

South Gloucestershire

# LOCAL PLAN

2018-2036

## Habitats Regulations Assessment Statement February 2018

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# South Gloucestershire new Local Plan 2018 – 2036 Habitats Regulations Assessment (HRA): Scoping Paper

## 1). Introduction

1.1 The purpose of this paper is set out the process proposed to undertaking an assessment which satisfies the requirements of the Conservation of Habitats and Species Regulations 2010 in relation to the South Gloucestershire new Local Plan 2018 – 2036 (the new Local Plan). It has been published alongside the South Gloucestershire new Local Plan consultation document February 2018 (in accordance with Regulation 18 of The Town and Country Planning (Local Planning) (England) Regulations 2012 – ‘the Regulations’).

1.2 The new Local Plan will cover the entire the unitary area of South Gloucestershire, which is located within the West of England. The West of England (WoE) covers the four unitary authorities (UAs) of Bath and North East Somerset, Bristol, North Somerset and South Gloucestershire.

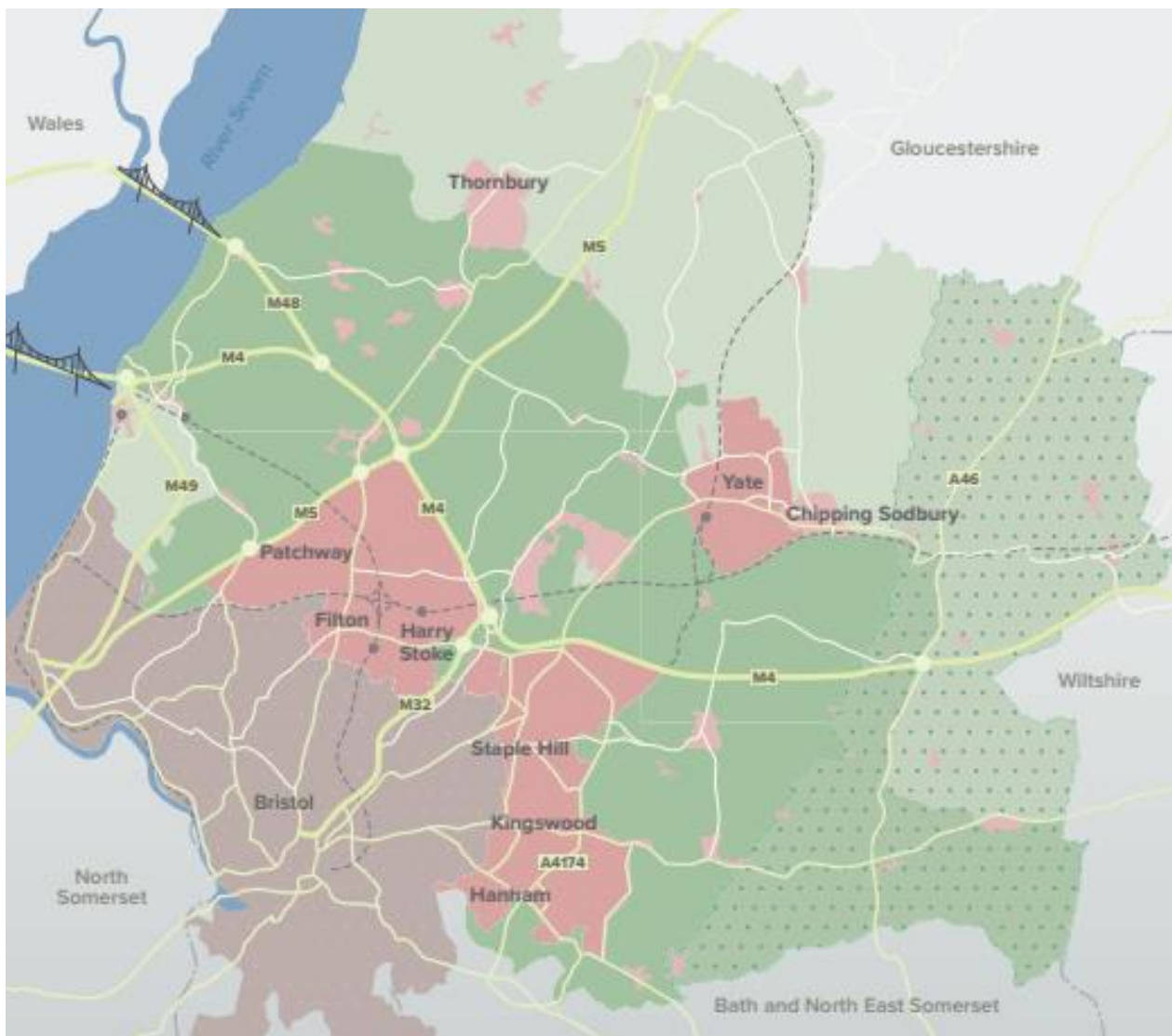


Figure 1 – context map

### **Relationship between the new Local Plan and the West of England Joint Spatial Plan (JSP)**

1.3 The Council is working with Bristol City, Bath & North East Somerset and North Somerset Councils to prepare a development plan - the Joint Spatial Plan (JSP) which will cover all four of these authority areas and set the strategic planning context for the West of England. The JSP will set out the amount of homes and work places which are required in the area up to 2036, strategically where they should go and why<sup>1</sup>. It will also identify the key new infrastructure required to support this growth. It will be for the individual LPAs new Local Plan's to allocate sufficient land to meet the needs for new homes and work places up to 2036.

1.4 The JSP has reached an advanced stage of preparation. The 'publication' version of the Plan was published for full, formal public consultation within representations invited between 22 November 2017 and 10 January 2018 (in accordance with Regulations 19 and 20 of The Town and Country Planning (Local Planning) (England) Regulations 2012).

1.5 All 'duly made' representations will be considered alongside the JSP, when they are submitted to the Planning Inspectorate (Regulations 22 and 23), expected at the end of March 2018. The Plan's examination (Regulation 24) is anticipated to follow later in 2018.

