

HRA accompanying the Gloucestershire Waste Core Strategy Examination in Public (EiP) Note

In respect of Regulations 102 and 61 of the Conservation of Habitats and Species Regulations 2010 (which enacts the Council Directive 92/42 EEC) the County Council has completed a Habitats Regulations Assessment (HRA) on strategic site allocations and policies in the Waste Core Strategy (WCS). The documents produced for the HRA are detailed below followed by matters relating to air quality which have been raised at the Examination in Public of the WCS. This note summarises what the County Council has carried out to date and its position on how the HRA has influenced the contents of the WCS so that it is compliant with the Habitats Regulations.

HRA Evidence Gathering/Baseline Report (2007 to 2009)

- a) First produced in 2007
- b) Update 1 in May 2009
- c) Update 2 in August 2009 (CD9.3)

This latest version of this report is informed by consultee comments on the above versions, particularly those of Natural England (which are quoted within the report on pages 3 to 6 and Appendix 1). The report covers the 11 European (including Ramsar) sites that needed to be considered in the HRA which were within Gloucestershire and 15km of the administrative boundary of the county. The document describes the location, characteristics, conservation objectives of each site and other relevant plans or projects to be taken account of as the HRA process proceeds (in-combination assessment).

HRA Screening Report for WCS Issues and Options (May 2007) (CD2.5)

This document describes the task results of screening for likely significant effects on international sites within the WCS Issues and Options stage (Appendix 1). Options were concluded as having either a no likely significant effect or uncertain effect mainly due to lack of confirmation of strategic site allocations and exact policy wording. Under 'uncertain' the need for more detailed Appropriate Assessment (AA) at the planning application stage was first highlighted.

HRA Screening Report for WCS Preferred Options (Jan 2008) (CD3.4)

This report describes the task results of screening for likely significant effects on international sites within the WCS Preferred Options stage (Appendix 1) but also includes the feedback from Natural England and the Environment Agency on the screening report for the Issues and Options stage. The large majority of the preferred options were concluded as having a no likely significant effect but some remained as having an uncertain effect mainly due to lack of confirmation of strategic site allocations and exact policy wording.

HRA Screening Report for WCS Site Options (Oct 2009) (CD4.5)

This report updates the reader on the HRA process to date (pages 6 to 8). The report also includes the general characteristics of waste management and how this could impact on international sites (e.g. via traffic, dust, noise, litter and emissions to air – see pages 9 to 12). This report describes the task results (A and B) of screening from international site conservation objectives and WCS policy, including strategic sites, perspectives (tasks A and B respectively). A third task (C) was to take account of potential 'in combination' effects of

others plans and projects. The final task (D) summarises the assessment scores of the above mentioned tasks A to C.

In October 2009 the findings of the HRA were that for some strategic site allocations no likely significant effect on international sites was concluded but for other strategic site allocations uncertainty remained and further evaluation was required. The County Council started to address this in its Key Development Criteria for strategic sites. Additionally Natural England (letter dated 21st October 2009) advised that a 'high level AA' was needed to explore matters further particularly with regard to the impact of thermal treatment facilities that might come forward at the planning application stage. It is worth noting here that this advice was prior to the Feeney judgement and Natural England's observation (letter from May 2011) that it had an obligation to raise all relevant issues at the HRA stage even though they would require consideration later on, i.e. the planning application and environmental permitting stages.

WCS HRA Final Report

a) Final Report (Dec 2010) (CD5.1)

This is the final report to complete the HRA process and was commissioned by the County Council (from ERM) for two purposes. The first purpose being a final review of all confirmed WCS policies. The second addressing Natural England's request to explore (as a 'high level AA') waste management facilities that might come forward at the planning application stage. This involved commenting on what further considerations might be required at the WCS stage, if any, and which would need to be assessed at the planning stage (both alone or in-combination with other plans and projects).

It was concluded for certain facility types at certain allocated strategic sites that the test at Regulation 61(1a) might not be passed at the planning application stage such that an AA would be triggered. In terms of the WCS stage it was concluded that without detailed design information it was not possible to conclude no likely significant effect on international sites. However it would be *unreasonable to rule out any sites or treatment processes at the WCS stage* as a proposal could be acceptable when facility design was known and mitigation measures set out for consideration at the planning application stage. The caveats in Appendix 5 of the WCS publication version (which ERM confirmed were needed) meant the WCS could not have an adverse effect on the integrity of any international site. The HRA was considered complete to a level that was compliant with the legislation. Counsel opinion and the Feeney v Oxford City Council judgement has confirmed this view but to make results of the HRA clearer the County Council is now proposing a modification to the wording of policy WCS4, supporting text and a minor word insertion into policy WCS7 and changes to criteria text in Appendix 5 (Strategic Site Schedules).

b) Support Note for WCS HRA Final Report (CD6.3)

This short note deals with technical details on flue diameters and volume flow rate of the modelled generic thermal treatment plant. There was no impact on this final test on the modelling results presented in the HRA Final Report.

It should be noted that both Natural England (letter May 2011) and the Environment Agency (letter dated Feb 2011 and statement to the EiP) confirmed that the HRA was sufficient and complete for the WCS and that a more detailed assessment could be carried out at the planning application and Environmental Permitting stages.

Matters raised at the EiP on Air Quality and Strategic Site Allocations

The County Council's assessment on air quality matters in the HRA Final Report modelled the dispersion of air emissions from generic thermal facilities at each strategic site. This was triggered by Natural England asking us to explore matters further (letter October 2009) to ascertain whether in the future it would be possible to consent a thermal waste facility on the strategic sites allocated in the WCS. If it was concluded that this would not be possible at the planning application or environmental permitting stage, then this would mean there might have to be a constraint on such technology in WCS. It is worth noting here that the advice from Natural England (letter from May 2011) was that it had an obligation to raise all relevant issues at the HRA stage *even though they would require more detailed consideration later on*, i.e. at the planning application and environmental permitting stages.

