

Compendium of Key Tipner West Correspondence



November 2025

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1.

IROPI Opinion letters (February and July 2025)



Ministry of Housing,
Communities &
Local Government

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Please ask for: Mike Hale
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Your ref:

Our ref: PCU/RARE/Z1775/3352981

Date: 28 February 2025

Dear Lucy

Referral to the Secretary of State under Regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended).

**Imperative Reasons of Overriding Public Interest opinion request on a Pre-Submission allocation in Portsmouth City 2040 Local Plan
Tipner West and Horsea Island East**

1. I refer to your letter of 1 October 2024, notifying the Secretary of State under regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) ("The Habitats Regulations") that Portsmouth City Council proposes the above allocation in its Pre-Submission Local Plan ("LP"), notwithstanding a negative assessment of the implications for the Portsmouth Harbour Special Protection Area ("SPA") and Ramsar site.
2. The Secretary of State, as the appropriate authority ("AA"), must consider, and notwithstanding her further consideration at the project stage, may give her opinion, whether Imperative Reasons of Overriding Public Interest ("IROPI") exist, where a local planning authority as competent authority ("CA") proposes to agree to a plan, notwithstanding that negative assessment.

The proposal

3. The proposed allocation (Policy PLP3) in the emerging LP is for a marine employment hub ("the hub") with a working quayside, involving dredging to

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provide deep water accesses and up to 58,000 m² of marine employment floorspace; 814-1,250 residential dwellings (enabling development); a bridge between Tipner West and Horsea Island East, for sustainable transport modes only; flood defences along the peninsula edges of Tipner West and Horsea Island East; shops selling essential goods; and meeting places for the local community.

4. The Secretary of State notes that the CA considers the proposed LP allocation is critical to the regeneration of Portsmouth. However, it also considers that the proposal would have direct adverse effects on Portsmouth Harbour SPA/Ramsar/SSSI site.
5. As the proposed LP allocation is not directly connected with or necessary for the management of the site and is likely to significantly affect a protected site, the CA must, in accordance with regulation 105 of the Habitats Regulations, make an Appropriate Assessment of the implications of the proposed allocation for the site, in view of the site's conservation objectives. The CA produced a Habitats Regulations Assessment ("HRA"), which includes an Appropriate Assessment, that concluded that the LP policy will result in adverse effects, including the direct loss of habitat from the SPA/Ramsar site. It also produced a HRA supplement which included further information about the compensation proposed.
6. In light of the conclusions of the Appropriate Assessment, the CA as plan-maker must determine whether it can ascertain that the proposal will not adversely affect the integrity of the site. The CA, and Natural England ("NE"), have concluded that the LP allocation would have an adverse impact on the integrity of European protected sites. This is due to the fact that it will inevitably cause the loss of 2.1ha of intertidal habitat, as a result of dredging; likely cause the loss of 0.3ha of intertidal habitat, for the insertion of bridge piers; and possibly cause the loss of 0.5ha of subtidal habitat, as a result of land reclamation for the hub; and up to 3.6ha of terrestrial habitat for housing, on land south of the firing range.
7. The Secretary of State is satisfied that the Appropriate Assessment has been carried out in accordance with the Habitats Regulations and also considers that the CA has fulfilled the requirements of regulation 107(3), requiring the provision of information to the AA.
8. As required, the Secretary of State has herself consulted under regulation 107[4A] (a) and (b) with the Joint Nature Conservation Committee ("JNCC") and devolved nations. Based on the particular case facts of the request, she has also consulted with the Marine Management Organisation ("MMO") under regulation 107[4A] (d).

Secretary of State's consideration

9. The Secretary of State is required to ensure that the proposed allocation meets the requirements of the Habitats Regulations. She notes that the CA has undertaken the required consideration as to whether there is no alternative solution or site and the assessment undertaken indicates that the

CA considers that there are no viable alternative solutions that would have no effect or a lesser effect on the site's integrity than the proposed allocation, and would fully meet the objectives of the draft LP policy PLP3.

10. This decision letter sets out her opinion as to whether she considers the proposed allocation has IROPI. In reaching this opinion, and in addition to considering the views of the JNCC and respondents from the devolved nations, the Secretary of State has also noted the views of NE and the Environment Agency ("EA"), as to the extent that suitable compensation has been agreed and will be delivered.

Secretary of State's consideration of Imperative Reasons of Overriding Public Interest

11. If there is no alternative solution, the decision-maker should consider whether there are IROPI to justify the plan, despite a potentially negative effect on site integrity. Different tests apply depending on whether the site hosts a priority natural habitat type or species. A plan may only be agreed if there is a finding that IROPI exist (and the other requirements of the Habitats Regulations are satisfied), with this usually relating to human health, public safety or beneficial consequences of primary importance to the environment.
12. The Secretary of State has considered the CA's case for the allocation on the grounds of IROPI. The CA considers there are significant public safety benefits which constitute IROPI. The development will deliver required sea defences for the northern part of Portsea Island, where there is a risk to human health and safety and more than 200 homes at risk from flooding, should the defences at Tipner West and Horsea Island East fail, allowing flood waters to pass through Tipner East and Stamshaw. The CA also considers there are human health and environmental benefits through remediation of the site, due to the potential for contaminant leachate and risk to the integrity of the SPA/Ramsar site. There are also claimed social and economic benefits arising from the hub, which would help deliver a national strategic ambition and develop a world leading marine and maritime economy. However, in the Secretary of State's view IROPI has not been demonstrated.
13. While the risk to existing properties is the key relevant IROPI ground, this is separate to any public health and safety considerations relating to the proposed site allocation PLP3 or protection afforded to other proposed allocations. The Secretary of State has therefore considered the guiding principles developed, following public consultation on options as part of its emerging Local Plan on the Tipner Strategic Development Area, and notes that delivery of sea defences does not feature nor is it well related to wider shoreline defences for the coastal area, such as envisioned through the North Solent Shoreline Management Plan. She has further considered the overall objectives of draft policy PLP3 and in her opinion the objectives are led by the delivery of the hub. While the continued growth of the marine economy in the Solent area is a matter of regional strategic importance, this and other public benefits, including site decontamination are not considered significant IROPI grounds.

14. Therefore, her view is that the delivery of the sea defences at Tipner West and Horsea Island East is not evidenced as central to the allocation rationale, as a critical precursor to the hub. Given the proposed marine employment hub is not in itself IROPI relating to human health and public safety overall, the Secretary of State is not satisfied, having regard to the national interest, that the reasons advanced by the CA constitute IROPI.

Other matters

15. Given the AA has concluded IROPI has not been demonstrated, the AA has not further considered measures to ensure that the overall coherence of the network of SPAs and SACs is protected.

Conclusion and Decision

16. The Secretary of State has undertaken a comprehensive assessment of the proposed allocation in the Pre-Submission LP and considered the national interest as well as evidence submitted by the CA, NE and other statutory agencies, organisations and bodies, in addition to those resulting from statutory consultation undertaken as AA. She considers that insufficient justification has been made to demonstrate that there are IROPI grounds for the inclusion of the allocation in the plan. The Secretary of State concludes that, overall, the test of IROPI in the Habitats Regulations has not been satisfied.
17. I am sending a copy of this letter to NE, the JNCC, MMO and the devolved administrations.

Yours sincerely

Andrew Lynch

Andrew Lynch

Head of Jurisdiction and Environmental Casework

This decision was made by the Minister of State, Matthew Pennycook, on behalf of the Secretary of State, and signed on her behalf



Ministry of Housing,
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Your ref:

Our ref: PCU/RARE/Z1775/3352981

Date: 31 July 2025

Dear Lucy

Referral to the Secretary of State under Regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended).

**Imperative Reasons of Overriding Public Interest opinion request on a Pre-Submission allocation in Portsmouth City 2040 Local Plan
Tipner West and Horsea Island East**

1. I refer to your letter of 1 October 2024, notifying the Secretary of State under regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) ("The Habitats Regulations") that Portsmouth City Council proposes the above allocation in its Pre-Submission Local Plan ("LP"), notwithstanding a negative assessment of the implications for the Portsmouth Harbour Special Protection Area ("SPA") and Ramsar sites.
2. The Secretary of State, as the appropriate authority, must consider, and notwithstanding her further consideration at the project stage, may give her opinion whether Imperative Reasons of Overriding Public Interest ("IROPI") exist where a local planning authority as competent authority ("CA") proposes to agree to a plan, notwithstanding that negative assessment.
3. An opinion was issued on 28 February 2025 which stated the Secretary of State was not satisfied, having regard to the national interest, that the reasons advanced by the CA constituted IROPI. That opinion was withdrawn on 9

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May and is being reissued today. This reissued opinion seeks to address the CA's concerns with the first opinion.

4. The Secretary of State notes that on 29 April 2025, an updated Local Development Scheme ("LDS") was approved at an Extraordinary Cabinet meeting of Portsmouth City Council, and would have effect from 30 April 2025. That LDS provides that an addendum to the current Pre-Submission LP will be consulted on in Winter 2025, before being submitted to the Secretary of State for Examination in Spring 2026.

Background

The Proposal

5. The proposed allocation (currently draft Policy PLP3) in the emerging LP is for a marine employment hub ("the hub") with a working quayside, involving dredging to provide deep water accesses and up to 58,000 m² of marine employment floorspace; 814-1,250 residential dwellings (enabling development); a bridge between Tipner West and Horsea Island East, for sustainable transport modes only; flood defences along the peninsula edges of Tipner West and Horsea Island East; shops selling essential goods; and meeting places for the local community.
6. The Secretary of State notes that the CA considers the proposed LP allocation is critical to the regeneration of Portsmouth. However, it also considers that the proposal would have direct adverse effects on the Portsmouth Harbour SPA/Ramsar/SSSI sites. While the site also falls within the Solent and Dorset Coast SPA, the CA concludes that this SPA was not at risk of likely significant effects arising from the proposed allocation.
7. The proposed LP allocation is likely to significantly affect the SPA/Ramsar sites, and is not directly connected with or necessary for the management of that protected site. The CA therefore must, in accordance with regulation 105 of the Habitats Regulations, make an Appropriate Assessment of the implications of the proposed allocation for the sites, in view of the sites' conservation objectives.

Habitats Regulations Assessment by Portsmouth City Council

8. The CA produced a Habitats Regulations Assessment ("HRA"), which includes an Appropriate Assessment, which concluded that the LP policy will result in adverse effects, including the direct loss of habitat from the SPA/Ramsar sites. This is due to the fact that it will inevitably cause the loss of 2.1ha of intertidal habitat, as a result of dredging; likely cause the loss of 0.3ha of intertidal habitat, for the insertion of bridge piers; and possibly cause the loss of 0.5ha of subtidal habitat, as a result of land reclamation for the hub; and up to 3.6ha of terrestrial habitat for housing, on land south of the firing range. Potential indirect impacts have also been identified, such as atmospheric pollution and disturbance from construction. It also produced a HRA supplement which included further information about the compensation proposed.

9. The Secretary of State is satisfied that the Appropriate Assessment has been carried out in accordance with the Habitats Regulations and considers that the CA has provided the requisite information to the Secretary of State as the appropriate authority, as required by regulation 107(3).

Other Derogation Tests

10. The Secretary of State notes that the CA has undertaken the required consideration as to whether there is an alternative solution or site. The assessment undertaken indicates that the CA considers that there are no viable alternative solutions that would fully meet the objectives of the draft LP policy PLP3 which would have a lesser effect or no effect at all on the site's integrity. The Secretary of State notes paragraph 8.14 of the HRA states that:

“...the assessment of alternative solutions to each element of the proposal, as conducted below, is somewhat theoretical. The financial reality is such that it is likely the allocation will be delivered as a package or not at all.”

11. As such, the assessment of alternatives was carried out against the objectives of the whole of draft LP policy PLP3.
12. In addition, the Secretary of State has noted the views of Natural England (“NE”) and the Environment Agency, as to the extent that suitable compensation has been agreed and will be delivered.
13. While the Secretary of State's opinion as to the adequacy of the assessment of alternatives and suitable compensation are not required for her opinion on IROPI under regulation 107, and therefore do not form part of her consideration for this opinion, it is useful context to note.

Appropriate Authority Consultation

14. As required under regulations 107(4A)(a) and (b), the Secretary of State has consulted with the Joint Nature Conservation Committee (“JNCC”) and devolved nations. Based on the particular facts of this request, she has also consulted with the Marine Management Organisation (“MMO”) under regulation 107(4A)(d). Responses to this consultation were received from the JNCC and the Scottish Government (both of which are appended to this letter).

Secretary of State's Consideration of IROPI

15. The CA is asked to consider whether there are IROPI to justify the plan, despite a potentially negative effect on site integrity. These may include reasons relating to human health, public safety, or beneficial consequences of primary importance to the environment, plus reasons relating to social or economic benefit.

16. The Secretary of State has considered the CA's case for the allocation on the grounds of IROPI, as set out and summarised below.

Public Interest Benefits of the Proposed Plan

17. While some of the claimed IROPI relate only to certain elements of the draft plan allocation, the Secretary of State has proceeded on the basis that the different elements are to be considered as a single "package" given the financial position whereby the Southampton and Portsmouth City Deal of 2013 ("City Deal"), as well as delivery of housing, enable the main elements of hub, decontamination and improved flood defences.
18. The broad rationale for the proposed allocation was established by the City Deal. The Tipner-Horsea Island site was described as consisting of five pieces of land: Port Solent; Tipner West; Tipner East; Horsea Island East; and the Tipner Firing Range.
19. The Guiding Principles for development of the site seek to guide progression of the emerging PLP3 allocation in respect of Tipner West and Horsea Island East. There were set out in the CA's letter of 1 October 2024:

"(1) Develop options that have regard to the Conservation Objectives of the SPA/Ramsar Sites in respect of their bird populations and other qualifying features, subject to the procedures set out within the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitats Regulations).

(2) Deliver nature-focused place-making to contribute to Greening of the City, in line with the City Vision 2040, which achieves more than the statutory biodiversity requirement.

(3) Provide a minimum of 814 homes and maximum of 1,250 homes & a minimum of 58,000 sqm of marine focussed employment space (Minimum affordable housing at 30%) alongside enabling infrastructure to satisfy the terms of City Deal.

(4) Maximise local job creation.

(5) Minimise costs and impact on City Council finances & services to the public.

(6) Seek to continue to work in partnership with Royal Society for the Protection of Birds (RSPB), Hampshire & Isle of Wight Wildlife Trust (HIWWT), Ministry of Defence and Historic England to develop proposals that are capable of satisfying the regulatory requirements of Natural England (NE), the Marine Management Organisation (MMO) and the Environment Agency (EA).

(7) Minimise land reclamation to meet the principles listed above."

20. The Project Objective as set out in paragraph 4.13 of the Pre-Submission Portsmouth LP dated July 2024 is:

“To create a marine employment hub in the Solent region with access to deep water, and of sufficient scale to enhance and expand the marine business cluster, along with critical infrastructure, and sufficient housing to help enable delivery of the development as well as support the growth in the marine workforce.”

21. On a plain reading of the Project Objective, the Secretary of State has therefore interpreted the position as being that the delivery of the hub element of the overall package is the main element of the proposed plan allocation, in turn partially facilitating flood defence works, land remediation, and other public benefits.

Flooding Risk

22. The IROPI request acknowledges that the requirement for flood defences stems from non-statutory coastal policy independent of the LP. This is summarised below.

23. The ‘Hold the Line’ policy set out in the Shoreline Management Plan (“SMP”) extends for all three ‘Epochs’ covering a 100-year period (Epoch 1: 0 to 20 years; Epoch 2: 21-50 years; Epoch 3: 51-100 years). ‘Hold the Line’ means that it is necessary to maintain or upgrade the level of protection provided by existing coastal defences, upgrades being necessary due to the predicted effects of climate change. The SMP was found to demonstrate IROPI in a 2011 decision issued by the Department for Environment Food and Rural Affairs. The SMP covers a much wider geographic area than the case before the Secretary of State now. It was considered that as flooding and coastal erosion would threaten 51,000 residential and commercial properties, two major ports, industrial assets and key infrastructure, that a strong IROPI case had been made in that instance.

24. The argument for IROPI in respect of flooding risk in this instance focusses on there being no current prospect that the flood defences envisaged in the City Deal and the SMP will be delivered without developer funding through Policy PLP3. The cost of defending the existing land mass is currently estimated to be in the order of £35m.

25. The Portsea Island Coastal Strategy Study (2011) identified the key concern for Tipner as requiring improvements of defences to protect the Portsmouth Harbour SPA from ingress of harmful contaminants caused by exposure of the hinterland to a breach in the defences. It identified a single residential property as being at risk of a breach (0.5% AEP storm).

