should also briefly outline the purpose of Marine Plans.</p> <p>The wording of the policy implies that 'giving consideration' to the NW Marine Plan will sufficiently account for any impacts to the marine environment. Whilst the Marine Plan will be subject to a plan level HRA and Sustainability Assessment, this does not mean that all projects which may proceed under this plan are necessarily automatically compliant with relevant environmental legislation. Noting that the Marine Plans are relatively high level, there will always need to be some amount of tailoring of assessments for individual projects, rather than relying solely on the Marine Plan.</p>
<b>Policy N5PO: Landscape Protection</b>	Natural England recommend that developments which have the potential to impact upon the landscape character, or a protected landscape, must be required to submit a Landscape and Visual Impact Assessment and provide mitigation and compensation measures.
<b>Policy N6PO: The Undeveloped Coast</b>	As stated in our previous response to the I&O consultation: Natural England would support a policy which only permits development required to provide safe access to and interpretation of the coast, subject to it meeting certain criteria. Any development should ensure the local landscape character is maintained and does not have a detrimental impact within the St Bees Heritage Coast or its surrounding setting, as well as the biodiversity features along the undeveloped coast.
<b>Para 50.2.5</b>	Natural England welcome the provision of a Green Infrastructure Strategy. As stated in

	<p>our previous response to the Issues &amp; Options consultation we advise the following to increase GI in the District:</p> <ul style="list-style-type: none"> <li>• Mapping exercise to identify location and quality of existing green infrastructure and what services it is currently providing. Having established this baseline, opportunities should be identified to enhance and connect this green infrastructure network.</li> <li>• Establishing principles or standards for high quality green infrastructure, providing clear expectations for development proposals.</li> </ul> <p>Existing standards include Accessible Natural Greenspace Standard. We note a new national green infrastructure standards project is currently in development.</p>
<b>Policy N8, N9 PO: Protected and Local Green Spaces</b>	<p>As stated in our previous response to the Issues and Options consultation Natural England welcome the designation of land as Protected Green Space. However, it should be recognised within the Local Plan that the Boroughs green infrastructure network is wider than just Local Green Space designation, also including local nature reserves, woodlands, allotments, verges, SuDS features, street trees and blue features such as rivers and coast. Together this network can provide a range of benefits for recreation and biodiversity. We recommend identifying all existing green infrastructure assets to establish a baseline, and using this to identify which areas to protect and where there are opportunities identified to enhance and connect this green infrastructure network.</p>
<b>Para 50.6.1</b>	<p>We welcome the ambition for a Community Forest. In addition, existing tree cover should be assessed and opportunities to increase the tree cover identified. The policy should seek to enhance tree provision from developments, helping applicants to understand what and where tree planting would be most appropriate. This should be linked to Policy DS10PO.</p>
<b>Policy N10PO Woodlands and Trees</b>	<p>The wholly exceptional reasons for loss or damage to ancient woodland or veteran trees could include examples e.g: infrastructure projects (including nationally significant infrastructure projects, orders under the Transport and Works Act and hybrid bills) where the public benefit would clearly outweigh the loss or deterioration of habitat.</p>
<b>Section 51 Air Quality</b>	<p>Air Quality needs to be a separate Policy within the Local Plan. The Policy needs to strongly emphasise impacts from air quality on designated sites. We therefore suggest that policy criteria is included for developments to ensure reducing impacts on designated sites, particularly in relation to the following: industrial developments; roads; pig, poultry and cattle developments and slurry tanks; and combustion sources.</p> <p>As stated in our response to the Issues &amp; Options consultation: Natural England note that the Air Quality section of this consultation document has no reference to increased ammonia emissions from new agricultural developments and activities such as livestock housing, slurry stores and spreading of manures. Ammonia impacts upon human health and damages sensitive habitats. Several SSSI's within the Borough are currently over their critical threshold levels for ammonia (see below):</p> <ul style="list-style-type: none"> <li>• Duddon Valley Woodlands SSSI</li> <li>• Greendale Mires SSSI</li> <li>• Silver Tam, Hollas and Hamsey Mosses SSSI</li> <li>• Brantrake Moss and Devoke Water SSSI</li> <li>• Ennerdale SSSI</li> <li>• Halle Great Wood SSSI</li> <li>• Milkingstead Wood SSSI</li> <li>• Wasdale Screes SSSI</li> <li>• Hallsenna Moor SSSI</li> <li>• Duddon Estuary SSSI</li> <li>• Pillar and Ennerdale Fells SSSI</li> <li>• Duddon Mosses SSSI</li> <li>• Black Moss SSSI</li> </ul> <p>There are also impacts to sensitive habitats from air pollution within 200m of a transport corridor and therefore the need for avoidance and mitigation measures. These should be included in an Air Quality Policy as outlined in the HRA and referred to below.</p>
<b>Policy CO2PO: Priorities for improving connectivity</b>	<p>This Policy needs strengthening with regards to air quality impacts as detailed in the Plan HRA and the future modelling and monitoring from traffic impacts. There should</p>

<p><b>within Copeland</b></p> <p><b>Policy CO3PO: Priorities for improving transport links to and from the Borough</b></p>	<p>also be an outline of the avoidance and mitigation measures that will be required within project HRA's.</p>
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Comments on the Habitats Regulations Assessment (HRA)

**General comments**

Natural England welcome the thorough and detailed approach to the Habitats Regulations Assessment.

We welcome the process of assessing impact pathways from allocations to designated sites which has been detailed within the HRA. However the conclusion of the HRA is slightly confusing for this. It states that the policies and sites there is no LSE via certain pathways of impact but that it is not possible to conclude the Local Plan can be delivered without further Appropriate Assessment. It would be clearer to state in bullets what these impact pathways that require further assessment are: Air Quality and Water Quality.

Throughout the HRA there is reference to project specific HRA's being required for some sites but then no further level of detail provided. By allocating a site the Council needs to be certain that the site will pass the project level HRA and therefore should outline an overview of the mitigation measures that would ensure this.

Example wording:

*The site adjoins a site designated as SSSI, SAC, SPA and under the Ramsar Convention. Mitigation measures will therefore be required, guided by existing evidence and an appropriate ecological survey, including;*

*1) Timings of construction works to avoid the wintering period (October – March inclusive), 2) The erection of acoustic & visual screening throughout the construction period, 3) Barriers to prevent debris entering the nearby watercourse/ designated site*

*This should include an Appropriate Assessment taking into account the identified mitigation above and any other identified measures required as a result of project level ecological survey and assessment. Standard best practice approaches such as pollution prevention measures must be implemented.*

This will make it clear to developers what the minimum mitigation requirements that are known to be required at this stage. If conclusions for certain site allocations cannot be reasonably be reached by the Local Plan HRA, lower tier plans can be relied upon, subject to the Local Plan HRA being able to confirm that viable mitigation measures are available, despite not having full details at this stage.