The results of the assessment work in the final HRA report included the use of two air quality models (ADMS and AERMOD) which gave divergent results. This can happen in certain circumstances, such as with complex terrain as is the case in Gloucestershire. ADMS and AERMOD are both accepted as legitimate tools by the Environment Agency, although designed for detailed investigation at the project rather than land use plan level.

On the issue of whether enough consideration has been given in the HRA Final Report to 'in-combination effects' the advice from our expert Roger Barrowcliffe is to remind everyone that the test the air quality modelling work applied was taken from the joint Environment Agency/Natural England guidance for permitting at the project level, which states that:

*'Where the concentration within the emission footprint in any part of the European site(s) is less than 1% of the relevant long term benchmark (EAL, Critical Level or Critical Load), the emission is not likely to have a significant effect alone **or in combination**, irrespective of the background levels.'*

In the HRA Final Report each of the air quality impacts is given for the maximum impacts on the international sites and all the individual impacts ERM quantify are not additive, since they would not occur at the same location on the European site for each source. It should not be automatically assumed that several sites operating close together would be unable to pass the test of insignificance/significance. The impacts from each are actually very slight in an absolute sense and it would be easy to fall into the trap of assuming that a 'cluster' of facilities operating is more likely to result in an adverse impact being identified at the planning/permitting stage. So, if there are a number of development sites which were operating simultaneously and which were each contributing an impact that was less than 1% of the critical load, there is no in-combination effect to consider using the methodology advocated by the Environment Agency.

As we have modelled, and can only model, generic thermal treatment facilities without the application of any mitigation, it is not possible for the WCS to determine whether a future site proposal will be able to be compliant with the Habitats Regulations/Directive when submitted at the planning application/permitting stage. This is even the case where the generic modelling exercise has shown some exceedance of 1% of the relevant long term benchmark. The 1% test is not a threshold of harm but one that states the starting point from which harm to international sites *might* occur rather than *will* occur.

The significance test where sites are >1% of the air quality significance test is dependent on an approved methodology that applies to modelling single sources only. It is not designed for 'in-combination assessments' or even the plan level of assessment. Roger Barrowcliffe (consultant) has explained why we cannot take the assessment any further for the individual sites due to lack of information on facility design and real parameters. In such a situation this limits the ability to do in-combination assessment between potential thermal facilities on more than one strategic site. The conclusions of an 'in-combination' assessment if carried out would not provide additional clarity or certainty of impact on international sites. We would be constructing scenarios of the interplay between constructed generic thermal facilities rather than actual known facilities which would have better defined behaviours in the modelling exercise.

It was concluded from the results of the modelling that for certain allocated strategic sites a generic thermal treatment facility placed upon them could give both no or some potential for adverse effect on the integrity of any international site. Given that the results only represent an indicative effect rather than real effect it was decided that it would be *unreasonable to rule out any sites or treatment processes at the WCS stage*.

The approach of the HRA being a high level assessment and that no further meaningful work could be carried out at the WCS stage has been accepted by both the Environment Agency and Natural England. Although further assessment of air quality impacts on international sites from thermal treatment waste facilities is needed this can only be properly carried out at the planning application and environmental permitting stages when real data could be modelled, i.e. as the air modelling tools intend. At the WCS stage a generic thermal waste plant without mitigation could only be used and this is not the same as using the known parameters of a thermal treatment design at the planning application/environmental permitting stages.

County Council Proposals on the implications of the HRA upon the WCS

The County Council has taken into account the findings of the HRA and also recently Counsel Opinion to ensure that the WCS cannot have an adverse effect on international sites. The WCS (Appendix 5 Site Schedules) already includes development criteria requiring the need for AA at the planning application stage. However in addition, on the recommendation of Mr Anthony Crean QC, the Council is proposing a text insertion into WCS4. This spells out clearly, for the avoidance of doubt, the special requirement that development at strategic waste sites will have to meet:

Proposals are supported by sufficient information for the purposes of an appropriate assessment of the implications of the proposal, alone or in-combination with other plans and projects, for any Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The conclusions of the assessment, in accordance with Council Directive 92/42 EEC and the Conservation of Habitats and Species Regulations 2010, must show that a proposal can be delivered without adverse effect on the integrity of any SAC, SPA or Ramsar site.

In the text supporting WCS7 on cumulative impact the following text should also be inserted (at end of paragraph 4.183)

In relation to the Council Directive 92/42 EEC and the Conservation of Habitats and Species Regulations 2010 the WCS will only make provision for a level and location of residual waste management development where there will be no adverse effect on the integrity of any SAC, SPA or Ramsar site, even if this is below the indicative residual waste recovery capacity set out in this WCS.

The County Council is also proposing a small insertion of the word 'ecology' for policy WCS7 as follows:

Within these broad categories this will, subject to the scale and nature of the proposal, include an assessment of the following issues: noise, odour, traffic (including accessibility and sustainable transport considerations), dust, health, **ecology** and visual impacts.

In respect of the above modifications to the WCS some text changes are deemed necessary for Appendix 5 (Strategic Site Schedules) under 'Ecology/HRA'.

In conclusion the HRA of the WCS is considered complete and the approach taken by the County Council is supported by Counsel Opinion as being compliant with the Conservation of Habitats and Species Regulations 2010 (which enacts the Council Directive 92/42 EEC).

Gloucestershire County Council
March 2012