



Faversham Creek Neighbourhood Plan
(Submission Version) November 2014

Habitats Regulations Assessment

February 2015

Revision Schedule

Habitats Regulations Assessment

February 2015

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1 Introduction

1.1 Background to the Project

1.1.1 AECOM was appointed by Swale Borough Council to assist the Council in undertaking a Habitats Regulations Assessment (HRA) of its Faversham Creek Neighbourhood Plan (Submission Version) November 2014. The objective of the assessment was to:

- identify any aspects of the Neighbourhood Plan that would cause an adverse effect on the integrity of Natura 2000 sites, otherwise known as European sites (Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and, as a matter of Government policy, Ramsar sites), either in isolation or in combination with other plans and projects; and'
- to advise on appropriate policy mechanisms for delivering mitigation where such effects were identified.

1.1.2 AECOM (formerly URS) has undertaken a HRA of the draft Swale Borough Council Local Plan Part 1. Although it has not yet been adopted it is in its later stages of development and is unlikely to be subject to significant changes such that the policy framework that it sets is clear the Local Plan does contain a relevant policy framework with which the Neighbourhood Plan should be in conformity. This includes a series of policies facilitating strategic borough-wide protection of internationally important wildlife sites. The HRA of the Neighbourhood Plan has been undertaken with this fact and overarching policies as a key consideration. Natural England have been consulted on the Local Plan and has not raised any concerns with the policy framework it provides as it relates to the protection of European sites.

1.2 Legislation

1.2.1 The need for Habitats Regulations Assessment is set out within Article 6 of the EC Habitats Directive 1992, and interpreted into British law by the Conservation of Habitats and Species Regulations 2010. The ultimate aim of the Directive is to "*maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest*" (Habitats Directive, Article 2(2)). This aim relates to habitats and species, not the European sites themselves, although the sites have a significant role in delivering favourable conservation status.

1.2.2 The Habitats Directive applies the precautionary principle to European sites. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the site(s) in question. Plans and projects with predicted adverse impacts on European sites may still be permitted if there are no alternatives to them and there are Imperative Reasons of Overriding Public Interest (IROPI) as to why they should go ahead. In such cases, compensation would be necessary to ensure the overall integrity of the site network.

1.2.3 In order to ascertain whether or not site integrity will be affected, a Habitats Regulations Assessment should be undertaken of the plan or project in question:

Box 1. The legislative basis for Appropriate Assessment

Habitats Directive 1992

Article 6 (3) 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.”

Conservation of Habitats and Species Regulations 2010 (as amended)

The Regulations state that:

“A competent authority, before deciding to ... give any consent for a plan or project which is likely to have a significant effect on a European site ... shall make an appropriate assessment of the implications for the site in view of that sites conservation objectives... The authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site”.

1.2.4 Over the years the phrase ‘Habitats Regulations Assessment’ has come into wide currency to describe the overall process set out in the Conservation of Habitats and Species Regulations from screening through to Imperative Reasons of Overriding Public Interest (IROPI). This has arisen in order to distinguish the process from the individual stage described in the law as an ‘appropriate assessment’. Throughout this report we use the term Habitats Regulations Assessment for the overall process.

1.3 Scope of the Project

1.3.1 There is no pre-defined guidance that dictates the physical scope of a HRA of a Neighbourhood Plan. Therefore, in considering the physical scope of the assessment, we were guided primarily by the identified impact pathways rather than by arbitrary ‘zones’. Current guidance suggests that the following European sites be included in the scope of assessment:

- All sites within the Neighbourhood Plan area boundary; and
- Other sites shown to be linked to development within the boundary through a known ‘pathway’.

1.3.2 Briefly defined, pathways are routes by which a change in activity within the Neighbourhood Plan area can lead to an effect upon a European site. In terms of the second category of European site listed above, guidance from the former Department of Communities and Local Government states that the HRA should be ‘*proportionate to the geographical scope of the [plan policy]*’ and that ‘*an AA need not be done in any more detail, or using more resources, than is useful for its purpose*’ (CLG, 2006, p.6).

There is one internationally designated site that lies adjacent to the Faversham Creek Neighbourhood Plan Area – The Swale SPA and Ramsar site (Figure 1). No other internationally

designated sites lie within 6km of the Plan area. A detailed study investigating disturbance of birds for which the North Kent Estuaries (including The Swale SPA/Ramsar site and Medway Estuary & Marshes SPA/ Ramsar site) were designated¹ identified that development within 6km of access points to the SPAs is particularly likely to lead to increase in recreational use of the SPAs. As a result, it is considered that 6km is a suitable 'zone of influence' to use for the Neighbourhood Plan. It is not considered that other potential pathways of impact resulting from the Neighbourhood Plan (such as reduced water quality) would extend further than 6km.

1.4 This Report

- 1.4.1 Chapter 2 of this report explains the process by which the HRA has been carried out. Chapter 3 explores the relevant pathways of impact. Chapter 4 summarises policies, objectives and projects that have been screened in. These are considered further in Chapter 5, including recommended changes. The key findings are summarised in Chapter 6: Conclusions. The interest features and ecological condition of The Swale SPA and Ramsar sites and the environmental processes essential to maintain site integrity are outlined in Appendix A, whilst the screening exercise is undertaken in Appendix C.

1.5 Consultation

- 1.5.1 The pre-submission draft Faversham Creek Neighbourhood Plan was open for public consultation for six weeks between 19th May 2014 and 30th June 2014. It should be noted that the Faversham Creek Neighbourhood Plan and associated HRA will be subject to consultation with Natural England prior to adoption.

¹ Liley, D., Lake, S. & Fearnley, H. (2012) North Kent Interim Overarching Report. Footprint Ecology/GGKM/NE

2 Methodology

2.1 Introduction

- 2.1.1 The HRA has been carried out in the continuing absence of formal central Government guidance, although general EC guidance on HRA does exist². The former Department for Communities and Local Government released a consultation paper on the Appropriate Assessment of Plans in 2006³. As yet, no further formal guidance has emerged. However, Natural England has produced its own internal guidance⁴ as has the RSPB⁵. Both of these have been referred to alongside the guidance outlined in section 1.2 in undertaking this HRA.
- 2.1.2 Figure 3 below outlines the stages of HRA according to current draft CLG guidance. The stages are essentially iterative, being revisited as necessary in response to more detailed information, recommendations and any relevant changes to the plan until no significant adverse effects remain.

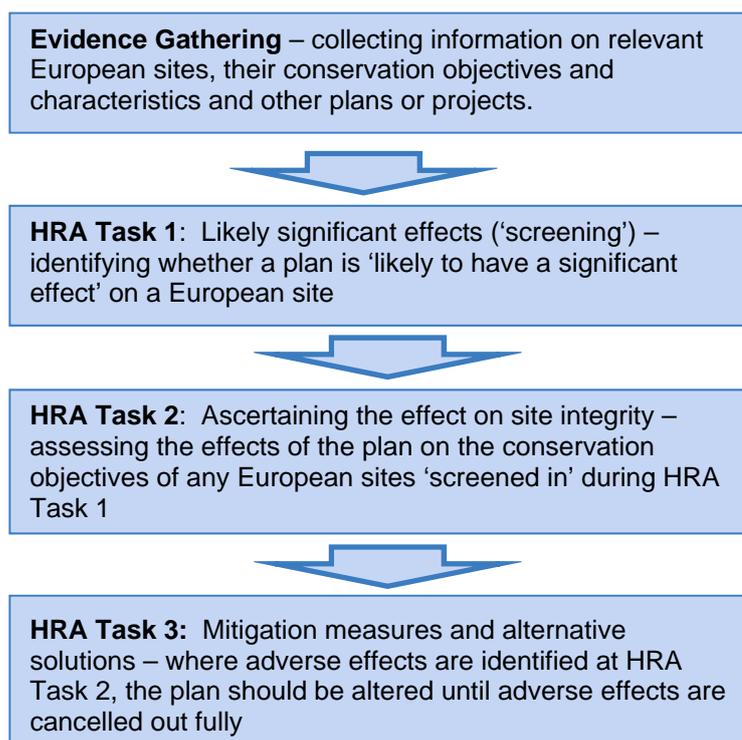


Figure 3 - Four-Stage Approach to Habitats Regulations Assessment

Source: CLG, 2006

² European Commission (2001): Assessment of plans and projects significantly affecting Natura 2000 Sites: Methodological Guidance on the Provisions of Article 6(3) and 6(4) of the Habitats Directive.

³ CLG (2006) Planning for the Protection of European Sites, Consultation Paper

⁴ http://www.ukmpas.org/pdf/practical_guidance/HRGN1.pdf

⁵ Dodd A.M., Cleary B.E., Dawkins J.S., Byron H.J., Palframan L.J. and Williams G.M. (2007) *The Appropriate Assessment of Spatial Plans in England: a guide to why, when and how to do it*. The RSPB, Sandy.