Throughout the HRA there are recommendations of how the Plan can be strengthened to ensure protection of designated sites from future development. However, some of these do not appear to have been incorporated into the Plan and therefore must be included in the next draft. The recommendations that need to be included are listed in the table below.

Air quality impacts are detailed within the HRA but there is no specific policy within the Plan for air quality and, as in above comments on the Plan, this needs to be a separate Policy. It needs to incorporate the comments within the HRA regarding the Transport impacts from traffic flows, and reflected in Policy CO2PO.

**Recommendations within the HRA to be incorporated into the Plan**

*5.4.6 In order to further strengthen the protection of Natura 2000 sites, policies H4PO and H5PO could specifically cross-reference the need for delivery of housing numbers at specified locations and individual allocations to be compliant with other Plan policies, including N1PO, where development must result in no LSE on Natura 2000 sites, both alone and in combination with other plans and projects. Policy E2PO (Location of Employment) effectively mitigates policy E4PO (Employment Sites and Allocations) through stating that "Where the following impacts occur, and have been deemed to be acceptable by the Council, mitigation measures must be sought....biodiversity" and this protection could usefully be added into policy to mitigate policies H4PO and H5PO in terms of housing delivery.*

*6.6.3 It is important that where, following the production of the transport assessment and/or air quality modelling, a LSE through reduced air quality cannot be screened out, there is also a mechanism established to monitor the effectiveness of the measures adopted within the Local Plan currently or in the future.....*

7.4.4 Policy DS5PO.....could be strengthened further by stating that development will only be supported where infrastructure capacity is in place or may be provided prior to operation of the development.

7.4.8 With regards to reduced water quality, policy N6PO.....does not provide strong protection for Natura 2000 sites, and could be strengthened to state that such projects will only be supported where harm to Natura 2000 sites can be avoided, mitigated or as a last resort compensated for.

9.4.8 In order to ensure that economic policy does not lead to LSE on Natura 2000 sites, policy E1PO (Economic Growth) could explicitly state conditions for such growth include compliance with Policy N1PO.

**Further comments**

Section	Comments
Page 8	<p>The HRA stages need further clarification:</p> <p>Stage 1 – Is the proposal directly connected with or necessary to the management of the site.</p> <p>Stage 2 – Screening Likely Significant Effects (LSE) – This stage identifies potential effects of a plan or project on the qualifying features of the Natura 2000 sites (without mitigation) and assess whether these effects will be significant alone or in-combination with other plans or projects. The precautionary principle should be used, so where there is any uncertainty, the potential effect is carried to next stage.</p> <p>Stage 3 – Appropriate Assessment Where LSE is found or uncertainty remains, more detailed assessment is carried out at this stage, considering adverse effects alone and in-combination with other plans and projects. This stage considers the avoidance and mitigation measures.</p> <p>Stage 4 – No alternatives and Imperative reasons of overriding public interest (IROPI). This stage is required if stage 3 concludes there is an impact on site integrity that cannot be mitigated (not if there is a Likely Significant Effect which has already been addressed at Stage 2)</p> <p>Stage 5 – Compensation This ensures compensation to maintain the European Site network if the project has no alternatives and IROPI.</p> <p>Plans and projects only need to go to in-combination assessment with other live plans or projects if they do not have a likely significant effect alone. This is in-combination rather than cumulative.</p>
Page 14 – 2.4 In Combination	<p>This should also identify any live specific projects/developments within Copeland that could have a Likely Significant Effect in-combination with this Local Plan. The HRA should consider individual projects as well as other strategic plans.</p>
Policy H20PO – Residential Caravans	<p>Any caravans being proposed around the coast where there are designated SPA will need to assess impacts from recreational disturbance.</p>
<p>Policy E4PO Employment Sites and Allocations</p> <p>Policy E5PO Opportunity Sites and Areas</p>	<p>Disagree with these Policies being screened out. With respect to project stage mitigation the site policies concerned should include reference to what measures are required at application stage and should also reference the need for an Appropriate Assessment to include the details of the scheme that are (potentially) not yet known at the plan-level stage.</p>
Policy CC3PO Wind Energy Developments	<p>Disagree that this Policy should be screened out.</p>

	<p>The Map at Appendix H indicates an area as Overall Suitable Location for Wind Energy. Much of the northern section overlaps with an area known to support Hen Harriers and a variety farmland birds such as curlew which are SPA species. Therefore this needs assessing the Plan HRA and reference to a requirement for project HRA's that would need to be undertaken before wind energy developments could be consented here.</p> <p>The Southern area on the map west of Millom would also require bird surveys and HRA due to the functional linkage and bird flightpaths around the SPA margins.</p>
Section 5 – Appropriate Assessment – Recreational Pressure and Disturbance	<p>As above any caravan site developments or extensions to existing sites being proposed around the coast where there are designated SPA's will need to assess impacts from recreational disturbance.</p>
Section 6 – Appropriate Assessment - Air Quality	<p>We welcome the thorough assessment of air quality impacts within the HRA and the need for further modelling. As well as traffic impacts from allocations and associated improved road links this section should also include air quality impacts from agriculture as stated above.</p>
Section 7 – Appropriate assessment – Water Quality	<p>The HRA should also include potential water quality impacts from any proposed flood defences or bank reinforcements as a result of allocations.</p>
Section 9 - Appropriate Assessment - Loss of or Disturbance to Off-Site Supporting Habitats	<p>For specific employment allocations (Hensington Common Whitehaven and Whitehaven Commercial Park) and the wind energy suitable areas (as above) the loss of supporting habitat for Hen Harrier needs to be assessed. There is evidence that some of the Hen Harriers which winter in Copeland area breed on SPAs in the North of England and the Isle of Man. West Cumbria Hen Harriers are therefore functionally linked to these SPAs.</p> <p>The employment allocations and wind farm proposals in this area should also be accompanied by a project HRA to address potential impacts. As above this section should outline an overview of the mitigation measures that would ensure no adverse effect on site integrity.</p> <p>St.Bees housing should assess impacts on the SSSI bird notified features, and although not an SPA it could be included within the HRA.</p>

If you have any queries relating to the above response please contact me at [kate.berry@naturalengland.org.uk](mailto:kate.berry@naturalengland.org.uk)

We look forward to being consulted further as the Plan progresses.

Yours sincerely

Kate Berry  
Sustainable Development Adviser



Figure 2: Natural England response to Local Plan Publication Draft - 18th March 2022

Date: 18 March 2022  
 Our ref: Copeland Local Plan 2021 – 2038: Publication Draft  
 Your ref: 379714.

localplanconsultation@copeland.gov.uk

**BY EMAIL ONLY**

Dear [REDACTED]


Thank you for your consultation on the above dated and received by Natural England on 4 February 2022.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Our remit includes protected sites and landscapes, biodiversity, geodiversity, soils, protected species, landscape character, green infrastructure and access to and enjoyment of nature.

