Response to Action Point 4 – Habitat Regulation Assessment

Issue raised	HDC Response	Ms Pedan Response
Issue 1: The HRA identifies a pathway by which wastewater from the allocation site reaches the Arun Valley (para 4.20, Appendix C). Para 4.21 screens it out because discharge permits are being tightened elsewhere – which is reliant on mitigation contrary to the People Over Wind Judgment (which the HRA acknowledges in para 1.11). Para 5.1 and 5.7 list water quality pathways as taken forward to appropriate assessment, but this does not occur. As such, can't conclude that the council has assessed whether it will affect integrity of the site which regulation 105(4) requires. [paras 1.2 & 3.1-3.6 of the hearing statement]	We can confirm that paragraph 4.2.1 does not reference mitigation, as the measures to improve the quality of WwTW discharge referenced in that paragraph are <u>not</u> 'measures intended to avoid or reduce the harmful effects of the plan' as per People over Wind, since the Review of Consents process is unrelated to Local Plans, and effectively constitutes the baseline situation for the purposes of Local Plan HRA. The tightening of WwTW discharge consents referenced in paragraph 4.2.1 are part of a standard national process undertaken by the Environment Agency (called Review of Consents) to monitor and address <u>existing</u> concerns regarding WwTW discharges and are unrelated to Local Plans (since the vast majority of treated wastewater discharged is from existing development). Paragraph 4.2.1 notes that the EA has undertaken a process to review WwTW discharging to the Arun catchment and if necessary reduce the nutrient concentration of discharged effluent, to ensure an acceptable standard of treatment for all development (existing and new) connected to those WwTW, to continue to protect water quality in the Arun Valley SPA/SAC/Ramsar. If a WwTW has not had its permit tightened it is because effluent quality is already deemed acceptable by the EA. Therefore, the treatment standards applied at all WwTW discharging to the Arun catchment are deemed sufficient to protect the European site by the regulator, and thus no likely significant effect will arise from additional development being served by those WwTW provided the legally-mandated permit conditions are adhered to by the water company. While a standard provision in Local Plans and not specific to Arun Valley SAC/SPA/Ramsar site (and therefore not constituting mitigation as per People over Wind), Strategic Policy 41 of the Local Plan explicitly states that '*The release of land for development will be dependent on there being sufficient capacity in the existing local infrastructure to meet the additional requirements arising from new development… Where there is a need for extra capacity, this will need to be provided in time to serve the development or the relevant phase of the development, in order to ensure that the environment and amenities of existing or new local residents is not adversely affected'* thus ensuring that development will not be released for developed until the necessary infrastructure (including wastewater treatment infrastructure) is in place. The listing of water quality in paragraph 4.66 and 5.1 of the HRA is therefore an error, hence why the appropriate assessment does not discuss water quality. **The Council is happy to correct that error in the HRA.**	Ms Pedan accepts that permit changes made by the Environment Agency independently of the plan, so far as they are in force, are baseline rather than mitigation, and does not pursue the People Over Wind point in relation to them. She welcomes the correction of paragraphs 4.66 and 5.1; paragraph 4.27 should be corrected in the same way. Paragraph 4.21 is then the HRA's only basis for screening out water quality, and it cannot bear that weight. First, paragraph 4.21 relies on phosphorus limits at Horsham, Warnham, Rudgwick and Storrington. The HRA expects Adversane to use Pulborough or Billingshurst (Appendix C, p.98), and Warnham closed in 2022. Pulborough's permit (A1507/S/07, limits from 31 March 2025) sets no phosphorus or nitrogen limit, its effluent phosphorus has not been measured since 2009 (Environment Agency Water Quality Archive, SO-F0002868), and the Council's 2023 workings assumed 8 mg/l there (SD07, Appendix D, pp.125 to 126). No works in the catchment has a nitrogen limit. The limits relied on were set under Water Framework Directive drivers (WFD_IMPm at Horsham, 'IMPm' at Rudgwick, WFD_IMPg at Storrington), not under a Habitats Regulations driver or the Review of Consents the response cites; the HRA's only source for them is a WINEP extract accessed in December 2020 (footnote 53). They have not been 'deemed sufficient to protect the European site by the regulator'. Natural England's Site Improvement Plan (HRA footnote 52) records upstream