2.2 HRA Task 1 - Likely Significant Effects (LSE)

2.2.1 Following evidence gathering, the first stage of any Habitats Regulations Assessment is a Likely Significant Effect (LSE) test - essentially a risk assessment to decide whether the full subsequent stage known as Appropriate Assessment is required. The essential question is:

"Is the Plan, either alone or in combination with other relevant projects and plans, likely to result in a significant effect upon European sites?"

2.2.2 The objective is to 'screen out' those plans and projects that can, without any detailed appraisal, be said to be unlikely to result in significant adverse effects upon European sites, usually because there is no mechanism for an adverse interaction with European sites. This stage is undertaken in Appendix C of this report.

2.2.3 In evaluating significance, AECOM have relied on our professional judgement as well as the results of previous stakeholder consultation regarding development impacts on the European sites listed in 1.3.2 and Appendix A.

2.2.4 The level of detail in land use plans concerning developments that will be permitted under the plans will never be sufficient to make a detailed quantification of adverse effects. Therefore, we have again taken a precautionary approach (in the absence of more precise data) assuming as the default position that if an adverse effect cannot be confidently ruled out, avoidance or mitigation measures must be provided. This is in line with the former Department of Communities and Local Government guidance that the level of detail of the assessment, whilst meeting the relevant requirements of the Habitats Regulations, should be 'appropriate' to the level of plan or project that it addresses (see Appendix B for a summary of this 'tiering' of assessment).

2.3 Other Plans and Projects That May Act In Combination

2.3.1 It is a requirement of the Regulations that the impacts of any land use plan being assessed are not considered in isolation but in combination with other plans and projects that may also be affecting the European site(s) in question.

2.3.2 It is neither practical nor necessary to assess the 'in combination' effects of the Neighbourhood Plan within the context of all other plans and projects within Kent. For the purposes of this assessment, we have determined that, due to the nature of the identified impacts, the key other plans and projects with potential for in-combination likely significant effects are those schemes that have the following impact pathways: recreational pressure from residential development, and tourism. For the purpose of this assessment, only projects and plans within 6km of Faversham Creek Neighbourhood Plan area were considered. 6km was identified following a detailed study investigating disturbance of birds for which the North Kent Estuaries (including The Swale SPA/Ramsar site and Medway Estuary & Marshes SPA/ Ramsar site) were designated⁶.

2.3.3 From reviewing the Swale Borough Local Plan Part 1 Publication Version, the following policies could act in-combination with the Faversham Creek Neighbourhood Plan, resulting in likely significant effects upon The Swale SPA and Ramsar site:

- Policy MU 4 - The Oare Gravel Workings, Oare Road, Faversham. The Oare Gravel Pit site has already been assessed in detail at the project level and the potential impacts and

⁶ Liley, D., Lake, S. & Fearnley, H. (2012) North Kent Interim Overarching Report. Footprint Ecology/GGKM/NE

mitigation methods are well understood. Policy MU 4 of the Swale Local Plan reflects these requirements by requiring a project-specific HRA and by stating that the applicant must devise proposals for '*protecting and enhancing on-site habitats to provide for (at least) current levels of use by key species, including its use by SPA birds*'. As such, this policy is screened out.

- Other residential development within Faversham as outlined within the Swale Borough Local Plan Part 1 Publication Version. Further to the HRA assessment undertaken in 2014⁷, these strategic sites were screened out provided the Swale Local Plan incorporates recommendations made within the 2014 HRA assessment.

2.3.4 There are other plans that are relevant to the 'in combination' assessment, and the following have all been taken into account in this assessment:

- Core Strategies/Local Plans and DPDs produced by local authorities surrounding the Neighbourhood Plan area;
- European Site Management and Access Management Plans where available.
- The Faversham Creek Streetscape Strategy (publication date not given)
- Faversham Creek Area Action Plan (2010)⁸

2.3.5 When undertaking this part of the assessment it is essential to bear in mind the principal intention behind the legislation i.e. to ensure that those projects or plans which in themselves have minor impacts are not simply dismissed on that basis, but are evaluated for any cumulative contribution they may make to an overall significant effect. In practice, in combination assessment is therefore of greatest relevance when the plan would otherwise be screened out because its individual contribution is inconsequential.

⁷ URS. 2014. *Swale Borough Local Plan Part 1 Publication Version Habitats Regulations Assessment*. At the time of writing, this version of the Swale Borough Local Plan Part 1 Publication Version was not yet adopted.

⁸ Tony Fullwood Associates. 2010. *Faversham Creek Area Action Plan. Developing proposals and future planning policy options to deliver regeneration of the Creek area*.

3 Pathways of Impact

3.1 Introduction

3.1.1 In carrying out an HRA it is important to determine the various ways in which land use plans can impact on European sites by following the pathways along which development can be connected with European sites, in some cases many kilometres distant. Briefly defined, pathways are routes by which a change in activity associated with a development can lead to an effect upon a European site.

3.1.2 Impact pathways considered within this document are:

- Loss of Supporting Habitat
- Disturbance: Recreational Pressure
- Disturbance: Other than Recreational Pressure
- Urbanisation
- Water Quality (from terrestrial development and boating)

3.2 Loss of Supporting Habitat

3.2.1 While most European sites have been geographically defined in order to encompass the key features that are necessary for coherence of their structure and function, this is not the case for all such sites. Due to the highly mobile nature of waterfowl it is inevitable that areas of habitat of crucial importance to the maintenance of their populations are outside the physical limits of the European site for which they are an interest feature. However, this area will still be essential for maintenance of the structure and function of the interest feature for which the site was designated and land use plans that may affect this land should still therefore be subject to appropriate assessment.

3.2.2 At its closest Faversham Creek Neighbourhood Plan area lies within The Swale SPA and Ramsar site and includes estuarine habitats (mud flats) in proximity to the SPA and Ramsar boundary that have potential to support bird species for which the international sites are designated.

3.3 Disturbance: Recreational Pressure

3.3.1 Activities such as new residential development and tourism (both in terrestrial and aquatic habitats) have potential to lead to likely significant effects upon internationally designated sites. Consultation for the HRA of the (now revoked) South East Plan revealed that potentially damaging levels of recreational pressure are already faced by many European sites. Recreational use of a site has the potential to:

- Cause disturbance to sensitive species such as wintering wildfowl;
- Prevent appropriate management or exacerbate existing management difficulties;
- Cause damage through erosion, trampling and fragmentation; and

- Cause eutrophication as a result of dog fouling.
- 3.3.2 Different types of European sites (e.g. coastal, heathland, chalk grassland) are subject to different types of recreational pressures and have different vulnerabilities. Studies across a range of species have shown that the effects from recreation can be complex.
- 3.3.3 Disturbance effects for birds can have an adverse effect in various ways, with increased nest predation by natural predators as a result of adults being flushed from the nest and deterred from returning to it by the presence of people and dogs likely to be a particular problem. A literature review on the effects of human disturbance on bird breeding found that 36 out of 40 studies reported reduced breeding success as a consequence of disturbance⁹. The main reasons given for the reduction in breeding success were nest abandonment and increased predation of eggs or young. Over years, studies of other species have shown that birds nest at lower densities in disturbed areas, particularly when there is weekday as well as weekend pressure¹⁰.
- 3.3.4 A number of studies have shown that birds are affected more by dogs and people with dogs than by people alone, with birds flushing more readily, more frequently, at greater distances and for longer (Underhill-Day, 2005). In addition, dogs, rather than people, tend to be the cause of many management difficulties, notably by worrying grazing animals, and can cause eutrophication near paths. Nutrient-poor habitats are particularly sensitive to the fertilising effect of inputs of phosphates, nitrogen and potassium from dog faeces¹¹.
- 3.3.5 Underhill-Day (2005) summarises the results of visitor studies that have collected data on the use of semi-natural habitat by dogs. In surveys where 100 observations or more were reported, the mean percentage of visitors who were accompanied by dogs was 54.0%.
- 3.3.6 However these studies need to be treated with care. For instance, the effect of disturbance is not necessarily correlated with the impact of disturbance, i.e. the most easily disturbed species are not necessarily those that will suffer the greatest impacts. It has been shown that, in some cases, the most easily disturbed birds simply move to other feeding sites, whilst others may remain (possibly due to an absence of alternative sites) and thus suffer greater impacts on their population¹². A recent literature review undertaken for the RSPB¹³ also urges caution when extrapolating the results of one disturbance study because responses differ between species and the response of one species may differ according to local environmental conditions. These facts have to be taken into account when attempting to predict the impacts of future recreational pressure on European sites.
- 3.3.7 It should be emphasised that recreational use is not inevitably a problem. Many European sites are also National Nature Reserves or nature reserves managed by Wildlife Trusts and the RSPB. At these sites, access is encouraged and resources are available to ensure that recreational use is managed appropriately.