Natural England welcomes the opportunity to comment on the Local Plan and its associated documents. We have provided comments on specific sections below including Development and Strategic Policies, the Habitat Regulations Assessment and Marine Conservation Assessment.

ID75



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<b>Local Plan</b>	
<b>6.8 DS11PU</b>	<p>Natural England support the Council's ambition improve air quality across the borough. In order to strengthen the policy further could the council strive to implement green infrastructure as mitigation in areas that are struggling with poor air quality either for residents or the designated sites in the area.</p> <p>For example, the recommendations set out in paragraph 6.8.4 deal with specifically new development, could these be brought formally into policy DS11PU to strengthen the wording and then also be applied to existing developments across Copeland.</p>
<b>7.9.6 E6PU</b>	<p>Natural England would support the removal of the opportunity site OCL01 within Cleator Mills, due to the flood risk and due to the River Ehen SSSI and SAC next to the site. This site will require escalating to Appropriate Assessment stage at both project level and plan level HRA.</p>
<b>15.3.5</b>	<p>The HRA AA will need to ensure that it can conclude no LSE and no AEOL, at the moment it relies on individual developments having project level HRA's without giving the specific potential impacts and mitigation, ensuring they are deliverable at plan level.</p> <p>To ensure that the local plan can conclude no Likely Significant Effects and no Adverse Effects on Integrity of the Site, we have provided advise below on the Habitats Regulations Assessment.</p>

<p><b>15.6.1</b></p>	<p>Impact of Development upon Former Natura 2000 sites</p> <p>Natural England welcome the inclusion of this section and the necessity for developers to be aware that carrying out HRA screening assessment is required.</p>
<p><b>15.7.1</b></p>	<p>Construction Environmental Management Plans</p> <p>Natural England welcome the inclusion of the CEMP section in the Local Plan. Noted here is the need for larger residential and commercial development projects to include CEMPs with their planning application. It may be useful to ensure that this is reiterated in the Housing / Site Allocation policies.</p>
<p><b>15.8.4 N1PU</b></p>	<p>Natural England supports the use of the mitigation hierarchy within this policy and the need for the National Sites Network to be protected.</p>
<p><b>15.9 N2PU</b></p>	<p>Natural England support the inclusion of the LNRS policy within the Local Plan. It may be beneficial to highlight the use of the LNRS mapping to help aid developers in selecting areas for habitat management, enhancement, restoration or creation and how development can contribute to nature recovery.</p>
<p><b>15.10 N3PU</b></p>	<p>Natural England support the Biodiversity Net Gain policy and the council's ambition of achieve a minimum of 10% net gain with the encouragement of developers exceeding this.</p> <p>The policy could be strengthened by acknowledging the Irreplaceable Habitats section of the BNG legislation and the development of the Net Gain Register. The secondary legislation consultation is out at the moment and will help to develop a further understanding of BNG.</p> <p>The small sites metric is also a useful tool for developers/ residential applicants to be aware of, to encourage a net gain within the boundary of some of the smaller sites.</p> <p>Natural England welcome the emphasis on onsite delivery as a priority for developers and then moving to off-site local delivery. The Local Plan could assist with ensuring there is available net gain sites in the local area to be used by developers when developing the site allocations put forward in this local plan. These net gain sites in the local area will allow developers to select a pre-approved net gain site that will aid habitat creation and enhancement within the Copeland Borough.</p>
<p><b>15.12.7 N5PU</b></p>	<p>Natural England support the Protection of Water Resources policy.</p> <p>In light of the recent release of Nutrient Neutrality, the Environmental Section of the local plan should include a policy explaining the necessity to protect water quality and the principles of how Nutrient Neutrality can help to mitigate any potential impacts.</p> <p>Within the Copeland BC border the River Derwent and Bassenthwaite Lake SAC is now within the NN scheme. We have included advice on how to assess the potential impacts of housing for NN in relation to the River Derwent SAC in the HRA section of this letter.</p> <p>The policy should include a brief description of what NN is, its implications for housing apps within the boundary of the catchment, including the use of the calculator to create a nutrient budget. The policy should also cover how</p>

	<p>developers will have to secure mitigation as part of their development within the NN catchment. For further information about NN please see the letter and supporting documents there were sent out on the 16<sup>th</sup> of March, as well as the section on NN in the HRA section of this letter.</p>
<p><b>15.13.11 N7PU</b></p>	<p>St Bees and Whitehaven Heritage Coast</p> <p>Natural England support the policy which aims to 'conserve, protect and enhance' the Heritage Coast but note that as the extension has not been defined the heritage coast in Copeland is still called the St Bees Heritage Coast.</p>
<p><b>15.14.3 N8PU</b></p>	<p>Natural England support the Undeveloped Coast policy, it could also be possible for sections of this land to be used as Biodiversity net gain sites, which would restore the habitat there to a better condition than it is in now.</p>
<p><b>15.15.5 N9PU</b></p>	<p>Natural England support all of the Green Infrastructure policies and are encouraged by the Council's production of a Green Infrastructure Strategy.</p> <p>Biodiversity Net Gain investment from off-site net gain sites can also help to fund green infrastructure implementation and wider GI outcomes across the borough.</p> <p>Natural England has produced the GI Standards, which can help to produce a certain set of objectives and help towards producing design codes for the borough.</p>

### **Habitats Regulation Assessment**

Natural England welcomes the production of the HRA and the opportunity to comment, we have included overall comments and specific comments about the Air Quality and Water Quality sections.

Natural England recommend that a Habitat Regulations Assessment follow a specific structure that we have set out below, this will allow a complete Screening Assessment to be carried out and allow the appropriate designated sites and policies to be progressed to the Appropriate Assessment stage.

We suggest that the report is re-structured under the following principle headings to clearly demonstrate that the steps of the Habitats Regulations have been undertaken:

#### **1 - Likely Significant Effect (LSE) test (Screening stage)**

To clarify, where there is LSE alone, these sites and/or policies need to be taken to Appropriate Assessment alone. Where there is no LSE alone, these sites need to be assessed in-combination with other plans or projects to establish if, together, they result in a likely significant effect that needs to be considered at Appropriate Assessment, taken into account other plans and projects.

#### **2 - In-combination assessment of likely significant effects ruled out alone.**

This assessment should come before the Appropriate Assessment. Consideration will need to be given to the *Wealden District Council v. Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority* [2017] EWHC 351 in terms of in-combination effects relating to air pollution.

The in-combination assessment needs to be explained and justify which plans have been assessed and which plans have been left out from the surrounding areas.

#### **3 - Appropriate Assessment (AA)**

This stage needs to assess the identified likely significant effects in detail on the features of the European site, considering the site's conservation objectives.

