

**Subject:**

FW: Habitats Directive and neighbourhood plans in Torbay

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**From:** Brooks, Tracy

**Sent:** 04 May 2018 12:02

**To:** (redacted)

**Subject:** FW: Habitats Directive and neighbourhood plans in Torbay

Dear Deborah and Nigel,

Please see the email below which sets the officer level assessment of the impact of the 'People Over Wind' ECJ judgement. Hopefully this is self-explanatory.

Kind Regards,

Tracy Brooks

Senior Strategy and Project Officer

Strategy & Project Delivery,

Spatial Planning,

Torbay Council

Tor Hill House - North

Castle Circus, Torquay, TQ1 3DR

(Redacted)

Web site: [www.torbay.gov.uk/local-plan](http://www.torbay.gov.uk/local-plan)

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**Torbay Local Plan 2012 to 2030 published** : the new Local Plan forms part of the development plan for Torbay and provides the basis for decisions on spatial planning within Torbay up to 2030.

**The Torbay Local Plan 2012 to 2030 – A landscape for success** can be viewed online or purchased as a hard copy or USB memory card. Card payments will be accepted via 01803 207801 quoting the 'new Local Plan'.

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**From:** Brooks, Tracy

**Sent:** 04 May 2018 11:12

**To:** (redacted)

**Subject:** Habitats Directive and neighbourhood plans in Torbay

Dear Chairs,

The Council has been made aware of the following "European Court (Seventh Chamber)" decision dated 12 April 2018:

*Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dd4a0be052f3b04c09819ffb09262871e7.e34KaxiLc3qMb40Rch0SaxyNbxn0?text=&docid=200970&pageI ndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=636343>

Our current understanding is that proposed mitigation measures are not to be taken into account when determining whether a plan or project will have a likely significant effect. The argument behind the judgement is that, if mitigation measures are included in a proposal it is likely that the protected site will be affected significantly and that, as a result, an assessment should be carried out (para 35).

The Council, as competent authority under the Habitats Regulations is empowered to require the Qualifying Bodies to provide sufficient information to enable it to be satisfied in HRA terms. We have therefore reviewed the associated Neighbourhood Plan HRAs, and in the context of the above (not withstanding any other representations on sites/specific elements) considers that the Assessment and Mitigation Measures set out in all three NP HRA 'Screening Stages' substantively meet the requirements. For absolute clarity, this could be made clearer through a minor re-formatting to set out the same in an 'Appropriate Assessment' Stage. Given that the information provided is sufficient to make the assessment, the LPA is prepared to make the minor amendments to formatting before making the plan. This would, in terms of the Council, (as competent authority), meet the HRA regulations.

However you may wish to amend your associated HRA's in order for the Examiner to see that they comply with the HRA Regulations.

Kind Regards,

Tracy Brooks  
Senior Strategy and Project Officer  
Strategy & Project Delivery,  
Spatial Planning,  
Torbay Council  
Tor Hill House - North  
Castle Circus, Torquay, TQ1 3DR  
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