⁹ Hockin, D., M. Oundsted, M. Gorman, D. Hill, V. Keller and M.A. Barker (1992) – Examination of the effects of disturbance on birds with reference to its importance in ecological assessments. *Journal of Environmental Management*, **36**, 253-286.

¹⁰ Van der Zande, A.N., J.C. Berkhuisen, H.C. van Letesteyn, W.J. ter Keurs and A.J. Poppelaars (1984) – Impact of outdoor recreation on the density of a number of breeding bird species in woods adjacent to urban residential areas. *Biological Conservation*, **30**, 1-39.

¹¹ Shaw, P.J.A., K. Lankey and S.A. Hollingham (1995) – Impacts of trampling and dog fouling on vegetation and soil conditions on Headley Heath. *The London Naturalist*, **74**, 77-82.

¹² Gill et al. (2001) - Why behavioural responses may not reflect the population consequences of human disturbance. *Biological Conservation*, **97**, 265-268

¹³ Woodfield & Langston (2004) - Literature review on the impact on bird population of disturbance due to human access on foot. *RSPB research report* No. 9.

3.3.8 Where increased recreational use is predicted to cause adverse impacts on a site, avoidance and mitigation should be considered. Avoidance of recreational impacts at European sites involves location of new development away from such sites; Local Development Frameworks (and other strategic plans) provide the mechanism for this. Where avoidance is not possible, mitigation will usually involve a mix of access management, habitat management and provision of alternative recreational space:

- *Access management* – restricting access to some or all of a European site - is not usually within the remit of the Council and restriction of access may contravene a range of Government policies on access to open space, and Government objectives for increasing exercise, improving health etc. However, active management of access is possible, for example as practised on nature reserves.
- *Habitat management* is not within the direct remit of the Council. However the Council can help to set a framework for improved habitat management by promoting cross-authority collaboration and S106 funding of habitat management. In the case of Swale Borough, opportunities for this are limited since, according to Natural England, the majority of The Swale component SSSI units are in favourable condition.
- *Provision of alternative recreational space* can help to attract recreational users away from sensitive European sites, and reduce additional pressure on them. Some species for which European sites have been designated are particularly sensitive to dogs, and many dog walkers may be happy to be diverted to other, less sensitive, sites. However the location and type of alternative space must be attractive for users to be effective.

Bird Disturbance Study

3.3.9 A study was undertaken in 2010/2011 by Footprint Ecology¹⁴, who looked at bird disturbance in North Kent. The study focused on recreational disturbance to wintering waterfowl on intertidal habitats and focused on part of the North Kent shoreline, stretching between Gravesend and Whitstable; encompassing three SPAs: the Swale SPA, the Thames Estuary and Marshes SPA, and the Medway Estuary and Marshes SPA. The key findings of the study are as follows:

3.3.10 From 1,400 events (records of visitors in the bird survey areas) occurring within 200m of the birds, 3,248 species specific observations were noted of which:

- 74% resulted in no response.
- 13% resulted in a major flight.
- 5% resulted in a short flight.
- 5% resulted in a short walk.
- 3% resulted in an alert.

3.3.11 Dog walking accounted for 55% of all major flight observations with a further 15% attributed to walkers without dogs. After controlling for distance, major flights were more likely to occur when activities took place on the intertidal zone (compared to events on the water or events on the shore), when dogs were present, and the probability of major flight increased with the number of dogs present within a group.

¹⁴ D. Liley & H. Fearnley (Footprint Ecology), 2011. Bird Disturbance Study North Kent.

- 3.3.12 There were significant differences between species with curlew *Numenius arquata* the species with the highest probability of major flight and teal and black-tailed godwit *Limosa limosa* the lowest.
- 3.3.13 Tide state was also significant with major flights more likely at high tide, after controlling for distance. There was also a significant interaction between distance and tide, indicating that the way in which birds responded varied according to tide.

North Kent Visitor Survey

- 3.3.14 A visitor survey was undertaken at the same time as the aforementioned bird survey by Footprint Ecology¹⁵. The key findings of the survey are as follows:
- 3.3.15 542 groups of visitors were interviewed representing information from 930 people with 502 dogs.
- 65% (345) interviewed groups were accompanied by at least one dog.
 - 96% (521) interviewed groups were local residents who made their visit from home.
 - 70% of visitors who arrive by foot made their visits either daily or most days (in comparison to 31% who arrive by car).
 - 63% of visitors travelled to their visit location by car or van, 34% of visitors arrived by foot, 3% arrived by bicycle and 2% by public transport.
 - 50% of visitors who arrived by car lived within 4.2km of their visit location.
 - 23% of visitors stated they walked off the paths and onto the mudflats or the open beach. Of the 23% of visitors whose routes took them onto the mudflats 65% were accompanied by at least one dog.

Local Plan Approach

- 3.3.16 To ensure no likely significant effect occurs as a result of the Swale Borough Local Plan Part 1 (as yet to be adopted) a detailed study was undertaken which investigated disturbance of birds for which the North Kent Estuaries (including The Swale SPA/Ramsar site and Medway Estuary & Marshes SPA/ Ramsar site) were designated¹⁶. The study outcome and recommendations can be summarized as follows:
- There have been marked declines in the numbers of birds using the three SPAs (the third being the Thames Estuary & Marshes SPA/Ramsar site on the south bank of the River Thames). Declines are particularly apparent on the Medway and have occurred at the locations with the highest levels of access.
 - Disturbance is a potential cause of the declines. The disturbance study shows birds are responding to the presence of people, and there is evidence that the busiest locations (which have seen the most marked bird declines) support particularly low numbers of birds.
 - Access levels are linked to local housing, with much of the access involving frequent use by local residents. Indicative data on future housing development, when used with the visitor data to estimate change in access levels between now and c.2026, would suggest that the

¹⁵ Fearnley, H. & Liley, D. (2011). North Kent Visitor Survey Results. Footprint Ecology.

¹⁶ Liley, D., Lake, S. & Fearnley, H. (2012) North Kent Interim Overarching Report. Footprint Ecology/GGKM/NE

SPA/Ramsar sites would see a future increase of approximately 15%. Given the results of the disturbance work to date and the likely scale of change in the future, it is clearly not possible to rule out any Likely Significant Effects on the integrity of the European sites as a result of increased housing. A suite of mitigation measures are therefore necessary to avoid potential adverse effects caused by future development.

- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites and should be addressed within mitigation plans. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance (by far) and therefore should be a focus for mitigation. Other particular activities are those that involve people on the mudflats or the water.
 - Development within 6km of access points to the SPAs is particularly likely to lead to increase in recreational use of the SPAs. Local greenspace use such as dog walking, cycling, jogging, walking and to some extent family outings will originate from people living within this radius.
 - Beyond 6km from access points onto the SPA, large developments or large scale changes to housing levels will also result in increased recreational use. It would appear that visitors to the North Kent coast mostly originate from a zone north of the M2/A2 between Gravesend and Herne. People living within this broad coastal strip (i.e. beyond 6km from SPA access points and north of the M2/A2) are likely to visit for more coastal specific activities. Assuming users will be drawn to make a dedicated trip to particular features/areas, then the following can be highlighted:
 - the mouth of the Swale (for kite/windsurfing, dog walking with dogs off leads on the intertidal, bait digging);
 - the upper parts of the Swale (boating activities);
 - the upper parts of the Medway around Gillingham, Upnor and Rochester (where considerable infrastructure is present and lots of boating activity including powerboats, RIBs etc.);
 - nature reserves at Sheppey, Oare Marshes, Cliffe and Northward Hill.
- 3.3.17 Development beyond 6km (excluding large sites) was potentially screened out of assessments and assumed to have no Likely Significant effect on European sites. For development that falls within 6km (or large sites beyond 6km) it was not possible to demonstrate no adverse effect on integrity of the European sites and mitigation measures will need to be considered.
- 3.3.18 Mitigation measures are discussed, including awareness raising, on-site wardening, provision of signage and access infrastructure, provision/enhancement of green space away from the SPAs and direct contact with users.
- 3.3.19 Areas currently undisturbed, and in particular the main roost sites should, in particular, be protected from additional recreational pressure.
- 3.3.20 Within the Swale Borough Local Plan Part 1 Publication Version there were a number of policies within the Local Plan that had the potential to increase recreational pressure on The Swale such as policies ST 2 (Development Targets for Jobs and Homes 2011 - 2031), ST 4 (Meeting the Local Plan Development Targets), ST 7 (The Faversham Area and Kent Downs Strategy). Policy DM 22 (The Coast) could also lead to Likely Significant Effects in as much as it promotes '*maintaining or enhancing access to the coast*', although it qualifies that by adding '*where it can be appropriately managed*'. As such, it was considered that development within Swale Borough as set out in the Local Plan will result in a likely significant effect upon the designated sites without the delivery of necessary mitigation to address recreational pressure and direct/manage

future recreational access since it involves delivery of 10,800 dwellings over the Plan period of which the vast majority will be located within 6km of The Swale SPA/Ramsar site or the Medway Estuary and Marshes SPA/Ramsar site, with the majority at either Sittingbourne, Faversham or the Isle of Sheppey.

