Matters Relating to Habitat Regulations Assessment of the Local Plan Proposed Modifications

Response on behalf of Torbay Council to the
Consultation Response Received from Natural England
on the Proposed Modifications

April 2015

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Greenbridge Ltd

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Report for Torbay Council

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A report by Greenbridge Ltd on behalf of Torbay Council.

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Contents

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1.0 INTRODUCTION AND BACKGROUND

1.1 Introduction

1.1.1. Torbay Council (TC) has commissioned this report to provide an independent assessment and response to Natural England's Consultation Response to the Proposed Modifications to the Local Plan.

1.1.2. This report has been informed by the series of Habitat Regulation Assessment (HRA) Site Appraisals prepared for the Council in October and November 2014 and February and March 2015.

1.1.3. The report has been prepared specifically to examine two of the proposed 'main modifications' to the Local Plan where further development is proposed for:

- Land South Of White Rock - Proposed Main Modification Notation (MM 3) Policy SS2 New Future Growth Area (Local Plan Broad Allocation);
- St. Marys Campsite [Proposed Main Modification reference MM14 (Pool of housing sites), linked to MM12 (Policy SDB1)]

1.1.4. The report also examines a potential development site identified for the Torquay Neighbourhood Plan:

- Sladnor Park - Potential development site (Primarily Housing) for consideration in the Torquay Neighbourhood Plan.

1.2 Natural England Consultation Response

1.2.1. Natural England provided a consultation response to the Proposed Modifications to the Local Plan in a letter to Torbay Council dated 18th March 2015.

1.2.2. For ease of cross-referencing, relevant extracts from Natural England's consultation response that specifically relate to the South Hams SAC and/or Habitat Regulations Assessment, have been included in this report for each of the sites discussed.

1.2.3. Natural England have raised substantial concerns about the Proposed Modifications and currently consider that the Plan may not yet be compliant with statutory obligations for Sustainability Appraisal and Habitat Regulations Assessment.

1.2.4. In commenting on the Sustainability Appraisal, Natural England stated that:

> *"Due to the incomplete nature of the updated Sustainability Appraisal and that the SA does not appear to have informed the Plan, the Plan is not yet legally sound.*

1.2.5. However, this document does not address comments by Natural England on the Sustainability Appraisal; these are addressed by the Council in a separate response.

1.2.6. Instead, this document concentrates on Natural England's comments made in relation to the South Hams SAC and associated Habitat Regulations Assessments.

2.0 STRUCTURE OF THIS REPORT

2.1. In responding to Natural England's consultation response, this report is structured (for each of the sites identified in Section 1.1 above) to provide:

a. A summary of the relevant conclusions from the original HRA Site Appraisal – where these identified the likely effects of proposed development on the SAC and whether or not mitigation was considered capable of removing such effects;

b. A summary of Natural England's comments on the proposed modifications to the Local Plan that are likely to affect the South Hams SAC;

c. An assessment of the adequacy of existing data on greater horseshoe bats for each of the proposed sites;

d. A clear statement of the issues, if any, still to be addressed prior to the adoption of the Local Plan, in order for it to be judged as legally sound.

e. Conclusions and recommendations.

3.0 LAND SOUTH OF WHITE ROCK - PROPOSED MAIN MODIFICATION NOTATION (MM 3) POLICY SS2 NEW FUTURE GROWTH AREA

3.1 Conclusions from the Original HRA Site Appraisal (February 2105)

3.1.1. The original HRA Site Appraisal undertaken in February 2015 addressed three key questions:

- *Does future development of the site have the potential to impact the integrity of the South Hams SAC?*
- *Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?*
- *Is it likely that impacts can be mitigated effectively?*

3.1.2. A summary of the answers, to all of the above questions for the Land South of White Rock, are presented below in Section 3.1.

Does future development of the site have the potential to impact the integrity of the South Hams SAC?

3.1.3. A number of landscape features offer suitable foraging and commuting habitat for greater horseshoe bats: including:

- Cattle-grazed pasture across large parts of the 'Site';
- The network of Devon hedge banks across the 'Site';
- The small woodland copse on the south-west boundary.

3.1.4. Development therefore has the potential to effect adversely the integrity of the SAC.

Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?

3.1.5. Wherever Greater horseshoe bats are confirmed to be present within a Sustenance Zone or Strategic Flyway, then a Habitat Regulations Assessment will be required to determine whether the integrity of the SAC is likely to be affected adversely. As a minimum this would require Screening to establish the Likelihood of any Significant Effects (LSE Test), and where effects are predicted these should be subject to full Appropriate Assessment.

Is it likely that impacts can be mitigated effectively?

3.1.6. To meet the requirements of Habitat Regulations Assessment any necessary mitigation must avoid or reduce any adverse effects to the point where there is no 'alone' or 'in combination' adverse effects on the SAC.

3.1.7. Mitigation should also support the *SAC Conservation Objectives* set by Natural England and promote *Favourable Conservation Status* for the greater horseshoe bats (see Appendix A). To achieve this, in practical terms, mitigation measures should aim to:

> *Facilitate ease of movement and conserve energy expenditure by greater horseshoe bats by providing optimal daily and seasonal commuting routes through and around the proposed new built up areas and by retaining and enhancing foraging and roosting opportunities.*

3.1.8. The HRA Site Appraisal (February 2015; para. 3.1.22) recommended that:

> *In order to achieve the above aim, and to provide the certainty necessary to satisfy the requirements of the HRA process, the following mitigation objectives must be incorporated*

into the master-planning process for the 'Site'. These mitigation proposals should be developed in conjunction with master-planning and must be informed by adequate greater horseshoe bat surveys. Subsequent mitigation must then be secured and implemented in full at such time as development applications are brought forward.

This mitigation should be a combination of identifying and recognising:

- key design constraints required to avoid or minimise[1] adverse effects, and;
- habitat mitigation/enhancement opportunities to provide overall net gains[2] for Greater horseshoe bats specifically, and for wider biodiversity in general.