### **Relationship with the HRA of the Joint Spatial Plan**

1.6 The nature of the JSP is such that the HRA undertaken was 'strategic' in nature and therefore by necessity deferred the more specific assessment of impacts and detailed mitigation requirements to the four unitary authorities new Local Plans.

1.7 The purpose of the final HRA for the new Local Plan is therefore to identify, following on from the conclusions of the JSP HRA, any aspects of the NLP would have the potential to cause a likely significant effect (LSE) on Natura 2000 sites. If significant negative effects are identified, alternative options should be examined to avoid any potential damaging effects.

## **2). Habitats Regulations Assessment (HRA)**

2.1 European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Flora and Fauna (known as the 'Habitats Directive') implemented in Britain by the Habitats Regulations 2010<sup>2</sup>, provides legal protection for a range of habitats and species identified as being of European importance.

2.2 Article 2 of the Directive requires the maintenance or restoration of these habitats and species, in a favourable condition, and is achieved through the establishment and maintenance of protected areas referred to as Natura 2000 sites. These are comprised of Special Areas of Conservation (SAC) designated under European Directive 92/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora ('the Habitats Directive 1992'), implemented in Britain by the Conservation (Natural Habitats & c) Regulations 2010 ('the Habitat Regulations'); and Special Protection Areas (SPA) designated under EC Directive 79/409 on the Conservation of Wild Birds ('the Birds Directive') and Ramsar site under the Ramsar Convention on the Conservation of Wetlands of Importance.

2.3 Sites designated as wetlands of international importance under the Ramsar Convention are subject to the same provisions as Natura 2000 sites.

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1 The objectively assessed need (OAN) NPPF para 47

2 updated in 2017

2.4 Article 6(3) of the Directive requires any ‘plan or project’ likely to have a significant effect on a Natura 2000 site be subject to ‘appropriate assessment’. This means an assessment of the impacts of the plan/project on the site. As ‘plans’, the Regulations require local authorities to carry out an ‘appropriate assessment’ (‘Habitats Regulations Assessment’ or HRA) of local development documents before being adopted with the purpose being to assess the impacts of a ‘land-use plan’ against the conservation objectives of Natura 2000 Sites.