3.3.21 The study went on to make a series of recommendations for:

- Set back development at distances greater than 6km from SPA access points where feasible;
- Secure roost sites;
- Providing additional green infrastructure both in terms of suitable areas of alternative natural greenspace and rerouting of footpaths away from the coast (specific reference was made to Sittingbourne in this recommendation);
- Awareness raising through the issue of information and leaflets to dog walkers and others;
- Enhanced wardening presence;
- Improved signage; and
- Modifications to some existing car parking locations

3.3.22 Access management was identified as the principal tool for addressing recreational disturbance impacts. This work led to the development of a draft North Kent Access Management Plan which was converted to an access management scheme to be implemented on the ground.

3.3.23 The detailed Strategic Access Management and Monitoring Strategy (SAMMS) for the Thames, Medway and Swale Estuaries was completed to set out a strategy to resolve disturbance issues from increased recreational activity to wintering birds within the north Kent Marshes. The 'strategy addresses disturbance impacts and provides a strategic, cross-boundary solution to issues relating to disturbance, there are two aims.

- *To support sustainable growth whilst protecting the integrity of European wildlife sites from impacts relating to recreational disturbance*
- *To reduce the existing recorded recreation impact on birds on the European wildlife sites in order to meet duties relating to the maintenance and restoration of European sites, as required by Article 4(4) of the Birds Directive.'*

3.3.24 The following broad elements were identified as being useful tools to help resolve disturbance issues from increased recreational pressure as a result of development:

- A North Kent Coast Dog Project – *'focuses on the activity that is most associated with disturbance and will engage with local dog walkers. It will be able to promote particular sites to dog walkers and raise awareness of disturbance issues'*.
- Wardening/Visitor Engagement – *'can be mobile and deployed across a range of locations, targeting areas with particular issues or close to new development. The level of wardening can be flexible over time and the post can supplement existing visitor engagement and ranger posts.'*
- New Access Infrastructure – *'will involve a range of discrete, focused projects that could be phased with new development.'*

- Parking (Strategic Review and Changes to Parking) – *‘will provide the necessary information to underpin long-term changes in parking capacity, charging and provision. Such changes can be phased over time and linked to available funding and locations where new development comes forward.’*
 - Interpretation/signage – *‘Interpretation will ensure visitors recognise that the sites they are visiting are important for nature conservation and will potentially increase awareness of nature conservation issues (and possibly behaviour in the long-term). Signage will convey particular messages, such as asking dogs to be on leads or asking people not to stray from the path.’*
 - Codes of Conduct – *‘provide guidance for a range of activities, in particular making it clear how users should behave and where to undertake particular activities (important ground work should legal enforcement be required in later years).’*
 - Work with local clubs/groups – *‘There is scope to resolve very specific local issues by directly talking to local users that have a local club/group and this contact has relevance for some of the other recommendations in this report (such as input into the codes of conduct).’*
 - Refuges – *‘quiet’ areas within the Medway where recreation and other activities are discouraged.’*
 - Enhancement of existing sites to create hub – *‘In the long term access is best focused away from the SPAs. Particular honeypots within the SPA will be likely to continue to draw access and coastal sites will always have a particular draw. These sites therefore need to be made more robust, with additional resources made available and management measures targeted to reduce disturbance impacts. Measures are possible at such locations to reduce disturbance’*
 - Enhancement to existing green infrastructure sites away from SPA – *‘...the more that existing green infrastructure away from the SPA can absorb access pressure and people’s access requirements the better.’*
 - Enforcement – *‘Legal enforcement provides a means of ensuring some particularly disturbing activities do not take place.’*
 - Monitoring – *‘Monitoring across the SPA sites will provide a check on success of measures and inform where further measures, such as enforcement (for example dog control orders) might be necessary.’*
- 3.3.25 This is reflected in Policy CP 7 ‘Conserving and Enhancing the Natural Environment’ of the Local Plan which states that *‘The Council will work with partners and developers to ensure the protection, enhancement and delivery, as appropriate, of the Swale natural assets and green infrastructure network and its associated strategy’*. In addition, this policy directly refers to the use of the Strategic Access Management and Monitoring Strategy (SAMMS) Thames, Medway and Swale Estuaries for managing recreational pressure within the North Kent Marshes European sites.

3.4 Disturbance: Other than Recreational Pressure

- 3.4.1 Recreational pressure is not the only potential source of disturbance. Construction work taking place in close proximity to the designated site could cause disturbance and displacement of the designated birds.

Construction/ Demolition (Development) Works

3.4.2 Construction and development activities can lead to likely significant effects upon The Swale SPA and Ramsar site. This is through the following impact pathways:

- Noise and vibration (within terrestrial habitats)
- Noise and vibration (within aquatic habitats)
- Visual impacts (terrestrial habitats)

3.4.3 While any impact will be temporary (in that birds would return once construction/ demolition) work ceased and the disturbance stimulus was removed) the resulting effect on population survival could be significant if it occurs during the winter/passage period and prevents birds from using feeding areas on which they rely, or if it occurs during breeding season and disturbs the birds rearing their young.

Encroachment

3.4.4 Where the designated site is located adjacent to a developed area, there is potential for the site boundaries to become blurred. Whilst this is not intentional encroachment, it can lead to small scale likely significant effects resulting as mechanical abrasion, direct loss of habitat and disturbances (such as noise and visual) encroaching into the SPA and Ramsar site.

Light spill

3.4.5 Where the designated site is located in close proximity to a development area, any light spill into the designated site could impact upon bird features for which it is designated.

Loss of flight lines

3.4.6 Large structures (e.g. offshore and onshore wind turbines), have the potential to alter bird flight paths (e.g. hunting flight paths for raptors, bird migratory paths, regular flight paths between roosting and feeding sites, and foraging routes for bats etc.). This may result in a collision risk barrier effect or displacement which could make birds either vulnerable to predation or loss of vital energy stores¹⁷.

3.5 Urbanisation

3.5.1 This impact is closely related to recreational pressure, in that they both result from increased populations within close proximity to sensitive sites. Urbanisation is considered separately as the detail of the impacts is distinct from the trampling, disturbance and dog-fouling that results specifically from recreational activity. The list of urbanisation impacts can be extensive, but core impact can be singled out:

- Increased fly-tipping - Fly-tipping tipping is unsightly but the principle adverse ecological effect of tipping is the introduction of invasive non-native species with garden waste. Non-native species can in some situations, lead to negative interactions with habitats or species for which European sites may be designated. Garden waste results in the introduction of

¹⁷ This has been explored through various recent Scottish Natural Heritage studies including Guidance Avoidance Rates for Wintering Species of Geese in Scotland at Onshore Windfarms (May 2013) (<http://www.snh.gov.uk/docs/A916616.pdf>); and Guidance Recommended bird survey methods to inform impact assessment of onshore wind farms August 2013; (<http://www.snh.gov.uk/docs/C278917.pdf>);

invasive non-native species precisely because it is the ‘troublesome and over-exuberant’ garden plants that are typically thrown out¹⁸. Non-native species may also be introduced deliberately or may be bird-sown from local gardens.

- Cat predation - A survey performed in 1997 indicated that nine million British cats brought home 92 million prey items over a five-month period⁵. A large proportion of domestic cats are found in urban situations, and increasing urbanisation is likely to lead to increased cat predation.

3.6 Water Quality

3.6.1 Any policy, objective, or project that will result in an increase in boating activities within the Faversham Creek Neighbourhood Plan Area or The Swale SPA and Ramsar site has potential to lead to an increase in the frequency of pollution events from boating activities.

3.6.2 The quality of the water that feeds European sites is an important determinant of the nature of their habitats and the species they support. Poor water quality can have a range of environmental impacts:

- At high levels, toxic chemicals and metals can result in immediate death of aquatic life, and can have detrimental effects even at lower levels, including increased vulnerability to disease and changes in wildlife behavior. Eutrophication, the enrichment of plant nutrients in water, increases plant growth and consequently results in oxygen depletion. Algal blooms, which commonly result from eutrophication, increase turbidity and decrease light penetration. The decomposition of organic wastes that often accompanies eutrophication deoxygenates water further, augmenting the oxygen depleting effects of eutrophication. In the marine environment, nitrogen is the limiting plant nutrient and so eutrophication is associated with discharges containing available nitrogen.
- Some pesticides, industrial chemicals, and components of sewage effluent are suspected to interfere with the functioning of the endocrine system, possibly having negative effects on the reproduction and development of aquatic life.

3.6.3 For sewage treatment works close to capacity, further development may increase the risk of effluent escape into aquatic environments. In many urban areas, sewage treatment and surface water drainage systems are combined, and therefore a predicted increase in flood and storm events could increase pollution risk.

