

## **Belfast LDP 2035: Habitat Regulations Assessment**

### **Overview**

We're developing the new Local Development Plan (LDP) which is the land use plan for Belfast up to 2035. The Plan will guide investment and set out policies and proposals for the use, development and protection of land across the city. Once adopted the plan will be used to determine planning applications. Your opinions matter to us and we want to hear from you during the various stages throughout the preparation of the plan. The consultation closes on 15th November 2018.

### **What is the Plan Strategy?**

The Plan Strategy will be a strategic policy framework for the plan area as a whole across a range of topics. It will set out an ambitious but realistic vision for Belfast as well as the objectives and strategic policies required to deliver that vision. Establishing this strategic direction early in the plan process will provide a level of certainty on which to base key development decisions in the area as well as the necessary framework for the preparation of the Local Policies Plan. You can find out more about the Plan Strategy, and access all relevant documents, on the Council's website at [www.belfastcity.gov.uk/LDP](http://www.belfastcity.gov.uk/LDP).

### **Habitat Regulations Assessment**

The purpose of Habitat Regulations Assessment (HRA) is to ascertain if any aspects of the draft plan strategy would have the potential to cause a likely significant effect on a European designated site, also known as Natura 2000 sites (Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites), either in isolation or in combination with other plans and projects, and to identify appropriate avoidance and/or mitigation measures where such effects are identified.

There is a legal requirement for all Local Plans to be subject to HRA, as set out in Article 6 of the EC Habitats Directive 1992, and by the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

## **Accessibility**

The relevant documents are available, on request, in alternative formats - Braille, audio, large print, easy read. The council will also consider requests to produce it in other languages. If you require the documents in these or other formats please contact us:

Belfast Planning Service Belfast City Council Cecil Ward Building

4-10 Linenhall Street

Belfast

BT2 8BP

Telephone: 028 9050 0510

Email: [localdevelopmentplan@belfastcity.gov.uk](mailto:localdevelopmentplan@belfastcity.gov.uk)

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I confirm that I have read and understood the privacy notice above and give my consent for Belfast City Council to hold my personal data for the purposes outlined.

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To facilitate more open and transparent government, Belfast City Council would like your permission to publish your consultation response in the public domain. Should you prefer us to treat your submission as confidential - either by publishing it as an anonymous response or by not publishing it at all - please indicate accordingly.

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Yes, please publish my response, but do so anonymously

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**C. Individual**

If you have selected that you are responding as an individual, please complete this Section, then proceed to Section F.

7 What is your address? Address Line 1 (Required)

Address Line 2

Address Line 3 (Required)

City

Postcode (Required)

## D. Organisation

If you have selected that you are responding as an organisational respondent, there are a number of pieces of information that we are legally required to gather from you.

8 If you are responding as a representative of a group or organisation, please complete this Section, then proceed to Section E.

Organisation (Required) RSPB NI, NIHQ, Belvoir Park Forest, Belvoir Drive, Belfast BT8 7QT

Your Job Title (Required) [REDACTED]

Organisation address (if different from above):

Address Line 1 (Required)

Line 2

Line 3

City

Postcode (Required)

## E. Agents

If you have selected that you are responding as an agent on behalf of other people/organisations, there are a number of pieces of information that we are legally required to gather from you.

9 Please provide details of the organisation or individual you are representing. The name of the organisation or individual you are representing: (Required)

Client contact details:

Title

First Name (Required)

Last Name (Required)

Address Line 1 (Required)

Line 2

Line 3

City

Postcode (Required)

Telephone number (Required)

Email (Required)

10 Would you like us to contact you, your client or both in relation to this response or future consultations on the LDP? (Required)

Please select only one item

Agent Client Both

## **F. Habitat Regulations Assessment**

11 Please provide your comments on the Habitat Regulations Assessment.

### **Background and introduction**

The RSPB is UK's lead organisation in the BirdLife International network of conservation bodies. The RSPB is Europe's largest voluntary nature conservation organisation with a membership over 1 million, around 13,000 of which live in Northern Ireland. Staff in Northern Ireland work on a wide range of issues, from education and public awareness to agriculture and land use planning.

