

APPENDIX 4.5 (Revised)

DEVONSHIRE PARK NEIGHBOURHOOD PLAN – HABITATS REGULATIONS ASSESSMENT REPORT

Introduction

1. This Habitats Regulations Assessment (HRA) Report relates to the Devonshire Park Neighbourhood Development Plan ('NDP') that has been produced to guide development in the existing residential area of Devonshire Park, which is located within the wider residential area of suburban Birkenhead, in the eastern part of the Metropolitan Borough of Wirral.
2. Once made following the resolution of Wirral Council, the Devonshire Park NDP will become a material consideration in determining planning applications and will be used to inform pre-application discussions.
3. The Council is required to consider whether plans or projects prepared to guide development within the Borough require an assessment of their likely significant effects on European nature conservation sites. This statement sets out the outcome of this process.

Background

4. The EU Habitats Directive 92/43/EEC affords protection to plants, animals and habitats that are rare and vulnerable in a European context. European Sites, also referred to as Natura 2000 sites, consist of designated (and potential) Special Protection Areas (SPAs), designated (and candidate) Special Areas of Conservation (SACs) and offshore Marine Sites. Listed or proposed Ramsar sites, designated under the International Wetlands Convention, are also treated as part of the Natura 2000 network as a matter of Government Policy (National Planning Policy Framework, paragraph 118 refers).
5. Most of the foreshore around the Wirral coastline carries Natura 2000 designations.
6. The requirements of the Habitats Directive are transposed into UK law by the Conservation of Habitats and Species Regulations 2010 (SI 2010 No.490, as amended). 'Competent Authorities' have a duty to ensure that all the activities they regulate have no adverse effect on the integrity of any Natura 2000 site. This includes assessing plans and projects for significant effects on European sites, either alone or in combination with other plans or projects and where necessary, undertaking an 'appropriate assessment' of the plan or project, unless directly connected with or necessary to the management of European sites.

7. The term Habitats Regulations Assessment ('HRA') is used as an umbrella term to describe this process of assessing a plan or project.
8. The Localism Act 2011 provided the new statutory regime for Neighbourhood Planning, with detailed provisions set out in the Neighbourhood Planning (General) Regulations 2012 (SI 2012, No.637). It is a 'basic condition', to be tested by an independent examiner, that the Devonshire Park NDP is compatible with European Union obligations, including the Habitats Directive.
9. Schedule 2 of the Neighbourhood Planning Regulations makes provision in relation to the Habitats Directive. Paragraph 1 prescribes a basic condition that the making of a neighbourhood plan is not likely to have a significant effect on a European site or a European offshore marine site. Paragraphs 2 to 5 of the Schedule amend the Conservation of Habitats and Species Regulations 2010 so as to apply its provisions to neighbourhood development orders and neighbourhood plans.

Assessment of Likely Significant Effects

1. Description of the Project or Plan

10. The Devonshire Park NDP sets out the community's vision for the future of Devonshire Park over the next fifteen years. It is based on evidence of existing conditions, community derived objectives and the community's sense of the local distinctiveness of the Plan Area.
11. The Devonshire Park NDP provides general policies that clarify and provide guidance on the application of the policies within the Wirral UDP and emerging Core Strategy relating to housing and does not allocate sites for development. The proposed policies are intended to create a framework for private investment that will better promote the social, economic and environmental wellbeing of Devonshire Park.

2. Name and Location of the Natura 2000 sites

12. The HRA is carried out with regard to the Conservation Objectives of the European sites identified by the Wirral Core Strategy HRA <http://www.wirral.gov.uk/downloads/5642>, but with particular reference to the Mersey Estuary SPA/ Ramsar and Mersey Narrows and North Wirral Foreshore SPA/ Ramsar sites (see Appendix A).
13. The boundaries of the Natura 2000 sites around Wirral can be viewed at: <http://www.magic.gov.uk/MagicMap.aspx>

3. Location of the Plan in relation to the Natura 2000 sites

14. The closest Natura 2000 site to the Devonshire Park NDP Plan Area is the Mersey Estuary SPA/ Ramsar, which is approximately 1.6 km from the Plan Area boundary.
15. The Mersey Narrows and North Wirral Foreshore SPA/ Ramsar is approximately 3.2 km from the NDP Plan Area.
16. The map in Appendix B shows an approximation of the NDP boundary in red and its location in relation to these Natura 2000 sites.

4. Is the Neighbourhood Plan directly connected with or necessary for the management of a European site for nature conservation?

