

**Appropriate Assessment
of
The Bournemouth, Dorset & Poole
Mineral Sites Plan
Pre-Submission Draft**

**Presented as an Addendum to the Original
Assessment (November 2017) under the
Conservation of Habitats and Species
Regulations, 2017**

**Prepared in response to recent case law:
People Over Wind, Peter Sweetman v Coillte
Teoranta**

**Prepared for the
Mineral Planning Authority in Dorset**

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Introduction

In light of a recent Court of Justice of the European Union (ECJ) ruling: *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Planning Inspectorate issued the following note in mid-May to the Mineral and Waste Planning Authority representing Dorset County Council, Poole Borough Council and Bournemouth Borough Council:

'On 12 April 2018, the Court of Justice of the European Union issued a judgment (C-323/17) which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

The Habitats Regulations Assessment (HRA) reports on the Waste Plan and Minerals Sites Plan include information that identifies likely significant effects on European sites and their designated features but conclude that they can be mitigated through avoidance or reduction measures, and does not go on to the AA stage.

I am writing to ask that the Councils confirm the extent to which they consider their HRA reports are legally compliant in light of the judgement and in doing so re-visit the screening assessments. If the revised screening assessments conclude that AA(s) is/are required these should be carried out.' Nick Palmer, via email, 16/5/18

The Mineral Planning Authority has considered this new information and concluded that the Assessment under the Conservation of Habitats and Species Regulations, 2017, (hereafter referred to as the HRA) submitted alongside the Mineral Sites Plan Pre-Submission Draft (hereafter referred to as the Mineral Plan) was consistent with accepted UK practice at the time of submission but, in the light of the above judgement, it is necessary to re-visit the screening assessment and conduct an Appropriate Assessment (AA) for those parts of the Plan (Policies and Site Allocations) which, without mitigation, would lead to a Likely Significant Effect on the relevant European sites. This will ensure the HRA is legally compliant when considered in the context of the ECJ judgement.

The Appropriate Assessment is presented below.

1. Appropriate Assessment

Article 6(3) of the European Council Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, the Habitats Directive, (92/43/EEC) states that:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions.....the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned....'

This directive is translated into UK law via the Conservation of Habitats and Species Regulations, 2017. Land Use Plans, such as the Mineral Plan, are covered by Regulations 105 and 107, as detailed in the Mineral Plan HRA. The Regulations refer to Special Areas of Conservation and Special Protection Areas, and UK National Planning Policy Framework, 2012, para 118, (now revised in NPPF, 2018, to para 176) affords international Ramsar sites (and potential Ramsar sites, potential SPAs and possible SACs) the same protection. For the purposes of this Appropriate Assessment all sites are referred to as European sites, as is the case in the Mineral Plan HRA.

Consultation with Natural England (NE) specifically relating to this Appropriate Assessment has been carried out as advised by PINS note (The Planning Inspectorate, 05/2018, Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta):

'9. Further consultation may be required on any revised screening assessment or AA. The Habitats Regulations require the competent authority to consult the appropriate statutory nature conservation body and have regard to any representations made by that body.'

2. Parts of the Plan where Likely Significant Effect would occur in the absence of mitigation.

Prior to People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17), previous case law (Hart District Council v. Sect. of State for Communities and Local Government, CO/7623/2007) allowed mitigation to be included at the screening stage of a Habs Regs Assessment. In the case of the Mineral Plan, the inclusion of mitigation resulted in the screening out of several Policies and Site Allocations which may otherwise have led to a Likely Significant Effect on the relevant European sites. The pathways by which this could occur are discussed in Sections 7 and 8 of the HRA.

Appendix 1 below summarises those parts of the Mineral Plan where Likely Significant Effects would occur in the absence of mitigation, with a summary of the mitigation. These Policies and Site Allocations are those which are now considered in the Appropriate Assessment.

Consultation with Natural England has confirmed that the mitigation information provided at the screening stage of this assessment is sufficient to inform the Appropriate Assessment.

3. The European Sites

An Appropriate Assessment must consider whether there would be an adverse impact on the integrity of the European sites relevant to the development. This must be specifically linked

to the conservation objectives of these sites. The European sites relevant to the Mineral Plan are identified in Section 6 of the HRA, and their features/attributes are set out in Appendix 1 of the same document.