26. The development is intended to subsidise delivery of required sea defences for the northern part of Portsea Island, where there is a risk to human health and safety and more than 200 existing homes at risk from flooding, should the defences at Tipner West and Horsea Island East fail, allowing flood waters to pass through Tipner East and Stamshaw.

27. Currently these defences are subject to a 'Hold the Line' approach under the North Solent SMP, which is a high-level, non-statutory, policy document setting out a framework for future management of the coastline and coastal defences. The CA considers that in the absence of the proposed LP allocation or alternative funding, there would likely be a scenario of continued maintenance and urgent repair of defences. In this scenario, defence works would be identified purely on the basis of immediate need, determined by emergency failures resulting in isolated, but increasingly frequent, flood events. In the long-term, the CA's opinion is that this emergency patching would cease to become effective.
28. Paragraph 8.86 of the Habitat Regulations Assessment of the Portsmouth LP concludes that the need to mitigate significant flooding risks comprise imperative reasons that are in the public interest.
29. In considering the weight to be attached to the delivery of sea defences via the PLP3 allocation, the Secretary of State has borne in mind regulation 9 of the Habitats Regulations, in particular regulation 9(3) which provides that a CA, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions. This duty will continue in respect of the SPA/Ramsar sites notwithstanding her finding in respect of IROPI.
30. The Secretary of State recognises that there are benefits arising from the delivery of new sea defences in comparison to the likely position in the 'Hold the Line' approach. She considers that the weight to be attached to delivery of these defences is moderate in the short term, potentially rising to significant in the longer term should the Hold the Line approach prove to become less effective. She also considers that the certainty of harm to the SPA/Ramsar sites arising from the PLP3 allocation is greater than the certainty of harm arising in the Hold the Line approach in the short term. Given the inherent uncertainties associated with longer term forecasts, funding and opportunities, she considers that the weight to be attached to this benefit is moderate for the purposes of this opinion.

Contaminate Leachate Risk

31. The CA also considers there would be human health and environmental benefits delivered by the LP allocation through the remediation of the sites. The CA considers that this remediation would address risks arising from the potential for contaminant leachate to damage the integrity of the SPA/Ramsar sites.
32. Should flood defences fail, the CA considers that there is a risk of contaminants being released into Portsmouth Harbour. This is considered to pose a risk to the integrity of the designated sites and citation species and habitats. The Secretary of State notes that the waterbody where works are proposed is currently of 'moderate' ecological status and 'fails' on chemical status. She also notes that the HRA recognises that there may be conflicts between the damage to the international site caused through pollution and the

encroachment on the SPA/Ramsar sites if defences have to be constructed to protect the area.

33. In considering the weight to be attached to the claimed benefits, the Secretary of State has had regard to NE's Supplementary Advice Note for the SPA / Ramsar sites. This identifies the water quality status to be in poor condition, affected by anthropogenic impacts including treated sewage effluent, diffuse agricultural fertiliser runoff and flood alleviation discharge.
34. While recognising that site remediation would bring important benefits in terms of contaminate leachate, the Secretary of State considers that current concerns relating to the SPA/Ramsar sites arise from anthropogenic impacts. Site remediation would do little to affect these concerns.
35. The Secretary of State considers that the weight to be attached to remediation of the site is linked to the efficacy of the sea defences. As with her assessment of flooding risk, she considers that the weight to be attached to the remediation benefits is moderate in the short term, potentially rising to significant in the longer term. She has also borne in mind that further direct pollution could arise from construction works in respect of plan allocation PLP3. She considers that the PLP3 allocation does not offer significant benefits in respect of likelihood of harm arising from contaminate leachate in the short term. Given the inherent uncertainties associated with longer term forecasts, funding and opportunities, the Secretary of State considers that the benefits arising from this matter should carry moderate weight.

Social and Economic Benefits and Enabling Development

36. There are also claimed social and economic benefits arising from the hub, which would help deliver a national strategic ambition and develop a world leading marine and maritime economy.
37. The request for an IROPI opinion considers that delivery of the hub has imperative social and economic reasons. The claimed need for the hub is national (market demand of the UK marine sector), regional (growth of the marine economy in the Solent area), and local (addressing deprivation and skills shortages). A central government grant of £48.75m was part of the City Deal, the purpose of which included maximising the economic impact of marine and maritime assets in the area, and the transfer of land at the site from the Ministry of Defence to the CA.
38. Paragraph 8.114 of the HRA states:

“the delivery of development to meet the needs of the UK marine sector is considered to be both imperative and critical and in the public interest in support of the draft allocation.”
39. Appendix G of the HRA Supplement (October 2024) quantifies some of these benefits as being the delivery of 58,000 m² of marine employment floorspace and 1,900 FTE jobs.

40. National strategies focus on a number of key marine and maritime clusters.
41. The provision of enabling development is considered by the CA to be both imperative and in the public interest to ensure the delivery of the site allocation and the benefits associated with that.
42. The Secretary of State considers that taken together, the social and economic benefits, and enabling development, should carry significant weight.

Other Benefits

43. Other claimed IROPI benefits relate to the social and economic benefits arising from the delivery of housing in and of itself (rather than as an enabler of the wider development), sustainable transport and connectivity, and public access to open space and heritage assets. In the opinion of the Secretary of State these benefits carry more limited weight than those mentioned in the preceding paragraphs. While a clear benefit of the proposal, the delivery of between 814 and 1,250 homes has to be seen in the context of a requirement in the area for 899 new dwellings per year (under the standard methodology figure). Similarly, while recognising that improving the condition of, and access to, five listed buildings with a maritime history is a highly desirable outcome, the scale of the benefits does not match those identified in the preceding paragraphs. Improved opportunities for access to open space are also welcome, but in a situation where 91% of people in Portsmouth already use their local parks or playgrounds¹, the weight to be attached to this benefit is more limited. They are not directly related to protecting the long-term integrity of Habitats sites.

Risks of Harm from the Proposed Allocation

44. Against the wide range of public benefits claimed by the CA in respect of the draft allocation, the Secretary of State has considered the harm arising from the direct adverse effects on the Portsmouth Harbour SPA/Ramsar sites.
45. The Secretary of State agrees that the correct approach is to assume a worst-case scenario. As set out in paragraph 8 of this opinion, that envisages the loss of up to 6.5 hectares of different habitat types. Table 1 of the HRA Supplement sets out the functional importance of those areas within the SPA/Ramsar sites that may be lost to development. The subtidal and terrestrial habitats (up to 4.1 ha of which will be lost) were given a high level of functional importance. Intertidal habitat was rated as both high (0.3ha) and medium (2.1ha). The Secretary of State attaches substantial weight to the direct loss of habitat.
46. The Secretary of State notes that development schemes in Habitats sites can result in the disturbance of qualifying SPA / Ramsar bird species in Habitats sites or functionally linked habitats through several mechanisms. Noise and visual disturbance arising from construction activities may result in behavioural changes (e.g. flight from the nest, cessation of foraging) in birds.

¹ <https://www.portsmouth.gov.uk/services/leisure/parks/parks-gardens-and-open-spaces/#map>

Furthermore, post-construction disturbance from site usage, road traffic and operational lighting might also arise. The Portsmouth Harbour SPA/Ramsar are identified as being sensitive to visual and noise disturbance, and at least some of the construction works to deliver the 13,603 net new dwellings and at least 138,429m² of employment land will be carried out within or directly adjacent to the Portsmouth Harbour SPA / Ramsar sites. The Monitoring and Delivery Framework element of draft allocation PLP3 envisages that development will take place over a 15-year timeframe. Given the sensitivity of the site and the lengthy timeframe envisaged, the Secretary of State attaches significant weight to this harm.

47. In respect of recreational pressure, paragraph 8.122 of the HRA refers to improved management to mitigate / avoid recreational disturbance. While recognising that this may be possible, the Secretary of State considers that the delivery of between 814 and 1,250 homes on the PLP3 allocation would represent a significant increase in nearby residents, and she considers that adverse effects arising from recreational pressures in this regard cannot be ruled out, and she considers that this should attract moderate weight.

Secretary of State's Conclusion on Balance of Benefits and Harms

48. Taking all of the above into account, the Secretary of State has considered whether the benefits are sufficient to override the identified harms to the Portsmouth Harbour SPA/Ramsar sites and constitute IROPI.
49. The Secretary of State has attached significant weight to the benefits of the scheme in terms of social and economic benefits and enabling development, moderate weight in respect of flooding and contaminate leachate risks, and more limited weight to the benefits identified in paragraph 43 above.
50. Against these benefits, she has attached substantial weight to the direct loss of 6.5ha of habitat, significant weight to the harms from noise and visual disturbance arising from construction activities, and moderate weight in respect of recreational pressure.
51. Overall, in the opinion of the Secretary of State and having regard to the national interest, the identified benefits are not sufficient to override the harms arising to the Portsmouth Harbour SPA/Ramsar sites and IROPI for the proposed allocation have not been demonstrated.

Other matters

52. Given the Secretary of State has concluded IROPI have not been demonstrated, the Secretary of State has not further considered measures to ensure that the overall coherence of the network of SPAs and SACs is protected.

Conclusion and Decision

53. The Secretary of State has undertaken a comprehensive assessment of the proposed allocation in the Pre-Submission LP and considered the national

interest as well as evidence submitted by the CA, NE and other statutory agencies, organisations and bodies, in addition to those resulting from statutory consultation undertaken as the appropriate authority. She considers that insufficient justification has been made to demonstrate that it is essential that the allocation should proceed for public interest grounds, and she has accordingly concluded that the public interest does not outweigh the predicted harm, or risk of harm, to the integrity of the SPA/Ramsar sites. The Secretary of State therefore concludes that, overall, the test of IROPI in the Habitats Regulations has not been satisfied.

54. I am sending a copy of this letter to NE, the JNCC, MMO and the devolved administrations.

Yours sincerely

Andrew Lynch

Andrew Lynch

Head of Jurisdiction and Environmental Casework

This decision was made by the Minister of State, Matthew Pennycook, on behalf of the Secretary of State, and signed on her behalf



Mr Mike Hale
Head of Environmental Casework
Planning Casework Unit
Ministry of Housing, Communities
& Local Government

Your Ref: PCU/RARE/Z1775/3352981

By email: mike.hale2@communities.gov.uk

Dear Mr Hale

The Conservation of Habitats and Species Regulations 2017 (The ‘2017 Regulations’)

Request by Portsmouth City Council in respect of a proposed Pre-Submission Local Plan allocation for an Imperative Reasons of Overriding Public Interest (“IROPI”) opinion: Tipner West and Horsea Island East

Thank you for your letter dated 17th January 2025 requesting the Scottish Government’s views on whether likely harm to the Special Protection Areas (SPA) / Ramsar sites associated with allocating a change of land use for a Marine hub and housing at Tipner West and Horsea Islands East can be justified by imperative reasons of overriding public interest (“IROPI”).

In providing this opinion, we have considered the Habitats Regulation Appraisal (“HRA”), the Supplement to the HRA and the stakeholder consultation responses and subsequent correspondence. Also taking into account the requirements of the 2017 Regulations which need to be applied when considering an IROPI derogation, we would offer the following observations:

- **No alternative solutions**

We are satisfied that based on the information provided, particularly with respect to the requirements assessment of potential sites contained in the Supplement to the HRA and including the response from some stakeholders, that this test has been met.

- **Imperative Reasons of Over-riding Public Interest**

We are satisfied that based on the information provided, particularly the various economic and social appraisals highlighted in the Supplement to the HRA and including the response from some stakeholders, that this test has been met.

- **Compensatory Measures**

We note from the information provided the differing views expressed by Portsmouth City Council and Natural England regarding the extent to which areas are secured to provide the necessary compensation. It is our understanding that the proposals as presented could result in the loss of approximately 6.5 hectares of habitat which supports the notified bird species on the SPA. However, that the exact loss, and therefore the compensatory measures required, would not be known until the detailed project planning stage. The project planning stage would itself be subject to a HRA. Portsmouth City Council has identified, in the Supplement to HRA document, a number of sites which could be brought in



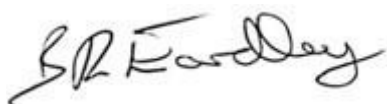
as compensatory measures. In total, these cover around 400 hectares, some of which have been secured for compensatory measures, while others are under negotiation.

Given the circumstances in this case, it would be our view that it would not be realistic for Portsmouth City Council to secure all compensatory area at the Plan stage. However, we are satisfied that they have given assurance to the Appropriate Authority that adequate compensatory measures are available and can be secured. As an additional safeguard, if this policy in the Local Plan is adopted, the project level planning and design will be subject to HRA based on known areas of loss and therefore there will be greater certainty of compensation requirements at that stage. This opinion is therefore based on the assumption that the proposed compensatory measures would need to have been secured at the project stage.

Taking all these factors into account and with the caveat noted above, we are satisfied that the necessary compensatory measures can be secured.

We hope these comments are helpful to you in considering the request from Portsmouth City Council. Please do continue to liaise with Brian Eardley if there are further issues arising from this case.

Yours sincerely



Brian Eardley
Biodiversity Unit Policy Manager
Nature Division
Scottish Government
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Turning science into action for nature,
people and the planet

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Mike Hale
Head of Environmental Casework
Planning Casework Unit
Ministry of Housing, Communities and Local
Government
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Birmingham B2 4BH

Our reference:
Portsmouth 1/2025
Your reference:
PCU/RARE/Z1775/3352981

Date: 7 February 2025

Dear Mr Hale

Request for an IROPI opinion in respect of the proposed Tipner West and Horsea Island East allocation in the Portsmouth Council Local Plan

Thank you for consulting the Joint Nature Conservation Committee (JNCC) under Regulation 107(4A)(a) of The Conservation of Habitats and Species Regulations 2017 (as amended), with regards an opinion on the Imperative Reasons of Overriding Public Interest (IROPI) for the proposed Tipner West and Horsea Island East allocation in the Portsmouth Council Local Plan.

JNCC is the public body that advises the UK Government and devolved governments on UK wide and international nature conservation. Its work contributes to maintaining and enriching biological diversity and sustaining natural systems.

Consistent with guidance agreed with Defra ([Changes to the Habitats Regulations 2017 – IROPI](#)), and with our broader statutory remit, the scope of JNCC's advice in relation to this request is the national (UK) importance of the affected features at Portsmouth Harbour SPA, setting the possible adverse impacts of the proposed project in the wider conservation context. JNCC is not advising on whether the public interest of the proposal overrides the conservation interest and nor whether the reasons are imperative.

Our advice is presented in Appendix 1. In summary:

Portsmouth Harbour SPA was classified in 1995 for supporting non-breeding populations of Dark-bellied Brent Goose (*Branta bernicla bernicla*), Dunlin (*Calidris alpina alpina*), Black-tailed Godwit (*Limosa limosa islandica*) and Red-breasted Merganser (*Mergus serrator*). At classification, the site held approximately 3% of the UK's SPA network population of Dark-bellied Brent Geese (2,847 individuals); more recent counts show that the population has declined slightly. The populations of the other three species varied from 0.4% to 4% of the UK SPA network populations, depending on the period assessed (see Appendix 1). Overall, the site makes a significant contribution to the conservation of these species within the national site network. The wider contribution of the SPA to the conservation of the species in

Great Britain is significant for Dark-bellied Brent Geese, Dunlin and, in recent times, for Black-tailed Godwit, but not for Red-breasted Merganser. The SPA is internationally important for Dark-bellied Brent Goose; the whole biogeographical population over-winters in Great Britain so the national site network (SPAs) is of particular significance for the conservation of this population.

The conservation status of all four species in the SPA is unfavourable. Across the network, the short-term population trend for Dark-bellied Brent Geese is increasing, and across the UK it is stable, with an increasing long-term trend. The Black-tailed Godwit trend in the network and nationally is increasing, whilst trends for Dunlin are declining, and for Red-breasted Merganser is short-term decline but long-term increase.

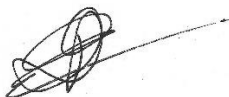
Portsmouth Harbour SPA comprises approximately 1% grassland, 14% salt marsh and 85% estuarine, tidal mud and sand flats. Both latter habitat types provide significant benefits to biodiversity. According to a recent extent and zonation study of salt marsh in England the area in which the proposed plan is situated, Southeast England, has seen a net loss of 2.6% of this important habitat, much of this in the Solent. According to the appropriate assessment of the proposal a total of 6.6 ha of supporting habitat within the SPA will be lost, equating to approximately 0.5% of the total SPA area. This comes at a time when Portsmouth Harbour is one of the only major waterbodies in the Solent area that has experienced a net gain of saltmarsh habitat between 2008-2016.

