

TIPNER WEST REGULATORY PANEL

COASTAL CONCORDAT WORKING PROTOCOL BETWEEN:

- Portsmouth City Council as local planning authority (PCC)
- Natural England (NE)
- Environment Agency (EA)
- Marine Management Organisation (MMO)
- Historic England (HE)

And inclusive of:

- Royal Society for the Protection of Birds (RSPB)
- Hampshire and Isle of Wight Wildlife Trust (HIWWT)

In relation to proposed strategic development at TIPNER WEST AND HORSEA ISLAND EAST

1. This note has been prepared to confirm the working arrangements agreed between the above-mentioned bodies in relation to the City Council's proposed strategic development at Tipner West and Horsea Island East. The City Council has several distinct functions in relation to this development:
 - i. *Developer* - the Council's Strategic Developments team
 - ii. *Local Planning Authority - Development Management* (Project-level)
 - iii. *Local Planning Authority - Planning Policy* (Plan-Making)
 - iv. *Competent Authority* - Habitat Regulations Assessment pursuant to the Habitat Regulations 2017 (see para.5)
2. The proposed development ("the Project") is anticipated to comprise a new marine hub of 58,000sqm employment floorspace, between 814 and 1,250 residential dwellings, a bridge between Tipner West and Horsea Island East, flood defences (incorporating land raising as required), local convenience retail and community facilities and associated highway and landscaping works.
3. The proposed development requires Planning Permission and Marine Licences. It may also require a Transport and Works Act Order and other consents and permits pursuant to transport and environmental legislation.
4. The proposed development would be EIA development for the purposes of:
 - Regulation 15 (1) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (The 2017 Terrestrial Regulations);
 - Rule 8(1) of The Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (as amended) (the 2006 Rules);
 - The Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) (the 2007 Marine Regulations).
5. Furthermore, the proposed development is considered to have the potential to give rise to likely significant effects to the following Habitats Sites abutting (and

partly covering) the site, forming part of the National and international site network: *Portsmouth Harbour SPA, Dorset and Solent Coast SPA, Portsmouth Harbour Ramsar site*. Consequently, the development proposals (and draft Local Plan site allocation) will require Appropriate Assessment pursuant to The Conservation of Habitats and Species Regulations 2017 (as amended)(***The Habitat Regulations***) including adherence to the derogation requirements under Regulations 64 and 68.

6. There may also be potential for likely significant effects in respect of the *Solent Maritime SAC, Chichester and Langstone Harbours SPA/Ramsar, the Solent and Southampton Water SPA/Ramsar, Solent and Isle of Wight Lagoons SAC*, all forming part of the national and international site network and within a 10km Zone of Influence, together with SSSI, NNR, LWS and non-statutory site designations.
7. In line with the principles of the Coastal Concordat 2019¹ (as updated 2021, and to which the City Council is signatory), the above-mentioned bodies have agreed to establish a Tipner West Regulatory Panel to align consultation processes and avoid duplication in relation to all HRA and EIA matters, for the benefit both of the Project and for the progression of the draft Local Plan to adoption. The competent authority for the EIA and HRA respectively will be PCC as local planning authority (for Project and Plan-making purposes).
8. This Working Protocol should be read alongside the agreed **Handling Arrangements** for the Project (a copy attached to this Protocol). Regulation 64(2) of the EIA Regulations has effect where, as here, the relevant local planning authority is also the same legal person “*bringing forward the (relevant) proposal for development*”. In these circumstances, the authority is required to “*make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal*”.

Working Arrangements (Provisional Agreement)

9. It is proposed that PCC as local planning authority and competent authority for HRA purposes, manage the Regulatory Panel and chair the meetings thereof.
10. It is proposed that the Panel convenes on an approximately monthly basis following the completion of this Protocol, up to the point of submission of a planning application by the Developer or adoption of the new Portsmouth Local Plan 2040, whichever is the later. PCC will prepare associated meeting agendas and minutes for distribution amongst the parties, allowing for reasonable advance notice and suggestions/amendments. The Developer will be invited to the Panel to present updated material relevant to HRA/EIA for the Project.
11. The parties agree to work constructively and collaboratively in the assessment and discussion of information submitted by the Developer with a view to ensure the prompt identification (and as far as possible, resolution) of issues and concerns and to support the competent authority in undertaking robust

¹ <https://www.gov.uk/government/publications/a-coastal-concordat-for-england/a-coastal-concordat-for-england-revised-december-2019>

Appropriate Assessment of the development in accordance with the Habitat Regulations.

12. All pre-application documents provided by the Developer and the minutes of Panel meetings are to be treated as confidential. This provision does not however override any requirement on the Council and/or Panel members to disclose information under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 (as amended) or in the event that the Council is directed to release information by the Information Commissioner.
13. Letters sent to consultees, site and press notices should reference key Planning (including Marine), HRA and EIA Regulations. The lead authority will issue these to the applicant and relevant statutory and non-statutory consultees unless otherwise agreed between the parties.
14. The drafting of planning and other consent conditions/obligations should wherever possible be coordinated to minimise overlap and duplications of control and/or information requirements.
15. Guest contributing parties may be invited to sit on the Panel from time to time at the discretion of Panel members, subject to agreement of such guest parties to the principles of collaborative and constructive engagement and confidentiality as set out in clauses (11) and (12) of this Protocol.

