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Dear Mr Berkeley and Mr McCormack,

City of York Council are pleased to attach for your consideration the revised Habitat Regulation Assessment (HRA) and Schedule of Proposed Modifications. This concludes the schedule of further work as agreed following the December 2019 hearing sessions.

Habitat Regulation Assessment

This document takes full account of up to date policy and law. Firstly, it *screens* the plan (following recent case law) to identify if there is a risk that certain policies or allocations may have a likely significant effect on a European site, alone or (if necessary) in-combination with other plans and projects. If the risk of likely significant effects cannot be ruled out, then the relevant policies/allocations have been subjected to the greater scrutiny of an *appropriate assessment* to find out if the plan will have an adverse effect on the integrity of the European sites. Typically, a Plan may only be adopted if an adverse effect on the integrity of the site can be ruled out to a high degree of certainty. If necessary, a plan should be amended to avoid or mitigate any likely conflicts, which usually means that some policies or allocations will need to be modified or, more unusually, may have to be removed altogether.

Where appropriate, this HRA also draws on draft HRAs completed in 2014 and 2017 and, in particular, those produced in 2018 and 2019 which accompanied formal submission of the Plan. It also refers to further evidence provided by the Defence Infrastructure Organisation in late 2019.

As you are aware, the Council formally submitted its Regulation 19 Publication Draft accompanied by an HRA dated April 2018. Following advice by Natural England and the production of new evidence, the 2018

HRA was replaced by a new version in February 2019, which was subsequently presented during the initial stages of the Examination in Public in December 2019.

As the Plan and HRAs evolved, the outcomes changed. These changes are important and are summarised below.

The 2018 HRA concluded that the Plan would not have an adverse effect on the integrity of any European sites. However, Natural England challenged this outcome in terms of possible impacts from recreational pressure at the Strensall Common, Skipwith Common, Lower Derwent Valley and River Derwent European sites, and from air pollution on Strensall Common and the River Derwent. This prompted the production of visitor surveys and the re-evaluation of existing air quality data.

The changes required to take account of this new advice and evidence prompted production of the 2019 HRA which, importantly, recommended the deletion of policies SS19/ST35 ‘Queen Elizabeth Barracks, Strensall’ and H59(A) ‘Howard Road, QEB, Strensall’ from the Plan. The Council accepted this recommendation and it was consequently presented as a proposed modification and consulted on in the Proposed Modifications Consultation (2019) [EXCYC20].

These outcomes persist in the 2020 edition, which not only includes greater scrutiny of relevant policies but, at the request of the Inspectors, also comprises changes to confirm compliance with case law. The findings of the current HRA are summarised below.

All policies and associated allocations within the Regulation 19 Publication Draft (and subsequently proposed modifications) of the Local Plan (2018) have been screened; the ‘screening’ results can be found in Table 5, Table 6 and Appendix B. Overall, this HRA found that likely significant effects could be ruled out for the vast majority of policies and allocations which meant they could be excluded from any further scrutiny.

However, it was not possible to rule out likely significant effects in respect of a number of policies for the reasons listed below:

European site	Potential effect	Policies
Strensall Common	Recreational pressure and urban-edge effects	SS19/ST35, E18 & H59(A)
	Recreational pressure	SS9/ST7, SS10/ST8, SS11/ST9, SS12/ST14,

		SS15/ST17, SS17/ST32, H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A), SH1
	Windfall development	H1(P)
	Air pollution	SS19/ST35, E18 & H59(A)
	Wetland features	SS19/ST35, H59(A), E18
Lower Derwent Valley	Mobile species	SS13/ST15
	Recreational pressure	SS13/ST15 & SS18/ST33
River Derwent	Air pollution	SS13/ST15

Accordingly, an appropriate assessment was carried out. The outcome of this further scrutiny is described in Table 9 and Section 5 and is summarised below.

Site, issue and policies	Outcome
<u>Strensall Common SAC</u> Wet and dry heathland Wetland features SS19/ST35, E18 & H59(A)	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure and urban-edge effects SS19/ST35 & H59(A)	Adverse effects on the integrity of the site avoided by removal of policies. SS19/ST35 and H59(A)
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure and urban-edge effects E18	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland Recreational pressure SS9/ST7, SS10/ST8, SS11/ST9, SS12/ST14	Adverse effect on the integrity on the site will be avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Strensall Common SAC</u> Wet and dry heathland	Adverse effect on the integrity of the site is avoided with no need for mitigation

Site, issue and policies	Outcome
Recreational pressure SS15/ST17 & SS17/ST32, and H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A) & SH1	
<u>Strensall Common</u> Wet and dry heathland Air pollution SS19/ST35, E18 and H59	An adverse effect on the integrity of the site is avoided with no need for mitigation
<u>Strensall Common</u> Wet and dry heathland Windfall development H1(P)	Adverse effect on the integrity on the site will be avoided if mitigation in the form of a new policy is adopted
<u>Lower Derwent Valley</u> Breeding and non-breeding birds Recreational pressure SS18/ST33 & SS13/ST15	Adverse effect on the integrity of the site is avoided if mitigation in the form of modifications to the policy wording is adopted
<u>Lower Derwent Valley</u> Mobile species Non-breeding birds SS13/ST15	Adverse effect on the integrity of the site is avoided if mitigation in the form of modifications to the policy wording is adopted
<u>River Derwent</u> Air pollution Floating vegetation community and populations of river and sea lamprey, and bullhead SS13/ST15	Adverse effect on the integrity of the site is avoided with no need for mitigation

Provided that all the modifications suggested above are adopted, the HRA concludes that the council could be certain to the required standard that an adverse effect on the integrity of the European sites would be avoided. However, in terms of Policies SS19/ST35 and H59(A) it was not possible to be certain that adverse effects could be avoided because of reasonable scientific doubt concerning the effectiveness of mitigation measures at locations in such close proximity to Strensall Common SAC. Therefore, this latest HRA continues to recommend that both policies should be removed from the Plan.