3.1.9. To achieve this, the HRA Site Appraisal also recommended that Design Restrictions/Constraints should:

i. Maintain existing connectivity of bat commuting and foraging habitat within the wider landscape on the edge of and around the site;

ii. Achieve no net loss of potential cattle grazed foraging habitat across the whole site – this may required contributions to secure appropriate areas of off-site cattle grazed mitigation land;

iii. Achieve no overall net loss of existing hedgerows and trees within the site (possibly in conjunction with (ii) above or through landscape planting of green corridors on the edge of the development;

iv. Avoid light spill in bat flyways and foraging areas i.e. achieve light levels less than 0.5 lux in sensitive locations;

v. Achieve road layouts associated with new development that do not sever or interrupt key bat flyways;

3.1.10. And Habitat Mitigation/Enhancement Opportunities should:

viii. Create a green corridor along the southern edge of the 'Site' that remains dark and suitable habitat for commuting and foraging Greater horseshoe bats;

ix. Undertake habitat creation/enhancement to provide new tree lines and hedgerows in the surrounding landscape to strengthen bat commuting habitat in the wider landscape – especially between the 'Site' and the River Dart;

x. Provide landscape buffers between bat flyways/foraging habitat and the new built development – these should ideally be 10m wide;

xi. Create a 'string' of new bespoke bat roost(s) to support and improve viability of green corridors around the built development and in the wider landscape;

xii. Provide long-term habitat management for Greater horseshoe bats, through a Landscape and Ecological Management Plan (LEMP), secured through a planning condition and/or obligations;

xiii. Implement development through the means of a prior-approved Construction Environmental Management Plan (CEMP), secured through a planning condition and/or obligations;

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[1] Adverse effects should be 'minimised' to the point where either alone or in combination with other effects they do not have an adverse effect on the integrity of the South Hams SAC.

[2] The achievement of a net gain for biodiversity is consistent with the objectives set out in Local Plan Policy NC1 Biodiversity and Geodiversity.

xiv. Undertake appropriate and proportionate ecological monitoring of the LEMP(s) to establish the effectiveness of proposed mitigation measures and to provide early warning of any necessary contingency or remedial measures required to meet original objectives;

5.3.11. The provision of such measures would be consistent with the four principles set out in the proposed modified Local Plan Policies SS8 and NC1.

3.2 Natural England's Comments on the Proposed Modifications for Land South of White Rock

Summary of Comments

3.2.1. Comments in relation to Land South of White Rock are provided at the bottom of pages 3, 9 and 10 of Natural England's response (18th March 2015).

3.2.2. In summary, Natural England have identified the following issues with regard to the proposed allocation of the Land South of White Rock:

- The site is well within the SAC Sustenance Zone and is therefore of likely importance to foraging greater horseshoe bats from the SAC roost;
- Insufficient information currently exists to establish the full extent of use of the site by greater horseshoe bats;
- Evidence gathering is not complete and further field data should be collected in accordance with Natural England's 2010 South Hams SAC guidance;
- Requirements for off-site mitigation would be reliant on delivery by a third party;
- Difficulty with delivery of mitigation in perpetuity equates to uncertainty for the purpose of the Habitat Regulations Assessment.

3.2.3. In conclusion, Natural England (page 3) advises that there is a high risk to delivery to this Strategic Site, and state:

> "*This is due to the lack of a sufficiently robust evidence to show the site is deliverable in respect of landscape and the South Hams SAC. There are significant environmental effects which have not yet been shown to be capable of mitigation".*

3.2.4. In formulating their response, Natural England have drawn upon the recent (3rd February 2015) Churston Golf Club Appeal Decision[3], where the inspector dismissed the appeal because the appellant was unable to demonstrate, with sufficient certainty, the delivery in perpetuity of the proposed off-site mitigation measures. Consequently, the Inspector judged an adverse effect on the integrity of the SAC could not be ruled out, and therefore that the strict requirements of Regulation 61[4] could not be met.

3.2.5. In addition, also on page 9 of their response, and in light of the Inspector's decision, Natural England advise:

> *"An important consideration will be the value of that site to foraging bats which will depend on the extent of optimal cow-pasture; its present use; its history and the number of bats foraging at that site (which can only be determined by survey to 2010 Guidance standards).*

[3] Churston Gold Club Appeal Reference Number: APP/X1165/A/13/2205208

[4] Regulation 61 of the Habitat and Species Regulations 2010

Both the Churston Site and the new growth area 'South of White Rock' are sites where off-site foraging is proposed as mitigation for the site. Both lie well within the sustenance zone.

We strongly advise at this stage that additional information is obtained to establish the proportion of improved and unimproved cow pasture and its likely desirability for bat foraging based on sufficiently robust evidence base including bat surveys (to 2010 Guidance standards) to establish the level of bat activity on the proposed site at 'South of White Rock' and on any identified new replacement fairways for the golf course".

3.2.6. In discussions held with the Council since they provided their written response, Natural England have elaborated on the above comments. They have made clear that they are especially concerned over the proposed Future Growth Area because it is well within the Sustenance Zone of the SAC roost at Berry Head, and therefore within daily reach of greater horseshoe bats commuting from the SAC roost. Consequently, loss of any important foraging habitat could, in particular, have an adverse effect on the bats and the integrity of the SAC.

Difference of Approach Recommended for Land South of White Rock Compared to the Growth Area at Collaton St Mary[5]

3.2.7. As a result of these concerns, they have indicated that potential mitigation measures to address loss of foraging habitat (as outlined within the HRA Site Appraisal - see Sections underlined text above e.g. 3.1.7, 3.1.9ii and 3.1.10xi), are not sufficient alone to demonstrate with certainty that there will be 'No Likely Significant Effect' on the SAC.