First, the AA must look at the potentially damaging aspects of each site allocation and/or policy and the potential effects on the site features and conservation objectives and characterise the impacts in terms of their likelihood, nature, scale, severity and duration to determine whether they have an Adverse Effect on Integrity of the site. This assessment needs to include a consideration of the impacts on;

- The extent and distribution of qualifying habitats and species,
- The abundance and spatial distribution of qualifying species or assemblages,
- The structure of the qualifying habitat, which should not be affected in terms of abundance and diversity,
- The physical, chemical and biological processes that support the qualifying habitat to ensure these are not affected.

The AA must then look at any potential mitigation measures, to determine if they can reduce the likelihood, nature, scale, and duration of the effect to a lower level. The appropriate assessment should seek mitigation measures that are capable of implementation and will reduce the impact to

the lowest level possible. Any residual effects after applying mitigation should also be considered alone and in-combination.

#### **Mitigation Measures in an Appropriate Assessment**

Mitigation can only be accepted in the AA stage of a HRA if it is specific and measurable, it is not possible to accept soft measures as mitigation in a HRA due to the lack of certainty regarding their measurability. If mitigation is required then it has to be effective, reliable, timely and guaranteed to be delivered. For every mitigation measure that is required Copeland should be understand:

- What the measure is, the scientific basis of the evidence, and how it would avoid or reduce effects on site.
- How it would be implemented and by whom.
- The degree of confidence in its success.
- The timescale over which it will be implemented, maintained and managed.
- How the measures will be secured, monitored and enforced.
- If the measure failed, how the failure will be rectified.

Therefore, if mitigation is required due to the evidence presented in the HRA then specific mitigation measures need to be brought forward. The current mitigation used throughout the HRA is a reliance on the Local Plan policies, as these are good practice policies they can not be used as mitigation for the specific issues raised in the HRA and are an example of the soft measures explained above.

#### **Air Quality Appropriate Assessment**

Table 6.1. for the sites that have been screened out, Natural England recommends including supporting evidence and justification for why they have been screened out. For example, for the River Ehen SAC, it is possible for the rivers designated features to be sensitive to air pollution, as listed on APIS. The justification for the River Derwent and Bassenthwaite Lake SAC needs further explanation to explain how the conclusions have been reached – for example is there evidence that the river is suffering from nitrogen deposition due to its aquatic environment compared to air pollution? With regards to the River Derwent and the close proximity to the A66, which has been used in the traffic modelling assessment, further justification is needed to understand why it has been screened out.

Section 6.4.4: further explanation is needed here to explain why the AADT has declined along the A591 due to local plan growth strategies. Evidence should be provided here to explain how this conclusion has been reached or if it is referred to in the Appendix this section should summarise the findings.

Section 6.4.5: see comments above for 6.4.4, the slight decrease in AADT along the A66 during considering the local plan growth needs to be explained.

Table 6.4 and Table 6.5: These tables are screening assessments for exceedance over 1%, these assessments highlight breaches of 1% that need to be carried forward to Appropriate Assessment stage.

For the green boxes, where there are no breaches of the 1% critical load, these need to be examined in combination, against other plans or projects that have been identified and assessed. The in-combination assessment needs to set out which plans and projects it has considered and provide evidence for why they have been deemed not relevant to include.

#

For the orange boxes, where they do exceed the 1% threshold, further assessment and information is needed. For example, they need to be specific about how far over the 1% threshold they are and where the breaches are likely to occur. There would need to be a detailed assessment that considered the location of the sensitive species and how much of an impact there may be (e.g., loss of species over how much of the site). Once the impact has been determined and explained the assessment needs to address whether this would be considered an Adverse Effect on Integrity of the site and whether there is a need to propose specific mitigation that can deal or offset the impacts.

Section 6.5.3: Policy N1PU (Conserving and Enhancing Biodiversity and Geodiversity) is an integral part of the plan and ensures compliance with national policy to protect and enhance the natural environment. It's not required as a mitigation measure (e.g., a measure to reduce an ecological impact to an acceptable level where it is no longer deemed to risk an adverse effect on site integrity). It is not sufficient for a HRA to conclude no likely significant effect because it contains a policy to protect internationally designated sites. Any policy introduced to avoid or reduce effects should specifically deal with the issue that it is causing an effect.

Natural England have produced guidance for competent authorities on how to assess road traffic emissions under the Habitats Regulations – NEA001 and is accessible [here](#).

Section 6.5.11: In this paragraph clarification is needed about what the sufficient mitigation is.

Section 6.8: Conclusion: Natural England recommend that it is not possible to conclude no Adverse Effect on Integrity of the protected sites without carrying out the further assessments described above.

#### **Water Quality Appropriate assessment**

Section 7.2.3, 7.2.5, 7.2.6 and 7.2.7: these sections should confirm whether United Utilities have been recently consulted to assess whether the waste-water treatment works have capacity since these sections state an assessment was carried for the Copland Core Strategy which was produced in 2012.

7.4 Mitigation: Please see section above regarding mitigation measures and the inability to use soft measures (Local Plan policies) as appropriate mitigation.

7.4.6. Natural England advises that to be able conclude that the housing and other site allocations will need a project level HRA, further assessment in the plan level HRA is needed, as the local plan needs to ensure these sites are deliverable. As the sites are specifically located it should be possible to determine what the potential impacts to designated sites might be, this will allow the local plan to ensure it is selecting deliverable sites with in built mitigation if necessary.

For example, if construction dust is a concern, then this can be addressed at plan level by recommending that a Construction Environmental Management Plan is required for this specific allocation / policy. The HRA AA can concluded that further assessment is needed, once detail is available a project level, but it does need to list the potential impacts of development to the designated sites and list what potential mitigation might be needed, so that we can ensure the site is deliverable and there is no adverse effect on the integrity of the site.

7.5.2 the site allocations within the Cleator Moor wastewater infrastructure treatment zone should be assessed to see whether they are deliverable within the capacity of the wastewater treatment works, this is due to concern for the water quality of the River Ehen SAC and SSSI.

7.6 In-combination Effects: similarly, to the Air Quality AA and the rest of the HRA, the in-combination assessment for Water Quality needs to clearly state which plans and projects were assessed and why they were deemed irrelevant.

7.7 Conclusion: Natural England recommend that it is not possible to conclude no Adverse Effect on Integrity of the protected sites without carrying out the further assessments described above.