works 'which have not been addressed through Review of Consents' (Action 3A), and the current programme includes a Habitats Regulations investigation of water company discharges at the Arun Valley sites, due in April 2027 (PR24 WINEP, action 08SO101055a). The response relies on the Environment Agency's regime. That reliance is a rebuttable presumption, not a requirement (Crest Nicholson Operations Ltd v SSHCLG [2025] EWHC 2194 (Admin), [103], a Horsham case concerning the Arun Valley), and it cannot supply a control that the regime does not impose. Its premise that a works without a tightened permit has effluent 'deemed acceptable by the EA' does not hold at Pulborough: the Agency records continuous sewage discharge as a confirmed reason for the Poor phosphate status of the River Stor (2022), which receives Pulborough's effluent. The conclusion also depends on permits being 'adhered to'; the Agency has recorded four breaches in the

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		Billingshurst system since 2020, a further non-compliance there in June 2026, and a sludge spill to the watercourse at Pulborough in February 2026 (public register). Second, the wording quoted as 'Strategic Policy 41' is submitted Strategic Policy 23, which MM93 deletes. Ms Pedan accepts that MM93's requirement for infrastructure 'at the right time to serve the development' addresses timing; it does not address what a works discharges within its permit, which is the screening question. Because Southern Water has identified a site-specific constraint at Adversane, she asks for one sentence in paragraph 7 of the HA(NP1) supporting text, following its wording on the railway bridge: 'It may also be necessary to restrict the amount of development that could come forward until such a time that the water supply and wastewater infrastructure needed to serve it is in place, based on the advice of Southern Water.'
Issue 2: Screening out reasoning has not been updated from 2023 and council's work found an increase in phosphorus even with tightened permits. NE advice is that the site will fail nitrogen targets. EIA scoping report for the applicants are aware of the issue and screened in such issues. [paras 1.3 & 4.1-4.7 of the hearing statement]	The 2023 HRA (SD07) included in Appendix D an entirely voluntary set of nutrient neutrality calculations. In that HRA they are explicitly badged as 'horizon scanning' in the event that a nutrient neutrality requirement was to be identified in the future by Natural England regarding Arun Valley SAC/Ramsar i.e. in the event if was ultimately concluded by Natural England that, even following the RoC process referenced under Issue 1, WwTW discharge was having a likely significant effect on Arun Valley SAC/SPA/Ramsar site. However, in the nearly three years since that report was written no such requirement has been introduced and there is no indication of one being introduced. Natural England undertook a condition review of the Arun Valley, the results of which were published in May 2025. Natural England provided the local authorities within the Sussex North Water Resource Zone with a summary document which is attached at Appendix 2. (For the avoidance of doubt the note was issued prior to the withdrawal of the water neutrality position statement. The Natural England position on water neutrality in Appendix 2 has therefore been superseded). The summary document outlines that the primary source of nutrients in the Arun Valley is from diffuse pollution sources (e.g. run off from agriculture). Natural England has concluded that the most appropriate way of addressing elevated nutrient levels is therefore to work with landowners and focus on improvements of livestock and arable land management. An exception to this trend was identified at Waltham Brooks where a significant input of nutrients into the SSSI from the Coldwaltham Brooks Wastewater Treatment Works (WwTW) was noted. However, that WwTW does not serve properties which are the subject of proposed development in the Horsham District Local Plan. The advice provided by Natural England on water quality matters therefore remains that there is no identified concern with WwTW discharges into the River Arun affecting Arun Valley SAC/SPA/Ramsar except from some specific WwTW located close to the	Ms Pedan does not insist on nutrient neutrality or on the 2023 calculator. What is needed is a screening under regulation 105(1), for phosphorus and nitrogen, of whether a likely significant effect on the Arun Valley sites, alone or in combination, can be excluded on the basis of objective information. For the reasons under Issue 1, paragraph 4.21 is not such a screening. The 2023 work applied 'the phosphorus and nitrogen calculation method developed for Stodmarsh' (SD07, Appendix D, 7.60) and found an increase in both (7.73); Table 7 shows