3.2.8. Natural England believe that for such a potentially sensitive location, mitigation must be informed by comprehensive field survey work to establish actual use of the area by greater horseshoe bats. They argue that only with a robust evidence base will it be possible to assess likely effects – especially relating to foraging habitat - and then to reach a decision as to the type, scale and location of mitigation (e.g. provision of alternative foraging habitat) that is required.

3.2.9. This approach is different to the one that they agreed to at Collaton St Mary, where they were satisfied with a landscape and habitat assessment and did not recommend a full suite of field surveys. Their reason for adopting this different position, is that at Collaton St Mary, which is at the outer edge of the Sustenance Zone, the key issue was one of retaining the Strategic Flyway through the village. As such, the proposed mitigation did not rely upon retaining vital foraging habitat within easy reach of greater horseshoe bats commuting from the Berry Head roost; whereas this is their concern for South of White Rock.

Risk of Delivery

3.2.10. Instead, much of the mitigation at Collaton St Mary concentrated on retention of likely commuting features and routes through the village, rather than on the need to find potentially large areas available for off-site foraging habitat – which appears may be required for the Land South of White Rock. In this respect, the delivery of the Collaton St Mary mitigation options were judged as carrying far less uncertainty.

3.2.11. However, from the Churston Appeal decision, Natural England consider that there are clear risks associated with the deliverability of off-site mitigation grazing land where it is required to provide future foraging habitat for the bats in perpetuity.

3.2.12. Consequently, Natural England believes that both the quality and quantity of foraging habitat at Land South of White Rock must be established before the Future Growth Area is

[5] Discussed at a meeting between Mike Oxford, TDC officer and Natural England on the 2nd April 2015.

allocated in the Local Plan. Furthermore, this information must be used to establish that there is no remaining uncertainty over the deliverability of any necessary off-site mitigation.

3.2.13. Conversely, if the delivery of mitigation is undertaken solely on-site, which would perhaps increase levels of certainty over its deliverability, it would at the same time reduce the area of land available for development. This would then pose a risk to the delivery of the proposed housing figures for the proposed new Growth Area.

3.2.14. As a result, in the absence of such detailed field based survey information, Natural England do not consider it possible for Torbay Council to discharge its necessary obligations under Regulation 61 of the Habitat Regulations. Simply put, they believe that the proposed modification to include the Land South of White Rock would leave the Local Plan legally unsound and open to challenge by third parties.

3.2.15. However, greater certainty could be achieved for delivery of both the housing targets and bat mitigation if a conscious decision is made to reduce the housing requirements for the Land South of White Rock to enable a sufficient area land on site to be identified in advance for bat mitigation purposes. The recent development proposals for Wall Park, Brixham provide a useful precedent as to how these two land uses could be planned to co-exist adjacent to each other. At Wall Park, the introduction of habitat enhancements and long-term habitat management for the benefit of greater horseshoe bats (as well as for other biodiversity) have been secured successfully through planning conditions and obligations. The measures have been subject to full HRA and have been agreed by Natural England.

3.2.16. It is therefore possible that a similar approach could be planned for the Land South of White Rock. For instance, the eastern half of the site could be allocated for development (e.g. alongside the A382) with the western half of the site identified to provide bat mitigation measures necessary to meet the requirements of HRA, and to ensure no adverse effect on the integrity of the SAC.

3.2.17. It is impossible at this stage to be precise over the exact proportion of the land that should be developed and that which should remain as greenspace, but as a principle going forward, this would be one means of increasing certainty of delivery for both requirements.

3.2.18. Another advantage associated with provision of bat mitigation on the western half of the site, would be that the measures would almost certainly involve planting of new hedges to create smaller cattle grazed pasture fields, and the planting of small blocks of woodland and scrub. These would have the dual benefit of also mitigating (to some extent) visual impacts on the AONB. A matter also raised as a concern by Natural England.

3.2.19. Notwithstanding what has been outlined above (sections 3.2.15 – 3.2.18), the provision of the mitigation measures at Wall Park have been informed by full bat surveys that have been undertaken in accordance with Natural England's 2010 SAC guidance. No such information currently exists for White Rock and the absence of such data remains another concern for Natural England.

3.3 Adequacy of Existing Data on Greater Horseshoe Bats

Existing Site Based Evidence

3.3.1. An ecological report has been prepared for the landowners by Ecosulis Ltd (dated July 2014). This report includes the results of bat surveys undertaken across the area during the period between May and September 2014.

3.3.2. As such, the above report provides useful confirmation that greater horseshoe bats are using at least some features across the site, especially along the southern and western boundaries.

Limitations of Existing Site Based Evidence

3.3.3. The Ecosulis Report was recognized in the HRA Site Appraisal (February 2015)[6] as being inadequate to inform any future planning because the degree of survey effort is not consistent with Natural England's 2010 SAC Guidance[7] and does not provide sufficient evidence of use of the 'Site' by greater horseshoe bats.

3.3.4. In their response to the Proposed Modifications, Natural England have stated that the Ecosulis Report is also inadequate to inform the proposed allocation of the Future Growth Area.

3.3.5. The reasons why the Ecosulis Report is inadequate can be summarized as follows:

- It does not cover the full survey period through the year with no surveys undertaken during the critical months of April and October (as recommended by Natural England in their SAC Guidance);
- No details are provided of the number of surveyors used for the transect surveys conducted through May to September, and consequently it is impossible to establish whether survey effort was adequate (e.g. whether enough people were on the ground to cover such a large area).
- A significant deficiency in the report, is that the surveys only included the use of static bat detectors in August and September and at only one location. This is considered to be a major failing of the report. Natural England recommend at least 50 nights of static survey effort, with at least one full week of survey during April, May, August, September and October.
- Use of just one static detector at only one location, and for an unspecified number of nights, is inadequate for such a large site.
- In particular, such limited use of static detectors means it is not possible to detect any patterns of activity or seasonal trends in use of the site by foraging or commuting greater horseshoe bats;
- Also, the survey did not include any of the land comprising the large field in the south-eastern corner of the proposed allocation near to Warborough and Langdon Lane.