Regulator-specific clauses

Natural England

1. Natural England have previously, and are currently, intending to deliver advice to the developer through our charged Discretionary Advice Service.
2. Natural England seek to include time spent working with the Regulatory Panel as chargeable against the DAS contract, depending on the type of work that is carried out with the Regulatory Panel. The majority of the work with the panel is closer to 'pre-app' advice and difficult for us to resource outside of our charged service. It is likely that some elements of the statutory engagement will take place within the panel, and Natural England will not seek to charge for this time. Any advice provided as part of work within this panel will be the best advice that can be given based on the information provided so far. Its quality and detail is dependent upon the quality and depth of the information which has been provided. It does not constitute a statutory response or decision, which will be made by Natural England acting corporately in its role as statutory consultee to the competent authority after an application has been submitted.
3. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by Natural England in due course.
4. The final judgement on any proposals by Natural England is reserved until an application is made and will be made on the information then available, including any modifications to the proposal made after receipt of discretionary advice. All pre-application advice is subject to review and revision in the light

of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy, guidance or law.

5. Natural England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Natural England.

EA clauses

1. The Environment Agency have previously delivered advice to the developer through our cost recovery service. Time spent working with the regulatory panel is likely to fall under this service depending on the type of work that is carried out. It remains to be seen whether some of the work through the panel would be considered to fall within our statutory remit. Decisions on this will need to be taken on an ongoing basis.
2. Any advice provided as part of the work within this panel will be the best advice that can be given at the time, based on the information provided. It does not constitute a statutory response or decision, which will be made by the Environment Agency in its role as statutory consultee to the competent authority after an application has been submitted. Any advice may also be subject to change.
3. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by the Environment Agency in due course.
4. The final judgement on any proposal is reserved until the Environment Agency is formally consulted on any application and will be made on the information that is formally submitted as part of any proposal, including any modifications to the proposal made after receipt of pre application advice. All pre-application advice is subject to review and revision in the light of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy, guidance or law.
5. For non-statutory work the Environment Agency cannot commit to a 21 day response time (as per our statutory work). Response times will vary according to the complexity of request and other workload commitments at any given time. Timescales will need to be agreed on an individual basis.

MMO

In addition to the working arrangements agreed in the previous section, the following other agreements apply to the MMO's consultation requirements for the marine licence application:

- The MMO is awaiting written confirmation from the Applicant that they wish the MMO to attend Panel meetings.

- In most instances, the MMO marine licencing case team will coordinate advice from the MMO departments (e.g. the MMO coastal office), as well as Cefas, and provide to the lead authority in a single response.
- The MMO will consider regulation 10 of the Marine Works (Environmental Impact Assessment) Regulations 2007 as amended which allows for deferring the EIA consent decision to another regulating authority providing that the MMO is satisfied that the marine aspects of the project have been adequately assessed.
- Another Competent Authority's HRA (or part of) can only be adopted by the MMO at the Appropriate Assessment stage, therefore the MMO need to carry out a Likely Significant Effects (LSE) test. The MMO must be satisfied that the other Competent Authority's assessment and subsequent decision is sufficient to meet the requirements of the Habitat Regulations in relation to the proposed development. The MMO may need to carry out a new AA if:
 - (i) the circumstances have changed
 - (ii) the proposal has altered
 - (iii) new arguments are being put forward that cast doubt upon the conclusions of the earlier assessment

The following are the MMO KPIs that should be considered when programming the consents phase of the project. It should be noted that the MMO will put case (e.g. EIA Scoping, MLAs) on hold if additional information is required from the applicant, or others, to allow the case to be progressed. The initial target date will shift until the case is taken off hold.

- Environmental Statement Review - 13 weeks
- MLA - 13 weeks

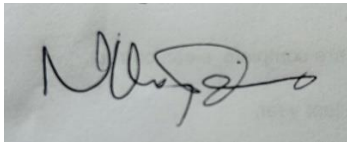
Historic England

1. Historic England intend to deliver advice to the applicant through a charged Discretionary Advice Service.
2. Any advice provided as part of work within this panel will be is the best advice that can be given based on the information provided so far. Its quality and detail is dependent upon the quality and depth of the information which has been provided. It does not constitute a statutory response or decision, which will be made by Historic England acting corporately in its role as statutory consultee after an application(s) has been submitted.
3. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by Historic England in due course.
4. The final judgement on any proposals by Historic England is reserved until an application is made and will be made on the information then available, including any modifications to the proposal made after receipt of discretionary advice. All pre-application advice is subject to review and revision in the light of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy, guidance or law.

5. Historic England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Historic England.

Signed for:

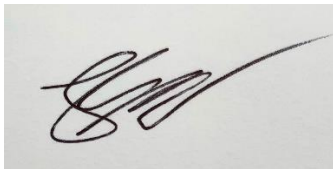
Portsmouth City Council



Name: Nick Lloyd-Davies

Date: 23rd February 2024

Natural England:



Name: Jonathan Shavelar

Date: 29th February 2024

Environment Agency:



Name: Laura Lax

Date: 11th March 2024

Marine Management Organisation:



Name: Linda Brewis

Date: 24th May 2024

Historic England



Name: Johanna Short

Date: 15 April 2024

Guest Contributor Agreement:

Royal Society for the Protection of Birds (RSPB):



Name: Carrie Marchbank

Date: 28 March 2024

Hampshire and Isle of Wight Wildlife Trust:



Name: Hannah Terrey, Director of Advocacy and Engagement

Date: 29th April 2024