MEMO 1

DATE:	10 September 2021	**CONFIDENTIALITY:**	Public
SUBJECT:	Calderdale Local Plan - Air Quality Habitat Regulations Assessment		
PROJECT:	Calderdale Local Plan	**AUTHOR:**	Stuart Ireland
CHECKED:	Ursula Digby	**APPROVED:**	Gemma Cookson

NATURAL ENGLAND REPSONSE

Dear Merlin,

Further to your response to the Report to Inform an Appropriate Assessment for the Calderdale Local Plan Air Quality assessment, we are pleased to provide our response to your points below.

Table 1 – Response to Natural England Comments

Natural England Comment	Response
Natural England welcomes the Habitats Regulations Assessment of the Draft Calderdale Local Plan Air Quality Assessment (dated June 2021) which is broadly in line with our published guidance NEA0011 however we do not consider that sufficient information has been provided to justify conclusions reached. In addition we have concerns regarding the application of Natural England commissioned report NECR2102 and Highways England's guidance DMRB LA105 Air Quality as well as an absence of consideration of the other key sources of evidence as identified in NEA001.	No response is provided to this overarching statement. Responses to individual comments are provided below.
For reference, as set out in NEA001, we expect the assessment to address the following: • Consider whether the sensitive qualifying features of the site would be exposed to emissions • Consider the European Site's Conservation Objectives, is there a restore or maintain objective? • Consider background pollution • Review the Environmental Benchmarks ('critical loads and levels') and feature sensitivity to nitrogen • Check for exceedance of Environmental Benchmarks • Consider the designated site in its national context • Consider the best available evidence on small incremental impacts from	A response is not provided to this re-iteration of the guidance in NEA001.

nitrogen deposition [NB - This particular threshold originates from NECR210 – this is discussed in further detail in NEA001 but it must be emphasised that this report should only be used to determine whether there is an adverse effect or not in conjunction with several other means ures and evidence sources and for the appropriate habitat types]. • Consider the spatial scale and duration of the predicted impact and the ecological functionality of the affected area • Consider site survey information • Consider national, regional and local initiatives or measures which can be relied upon to reduce background levels at the site • Consider measures to avoid or reduce the harmful effects of the plan or project on site integrity • Consider any likely in-combination effects with other live plans and projects from other sectors Natural England recommends that a qualified ecologist is commissioned to conduct a site-specific appropriate assessment for the designated features identified as experiencing a loading/concentration of pollutant identified as potentially harmful. This will involve an assessment of habitats in the key areas identified in this report where the 1% threshold has been exceeded.	
Natural England recommends that a qualified ecologist is commissioned to conduct a site-specific appropriate assessment for the designated features identified as experiencing a loading/concentration of pollutant identified as potentially harmful. This will involve an assessment of habitats in the key areas identified in this report where the 1% threshold has been exceeded.	WSP would firstly like to raise that, the determination of whether the draft local plan will have an adverse effect on the South Pennine Moors SAC or SPA has not been solely based on the 1% threshold, nor on the 0.4kgN/ha/y threshold set out in LA105 (and the potential effect on species composition as a result of dose-response). The assessment conclusion of no adverse effect has, in fact, been based on the small percentage of the designated sites which will experience an increase of greater than 1% of the lower critical load or critical level, the habitats that these areas comprise, and their likely condition and ability to maintain or restore integrity in accordance with their Conservation Objectives (noting in particular the fact that these areas are directly adjacent to the existing road network).