3.6.4 However, it is also important to note that the situation is not always simple. While nutrient enrichment does cause considerable problems on the south coast (particularly in the Solent) due to the abundance of smothering macroalgae that is produced, it is not necessarily a problem in other areas where the macroalgae are broken up by tidal wave action and where colder and more turbid water limit the build-up in the first place. Nonetheless, at this screening stage water quality impacts are considered to be an issue that requires investigation.

3.6.5 Water quality reduction may also occur through direct run-off from construction activities or operational developments where drainage protocols and infrastructure are inadequate.

¹⁸ Gilbert, O. & Bevan, D. 1997. The effect of urbanisation on ancient woodlands. *British Wildlife* 8: 213-218.

4 HRA Screening of the Faversham Creek Neighbourhood Plan

4.1.1 The Faversham Creek Neighbourhood Plan contains two items that provide some form of protection for internationally designated sites. These are as follows:

4.1.2 Objective 7: *'Avoid significant harm to areas designated for their ecological importance, whilst ensuring that a network of habitats is provided.'*

4.1.3 Natural Environment NE 1: *'Planning permission will be granted unless development causes significant harm to the natural environment or habitats of the Creekside sites identified here, the waterway or the protected sites downstream.'*

4.1.4 Objective 7 and Policy NE 1 provide for some basic protection for internationally designated sites, however, the initial screening of the Neighbourhood Plan identified the need to include changes to the text of the policies, objectives and projects to ensure no likely significant effects upon The Swale SPA and Ramsar site.

4.1.5 The policies, objectives and projects within the Faversham Creek Neighbourhood Plan area were subject to an initial screening within Appendix C. From the initial screening exercise, a number of policies, objectives and projects could not be screened out and are subject to further discussion within this document. The policies, objectives and projects screened in during the initial screening within Appendix C are considered further due to presence of mechanisms that could lead to impact pathways and likely significant effects upon The Swale SPA and Ramsar site.

4.2 Objectives, Policies and Projects considered for further screening are as follows:

4.2.1 Objectives:

- Objective 1; Objective 3; Objective 4; Objective 9; Objective 12; Objective 15.

4.2.2 Creekwide Policies and Projects:

- Design Quality: DG3; Design Quality: DG5;
- Community, Leisure + Recreation: CLR1; Community, Leisure + Recreation: CLR2; Associated Community Leisure + Recreation Projects: 4;
- Business, Tourism and Employment: BTE1; Business, Tourism and Employment: BTE2; Associated Business, Tourism + Employment Projects: 2; Associated Business, Tourism + Employment Projects: 4;
- Housing: HO1;
- Associated Natural Environment Projects: 1; Associated Natural Environment Projects: 2;
- Infrastructure: INF2; Associated Infrastructure Projects: 3; Associated Infrastructure Projects: 4.

4.2.3 Site Specific Policies and Projects Screened In:

- The Purifier: P1; Associated Purifier Projects: 1;
- Ordnance Wharf: OW1; Ordnance Wharf: OW3; Ordnance Wharf: OW4; Ordnance Wharf Site Specific Projects: 1;
- BMM Weston: BMMW1; BMMW Site Specific Projects: 2;
- Frank and Whittome: FW1;
- Swan Quay: SWQ1; Swan Quay: SWQ2; Swan Quay: SWQ3;
- Former Oil Depot: OD1; Former Oil Depot: OD2; Former Oil Depot: OD3;
- Former Coach Depot: CD1; Former Coach Depot: CD2; Former Coach Depot: CD3;
- Standard Quay: STQ2; Standard Quay: STQ3; Standard Quay Site Specific Projects: 1;
- Standard House: STH1; Standard House: STH2; Standard House Site Specific Projects: 1;
- Fentiman's Yard; FY1;
- Brents Industrial Estate Site Specific Projects: 2;
- Iron Wharf: IW2

5 Likely Significant Effects

- 5.1.1 In the following Chapter, Objectives and Policies that were screened in for further assessment in Chapter 4 and Appendix C are considered in the context of inter-linked policies and objectives in order to determine approaches that may be adopted to be able to conclude no likely significant effects remain on European sites under consideration.
- 5.1.2 The Faversham NP will function as a Planning Policy document linked to the Swale Local Plan. Although not yet adopted, and acknowledging that policy numbers and detailed text may yet change, it is considered that at the current advanced stage of the Local Plan, no major changes to Local Plan policy are to be expected. Therefore should the NP be adopted prior to the Local Plan, it is nonetheless concluded that (provided the NP clearly defers, where appropriate, to mitigating measures within the over-arching Swale policies) a robust framework of protection for European sites will be in place at the Swale Local Plan level.

5.2 Loss of Supporting Habitat

- 5.2.1 Policies, objectives and/ or projects within the Faversham Neighbourhood Plan have potential to result in loss of mudflat habitats within Faversham Creek. This could lead to loss of supporting habitat for The Swale SPA and Ramsar site bird features, resulting in a likely significant effect.
- 5.2.2 Due to the urban nature of the estuarine habitats located within Faversham Creek they are subject to high levels of disturbance from human activities such as boating and use of the surrounding terrestrial habitats. Although the estuarine habitats within Faversham Creek Neighbourhood Plan area could support small numbers of birds for which the SPA and Ramsar site is designated, it is considered that this area is highly unlikely to support a significant population of birds for which The Swale SPA and Ramsar site is designated due to existing disturbance levels and the limited availability of intertidal habitat. As such, this impact pathway can be screened out as no likely significant effects would arise as a result of the Neighbourhood Plan either alone or in combination with other plans and projects.

5.3 Disturbance: Recreational Pressure

- 5.3.1 Policies, objectives and/ or projects within the Faversham Creek Neighbourhood Plan have potential to lead to adverse likely significant effects upon The Swale SPA and Ramsar site as a result of increased disturbances resulting from increased recreational pressure in-combination with other projects and plans, from new residential development and increased tourism. In addition, the Faversham Creek Streetscape Strategy (provided for within the Neighbourhood Plan) provides locations to increase pedestrian connectivity to creekside areas. These new Public Rights of Way enhance pedestrian connectivity to within and around the Neighbourhood Plan area. By default they will also enhance connectivity to areas outside of the Neighbourhood Plan area. The focus of the new and/ or enhanced pedestrian routes is to encourage people to use the creekside areas. Existing Public Rights of Way that enter The Swale SPA and Ramsar site run along the Creekside within the Neighbourhood Plan area. The in-combination increased pedestrian connectivity (identified within the Streetscape Strategy and outlined within the Neighbourhood Plan) to the Creekside area (and towards the Public Rights of Way that enter the SPA and Ramsar site) will by default lead to increased pedestrian connectivity to The Swale SPA and Ramsar site in-combination with other policies, objectives and projects within the neighbourhood Plan.

- 5.3.2 Objective 7, provides some protection for ecologically important sites: ‘Avoid significant harm to areas designated for their ecological importance, whilst ensuring that a network of habitats is provided’ In addition, Policy Natural Environment: NE 1 provides additional protection for designated sites as a result of new residential development: ‘*Planning permission will be granted unless development causes significant harm to the natural environment or habitats of the Creekside sites identified here, the waterway or the protected sites downstream*’. **To ensure robustness of Objective 7, it is recommended that reference is included to internationally designated sites.**
- 5.3.3 Within the Swale Borough Local Plan Part 1 Publication Version, the number of new net dwellings to be provided within the Faversham Creek Neighbourhood Plan area from 2011-2031 is 103. **Provided that this number of housing provided within the Neighbourhood Plan area remains the same as defined within the Swale Borough Local Plan Part 1 Publication Version, then this impact pathway can be screened out at a Local Plan level.** This is achieved within the Local Plan via the following policies.
- 5.3.4 The Swale Borough Local Plan Part 1 Publication Version offers protection to internationally designated sites, via the following mechanisms:
- Within the pre-amble of policy to deliver sustainable development it states ‘*the North Kent councils are working together to manage recreational pressures arising from planned growth and their possible negative effects on the designated Special Protection Area*’. This is detailed further in Policy text that states ‘*Natural England are satisfied that for the short-medium term, adequate measures are in place for the Local Plan, such as the identification of the broad mitigation measures required. In the medium to long terms, partners will firstly prepare a recreational management plan and then put in place evidence to enable the amount of new space for biodiversity to be calculated and provided.*’
 - There is also an identified requirement to ‘*Protect the integrity of the existing green infrastructure network as illustrated by the Natural Assets and Green Infrastructure Strategy Map, having regard to the status of those designated for their importance*’
- 5.3.5 The Swale Local Plan policy framework for securing the Special Protection Areas and both mitigating and managing recreational pressure consists of both policies to promote the delivery of additional green infrastructure and policies that are specifically concerned with protecting the Special Protection Areas:
- Policy concerned with conservation and enhancement of the natural environment through green infrastructure provision. It seeks to ‘*minimise impacts on European designated wildlife habitats and contribute, where required, to wider management of the North Kent Marshes*’. In addition, policy directly refers to the use of a Strategic Access Management and Monitoring Strategy (SAMMS) for managing recreational pressure within the North Kent Marshes European sites.;
 - Policy concerned with the coast states that ‘*Planning permission will be granted for development proposals at or near the coast subject to ...The protection, enhancement or management as appropriate of biodiversity, landscape, seascape and coastal processes*’
 - and also provides for the protection of the internationally designated sites as a result of increased tourism by commitment to ‘*maintaining or enhancing access to the coast where it can be appropriately managed...*’. This implies the use of the SAMMS.