3.3.6. From experience gathered since 2010, across the South Hams SAC, it has become apparent that far more records of greater horseshoe bats are captured using static detectors, than relying almost solely on the results of transect surveys – as is the case with the Ecosulis work. Walked transect surveys, alone, do not therefore provide a sufficiently clear or accurate picture of greater horseshoe activity across an area. As a consequence, we cannot rely on the existing data as a true reflection of bat activity across the whole site and throughout the whole season (i.e. April to October).

Conclusion Over Adequacy of Existing Site-based Field Data

3.3.7. To be consistent with the NE survey protocol in their 2010 SAC guidance, greater field survey effort is still required. Firstly, through use of sufficient static detectors at sufficient locations across the site and for the duration of the whole survey season. And secondly, through use of walked transect surveys during April and October.

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[6] Oxford M (2015) HRA Site Appraisal Report of Proposed Additional Sites with Potential for Development to be included as Proposed Main Modifications to the Submission Local Plan February 2015.

[7] Natural England (2010) South Hams SAC – Greater Horseshoe Bat Consultation Zone Planning Guidance.

Known Greater Horseshoe Bat Activity in the Surrounding Landscape (Desk Top Data)

3.3.8. As part of their 2010 SAC Guidance, Natural England show known commuting routes used by greater horseshoe bats, that have been identified through radio-tracking studies undertaken in the early 2000s. These radio-tracking studies have recorded bats leaving the Berry Head roost and flying around the southern edge of Brixham to locations within only one or two kilometres of the southern edge of this 'Site'.

3.3.9. From bat surveys undertaken over the last few years associated with other nearby developments, greater horseshoe bats are known to be present in the wider landscape around the 'Site'. For instance, they are present on Churston Golf Course (approx. 2km to the south-west). They have also been recorded immediately to the north on land currently being built on as part of the current White Rock development.

3.3.10. In addition, just to the north of White Rock, further records of greater horseshoe bats have been recorded in bat surveys undertaken in support of planning existing and proposed new developments in the area north of South Devon College and south of the Yalberton Industrial Estate.

3.3.11. The Devon Bat Group also hold records of known greater horseshoe bat roosts to the south and west (near Galmpton and Dittisham) and to the north-west along the valley between Collaton St Mary and Stoke Gabriel.

Overall Conclusion Based on Existing Evidence:

3.3.12. The existing evidence shows that the proposed Future Growth Area lies within an area of the SAC Sustenance Zone where the surrounding landscape has been demonstrated to support commuting, foraging and roosting greater horseshoe bats.

3.4 Issues Still to be Addressed

Screening for Likely Significant Effects and Appropriate Assessment

3.4.1. Natural England have presented a very strong case for the need for further detailed field surveys to be undertaken (in accordance with their 2010 SAC guidance) prior to the allocation of this Growth Area in the Local Plan.

3.4.2. This is because loss of foraging habitat in such a potentially sensitive location is likely to have a significant effect (LSE)[8]. Unfortunately, with the information currently available, it is agreed that it is not possible to proceed to an Appropriate Assessment (AA) to establish that there will be no adverse effect on the integrity of the SAC.

3.4.3. Detailed evidence on the use of the area by greater horseshoe bats must therefore be provided to:

(i) *inform* the location, scale and type of mitigation measures necessary, and;
(ii) *to provide certainty* over their deliverability (especially where measures will be reliant on off-site provisions).

3.4.4. The Council currently does not have access to such information.

[8] . In establishing if an effect is "likely", it is not necessary for a significant impact to be a probability or certainty, but whether there is a possibility or real (rather than hypothetical) risk of it occurring.

In Combination Effects

3.4.5. Natural England have been satisfied that development allocations, prior to the proposed modifications, would not result in *'In Combination'* effects.

3.4.6. However, in their response to the Proposed Modifications they have stated their concern that the Council has not assessed the effects of the proposed Growth Area on Land South of White Rock in combination with the other developments in and around the Brixham Peninsula that have already been recently consented or that have already been allocated/identified in the Local Plan.

3.4.7. To date, the Council has not had the evidence available to undertake such an '*In Combination'* assessment for the Land South of White Rock.

3.5 Conclusion and Recommendations

3.4.8. Since an Appropriate Assessment of effects, alone or in combination, cannot be undertaken without the information set out in Section 3.4.3 above, Torbay Council will be unable to meet the strict requirements of Regulation 61 of the Habitat and Species Regulations (2010).

3.4.9. To ensure that the Local Plan is legally sound, Natural England believe that it will therefore not be possible to allocate the Land South of White Rock before the above information is available to inform a full Appropriate Assessment.

3.4.10. In order to complete the required field surveys, in accordance with Natural England's 2010 SAC guidance, the results and accompanying findings and recommendations will not be available – at the earliest – before the autumn of 2015. Furthermore, even if field work starts as soon as possible, it seem likely that surveys undertaken during 2015 will again still miss critical results for April, just as the bats emerge and become active again after winter hibernation.

3.4.11. Taken together, this means that an Appropriate Assessment to inform the allocation of the Land South of White Rock is unlikely to be available before November 2015 at the earliest.

3.4.12. In order to avoid legal challenge, Torbay Council are advised not to include the Proposed Future Growth Area until it has undertaken a full Appropriate Assessment informed by adequate new field evidence that has been carried out in accordance with Natural England's 2010 SAC guidance.

4.0 St MARY'S CAMPSITE

Proposed Main Modifications reference MM14 (Pool of potential development sites (primarily housing) for consideration in the Brixham Peninsula Neighbourhood Plan), linked to MM12 (Policy SDB1)

4.1 Conclusions from the Original HRA Site Appraisal (February 2015)

4.1.1. The original HRA Site Appraisal undertaken in February 2015 addressed three key questions:

- *Does future development of the site have the potential to impact the integrity of the South Hams SAC?*
- *Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?*
- *Is it likely that impacts can be mitigated effectively?*

4.1.2. A summary of the answers, to all of the above questions for St Mary's Campsite, are presented below in Section 4.1.