**Water Quality Appropriate Assessment Additional Comments**

Given the recent launch of Natural England’s advice (issued on 16<sup>th</sup> March 2022) on water quality and Nutrient Neutrality (NN) and the presence of the River Derwent and Bassenthwaite Lake SAC within the Copeland District Council Borough, Natural England advises that the HRA screens in and carry’s forward the River Derwent SAC to appropriate assessment stage in the HRA for water quality. The River Derwent SAC has a specific NN catchment within the Copeland Borough, these catchment maps were sent to Copeland on the 16<sup>th</sup> of March, along with a Methodology, catchment specific calculator and advice on how to mitigate the potential impacts. The calculator can work out a nutrient budget associated with a housing development for phosphorus, which is the nutrient currently causing the site to be unfavourable. The housing allocation/s that are within the NN catchment area need to be assessed as part of the HRA. Nutrient Neutrality is a potential mitigation measure which can be used to address nutrient impacts. The NN calculator identifies the level of mitigation required to cancel out the additional nutrient pollution from the housing allocation. From our understanding of the local plan housing allocations the only allocation to be affected is HAR01 (37 houses), but please do include any other relevant allocations within the NN catchment in the assessment as well.

**Marine Conservation Assessment**

<b>General</b>	Natural England agrees that proposals will need to be assessed on an individual basis. With regards to MCZ assessments, the MMO will consult Natural England to determine if there will be a likely significant effect on the integrity of any MCZ.
<b>Section 1.2.4</b>	Please note, the MCZ assessment process for marine licensing has already been introduced by the Marine Management Organisation (MMO) and is actively used by the MMO in marine licence decision making. Therefore the information in this paragraph should be updated accordingly.
<b>Section 3.2.1</b>	It would be useful to outline the policies that are being proposed as mitigation measures here. Additionally, it should be clear which potential impacts they are mitigating for in Table 4.1.

**Appendix 2, Cumbria Coast MCZ**

We note the advice on operations page on Natural England’s designated sites viewer has not been updated for the Cumbrian Coast MCZ yet. However, the Razorbill (*Alca torda*) entry in this table could be populated based on advice on operations from another protected site which has breeding razorbill as a feature, example [here](#).

**Appendix 2, Allonby Bay MCZ**

Please note, the conservation advice package for Allonby Bay MCZ has now been published and is available on Natural England’s designated sites viewer [here](#)

Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to specific advice in this letter only, please contact [redacted] at [redacted]. For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely,

[redacted]  
Sustainable Development Lead Advisor



Figure 3: Natural England's Comments on Local Plan Addendum Draft – 27<sup>th</sup> June 2022

Date: 27 June 2022  
Our ref: 393192 & 393197  
Your ref: Focussed HRA and Interim Assessment.

localplanconsultation@copeland.gov.uk

**BY EMAIL ONLY**

**NATURAL ENGLAND**

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T 0300 060 3900

Dear Chris,

Thank you for your consultation on the above dated and received by Natural England on 16 May 2022.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Our remit includes protected sites and landscapes, biodiversity, geodiversity, soils, protected species, landscape character, green infrastructure and access to and enjoyment of nature.

Natural England welcomes the production of the focussed Habitat Regulations Assessment for the Gypsy and Traveller site allocations and for Nutrient Neutrality as well as the Interim Assessment for both. Natural England concur with the conclusions in both the HRA and Interim Assessment and have provided relevant comments below:

Habitat Regulations Assessment
Nutrient Neutrality
Natural England welcome the strengthening of policy wording set out in Section 4.2 but note that <b>'hard solutions such as improvements to existing waste-water treatment works'</b> is not an appropriate mitigation method for Nutrient Neutrality and recommend this sentence is removed from the HRA.
It is important to note that any further planning application in the catchment that results in a net increase in overnight accommodation will need a HRA that has been escalated to Appropriate Assessment stage if it is not found nutrient neutral by using the Natural England nutrient calculator. Appropriate mitigation needs to be upstream of where the nutrients are discharged and also within the nutrient neutrality catchment.
<b>'We appreciate that it may take time for applicants to secure mitigation, particularly where additional land outside the application site needs to be sourced'</b> . Natural England recommend highlighting that mitigation needs to be secured and delivered before housing and overnight accommodation can be occupied.
Natural England agrees that the policy includes the following sentence <b>'Mitigation will need to be deliverable, certain and provided in perpetuity.'</b>
Clarity is needed on how <b>'policy N5PU were to be likely to contribute a small but</b>

***insignificant negative effect on its own.*** As the conclusion of the Nutrient Neutrality HRA concludes no likely significant effects.

**Habitat Regulations Assessment, Gypsy & Traveller**

Natural England agree with the conclusion of adverse on integrity of the site as this HRA has been escalated to Appropriate Assessment stage

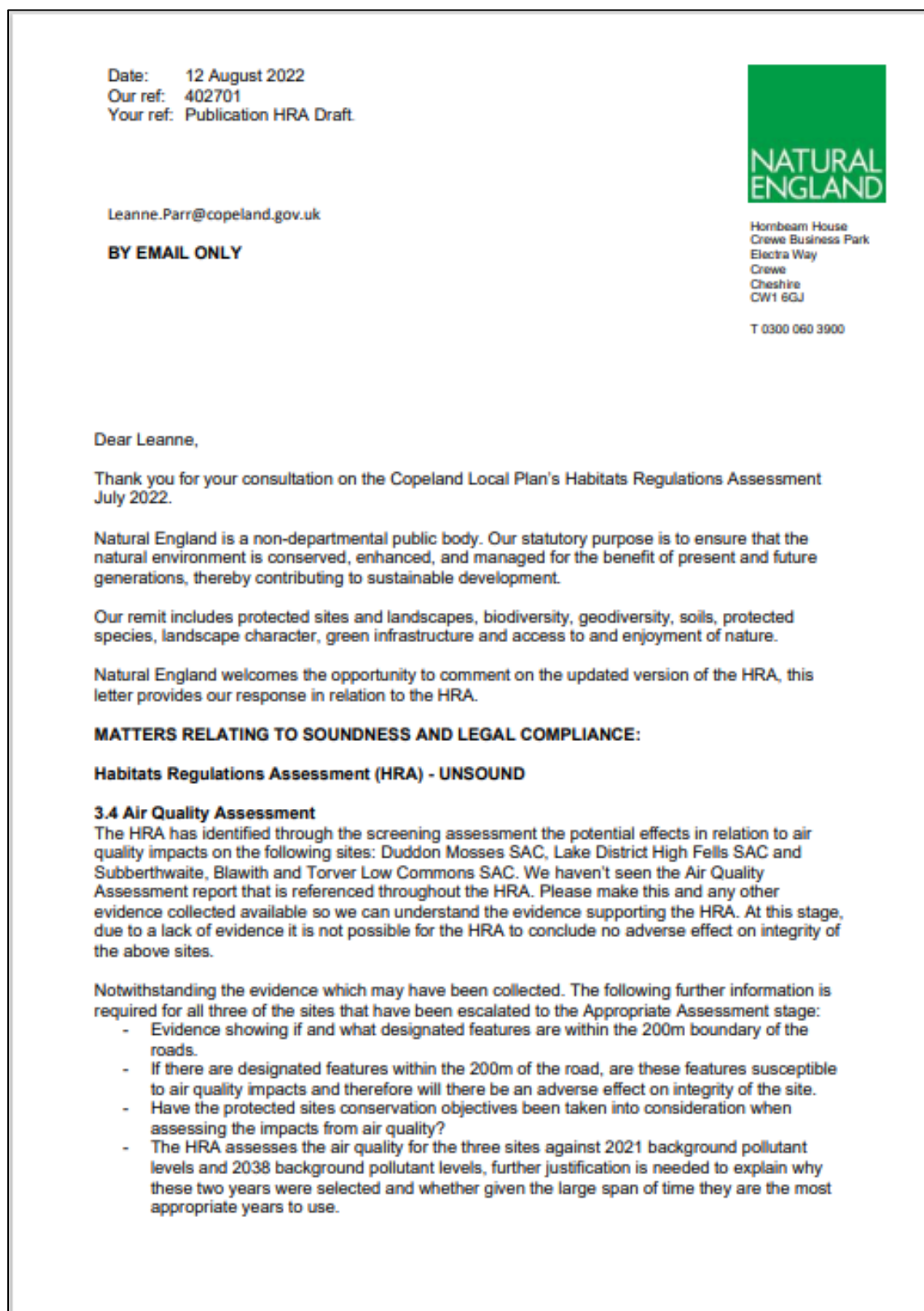
Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.