- Policy on biodiversity and geological conservation states that *'within internationally designated sites (including candidate sites), the highest level of protection will apply. The Council will ensure that plans and projects proceed only when in accordance with relevant Directives, Conventions and Regulations. When the proposed development will have an adverse effect on the integrity of a European site, planning permission will only be granted in exceptional circumstances, where there are no less ecologically damaging alternatives, there are imperative reasons of overriding public interest and damage can be fully compensated'*;
- 5.3.6 **The Neighbourhood Plan could be made more robust by amending Policy NE 1 as follows: *'..., the waterway, the internationally designated sites and other protected sites downstream.'* In addition it is recommended that Policy NE 1 makes reference to the fact that it will accord with Swale Borough Local Plan Part 1 Policies and both the explicit protection to internationally designated sites it offers and its commitment to a Strategic Access Management and Monitoring Strategy (SAMMS) for the Thames, Medway and Swale Estuaries.**
- 5.3.7 The Faversham Creek Neighbourhood Plan does not make any reference to the protection of internationally designated sites as a result of increased tourism leading to an increase in recreational pressure upon both the terrestrial and aquatic environments. **Although Objective 4 includes tourism opportunity it is understood that the NP Objectives are inter-linked and therefore Objective 4 must be considered in conjunction with the protective statements made by Objective 7.**
- 5.3.8 It is considered, that provided the above mentioned changes and strategic recommendations outlined are incorporated within the Faversham Creek Neighbourhood Plan, then there will be no likely significant effects upon The Swale SPA and Ramsar site.

Recommendations

- To ensure robustness of Objective 7, it is recommended that reference is included to internationally designated sites.
- The Neighbourhood Plan could be made more robust by amending this Policy NE1 as follows: *'..., the waterway, the internationally designated sites and other protected sites downstream.'*
- It is recommended that Policy NE1 makes reference to the fact that it will accord with the Swale Borough Local Plan Part 1 and both the explicit protection to internationally designated sites it offers and its commitment to a Strategic Access Management and Monitoring Strategy (SAMMS) for the Thames, Medway and Swale Estuaries
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5.4 Disturbance: Other than Recreational Pressure

Construction/ Demolition Works

5.4.1 The Faversham Creek Neighbourhood Plan area is partially located within The Swale SPA and Ramsar site at its eastern extent. The site specific area of the boat yards at Iron Wharf and Chambers Wharf contain a small portion of The Swale SPA and Ramsar site at its eastern extent within the eastern drainage channel. This site is also located approximately 30m from the SPA and Ramsar site located on the northern bank of Faversham Creek. At its widest point, river channel is approximately 30m wide. The sites that have potential to have a likely significant effect upon the SPA and Ramsar site as a result of terrestrial construction works area as follows:

- Iron Wharf and Chambers Wharf – partly within The Swale SPA and Ramsar site.
- Standard Quay – approximately 30m from the designated site;
- Standard House – approximately 45m from the designated site;
- Fentiman's Yard - approximately 120m from the designated site

5.4.2 Any construction works undertaken within the four above mentioned sites has potential to have a likely significant effect upon The Swale SPA and Ramsar site depending on how it is managed and delivered. Both noise and visual impact pathways from development activities could result in disturbance of SPA and Ramsar designated birds at the most sensitive periods (generally October to February for wintering birds), if construction work takes place without adequate controls (such as minimising winter construction activity and where it cannot be minimised using close-board fencing, damped piling and other measures set out in British Standards guidance to reduce noise to non-disturbing levels). **At the Neighbourhood Plan level it is not possible to conduct a development-specific HRA as necessary detail is set at the project level not within the Neighbourhood Plan. As such, it is recommended that the policies for these sites include specific reference to the proximity of The Swale SPA and Ramsar site and stipulate the need for planning applications to include protocols for avoiding disturbance and other adverse effects on the integrity of The Swale SPA and Ramsar site during the construction process. In addition, any planning application submitted for the above four sites, should be accompanied by a site specific HRA.** This is in line with advice from the Department for Communities and Local Government which states that more detailed assessment can be deferred to a lower tier of the planning process, where the necessary details are only available at that tier.

5.4.3 Construction and maintenance activities (such as piling) within aquatic environments for development such as slipways or moorings could have a likely significant effect upon the prey species for SPA and Ramsar site bird features. Any works within aquatic environments within the neighbourhood Plan area could thus have a likely significant effect upon the designated site. However, any proposals for works within the marine environment will be subject to scrutiny/permitting from the Marine Management Organisation and the appropriate legislation. This will include examining impacts of works within marine environments. This Statutory requirement provides for the protection of designated sites via this impact pathway. As such, this impact pathway can be screened out.

Encroachment

5.4.4 Due to the proximity of the SPA and Ramsar site to Iron Wharf and Chambers Wharf boat yards, there is potential for encroachment to impact on the areas of land in close proximity to the Neighbourhood Plan area, where the boat yard abuts the SPA and Ramsar site. It is noted from reviewing aerial photography of this area, that boat yard activities are already occurring within the SPA and Ramsar site at its eastern extent of Faversham Creek and along the small drainage channel to the east of the boat yard. The encouraged increase of boating activities within the Faversham Creek Neighbourhood Plan has potential to exacerbate this usage. **To prevent a likely significant effect to The Swale SPA and Ramsar site within and in close proximity to the Neighbourhood Plan area, it is recommended that the need for project-level HRA for development at Iron Wharf is included in policy or supporting text as discussed in paragraph 5.4.2.**

5.4.5

Loss of flight lines

5.4.6 Some forms of renewable energy, such as wind turbines can lead to the potential for adverse effects on European sites through disturbance of species flight lines.

5.4.7 Policy INF 5 states: '*Renewable energy proposals will be permitted unless they would result in harm to the character of the buildings and the amenity of residents.*' This policy does not elaborate upon the type of renewable energy proposals or the location. As such, at the Neighbourhood Plan level, a full Habitats Regulations Assessment is not possible. It is recommended that the text of the policy be amended to state that '*Renewable energy proposals will be permitted **provided they are of an appropriate type and scale and will not lead to adverse effects on internationally designated sites adjacent to the NP area, or result in harm to the character of the buildings...***' Alternatively the reference to protection of international sites could be made in supporting text to the policy. .

5.4.8 It is considered, that provided the above mentioned changes are incorporated within the Faversham Creek Neighbourhood Plan then there will be no likely significant effects upon The Swale SPA and Ramsar site from the plan itself, either alone or in combination with any other plans and projects. This conclusion does not remove the need for individual plans and projects to be subject to an HRA process when more detailed proposals are developed.

Recommendations

- It is recommended that the policies for the following sites include specific reference to their proximity of The Swale SPA and Ramsar site and stipulate the need for planning applications to include protocols for avoiding disturbance and other adverse effects on the integrity of The Swale SPA and Ramsar site during the construction process:
 - Iron Wharf and Chambers Wharf
 - Standard Quay;
 - Standard House;

- Fentiman's Yard
- Any planning application submitted for the above four sites, should be accompanied by a project level Habitats Regulations Assessment to ensure the development does not result in likely significant effects upon The Swale SPA and Ramsar site.
- It is recommended that Policy INF 5 includes reference to the protection of internationally designated sites through restriction of renewable energy development to those of an appropriate type and scale.

5.5 Urbanisation

5.5.1 Due to the close proximity of The Swale SPA and Ramsar site to the Faversham Creek Neighbourhood Plan area (the area is adjacent to the SPA and Ramsar site at to the eastern portion of the Neighbourhood Plan area.), there is potential for the SPA and Ramsar site to be impacted upon by urbanisation impacts such as fly tipping from residential and industrial activities. Fly tipping is most likely to be an issue of concern where vehicular access to the SPA and Ramsar is possible. However, the nearest policy area, objective or project area to The Swale SPA and Ramsar site on the northern bank of Faversham Creek is at Brents Industrial Estate, 75 metres from the SPA and Ramsar site and there is no vehicular access to the SPA and Ramsar site from this location. There are however two public footpaths. The presence of these two public footpaths entering the SPA and Ramsar site from the industrial estate is not considered the lead to a likely significant effect as a result of urbanisation. As such, this impact pathway can be screened out.