Any direct habitat loss is likely to reduce the feeding areas for the four species; all are in unfavourable status in the SPA and any loss of habitat extent is likely to inhibit improvement in conservation status. This could worsen the 'No Change' status of Dark-bellied Brent Geese and 'Declining' status of Dunlin and Red-breasted Merganser and halt the 'Recovering' status of Black-tailed Godwit at the site. In addition, it might force redistribution of birds to less favourable foraging areas that are themselves undergoing reductions in extent, in part due to cumulative pressures in the region. There is also the possibility of loss of individuals from beyond the 6.6 ha impacted area but within the SPA, due to indirect impact of disturbance whilst works are being carried out.

In summary, the proposed allocation will lead to a loss of important feeding habitat for the classified features of the SPA and, in particular, could worsen the status of these features within the UK SPA network. This might lead to a significant adverse effect on the national and hence biogeographical Dark-bellied Brent Goose population, and on the national populations of Dunlin and Black-tailed Godwit, but not on the natural ranges of these species.

If you have any questions about our advice, please do not hesitate to get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dave Stone', with a long horizontal line extending to the right.

Dave Stone FEnvSC CSci
Chief Scientist
Dave.Stone@jncc.gov.uk

Appendix 1. Portsmouth ref 1/2025. Information in support of JNCC's advice to the Ministry of Housing, Communities and Local Government under Regulation 107(4A)(a) of The Conservation of Habitats and Species Regulations 2017 (as amended).

Nature conservation factor relevant to IROPI advice	Analysis
1. Significance of the site's contribution to conserving the affected feature relative to the UK European Site network	Portsmouth Harbour SPA covers 1249.6 ha of mixed humid grassland (habitat class code N10), salt marsh (N03) and estuarine mud and sand flats (N02) ^[1]. It was originally classified for its over winter populations of Dark-bellied Brent Geese (<i>Branta bernicla bernicla</i>), Dunlin (<i>Calidris alpina alpina</i>), Black-tailed Godwit (<i>Limosa limosa islandica</i>) and Red-breasted Merganser (<i>Mergus serrator</i>) ^[1]. At classification, the site held approximately 3% of the UK's SPA network population of Dark-bellied Brent Geese (2,847 individuals) ^[1;2]. This is similarly the case, when considering more recent counts at the site ^[3]. The site also held c.1% of the SPA network population of Dunlin (5,123 individuals) at classification ^[1;2]. The recent 5-year average population estimate for the site suggests 5,044 individuals frequent the site ^[3], equating to approximately 1.7% of the network population. Approximately 0.4% of the Black-tailed Godwit SPA network population was held at the site when classified (31 individuals) ^[1;2]. The recent 5-year average suggests this has increased to 433 individuals ^[3], equating to approximately 1.5% of the network population. At classification 87 Red-breasted Merganser individuals were cited equating to approximately 4% of the network population ^[1;2]. Although not a feature of the SPA, Grey plover (<i>Pluvialis squatarola</i>) is cited as a feature of the overlapping SSSI ^[4]. Only 1 Grey Plover individual was recorded at the site in 2022/23 down from 60 in 2018/19 ^[3]. The condition status of this feature in this site was given Unfavourable-Recovering in 2010.
2. Significance of the site's contribution to conserving the affected feature relative to its wider natural range	At classification, just under 1% of the UK population of Dark-bellied Brent Geese were found at Portsmouth Harbour SPA ^[1]. Recent estimates of Dark-bellied Brent Geese at the site (5-year average 18/19-22/23 WeBS) suggest 2,121 individuals frequent the SPA, equating to approximately 2% of the national population, exceeding the GB classification threshold of 980 individuals ^[3]. The wider Solent Harbours area can host over 20% of the national population of Dark-bellied Brent Geese ^[5] (Frost <i>et al.</i>, 2019).

Nature conservation factor relevant to IROPI advice	Analysis
	Around 1% of the GB population of Dunlin was found at the site at classification ^[1]. The recent 5-year average population estimate for the site suggests 5,044 individuals frequent the site, approximately 1.5% of the national population, exceeding the GB classification threshold of 3,400 individuals ^[3]. When classified Portsmouth Harbour held around 0.4% of the Black-tailed Godwit population ^[1]. The recent 5-year average suggests this has increased to 433 individuals, equating to approximately 1% of the national population, exceeding the GB classification threshold (390 individuals) ^[3]. At classification the population of Red-breasted Merganser equated to 0.9% of the GB population ^[1]. Recent counts at the site (5-year average 18/19-22/23) suggest 60 individuals which does not meet the GB threshold (100 individuals) ^[3].
3. Significance of the affected feature in an international context	At designation Portsmouth Harbour SPA held 0.9% of the Dark-bellied Brent Goose Biogeographic population ^[1], this has remained relatively consistent with the recent 5-year average (2,121 individuals) exceeding the international classification threshold for the species ^[3]. The wider Solent Harbours area can host over 10% of the international population of Dark-bellied Brent Geese ^[5]. Great Britain itself is estimated to host c.50% of the world population ^[6] and approximately 100% of the wintering biogeographic population, with over 90% of the population utilising the SPA network ^[2]. For Dunlin, Black-tailed Godwit and Red-breasted Merganser neither at classification nor through recent counts were the international thresholds met at this particular site. However, Great Britain holds just over 26% of the biogeographic population of Dunlin, with 85% of that population found within the GB SPA network ^[2]. Similarly, GB hosts a large proportion of the biogeographic population of Black-tailed Godwit, approximately 70%, of which almost 48% are found within the SPA network ^[2]. Therefore, although the international significance of this single site is low for these species, the importance of the health of the overall GB network is significant.
4. Prevailing conservation status assessment of the affected feature across the UK network and its natural	Both the Red-breasted Merganser and Dunlin have been deemed to be in 'Unfavourable Declining' condition at this site ^[7] . Black-tailed Godwit is in 'Unfavourable Recovering' condition and Dark-bellied Brent Geese is in 'Unfavourable No Change' condition ^[7] .

Nature conservation factor relevant to IROPI advice	Analysis
range, including current trends for the habitat/species concerned	Across the network, the short-term population trend for Dark-bellied Brent Geese is increasing, across the UK it is stable with an increasing long-term trend ^[8]. Internationally, the species is listed as Least Concern in the European Red List (2021) ^[9]. For Dunlin, the trend for the network in the short-term is decreasing, similarly the long-term trend for the UK is also decreasing but stable in the short-term ^[8]. From an international perspective they have been given 'Least Concern' status in the European Red List 2021 ^[9]. The Black-tailed Godwit population across the UK network has been increasing in the short-term, this is the same for the wider UK population both the short and long-term trends ^[8]. However, internationally, the species has been deemed 'Near Threatened' and 'Endangered' (EU+UK) as per the European Red List ^[9]. Red-breasted Merganser have been decreasing in the short-term across the UK network, this is the same across the wider UK range ^[8]. However, the long-term population trend is suggested to be increasing ^[8]. Internationally, this species status is 'Near Threatened' as per the European Red List ^[9].
5. Significance of the adverse effect on the attributes of the affected feature's national (UK) conservation status and its impact on: • its overall geographic extent and range • its structure and function • its overall population (where a species feature is concerned) • Its overall range and distribution of a species feature	Portsmouth Harbour SPA contains approximately 1% grassland, 14% Salt marsh and 85% estuarine, tidal mud and sand flats ^[1]. Both latter habitat types provide significant benefits to biodiversity and provide numerous ecosystem services, in particular their ability to sequester waves and limit coastal flooding and erosion ^[10;11]. According to a recent extent and zonation study of salt marsh in England the area in which the proposed plan is situated, South-East England, has seen a net loss of 2.6% of this important habitat ^[10]. Much of this loss was observed in the Solent waterbodies, where the proposed plan is situated ^[10]. According to the appropriate assessment of the proposal a total of 6.6 ha of supporting habitat within the SPA will be lost, equating to approximately 0.5% of the total SPA area. This comes at a time when Portsmouth Harbour is one of the only major waterbodies in the Solent area that has experienced a net gain of saltmarsh habitat between 2008-2016 ^[10]. Portsmouth Harbour SPA is one of 19 SPAs for Dark-bellied Brent Geese in the UK, all of which are situated along the East and South Coasts of England ^[2]. Although the other three species are named features in the citation for the site, Portsmouth Harbour does not appear as a listed SPA for any of them in either the second or third SPA reviews ^[2;6]. However, as two of them have nationally important numbers frequenting the site, the impact should still be considered. All four species are in 'Unfavourable' status therefore any

Nature conservation factor relevant to IROPI advice	Analysis
	direct habitat loss is likely to inhibit any improvement on this status. There is also a possibility that with any loss of habitat, there could be a loss of individuals, though total extent of loss cannot be quantified. This could worsen the 'No Change' status of Dark-bellied Brent Geese and 'Declining' status of Dunlin and Red-breasted Merganser and halt the 'Recovering' status of Black-tailed Godwit at the site. There is also the possibility of loss of individuals extending beyond the 6.6 ha impacted area, due to indirect impacts from disturbance whilst works are being carried out. The proposed plans also potentially pose an indirect impact to the overall hydrology of the area, through the deep water dredging and bridge structure.
SUMMARY OF ADVICE TO COMPETENT/APPROPRIATE AUTHORITY	

Sources:

[1] JNCC, 1995. Standard Data Form SITE UK9011051 Portsmouth Harbour SPA. <https://jncc.gov.uk/jncc-assets/SPA-N2K/UK9011051.pdf> accessed 06/02/25

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[3] Woodward, I.D., Calbrade, N.A., Birtles, A., Feather, G.A., Peck, K., Wotton, S.R., Shaw, J.M., Balmer, D.E. and Frost, T.M. 2024. Waterbirds in the UK 2022/23: The Wetland Bird Survey and Goose & Swan Monitoring Programme. BTO/RSPB/JNCC/NatureScot. Thetford. <https://app.bto.org/webs-reporting/numbers.jsp> accessed 06/02/25

[4] Natural England, 1993. Portsmouth Harbour SSSI citation. <https://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1003174.pdf> accessed 06/02/25

- [5] Frost, T., Austin, G., Hearn, R., Mcavoy, S., Robinson, A., Stroud, D., Woodward, I., Wotton, S. and Allen, R. (2019). Population estimates of wintering waterbirds in Great Britain. *British Birds*. 112. 130-145.
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- [8] European Commission, 2020. Article 12 Web Tool (2013-2018): Population status and trends at the EU and Member State Levels [Online] <https://nature-art12.eionet.europa.eu/article12/summary> accessed 06/02/25
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- [10] Environment Agency, 2022. The extent and zonation of saltmarsh in England: 2016-2019 *An update to the national saltmarsh inventory*. https://assets.publishing.service.gov.uk/media/62f62bf88fa8f50b5437435d/The_extent_and_zonation_of_saltmarsh_in_England_2016-2019_-_report.pdf accessed 06/02/25
- [11] Joint Nature Conservation Committee, 2008. UK Biodiversity Action Plan; Priority Habitat Descriptions: Intertidal Mudflats. <https://data.jncc.gov.uk/data/6e4e3ed1-117d-423c-a57d-785c8855f28c/UKBAP-BAPHabitats-22-IntertidalMudflats.pdf> accessed 06/02/25

2.

Pre-Action Protocol correspondence

Secretary of State for**Housing Communities and Local Government**

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PRE-ACTION PROTOCOL LETTER**THIS LETTER REQUIRES YOUR URGENT ATTENTION**

Date: 10 March 2025

Dear Secretary of State,

Re: Proposed judicial review claim by Portsmouth City Council**1. Introduction**

1. This letter is written in accordance with the judicial review pre-action protocol. It puts you on notice of a possible judicial review challenge, and gives you an opportunity to deal with, or at least to narrow, the points in issue. It sets out our current understanding of the legal and factual position so that you can explain if and

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Our ref: IROPI TCM:00601802

Your ref:

PCU/RARE/Z1775/3352981

how you disagree.

2. Portsmouth City Council ("**the City Council**") makes clear that the intention of this letter is to avoid the need for judicial review, which the City Council contemplates only at a last resort. However, if we do not receive a satisfactory response to this letter, the City Council will consider making an application for judicial review without further reference to you.

2. The Claimant

3. The City Council is a local planning authority ("**LPA**") under the Planning Acts and Competent Authority ("**CA**") for the purposes of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**"). It is currently in the process of preparing its Local Plan ("**the draft Local Plan**"). Draft Policy PLP3 ("**Policy PLP3**") is a strategic allocation of land at Tipner West and Horsea Island East in the Pre-Submission Local Plan.
4. Separately to its role as LPA and CA, the City Council is also the landowner of Tipner West and Horsea Island East and the promoter of Policy PLP3 through the Local Plan process. The City Council has arrangements in place to ensure the effective separation of the City Council's LPA and CA functions from its role as site promoter. This letter is sent on behalf of the City Council as LPA and CA only. The content of this letter has not been discussed with the City Council's promoter team.

3. The Defendant

5. The proposed Defendant is the Secretary of State for Housing, Communities and Local Government. The Secretary of State is the appropriate authority responsible for providing opinions, upon request from a plan-making authority under regulation 107(3) of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**") on whether reasons relied on by a plan-making authority for progressing a plan notwithstanding adverse effects on protected habitats are imperative reasons of overriding public interest ("**IROPI**").

4. The matter being challenged

6. The City Council intends to challenge the legality of the Secretary of State's opinion, dated 28 February 2025 (reference: PCU/RARE/Z1775/3352981), that the reasons advanced by the City Council for progressing the draft Local Plan with Policy PLP3 intact do not constitute IROPI. In short, the City Council contends that the opinion

is unlawful on three grounds:

- a. The Secretary of State misdirected herself in law by applying the wrong test to circumstances where no priority habitats or species are likely to be affected.
 - b. The Secretary of State failed to give adequate reasons for her opinion that each of the grounds relied on by the City Council, individually and cumulatively, did not constitute IROPI;
 - c. The Secretary of State's opinion was irrational because it was based on flawed reasoning and failed to have regard to obviously material considerations.
7. Further, conscious that this is the first opinion issued by the Secretary of State under regulation 107(4) of the Habitats Regulations, and independently of the City Council's concerns as to the lawfulness of the decision, the City Council has very serious concerns as to the unintended effects of this poorly reasoned and ill-considered opinion.
8. For these reasons, as explored further below, the City Council invites the Secretary of State to withdraw and remake the decision on a lawful basis, having regard to the need to avoid the unintended effects highlighted below. If the Secretary of State refuses to withdraw and remake the decision and chooses instead to defend the proposed claim, please ensure that your pre-action response contains a full explanation of the decision-making process, and sets out full reasons for the decision, supplementing the currently deficient reasons in the opinion.

5. Legal and policy framework

9. The Habitats Regulations were originally enacted to implement the Habitats Directive (Council Directive 92/43/EC) ('**the Directive**') in UK law. Notwithstanding the effect of the Retained EU Law (Revocation and Reform) Act 2024, regulation 9 of the Habitats Regulations provides that the appropriate authority and any competent authority must exercise their functions which are relevant to nature conservation so as to secure compliance with the requirements of the Directive.

10. Regulation 105 provides:

Assessment of implications for European sites and European offshore marine sites

105.—(1) Where a land use plan—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

11. Regulation 107 provides:

Considerations of overriding public interest

107.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

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

(b) any other reasons which the plan-making authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.

(3) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the appropriate authority as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information which may be required.

(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.

(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

- (b) where the appropriate authority is the Secretary of State, the devolved administrations;
- (c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and
- (d) any other person the appropriate authority considers appropriate.

12. There is no domestic caselaw on the criteria for determining whether reasons constitute IROPI. In C-304/05 *Commission v Italy* [2007] ECR I-07495 at paras 82–83, the CJEU affirmed that *“the assessment of any imperative reasons of overriding public interest... require[s] a weighing up against the damage caused to the site by the plan or project under consideration”* (emphasis added). In case C-182/10 *Marie-Noëlle Solvay and Others v Région Wallonne* [2012] ECR I-00000, the Court clarified that for an interest to be IROPI, it must be both ‘public’ and ‘overriding’. The court said at para.75 that this means *“it must be of such an importance that it can be weighed up against that Directive’s objective of the conservation of natural habitats and wild fauna and flora”* (emphasis added). In case C-239/04 *Commission v Portugal*, Advocate-General Kokott explained at para.45 that:

“The necessity of striking a balance results in particular from the concept of ‘override’, but also from the word ‘imperative’. Reasons of public interest can imperatively override the protection of a site only when greater importance attaches to them. This too has its equivalent in the test of proportionality, since under that principle the disadvantages caused must not be disproportionate to the aims pursued.”