We believe that sustainability should be at the heart of decision-making. The RSPB's policy and advocacy work covers a wide range of issues including planning and regional policy, climate change, energy, marine issues, water, trade and agriculture. As well as commenting on national planning policy issues. The RSPB's professional conservation and planning specialists engage with over 1,000 cases each year throughout the UK, including development plans and individual planning applications and proposals. We thus have considerable planning experience. The RSPB also makes over 100 planning applications a year on its own reserves and estate.

The RSPB firmly believes that planning, especially plan-making should seek to integrate the three pillars of sustainable development rather than balancing, as this could potentially result in environmental trade-offs.

RSPB NI welcomes the opportunity to comment on the Belfast City Council (BCC) Local Development Plan (LDP) draft Plan Strategy Habitats Regulation Assessment (HRA)

### **General commentary**

No plan, programme or project should result in a significant direct impact upon important birds or bird habitats. The full suite of Environmental Assessments (SEA, EIA, HRA) should be used as tools to minimise environmental impacts. The Government and planning authorities should ensure that full protection is afforded to both designated and non-designated sites important for wildlife and biodiversity.

The most important sites for biodiversity in Northern Ireland form part of a Europe-wide network known as Natura 2000, the conservation of which is a key step in halting the decline in Europe's biodiversity. Natura 2000 comprises Special Protection Areas (SPAs) for birds and Special Areas of Conservation (SACs) for other habitats and species – designated under the EU Birds and Habitats Directives respectively. As such, anyone formulating spatial plans has an important role in ensuring Natura 2000 sites are given the protection they need, so helping to contribute to provision of a high quality natural environment for wildlife and people.

RSPB NI recognises and strongly supports a plan-led approach, as contained within the Planning Act (NI) 2011. Spatial plans are the principal way to ensure that strategic and rational decisions are taken

to reconcile the need to protect and enhance wildlife with that of providing the right framework for development to proceed. They allow potential problems between socio-economic development and wildlife protection to be identified and resolved at an early stage. This is a vital part of achieving sustainable development.

While we acknowledge that the Habitats Regulations Assessment (HRA) of the current draft Plan Strategy is at a strategic-level, there is however, a heavy reliance placed on avoiding adverse effects at the Local Polices Plan (LLP) project-level via project-specific HRAs, and an assumption that adverse effects can be avoided by mitigation considered and implemented at the LPP/project-level.

Such an approach leads to an inevitable requirement for project-level mitigation measures to be an absolute condition of any planning permissions granted by Belfast City Council under its Local Development Plan. It also passes the risk to the developer as to whether mitigation measures will be able to avoid an adverse effect on integrity at the project level, undermining the value of strategic HRA. Mitigation measures, necessary to avoid an adverse effect on European sites, need to be set out (at a high/generic level) in greater detail in Plan Strategy HRA, and it should be clearly stated that these measures must be included at the LPP/project stage for the conclusion of no adverse effects to be reached at this stage. In addition, it is important that mitigation measures are available in time, on site and are effective.

### **Specific comments on the draft HRA for Draft Plan Strategy**

#### **Assessment assumptions and Limitations (page 5)**

The draft HRA is predicated on the fact that a number of Strategic Planning Policy Statement (SPPS) polices must be taken into account in the determination of planning applications and which specifically apply to International Designations (i.e. paragraphs 6.175 to 6.178). It has been assumed by the draft HRA that these polices will all apply to the draft Plan Strategy and LDP and that they are material to all decisions on individual planning applications.

Any deviation from such an assumption (through local tailoring for example) in any future iterations of the draft Plan Strategy or LPPS could undermine the conclusions of the HRA as currently written.

RSPB NI welcomes cognisance of the CJEU Case C323/17 (People over Wind & Sweetman), and the cautious approach taken to screening the plan for potential impacts.

#### **Climate Change (page 7)**

With regards to climate change, the draft HRA states *'the causes of climate change are global and it is not within the scope of the LDP to bring about levels of change such that they will have an evident impact on climate change as it affects European sites. Climate change is therefore not assessed as an impact that the draft Plan Strategy directly contributes to'*.

However, in order to secure the long-term presence and stability of the Natura 2000 sites and network climate change should be a key consideration in the application of Appropriate Assessment (AA). To this end, it is recommended that during the AA process, consideration should be given to whether the plan does in any way inhibit the potential of species and habitats to adapt to climate change<sup>1</sup>.