Does future development of the site have the potential to impact the integrity of the South Hams SAC?

4.1.3. The proposed residential site is within the South Hams (Berry Head) *Sustenance Zone* and is in a 'Pinch Point' on a *Strategic Flyway*.

4.1.4. While the site is not currently cattle-grazed, it does represent a significant undeveloped area of grassland that provides open and relatively unrestricted access for commuting bats moving in an east-west direction. As such it appears to offer the first available opportunity for the bats to move westward (through the narrowest part of the town) away from the coast (i.e. St Mary's Bay) towards known foraging areas to the west of the Brixham.

4.1.5. The introduction of new residential development into such a greenfield site could lead to the partial or complete loss of this important flyway, and could thereby limit future opportunities for greater horseshoe bats to reach vital areas currently used for foraging.

Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?

4.1.6. Wherever Greater horseshoe bats are confirmed to be present within a Sustenance Zone or Strategic Flyway, then a Habitat Regulations Assessment will be required to determine whether the integrity of the SAC is likely to be affected adversely. As a minimum this would require Screening to establish the Likelihood of any Significant Effects (LSE Test), and where effects are predicted these should be subject to full Appropriate Assessment.

Is it likely that impacts can be mitigated effectively?

4.1.7. Due to its position within the Sustenance Zone for the Berry Head SAC roost, and its position in the landscape within a crucial section of the Strategic Flyway, it is difficult to envisage how any development might effectively mitigate or compensate for the partial or complete loss of this green corridor.

4.1.8. In addition, offsite mitigation (e.g. provided elsewhere within the Sustenance Zone) would not be appropriate because it could not mitigate for the loss of 'this' element of the green corridor.

4.2 Natural England's Comments on the Proposed Modifications for St Mary's Camp

4.2.1. Comments in relation to St Mary's Camp are provided at the bottom of page 4 of Natural England's response (18th March 2015). They state:

> *"This is a very sensitive area. The present use of the site as a campsite is of low risk to commuting bats. Housing and its necessary infrastructure would increase lighting which in this area is unlikely to be capable of mitigation and would have an adverse effect on the bats. This site is very close to other development sites where some recent bat survey work is available. That survey work shows that the lane immediately south of the site separating it from the rest of the Park is a route used by bats commuting along the coast from Berry Head to foraging areas. This may therefore be a significant "pinch point" as defined in the 2010 South Hams SAC Guidance. The existing survey work does not inform how significant this route may be to ensure integrity of the Special Area of Conservation. Additional survey work will be required to show the Spatial Distribution can be delivered and the site included in Annex 2 and Appendix D of the Plan. This will include bat surveys south of St Mary's Park to determine how significant this route along the lane is".*

4.2.2. And on page 10, Natural England state:

> *"The cumulative effects of development at Berry Head and along the coastal strip south of Brixham need to be examined in the light of additional proposed development at St Mary's campsite.*
>
> *The change of use from campsite to housing has the potential to have an adverse effect on bats due to significant changes in lighting which may not be capable of mitigation in this location. Whilst we are aware from previous recent survey work that bats frequent the lane running south west north east of the site, we cannot yet establish the importance of this route as there is no comparative evidence for bats further south of this lane.*
>
> *In the absence of firm evidence to the contrary, we must therefore conclude that firstly LSE cannot be ruled out and due to the pinch point nature of the location of the proposed development site, disruption of which may cause adverse harm, this needs to be fully examined using a robust evidence base (to include bat surveys to 2010 guidance standard south of the site) before proceeding with this allocation. As there are LSE which cannot be ruled out, a full Appropriate Assessment supported by sufficiently robust evidence base is required".*

4.3 Adequacy of Existing Data on Greater Horseshoe Bats

Existing Site Based Evidence

4.3.1. There is currently no on-site data available for St Mary's Camp.

Known Greater Horseshoe Bat Activity in the Surrounding Landscape (Desk Top Data)

4.3.2. As part of their 2010 SAC Guidance, Natural England show known commuting routes used by greater horseshoe bats, that have been identified through radio-tracking studies undertaken in the early 2000s. These radio-tracking studies have recorded bats leaving the Berry Head roost and flying around the southern edge of Brixham and through and around the site at St Mary's Camp. The results of this radio tracking are summarised in Figure 1 of this report.

4.3.3. Recent survey information is also available from the monitoring work that has been undertaken for the new development at 'Sharkham' immediately to the east. Evidence from this work has

confirmed that greater horseshoe bats are continuing to use St Mary's Lane on a regular basis throughout the full season (April to October).

4.4 Issues Still to be Addressed

4.4.1. St Mary's Camp is in an extremely sensitive location and is within a very narrow 'Pinch Point' along one of the few flight routes available to the bats as they commute around the edge of Brixham to and from the Berry Head SAC roost.

4.4.2. In the absence of detailed and extensive bat surveys, it is impossible to establish that the bats would not be affected by proposed residential development on this site. It is therefore, correspondingly, not possible to establish that there would not be an adverse effect on the integrity of the South Hams SAC.

4.5 Conclusions and Recommendations

4.5.1. Since an Appropriate Assessment of effects, alone or in combination, cannot be undertaken without robust evidence (see Section 4.1.1 and 4.1.2 above), Torbay Council will be unable to meet the strict requirements of Regulation 61 of the Habitat and Species Regulations (2010).

4.5.2. To ensure that the Local Plan is legally sound, Natural England believe that it will therefore not be possible to allocate the at St Mary's Camp before robust evidence is available to inform a full Appropriate Assessment.

4.5.3. In order to complete the required field surveys, in accordance with Natural England's 2010 SAC guidance, the results and accompanying findings and recommendations will not be available – at the earliest – before the autumn of 2015. Furthermore, even if fieldwork starts as soon as possible, it seems likely that surveys undertaken during 2015 will miss critical results for April, just as the bats emerge and become active again after winter hibernation. It is also likely that results for May might also not be recorded, if the start of surveys is delayed even further.