13. Having regard to the language of regulation 107(1) and (2) of the Habitats Regulations (and to Article 6(4) of the Directive), reasons of a social or economic nature may constitute IROPI, as may reasons related to human health, public safety, or beneficial consequences of primary importance to the environment. However, it is clear that neither the Directive nor the Regulations seek to prescribe a definitive list or category into which such reasons must fall (though, where priority habitats or species are affected, both the Directive and the Regulations permit reliance on reasons other than those related to human health, public safety, or beneficial consequences of primary importance to the environment only where approved by opinion of the appropriate authority).
14. Guidance issued by Defra affirms that the existence of IROPI is to be judged on the facts of each case, rather than against any defined criteria. In particular, the guidance is clear that claims to IROPI are not limited to projects of national significance.

- a. Defra Guidance entitled *Habitats regulations assessments: protecting a European site* (24 February 2021) provides:

“You must decide if the proposal is:

- imperative - it’s essential that it proceeds for public interest reasons
- in the public interest - it has benefits for the public, not just benefits for private interests
- overriding - the public interest outweighs the harm, or risk of harm, to the integrity of the European site that’s predicted by the appropriate assessment

National strategic plans, policy statements and major projects are more likely to have a high level of public interest and be able to show they are imperative and overriding. Plans or projects that only provide short-term or very localised benefits are less likely to be able to show imperative reasons of overriding public interest.” (emphasis added).

- b. Defra Guidance entitled *Habitats Directive: guidance on the application of article 6(4)* (December 2011) provides the following additional guidance:

“Public interest can occur at national, regional or even local level, provided the other elements of the test are met.

In practice, plans and projects which enact or are consistent with national strategic plans or policies, may be more likely than others to show IROPI – e.g. those covered by or consistent with a National Policy Statement or identified within the National Infrastructure Plan, especially if the plan itself has been assessed using the Habitats Regulations. Plans or projects which fall outside national strategic plans, including those at a lower geographic scale may also be able to show IROPI, depending on the particular case. Plans or projects which only deliver short term benefits are unlikely to be able to show IROPI. In each case, the public interest of the plan or project would need to be assessed and weighed against its particular impacts on a European site.” (emphasis added).

15. This guidance is consistent with the previous practice of the European Commission in providing opinions as appropriate authority under the Directive. The European Commission has found that reasons of a social and economic nature (including of a local or regional scale) constitute IROPI for a range of projects, including:

- a. The construction of new container terminal at the external port of Świnoujście, Poland, where that was accepted to be consistent with a number of legal acts and strategic documents adopted at EU and national level and would contribute to sustainable economic development (opinion of 23 January 2024);
- b. The construction of a car manufacturing complex in Győr, Hungary, where it was accepted that the proposal would create jobs and contribute to the

regional and national economy (opinion of 25 January 2011);

- c. The construction of a new port in Tenerife, where it was accepted that there was a demonstrated need to increase and develop port capacity in order to promote economic and social development in the island of Tenerife and the surrounding region (opinion of [undated] 2006);
- d. The extension of underground coal mining activities at a colliery in Germany, where that was accepted to mitigate *“short term significant social and economic effects at the local and regional level”* in the form of job losses (opinion of 24 April 2003).

6. Factual background

Development of draft Policy PLP3

- 16. In 2013, Tipner West and Horsea Island East (**‘the Site’**) was identified as a key site in the Portsmouth and Southampton City Deal (**‘the City Deal’**). The City Deal was agreed by central government, local government and local businesses in order to *“maximise the impact of marine and maritime assets by unlocking critical employment and housing sites in both cities. The two critical sites, within the wider Solent pipeline, are the Watermark West Quay site in Southampton and Tipner-Horsea in Portsmouth.”* It included a central Government grant of £48.75m to the City Council to help deliver the enabling infrastructure, including flood defences and site decontamination, to:
 - a. Unlock critical employment sites to enable the marine, maritime and advanced manufacturing sectors of the region’s economy to expand;
 - b. Provide new housing to support the growing workforce;
 - c. Ensure people have the right skills to access employment in those growing sectors;
 - d. Provide effective support to small and medium enterprises to enable them to grow, including marine and maritime small and medium enterprises.

- 17. A key part of the City Deal was the transfer of land at the Site from the Ministry of

Defence to the City Council. The objective of that land transfer was to enable the delivery of approximately 2,370 new homes on the Site and nearby (at Tipner East and Port Solent) and 58,000sqm of employment floorspace for the growth of marine and advanced manufacturing sectors in the Solent sub-region.

18. Since 2013, the City Council has explored options for delivering on the City Deal at the Site. A Habitats Regulations Assessment (“HRA”) of the Regulation 18 version of the Local Plan published in 2021 concluded that all options would involve some degree of adverse effect on the Portsmouth Harbour SPA/Ramsar site and the Solent and Dorset Coast SPA because the delivery of any marine hub at Tipner West and Horsea Island East would require some dredging of SPA habitat.
19. After having considered and rejected a wide range of options, including a proposal to develop a super-peninsula involving the reclamation of up to 27ha of SPA/Ramsar habitat, the City Council settled on draft Policy PLP3. That policy seeks to deliver City Deal-consistent development at Tipner West and Horsea Island East, while minimising the impact on protected habitats. It allocates the Site for:
 - a. A marine hub with a working quayside and up to 58,000 m2 of marine employment floorspace (class E(g) offices, research and development, light industrial, B2 general industrial and B8 storage or distribution);
 - b. A new community with between 814 and 1,250 residential dwellings (class C3);
 - c. A bridge between Tipner West and Horsea Island East for the use of sustainable transport modes only;
 - d. Flood defences along the peninsula edges of Tipner West and Horsea Island East in line with robust climate change scenarios;
 - e. Shops selling essential goods, including food, where the shop’s premises do not exceed 280 m2 (class F2a); and
 - f. Meeting places for the principal use of the local community (class F2b).

20. The policy also requires the developer to mitigate and remediate existing site contamination.
21. In May 2023, cognisant that the draft policy (then called PLP5) would have adverse (albeit limited) effects on the Portsmouth Harbour SPA/Ramsar Site and the Solent and Dorset Coast SPA, the City Council sought an opinion from the Secretary of State under regulation 107(3) of the Habitats Regulations on whether the reasons relied on by the City Council to proceed with the allocation notwithstanding those adverse effects were IROPI (**"the 2023 request"**). In support of the 2023 request, the City Council provided a 31 page statement of case (**"the Statement of Case"**) and 330 pages of accompanying evidence.
22. On 22 September 2023, Andrew Lynch, Head of Casework at the then Department for Levelling Up, Housing and Communities, responded to the 2023 request (**"the 2023 DLUHC letter"**), noting that notwithstanding the *"carefully researched and thorough 107(3) request"* the Secretary of State was unable to provide an opinion because the request was premature and should be remade once the alternatives assessment was complete and a compensation strategy in place. The letter nonetheless affirmed that the provision of housing was capable of justifying IROPI and that the consideration of whether IROPI exists *"would need to be made against the full package of public benefits associated with the scheme – your request refers additionally to matters including flood risk, contaminant leachates and employment, for example."*
23. The City Council therefore proceeded with the plan-making process. In April 2024, the HRA of the draft Local Plan was concluded and determined that draft Policy PLP3 would have an adverse effect on the integrity of Portsmouth Harbour SPA/Ramsar site on account of the fact that it would:
 - a. inevitably cause the loss of 2.1ha of intertidal habitat as a result of the dredging necessary to provide deep water access to the marine employment hub;
 - b. likely cause the loss of 0.3ha of intertidal habitat for the insertion of bridge piers;
 - c. possibly cause:
 - i. the loss of 0.5ha of subtidal habitat as a result of land reclamation for

- the marine employment hub; and
 - ii. the loss of up to 3.6ha of terrestrial habitat for housing on land south of the firing range.
- 24. Having concluded that there were no feasible alternative solutions capable of delivering on the overall objective of the policy, the HRA then concluded, on the basis of the IROPI case made in the Statement of Case, that there were IROPI to justify the progression of the draft Local Plan with Policy PLP3 intact, notwithstanding the adverse effects on protected habitats.
- 25. On 1 October 2024, the City Council invited the Secretary of State to re-engage with the 2023 request and provide an opinion on whether the reasons relied on by PCC for progressing draft Policy PLP3, notwithstanding its implications for a European site, are considered to be IROPI. In support of that invitation, the City Council provided the Secretary of State with the following:
 - a. A covering letter (“**the Covering Letter**”) outlining the City Council’s case for IROPI, summarising the background, and highlighting the grounds on which the City Council claimed IROPI, namely: i) the need to provide flood defences (human health and public safety); ii) the need to provide site decontamination (beneficial consequences of primary importance to the environment); and iii) the need for a marine employment hub in the Solent (reasons of a social and economic nature). These grounds were not listed in order of priority but were advanced as independent and cumulative grounds. The City Council also relied cumulatively on other public benefits including new housing, improved transport connectivity and public access to recreational open space and heritage assets, facilitated by the delivery of a new bridge.
 - b. The Statement of Case that accompanied the 2023 request.
 - c. The Pre-Submission Portsmouth Local Plan dated July 2024;
 - d. The HRA dated April 2024;

- e. The regulation 19 consultation responses from key stakeholders, including Natural England, the Environment Agency, RSPB and Hampshire and Isle of Wight Wildlife Trust ('**HIWWT**') and the City Council's summary responses to those representations;
 - f. An example of a pro-forma letter generated by RSPB and HIWWT and submitted, in some cases with minor amendments, by 6,910 representors during the regulation 19 consultation; and
 - g. An updated and more detailed summary of evidence in support of the City Council's IROPI case based on the need for a marine employment hub in the Solent region, with hyperlinks to supporting evidence in published material ("**Appendix 6**").
26. The City Council subsequently provided further documentation in the form of an HRA Supplement in both redacted (to preserve commercial confidence) and, on request, unredacted form.
27. On 28 February 2025, one working day before the City Council was due to submit its draft Local Plan for Examination, the Secretary of State notified the City Council of her opinion that the reasons relied on by the City Council did not constitute IROPI.

The opinion

28. The Secretary of State's opinion consists of 17 paragraphs. The first ten paragraphs address matters of process and background. The final three paragraphs contain a summary and restatement of the Secretary of State's conclusions. It is only in paragraphs 11 to 14 that the Secretary of State engages with the extensive evidence provided in support of the request and sets out her analysis and reasons. Those four paragraphs are quoted in full below.

Secretary of State's consideration of Imperative Reasons of Overriding Public Interest

11. If there is no alternative solution, the decision-maker should consider whether there are IROPI to justify the plan, despite a potentially negative effect on site integrity. Different tests apply depending on whether the site hosts a priority natural habitat type or species. A plan may only be agreed if there is a finding that IROPI exist (and the other requirements of the Habitats Regulations are satisfied), with this usually relating to human health, public safety or beneficial consequences of primary importance to the environment.

12. The Secretary of State has considered the CA's case for the allocation on the grounds of IROPI. The CA considers there are significant public safety benefits which constitute IROPI. The

development will deliver required sea defences for the northern part of Portsea Island, where there is a risk to human health and safety and more than 200 homes at risk from flooding, should the defences at Tipner West and Horsea Island East fail, allowing flood waters to pass through Tipner East and Stamshaw. The CA also considers there are human health and environmental benefits through remediation of the site, due to the potential for contaminant leachate and risk to the integrity of the SPA/Ramsar site. There are also claimed social and economic benefits arising from the hub, which would help deliver a national strategic ambition and develop a world leading marine and maritime economy. However, in the Secretary of State's view IROPI has not been demonstrated.

13. While the risk to existing properties is the key relevant IROPI ground, this is separate to any public health and safety considerations relating to the proposed site allocation PLP3 or protection afforded to other proposed allocations. The Secretary of State has therefore considered the guiding principles developed, following public consultation on options as part of its emerging Local Plan on the Tipner Strategic Development Area, and notes that delivery of sea defences does not feature nor is it well related to wider shoreline defences for the coastal area, such as envisioned through the North Solent Shoreline Management Plan. She has further considered the overall objectives of draft policy PLP3 and in her opinion the objectives are led by the delivery of the hub. While the continued growth of the marine economy in the Solent area is a matter of regional strategic importance, this and other public benefits, including site decontamination are not considered significant IROPI grounds.

14. Therefore, her view is that the delivery of the sea defences at Tipner West and Horsea Island East is not evidenced as central to the allocation rationale, as a critical precursor to the hub. Given the proposed marine employment hub is not in itself IROPI relating to human health and public safety overall, the Secretary of State is not satisfied, having regard to the national interest, that the reasons advanced by the CA constitute IROPI."

29. As can be seen, paragraph 12 is a summary of the case made by the City Council. So the Secretary of State's analysis of the City Council's case (which consisted of a 361 page 2023 request previously described by her own Department as "*carefully researched and thorough*," together with further evidence submitted in October 2024) is limited to three short paragraphs: paragraphs 11, 13 and 14.

7. Proposed grounds of challenge

Ground 1: misdirection in law

30. The Secretary of State's opinion suffers from two misdirections in law.
31. First, in the second sentence of paragraph 11 of the opinion, the Secretary of State correctly acknowledges the different test that applies depending on whether the site does (reg 107(2)) or does not (reg 107(1)) host a priority habitat or species. However, in the third sentence of paragraph 11, the Secretary of the State erroneously states as a general proposition that IROPI "*usually relat[es] to human health, public safety or beneficial consequences of primary importance to the environment.*" That is unarguably wrong. It is wrong as a general statement of law and it is wrong as a statement of the law applicable to the opinion sought by the City Council. As no

priority habitats or species will be affected by Policy PLP3, regulation 107(1) applies and reasons of a social and economic nature are therefore (explicitly) grounds for IROPI.

32. The Secretary of State's erroneous starting point infects the analysis that follows:

- a. On the misunderstanding that social and economic reasons were usually not sufficient to constitute IROPI, paragraph 13 of the opinion proceeds on the wholly unexplained basis that risk to existing properties is *"the key relevant IROPI ground"*. The City Council had not presented its three grounds for IROPI in any hierarchy or order of priority and had never claimed that the need to deliver flood defences was more or less important than the other two IROPI grounds, including the social and economic case associated with the strategic need for a marine hub in the Solent.
- b. On the misunderstanding that social and economic reasons were usually not sufficient to constitute IROPI, the final sentence of paragraph 13 contains a bare statement that economic growth which the Secretary of State considered to be a matter of regionally significant importance is not a significant IROPI ground. And the only reason for that conclusion is provided at paragraph 14 of the opinion, namely: *"Given the proposed marine employment hub is not itself IROPI relating to human health and public safety overall, the Secretary of State is not satisfied, having regards to the national interest, that the reasons advanced by the CA constitute IROPI."*

33. Those statements, and the conclusions that follow from them, clearly follow from the Secretary of State's misdirection of law articulated in the third sentence of paragraph 11. At no point in the opinion does the Secretary of State set out the relevant test in regulation 107(1), acknowledge that social and economic reasons (including social and economic reasons of regional significance) are capable of constituting IROPI, or explain why the social and economic reasons articulated in detail in Appendix 6 to the request were not considered IROPI. That was very plainly an error of law.

34. Second, contrary to the approach endorsed by the CJEU in the cases cited at paragraph 12 above, the Secretary of State failed to engage in any weighing of the

public benefits of delivering Policy PLP3 against the harm caused to the SPA. She erroneously treated IROPI as a pure threshold question rather than a weighing exercise. By doing so, she failed to assess whether the need to deliver the specific public benefits in this particular case overrode the specific (and limited) harm identified in the HRA in this particular case. That was, again very plainly, a further error of law.

Ground 2: failure to give adequate reasons

35. Pursuant to regulation 107(4) of the Habitats Regulations, the Secretary of State was required to give her opinion as to whether the reasons relied on by the City Council were IROPI. By necessary implication, that statutory requirement incorporates a duty to give reasons: see *Stefan v General Medical Council* [1999] 1 WLR 1293 at p.1297.

36. Where a duty to give reasons arises under statute or common law, the standard of reasons required is the standard described by Lord Brown in *South Bucks v Porter* [2004] 1 WLR 1953:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inferences will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed [persons, in that case, developers] to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact on such future applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

37. Lord Brown also approved the observations in *Clarke Homes Limited v Secretary of State for the Environment* (1993) 66 P & CR 263 that the key issue was whether the decision, "*leaves room for genuine as opposed to forensic doubt as to what [the decision maker] has decided and why*" (at paragraphs 271-272).