2.5 The phrase ‘land-use plan’ has been deemed by the European Court to include Development Plan Documents (i.e. Local Plans). Accordingly, as a land-use plan, the South Gloucestershire new Local Plan (NLP) must be subject to Assessment under Regulation 61 of the Habitats Regulations 2010.

**HRA requirements**

2.6 Article 6(3) of the Habitats Directive requires an ‘appropriate assessment’ to be undertaken when a plan or development project is likely to have a significant effect upon a European site.

2.7 Article 6(4) also requires that where an appropriate assessment has been carried out and results in a negative assessment, i.e. any proposed avoidance or mitigation are unable to reduce the potential significant impacts, or if uncertainty remains over the significant effects, the proposal can only be granted if:

- there are no alternative solutions; and
- there are no imperative reasons of overriding public interest (IROPI) for the development; and
- compensatory measures have been secured.

2.8 The regulations make reference to ‘competent authorities’. These include relevant public bodies, government ministers, and statutory undertakers etc. who are able to carry out the ‘appropriate assessment’ of impacts in relation to the Habitats Regulations. Regulation 65 sets out the necessary stages that apply where more than one competent authority is involved in decision making. In this case, the competent authority is South Gloucestershire Council.

**3). The HRA Process**

3.1 In line with up to date guidance, undertaking a Habitats Regulations Assessment can involve a four stage process, as set out at table 1 below.

Habitats Regulation Assessment – Stage	Purpose
<b>1. Screening</b>	Process for identifying potential impacts of a plan or project on a European site, either individually or in combination, and consideration of whether likely effects will be significant.
<b>2. Appropriate Assessment</b>	Consideration of impacts on integrity of the site, either individually or in combination with other plans and projects, having regard to the site’s structure, function and conservation objectives. Where adverse impacts are identified, assess mitigation options to identify impacts on the integrity of the site. This stage should involve consultation. If mitigation options do not result in

	avoidance of adverse effects permission can only be granted if the remaining 2 stages are followed.
<b>3. Assessment of alternative solutions</b>	Review and examine alternatives to achieve objectives; would these alternative solutions avoid or have less adverse effects on the European sites?
<b>4. Assessment of any 'imperative reasons of overriding public interest' (IROPI)</b>	Where no suitable alternative solution exists and adverse impacts still remain then assess whether the development is necessary for IROPI. If so then identify potential compensatory measures to maintain integrity and coherence of the protected site.

Table 1 – HRA process guide

### Stage 1 - Screening

3.4 EC Directive 92/43/EEC requires that a screening assessment is undertaken by the competent authority, and should consider the following matters:

- assessment of the project including its objectives; and
- assessment of relevant plans, policies and projects; and
- assessment of relevant European sites that could potentially be affected – including their specific characteristics and conservation objectives.

3.5 A screening assessment, both alone and in combination with other identified plans and projects (including those of neighbouring authorities), will identify if any likely significant environmental effects will affect the site.

3.6 When undertaking this stage a precautionary approach is required to decision-making and assessment. This means that when the likelihood of significant effects cannot be ruled out on the evidence available, it must be assumed that a risk of significant effects may exist. These will then need to be addressed through either changes to the proposal/ scheme, avoidance, or through securing mitigation measures.

3.7 If no likely significant affects are identified, the process concludes at this stage.

### Stage 2 – Appropriate Assessment

3.8 Regulation 61 of the Habitats Regulations stipulates that the 'appropriate assessment' process should consider 'the implications for the site in view of that site's conservation objectives'. As such, the HRA needs to understand the reasons for the European sites' designation (i.e. the particular species and habitats present); the condition of each site *vis-a-vis* their conservation objectives; the factors which might adversely impact on the qualifying features; and determine whether or not the impact is likely to be significant.

3.9 A profile of each of the affected sites will need to be drawn up based on up to date information. This information will include the reasons for their designation (the qualifying features and species) as well as the factors likely to have the greatest deleterious effects on each site. This work will be undertaken once options for development are better defined.