a phosphorus surplus for every allocation draining to the Arun and a nitrogen surplus for all but one. Its arithmetic errors (the totals at 7.78 do not match Table 7) are a reason to update it, not to set it aside. Adversane has not been assessed at all. Natural England's summary (topic paper Appendix 4) does not say there is 'no identified concern with WwTW discharges'. It reports 'initial assessments' and 'outstanding evidence gaps (particularly around source apportionment of nutrients)'; the condition review calls its finding 'Early indications' (NERR143, p.169) and did not assess storm overflows (p.145). Natural England has not addressed what the plan will add. The reasons given for not assessing the plan's contribution do not meet the test: (a) 'will not necessarily mean it will have an adverse effect' is not the screening test; (b) the water company's 'other potential solutions' and any future tightening 'to maintain the existing nutrient load' are

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	European site (Coldwaltham Brooks WwTW) and thus no requirement for specific Local Plan modelling or for nutrient neutrality. Additional treated effluent entering the River Arun may contribute additional nitrogen and phosphorus if it lies beyond the headroom of existing WwTW discharge consents, or if those consents cannot be tightened to maintain the existing nutrient load (which would be determined by the Environment Agency during their consenting process for WwTW). However, even that will not necessarily mean it will have an adverse effect on the SAC/SPA/Ramsar, firstly because the water company has other potential solutions available (such as sending effluent to another catchment (e.g. the Adur catchment) for discharge, and partly because protecting the European site is about addressing the main drivers of the exceedance which has been identified as being surface runoff. Otherwise, considerable work and money might be spent for little benefit in protecting the European site. No further assessment of is therefore required as part of the HRA process. Moreover, the approach to calculating nutrient budgets has changed substantially since the Appendix D of the 2023 HRA was produced, which took a generic phosphorus calculator and applied it to Horsham allocations. Calculators must now be tailored to the specific circumstances of individual Habitats sites, and for all relevant European sites these calculators have been produced by Natural England to ensure consistency among local authorities. No calculator exists for Arun Valley. In summary, there is neither an identified requirement for nutrient neutrality at Arun Valley (despite nearly three years having elapsed since this was first mentioned), nor a suitable tool to use for the calculations. For both these reasons we removed the 'horizon-scanning' nutrient neutrality calculations from the 2026 Main Modifications HRA. **This discussion can be added into the HRA.**	mitigation, none is identified or secured, and there is no nitrogen limit to tighten; (c) cost is not relevant to screening as a matter of law; (d) runoff being the main driver does not make the plan's contribution *insignificant* in combination where both targets are 'significantly exceeded' (topic paper Appendix 4); where conservation status is unfavourable, the scope to authorise activities that may further affect a site 'seems necessarily limited' (Coöperatie Mobilisation for the Environment, C-293/17 and C-294/17, [103]). On headroom, the response's own test is whether the plan's effluent 'lies beyond the headroom of existing WwTW discharge consents'. The HRA does not identify the works or their headroom, and the evidence points to strain: the Infrastructure Delivery Plan rates Billingshurst capacity upgrades 'Critical' for Land East of Billingshurst alone (HDCJB19, p.218); in June 2026 the Environment Agency found Billingshurst 'needing 3, 6K tankers a day' to stay within its ammonia limits (C0013083); Southern Water lists Billingshurst among works with 'limited spare DWF capacity', from 10% in 2020 to minus 6% by 2050 (DWMP Technical Summary, 2021, Appendix B), and its March 2026 forecasts add fewer than 2,000 people to Billingshurst and Pulborough together by 2055 (DWMP progress report, March 2026); and in July 2025 the Agency found Pulborough's larger primary tanks 'full and surcharged' (S/571465). It is common ground that the existing permits are baseline against which the plans effects are measured. The question is whether the plan is likely to have a significant effect 'either alone or in combination' (regulation 105(1)). Permits limit concentration, but not added load: the Council's own 2023 workings, applying Natural England's method, count each new home's effluent at 90% of the permit limit, so that 650 homes at Billingshurst add about 50.7 kg of phosphorus and 1,500 kg of nitrogen a year (SD07, Appendix D, pp.126 and 136). The response's premise that growth within a works' permitted flow is already accounted for would require evidence that the regulator assessed each works at its full permitted flow against the sites' current targets. There is none, and the response describes the process it relies on as 'unrelated to Local Plans'. Treating in-combination effects as 'somehow catered for' by a proxy of this kind 'lacks coherence' (Wealden DC v SSCLG [2017] EWHC 351 (Admin), [109]). Proposed outcome: the HRA update (i) identifies the works serving each allocation draining to the Arun, including

