



Horsham
District
Council

Horsham District Local Plan Examination

Response to Action Point 8

**Matter 1, Issue 2 - Legal and
Procedural Requirements -
Whether the Council has complied
with other relevant procedural and
legal requirements?**

HDC33

December 2024

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Action Point 8: Produce Update Note to outline likely impact of Natural England Condition Survey - both on the habitats and on the issue of water neutrality as an ongoing issues. Explain what working had been done

Context

Arun Valley sites

1. This note is to provide an overview of the two separate studies that have been undertaken in relation to the 'Arun Valley sites'. These sites comprise the Arun Valley Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site. The SPA and SAC are European sites protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
2. There are also five Sites of Special Scientific Interest (SSSIs) within the Arun Valley catchment - the Arun Banks, Upper Arun, Amberley Wild Brooks, Pulborough Brooks & Waltham Brooks SSSIs. These sites receive national protection under the Wildlife and Countryside Act (1981).
3. The SPA is protected for its wintering birds including Bewick swan and its assemblage of wintering waterfowl. The SAC is one of three main population centres for the Little Whirlpool Ramshorn Snail (*Anisus vorticulus*) in the UK. Natural England (NE) has raised concerns about the potential adverse impact of ongoing water extraction at Southern Water's Pulborough groundwater abstraction on these protected species and their habitats, and therefore on the integrity of the SPA and SAC.
4. NE's 2021 position statement (**CC08**) sets out that new development within the Sussex North Water Resource Zone should achieve water neutrality. Otherwise, schemes would therefore be likely to have a significant effect on the integrity of the protected sites, either alone or in combination with other plans or projects.

Southern Water's Pulborough abstraction

5. Southern Water (SW) operates a public water supply abstraction at Pulborough, close to the Arun Valley sites, which is the cause of Natural England's (NE) concerns and position statement.
6. As far as we understand, SW are licensed to abstract a greater volume of water than they are currently abstracting from Pulborough. However, we were advised by NE in March 2023 that this voluntary reduction is insufficiently certain for the local planning authorities to account for when determining planning applications (see **Appendix 1**).
7. The SW new supply measures outlined in their latest Water Resources Management Plan (WRMP) are intended to mitigate the impacts of the supply borehole at Pulborough. However, we have been advised that the source will not be fully mitigated until SW's proposed Ford Water Recycling Scheme has been delivered, which SW estimate to be operational by 2030/31.

Natural England responsibilities

8. Natural England (NE) play a role in managing and protecting Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) in England, which are collectively known as European designated sites. Their responsibilities include developing and communicating Conservation Objectives, advising on potential impacts of development, monitoring site conditions, and working with landowners to ensure appropriate management. NE provides guidance on protecting and conserving the habitats and species within these sites, implements Impact Risk Zones to assess development risks, and contributes to the costs of special management practices when necessary. Ultimately, NE

ensures that SPAs and SACs are effectively safeguarded in accordance with both national and international conservation standards.

9. NE are the body responsible for ensuring the protection of the Arun Valley sites.

Environment Agency responsibilities

10. The Environment Agency (EA) is one of the primary regulators for managing public water supply abstractions in England. It regulates water abstraction through licensing, assessing applications to ensure reasonable quantities and minimise environmental impact. The EA implements the Catchment Abstraction Management System (CAMS), sets flow-based controls, and monitors water resources to balance supply needs with environmental protection. It publishes Abstraction Licensing Strategies (ALS), facilitates water trading, and works with water companies during droughts. The agency also uses Environmental Flow Indicators (EFI) to assess sustainability and to implement reforms to modernise abstraction regulation. Ultimately, the EA aims to ensure efficient water use whilst safeguarding the environment and other water users' rights.
11. The EA are responsible for licensing Southern Water's Pulborough abstraction.

Southern Water responsibilities

12. Southern Water (SW) has several legal duties under the Water Industry Act 1991 and subsequent amendments. These include providing a sufficient supply of wholesome water for domestic purposes, maintaining water connections, and properly carrying out statutory functions such as supplying safe drinking water and managing wastewater services. They must ensure long-term resilience of water supply and wastewater systems, protect consumers' interests, contribute to sustainable development and environmental protection, and prepare drought and Water Resource Management Plans. SW is required to comply with regulations set by environmental regulators regarding water abstraction and discharge and meet performance targets set by Ofwat.
13. SW is responsible for the operation and maintenance of the Pulborough abstractions, in line with any licence requirements set by the Environment Agency.