3.10 If it is decided that the NLP would be likely to result in significant adverse impacts on a European site, an appropriate assessment will be undertaken. The Regulations do not define 'significant impacts', so an

informed decision will be made on this issue. In order to decide whether an appropriate assessment is required, a variety of information will be considered. This could include:

- a detailed description of the European site, identifying any/all features potentially affected, highlighting the site's conservation objectives;
- a detailed description of the proposed development(s), processes, construction, phases, methods of work etc.;
- details of alternatives considered, along with any mitigation measures proposed to reduce, remove or manage impacts;
- provision of necessary data, evidence and reports – including interpretation of that information to aid decision making;
- appraisal of any other plans or projects likely to have a significant effect, either individually or in combination with the proposed development.

3.11 Natural England (NE) has also produced Site Improvement Plans (SIPs) for some European Sites, which are a useful resource and although not necessarily comprehensive they provide a starting point. They set out NE's understanding of the pressures on, and condition of European designated sites, and identify potential mitigation measures that might be introduced. While this information has been drawn upon in supporting and informing the HRA for the Joint Spatial Plan, there may be a need for further engagement/work to be undertaken.

3.12 More information regarding the Improvement Programme for England's Natura 2000 sites (IPENS)/ LIFE Natura 2000 (LifeN2K) and the Site Improvement Plans (SIP) are also available to view at <https://www.gov.uk/government/publications/improvement-programme-for-englands-natura-2000-sites-ipens>.

3.13 When considering whether a plan or project will adversely affect the integrity of a European site, consideration should be given to the manner in which it is to be delivered.

### **Stage 3 – Alternative Solutions**

3.14 At this stage the assessment will, if necessary, include consideration of alternatives, including how mitigation measures may help to reduce or avoid these effects. The opportunities for alternatives will vary depending upon the location and scale of development proposed, and as such, alternative solutions could include proposals of a different scale, location, phasing, a different scheme or no scheme at all.

3.15 Where it has been demonstrated there are no alternative solutions with lesser effects, the project can still be carried out if 'imperative reasons of overriding public interest' apply.

### **Stage 4 – Considerations of overriding public interest**

3.16 If it is agreed that there are no alternative solutions, and the plan must be progressed for imperative reasons of overriding public interest (IROPI) then it can still do so.

3.17 Where a location hosts a priority natural habitat type or a priority species, the reasons for justifying the scheme must relate to either:

- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or

- any other reasons which the competent authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

#### 4). Preparing the South Gloucestershire new Local Plan 2018 - 2036

4.1 The new Local Plan (NLP) has a clearly defined role, to follow on from the JSP which sets out how the quantum of development proposed will be sustainably accommodated and what infrastructure is required to support it.

4.2 The NLP follows on closely from the JSP and will allocate sites and display them on a Policies Map to promote the requisite amount of development identified for South Gloucestershire through the JSP. In bringing forward new allocations it will provide detail on the intended mix of uses, form, scale, access and quantum of development where appropriate, as well as the new suite of planning policies needed to deliver sustainable development in South Gloucestershire. The overall time and process for bringing forward the new SGLP and how this relates and will work alongside the JSP is set out below at Table 2.

4.3 Consultation on the Local Plan Prospectus was undertaken between January and February 2017. The purpose of that stage was to highlight a number of key work areas that were intended to form the basis of the new SGLP. These were introduced at the start of the Plan's preparation to provide stakeholders with an early opportunity to consider, review and provide early feedback on the Council's emerging thinking. Analysis of the feedback from this consultation, set out in the Report of Engagement and Main Issues, is available to view online (see [www.southglos.gov.uk/newlocalplanfeb2018](http://www.southglos.gov.uk/newlocalplanfeb2018)).

4.4 The JSP has been prepared through a number of stages – details of which can be viewed at <https://www.jointplanningwofe.org.uk/consult.ti/>.

4.5 Details of the stages for preparing the NLP (and the broad timetable associated with them) are set out in Table 1 below, including reference to the relevant stages in the Town and Country Planning (Local Planning) Regulations 2012. N.B. the timings set out are based on and dependent on the JSP programme.