17. No.

5. Does the Neighbourhood Plan propose new development or allocate sites for development?

18. The Devonshire Park NDP supports the provision of dwelling houses through new development or through the conversion or change of use of existing buildings and provides guidelines on design and layout within the Plan Area with the aim of retaining the character of the existing developed Villa Estate (Devonshire Park Policy 1 refers). The definition of a dwelling house is as defined in the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No. 596) which does not include a building containing one or more flats or a flat contained within such a building.
19. Development to provide additional flats, maisonettes or apartments, including converted or shared houses (Devonshire Park Policy 2) and additional residential institutions and hostels (Devonshire Park Policy 2), will not be permitted unless a clear local need is demonstrated within Devonshire Park, the proposals comply with the design criteria set out in Devonshire Park Policy 1, the development proposed would not detract from the unique character of the Villa Estate and the living conditions for occupants of neighbouring properties is not harmed (both Policy 2 and Policy 3 refer).
20. As such, the Devonshire Park NDP seeks to provide additional local context to assist in the application of Wirral UDP policies, Policy HS4 (*Criteria for New Housing Development*), Policy HS7 (*Sheltered Housing*), Policy HS8 (*Nursing Homes/ Residential Care Homes*), Policy HS13 (*Self-Contained Flat Conversions*) and Policy HS14 (*Houses in Multiple Occupation*) in the Devonshire Park area and the NDP will operate similarly to UDP Policy HS5 (*Density and Design Guidelines*) by providing additional detail to be taken into consideration

in Devonshire Park alongside the other policies in the Development Plan¹.

21. The Devonshire Park NDP will also operate alongside Policy WM8 (*Waste Prevention and Resource Management*) and Policy WM9 (*Sustainable Waste Management Design and Layout for New Development*) in the Joint Waste Local Plan for Merseyside and Halton².
22. The Devonshire Park NDP additionally supports the delivery of the Spatial Vision, Strategic Objectives, Broad Spatial Strategy and Settlement Area Priorities of the emerging Wirral Core Strategy Local Plan including Proposed Submission Draft Core Strategy policies, Policy CS6 (*Priorities for Suburban Birkenhead*), Policy CS21 (*Criteria for New Housing Development*), Policy CS23 (*Criteria for Specialist Housing*), Policy CS42 (*Development Management*) and Policy CS43 (*Design, Heritage and Amenity*)³.

6. Are there any other projects or plans that together with the Neighbourhood Plan that could impact on the integrity of a European Site?

23. Yes – the adopted Wirral UDP, adopted Joint Waste Local Plan and the emerging Core Strategy Local Plan for Wirral.

7. Describe how the plan (alone or in combination) is likely to effect a European site and explain why these effects are not considered significant

24. As indicated above, the Devonshire Park NDP will sit alongside the existing Development Plan Documents for the Borough. The potential impacts of the NDP have therefore been assessed in combination with the existing Wirral UDP (February 2000), Joint Waste Local Plan (July 2013) and the emerging Core Strategy for the Borough (last published in December 2012).
25. While the Wirral UDP predates the HRA requirements, UDP Policy NCO1 (*Principles for Nature Conservation*) and UDP Policy NC1 (*The Protection of Sites of International Importance for Nature Conservation*) provide protection to sites of international importance for nature conservation and are not limited in scope to those sites designated at the time of adoption. The Joint Waste Local Plan and the emerging

¹ UDP Policies can be viewed online at <http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/unitary-development-plan>

² Joint Waste Local Policies can be viewed online at <http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/joint-merseyside-waste-development-plan>

³ The policies of the emerging Core Strategy Local Plan can be viewed online at <http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/core-strategy-development-plan>

Core Strategy Local Plan for Wirral have, however, been subject to HRA.