Arun Valley site assessments

14. There are two separate studies that have been or are being undertaken on the Arun Valley sites that relate to water neutrality, which are detailed in the following section of this note. In short, there is a *Condition Review* being undertaken by Natural England and a *Sustainability Study* being undertaken jointly by the Environment Agency and Southern Water.

Overview of Arun Valley site assessments

Natural England Condition Review

15. As part of their regular and ongoing monitoring of the Arun Valley sites, Natural England periodically review the Sites of Special Scientific Interest (SSSIs) that make up the sites in order to better understand their condition, and any pressures that they may be facing. Undertaking period reviews of SSSIs helps to ensure that the favourable condition status of a site continues to be met, or alternatively, set out what measures are required to bring a site back into favourable condition. This is known as a 'condition review'.

Environment Agency & Southern Water Sustainability Study

16. Due to the site-specific drying issues identified for the Arun Valley sites through previous Natural England (NE) condition reviews, and NE's water neutrality position statement, which identifies concerns with the Pulborough abstraction, the Environment Agency (EA) and Southern Water (SW) are jointly undertaking a study - the *Hardham Basin Sustainability Study* - to identify what, if any, impact the Southern Water abstraction is having on the drying of the Arun Valley sites. The report will

identify whether there is a sustainable level of abstraction to ensure the protection of the sites' habitats and species. Following the publication of the report, the EA may need to review the existing abstraction licence if the report recommends a lower abstraction rate than SW are currently licensed for.

Natural England Condition Review

Who is responsible?

17. As noted in paragraph 15, Natural England (NE) is responsible for periodically reviewing Sites of Special Scientific Interest (SSSIs) to understand their condition and any environmental pressures. However, NE is not responsible for the management of the Arun Valley sites, most of which are managed by the Royal Society for the Protection of Birds (RSPB).

What is the review?

18. Each of the different features for the SSSIs have a range of pre-defined attributes against which their condition is assessed, and these vary depending on the type of feature being assessed. Typical attributes that are likely to be common across multiple features include: habitat extent, population size, absence/presence (of a specific feature), or habitat composition. Other features will also have specific attributes such as water depth, or water quality.
19. The published condition status of each feature is reflective of NE's precautionary approach wherein if an attribute of a feature is 'Unfavourable', then the condition of a site as a whole should be assessed as being Unfavourable.
20. Whilst the condition review assessed the condition of the underpinning SSSIs, many of the features assessed also form part of the European designated sites. Some of the features may also be declining nationally and therefore local declines may be indicative of wider national trends. For others, there are some fluctuations of numbers over time, and the condition review provides further commentary on each of them, as well as comments on how the confidence rating was reached for each feature.

When was / will it be published?

21. NE published the updated condition status of the Arun Valley designated sites in early 2024, which is publicly available via Natural England's [Designated Sites View](#). However, NE also intends to publish a condition review report. NE's latest indication is that this report will be published in **mid-January 2025**.

What does it show?

22. The updated condition status supports the conclusions of earlier studies (including earlier condition assessments undertaken by NE), indicating that a broad range of issues, including water availability, is having an adverse impact upon the condition of the Arun Valley sites. It is recognised that there are a broad range of factors (including climate change) that are likely to be contributing to the drying of the site, and the reduced water levels within it.
23. Notwithstanding climatic effects, it remains NE's view that other factors, such as abstraction, cannot be ruled out as a contributing factor either. There is evidence that there is a connection between the aquifer, Southern Water's groundwater abstraction, and the floodplain designated sites. Therefore, it remains NE's advice that an adverse effect on integrity cannot be ruled out for proposals that result in a net increase in water use within the Sussex North Water Resource Zone.

Why has it been undertaken?

24. Whilst the surveys undertaken in support of the condition review looked at the potential impacts of water scarcity on each of the sites, the review was not undertaken with water neutrality in mind. Instead, it looked at a broad range of pressures that are likely to have a potential impact on the condition of the SSSIs. These pressures can be broadly summarised as: freshwater impacts, invasive non-native species, land management, pollution, and the vulnerability of the site to climate change.

How does it relate to water neutrality?