When	Stage	Time	Stage of HRA
February to April 2018	Local Plan consultation document	12 week consultation	Scoping paper
May to September 2018 (follow up engagement with key stakeholders and groups as appropriate.)	Further consultation(s) on the new Local Plan (Regulation 18)	TBC	Draft HRA (if appropriate)
October 2018	Publication Plan (Reg 19/20)	Minimum 6 week consultation	Full Habitats Regulations Assessment (HRA)
December 2018	Submit to Secretary of State (PINS) (Reg 22)	N/A	N/A
February 2019	Examination in Public (EiP)	TBC	Updated HRA dependent upon outcome of EIP

Table 2



4.6 Following the adoption of the JSP, it will be for the Council, working with Natural England, to decide what additional work is necessary to ensure that the new Local Plan meet the requirements of the Conservation of Habitats and Species Regulations 2010 and does not, in combination with any other relevant plans (e.g. those of neighbouring authorities), result in likely significant effects on Natura 2000 sites.

#### **Role of the West of England Green Infrastructure (GI) Plan**

4.7 The West of England authorities, though the Joint Spatial Plan have agreed to prepare a Green Infrastructure Plan. This will ‘identify the strategic measures and mechanisms to support the delivery of the environmental ambitions of the JSP and Local Plans, including mitigation for protected sites’ (Policy 6).

4.8 The GI Plan is an essential element of the mitigation proposed for the JSP through its HRA. One of its key purposes will be to identify the mitigation required in relation to sites of international and national importance at JSP strategic development locations.

4.9 It will need to be prepared alongside the more detailed masterplanning work and provide the reassurance required that the ecological issues identified can be satisfactorily addressed as detailed site allocations are worked up and confirmed through Local Plans.

### **5. Screening**

5.1 The initial screening stages involves the screening in of sites that could feasibly be affected by the new Local Plan, then more detailed screening of the plan’s objectives and policies in terms of sites screened in for further investigation. The screening approach will involve the following stages.

#### **Identification of likely significant effects (LSEs)**

5.2 When considering the LSE of a policy, it is recognised that some policy ‘types’ cannot affect any European sites. Different guidance documents suggest various classification and referencing systems to help identify those policies than can be safely screened out to ensure the HRA focuses on the policies with any potential to result in likely significant effects.

5.3 Table 3 below summarises the characteristics of policies that can usually be ‘screened out’.

<b>Policy type</b>	<b>Commentary</b>
General statements of policy	The EC recognises that plans or plan components that are general statements of policy or political aspirations cannot have significant effects.
General design/ design criteria	A general ‘criteria-based’ policy expresses the tests or expectations of the plan-making body when it comes to consider particular proposals, or relate to design or other qualitative criteria which do not themselves lead to development (e.g. controls on building design).
External plan/ projects	Plans or projects that are proposed by other plans and are referred to in the plan being assessed for completeness.
Environmental protection policies	Policies designed to protect the natural or built environment will not usually have significant or adverse effects.

Table 3

\*EC (2000). Managing Natura 2000 sites: the provisions of Art. 6 ‘Habitats’ Directive 92/43/EEC April 2000 at 4.3.2

5.4 An assessment of likely significant effects has been undertaken alongside the preparation of the Joint Spatial Plan.

#### **Identification of relevant sites**

5.5 Following consideration of the approach taken to HRA for the JSP and for previous Local Plan documents in the West of England, a list of Natura 2000 sites within South Gloucestershire and within 15km from the boundary, as shown in Figure 2 (below), have been identified. These sites are:

- Avon Gorge Woodlands Special Areas of Conservation (SAC);
- Bath & Bradford-on-Avon Bats Special Areas of Conservation (SAC);
- Chew Valley Lake Special Protection Areas (SPA);
- River Usk / Afon Wysg Special Areas of Conservation (SAC);
- River Wye / Afon Gwy Special Areas of Conservation (SAC);
- Rodborough Common Special Areas of Conservation (SAC);
- Severn Estuary Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar site;
- Wye Valley & Forest of Dean Bat Sites Special Areas of Conservation (SAC); and
- Wye Valley Woodlands Special Areas of Conservation (SAC).