38. In providing the opinion, the Secretary of State failed to comply with her legal duty to give adequate reasons in her rejection of all the grounds on which the City Council

relied.

39. First, the Secretary of State failed entirely to give any reasons for rejecting the City Council's claim that IROPI arose from the need to protect the SPA/Ramsar site from the risk of harm from contaminant leachate from the Tipner West site. The City Council had provided evidence of significant contamination of land at Tipner West with risk to the controlled waters of the SPA/Ramsar site. The HRA concluded that contamination of the controlled waters *"would have adverse effects at least as harmful as the reasonable worst case direct habitat loss that might be caused by the PLP3 allocation."* The City Council also explained that there was no funding for site decontamination, save through the use of funds linked to delivery of the proposed development (City Deal funding plus cross subsidy). On the face of it, this ground for IROPI fell squarely within the category of 'beneficial consequences of primary importance to the environment.' Its rejection required an explanation that, unlawfully, the Secretary of State failed to provide.
40. Second, the Secretary of State failed to give any adequate reasons for rejecting the City Council's claim that IROPI arose from the strategic need for a marine hub in the Solent. The City Council provided the Secretary of State with a clear summary of that long-term strategic need in Appendix 6 to the 1 October 2024 request. At the heart of the case was the City Deal, agreed by the UK Government in 2013, involving the transfer of land from the Ministry of Defence to the City Council and the provision of nearly £50 million of central government funding to facilitate the delivery of a marine hub at Tipner West and Horsea Island East to boost employment and economic growth in the Solent region. In her opinion, the Secretary of State acknowledged that the continued growth of the marine economy in the Solent area was *"a matter of regional strategic importance"* but concluded that this did not constitute IROPI because *"it did not relate to human health and public safety overall"*. As the Site does not host priority species or habitats, that was not an adequate reason to reject the claim to IROPI. No other reason was given. The rejection of the City Council's claim to IROPI for reasons of a social and economic nature, as summarised in Appendix 6 of the request, cried out for explanation which the Secretary of State, unlawfully, failed to provide.
41. Third, the Secretary of State failed to give any adequate reasons for rejecting the City Council's claim that IROPI arose from the need to provide flood protection to more

than 200 existing homes and many more planned homes. The City Council's case was that funding for the delivery of necessary flood defences to protect existing and planned homes came from the City Deal grant that was tied to the delivery of a marine hub. The Secretary of State's reasons for rejecting this claim are set out in the first three sentences of paragraph 13 and the first sentence of paragraph 14 of the opinion. We address each part separately as follows:

a. The first sentence of paragraph 13 is unintelligible:

- i. it is not explained why the Secretary of State considers *"the risk to existing properties"* to be the *"key relevant IROPI ground"* or why she considers the risk to around 1000 planned properties at Tipner East under Policy PLP4 to be less important.
- ii. it is entirely unclear what the Secretary of State means by saying that *"the risk to existing properties... is separate to any public health and safety considerations relating to the proposed site allocation or protection to other proposed allocations."* It is correct that the flood risk to existing properties exists independently of the proposed allocation. But that cannot possibly undermine the fact that one of the public benefits of the proposed allocation is that it will address flood risk for the protection of both existing and planned properties.

b. The second sentence of paragraph 13 contains both a fundamental misunderstanding and a fundamental error:

- i. the fundamental misunderstanding is the Secretary of State's erroneous belief that the 'guiding principles' developed on the Tipner Strategic Development Area in 2022 established the rationale for and requirements of the proposed allocation. That is wrong. The broad rationale for the proposed allocation was established by the City Deal (2013), which made clear that delivery of development on Tipner West and Horsea Island East would require delivery of enabling infrastructure, including flood defences. Even before that, the allocation of the site in the Local Plan (2012) included a requirement in policy PCS1 for improved flood defences to be delivered as part of any development on Tipner Point. The need for improved flood defences has been a core requirement of all draft and emerging plans

for Tipner West and Horsea Island East since then. The ‘guiding principles’ did not purport to be a restatement of the rationale for development but merely sought to guide the progression of the emerging allocation, for which the rationale (including delivery of flood defences) had already been established. As a matter of fact, the report to Full Council in advance of its 11 October 2022 meeting, in which the guiding principles were first proposed, contains an entire section explicitly addressing the need for development at Tipner West to shore up flood defences that were at high risk of failure.

- ii. the error is the Secretary of State’s statement that the plans for sea defences are not *“well related to wider shoreline defences for the coastal area, such as envisioned through the North Solent Shoreline Management Plan.”* That is wrong. The North Solent Shoreline Management Plan applies a “hold the line” policy for this part of Portsmouth Harbour, and the proposed sea defences are entirely consistent with that policy.
- c. The third sentence of paragraph 13 (*“She has further considered the overall objectives of draft policy PLP3 and in her opinion the objectives are led by the delivery of the hub”*) is consistent with the City Council’s case. Proposed development at Tipner West and Horsea Island East has, since the City Deal, been led by the delivery of a marine hub together with housing. However, the City Council’s case has been that the delivery of development consistent with the City Deal would also enable the City Council to deliver much needed improvements to flood defences. That is because the City Deal included funding for enabling development including precisely these flood defences. Accordingly, to divorce the delivery of flood defences at Tipner West and Horsea Island East from the delivery of a City Deal-consistent development is fundamentally to misunderstand that the delivery of improved flood defences has always been part of the City Deal package.
- d. For those reasons, the first sentence of paragraph 14 (*“Therefore, her view is that the delivery of the sea defences at Tipner West and Horsea Island East is not evidenced as central to the allocation rationale, as a critical precursor to the hub”*) is simply wrong (also note that requirements 1(d) and 2(o) of draft policy PLP3 along with the monitoring and delivery framework set out in table

4.2 of the Plan make abundantly clear that sea defences must be delivered as a critical precursor to the hub).

42. With all that in mind, the Secretary of State's reasons for rejecting the need to provide improved flood defences to protect existing and planned housing as IROPI are inadequate. The Secretary of State has failed properly to engage in the case before her, has failed to explain how – in the absence of City Deal funding – the City Council can otherwise deliver the necessary flood defences, and the City Council is left unsure of why the need to provide flood defences to protect existing and planned houses (found to be IROPI in respect of the North Solent Shoreline Management Plan) was considered not to be IROPI in respect of Policy PLP3.
43. Fourth, the Secretary of State failed entirely to give any reasons for rejecting the City Council's claim that IROPI may arise cumulatively from the three grounds above, together with other public benefits, including housing delivered to help meet a level of unmet housing need in the area, improvements in transport connectivity, and public access to open space and heritage assets (see the Statement of Case at 5.54 and Covering Letter at para.29). The opinion fails to address these cumulative public benefits, simply noting at paragraph 13 of the opinion that "*...this and other public benefits, including site decontamination are not considered significant IROPI grounds.*" No mention is made of the housing benefits (which the 2023 DLUHC letter accepted could, in principle, be IROPI) or the transport and public access benefits. No reasons are given for rejecting these cumulative benefits in the overall IROPI assessment. Indeed, as above, it appears the Secretary of State has failed entirely to do what the 2023 DLUHC letter (and CJEU caselaw) said was required of her, namely: "*the consideration of whether IROPI exists... need[s] to be made against the full package of public benefits associated with the scheme*".
44. The City Council is substantially prejudiced by the Secretary of State's failure to give adequate reasons for her opinion. In particular, the City Council is left unsure of how to amend and progress its draft Local Plan to Examination because it does not understand why its IROPI case has been rejected. That uncertainty prevents the City Council progressing any amendment to its draft Local Plan, which it wishes to do to meet Government's desire to see up to date plan coverage. The timing of the IROPI opinion has prevented the City Council from submitting its plan in accordance with the adopted LDS. To prevent unacceptable further delay a new draft plan must be

produced before June 2026 and clarification of the Secretary of State's reasons are therefore urgently required.

Ground 3: irrationality

45. A decision can be irrational if there are “*demonstrable flaw[s] in the reasoning which led to*” them: *R (The Law Society) v The Lord Chancellor* [2018] EWHC 2019 at [98]. As set out above, there are demonstrable flaws in the reasoning that led to the opinion, including the Secretary of State's clearly erroneous contentions that:
- a. The plans for sea defences are not well related to wider shoreline defences for the coastal area; and
 - b. The delivery of flood defences are not central to the allocation rationale, as a critical precursor to the hub.
46. Both of those statements are demonstrably wrong and are critical components of the Secretary of State's reasons for rejecting as IROPI the need to provide flood defences to protect existing and planned homes. They accordingly amount to legal error.
47. In addition, the Secretary of State's failure to have regard to the City Deal in reaching her opinion was an irrational failure to have regard to an obviously material consideration: see *Friends of the Earth v SSBEIS* [2022] EWHC 1841 (Admin) at [200]. National guidance on IROPI provides that national strategic plans, national plans, and plans or projects that fall outside national strategic plans are relevant to the existence of IROPI. The City Deal was plainly a relevant consideration as an agreement between national government and local government on a key aspect of the growth strategy of the Solent region, namely maximising the economic impact of the Solent's marine and maritime assets through the delivery of a marine employment hub and housing at Tipner West and Horsea Island East. It was highly relevant to the City Council's IROPI case on all three grounds because it:
- a. Established the principle of development and drove the process that led to draft Policy PLP3;

- b. Amounted to UK Government endorsement of the need for development of a marine hub plus housing on Tipner West and Horsea Island East; and
 - c. Tied the provision of funding for enabling infrastructure including flood defences and site decontamination to the delivery of such development at Tipner West and Horsea Island East.
48. In those circumstances, it was irrational for the Secretary of State to fail to have regard to the City Deal when delivering the opinion.

8. Precedent effects and unintended consequences

49. Separate to the City Council's submissions as to the lawfulness of the decision, the City Council is deeply concerned as to the precedent effect of the opinion and the unintended consequences it may have.
50. On account of the fact that the Secretary of State does not engage in any weighing of the public benefits of the proposal with the predicted harm to integrity of the SPA/Ramsar site, the implication appears to be that the Secretary of State has decided that none of the claimed grounds for IROPI even met the threshold of being capable of constituting IROPI. If that is indeed the case, it is deeply concerning that the Secretary of State has set a precedent that:
- a. Meeting a need for economic growth of regional strategic importance is incapable of constituting IROPI (contrary to the position as previously applied by the European Commission under the Habitats Directive, and contrary to Defra's published guidance);
 - b. Mitigating the risk of harm to an SPA through measures to prevent the release of leachate from contaminated land is incapable of constituting IROPI (despite that appearing to fall squarely within the category of 'beneficial consequences of primary importance to the environment' as set out in reg 107(2)); and
 - c. IROPI can only arise from the primary driver of a plan or project and cannot

arise from a demonstrated, imperative public interest need that is met by the plan or project but which is not the primary driver, or through the cumulative public benefits of the proposal as a whole (contrary to the position as previously applied by the European Commission under the Habitats Directive, contrary to the position as set out in the 2023 DLUHC letter, and contrary to CJEU case law).

51. Whether or not those conclusions are lawful (and the City Council says they are clearly not), we cannot believe that any of those conclusions are intended. Nonetheless, those are the most logical inferences from the opinion as written.
52. Further, because the decision is not based on a weighing of specific public benefits against specific (and in this case limited) adverse effects, but instead on the threshold question of whether the reasons relied on are capable of constituting IROPI, the effect of the opinion appears to be that the public benefits of proposed development at Tipner West and Horsea Island East are incapable of constituting IROPI, even if the loss of protected habitat within the SPA/Ramsar site was reduced to the smallest minimum (e.g. 1m²). The effect of the opinion therefore appears to prevent any City Deal-consistent development at Tipner West and Horsea Island East, thus blocking a key plank of UK Government support for economic growth in the region. No marine hub that meets the identified market-need for deep water access can be delivered at Tipner West and Horsea Island East without having some adverse effects on the SPA/Ramsar site because the provision of deep water access will always require at least some dredging of subtidal SPA. It is not clear from the opinion if the prohibition of such development is an intended or unintended consequence of the opinion and clarification is urgently needed to:
 - a. guide the City Council in how to progress the Local Plan (i.e. does the Local Plan need to abandon the decade-long ambition to facilitate marine focused development at Tipner West and Horsea Island East in accordance with the City Deal, the city's sectoral growth focus, and identified market need; or is City Deal-consistent development potentially still possible, provided the adverse effects on SPA habitat are reduced from those currently assessed so the balance of public benefits / adverse effects tilts in favour of IROPI); and

- b. guide the City Council in its engagement with the UK Government on the consequences of the opinion for the City Deal.
- 53. As set out below, the City Council invites the Secretary of State to consider these precedent effects, uncertainties and potentially unintended consequences alongside the legal grounds when considering how to respond to this letter, including whether to withdraw and remake the decision as requested.

What we require you to do

- 54. For the reasons above, the opinion is unlawful. In addition, as the first opinion issued by the Secretary of State under regulation 107(4) of the Habitats Regulations, it stands as a poor quality and unhelpful public precedent.
- 55. The City Council invites the Secretary of State to confirm, within 14 days, that the opinion will be withdrawn and reissued. The City Council recognises that the Secretary of State may be entitled to reach the same conclusion upon reissuing her opinion, but notes:
 - a. If the Secretary of State's reissued opinion is not infected by the misdirections in law identified in ground one above, and/or the errors of reasoning in ground three above, it is likely a different conclusion will be reached; and
 - b. Even if that is not the case, and the same conclusion is reached, a lawful opinion, with adequate reasoning, will enable the City Council to progress its draft Local Plan on a properly informed basis, without having to second-guess the implications of the Secretary of State's opinion for any amended policy that may replace existing draft Policy PLP3.
- 56. If you intend to defend the challenge, we invite you, within 14 days, to:
 - a. Provide a full response to this letter, including a full explanation for the opinion, supplementing the reasons where they are currently inadequate. Please also confirm whether the implications of the opinion, as identified at paragraphs 50 and 52 above are intended and, if not, please clarify.

- b. Provide disclosure in line with your duty of candour (which you are reminded applies at the pre-action stage), including at least:
 - i. The Ministerial submission provided by officials to the Minister of State in advance of the approval of the opinion; and
 - ii. Any advice received from the JNCC, respondents from the devolved administrations, the MMO, Natural England and the Environment Agency.
- c. Confirm – in the interest of the overriding objective – that you will not resist permission (the claim is clearly arguable) and agree to an expedited hearing so as not to delay unduly the progression of the draft Local Plan.

57. The City Council emphasises the particular importance of receiving clarity on the reasons for, and consequences of, the Secretary of State's opinion. On the opinion as currently issued, the City Council is unable to determine how best to proceed with its Local Plan to ensure it can submit for Examination in good time. We trust you will bear this in mind when deciding whether to withdraw and remake the opinion and/or when deciding how comprehensively you will set out supplementary reasons and clarifications for the decision in your pre-action response. As set out above, the City Council wants to avoid litigation but will be forced into issuing proceedings if it remains in its current position of uncertainty upon receipt of your pre-action response.

Legal Advisers

58. The solicitor with conduct of the proposed proceedings is Juliet Gill, Principal Solicitor, Planning and Highways. The case reference for correspondence is IROPI (TCM:00601802). If you have any queries she can be contacted by telephone on 02392 83 4565 or by email at juliet.gill@portsmouthcc.gov.uk

Yours faithfully

A handwritten signature in black ink, reading "Juliet Gill". The script is cursive and elegant, with the first letters of each word being capitalized and prominent.

Juliet Gill
Principal Solicitor, Planning and Highways



Government Legal Department

Juliet Gill
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Your ref: IROPI TCM:00601802
Our ref: Z2503054/JHK/JD3

28 March 2025

Dear Ms Gill,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write further to your letter dated 10th March 2025 and email correspondence dated 21st March 2025 and 24th March 2025.

As indicated in my email of 21st March 2025 the Secretary of State is undertaking a review of your letter of claim and the contents therein. Due to the nature of the issues raised in the letter of claim and the processes involved in preparing and seeking the Secretary of State's instructions we are not in a position to provide a substantive response to the letter of claim today.

The Secretary of State is aware of the importance of trying to resolve matters pre-action and is working towards providing a substantive response as soon as possible. We will continue to keep you apprised of any developments in this regard.

In your email dated 24th March 2025 you state that the deadline for judicial review is 10th April 2025. From this we assume you are applying the 6-week "planning" judicial review time frame. We do not consider this to be the correct timescale for bringing a judicial review claim. The 6-week timeframe only applies to judicial review claims under "the planning acts" (CPR Rule 54.5(5)).