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		Adversane, and their headroom; (ii) screens phosphorus and nitrogen for the SAC, SPA and Ramsar features, alone and in combination, with an appropriate assessment if an effect cannot be excluded; and (iii) reconciles Natural England's advice at paragraph 4.16 with paragraph 4.46, putting that question to Natural England and drawing on its nutrient study for the ditches (NECR603, pp.11 and 82). It should be published with the further main modifications, not 'following completion of the examination' (topic paper 8.4), since any requirement it identifies can only be secured by a main modification (Planning and Compulsory Purchase Act 2004, section 23). Without it, the screening is not made 'on the basis of objective information', and the plan is not supported by 'proportionate' evidence (NPPF 2023, paragraphs 31 and 35(b)).
Issue 3: Ramsar features (rare plants, ditch flora and invertebrates) are not assessed in the HRA. This is now a legal compliance issue due to update to statute since 21 May 2026. [paras 1.4 & 5.1-5.4 of the hearing statement]	Ramsar features are specifically discussed in the HRA e.g. paragraph 4.25 which states '*Furthermore, the Ramsar is designated for its outstanding assemblage of wetland plants and invertebrates'*. While they are not specifically discussed in the water quality section of the HRA (which is clearly headed Arun Valley SAC/SPA/Ramsar) neither is the SAC feature (Ramshorn snail). Rather the SAC, SPA and Ramsar designations are covered as a whole, because the ditches are of importance to both the SAC and Ramsar features and the discussion of phosphorus applies equally to both designations. This reduces repetition in the report. **This can be clarified in the HRA.**	Ms Pedan welcomes the clarification, but it covers phosphorus only. None of the Council's responses refers to paragraph 4.16, where Natural England advises that nitrogen is 'particularly impactful on aquatic and riparian plants which include those that form part of the Ramsar features'. Paragraph 4.46 treats phosphorus as limiting 'rather than nitrogen' without addressing that advice. Natural England's review introduced 'a total nitrogen target' (HRA 4.16), and both targets are 'significantly exceeded' (topic paper Appendix 4). Nitrogen in the effluent of Pulborough and Billingshurst has not been measured, other than as ammonia, since 2009 (SO-F0002868, SO-F0003095), and the Water Framework Directive river standards behind the phosphorus limits contain no nitrogen standard. The update under Issue 2 should cover nitrogen and phosphorus for each designation, including the Ramsar plant and invertebrate features.
Issue 4 and 5: Water supply not yet secure as licence variation has not been agreed. No evidence that wastewater infrastructure has been secured.	This is covered in the main body of the topic paper and is not duplicated here. HDC note Ms Pedan has indicated she no longer wishes to raise water neutrality as a concern following the recent issue of the water abstraction licence by the Environment Agency.	Water supply: Ms Pedan welcomes the varied licence of 9 October 2026 and does not pursue the licence point. The licence expires on 31 March 2035 and requires monitoring of ditch water levels (condition 9.4) but sets no level; she asks that the update confirm how the summer water levels at Pulborough Brooks relied on by the AtkinsRéalis assessment are secured (her Matter 5b statement, paragraph 2.4). Wastewater: Southern Water records limited network capacity at 13 sites including Adversane, 'not a constraint to development provided that planning policy and subsequent conditions ensure that occupation of these developments is phased to align with the delivery of wastewater

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		infrastructure' (14 August 2026). Ms Pedan asks that this be reflected in the HA(NP1) supporting text (Issue 1) and for the other affected allocations. Treatment capacity is addressed under Issue 2. Minor correction: the WRMP (paragraph 8.1) covers water resources (Water Industry Act 1991, section 37A); sewerage is planned through drainage and sewerage management plans (section 94A).