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	The conclusion is that the effects of the local plan will be de-minimis. This approach can be supported by Advocate General Sharpston's Opinion in Case C-258/11 where at paragraph 48 she stated 'the requirement for an effect to be 'significant' exists in order to lay down a de minimis threshold. Plans and projects that have no appreciable effect on the site can therefore be excluded. If all plans and projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.' Secondly, it is important to note that the precautionary area of the SAC/SPA potentially experiencing greater than 1% increase in a lower critical load of 5kgN/ha/yr was calculated as under 292ha. The calculations of the percentage of the designated site areas this represents were based in the document on inaccurate figures. Therefore, the percentage of the South Pennine Moors SAC (65,024.32ha) with an exceedance of the 1% increase is 0.44%, and the percentage of the South Pennine Moors (Phase 2) SPA (20994.46ha) predicted to experience this uplift is 1.39%. When examining the site-specific nature of the habitat affected by the increase >1%, examination of the Magic.gov.uk dataset for Habitats of Principal Importance indicates that there are approximately 216ha of HPI within the exceedance areas, of which 95ha are Blanket Bog and approximately 121ha are moorland habitats. The Annex I habitats other than blanket bog have a lower critical load of 10kgN/ha/yr, and thus would not actually exceed 1% increase in N-deposition. Therefore, the area of the SAC which will experience an uplift in N-deposition greater than 1% of the lower critical load will be 0.14% and the area of the SPA will be 0.45%. The small increase in these areas is unlikely to have an appreciable effect on the functioning of the SAC or SPA, in particular (but not only) when you consider the existing exceedance and implications on dose-response and also the likely effects on species in relation to the SPA). Finally, it should also be recognised that these areas are all adjacent to existing roads where other factors such as salt spray within 10m of road edges would likely restrict the ability of the habitats to achieve their conservation objectives. The report will be updated to present this information.
The evidence brought together in NECR210 was intended for use on a specific, case-by-case basis. In our view, the value based on loss of one species was not intended as a universally applied assessment tool but instead as just one	This information was not relied upon in concluding that the SAC/SPA would not experience an adverse effect on site integrity. This information was provided for further indication of the likely de minimis effect of the proposed local plan. If Natural England believe this information is unlikely to provide support to the conclusion, we are content to remove this text without there being any change in the conclusions reached regarding site integrity.

piece of evidence as part of an appropriate assessment.	
NECR210 also considered additional parameters to total species richness, which may be more and less sensitive. The thresholds using in LA 105 may not be the most precautionary option. For example, the data indicates a loss in species richness may occur at levels lower than those leading to the "loss of 1 species" (see example (i) below. This reduction in species richness is an indicator of damage is not considered in LA105. We have concerns that the increases in N deposition allowed by this approach does not consistently align with restore or maintain objectives.	As per previous comment.
Natural England is concerned that the application of dose-response tools in isolation may not be compliant with the Dutch Nitrogen Judgement (Cooperatie Mobilisation/ Dutch Nitrogen Case Joined Cases C-293/17 and C-294/17) which points to the limitations in allowing further environmental loading when sites are in unfavourable status.	As discussed above, the dose-response tool was not relied upon in isolation, and was not relied upon in concluding that the local plan would have a de-minimis effect on the SAC/SPA. The conclusion of no adverse effect on the integrity of the sites was reached based on the minimal area of habitat experiencing an uplift in pollutants above the 1% threshold, and not upon the ability of these habitats to absorb that increase without deteriorating, although a certain degree of additional comfort is given by the likelihood that this minor increase in NOx, NH3 or N-deposition is unlikely to adversely impact on the habitats in question.
For the most recent view taken on considering dose-response relationships in assessments we refer you to see CIEEM Air Quality Advisory Note: Ecological Assessment of Air Quality Impacts (dated January 2021) box 2 available online at: https://cieem.net/wp-content/uploads/2020/12/Air-Quality-advice-note.pdf.	As discussed in the report, the SAC/SPA is already in exceedance of all lower critical loads and some critical levels, the action needed to reduce air quality impacts on the SAC/SPA to below the lower critical loads cannot be achieved through limits on road traffic, and will to a large extent be subject to changes in agricultural practice within the vicinity of the site. Further, the calculations used within the report are highly precautionary, and the likely increase in zero-emission vehicles within the national fleet will see a reduction in the N-deposition from road traffic, though this cannot be scientifically relied upon at this stage.
Ultimately, the appropriate assessment should be based upon the case-specific information above for the features receiving N dep/NOx conc/NH3 conc above 1% of the CLo/CLe. For reference NECR210 is identified as one of these tools but the guidance is clear	As per responses provided above.

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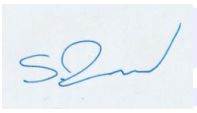
that this evidence is not appropriate for use to justify further exceedance on designated sites alone, without also considering all available factors and information and where this would undermine the conservation objectives to reverse this and restore pollutant levels to within an acceptable level.	

We look forward to discussing these points with you at your convenience, and would be happy to engage in a call to facilitate this discussion.

Kind regards,



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