### **Consideration of in-combination and cumulative effects (page 8)**

Plans in this context include Area Plans and any spatially based plan prepared by a competent authority (NI Government department or statutory body) or submitted to a competent authority for licence or consent. A list of potential plan types is given in Table 1 of the RSPB publication [‘The Appropriate Assessment of Plans in Northern Ireland: a guide to why, when and how to do it’](#). Dodd A.M., Cleary B.E., Dawkins J.S., Ferry C.D. and Williams G.M. (2008) The RSPB, Sandy<sup>2</sup>

As such, it is considered that the Draft HRA has been too narrow in its approach to the identification of other relevant plans. This needs to be addressed in any revised version of the HRA.

### **Section 3. Stage 1 Screening for likely significant effects**

In general terms, within this stage little or no cognisance has been given to in-combination effects with other plans and projects including permitted ongoing activities. RSPB NI would have expected this to be included within this stage. As set out in the Habitats Directive, consideration of these possible in-combination effects is part of the AA process. As noted above, Table 1 of the RSPB publication [‘The Appropriate Assessment of Plans in Northern Ireland: a guide to why, when and how to do it’](#). Dodd A.M., Cleary B.E., Dawkins J.S., Ferry C.D. and Williams G.M. (2008) The RSPB, Sandy<sup>3</sup> provides further details on the types of plans to consider. It would also be necessary to consider projects that have been applied for but not yet granted, consented but not implemented, and consented but undergoing statutory review.

An example of an in-combination effect could include the interaction between an Area Plan’s proposed industrial development adjacent to an estuarine SPA and proposals for aquaculture in the same estuary proposed by a government department.

### **Step 3: Gathering information about the European Sites**

RSPB NI’s reserve Window on Wildlife (WOW) is located within Belfast Harbour (D2), and as such regular monitoring is undertaken of the Belfast Lough SPA is undertaken at this location. As such, further monitoring and detailed species information could be made upon request.

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<sup>1</sup> Appropriate Assessment of Plans, September 2006, Scott Wilson, Levett-Therivel Sustainability Consultants, Treweek Environmental Consultants and Land Use Consultants

<sup>2</sup> [http://ww2.rspb.org.uk/Images/NIAA\\_tcm9-196528.pdf](http://ww2.rspb.org.uk/Images/NIAA_tcm9-196528.pdf)

<sup>3</sup> [http://ww2.rspb.org.uk/Images/NIAA\\_tcm9-196528.pdf](http://ww2.rspb.org.uk/Images/NIAA_tcm9-196528.pdf)

### **Table 1: Potential development impacts to be assessed in relation to European sites (page 11)**

RSPB NI would have expected the loss of food resource to be included within the five main categories of impacts.

With regards to potential impacts under ‘Disturbance: physical, noise, lighting’ i.e. noise or activity during construction and operational activities could have adverse impacts on sensitive species (marine mammals and birds), the draft HRA notes the following activities arising from the draft Plan Strategy as follows:

‘potential noise or vibration disturbance to birds or marine mammals from e.g. piling. Given mixed use of many of the areas, including residential, noise is unlikely to exceed background levels to which birds are acclimatised’.

While background levels in certain area like Belfast Harbour may be higher, it is worth noting a number of more recent planning permissions have had conditions attached (i.e. at the project level) to mitigate the effects of piling for example at the D1 site. As such it is considered that the conclusion that ‘given mixed use of many of the areas, including, residential, noise is unlikely to exceed background levels to which are acclimatised’ is somewhat of an over generalisation, and may require project level mitigation (in addition to any Plan Strategy avoidance measures) – this should therefore be recognised within the HRA.

### **Map 2: Draft BMAP 2015 Plan Boundary Designations in relation to Belfast Lough European Sites Overview (page 14)**

### **Map 3: Draft BMAP 2015 Plan Boundaries in relation to Belfast Lough European Sites - Belfast Harbour (page 15)**

### **Map 4: Draft BMAP Landuse Designations in relation to Belfast Lough European Sites - Belfast Harbour (page 15)**

Ordnance survey base maps are not up to date.

The D3 site in Belfast Harbour is still showing as an open lagoon on the Ordnance Survey base map – this area has been infilled for some time and is currently the subject of a live application for cruise ship facilities.