Issue 6: Disagreement with finding that the site is not potentially suitable for Bewick's Swan and supports Natural England's suggestion for a criterion requiring any application to be supported by a wintering bird survey. EIA Scoping includes functionally linked land for the Mens and Ebernoe Common but not Arun Valley, not clear why the Council don't accept this link at this site. [paras 8.1-8.4 of the hearing statement]	The HRA can be updated to reflect Natural England's comments and recommendation about the Adversane site. This would result in an update to the analysis presented in the HRA, but would <u>not</u> ultimately change the conclusion of the HRA which is that protection of Arun Valley SPA/Ramsar from adverse effects on integrity would be achieved through the policy mechanisms introduced into the plan in response to the 2023 HRA, namely (as cited in the July HRA) Strategic Policy 17 (Green Infrastructure and Biodiversity) which requires that development proposals demonstrate that they do not result in adverse effects on the integrity of Habitats sites, including through impacts on supporting/functionally-linked habitat (paragraph 6.54 of the submitted Local Plan and the policy wording itself) <u>and</u> the site allocation policies that require appropriate ecological assessment for allocations, including wintering bird surveys where suitable habitat is present. **The Council would be content to add the requirement for a criterion requiring any application to be supported by a wintering bird survey to the text for the Adversane policy (HA(NP1)).** <u>Technical note vs HRA</u> A request has been made in a hearing statement which asks us to reconcile the number of allocated sites mentioned in the Technical Note of June 2026 (HDCJB12a) with the HRA report of July 2026 (HDCJB12). The technical note was a high-level work in progress indication for the Council of whether there were likely to be any fundamental issues introduced by the new allocations, written while the actual HRA was still in progress. In particular, the specific assessment of individual allocation suitability was in its early stages at the time the note was produced. The text in the technical note was purely intended to convey that protection of Arun Valley SPA/Ramsar from adverse effects on integrity regarding those sites that were determined to be suitable as FLL for Bewick swan would continue to be achieved through the policy mechanism introduced into the plan in response to the 2023 HRA, as above.	Ms Pedan welcomes the agreement and supports Natural England's criterion (comment /887), which mirrors HA5: 'To ensure no adverse effect on the integrity of the Arun Valley SPA and Ramsar sites any application is supported by an HRA and a wintering bird survey.' While Table 3 stands, the HRA element is not 'unnecessary duplication' of Strategic Policy 17 (NPPF 2023, paragraph 16(f)). Clause 11 of that policy applies to development 'with the potential to impact' the sites, but Table 3 records Adversane as 'Not suitable' and 'Project-level AA Required: No', a finding Natural England disputes and which the promoter's shadow HRA will follow (EIA Scoping Report, June 2026, paragraph 4.60). A survey alone produces evidence that nothing in the plan then requires to be assessed. Either of two outcomes would meet her concern: (a) the criterion is retained, if necessary framed as an information requirement under regulation 63(2) of the Habitats Regulations: 'any application must be accompanied by at least one season of non-breeding bird survey and the information needed for a Habitats Regulations Assessment of any loss of functionally linked land'; or (b) Table 3 is corrected, as the Council has offered, to record Adversane as potentially functionally linked land requiring project-level assessment, and the HA(NP1) supporting text says so, so that Strategic Policy 17 applies. A criterion of this kind is ordinary in this plan (HA5, HA18; see also SD07, 6.36). Natural England considers it necessary for MM227 to be legally compliant and sound. Ms Pedan notes the explanation of the technical note. She asks that the updated HRA confirm how the combined loss of potentially functionally linked land across the allocations has been considered.