We would be happy to comment further should the need arise but if in the meantime you have any queries, please do not hesitate to contact us.

For any queries relating to specific advice in this letter only, please contact Niamh Keddy at [Niamh.Keddy@naturalengland.org.uk](mailto:Niamh.Keddy@naturalengland.org.uk). For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely,  
Niamh Keddy  
Sustainable Development Lead Advisor

Figure 4: Natural England response to Local Plan Addendum consultation - 12th August 2022



- Further clarification is also needed on the use of 2038 background pollutants. If the HRA concludes that there is no adverse effect on integrity because the 2038 data used is too over precautionary, is there more appropriate data that can be used? Does modelling take into consideration recent traffic trends and predicted traffic trends?

#### 4.1.1 Local Plan Policies – Air Quality (In Combination)

As the screening assessment identified only the three sites listed above as potential sites for likely significant effects, it is unclear here why the River Derwent and Bassenthwaite Lake SAC has been included here.

4.1.2 It is noted here that using 2021 background pollutant levels there is a breach of ammonia at 150m from the road of 5-6%. Further information is needed to explain why the 5-6% breach in ammonia will not have an adverse effect on the integrity of Subberthwaite, Blawith and Trover Low Commons SAC. Evidence should be provided here to show what percentage of the SAC is within the 200m of the road and how much of this is covered by designated features. The condition objective of the SAC should also be taken into consideration and the most recent data from APIS for the habitat type should be referenced. Natural England is concerned that it is not possible to conclude no adverse effect on the integrity of the site because the habitat is already in degraded condition.

The above advice is in line with Natural England's advice from the 'Natural England's Approach to Advising Competent Authorities on the Assessment of Road Traffic Emissions Under the Habitats Regulations'. –[Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations - NEA001](#)

4.1.6 It is not clear here why the River Derwent and Bassenthwaite Lake SAC is mentioned, if there is an increase in acid deposition of this site then the site should have been screened in to the AA stage, it would also be beneficial to check with APIS for the designated features in the SAC.

4.1.7 There is currently no evidence that suggests a national decrease in ammonia. The background evidence collected that shows the declining background level of ammonia, as well as the other pollutants mentioned here should be referenced and shown.

4.1.18 Clarification is needed here to understand which pollutant is being discussed as acid deposition, ammonia and nitrogen deposition are all listed as exceeding 1% critical load or level beyond the roadside itself.

#### 4.1.19 Ammonia Emissions

Ammonia emissions from road traffic could make a significant difference to nitrogen deposition close to roads. As traffic composition transitions toward more petrol and electric cars (i.e., fewer diesel cars on the road) – catalytic converters may aid in reducing NOx emissions but result in increased ammonia emissions – therefore consideration is needed (see AQC Guidance [here](#))

In summary we cannot agree that ammonia emissions from road traffic do not need to be assessed in totality due to there not being an endorsed national standard. There is growing evidence to support the significance and therefore inclusion of ammonia emissions within an Air Quality traffic emission assessment and informing necessary mitigation measures (see Epping Forest District Council as example). The Dutch Nitrogen Judgement explains it is difficult to justify further emissions to a site in unfavourable condition( see judgement [here](#)). Ammonia is a source of nitrogen deposition, therefore cannot be ignored in light of the growing evidence. This is something Natural England are actively tackling nationally but even in the absence of a standard NE approach; the competent authority cannot ignore ammonia emissions.

While we are aware that the current CREAM model created by Air Quality Consultants used to assess ammonia emissions from road traffic has not been peer reviewed and is not yet endorsed by Natural England, at this time it has been recognised as a Best Available Tool in several cases, that it is appropriate to be used where any caveats associated with this model are also considered within the assessment. An assessment based on the best available approach is necessary. The next stage of assessment can then consider uncertainties in the model and site specifics to decide if mitigation needs to be considered. .

#### 4.8 Site Allocation – In combination

Clarification is needed here as to whether the Morecambe Bay SAC, Morecambe Bay and Duddon Estuaries SPA and Duddon Estuary Ramsar have been screened into the Air Quality assessment – if so, they need representing in the Air Quality section of the HRA. If the site allocations MI040/E2 require the mitigation of a specific policy requiring a project level HRA for air quality impacts, then they need to be screened in and escalated to appropriate assessment stage.

#### **Future Forecast trends in traffic assessments**

Natural England advises that when judging whether a proposal will have an adverse effect on integrity and considering whether future baselines as a result of autonomous measures are certain, including improvements to vehicle emissions standards that the following assessment methods should be followed:

- Defra's latest Emissions Factors Toolkit (EFT) is [used](#) (version 11.0 published November 2021).
- The future forecasting does not go beyond 2030 (as this is the end year date for the updated Emission Factors).
- Where possible the predicted future baseline is informed by locally derived fleet mix data (usually derived from ANPR data) which will more accurately predict the local circumstances.
- A safety factor should be applied when using the emissions factor toolkit to provide estimates beyond 5 years into the future, determined by the Competent Authority.

#### **Mitigation Measures**

As mentioned in our previous letter dated 18<sup>th</sup> March 2022, best practice policies cannot be used as appropriate mitigation. Soft measures are valuable in a general context to address emissions from transport (i.e., promoting walking and cycling, improving public transport, campaigns to raise awareness of AQ issues, reducing the amount of parking spaces in new development or inclusion of electric charging points). However, these cannot be included within a model to quantify mitigation as there isn't sufficient certainty that they will deliver what is required. An approach to model changes seen can also not be included unless they have good locally specific data where they can show similar approaches have been taken elsewhere. Introduction of a Clean Air Zones (CAZ) and Ultra Low Emissions Zones (ULEZ) is acceptable for example, provided it is introduced when the impacts are shown to happen and there is sufficient certainty around the delivery of this.