The Council has consulted Natural England, the statutory consultee, on an iterative basis during the production of this HRA. The letters received in response are included at Appendix J. Where applicable, issues raised by

Natural England through the consultation process have been addressed in the report.

Natural England's letter of 12 March 2020 firstly welcomed the revised assessment of allocations SS18/ST35 and H59 for housing and agreed with the conclusions to remove the sites from the plan. Additionally, they agreed with the conclusions for employment allocation E18, which was assessed to result in a lesser threat with regards to recreational pressures and urban edge effects, despite its similar geography in relation to Strensall Common SAC and welcomed the proposed policy modifications.

Natural England also recognised that the revised assessment of policies/allocations SS9/ST7, SS10/ST8, SS11/ST9 and SS12/ST14 is in line with the ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of *People Over Wind and Sweetman vs Coillte Teoranta* (Case C-323/17). These policies/allocations have been reassessed as having likely significant effects on Strensall Common SAC as a result of recreational pressures. Natural England agreed with this assessment and welcomed the outcomes of the appropriate assessment wherein there are recommended policy changes, which strengthen the policies with regards to mitigating for recreational disturbance.

Natural England's letter of 8 October 2020 firstly concludes that they are "*satisfied that the modifications made to the screening assessment are in line with the ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)*" and that they have no further concerns with regards to this judgement in relation to the assessment.

Secondly, Natural England welcomed the proposed modifications to the plan, which are considered to satisfy their concerns raised in their letter dated 12 March 2020 regarding recreational pressure as a result of windfall development. In particular, they welcomed proposed policy G12a which sets out a 400m exclusion zone around Strensall Common SAC and a further 5.5km zone of influence concerning recreational disturbance based on with the analysis provided by Footprint Ecology and in line with approaches we have supported around the country.

The Council confirm that they accept the outcomes of this updated HRA report and the conclusions that the report has reached. We welcome Natural England's comments received throughout the process and their conclusion that they consider it satisfies applicable case law and the recommendations

are appropriate. On this basis, the recommended modifications have been included into the Proposed Modifications Schedule.

The Council also confirm that they have circulated the HRA report to the strategic sites concurrently to submission of this report with the intention of producing Statements of Common Ground pertaining to the conclusions and recommendations reached. These will be submitted in due course.

Proposed Modifications Schedule

During the Hearing Sessions during December 2019, a number of modifications to the plan were agreed to be made to clarify the Spatial Strategy set out in Section 3 of the Local Plan and as depicted on the Key diagram [CD001]. Principally, this was to ensure the plan period, applicable housing requirement and the resultant spatial distribution resulting from the application of the strategy principles ('spatial shapers') were clear.

Where applicable, the schedule updates previously proposed modifications set out in the Proposed Modifications Consultation (2019) [EXCYC20].

On this basis, the enclosed Proposed Modifications Schedule firstly proposes the following amendments to policy SS1 to:

- Amend the plan period date to confirm that the applicable plan period is to 2033 and that delivery beyond this date, is to provide flexibility to ensure that the Green Belt boundaries will not need to be amended for at least 5 years beyond the plan period.
- Amend the annual housing requirement is 822dpa, which takes into account our objectively assessed housing need of 790 dpa plus a shortfall of 32 dpa, as confirmed in our previous letter [EXCYC43], and that the plan therefore aims to deliver at least 13152 dwellings over the plan period;
- Provide a new bullet point referencing the delivery of Gypsy and Traveller Provision and Travelling Showpeople provision.

Secondly, it presents a new section to include in Section 3 'Spatial Strategy' to articulate the spatial distribution of allocated development across the city. To ensure this is clear, the Key diagram has also been updated to reflect the spatial distribution of development across the city, in line with discussions held at Phase 1. This now identifies the type of land use allocations relevant to their location to be delivered. The key diagram has also been updated to remove ST35 on the basis of the outcomes of the HRA recommendations.

Thirdly, following discussion at the Phase 1 hearing sessions and further consideration for the delivery of gypsy and Traveller provision, a policy modification is proposed to policy H5 'Gypsy and Travellers'. This seeks to

strengthen the policy approach to on-site delivery for those Gypsy and Travellers not meeting the Planning definition, encouraging on-site provision unless proven unviable. Additional modifications are also proposed to Section 10 'Managing Appropriate Development in the Green Belt' to clarify that GB4 makes provision for small scale affordable sites for Gypsies and Travellers not meeting the PPTS definition of a Gypsy or Traveller, to address need that may not be accommodated on strategic sites through policy H5.

Lastly, the schedule includes the Council's proposed modifications to policies in line with the outcomes and recommendations of the HRA to ensure legal compliance. It should also be noted that the HRA refers to modifications previously consulted on as part of the Preferred Modifications Consultation (2019) [EXCYC20], which remain relevant to the conclusions of the HRA report.

We look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil Ferris', written in a cursive style.

Neil Ferris
Corporate Director - Economy and Place