25. The results of the condition review confirm that the Arun Valley sites are suffering from drying, even outside of drought periods, and that this drying is impacting on the availability and quality of specific habitats for protected species, notably the Little Whirlpool Ramshorn Snail (*Anisus vorticulus*). The review does not, however, specify the exact causes of what is causing the impacts or what contribution the Pulborough abstraction may be having on the site drying conditions.

Hardham Basin Sustainability Study

Who is responsible?

26. The Environment Agency (EA) and Southern Water (SW) are jointly responsible for the production of the Hardham Basin Sustainability Study. There is currently limited information available about the study in the public domain.

What is the study?

27. The study is primarily intended to provide evidence to the EA about whether the Pulborough abstraction is impacting on the Arun Valley sites and, if it is, whether there is a safe level of abstraction that would not cause site drying. This will then enable the EA to review and, if necessary, amend or revoke SW's abstraction licence for the Pulborough supply. The study has been underway for several years due to the highly complex geology that makes up the Arun Valley sites and the complex interactions between water inputs, flows and losses.

What will it show?

28. To date, the Sussex North authorities have been given no indication of what the study's results might show. We have requested several updates from the EA and SW, primarily through our Water Neutrality Executive Board, over the course of the last year (see the **Duty to Cooperate** section for further details).
29. We know that the results could range from showing that the Pulborough abstraction has no direct link to the Arun Valley sites and therefore has no impact on their drying (though this is considered unlikely due to the proximity of the abstraction to the sites), through to showing that there is no safe level of abstraction from Pulborough, which may necessitate the EA revoking SW's abstraction licence. In between, it may be shown that there is a safe level of abstraction from Pulborough without adding to the drying of the Arun Valley sites, which may necessitate a licence variation to be secured between the EA and SW.
30. The results of the study will inform any NE decisions on whether the current Water Neutrality Position Statement can be removed, amended, or needs to stay in place. NE are not willing to provide any further details on how their position could change until they have received and assessed the results and implications of the sustainability study.

Why has it been undertaken?

31. Unlike the NE condition review, this study is being carried out specifically to identify whether the Pulborough abstraction is a factor in the drying of the Arun Valley sites. The study was not requested

by, nor does it directly involve, the Sussex North authorities. However, we recognise its importance in determining whether water neutrality requirements through the planning system will need to continue.

When will it be published?

32. Southern Water (SW) provided a timeline for the study at our Water Neutrality Executive Board meeting on 23 September 2024 (see **Appendix 3**), at which time they indicated that the report would be published in March 2025.
33. However, at a Water Resources Management Plan workshop held between the Sussex North authorities and SW on 31 October 2024, SW advised that the report would be completed in **May 2025** and would be published several weeks after completion. We are still awaiting notes of this meeting from SW.
34. We have received no further updates from the EA or SW on when the study will be completed and/or published. We requested an update from SW on 13 December, but the project lead is on leave until January 2025.

How does it relate to water neutrality?

35. In the event that the Pulborough abstraction is shown to have no impact on the drying of the Arun Valley sites, it is possible that all restrictions could be removed by NE on the use of the abstraction and water neutrality would no longer be required. This would still require NE to withdraw their position statement.
36. If a safe level of abstraction is identified through the study and the EA and SW agree to a licence variation such that SW are limited to abstracting up to the safe limit, it may be possible for NE to withdraw their position statement once the licence change is secured. However, during the period until the licence variation is secured, (which could be extended if there is disagreement about the terms of the licence change), water neutrality requirements would still apply and the Sussex North Offsetting Water Scheme (SNOWS) would still be necessary.
37. If there is no safe level of abstraction from Pulborough, the EA may be required to revoke SW's licence. The processes by which this would happen are beyond the remit of the Sussex North authorities, although we understand that it may not be immediate, and that SW may need to develop several new sources to mitigate the impacts of any licence revocation. This would be the same scenario that SNOWS is currently planning for, i.e. planning to run at least until SW's Ford Water Recycling Scheme is delivered, which is understood to be the final new supply option required to fully mitigate the Pulborough abstraction.

Duty to Cooperate

38. We have remained engaged with Natural England, the Environment Agency and Southern Water through our water neutrality governance meetings and have requested and received updates on the *Condition Review* and *Sustainability Study* through these meetings and through our direct engagement with those bodies.
39. We have included details of discussions about the NE Condition Review and the EA/SW Sustainability Study from our water neutrality governance meetings in **Appendix 2** and **Appendix 3** respectively of this note.