4.5.4. Taken together, this means that an Appropriate Assessment to inform the allocation of the St Mary's Lane is unlikely to be available before November 2015 at the earliest, and even then, survey results for the first part of the year may not be available.

4.5.5. However, notwithstanding the possibility that appropriate surveys could be carried out, these might ultimately be a waste of money and effort. Due to its position within the Sustenance Zone and its position in the landscape (i.e. within a crucial section of the Strategic Flyway), it is very difficult to envisage how any development might effectively mitigate or compensate for the partial or complete loss of this green corridor.

4.5.6. In addition, even if its delivery could be guaranteed, offsite mitigation (e.g. provided elsewhere within the Sustenance Zone) would not be appropriate because it could not mitigate for the loss of 'this' section of the green corridor and the crucial function that it performs in this part of the landscape. A useful analogy might be to consider an artery. If a section was removed, it would have potentially catastrophic implications for the rest of the system.

4.5.7. In light of the significant risks posed by development of this site, it is recommended that the *Precautionary Principle* should apply and that St Mary's Camp should not be included in the Local Plan until such time as incontrovertible evidence is provided that development would not have an adverse effect on the integrity of the South Hams SAC roost at Berry Head.

5.0 SLADNOR PARK, MAIDENCOMBE

Potential Development Site (Primarily Housing) For Consideration In The Torquay Neighbourhood Plan

5.1 Conclusions from the Original HRA Site Appraisal (February 2105)

5.1.1. The original HRA Site Appraisal undertaken in February 2015 addressed three key questions:

- *Does future development of the site have the potential to impact the integrity of the South Hams SAC?*
- *Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?*
- *Is it likely that impacts can be mitigated effectively?*

5.1.2. A summary of the answers, to all of the above questions for Sladnor Park, are presented below in Section 5.1.

Does future development of the site have the potential to impact the integrity of the South Hams SAC?

5.1.3. A number of landscape features offer suitable foraging and commuting habitat for greater horseshoe bats: including:

- Broadleaved woodland;
- Semi-improved pasture;
- Tall mature hedgerows.

5.1.4. Development therefore has the potential to effect adversely the integrity of the SAC if any of these features are affected by the proposed new development.

Is it likely that potential impacts will require Habitat Regulations Assessment (HRA)?

5.1.5. Wherever greater horseshoe bats are confirmed to be present within a Sustenance Zone or Strategic Flyway, then a Habitat Regulations Assessment will be required to determine whether the integrity of the SAC is likely to be affected adversely. As a minimum this would require Screening to establish the Likelihood of any Significant Effects (LSE Test), and where effects are predicted these should be subject to full Appropriate Assessment.

Is it likely that impacts can be mitigated effectively?

5.1.6. Mitigation measures for greater horseshoe bats should support the *SAC Conservation Objectives* set by Natural England and also promote *Favourable Conservation Status* for this species (see Appendix A). Mitigation measures should also support statutory requirements to protect and enhance ecological networks used by Annex II species e.g. greater horseshoe bats (See Appendix B). As such, mitigation measures for the 'Site' should aim to:

> *Protect existing roosting features on site and also facilitate ease of movement and conserve energy expenditure by greater horseshoe bats by providing optimal daily and seasonal commuting routes through and around the proposed new development and by retaining and enhancing foraging and roosting opportunities.*

5.1.8. In order to achieve the above aim, and to provide the certainty necessary to satisfy the requirements of the HRA process, the following mitigation objectives must be applied to emerging development proposals for the Sladnor Park Potential Development Site. This

mitigation must then be implemented in full at such time as development applications are brought forward. Such mitigation should be a combination of identifying and recognising:

- key design constraints required to avoid or minimise[9] adverse effects, and;
- habitat mitigation/enhancement opportunities to provide overall net gains[10] for Greater horseshoe bats specifically and for wider biodiversity in general.

5.1.9. *Design Restrictions/Constraints should:*

i. Protect the tunnel entrance and retain all identified flight routes into and out of the tunnel (the latter to be established through future detailed GHB survey work);

ii. Avoid light spill around the tunnel entrance and in all bat flyways and foraging areas i.e. achieve light levels less than 0.5 lux in sensitive locations;

iii. Maintain existing connectivity of bat commuting and foraging habitat through and around the 'Site';

iv. Achieve no net loss of foraging habitat;

v. Achieve no overall net loss of existing hedgerows and trees within the 'Site';

Habitat Mitigation/Enhancement Opportunities should:

vi. Secure favourable long-term management of foraging habitat e.g. through the introduction of cattle grazing on the semi-improved fields on the eastern part of the 'Site';

vii. Provide long-term management through a Landscape and Ecological Management Plan (LEMP), secured through a planning condition and/or obligations;

viii. Implement development through the means of a prior-approved Construction Environmental Management Plan (CEMP), secured through a planning condition and/or obligations;

ix. Undertake appropriate and proportionate ecological monitoring of the LEMP to establish the effectiveness of proposed mitigation measures and to provide early warning of any necessary contingency or remedial measures required to meet original objectives;

The provision of such measures would be consistent with the four principles set out in the proposed modified Local Plan Policies NC1 and SS8.

Contingency to Compensate for Loss of Roost in Tunnel (Measure of Last Resort)

x. If it proves impossible to retain access to the existing tunnel (and/or an adequate dark flight routes to it), then an alternative roost will need to be provided. This would need to be created, and proven to be functioning as a roost, prior to the original tunnel being closed or development being built in close proximity.

NOTE: Such works to affect the tunnel will need to be undertaken under the control of a Natural England European Protected Species (EPS) licence.

[9] Adverse effects should be 'minimised' to the point where either alone or in combination with other effects they do not have an adverse effect on the integrity of the South Hams SAC.

[10] The achievement of a net gain for biodiversity is consistent with the objectives set out in Local Plan Policy NC1 Biodiversity and Geodiversity.