There is a distinction between mitigation measures delivered through a plan or project and autonomous measures which improve the baseline and are independent of the plan or project. The Dutch N case concluded that it is not possible to consider a range of measures, including autonomous measures, where they are uncertain. It did not conclude that these measures cannot be considered in an AA as a matter of principle. Where a site is exceeding thresholds, Natural England considers that autonomous measures are needed to help achieve the conservation objective to 'restore' the site to within those levels.

Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.

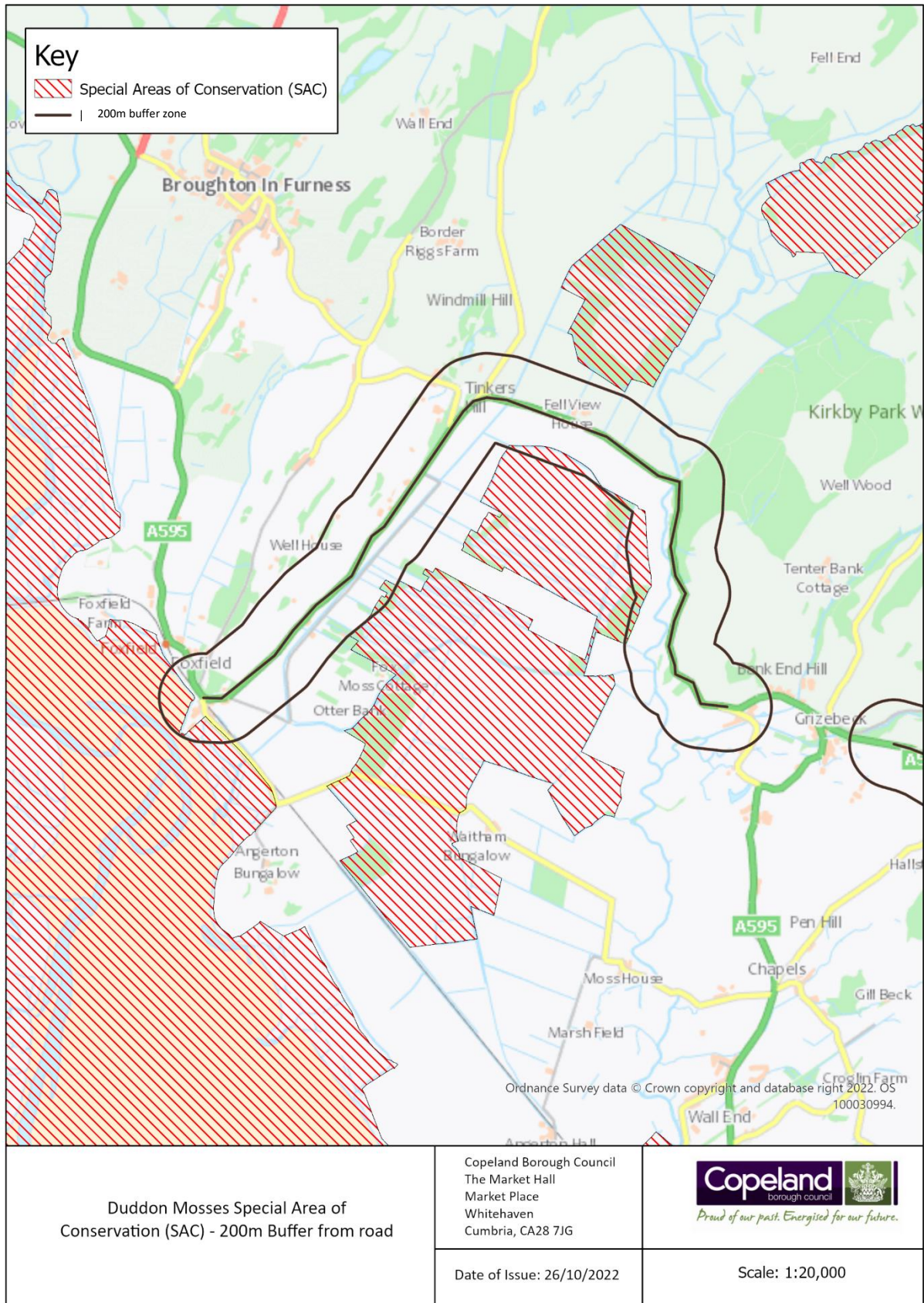
We would be happy to comment further should the need arise but if in the meantime you have any

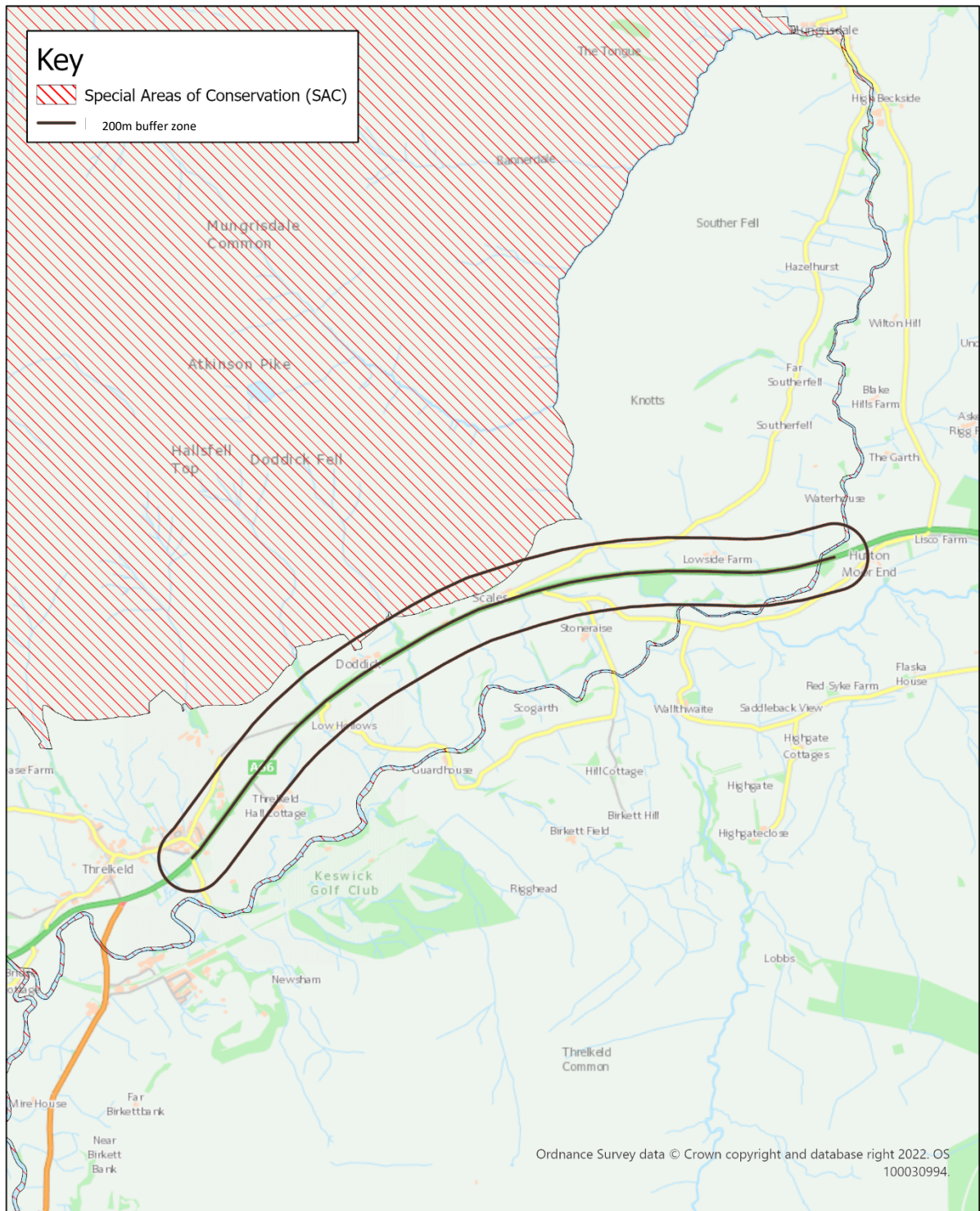
queries, please do not hesitate to contact us.