5.6 Water Quality

5.6.1 There are policies, project and/ or objectives that have potential to lead to an increase in boat traffic. In-turn, this has potential to lead to an increase in pollution events either within The Swale SPA and Ramsar site or within the Faversham Creek Neighbourhood Plan area (upstream of the designated site):

5.6.2 Under UK law, it is illegal to cause or knowingly permit any water discharge activity unless you are complying with an environmental permit or exemption. As a result, the impact pathway from pollution events can be screened out.

5.6.3 Increased amounts of housing, tourism or business development can lead to reduced water quality of rivers and estuarine environments. Sewage and industrial effluent discharges can contribute to increased nutrients on European sites leading to unfavourable conditions. Policies, objectives, and/ or projects within the Faversham Creek Neighbourhood Plan have potential to lead to a reduction in water quality. In addition increased runoff from terrestrial habitats as a result of changes in drainage can lead to changes in water quality. Both Associated Natural Environment Projects: 2 and Ordnance Wharf Site Specific Projects: 1 have potential (dependant on design), to lead to increased run-off onto Faversham Creek and ultimately The Swale SPA and Ramsar site. **Text should be included within these projects to ensure that there is no runoff from these bridges into the Creek**, although it is noted that this will also be prevented via existing legislation that prohibits pollution of watercourses, such as the Pollution Prevention and Control Act 1999.

Local Plan Approach

- 5.6.4 There are Waste Water Treatment Works at Faversham that treats sewage waste from 'terrestrial' areas. Treated effluent is discharged to The Swale SPA and Ramsar site and its tributaries. According to Swale Borough Council's Topic Paper 10 (2009) (the most recent report) relating to Water the Environment Agency has identified areas of concern where the receiving waters are almost at their capacity to receive effluent discharges. Consents in these areas have been set accordingly, but may need to alter again in the future if growth continues. A colour-coded system has been devised to advise Planners. Faversham was identified as being Amber (AMBER Areas where limited development is allowable. All except large developments can be accommodated, when checks should be made regarding the exact capacity available). This analysis is associated with meeting water quality targets generally, rather than the potential for effects on the interest features of internationally important wildlife sites.
- 5.6.5 If macroalgae (such as members of the sea lettuce genus *Ulva*) are able to grow uncontrolled they can develop a thick layer over mudflats, saltmarsh and other intertidal habitats. This can result in a significant reduction in oxygen within the sediment which can in turn reduce invertebrate biomass thereby reducing its value as foraging habitat. The mats can also prove a simple physical barrier for birds trying to forage within the underlying sediment. The principal issue controlling oxygen depletion in the underlying sediments appears to relate less to the weight and coverage of algae but to the quick growth and persistence of the mats.
- 5.6.6 In some estuaries on the south coast (e.g. Chichester & Langstone Harbours SPA) smothering macroalgae have been a historic problem due to the warmer water temperatures, low sediment loading and limited wave action, which result in a combination of rapid algal growth during the summer and low algal mortality during the winter and thus the accumulation of large dense persistent mats. In those estuaries nutrient inputs to the water have been a major contributor to the further growth of these algae (since there are few environmental factors to otherwise inhibit growth) and have necessitated controls on nitrogen loading of discharged effluent as well as other sources (such as agricultural runoff).
- 5.6.7 In estuaries like The Swale and Medway where the sediment loading is higher (reducing light penetration and thus restricting rates of growth) in addition to temperatures being cooler and wave action stronger (leading to winter break up of mats and considerable annual variation in algal cover) the sediments are able to remain well oxidised despite high nutrient loadings and hence the benthic invertebrate community is unaffected by macroalgal mats. If the benthic invertebrate community is unaffected then the site would continue to maintain its prey productivity for birds.
- 5.6.8 Previous discussions with the Environment Agency and the Review of Consent reports for the various marine/intertidal SPAs and Ramsar sites around the greater Thames Estuary have confirmed that while nutrient levels are high within the various estuaries around the greater Thames Estuary, this does not result in the smothering macro-algal growth that is having an adverse effect upon other European marine sites (such as The Solent). The prevailing expert opinion is that the dominant control on phytoplankton growth in these estuaries is not nutrient availability but light availability which is controlled by the high loading of suspended sediment.
- 5.6.9 The overall conclusion within the Swale Borough Local Plan Part 1 Publication Version Habitats Regulations Assessment¹⁹ is that sewerage capacity is not a major issue compared to other

¹⁹ URS. 2014. *Swale Borough Local Plan Part 1 Publication Version Habitats Regulations Assessment*. At the time of writing, this version of the Swale Borough Local Plan Part 1 Publication Version was not yet adopted.

Local Authority areas. It should be noted that the Swale Borough Local Plan Part 1 Publication Version is not yet adopted. It is noted that the Swale Local Plan allows for 103 new dwellings within the Faversham Creek Neighbourhood Plan area. The Neighbourhood Plan document does not identify a quantum of housing. It is assumed that the number of houses provided within the Neighbourhood Plan is the same as those outlined within the Swale Local Plan.

- 5.6.10 Objective 1 seeks to enhance access to and navigation of the creek but should be read in context of other Objectives, including Objective 7, which seeks to ensure protection of the environment. Policy within the Swale Local Plan states that *'when considering the flooding and drainage implications of development, development proposals will: ... Make efficient use of water resources and protect water quality...'* and that *'development proposals will, as appropriate...'*. *Facilitate greater use of waterways for commercial traffic, where this would not have an unacceptable adverse environmental impact, through working with the Port of Sheerness and other bodies'*. An adverse effect on the integrity of a European site (such as The Swale SPA and Ramsar site) would constitute such an unacceptable adverse impact. Provided the Swale Borough Local Plan Part 1 Publication Version (2014) is adopted, this impact pathway can be screened out.
- 5.6.11 Associated Natural Environment Projects: 2 provides for improvements in surfacing and maintenance at Flood Lane. Flood Lane crosses Faversham Creek. Any changes in the drainage system has potential to impact upon The Swale SPA and Ramsar site. **It is recommended that text for this project includes for the maintenance or provision of sufficient drainage to prevent any increased runoff into Faversham Creek.**
- 5.6.12 It is considered, that provided the above mentioned changes are incorporated within the Faversham Creek Neighbourhood Plan, then there will be no likely significant effects upon The Swale SPA and Ramsar site, either alone or in combination with any other plans and projects.

5.6.13 Recommendations

- Text should be included within Associated Natural Environment Projects: 2 and Ordnance Wharf Site Specific Projects: 1 to ensure that there is no runoff from these bridges into the Creek.
- It is recommended that text for Associated Natural Environment Projects: 2 includes for the maintenance of current drainage to prevent any increased runoff into Faversham Creek.

6 Conclusions

- 6.1.1 During the initial screening of the Faversham Creek Neighbourhood Plan, policies, objectives and projects were screened in for further assessment (See Appendix C) as impact pathways existed that could have a likely significant effect upon The Swale SPA and Ramsar site. Following the screening exercise, Appropriate Assessment was conducted of those policies, objectives and projects screened in during the screening exercise.
- 6.1.2 During Appropriate Assessment a number of recommendations were made for amendments to the Neighbourhood Plan policies, objectives and projects in order to be able to conclude no likely significant effects on designated sites.

Recommendations: Disturbance (recreational and other)

- To ensure robustness of Objective 7, it is recommended that reference is included to internationally designated sites.
- The Neighbourhood Plan could be made more robust by amending this Policy NE1 as follows: *'..., the waterway, the internationally designated sites and other protected sites downstream.'*
- It is recommended that Policy NE1 makes reference to the fact that it will accord with the Swale Borough Local Plan Part 1 and both the explicit protection to internationally designated sites it offers and its commitment to the Strategic Access Management and Monitoring Strategy (SAMMS) for the Thames, Medway and Swale Estuaries
- It is recommended that the policies for the following sites include specific reference to their proximity of The Swale SPA and Ramsar site and stipulate the need for planning applications to include protocols for avoiding disturbance and other adverse effects on the integrity of The Swale SPA and Ramsar site during the construction process:
 - Iron Wharf and Chambers Wharf
 - Standard Quay;
 - Standard House;
 - Fentiman's Yard
- Any planning application submitted for the above four sites, should be accompanied by a project level Habitats Regulations Assessment to ensure the development does not result in likely significant effects upon The Swale SPA and Ramsar site.
- It is recommended that Policy INF 5 includes reference to the protection of internationally designated sites through restriction of renewable energy development to those of an appropriate type and scale.

Recommendations: Water Quality

- Text should be included within Associated Natural Environment Projects: 2 and Ordnance Wharf Site Specific Projects: 1 to ensure that there is no runoff from these bridges into the Creek.
 - It is recommended that text for Associated Natural Environment Projects: 2 includes for the maintenance of current drainage to prevent any increased runoff into Faversham Creek.
- 6.1.3 Once these measures have been incorporated it may be concluded that the Faversham Creek Neighbourhood Plan will not have any likely significant effects on internationally designated sites, either alone, or in combination with other plans and projects. Note that this conclusion does not remove the need for specific lower tier projects and plans to be subject to HRA on their own account where further detail is available.
- 6.1.4 The Faversham Creek Neighbourhood Plan and associated HRA will be subject to consultation with Natural England prior to adoption.