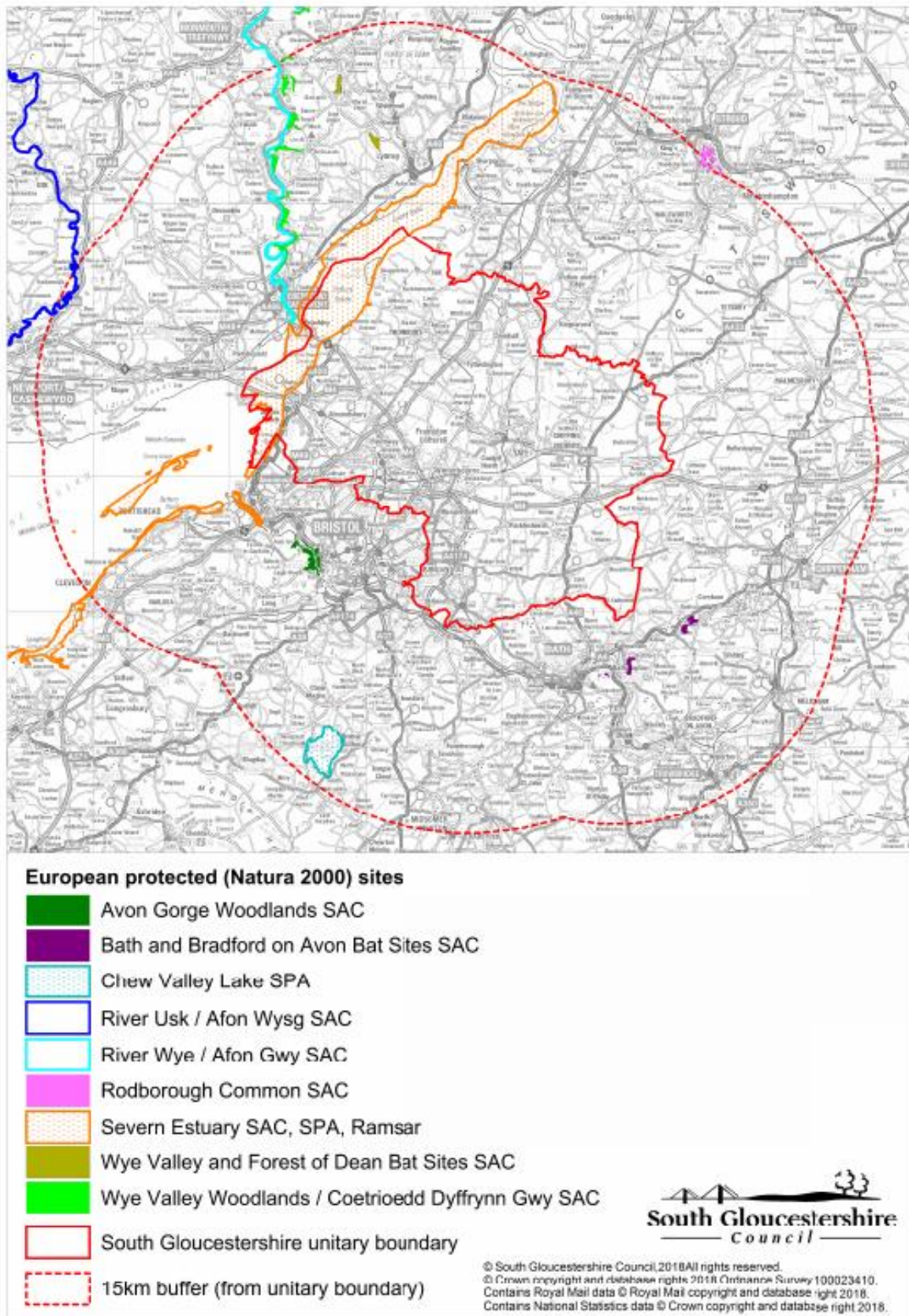


Figure 2: 15km screening radius with Natural 2000 sites.