### **Ecological Pathways (page 16)**

The information and assessment contained within this section is based on current land zonings and will need to be revisited at the Local Polices Plan stage.

### **Table 3: European Sites and Features to be Further Assessed and Potential Impacts (Page 19)**

It is noted that Strangford Lough Ramsar is only included within this table for its Grey Seal feature that may be affected, yet, all the Strangford Lough SPA bird features (which are included) are also qualifying features for the Ramsar. However, it is recognised that the Strangford Lough SPA is included for its bird interest within the table, and those features would therefore be assessed within that context. Further clarity in this regard would be helpful within the HRA.

## **Appropriate Assessment for Belfast Lough and Associates Sites (Birds)**

### **Stage 1: Test of Likely Significance**

#### **Main Threats on the Site in Relation to draft Plan Strategy (page 30)**

Currently the table rules out threat from the Plan in respect of Habitat extent – open water, however it should be noted that this could be a potential threat if further land reclamation is proposed at the mouth of the harbour. In the circumstances, there is a need to look at in-combination effects with other plans and projects in order to obtain a full picture of potential threats and effects. We note that the draft HRA has deferred consideration of cumulative impacts until the Stage Two Appropriate Assessment.

#### **Screening Conclusion (page 31)**

This section notes that Outer Ards Ramsar site will not require appropriate Assessment, yet it is included as a feature within the table on page 32 which sets out Elements of the plan that are likely to give rise to significant effects.

Further clarification is sought as to why Arctic Terns have been excluded from the list of qualifying features affected within Belfast Lough SPA etc. in respect of direct disturbance (habitat loss and disturbance). It should also be noted that Great Crested Grebe (albeit in lower numbers) breed and feed within the lough and Eider use the inner lough for foraging and roosting particularly from August through to September.

#### **Site Selection Features that could be impacted (page 32)**

Given Belfast City Council and Shared Environmental Services' access to information and data in compiling the draft HRA, RSPB NI would have expected to see more detailed site specific and analysis of trend information in this section, including the identification of important areas for each species within the plan area.

RSPB NI may have further site-specific data that may be of assistance in the preparation of the HRA, and could be made available upon request. Also, there have been a number of large port related proposals in recent years – the supporting documentation including shadow HRAs may provide further detailed information on the use of the harbour area/inner lough by feature species.

#### **Controls in place to address threats (page 35)**

The draft HRA relies on the legislative requirements and environmental assessment including the need to comply with the Habitats Regulations as well as the Strategic Planning Policy Statement (SPPS), yet the Draft HRA informing the LDP is equally important as now is the ideal time to establish what the key sensitivities of the various protected sites are (both within and those with linkages outwith the Council area) to ensure that their needs are reflected in the design of the Plan, and to employ effective avoidance techniques, as opposed to mitigation measures (as per tier 1 of the mitigation hierarchy).

Furthermore, it is recommended that the following additional controls as set out at page 43 of the draft HRA with reference to Harbour Porpoise sites are equally applicable to the Bird sites associated with Belfast Lough and should be included within this section:

*'Regional and Local Planning Policy will apply through the Strategic Planning Policy Statement and Local Policies under the Local Development Plan.*

*Any planning applications, proposals, plans or projects in the coastal area will be subject to a suite of policies for environment, natural heritage, landscape and coast'.*

### **Mitigation to address threats (page 35)**

While RSPB NI welcomes Mitigation A to identify areas adjacent to the plan area that are high sensitivity for birds or marine mammals so that this can be addressed in spatial designations, it is nevertheless of the opinion that this proposed measure should already be well underway. Furthermore, it should not only identify areas adjacent to the plan area, but also areas within the plan area which may be highly sensitive e.g. roost sites and D2. Again, RSPB NI may hold further data which may be of assistance in the preparation of the HRA, which can be made available upon request.

With regard to Mitigation E, which seeks to identify types of projects that should be assessed for indirect disturbance effects to ensure the need for HRA of these effects is not overlooked. While such an approach is welcome, caution must however be exercised so that any such list is not regarded by either a plan/scheme proponent or competent authority as a definitive list. In the circumstances, a caveat will be required to indicate that the list is illustrative and not to be regarded as exhaustive.