5.2 Natural England Comments on the Proposed Modifications for Sladnor Park, Maidencombe

5.2.1. Natural England (page 5) state:

> *"This is a large site of 22 ha for a relatively small number of houses (25) to be included for the Spatial Distribution for Torquay. Whilst this site was granted planning permission in 2006, it cannot be assumed that the environmental information that would have accompanied that application will be sufficient to include this site within Appendix 6 of the Plan. The majority of the site is a priority habitat consisting of wood pasture, parkland and deciduous woodland including veteran trees. Any proposal / allocation should avoid these environmentally sensitive areas and development should be within the brownfield area, this should be clearly stated in the Annex. The additional information on the site also highlights a potential Greater Horseshoe Bat roost. This may be significant and may affect any necessary access improvements to the site. Alternatively it might necessitate an access through the Priority Habitat to avoid the bat roost. The bat roost should be located and its significance assessed before the site is included in Appendix 6 so that options should be investigated. Alternatively if this site is not considered strategic, reference to it could be removed entirely from the Annex 1".*

5.3 Adequacy of Existing Data on Greater Horseshoe Bats

Known Greater Horseshoe Bat Activity in the Surrounding Landscape (Desk Top Data)

5.3.1. There is very little, if any, evidence for greater horseshoe bat activity in the surrounding landscape. And the identification of the Strategic Flyway that leads down to the coast through Sladnor Park was, apparently, identified on the basis of topography and the suitability of habitat features in the landscape, and because of the recorded presence of a greater horseshoe roost within Sladnor Park (see below). The Flyway was not identified, as they were around Brixham, from the results of radio-tracking studies.

Existing Site Based Evidence

5.3.2. Ambios Environmental Consultants (AEC), who were commissioned in 2006 to undertake ecological surveys in support of a planning application submitted by Meedhurst Project Management Ltd. When describing the site and its habitats, Ambios state (page 5):

> *"The development site comprises a disused holiday complex, with a few derelict chalet and other buildings, surfaced roads, an old swimming pool and tennis court, and areas of rough grassland, brambles and light scrub. … Surrounding land includes mature woodland (to the immediate north, west and south) and extensive areas of unmanaged semi-improved grassland (to the immediate east).*

5.3.3. The woodland and semi-improved grassland referred to above, are included within the boundary of the Potential Development Site. The Ambios report (page 5) continues:

> *"Much of the development site is relatively open and characterized by extensive concrete hard-standing and building foundations, interspersed with a mixture of tall rough grassland, more extensive beds of brambles, and occasional stands of developing scrub (in the main dominated by ash and Buddleja). None of these habitats have any intrinsic ecological value, though the presence nearby of specially protected animal species means that they may be of local significance to these species".*

5.3.4. The Ambios report (2006; page 5) also states:

> *"The extensive areas of grassland to the east of the development site provides ideal*

habitat for breeding cirl bunting, and offers potential feeding habitat for greater horseshoe bats".

5.3.5. With regard specifically to greater horseshoe bats, the Ambios report states:

"The survey identified a narrow tunnel in the north-western corner of the development site. The tunnel entrance is found approximately 2 metres above ground level, adjacent to a number of sheds at this location. The tunnel runs in a westerly direction into the sandstone cliff for a distance of approximately 15 metres, and a smaller tunnel runs north for approx. 8 metres. At the time of the survey a number of greater horseshoe droppings were found in the main tunnel – three separate piles were seen, all with at least 50 droppings of various ages. The tunnel will be consistently cool and humid, and the number and age of droppings indicates that it is likely to be used by a small number of bats throughout the year".

5.3.6. The exact status of this roost remains unknown so it is not clear to what extent, if any, it may serve as an important satellite to the known SAC roosts e.g. as a possible 'mating' roost, or 'formation' or 'post-breeding' roost; all of which have been recognised as being important to the overall lifecycle of horseshoe bats.

5.3.7. Much of the woodland and semi-improved grassland habitat on site and in the surrounding landscape provides suitable, and possibly optimal, foraging habitat for greater horseshoe bats. If and when cattle grazed, the fields on the lower slopes on the eastern half of the site could be particularly important.

5.4 Issues Still to be Addressed

5.4.1. In their comments on the Proposed Modifications for Sladnor Park, Natural England do not appear aware of the location of the roost as described by Ambios Ltd. However, the description of the site and the details of the roost (provided in Section 5.3 above) were included in the HRA Site Appraisal undertaken for Torbay in February 2015.

5.4.2. There is therefore adequate evidence available for Torbay Council to address the concerns raised by Natural England. The Ambios report has indicated where the roost (tunnel) is located and this has been confirmed by the author of this report during a site visit made during late January 2015.

5.4.3. The location of the tunnel is not situated so that it is likely to be affected by either site access or new residential development. It is set back from the existing access road and is currently screened by spoil heaps and scrub. There is no reason to believe that similar screening cannot be retained in the future as a part of new development proposals. It is also assumed that the existing access route is the most likely and suitable route for any future access into the site for residential development. Any alternative would be likely to incur significant cost. There is therefore no reason to believe that greater horseshoe bats will not be able to continue to use the tunnel and surrounding habitat in the same was as they do at present.

5.5 Conclusions and Recommendations

5.5.1. Torbay Council should be confident that the mitigation measures set out in Sections 5.1.9 above are capable of being delivered with high levels of certainty. It should be possible to mitigate for any potential disturbance to the roost in the tunnel, and nearby foraging habitat is not planned for development, and its protection and contributions towards its long-term management are capable of being secured through planning conditions or obligations in accordance with Local Plan Policy NC1.