For the purposes of this AA, the key sites are the Dorset Heathlands SPA and Ramsar, the Dorset Heaths SAC and the Dorset Heaths (Purbeck and Wareham) and Studland Dunes SAC. The conservation objectives of these sites are set out in Table 1:

Table 1: the relevant European sites and their conservation objectives

European Site	Conservation Objectives
Dorset Heaths SAC	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; <ul style="list-style-type: none"> <input type="checkbox"/> The extent and distribution of qualifying natural habitats and habitats of qualifying species <input type="checkbox"/> The structure and function (including typical species) of qualifying natural habitats <input type="checkbox"/> The structure and function of the habitats of qualifying species <input type="checkbox"/> The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely <input type="checkbox"/> The populations of qualifying species, and, <input type="checkbox"/> The distribution of qualifying species within the site.
Dorset Heathlands SPA	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; <ul style="list-style-type: none"> <input type="checkbox"/> The extent and distribution of the habitats of the qualifying features <input type="checkbox"/> The structure and function of the habitats of the qualifying features <input type="checkbox"/> The supporting processes on which the habitats of the qualifying features rely <input type="checkbox"/> The population of each of the qualifying features, and, <input type="checkbox"/> The distribution of the qualifying features within the site.
Dorset Heaths (Purbeck and Wareham) and Studland Dunes SAC	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; <ul style="list-style-type: none"> <input type="checkbox"/> The extent and distribution of qualifying natural habitats and habitats of qualifying species <input type="checkbox"/> The structure and function (including typical species) of qualifying natural habitats <input type="checkbox"/> The structure and function of the habitats of qualifying species <input type="checkbox"/> The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely <input type="checkbox"/> The populations of qualifying species, and, <input type="checkbox"/> The distribution of qualifying species within the site.

4. Consideration of Adverse Impact

In accordance with People Over Wind, Peter Sweetman v Coillte Teoranta, the mitigation considered in the original HRA now forms part of this Appropriate Assessment. The mitigation

is summarised in Appendix 1 below, and a full discussion of this and the potential impacts on the European sites can be found in Sections 7 and 8 of the HRA. Impacts were limited to:

- Uncertainty over whether adverse effects would occur due to weak policy wording (Policies MS-1: Sites for the provision of sand and gravel, MS-2: Sand and Gravel Area of Search, MS-3: Swanworth Quarry Extension, MS-4: Site for the provision of recycled aggregates, MS-5: Site for the provision of ball clay, MS-6: Sites for the provision of Purbeck Stone and MS-8: Puddletown Road Area Policy.
- Proximity effects related to habitat fragmentation (AS-06 Great Plantation, Bere Regis)
- Species effects related to species typical of the European sites, due to disturbance or habitat loss (AS-06 Great Plantation, Bere Regis, AS-12, Philliol's Farm, Hyde, AS-13, Roeshot Quarry Extension, Christchurch and BC-04 Trigon Hill Extension, Wareham)
- Effects from Displacement of Recreation due to mineral extraction related activity preventing recreation within an allocated site, and/or leading to a resulting increase in recreation within a European site (AS-06 Great Plantation, Bere Regis and AS-12 Philliol's Farm, Hyde).

These potential adverse effects on integrity have been mitigated by:

- Making amendments to policies and accompanying text to secure protection of the European sites.
- Making amendments, specific to those sites listed above, within the relevant policies (MS-1: Production of Sand and Gravel and MS-5: Site for the provision of ball clay) to provide mitigation related to effects at the specific sites.
- Identifying mitigation measures for the relevant site allocations (set out in Appendix 1 below) to be secured through planning conditions or planning obligations through plan/project level Appropriate Assessment as appropriate in consultation with Natural England.

The prepared HRA document which now forms part of this Appropriate Assessment provides detailed considerations of the effects of the policies and site allocations which are considered to have a Likely Significant Effect in the absence of further modification or detailed mitigation evidence. This Appropriate Assessment, which has been drawn up in consultation with Natural England, concludes that the Mineral Plan, incorporating the safeguarding modifications and mitigation brought forward in the original HRA (and listed in Appendix 1 below) provides sufficient certainty for the authorities to be sure that there will be no adverse effect on the integrity of the European sites, alone or in combination.

Table 2 below summarises this by listing the relevant European sites, setting out whether there would be a Likely Significant Effect and whether inclusion of mitigation would subsequently avoid adverse effect on the integrity of the European sites, in light of their conservation objectives.

Table 2: The relevant European sites, LSE and avoidance of adverse effects.

European Site	LSE Yes/No	Adverse Effects on integrity avoided for all features with mitigation, Yes/No
Dorset Heaths SAC	Yes	Yes
Dorset heathlands SPA	Yes	Yes
Dorset Heathlands Ramsar	Yes	Yes

Dorset Heaths (Purbeck and Wareham) and Studland Dunes SAC	Yes	Yes
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5. Conclusion

Having concluded that the Mineral Plan will have a likely significant effect in the absence of avoidance and mitigation measures on the above European sites, this Appropriate Assessment is presented by Dorset County Council as the Competent Authority in accordance with requirements under Reg 105 of the Conservation of Habitats and Species Regulations, 2017, and Article 6(3) of the Habitats Directive.

The AA concludes that, subject to suitable mitigation measures, there will be no adverse effect on the integrity of the relevant European sites, either individually or in combination with other plans or projects.

Appendix 1: Site Allocations and Policies in the Mineral Plan which would lead to Likely Significant Effect on the relevant European Sites, plus proposed mitigation.