The Secretary of State's decision was made under the Conservation of Habitats and Species Regulations 2017. This is not a "planning act", as defined for the purposes of the 6-week CPR Rule 54.5 deadline to file a claim form. We therefore consider the Claimant has three months to bring a judicial review claim.

Gary Howard - Head of Division

Fiona Montgomerie - Deputy Director, Team Leader Planning, Infrastructure & Environment



Should the Claimant seek to bring a judicial review claim by 10th April 2025 we consider this would be highly premature. We confirm that should the claim for judicial review be brought within 3 months of the decision the Secretary of State would not argue that the claim had not been brought promptly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jasvinder Young', with a long horizontal flourish extending to the right.

Jasvinder Young
For the Treasury Solicitor

D 0207 210 4651

E Jasvinder.Young@governmentlegal.gov.uk

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Phone: 02392 83 4565

Email: Juliet.gill@portsmouthcc.gov.u

Our ref: IROPI TCM:00601802
Your ref: PCU/RARE/21775/335298

Jasvinder Young
Litigation Group
The Government Legal Department
102 Petty France
Westminster
London SW1H 9GL

By email only:

Jasvinder.Young@governmentlegal.gov.uk

Leigh.McGeeney@governmentlegal.gov.uk

Date: 11 April 2025

Dear Jasvinder,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write further to our Pre-Action Protocol (PAP) letter of 10 March 2025, your holding letter dated 28 March 2025, our meeting on 3 April 2025 and your meeting with Lucy Howard yesterday.

It is deeply disappointing that a response has not been made to our PAP letter. The lack of clarity makes it very difficult for the City Council to progress both a legally compliant and sound Local Plan and discussions with Government on City Deal outputs.

If we do not receive a response to our PAP letter by **12pm on Thursday 17 April**, we reserve the right to issue proceedings without further reference to the Government Legal Department and to seek to recover our costs on an indemnity basis given the Secretary of State's unreasonable failure to comply with the PAP (in accordance with paragraph 16(b) of the Practice Direction on Pre-action Conduct and Protocols).

I look forward to hearing back from you.

Yours sincerely

 $f(t) \cdot 1$

Juliet Gill

Principal Solicitor, Planning and Highways

Juliet Gill
Portsmouth City Council - Legal Services
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Your ref: IROPI TCM:00601802

Our ref: Z2503054/JHK/JD3

17 April 2025

CONFIDENTIAL
WITHOUT PREJUDICE SAVE AS TO COSTS

Dear Ms Gill,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write further to your letters dated 10 March 2025 and 11 April 2025, on behalf of the Secretary of State for Housing, Communities and Local Government ("**the Secretary of State**").

1. The details of the matter being challenged

This proposed judicial review claim challenges the opinion of the Secretary of State that Policy PLP3 in Portsmouth City Council's ("**PCC's**") draft local plan did not constitute imperative reasons of overriding public interest (IROPI) pursuant to s107(3) of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**"). The Secretary of State's opinion was issued by letter on 28 February 2025 ("**the Decision**").

The proposed claim is pursued on the following grounds:

- (1) The Secretary of State misdirected herself in law by applying the wrong test to circumstances where no priority habitats or species are likely to be affected.
- (2) The Secretary of State failed to give adequate reasons for her opinion that each of the grounds relied on by the City Council, individually and cumulatively, did not constitute IROPI.
- (3) The Secretary of State's opinion was irrational because it was based on flawed reasoning and failed to have regard to obviously material considerations.

2. Response to the proposed claim

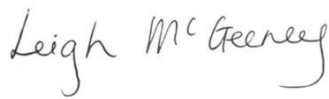
The Secretary of State does not agree with Ground 1. The impugned text does not represent the test applied by the Secretary of State, therefore she did not misdirect herself in law. She did not restrict her considerations as

alleged: this is clear from paragraph 13 of the decision which expressly takes economic factors into account, but concludes they do not amount to IROPI. Further and in any event, the premise of Ground 1 is not accepted: the legal test to be applied under reg.107 is a broader test requiring determination of whether imperative reasons of overriding public interest exist or not.

However, on the basis of Grounds 2 and 3, the Defendant agrees to withdraw and reissue the Decision, subject to your agreement to maintain confidentiality regarding the Decision being withdrawn whilst the Decision is being reconsidered. Additional clarity on the factors considered by the Secretary of State, and how they influence the decision, will be provided when the Decision is reissued.

We would be grateful if you could please confirm that you are content to agree to maintain confidentiality whilst the Decision is being reconsidered. Once this has been confirmed, the Decision will be withdrawn, and the Secretary of State will take steps to reconsider and reissue the Decision at the earliest possible opportunity.

Yours sincerely

A handwritten signature in black ink that reads "Leigh McGeeney". The signature is written in a cursive, flowing style.

Leigh McGeeney
For the Treasury Solicitor

D +44 7355 029114

E leigh.mcgeeney@governmentlegal.gov.uk

Jasvinder Young
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The Government Legal Department
102 Petty France
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London SW1H 9GL

By email only:

Jasvinder.Young@governmentlegal.gov.uk

Leigh.McGeeney@governmentlegal.gov.uk

Date: 25 April 2025

Dear Jasvinder,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write further to your letter dated 17 April 2025, my email of the same date and our meeting with Leigh McGeeney on Wednesday 23 April 2025.

It is necessary for the Council to make timely progress with its Local Plan. Therefore, if by 9 May 2025:

- you have not confirmed that the existing IROPI decision has been withdrawn, the Council will need to challenge the existing decision by way of judicial review to ensure it is quashed and we do not run out of time;
- you have confirmed that the decision has been withdrawn, but no replacement decision has been provided, the Council will need to explain the delay in the Local Plan process to Council Members and the public, including by explaining that the SoS has withdrawn the earlier IROPI decision and is in the process of remaking a new decision.

It is not reasonable for the Secretary of State to request confidentiality over the withdrawal of a statutory decision, which is not in fact capable of being confidential. However, the Council will not undertake any proactive communication about your intention to withdraw the decision and re-issue a new decision, provided that the Council receives the new decision by 9 May 2025.

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Phone: 02392 83 4565

Email: Juliet.gill@portsmouthcc.gov.uk

Our ref: IROPI TCM:00601802

Your ref: PCU/RARE/Z1775/3352981

I look forward to hearing back from you.

Yours sincerely

A handwritten signature in black ink, reading "Juliet Gill". The script is cursive and elegant, with the first letters of each word being capitalized and prominent.

Juliet Gill
Principal Solicitor, Planning and Highways



Government Legal Department

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Your ref: IROPI TCM:00601802
Our ref: Z2503054/JHK/JD3

9 May 2025

Dear Ms Gill,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write on behalf of the Secretary of State for Housing, Communities and Local Government ("**the Secretary of State**") further to the correspondence between yourself and the Government Legal Department, specifically your letter dated 10 March 2025.

1. The details of the matter being challenged

This proposed judicial review claim challenges the opinion of the Secretary of State that Policy PLP3 in Portsmouth City Council's ("**PCC's**") draft local plan did not constitute imperative reasons of overriding public interest (IROPI) pursuant to s107(3) of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**"). The Secretary of State's opinion was issued by letter on 28 February 2025 ("**the Decision**").

The proposed claim is pursued on the following grounds:

- (1) The Secretary of State misdirected herself in law by applying the wrong test to circumstances where no priority habitats or species are likely to be affected.
- (2) The Secretary of State failed to give adequate reasons for her opinion that each of the grounds relied on by the City Council, individually and cumulatively, did not constitute IROPI.
- (3) The Secretary of State's opinion was irrational because it was based on flawed reasoning and failed to have regard to obviously material considerations.

2. Response to the proposed claim

The Secretary of State does not agree with Ground 1. The impugned text does not represent the test applied by the Secretary of State, therefore she did not misdirect herself in law. She did not restrict her considerations as alleged: this is clear from paragraph 13 of the decision which expressly takes economic factors into account, but concludes they do not amount to IROPI. Further and in any event, the premise of Ground 1 is not accepted:

Gary Howard - Head of Division

Fiona Montgomerie - Deputy Director, Team Leader Planning, Infrastructure & Environment



the legal test to be applied under reg.107 is a broader test requiring determination of whether imperative reasons of overriding public interest exist or not.

However, on the basis of Grounds 2 and 3, the Defendant agrees to withdraw the Decision and reconsider the matter.

The Secretary of State notes from your correspondence PCC's desire to make progress with the Local Plan and endeavours to provide details of the redetermination as soon as is possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jasvinder Young', with a long horizontal stroke extending to the right.

Jasvinder Young
For the Treasury Solicitor

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E Jasvinder.Young@governmentlegal.gov.uk

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Email:
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Our ref: IROPI TCM:00601802

Your ref:

Secretary of State for**Housing Communities and Local Government**

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thetreasurysolicitor@governmentlegal.gov.uk

PRE-ACTION PROTOCOL LETTER**THIS LETTER REQUIRES YOUR URGENT ATTENTION**

Date: 04 September 2025

Dear Secretary of State,

Re: Proposed judicial review of the Secretary of State's 31 July 2025 IROPI opinion.

1. Introduction

1. This letter is written in accordance with the judicial review pre-action protocol. It puts you on notice of a possible judicial review challenge, and gives you an opportunity to deal with, or at least to narrow, the points in issue. It sets out our current understanding of the legal and factual position so that you can explain if and how you disagree.

2. Portsmouth City Council ("**the City Council**") has given careful consideration to whether it is necessary to send this letter. Reluctantly, it has concluded it is necessary, given the potential impacts of the unlawful reasoning contained in the Secretary of State's letter of 31 July. The City Council makes clear, however, that the intention of this letter is to avoid the need for judicial review, which the City Council contemplates only as a last resort. However, if we do not receive a satisfactory response to this letter, the City Council will consider making an application for judicial review without further reference to you.

2. The Claimant

3. The City Council is a local planning authority ("**LPA**") under the Planning Acts and Competent Authority ("**CA**") for the purposes of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**"). It is currently in the process of preparing its Local Plan ("**the draft Local Plan**"). Draft Policy PLP3 ("**Policy PLP3**") is a strategic allocation of land at Tipner West and Horsea Island East in the Pre-Submission Local Plan consulted on in 2024.
4. Separately to its role as LPA and CA, the City Council is also the landowner of Tipner West and Horsea Island East and the promoter of Policy PLP3 through the Local Plan process. The City Council has arrangements in place to ensure the effective separation of the City Council's LPA and CA functions from its role as site promoter. This letter is sent on behalf of the City Council as LPA and CA only. The content of this letter has not been discussed with the City Council's promoter team.

3. The Defendant

5. The proposed Defendant is the Secretary of State for Housing, Communities and Local Government. The Secretary of State is the appropriate authority responsible for providing opinions, upon request from a plan-making authority under regulation 107(3) of the Habitats Regulations on whether reasons relied on by a plan-making authority for progressing a plan notwithstanding adverse effects on protected habitats are imperative reasons of overriding public interest ("**IROPI**").

4. The matter being challenged

6. The City Council intends to challenge the legality of the Secretary of State's opinion, dated 31 July 2025 (reference: PCU/RARE/Z1775/3352981), that the reasons advanced by the City Council for progressing the draft Local Plan with Policy PLP3

intact do not constitute IROPI.

5. Factual background

7. We do not set out the full factual background in this letter but refer you to section 6 of our previous pre-action letter dated 10 March 2025. As you know, in response to that letter, the Secretary of State conceded that her IROPI opinion of 28 February 2025 was unlawful and withdrew it.
8. On 31 July 2025, the Secretary of State issued her further IROPI opinion. That opinion contains a far more detailed review of the evidence submitted with the City Council's request. In considering the City Council's request for an opinion under regulation 107(4) of the Habitats Regulations, the Secretary of State weighed in the balance:
 - a. The public interest benefits of the proposed plan, including through the delivery of flood defences, the mitigation of the risk of contaminant leachate entering the SPA/Ramsar site; social and economic benefits of the marine hub and enabling development; and other benefits (paras 22-43).
 - b. *"the direct adverse effects on the Portsmouth Harbour SPA/Ramsar Sites"* including: i) direct habitat loss (para.45); ii) construction and post-construction disturbance (para.46); and iii) recreational pressure (para.47).
9. Having weighed all these factors in the balance, the Secretary of State concluded that *"the identified benefits are not sufficient to override the harms arising to the Portsmouth Harbour SPA/Ramsar sites and IROPI for the proposed allocation have not been demonstrated"* (para.51).
10. However, the weighing exercise was flawed because the Secretary of State treated construction impacts and recreational pressure arising from Policy PLP3 as *"direct adverse effects"* arising from Policy PLP3. In fact, all the evidence before the Secretary of State was that both construction impacts and recreational pressure could be adequately mitigated and did not require derogation. That was the clear conclusion of the Habitats Regulations Assessment of the Pre-Submission Portsmouth Local Plan 2024 (**'the HRA'**), and it was a conclusion that neither Natural England, nor the JNCC, nor the Scottish Government had taken issue with. Indeed, Natural England, in its Regulation 19 representation (which was before the Secretary of State), had specifically praised the proposed mitigation for *"in-combination"*

recreational pressure as an *“ecologically sound and robust mitigation and avoidance strategy”* and was satisfied that “alone” impacts of development were adequately mitigated through Policy PLP39 and its supporting text. It is, accordingly, entirely unclear on what basis the Secretary of State included these alleged harms in the IROPI balance.

11. As developed below, the City Council maintains that the opinion was unlawful on the following bases:
 - a. Ground 1: The Secretary of State misdirected herself / had regard to immaterial considerations by including in the IROPI balance construction impacts that were capable of effective mitigation and were therefore irrelevant to regulation 107 of the Habitats Regulations;
 - b. Ground 2: The Secretary of State failed to have regard to mandatory material considerations namely: i) the proposed mitigations for construction impacts; ii) the proposed mitigations for recreational pressure; and iii) the previous decisions of her appointed examiners and inspectors on the same and/or similar issues;
 - c. Ground 3: The Secretary of State failed to give any or any adequate reasons for concluding that the City Council’s proposed mitigation measures for construction impacts and recreational pressure were ineffective to rule out adverse impacts at the Plan-level; and
 - d. Ground 4: The process of producing the opinion was procedurally unfair because the Secretary of State failed to give the City Council an opportunity to address the fundamental change made by the Secretary of State to the basis of the City Council’s request.
12. The Secretary of State’s decision to include construction disturbance and recreational pressure in the IROPI balance has potential consequences well beyond Policy PLP3. As the Secretary of State is aware, Portsmouth is surrounded by protected habitats sites. A number of strategic allocations in the Pre-Submission Local Plan (PLP4 Tipner East; PLP8 St James and Langstone Campus; PLP11 Port Solent; PLP13 Fraser Range) and six sites identified in the City Council’s Housing and Economic Land Availability Assessment (‘HELAA’) (EC14, PA03, SJ17, ST17, EC11,

EC28B) are adjacent to either an SPA or a Core or Primary Support Area of the Solent Waders and Brent Goose Strategy. If the Secretary of State's conclusion is that construction impacts and recreational pressure from development adjacent to protected habitats sites in Portsmouth cannot be effectively mitigated and therefore require a derogation from the Habitats Regulations to proceed, that may have the consequence of freezing development on those sites, putting at risk the delivery of 3342 dwellings and around 25,000sqm of employment floorspace. Moreover, the logic of the Secretary of State's opinion would apply beyond Portsmouth, and constrain development across the north Solent. The City Council cannot believe it was the Secretary of State's intention to do so, but it is the clear effect of her opinion.

6. Legal and policy framework

13. The Habitats Regulations were originally enacted to implement the Habitats Directive (Council Directive 92/43/EC) ('**the Directive**') in UK law. Notwithstanding the effect of the Retained EU Law (Revocation and Reform) Act 2024, regulation 9 of the Habitats Regulations provides that the appropriate authority and any competent authority must exercise their functions which are relevant to nature conservation so as to secure compliance with the requirements of the Directive.

14. Regulation 105 provides:

Assessment of implications for European sites and European offshore marine sites

105.—(1) Where a land use plan—

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of the site, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

15. In considering whether a land use plan is likely to have a significant effect on a European site, (the screening stage) the competent authority must ignore any proposed mitigation: see *People Over Wind and Sweetman v Coillte Teoranta* (C-

323/17). However, when considering whether the land use plan will adversely affect the integrity of a European site (the appropriate assessment stage), the competent authority must take into account proposed mitigation measures and must also take into account the representations of the statutory nature conservation body. It is only where the appropriate assessment identifies adverse impacts that cannot be effectively mitigated that regulation 107 is engaged.