### **In combination effects from other plans or projects that are likely to have significant effect (page 36)**

Within this section, the narrative concludes that 'the assessment found that, with mitigation in place, there will be no adverse effect on site integrity', yet the next sentence goes on to state 'the sites and selection features may be subject to effects arising from Belfast Harbour or development activities in the Belfast Urban Area Plan 2001 etc, alongside the fact that councils are now preparing new local development plans which may contribute to in-combination effects. The need to consider and assess in-combination effects will be reviewed before the HRA is finalised'.

In this context, it is difficult to reconcile the conclusions of the first sentence against the backdrop of the second. As noted previously, any assessment of, or the identification of plans or projects for assessment has been too narrow and must be extended both in scope and hierarchy (higher level strategic plans and projects to be also included. In-combination effects (direct, indirect and induced) cannot be continuously deferred to the next level of assessment.

### **Appropriate Assessment Conclusion (page 37)**

Notwithstanding the gaps highlighted in our comments above, the Appropriate Assessment Conclusion nevertheless states that it cannot be concluded reasonably and objectively that the

implementation of the plan will not adversely affect key species and key habits or the integrity of the identified designated sites. RSPB NI does not disagree with this conclusion.

#### **Appropriate Assessment for Harbour Porpoise Sites (page 38)**

##### **Potential for Cumulative Impacts (page 41)**

Please refer to our concerns outlined above with regards to the next stage deferral of cumulative impacts, which are equally applicable in this context.

##### **Mitigation to address threats (page 43)**

Please refer to our comments above in respect of the Bird AA (**draft HRA page 35**) in relation to the identification of types of projects that should be assessed for indirect disturbance effects to ensure the need for HRA of these effects is not overlooked, as they are equally applicable in this context.

##### **In-combination effects from other plans or projects that are likely to have significant effects (page 44)**

Please refer to our comments above in respect of the Bird AA (draft HRA page 36) which are equally applicable in this context.

##### **Appropriate Assessment Conclusion (page 44)**

Like the conclusion drawn for the Bird AA, this AA conclusion also states that it cannot be concluded reasonably and objectively that the implementation of the plan will not adversely affect key species and key habits or the integrity of the identified designated sites. RSPB NI does not disagree with this conclusion.

##### **Appropriate Assessment for Grey Seal (page 45)**

The same comments as noted above with regards to Harbour Porpoise are equally applicable here regarding potential for cumulative effects, mitigation to address threats, and AA conclusion.

It is noted that the AA for Grey Seals (page 47) notes 'impacts such as aquaculture and fishing are not under the control of planning', however this does not preclude the assessment of in-combination effects of same. This is welcomed.

#### **5. Outcome and recommendations (page 53)**

##### **Habitat Loss**

While now is the ideal time to establish what the key sensitivities of the various protected sites are (both within and those with linkages outwith the Council area) to ensure that their needs are reflected in the design of the Plan, and to employ effective avoidance techniques, as opposed to mitigation

measures (as per tier 1 of the mitigation hierarchy), RSPB NI nevertheless welcomes the fact that the draft HRA states that with regards to new development proposals or other land uses within or adjacent to the identified designated sites, the need for HRA is highlighted in relevant spatial designations at LPP to ensure there is no adverse impact on the integrity of the European Site.

Similarly, the use of consultation zones is also welcomed, but caution must be exercised to ensure that such areas are not viewed by plan or project proponents, or competent authorities as the definitive area for HRA consideration. The need for HRA beyond such consultation zones should not be ruled out by virtue of such a zoning.

#### ***Recommendation A***

This should be extended to include the identification of any areas within the plan area that are of high sensitivity for birds or marine mammals, in addition to the 'adjacent' areas proposed. For example, part of Belfast Lough SPA (at D2) lies within the Plan Area, as do important roost sites around the Lough.

#### **Disturbance: Direct (page 53)**

As noted previously, the fact that many of the designated areas are close to areas of mixed use, should not be regarded as sufficient mitigation to reduce direct disturbance effects. For example, RSPB NI is aware of the need for certain projects in the Harbour Area to contain conditions (e.g. timing restrictions, type of piling used) as part of a planning approval to mitigate the effects of piling during construction.

#### ***Recommendation A***

This should be extended to include the identification of any areas within the plan area that are of high sensitivity for birds or marine mammals, in addition to the 'adjacent' areas proposed. For example, part of Belfast Lough SPA (at D2) lies within the Plan Area, as do important roost sites around the Lough.