Appendix A – European Site Designations

1.1 Introduction

1.1.1 These four sites are considered together since the impact pathways associated with development in Swale Borough under the Local Plan apply to both sites.

1.1.2 The JNCC²⁰ provides the following introduction to the designated site:

1.1.3 “The Swale is located on the south side of the outer part of the Thames Estuary in south-eastern England. The Swale is an estuarine area that separates the Isle of Sheppey from the Kent mainland. To the west it adjoins the Medway Estuary and Marshes. It is a complex of brackish and freshwater, floodplain grazing marsh with ditches, and intertidal saltmarshes and mud-flats. The intertidal flats are extensive, especially in the east of the site, and support a dense invertebrate fauna. These invertebrates, together with beds of algae and Eelgrass *Zostera* spp., are important food sources for waterbirds. Locally there are large Mussel *Mytilus edulis* beds formed on harder areas of substrate. The SPA contains the largest extent of grazing marsh in Kent (although much reduced from its former extent). There is much diversity both in the salinity of the dykes (which range from fresh to strongly brackish) and in the topography of the fields. The wide diversity of coastal habitats found on the Swale combine to support important numbers of waterbirds throughout the year. In summer, the site is of importance for Marsh Harrier *Circus aeruginosus*, breeding waders and Mediterranean Gull *Larus melanocephalus*. In spring and autumn migration periods, as well as during winter, the Swale supports very large numbers of geese, ducks and waders”.

1.2 Reason for designation

1.2.1 The Swale SPA

1.2.2 The site is designated as an SPA for:

1.2.3 During the breeding season:

- Avocet *Recurvirostra avosetta*
- Marsh Harrier *Circus aeruginosus*
- Mediterranean Gull *Larus melanocephalus*

1.2.4 Over winter:

- Avocet *Recurvirostra avosetta*
- Bar-tailed Godwit *Limosa lapponica*
- Golden Plover *Pluvialis apricaria*
- Hen Harrier *Circus cyaneus*
- Black-tailed Godwit *Limosa limosa islandica*
- Grey Plover *Pluvialis squatarola*
- Knot *Calidris canutus*
- Pintail *Anas acuta*
- Redshank *Tringa totanus*
- Shoveler *Anas clypeata*

²⁰ <http://jncc.defra.gov.uk/default.aspx?page=2041>

- Dark-bellied Brent goose *Branta bernicla bernicla*
 - Dunlin *Calidris alpina alpina*
- 1.2.5 On passage:
- Ringed Plover *Charadrius hiaticula*
- 1.2.6 The SPA also qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 waterfowl (Over winter, the area regularly supports 65,390 individual waterfowl (5 year peak mean 1991/2 - 1995/6))
- 1.2.7 The Swale Ramsar site
- 1.2.8 The Ramsar information sheet states that The Swale comprises, “A complex of brackish and freshwater, floodplain grazing marsh with ditches, and intertidal saltmarsh and mudflat. These habitats together support internationally important numbers of wintering waterfowl. Rare wetland birds breed in important numbers. The saltmarsh and grazing marsh are of international importance for their diverse assemblages of wetland plants and invertebrates”.
- 1.2.9 Ramsar criterion 2: The site supports nationally scarce plants and at least seven British Red data book invertebrates.
- 1.2.10 Ramsar criterion 5: Assemblages of international importance: Species with peak counts in winter: 77501 waterfowl (5 year peak mean 1998/99-2002/2003).
- 1.2.11 Ramsar criterion 6: – Species/ populations occurring at levels of international importance.

Table 1 Ramsar Criterion 6

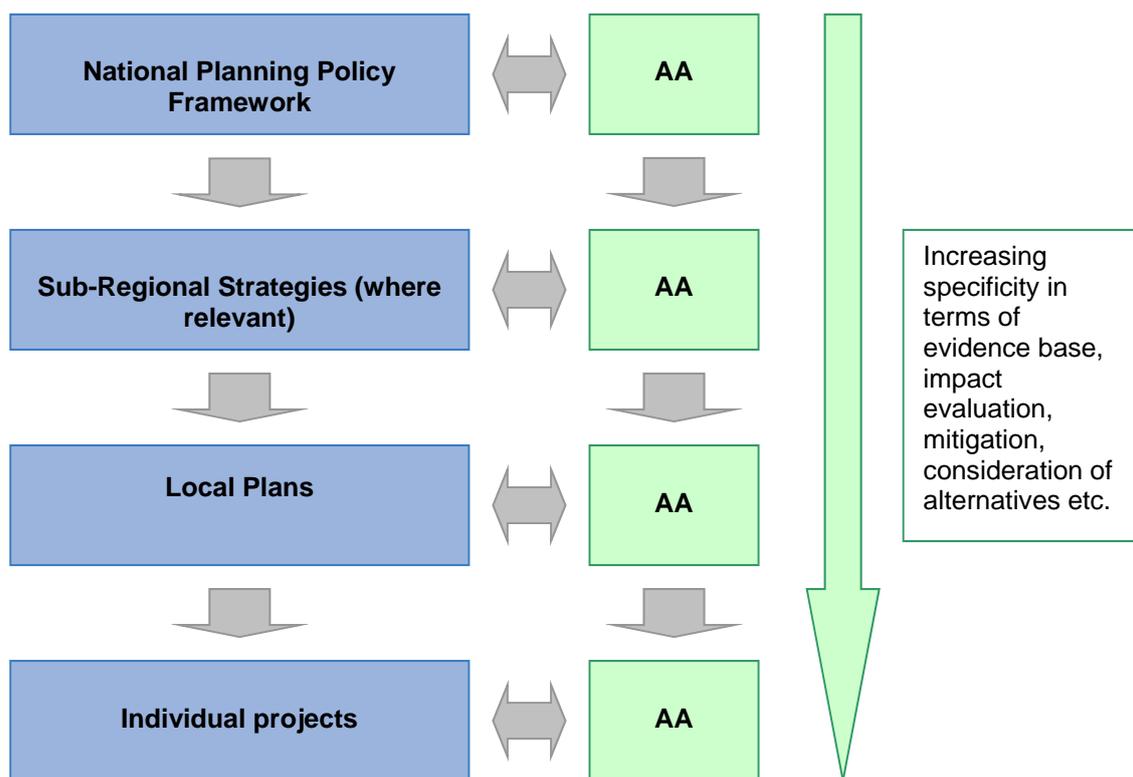
Qualifying Species/populations (as identified at designation):
Species with peak counts in spring/autumn:
Common redshank <i>Tringa totanus</i>
Species with peak counts in winter:
Dark-bellied brent goose <i>Branta bernicla bernicla</i>
Grey plover <i>Pluvialis squatarola</i> , E Atlantic/W Africa -wintering
Species/populations identified subsequent to designation for possible future consideration under criterion 6:
Species with peak counts in spring/autumn:
Ringed plover <i>Charadrius hiaticula</i> , Europe/Northwest Africa
Species with peak counts in winter:
Eurasian wigeon <i>Anas penelope</i> , NW Europe
Northern pintail <i>Anas acuta</i> , NW Europe
Northern shoveler <i>Anas clypeata</i> , NW & C Europe

Black-tailed godwit <i>Limosa limosa islandica</i> , Iceland/W Europe

1.3 Historic trends and current pressures

- 1.3.1 The Ramsar information sheet states that the following activities are undertaken at the Site: yachting, jet-skiing and water-skiing mostly in the summer, bird watching throughout the year and angling and wildfowling during their legally permitted seasons. Disturbance from these activities is a current issue but it is addressed through negotiation relating to activities consented within the SSSI and information dissemination. There is no clear evidence of damage from any of these activities.
- 1.3.2 The following key environmental management is needed in order to maintain the interest features of the site: wet grassland requires active management in order to maintain its conservation interest; this is traditionally carried out through grazing. Partial winter flooding is important for wintering birds. A mosaic of winter flooded grassland and permanently un-flooded grassland is desirable, with both temporary and permanent pools present. Sediment and vegetation management of ditches is needed in order to maintain their functionality. Ditches are susceptible to changes in water levels, nutrient level changes and invasion of non-native species. Freshwater to brackish transitions need to be maintained. Conditions on inter-tidal mudflats and sandflats need to be maintained in order to support bird species. Areas of saltmarsh may need active management in the form of grazing.

Appendix B: 'Tiering' in Habitats Regulations Assessment



Appendix C: Initial HRA Screening of the Faversham Creek Neighbourhood Plan

- 1.3.3 Green shading in the final column indicates that the policy/ objective/ project has been screened out of further consideration due to the absence of any mechanism for an adverse effect on designated sites. Orange shading indicates that further Appropriate Assessment is required since a pathway of impact exists that cannot be screened out at this stage.