26. There are no specific issues highlighted in the HRA of the Joint Waste Local Plan in relation to Devonshire Park. The HRA stated that it has been possible to conclude that with the amendments made to the Waste Local Plan, the proposals contained therein were unlikely to lead to a significant effect on any European site, either alone or in combination with other plans and projects.
27. The most recent September 2012 HRA of the Proposed Submission Draft Core Strategy (“Core Strategy HRA”) screened in Policy CS6 (*Priorities for Suburban Birkenhead*) – which includes Devonshire Park – as requiring assessment as it may lead to adverse effects on European sites, because it promotes and determines the location or scale of development (particularly housing and commercial development) within this Settlement Area. No specific issues were however highlighted in the Core Strategy HRA in relation to the existing residential area of Devonshire Park and it concluded overall that no adverse effects would result on all the European sites considered, largely due to amendments made in response to the 2010 Core Strategy Preferred Options HRA Report (Core Strategy HRA, paragraph 14.1 refers). The one residual recommendation from that earlier report, relating to the identification of supporting habitat prior to developing a Site Allocations DPD is not impacted upon by the Devonshire Park NDP.
28. Although the Core Strategy is not yet adopted, the approach used for the Core Strategy HRA is considered an appropriate starting point to assess the potential impacts of the Devonshire Park NDP on European sites.
29. The Core Strategy HRA uses the source-pathway-receptor model to assess whether the plan is liable to give rise to effects on Natura 2000 sites. It identified a range of potential pathways of impact on Natura 2000 sites. These included: disturbance; atmospheric pollution; water resources and water quality; port and channel construction and maintenance; shipping; dredging; and coastal squeeze. The Core Strategy HRA identified recreational disturbance as the main potential disturbance impact on Natura 2000 sites. Dredging and fishing were also identified as potential disturbance impacts to Natura 2000 site habitats. None of these pathways are specific to the Devonshire Park NDP.
30. The Devonshire Park NDP does not allocate any specific sites for development. Devonshire Park Policy 1 does however, provide for new residential development within the Plan Area. The NDP Area is a residential community of mainly large Victorian and Edwardian dwellings with gardens, but with no existing parks, green space or other open land. It lies outside the former Housing Market Renewal Area

and was not identified as an area for wider clearance and replacement of the existing housing stock. As such, any new residential development that comes forward under Devonshire Park Policy 1 is likely to be on windfall sites created through the clearance of existing property. There are no Wetland Bird Survey (WeBS) Core Count sites within or immediately adjacent to the NDP Area and the absence of parks or other open land minimises the possibility that there is unidentified supporting habitat within the NDP Area.

31. The above factors, together with the distance from the designated European sites and potential supporting habitat minimises the potential for significant effects from any development (either alone or in combination) on any of the SPA/ SAC's listed in the Core Strategy HRA. However, because the NDP is being progressed in advance of the Core Strategy, it is recommended that an additional avoidance measure in the form of the following statement is included within the main text of the NDP, as follows:

“Development which may result in a likely significant effect on an internationally important site must be accompanied by sufficient evidence to enable the Council to make a Habitats Regulations assessment. Adverse effects should be avoided, or where this is not possible they should be mitigated, to make sure that the integrity of internationally important sites is protected. Development which may adversely affect the integrity of internationally important sites will only be permitted where there are no alternative solutions and there are imperative reasons of overriding public interest, and where compensatory provision has been made. This also applies to sites and habitats outside the designated boundaries that support species listed as being important in the designations of the internationally important sites.”

32. The additional text is proposed to be added to the supporting text to Devonshire Park Policy 1, as any development permitted under the exceptions included in Policy 2 or Policy 3 must also comply with Part B of Policy 1.
33. Having regard to the characteristics of the NDP Plan Area and the scope of the NDP itself and the inclusion of the avoidance statement set out in paragraph 31 above it is, therefore, considered that any proposals coming forward for Devonshire Park, in accordance with the NDP, would not result in any likely significant effect on a European site.

Overall Conclusion

34. It is the Council's opinion that subject to the inclusion of the text in paragraph 31, the Devonshire Park NDP, to which this HRA statement relates:

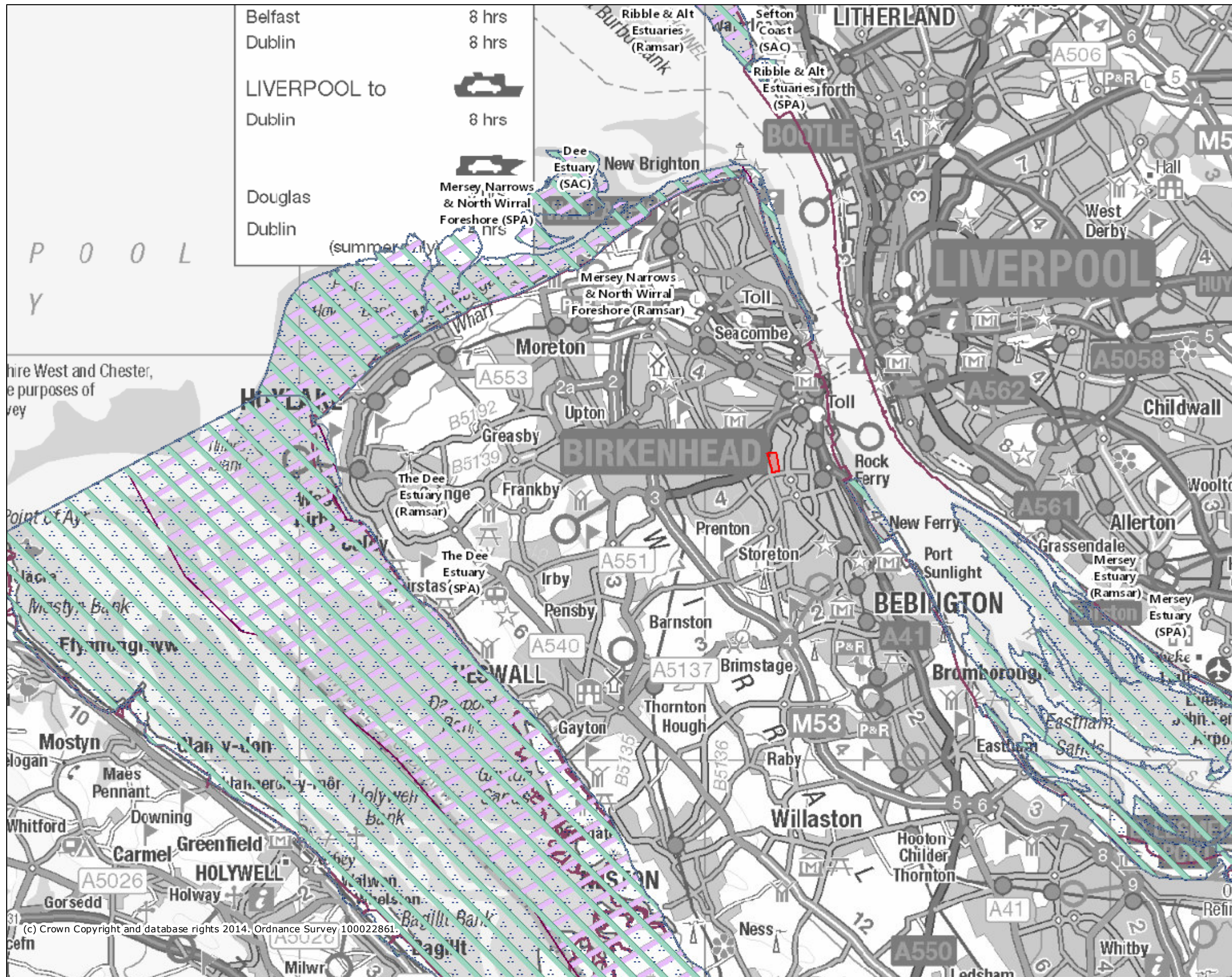
- a) is not directly connected with or necessary to the management of a European site; and
 - b) is not likely to have a significant effect on any European site (as defined in the Conservation of Habitats and Species Regulations 2010 (as amended) either alone or in combination with other plans or projects.
35. Accordingly, no “appropriate assessment” is required to be undertaken under Regulation 61, 62 and 63 of the Conservation of Habitats and Species Regulations 2010 (as amended) before the Council decides undertake, or give any consent, permission or other authorisation for this plan.
36. The conclusions of the Council, as set out above, were confirmed by Natural England by email dated 2 March 2015.

Appendix A: Physical Scope of the HRA

European Site	Reason for Inclusion
Mersey Estuary SPA/Ramsar	Located within Wirral Borough and immediately adjacent to the Core Strategy plan area, with potential pathways of impacts through direct disturbance of qualifying species; waste water discharges; water abstraction; port activity; coastal squeeze and loss of supporting habitat; Liverpool John Lennon Airport, recreational activities; aerial emissions and renewable energy schemes.
Mersey Narrows and North Wirral Foreshore pSPA/Ramsar	Located within Wirral Borough and immediately adjacent to the Core Strategy plan area, with potential pathways of impacts through direct disturbance of qualifying species; waste water discharges; water abstraction; port activity; coastal squeeze and loss of supporting habitat; recreational activities; aerial emissions and renewable energy schemes.

Appendix B: Physical Proximity of European Sites

[please see attached plan]



Legend

- Ramsar Sites (England)
- Special Areas of Conservation (England)
- Special Protection Areas (England)

Projection = OSGB36
 xmin = 312000
 ymin = 375700
 xmax = 344100
 ymax = 397600

Map produced by MAGIC on 24 July, 2014.
 Copyright resides with the data suppliers and the map must not be reproduced without their permission. Some information in MAGIC is a snapshot of the information that is being maintained or continually updated by the originating organisation. Please refer to the metadata for details as information may be illustrative or representative rather than definitive at this stage.