#### **Disturbance: Indirect (page 54)**

#### ***Recommendation D***

The identification and assessment of plans and projects that in-combination may lead to a cumulative adverse effect on site integrity through disturbance should be carried out as earlier as possible within the HRA process.

#### ***Recommendation E***

With regards to the identification of types of projects that should be assessed for indirect disturbance to ensure the need for HRA of these effects is not overlooked, caution must be exercised that such a

list is not regarded by project proponents or competent authorities as a definitive list and thus create opportunities for the 'avoidance of HRAs'.

**Table 5: Implementation of Recommendations – RSPB NI proposed edits in red**

A.- F. Recommendations for mitigation; I – Incorporated already; L – Later actions

Review and Finalization of HRA for Plan Strategy

Local Policies Plan

A. Seek further information from DAERA before LPP to identify any areas adjacent to and within the plan area that are of high sensitivity for birds or marine mammals so that this can be addressed in spatial designations.

Action: Obtain in time to inform the criteria (including avoidance) for reviewing and identifying spatial zones in the LPP.

B. C. D. E. The LPP will be subject to HRA which will reflect the most up to date information available about European Sites that may be affected. This will include consideration of all spatial designations and policies.

Action: HRA will be carried out in conjunction with preparation of the LPP. It is recommended that the criteria for reviewing and identifying spatial zones in the LPP include criteria to assess and where necessary avoid or mitigate for potential impacts on European Sites.

**Conclusions of the HRA**

RSPB NI welcomes that avoidance mitigation measures have been incorporated (where appropriate) into the draft Plan Strategy. However, greater cognisance is needed with regards to the in-combination and induced effects at earlier stages of the HRA process. Until such times as these effects have been considered, alongside more detailed information from NIEA on the location of sensitive sites within and adjacent to the plan area, our analysis of the draft HRA leads us to conclude that the conclusion of no adverse effects is premature.

**Appendix 4: Detailed Review of draft Plan Strategy Proposals**

**General comments**

**Creating a vibrant Economy Objectives (page 71)**

The Plan proposal 'to strengthen the potential of local tourism to appeal to a wide range of visitors, and the development of suitable tourism infrastructure, including overnight accommodation, leisure and cultural facilities for this important sector of the economy' should be screened in and 'assess any areas designated to deliver this objective at LPP (as per the two preceding vibrant economy objectives).

### **Building a Smart Connected and Resilient Place Objective (page 72)**

The Plan proposal 'to ensure availability of land to facilitate sustainable patterns of development and promote travel by more sustainable modes of transport' should be screened in. While the policy is supportive of sustainable patterns of development, the locations of possible development sites are not known so further assessments at a later stage may be required.

### **Strategic Policies (page 73)**

Plan Policy SP2 – Sustainable Development has been screened out. RSPB NI is however of the view that while the policy is supportive of sustainable patterns of development, the locations of possible development sites are not known so further assessments at a later stage may be required.

Plan Policy SP3 - Improving Health and Well-Being has been screened out. RSPB NI is however of the view that while the policy will not increase the level of development, it could however increase the use of sensitive areas or areas close to such areas for recreation purposes (by way of an example) and thus disturbance. As such further assessment at a later stage may be required when further detail is available.

Plan Policy SP6 – Environmental Resilience has been screened out. RSPB NI is off the view that while the policy supports development that helps reduce GHG emissions, developments such as offshore wind or tidal could be included within this category. As the locations of such development are not known, further assessments at a later may be required. Though it is acknowledged that Plan Policy ITU4 – Renewable Energy Development has been screened in.

### **Promoting Healthy Communities (page 78)**

Plan Policy HC1 – Promoting Healthy Communities has been screened out. However, while the policy is supportive of health and well-being, the locations of possible development sites, active travel routes or open space provision are not known so further assessments at a later stage may be required, as it could increase the use of sensitive areas or areas close to such areas and thus increase disturbance potential.

### **Transportation (page 83)**

Plan Policy TRAN 1 – Active Travel, walking and cycling has been screened out. However, the routes are not yet known, it could however increase the use of sensitive areas or areas close to such areas and thus increase disturbance potential. As such further assessment at a later stage may be required when further detail is available.