6.0 Overall Conclusions in Response to Natural England

6.1.1. In preparing this response, four main conclusions emerge.

6.1.2. **Land South of White Rock** In relation to likely effects on the South Hams SAC, high levels of uncertainty remain for the proposed Future Growth Area for the Land South of White Rock. Inadequate evidence is available on the use of the area by greater horseshoe bats – a view shared by both Natural England and the author of this report. Also, with the current housing figures proposed, it seem unlikely that sufficient mitigation (e.g. retention of bat foraging areas) could be provided on-site, meaning that delivery of mitigation would be reliant on offsite provision. In the absence of any details for where and what this might include, this is an approach that Natural England considers carries too much risk associated with its effective delivery. Consequently, the precautionary principle applies.

6.1.3. However, greater certainty over the delivery of any necessary mitigation measures could be provided if there is a commitment to provide a substantial area of land for onsite mitigation. This would only be possible if the housing figures are reduced from what is currently proposed. Also, the locations and proportions of 'developed land' and that 'retained for mitigation purposes' cannot be determined at this stage and would need to be informed by more detailed bat surveys (undertaken in accordance with Natural England's 2010 SAC guidance).

6.1.4. Reference to the recently approved development at Wall Park, Brixham provides a useful precedent as to how such an approach might be applied to the Land South of White Rock.

6.1.5. **St Mary's Camp** The proposed Main Modification to include residential development on land at St Mary's Camp poses a clear risk to a very important and well-used greater horseshoe bat Strategic Flyway that runs around the southern side of Brixham. There is little, if any, opportunity to mitigate adverse effects on site, and it would be inappropriate to mitigate offsite because loss of this site's corridor function could not be addressed in a different location. As such, there is a very high likelihood that development of this site would have an adverse effect on the integrity of the Berry Head component of the South Hams SAC.

6.1.6. **Sladnor Park** The Potential Development site at Sladnor Park proposes relatively low numbers of housing in what is relatively large site. Current information exists on the location of a greater horseshoe bat roost on site, and it is apparent that there is ample scope to retain and protect this from any likely adverse effects arising from limited development of the site. It is therefore concluded that this allocation can be progressed without a likely significant effect on the South Hams SAC and Torbay Council should be confident that adequate mitigation is capable of being delivered on site and with high levels of certainty.

6.1.7. **In Combination Effects** have been assessed for all the previous policies and proposals in the Submitted Plan. With regard to the above three proposed modifications, there are not expected to be any 'in combination' effects arising from the Land South of White Rock and Sladnor Park. The two sites are at opposite ends of Torbay, Sladnor Park is not in a *Sustenance Zone,* and is not on land that forms a part of the same *Strategic Flyway* as the White Rock site. Consequently, there are not likely to be any significant effects 'in combination' on the SAC arising from these two sites. In contrast, because of their proximity to each other and their presence within the Berry Head *Sustenance Zone*, there would be likely 'in combination' effects associated with the proposals for the Land South of White Rock and St Mary's Camp. However, since it is recommended that St Mary's Camp is not included as a modification, no 'in combination' effects are likely.

APPENDIX A

SAC CONSERVATION OBJECTIVES & GHB CONSERVATION STATUS

A.1. South Hams SAC Conservation Objectives

A.1.1 As required by the Habitats Directive, high level '*Conservation Objectives*' for the South Hams SAC have been identified by Natural England. An overarching objective and a list of further generic objectives aim to:

> '*Avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.*'
>
> *This is to be achieved by, subject to natural change, maintaining and restoring:*
>
> - *The extent and distribution of the qualifying natural habitats and habitats of qualifying species.*
> - *The structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species.*
> - *The supporting processes on which qualifying natural habitats and habitats of qualifying species rely.*
> - *The populations of qualifying species.*
> - *The distribution of qualifying species within the site'.*
>
> *NOTE Natural England is in the process of preparing site-specific objectives for each SAC and SPA in England.*

A.1.2 The application of these objectives will be site specific and dependant on the nature of the site and its features. The local planning authorities should take these objectives into account when undertaking Habitat Regulations Assessments.

A.2 Favourable Conservation Status (FCS)

A.2.1 Article 2(1) of the Habitats Directive states that '*Measures taken pursuant to this Directive shall be designed to maintain or restore at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest'* (emphasis added).

A.2.2 The concept of 'conservation status' is therefore fundamental to the purposes of the Habitats Directive. Article 1(i) defines the conservation status of a species as:

> *'the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its population within the territory referred to in Article 2'* and continues that the conservation status of the species will be taken as 'favourable' when:
>
> - *'population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
> - *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
> - *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis'*

APPENDIX B

Protection and Enhancement of Ecological Networks

B.1. Across Europe, all of the Special Areas for Conservation (SACs) and Special Protection Areas (SPAs) together contribute to the European Natura 2000 network. The protection, management, and enhancement of such ecological networks, and especially those relating to the *Natura 2000* network, are identified as being particularly important in the *EU Habitats Directive*.

B.1. Article 3 of the Directive states:

> *Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.*

B.1. Article 10 then goes on to explain:

> *Member States shall endeavor, where they consider it necessary, in their land use planning and development policies and, in particular, with a view to improving the ecological coherence of The Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.*

B.1. *The Conservation of Habitats and Species Regulations* (2010) transpose the above EU Directive into English legislation. Regulation 39 requires development plan policies to include policies that implement at the local level the requirements of Article 10 so as to encourage the management of features of the landscape which are of major importance for wild flora and fauna.

B.1. In relation to the potential development sites discussed in this report, Regulation 39 provides Torbay Council with an opportunity to link conservation objectives to the allocation of some or all of the sites finally adopted. In particular, the LPA has both a justification and a statutory mechanism by which they can seek through their development plan policies the management and enhancement of landscape features in and around the Local Plan Area which are of major importance for greater horseshoe bats.

B.1. For instance, planning for Green Infrastructure in and around the proposed Future Growth Areas could also lead to significant biodiversity gains and substantial improvement of GHB commuting and foraging habitat providing the bats with a very much enhanced flyways around the town. Such measures could also contribute to wider Green Infrastructure objectives and achieve benefits that could then also be enjoyed by the local community.

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Figure 1 Greater horseshoe bat strategic flyways around Brixham (indicative only)