16. Regulation 107 provides:

Considerations of overriding public interest

107.—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

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

(b) any other reasons which the plan-making authority, having due regard to the opinion of the appropriate authority, considers to be imperative reasons of overriding public interest.

(3) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the appropriate authority as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

(a) identifying the matter on which an opinion is sought; and

(b) accompanied by any documents or information which may be required.

(4) In giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must have regard to the national interest, and provide its opinion to the competent authority.

(4A) Before giving its opinion as to whether the reasons are imperative reasons of overriding public interest, the appropriate authority must consult the following, and have regard to their opinion—

(a) the Joint Nature Conservation Committee;

(b) where the appropriate authority is the Secretary of State, the devolved administrations;

(c) where the appropriate authority is the Welsh Ministers, the Secretary of State and the other devolved administrations; and

(d) any other person the appropriate authority considers appropriate.

17. There is no domestic caselaw on the criteria for determining whether reasons constitute IROPI. In C-304/05 *Commission v Italy* [2007] ECR I-07495 at paras 82–83, the CJEU affirmed that “*the assessment of any imperative reasons of overriding public interest... require[s] a weighing up against the damage caused to the site by*

the plan or project under consideration” (emphasis added). In case C-182/10 *Marie-Noëlle Solvay and Others v Région Wallonne* [2012] ECR I-00000, the Court clarified that for an interest to be IROPI, it must be both ‘public’ and ‘overriding’. The court said at para.75 that this means “*it must be of such an importance that it can be weighed up against that Directive’s objective of the conservation of natural habitats and wild fauna and flora*” (emphasis added). In case C-239/04 *Commission v Portugal*, Advocate-General Kokott explained at para.45 that:

“The necessity of striking a balance results in particular from the concept of ‘override’, but also from the word ‘imperative’. Reasons of public interest can imperatively override the protection of a site only when greater importance attaches to them. This too has its equivalent in the test of proportionality, since under that principle the disadvantages caused must not be disproportionate to the aims pursued.”

18. Guidance issued by Defra affirms that the existence of IROPI is to be judged on the facts of each case, rather than against any defined criteria: see Defra Guidance entitled *Habitats regulations assessments: protecting a European site* (24 February 2021) and *Habitats Directive: guidance on the application of article 6(4)* (December 2011).

7. Proposed grounds of challenge

Ground 1: misdirection in law / having regard to irrelevant considerations / failing to have regard to material considerations

19. The Secretary of State’s opinion suffers from a misdirection in law, namely the Secretary of State has weighed in the IROPI balance adverse effects that are capable of mitigation and are therefore irrelevant to a regulation 107(4) opinion.
20. In relation to construction impacts, paragraph 45 of the opinion states:

The Secretary of State notes that development schemes in Habitats sites can result in the disturbance of qualifying SPA / Ramsar bird species in Habitats sites or functionally linked habitats through several mechanisms. Noise and visual disturbance arising from construction activities may result in behavioural changes (e.g. flight from the nest, cessation of foraging) in birds. Furthermore, post-construction disturbance from site usage, road traffic and operational lighting might also arise. The Portsmouth Harbour SPA/Ramsar are identified as being sensitive to visual and noise disturbance, and at least some of the construction works to deliver the 13,603 net new dwellings and at least 138,429m² of employment land will be carried out within or directly adjacent to the Portsmouth Harbour SPA / Ramsar sites. The Monitoring and Delivery Framework element of draft allocation PLP3 envisages that development will take place over a 15-year timeframe. Given the sensitivity of the site and the lengthy timeframe envisaged, the Secretary of State attaches significant weight to this harm.
21. The first four sentences (“*The Secretary... also arise*”) are taken, almost verbatim, from HRA para.4.36. The first clause of the fifth sentence (“*The Portsmouth...*”

disturbance") is taken, almost verbatim, from HRA paras 4.41 and 5.21. The rest of the fifth sentence ("*and at least... Ramsar sites*") is taken verbatim from HRA para.5.19. All of those passages are taken from sections of the HRA that do not take account of proposed mitigations (section 4 deals with the background to impact pathways and section 5 is the screening stage of the HRA). None are taken from the appropriate assessment (section 6). HRA paras 6.73-6.76 set out proposed mitigations for construction disturbance and conclude, on the basis of "*professional experience of many redevelopment projects close to Special Protection Areas, these measures ensure the protection of SPA /Ramsar waterfowl and waders from visual and noise disturbance.*"

22. By weighing in the balance "likely significant effects" that had been screened into the appropriate assessment but were considered through that assessment to be capable of effective mitigation, the Secretary of State misdirected herself in law and/or took into account irrelevant considerations.

Ground 2: failure to have regard to material considerations

Ground 2(a): failure to have regard to proposed mitigations for construction impacts

23. By failing to have regard to the proposed mitigations for construction impacts as set out at HRA paras 6.73-6.76, the Secretary of State erred in law. Those mitigations were so obviously material to the Secretary of State's opinion that it was irrational not to take them into account: *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52 at [120].

Ground 2(b): failure to have regard to proposed mitigations for recreational pressure

24. Further, the Secretary of State failed to have regard to the proposed mitigations for recreational pressure. At paragraph 47 of the opinion, she said:

"In respect of recreational pressure, paragraph 8.122 of the HRA refers to improved management to mitigate / avoid recreational disturbance. While recognising that this may be possible, the Secretary of State considers that the delivery of between 814 and 1,250 homes on the PLP3 allocation would represent a significant increase in nearby residents, and she considers that adverse effects arising from recreational pressures in this regard cannot be ruled out, and she considers that this should attract moderate weight."

25. Paragraph 8.122 of the HRA is the only paragraph mentioned in the opinion when considering mitigation measures for recreational pressure. However, that paragraph is not the primary mitigation relied on in the HRA to conclude that recreational pressure from Policy PLP3 (amongst others) can be effectively mitigated. Paragraph 8.122 identifies a specific benefit of Policy PLP3, namely that it will improve the

status quo (unmanaged access to the coastal edge) by introducing on-site management of access to the coastal edge to prevent and reduce recreational pressure on the SPA. This is secured through paragraph 2(l) and (m) of Policy PLP3 (*“2(l) Mitigate likely significant effects from recreational disturbance to protected bird populations through a bespoke developer-provided package of measures for the lifetime of the development as advised by Natural England”; “2(m) Provide for public access for all along the waterfront where feasible and without causing unmitigated recreational disturbance to protected bird populations”*). Thus paragraph 8.122 of the HRA refers to the site-specific mitigations proposed for PLP3.

26. But the primary measures for mitigating recreational pressure arising from development in Portsmouth are addressed in the HRA appropriate assessment at paras 6.18-6.20. They include Policies PLP43 (a City-wide policy on Recreational Disturbance on International Nature Designations, incorporating the Bird Aware Solent Recreation Mitigation Strategy), PLP39 (a City-wide biodiversity policy requiring applicants to comply with the mitigation hierarchy and requiring an HRA for all planning applications with potential to impact a European site) and PLP9 (the strategic allocation of Horsea Island Open Space, easily accessible to all residents of PLP3 across the proposed Tipner Bridge). These policies are all referenced in the HRA but not referenced by the Secretary of State in her opinion.
27. Moreover, the Secretary of State failed to note the view of the statutory nature conservation body, Natural England, that Policy PLP43 reflected *“an ecologically sound and robust mitigation and avoidance strategy”* for the in-combination impacts of recreational pressure arising from development across the Solent, and that *“alone”* impacts, where they arose, were addressed adequately by PLP39 together with the supporting text at paragraph 9.82 of the Pre-Submission Local Plan.
28. Thus, in concluding that adverse effects arising from recreational pressures *“cannot be ruled out,”* the Secretary of State failed to have regard to the following material considerations:
 - a. The mitigations addressed in, and the conclusions of, the appropriate assessment of the HRA in respect of recreational pressures (strikingly, the Secretary of State failed to refer to the appropriate assessment section of

the HRA anywhere in her opinion); and

- b. The conclusion of the statutory nature conservation body, Natural England, that Policies PLP43 and PLP39 adequately addressed both in-combination and alone effects of development.

29. These considerations were so obviously material that it was irrational not to take them into account in the decision: *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52 at [120].

Ground 2(c): failure to have regard to the Secretary of State's own previous decisions relating to the adequacy of the proposed mitigations for recreational pressure

30. The Secretary of State has previously accepted that the Bird Aware Solent Recreation Mitigation Strategy is capable of mitigating recreational pressure arising from the in-combination effects of development across the Solent, and has accepted that bespoke, site-specific measures are capable of adequately mitigating “alone” effects of development close to the SPA. In addition, she has previously placed particular weight on the view of the statutory nature conservation body, Natural England. See:

- a. Examiner’s Report dated 25 March 2020 on the New Forest District (outside the National Park) Local Plan – Part 1: Planning Strategy (esp. paras 102 – 106);
- b. Examiner’s Report dated 23 March 2023 on the Fareham Local Plan 2037 (paras 37 – 40, 259 – 261);
- c. Inspector’s Report dated 16 August 2023, in respect of Ref: APP/Z1775/W/22/3302931 and Ref: APP/Z1775/Y/22/3302927 St James Hospital, Locksway Road, Southsea PO4 8LD (esp. paras 82-88).

31. These previous decisions were relevant considerations under the principle established in *North Wiltshire DC v Secretary of State for the Environment* [1993] 65

P&CR 137.

32. If the Secretary of State considered that the combined effect of City-wide Policies PLP9, PLP39, PLP43 and the site-specific mitigation measures required by paragraphs 2(l) and (m) of Policy PLP3 were inadequate to rule out the possibility of adverse impacts on the SPAs/Ramsar site, she was legally required to give her reasons for departing from the positions adopted in previous examination reports and appeal decisions in which the same or similar measures were found to be adequate. Her failure to take into account those previous decisions and/or to give reasons for departing from them, was unlawful.

Ground 3: failure to give any or any adequate reasons for concluding that the City Council's proposed mitigation measures for construction disturbance and recreational pressure were ineffective

33. Pursuant to regulation 107(4) of the Habitats Regulations, the Secretary of State was required to give her opinion as to whether the reasons relied on by the City Council were IROPI. By necessary implication, that statutory requirement incorporates a duty to give reasons: see *Stefan v General Medical Council* [1999] 1 WLR 1293 at p.1297.
34. Where a duty to give reasons arises under statute or common law, the standard of reasons required is the standard described by Lord Brown in *South Bucks v Porter* [2004] 1 WLR 1953:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inferences will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed [persons, in that case, developers] to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact on such future applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

35. Lord Brown also approved the observations in *Clarke Homes Limited v Secretary of State for the Environment* (1993) 66 P & CR 263 that the key issue was whether the decision, "leaves room for genuine as opposed to forensic doubt as to what [the

decision maker] has decided and why" (at paragraphs 271-272).

36. The duty to give reasons is heightened when a decision-maker departs from the advice of statutory consultees. In those circumstances, "*cogent and compelling reasons*" are required to justify the departure: *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin) at [72].
37. In providing the opinion, the Secretary of State failed to comply with her legal duty to give adequate reasons for departing from the conclusions of the City Council's HRA, as endorsed by Natural England, that the construction impacts and recreational pressure arising from Policy PLP3 could be adequately mitigated and were therefore irrelevant to IROPI.
38. As for construction impacts, this ground is advanced in the alternative to grounds 1 and 2 above, in the event the Secretary of State denies that she misdirected herself in law and/or failed to have regard to material considerations and instead contends that she simply disagreed with the conclusion in the HRA that construction effects were capable of effective mitigation. Unlawfully, no reasons were given for that disagreement. In circumstances where none of Natural England, JNCC or the Scottish Government had raised any issue with the HRA on this point, and there was no competing evidence before the Secretary of State, cogent and compelling reasons were required from the Secretary of State to justify a departure from the conclusion in the HRA.
39. As for recreational pressure, this ground is advanced in the alternative to ground 2 above, in the event the Secretary of State denies she failed to have regard to material considerations and instead contends that she simply i) disagreed with the conclusion in the HRA that recreational pressure was capable of effective mitigation; and ii) distinguished this case from those set out in paragraph 30 above. Paragraph 47 of the opinion provides no, or no adequate, reasons for the Secretary of State's disagreement with the conclusion in the HRA. In circumstances where none of Natural England, JNCC or the Scottish Government had raised any issue with the HRA on this point, and in circumstances where previous examiners and inspectors appointed by the Secretary of State had found that the same or similar measures were adequate to mitigate likely significant effects from recreational pressure, and

where there was no competing evidence before the Secretary of State, cogent and compelling reasons were required from the Secretary of State to justify a departure from the conclusion in the HRA.

40. In relation to both construction impacts and recreational pressure, the Secretary of State's reasons leave genuine doubt as to why the Secretary of State has weighed in the IROPI balance impacts that were screened into the HRA appropriate assessment, but which were found through the appropriate assessment to be capable of effective mitigation. The City Council is prejudiced by the unlawful absence of adequate reasons.

Ground 4: procedural unfairness

41. The requirements of fairness at common law were summarised by Singh LJ in *Citizens UK v Secretary of State for the Home Department* [2018] EWCA Civ 1812 at [68] et seq. At [69], Singh LJ quoted from the opinion of Lord Mustill in *R v Secretary of State for the Home Department, ex p. Doody* [1994] 1 AC 531, at 560 as follows:

"From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer."

42. The statutory power at issue here is regulation 107(3) and (4) of the Habitats Regulations. That power is conferred on the Secretary of State to give an IROPI opinion, when requested by a competent authority, in order to support that competent authority in the discharge of its functions. In that regard, it is for the competent authority to "*identify [...] the matter on which an opinion is sought*" (reg 107(3)(a)).
43. On 1 October 2024, the City Council made a request under regulation 107(3) of the Habitats Regulations for the Secretary of State to provide her "*opinion on whether the*

reasons relied on by PCC for progressing draft Policy PLP3, notwithstanding its implications for a European site, are considered to be IROPI.” The implications for the European site were set out at paragraph 19 of the letter and referenced only the impacts from direct habitat loss.

44. If the Secretary of State was minded to add into the IROPI balance further adverse impacts that the City Council and Natural England had concluded were irrelevant to the IROPI exercise, that amounted to a variation of *“the matter on which [the] opinion was sought”*. If the Secretary of State was to do so, she was required to inform the City Council of the proposed change to the factual basis on which the opinion would be given, and give the City Council an opportunity to make representations on that proposed change and/or an opportunity to withdraw the request. The failure to provide that opportunity to the City Council amounted to a denial of the Council’s right to be heard on a matter of real consequence for the future of the City.

8. What we require you to do

45. For the reasons above, the opinion is unlawful.
46. The City Council invites you to confirm, within 14 days, that the opinion will be withdrawn and reissued.
47. If you intend to defend the challenge, we invite you, within 14 days, to:
 - a. Provide a full response to this letter, including a full explanation for the opinion, supplementing the reasons where they are currently inadequate.
 - b. Provide disclosure in line with your duty of candour (which you are reminded applies at the pre-action stage), including at least the Ministerial submission provided by officials to the Minister of State in advance of the approval of the opinion.
48. Should you (as we trust you will) concede that the opinion is unlawful, we invite you to confirm, within 14 days, that the 31 July 2025 opinion will be withdrawn and remade. As this is the second unlawful opinion issued by the Secretary of State in response to a request that was first submitted on 1 October 2024, we implore you to retake the decision as a matter of urgency. The delays to date have been deplorable

and have real-world impacts on the City Council's ability to deliver the growth agenda the Government claims to promote.

49. In the remade opinion:

- a. The Secretary of State should avoid the errors of law identified above.
- b. The Secretary of State is invited to correct the statement at paragraph 6 of the 31 July opinion (*"While the site also falls within the Solent and Dorset Coast SPA, the CA concludes that this SPA was not at risk of likely significant effects arising from the proposed allocation"*). That statement is wrong, albeit the HRA is not as clear as the HRA Supplement that the direct loss of habitat anticipated from Policy PLP3 will affect both the Portsmouth Harbour and Solent and Dorset Coast SPAs / Ramsar sites.
- c. Should the Secretary of State still conclude there are no IROPI justifying Policy PLP3, we invite the Secretary of State to indicate (given the significant weight she attaches to the social and economic benefits of the proposed allocation) whether a revised version of Policy PLP3, with less direct habitat loss, might be able to demonstrate IROPI.