Appendix 1 – Natural England statement regarding the adoption of voluntary measures as water neutrality mitigation (March 2023)

Issued 02 March 2023



Natural England's general view is that an appropriate assessment should not take into account mitigation measures which are uncertain at the time of assessment. We note that a competent authority's decisions regarding the certainty of any given measure should consider both the measure's scientific certainty as well as its practical certainty; while scientific certainty is concerned with how likely a measure is to be effective, practical certainty is concerned with how likely a measure is to be delivered and secured in the long term.

While it is for the competent authority to satisfy itself regarding the certainty of any given measure our view is, and shall remain, that voluntarily adopted measures, which are not secured by an appropriate legislative or regulatory framework at the time of the permission, are not likely to be sufficiently certain to be considered as mitigation measures for any adverse effects on internationally designated sites. We note that this view is consistent with caselaw and Natural England's approach to cumulative impact mitigation on designated European sites.

Our view specifically concerning utilisation of voluntary abstraction reductions to mitigate water neutrality requirements is that, given the lack of practical certainty, these are not suitable to consider as mitigation measures as they are not secured. This is unless the relevant abstraction reductions proposed are suitably secured, such as through the established mechanism of a licence change. The competent authority in any particular case should satisfy itself as to whether any measure is sufficiently certain.

Whether any proposal is significant enough to justify undergoing the various regulatory considerations and assessments required to secure a licence change, remains a decision for the consideration of the Environment Agency and Southern Water.

We are not presently aware of any other suitable frameworks to appropriately secure a reduction in abstraction, however if any alternative frameworks should be proposed the competent authority should seek the view of the Environment Agency, as the relevant regulator, whether any such reduction is robustly secured for the lifetime of the proposal they intend to offset.

Yours sincerely,

[Redacted]
Senior Adviser
Sussex and Kent Team

Appendix 2 – Record of water neutrality governance meeting notes discussing NE’s Arun Valley condition review

Wednesday 5 April 2023 – Water Neutrality Lead Officer Group (WNLOG) meeting

Agenda item 6) ii) – Natural England updates:

Pulborough/Arun Valley ecological studies (summary and timeframes)

Condition assessment work - when complete, this will not draw conclusions on causes of conditions, but will identify the issues. NE prioritised this work as aware of the issues that led to water neutrality, and want publicly available info to be up to date. SW will be publishing a report 2025 re impacts of abstraction on site. Condition Assessment will not be available publicly until end of August. If any issues arise that would impact on water neutrality, NE will provide LPAs with earliest possible warning. Conditions Assessment will be publicly clarifying the issues we are already aware of.

Monday 17 April 2023 – Water Neutrality Executive Board meeting

Agenda item 3) iii) – Updates from Statutory Bodies (Natural England):

Natural England: Pulborough condition assessment will be published in 3-6 months. If there is anything that the local authorities or others need to know as a matter of urgency, we will inform them.

Crawley BC: Is this to assess whether water neutrality is required?

Natural England: No. The assessment is just to assess the condition - either good or poor - and why that condition assessment is provided (e.g. loss or reduction of particular flora or fauna). The assessment won't necessarily go into the reasons causing those conditions.

Monday 22 July 2024 - Water Neutrality Executive Board meeting

Agenda item 3) iii) – Updates from Statutory Bodies (Natural England):

We are legally revising the Arun Valley condition assessment - looking to publish in Sep/Oct.

Headlines: no surprises, the site remains in unfavourable condition. A few other pieces of evidence will come as a package. We will share headline points with local authorities prior to publication.

Wednesday 7 August 2024 – WNLOG meeting

Agenda item 6) – Natural England updates:

Crawley BC asked if there is any update on the Arun Valley Condition Review, which was due to be published October 2024. Natural England advised this is still being finalised, and noted the Executive Board action that NE update the Local Authorities in advance with headline points. Chichester DC noted previous discussion that NE would share the report with the LAs in advance. Natural England advised that this would just be for review, not editing. The report will show the site is still in unfavourable condition and is declining for some features.

The reports will be published on the Natural England access to evidence catalogue.

Monday 23 September 2024 - Water Neutrality Executive Board meeting

Agenda item – Update from Natural England:

Natural England are almost ready to send out their Arun Valley Site Condition Report, it should be this side of Christmas, also confirmed that the Sussex North authorities will be briefed on the report prior to publication.