For any queries relating to specific advice in this letter only, please contact Niamh Keddy at [Niamh.Keddy@naturalengland.org.uk](mailto:Niamh.Keddy@naturalengland.org.uk). For any new consultations, or to provide further information on this consultation please send your correspondences to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).

Yours sincerely,  
Niamh Keddy  
Sustainable Development Lead Advisor

## Appendix B

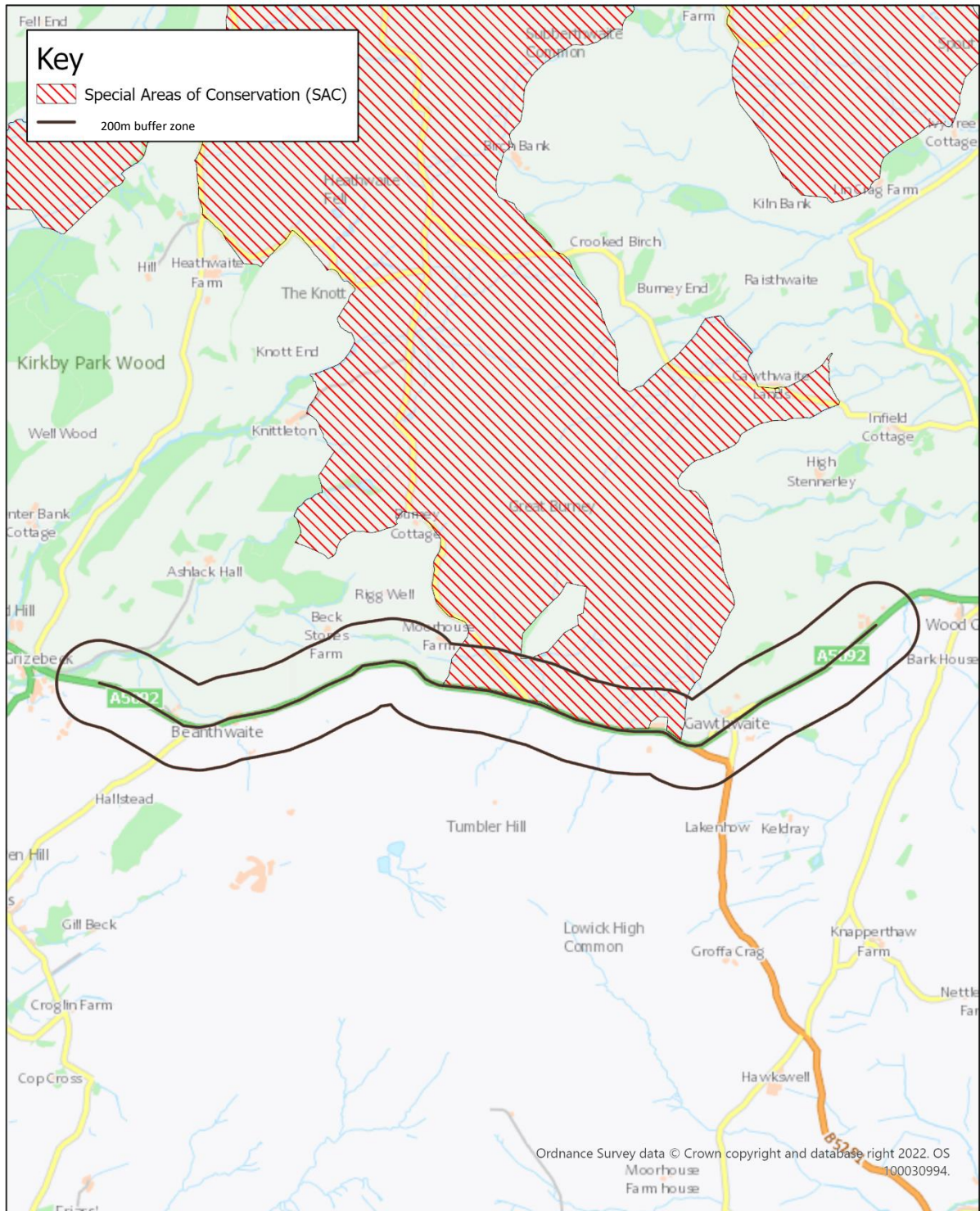





<p>Lake District High Fells (SAC) - 200m Buffer from road</p>	<p>Copeland Borough Council The Market Hall Market Place Whitehaven Cumbria, CA28 7JG</p>	 <p><i>Proud of our past. Energised for our future.</i></p>
	<p>Date of Issue: 26/10/2022</p>	<p>Scale: 1:28,000</p>



CBC Response to Matters, Issues and Questions: Matter 1



<p>Subberthwaite, Blawith and Torver Low Commons (SAC) - 200m Buffer from road</p>	<p>Copeland Borough Council The Market Hall Market Place Whitehaven Cumbria, CA28 7JG</p>	 <p><i>Proud of our past. Energised for our future.</i></p>
	<p>Date of Issue: 26/10/2022</p>	<p>Scale: 1:22,000</p>