Proposed Allocation	Policy/Site	Likely Significant Effect concluded without mitigation?	Mitigation proposed
Great Plantation, Puddletown Road (AS-06)		Yes	<p>Creation of an off-site heathland support area to mitigate displaced recreation.</p> <p>Design of a network of walks/paths around the remainder of the site, to ensure walkers are directed away from areas adjacent to the European site</p> <p>Phasing of works, with restoration to high quality heathland/grassland habitat taking place as soon as a phase is finished.</p> <p>Enhancement of areas within the 'blue line' boundary to create additional habitat for Annex 1 and Annex 2 species.</p> <p>Insertion of the following site specific text into the wording of Policy MS-1: <i>'Habitats Regulations Appraisal screening indicates that development at AS-06 Great Plantation may have significant effects on species, proximity and displacement of recreation in particular.... Development proposals must either mitigate these effects or reduce them to non-significant levels in order for any development to take place.'</i></p>
Philliol's Farm, Hyde (AS-12)		Yes	<p>Routing the haul road through existing forestry plantation, avoiding existing walking routes and habitat used by Annex 1 birds.</p> <p>Creating a haul road entrance which is separate from the existing ride entrance.</p> <p>Insertion of the following site specific text into the wording of Policy MS-1: <i>'Habitats Regulations Appraisal screening indicates that development at.....AS-12 Philliol's Farm may have significant effects on displacement of recreation and species in particular.... Development proposals must either mitigate these effects or reduce them to non-significant levels in order for any development to take place.'</i></p>
Roeshot Quarry Extension, Christchurch (AS-13)		Yes	<p>Creation of a buffer strip along both banks of the river Mude.</p> <p>Improvements to existing southern damselfly habitat within or adjacent to the allocated site.</p> <p>Careful management of water resources to ensure natural flow levels and water quality are maintained in the river Mude</p> <p>Phasing of works alongside the HLOWCC allocated site to ensure only one side of the river is affected at any time.</p>

		<p>Insertion of the following site specific text into the wording of Policy MS-1: <i>'Habitats Regulations Appraisal screening indicates that development at.....AS-13 Roeshot Quarry Extension may have significant effects on species in particular.... Development proposals must either mitigate these effects or reduce them to non-significant levels in order for any development to take place.'</i></p>
Trigon Hill Extension, Wareham (BC-04)	Yes	<p>Creation of a buffer between the allocated site and the adjacent European sites.</p> <p>Phased working to enable restoration of high quality heathland/acid grassland habitat immediately each extraction phase is complete. This will mitigate any potential effects on Annex 1 birds</p> <p>Insertion of the following site specific text into the wording of Policy MS-5: <i>'Habitats Regulations Appraisal screening indicates that development at BC-04 Trigon Hill Extension may have significant effects on species in particular. Development proposals must mitigate these effects or reduce them to non-significant levels in order for any development to take place.'</i></p>
Policy MS-1: Sites for the provision of sand and gravel	Yes	<p>Insert additional sentence into the text of Policy MS-1 stating development/allocated sites must demonstrate that: <i>'possible effects (including those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/allocated sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>
Policy MS-2: Sand and Gravel Area of Search	Yes	<p>Insert additional sentence into the text of Policy MS-2 stating development/ sites must demonstrate that: <i>'possible effects (including those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/ sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>

Policy MS-3: Swanworth Quarry Extension	Yes	<p>Insert additional sentence into the text of Policy MS-3 stating development/allocated sites must demonstrate that: <i>'possible effects (including those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/allocated sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>
Policy MS-4: Site for the provision of recycled aggregates	Yes	<p>Insert additional sentence into the text of Policy MS-4 stating development/allocated sites must demonstrate that: <i>'possible effects (including those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/allocated sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>
Policy MS-5: Site for the provision of ball clay	Yes	<p>Insert additional sentence into the text of Policy MS-5 stating development/allocated sites must demonstrate that: <i>'possible effects (including those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/allocated sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>
Policy MS-6: Sites for the provision of Purbeck Stone	Yes	<p>Insert additional sentence into the text of Policy MS-6 stating development/allocated sites must demonstrate that: <i>'possible effects (including</i></p>

		<p><i>those related to hydrology, displacement of recreation, species, proximity, land management and restoration) that might arise.....would not adversely affect the integrity of European and Ramsar sites, either alone or in-combination with other plans or projects.'</i></p> <p>Insert additional sentence in supporting text stating development/allocated sites: <i>'should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this plan.'</i></p>
<p>Policy MS-8: Puddletown Road Area Policy</p>	<p>Yes</p>	<p>Insertion additional sentence into the text of Policy MS-8 stating: <i>'Development, restoration, management or other activities will only be undertaken where it can be demonstrated that any possible effects that might result will not adversely affect the integrity of European and Ramsar sites, either alone or in combination with other plans or projects.'</i></p> <p>Insert additional sentence into supporting text stating: <i>'Any development, restoration, management or other activities relating to the implementation of this policy should demonstrate that there will be no adverse effects on the integrity of European and Ramsar sites. These effects are fully discussed in Policy DM5 of the Bournemouth, Dorset and Poole Minerals Strategy 2014 and the supporting text of that policy, which should be read in conjunction with this Plan.'</i></p>