Wednesday 2 October – WNLOG meeting

Agenda item 6) a) – Natural England updates:

Arun Valley Condition Assessment

Natural England shared briefing around Arun Valley Condition Assessment. The assessment found that an adverse effect of the abstraction at Pulborough cannot be ruled out...

Publication of the Arun valley Condition Assessment is being reviewed internally. Natural England and MHCLG are chasing for publication date.

Discussion around the fact that the condition assessment does not evidence that the abstraction is responsible for the decline. NE's legal test is whether there is an 'adverse effect risk'. It is then for the water company or regulator (EA) to evidence that the water company are not responsible.

Wednesday 6 November 2024 – WNLOG meeting

Agenda item 6) – Natural England updates:

Natural England advised that condition assessment has now progressed to internal review – comments by 15 November, then a short window for final sign off, with plans to publish this side of Christmas... Unfavourable declining condition, likely for several reasons, but cannot rule out that water company abstraction is part of the decline, and therefore cannot at present withdraw water neutrality position statement.

To withdraw Position Statement, there would have to be certainty that there isn't a link to SW abstraction contributing to an adverse risk on integrity. Must prove no deterioration under the Water Framework Directive. Site is drying, peat is drying, features in decline, only way to identify no adverse effect is to prove no connectivity to SW abstraction.

Monday 25 November 2024 - Water Neutrality Executive Board meeting

Agenda item 3) – Updates from Statutory Bodies (Natural England):

Natural England confirmed the Condition Assessment update had gone through the final stage and is awaiting final sign off.

Appendix 3 – Record of water neutrality governance meeting notes discussing EA & SW’s Sustainability Study

Monday 22 July 2024

Agenda item 3) iii) – Updates from Statutory Bodies (Natural England):

Southern Water: Noting the condition assessment shows that the site is degraded, we're expecting results of the sustainability assessment next year, which will show whether the SW abstraction is having an impact on the site. If the impact is shown to be negligible or zero, but the site condition is still failing, would Water Neutrality requirements remain in place?

Natural England: We'd have to review the evidence at the time and review our position statement in light of the evidence available.

Agenda item 4) i) – Southern Water update (Water Resource Management Plan (WRMP) data timescales update and General Election impact):

MHCLG: How has Southern Water undertaken its Appropriate Assessment (AA) (for Habitats Regulations) [for the draft Water Resources Management Plan]? Does it state that there are no adverse impacts?

Southern Water: The WRMP includes a series of environmental assessments. We still have the aforementioned sustainability study underway. The AA identifies no adverse impacts. The outcome of the study is due to complete in July next year.

MHCLG: How does the sequencing work? Surely you need the results of the sustainability assessment for the AA?

Southern Water: The sustainability study is much more detailed than the overall AA, and only specifically relates to that site. The AA covers the whole of SW's supply area.

Agenda item 4) iii) – Southern Water update (Pulborough abstraction & other SW plans):

Southern Water: We are reducing reliance on the Pulborough abstraction, but it's not being switched off. The sustainability study report coming out next year will be important evidence.

Monday 23 September 2024 - Water Neutrality Executive Board meeting

Agenda item – Update from Southern Water:

...the timeline for the sustainability study at Pulborough Brooks updated to state that the study should be completed by March 2025 but no confirmation as to the publication date following completion, but likely several weeks later.

The following slide was presented:

Sustainability Study - Pulborough

- Impact Assessment discussions: October 2024 through to November 2024
- Options Appraisal (if required): December 2024 to February 2025
- Study completion and sign off: End of March 2025



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Wednesday 2 October 2024 - Water Neutrality Lead Officer Group (WNLOG) meeting

Agenda item 6) a) – Natural England updates:

...NE are taking a plan-led approach on water neutrality and similar issues across the country. They will be able to review or revoke their decision if:

- They can evidence there is no adverse effect on the sites*
- The Pulborough sustainability study (being undertaken by Southern Water) shows that abstraction has no impact on the sites***
- Southern Water meet all the criteria of a plan-led approach in their WRMP, including a secured mechanism to achieve this*

Monday 25 November 2024 - Water Neutrality Executive Board meeting

Agenda item 4) – Southern Water update / WRMP:

[Southern Water] confirmed that the long-term sustainability study is due in May and this is the scientific study to show if there is an impact from abstraction.