Legal Advisers

50. We have instructed Toby Fisher of Matrix Chambers to act for the City Council in these contemplated proceedings.
51. The solicitor with conduct of the proposed proceedings is Juliet Gill, Principal Solicitor, Planning and Highways. The case reference for correspondence is IROPI (TCM:00601802). If you have any queries she can be contacted by telephone on 02392 83 4565 or by email at juliet.gill@portsmouthcc.gov.uk

Yours faithfully,

J Gill

Juliet Gill

Principal Solicitor - Planning and Highways, Portsmouth City Council



Government Legal Department

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Your ref: IROPI TCM:00601802
Our ref: Z2511109/JHK/JD3

07 October 2025

Dear Ms Gill,

Portsmouth City Council v Secretary of State for Housing, Communities and Local Government

I write on behalf of the Secretary of State for Housing, Communities and Local Government ("**the Secretary of State**") further to the correspondence between yourself and the Government Legal Department, specifically your letter dated 4 September 2025.

1. The details of the matter being challenged

This proposed judicial review claim challenges the opinion of the Secretary of State that Policy PLP3 in Portsmouth City Council's ("**PCC's**") draft local plan did not constitute imperative reasons of overriding public interest (IROPI) pursuant to s107(3) of the Conservation of Habitats and Species Regulations 2017 ("**the Habitats Regulations**"). The Secretary of State's opinion was issued by letter on 31 July 2025 ("**the Opinion**").

The proposed claim is pursued on the following grounds:

- (1) The Secretary of State misdirected himself / had regard to immaterial considerations by including in the IROPI balance construction impacts that were capable of effective mitigation and were therefore irrelevant to regulation 107 of the Habitats Regulations;
- (2) The Secretary of State failed to have regard to mandatory material considerations namely: (a) the proposed mitigations for construction impacts; (b) the proposed mitigations for recreational pressure; and (c) the previous decisions of his appointed examiners and inspectors on the same and/or similar issues;
- (3) The Secretary of State failed to give any or any adequate reasons for concluding that the City Council's proposed mitigation measures for construction impacts and recreational pressure were ineffective to rule out adverse impacts at the Plan-level; and
- (4) The process of producing the Opinion was procedurally unfair because the Secretary of State failed to give the City Council an opportunity to address the fundamental change made by the Secretary of State to the basis of the City Council's request.

Gary Howard - Head of Division

Fiona Montgomerie - Deputy Director, Team Leader Planning, Infrastructure & Environment



2. Response to the proposed claim

The Secretary of State accepts that he did not properly take account of the proposed mitigation in respect of construction impacts and failed to give adequate reasons for concluding that there would be adverse impacts in terms of both construction impacts and recreational pressure in light of the mitigation proposed. Therefore, on the basis of Grounds 2(a) and 3, the Secretary of State agrees to withdraw the Opinion and reconsider the matter. For the avoidance of doubt the Secretary of State does not consider that there is merit in any of the other proposed grounds of challenge.

The Secretary of State notes from your correspondence PCC's desire to make progress with the Local Plan and endeavours to provide details of the redetermination as soon as is possible.

Yours sincerely



Jasvinder Young
For the Treasury Solicitor

D 0207 210 4651

E Jasvinder.Young@governmentlegal.gov.uk

3.

Correspondence between MHCLG and PCC

Rt Hon Angela Rayner MP
Deputy Prime Minister and Secretary of State for
Housing, Communities and Local Government

By email only
angela.rayner.mp@parliament.uk

Councillor Steve Pitt

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Ref: SPOUT004

Date: 22 January 2025

Dear Secretary of State,

**Portsmouth Local Plan and the request for an opinion from the Secretary of State on
Imperative Reasons of Overriding Public Interest (IROPI)**

I am writing in regard to the Portsmouth Local Plan, which is ready to be submitted for examination albeit for one matter. We are waiting for your response to our request for an opinion on whether the reasons we have relied on to proceed with the strategic site allocation of Tipner West & Horsea Island East are to be considered IROPI. We made our written request under regulation 107(3) of the Habitats Regulations on 01 October 2024 and have still not received your opinion or even a timetable of when we are likely to receive the opinion.

The City Council is ambitious for growth for both new jobs and new homes in this great city. This strategic allocation will help us achieve both and bring us closer to making Portsmouth Britain's premier waterfront technology and innovation city.

To support our timely submission of the Local Plan for examination, the City Council needs both a timetable for your IROPI opinion and, subsequently, your agreement that the reasons relied on in this case constitute IROPI. This would accord with your letter to me and all local authority leaders in England sent last month stating that you would not 'duck the hard choices.'

I am aware that my Chief Executive met with Joanna Averley, your Chief Planner, last week and raised the same issue, which we understand is now a live case with you to give Secretary of State's opinion.

I would be happy to meet with you at any time and provide any information that you require to expedite the matter.

Yours sincerely



Councillor Steve Pitt

Leader of the Council

Cabinet Member for Culture, Regeneration & Economic Development

Rt Hon Angela Rayner MP

Deputy Prime Minister and Secretary of State for
Housing, Communities and Local Government

By email:

angela.rayner.mp@parliament.uk

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Ref: SPOUT046

Date: 21 May 2025

Dear Secretary of State

I am writing to complain in the strongest possible terms about your treatment of Portsmouth City Council in regard to the draft site allocation of Tipner West & Horsea Island East in the emerging Portsmouth Local Plan.

This is a site that national Government allocated a considerable amount of public funds to as part of City Deal in order to deliver much needed jobs and homes in one of the most deprived areas of the country. The long-agreed intention was to deliver a regionally significant marine hub on the last waterside site left on the Solent capable of deepwater access.

The City Council has worked tirelessly with partners over the last few years exploring how this hub could be allocated for development. Due to the known likelihood that any marine hub development on the site would cause harm to the international conservation designations in which it was located, Portsmouth Harbour Special Protection Area (SPA) / Ramsar, it was understood that the statutory derogations tests would have to be passed in order for the site to be allocated in the Local Plan. This included the test of Imperative Reasons of Overriding Public Interest (IROPI).

In order to smooth the passage of this work, a detailed request for an IROPI opinion was made in April 2023. A letter was received in September of the same year that the request was premature. During the summer of 2024 when your Government was elected to power, discussions were held with officials of your department. They encouraged us to submit a second request for an opinion, which they would strive to answer before we submitted the Plan for examination. The second request including comprehensive details on the other derogation tests of alternatives and compensation was sent in September 2024. Despite much prompting, an IROPI opinion or indeed any meaningful response was not forthcoming for five months.

An ill-considered and indeed unlawful IROPI Opinion was finally sent by your department under the direction of your Minister of State for Housing and Planning, Matthew Pennycook on 28 February. This derisory letter failed to engage with the complex arguments set out in our IROPI request. Indeed, we set out in detail in our Pre-Action Protocol letter of 10 March that the Opinion was unlawful on three grounds:

1. The Secretary of State misdirected herself in law by applying the wrong test to circumstances where no priority habitats or species are likely to be affected.
2. The Secretary of State failed to give adequate reasons for her opinion that each of the grounds relied on by the City Council, individually and cumulatively, did not constitute IROPI;
3. The Secretary of State's opinion was irrational because it was based on flawed reasoning and failed to have regard to obviously material considerations.

Having accepted that your opinion was unlawful, you withdrew your Opinion by letter on 09 May 2025.

This leaves the City Council in an unprecedented position in regard to its Local Plan. We were ready but then unable to submit the Plan for examination at the beginning of March due to your original IROPI Opinion. Cabinet agreed a new Local Development Scheme within two months of receiving your letter, which sets out how we will prepare a Local Plan Addendum with a new policy for Tipner. However, we do not have your opinion on whether there are IROPI to enable the development of the site notwithstanding the adverse effects on protected habitats. Your latest letter says that you are re-considering the matter with the intention of providing details of the redetermination as soon as possible. I would urge you to do that as a matter of urgency. If you conclude, for lawful reasons, that there are not IROPI justifying the current draft Policy PLP3, I invite you to provide as much clarity as possible as to whether (and if so how) IROPI could be established for the delivery of a regionally significant marine and employment hub on the site.

That question is directly relevant to the City Deal, which we will need to discuss with Government following the IROPI Opinion. Without limited dredging and land reclamation a regionally significant marine hub with deepwater access is no longer possible. The planned redevelopment of the site would have delivered sea defences for otherwise unprotected neighbouring communities and prevented leachates seeping into and contaminating the Harbour. This vital work would have been funded through cross-subsidisation of housing. I would like to meet with you as a matter of urgency to discuss these matters.

I am deeply disappointed by your ill-considered and indeed unlawful actions in regard to Tipner and the wider City of Portsmouth. I urge you and your Government to engage constructively and speedily on Tipner both in regard to the City Deal and the emerging Local Plan allocation. Without swift action the site and surrounding areas will flood and contamination will wash into the sea destroying both people and nature. Please note that this letter will be published on the City Council's website.

Yours sincerely



Councillor Steve Pitt

Leader, Portsmouth City Council

Cabinet Member for Leisure, Culture & Economic Development

Copies to:

- Matthew Pennycook MP, Minister of State for Housing and Planning - matthew.pennycook.mp@parliament.uk
- Amanda Martin MP, member of parliament for Portsmouth North - amanda.martin.mp@parliament.uk
- Stephen Morgan MP, member of parliament for Portsmouth South - stephen.morgan.mp@parliament.uk



**Ministry of Housing,
Communities &
Local Government**

Baroness Taylor of Stevenage
*Parliamentary Under-Secretary of State for
Housing and Local Government*
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Your reference: SPOUT046
Our reference: MC2025/14933

Councillor Steve Pitt
Leader
Portsmouth City Council
Cabinet Member for Leisure, Culture and
Economic Development

0(411
) July 2025

Dear *Cau1V1wWti* 1{?

Thank you for your letter of 21 May to the Deputy Prime Minister about your concerns around the treatment of Portsmouth City Council (PCC) regarding the proposed allocation for Tipner West and Horsea Island East. I have been asked to reply and extend my sincere apologies for the delay in doing so.

Regarding your concern about the delay following PCC's request for an opinion in October (rather than September) 2024, I should clarify that officials earlier advised that this request should follow the conclusion of PCC's work with Natural England. This work, together with various updates to the original submission on this matter, was not available for consideration until December 2024 and followed the submissions to which you refer.

While I understand your concerns on this matter, I am unfortunately not able to comment on the future of the site and the wider implications for PCC's planning strategy going forward. To do so may prejudice the consideration of a live matter before the Ministry of Housing, Communities and Local Government where the possibility of litigation remains. However, I can assure you that the matter takes high priority and that a new opinion will be issued as soon as practically possible.

I regret that I cannot give you a more full or favourable response, but I hope that you understand the reasons why it is not currently possible to do so, namely while we work to produce the more robust and detailed opinion sought by your authority.

Thank you for writing on this important matter.

Yours sincerely,

—  V ,

BARONESS TAYLOR OF STEVENAGE
Parliamentary Under-Secretary of State for Housing and Local Government

**Secretary of State for Housing
Communities and Local Government**

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Portsmouth City Council

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Our Ref: IROPI TCM:00601802

Your Ref: Z2511109/JHK/JD3

14 October 2025

Dear Secretary of State

Request for IROPI opinion from Portsmouth City Council

Background

As you will know, Portsmouth City Council is preparing its new Local Plan. On 1 October 2024, the City Council made a request to your predecessor for an opinion under regulation 107(4) of the Conservation of Habitats and Species Regulations 2017 (**'the Habitats Regulations'**) in relation to draft policy PLP3 Tipner West and Horsea Island East.

Regulation 107(4) of the Habitats Regulations empowers the Secretary of State to give an opinion, upon request from a local planning authority, as to whether reasons relied on to progress a local plan notwithstanding adverse effects on protected habitats sites are "imperative reasons of overriding public interest" (**'IROPI'**). The purpose of such an opinion is to provide a degree of certainty to a local planning authority before submitting its local plan to examination. In line with that purpose, local planning authorities reasonably expect that such an opinion will be provided expeditiously and without undue delay.

Unfortunately, despite submitting its request on 1 October 2024, Portsmouth City Council still does not have a lawful IROPI opinion and has been the victim of your department's unjustified delay and legal error.

It took four months to produce the first 17 paragraph opinion, issued on 28 February 2025. A pre-action protocol letter challenging that opinion was sent by the City Council on 10 March 2025 but (in breach of the pre-action protocol for judicial review) it took the former Secretary of State nearly two months to concede that the opinion was unlawful and withdraw it.

It took another 12 weeks for the former Secretary of State to produce a new IROPI opinion, issued on 31 July 2025. The City Council challenged that second opinion by way of pre-action protocol letter sent on 4 September 2025. Once again, your department failed to comply with the pre-action protocol for judicial review and it took

more than a month until, on 7 October 2025, you conceded that opinion was also unlawful and withdrew it.

In the circumstances, you will appreciate the City Council's frustration with the manner in which your department has handled our request for an IROPI opinion. Something designed to provide certainty to local planning authorities has actually delivered uncertainty and significant delay. As a result of your department's delay and legal error, the City Council missed the 12 March 2025 deadline for submission of its local plan under paragraph 234(b) NPPF. It now faces a hard deadline of 12 June 2026 by which it must submit its local plan for examination.

Local Plan Addendum

The City Council has been placed in a hugely undesirable situation of having to progress a local plan, under time pressure, without any certainty as to what will and will not be allowed on the Tipner peninsula. The City Council is committed to getting a plan in place for Portsmouth and has therefore, on a pragmatic basis, decided earlier this year to prepare a Local Plan Addendum that includes a variation of Policy PLP3 that causes no harm to protected habitats. That decision was taken to mitigate the risk that i) there was substantial further delay in receiving a lawful IROPI opinion; and ii) any replacement IROPI opinion was also negative. Given the impending deadline for submission for examination set by Government, and the prior need to consult on the Addendum, the City Council does not intend to pause that process while we await a replacement opinion. Subject to approval by Full Council consultation on the Local Plan Addendum is expected to start in November 2025.

Further IROPI opinion

Notwithstanding the preparation of the Local Plan Addendum, we welcome the Treasury Solicitor's confirmation by letter dated 7 October 2025 that you will endeavour to provide a replacement IROPI opinion, in response to our request of 1 October 2024, as soon as is possible. Given the very lengthy delay to date, we hope you will be able to provide a replacement IROPI opinion without further delay.

In providing that replacement opinion, we invite you to take account of the representations made in our pre-action protocol letter of 4 September 2025. For the reasons set out in that letter, we maintain it would be an error of law to weigh in the IROPI balance any adverse effects of Policy PLP3 arising from construction impacts or recreational pressure. Both of are capable of mitigation as shown in the HRA which has been agreed by Natural England as part of sustained and proactive engagement with the Statutory Nature Conservation Body.

Should you have any doubt about the effectiveness of bespoke mitigation measures at Tipner West, we attach to this letter a specific study on mitigation options available to avoid an increase in recreational pressure from residential development at Tipner West. Although this study was produced for Policy PLP3 as amended for the Local Plan Addendum 2025, rather than Policy PLP3 as presented in the Pre-Submission Local Plan 2024, the conclusions of the study are equally applicable to both. It is clear that bespoke mitigation measures considered together with contributions to Bird Aware Solent are capable of mitigating any increase in recreational pressure.

As your team considers the replacement IROPI opinion, officers at the City Council remain available to answer any questions they may have. You will, no doubt, agree that it would be hugely regrettable to issue a third unlawful IROPI opinion because of a further misunderstanding of the proposals that could have been clarified simply by reaching out to PCC officials.

This week, we plan to publish the pre-action correspondence passing between us, including your admission that the second IROPI opinion was unlawful and your decision to withdraw it. We look forward to receiving your replacement IROPI opinion soon.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ian Maguire', with a stylized flourish extending from the bottom right.

Ian Maguire
Assistant Director for Planning and Economic Growth

Enc. Tipner West – Draft Policy PLP3 SPA Recreational Disturbance
Mitigation Study. Holbury Consultancy Services October 2025



Ministry of Housing,
Communities &
Local Government

Lucy Howard
Head of Planning Policy
Portsmouth City Council

By email only

Please ask for: Mike Hale
Email: Mike.hale2@communities.gov.uk
Your ref: IROPI TCM:00601802
Our ref: PCU/RARE/Z1775/3352981
Date: 17 October 2025

Dear Lucy

**Portsmouth Local Plan - Tipner West & Horsea Island East,
Portsmouth proposed allocation (Policy PLP3)
Regulation 107(3) of the Conservation of Habitats and Species Regulations
2017 “the Regulations” - IROPI Opinion reconsideration**

I refer to the letter and enclosure from Ian Maguire, Assistant Director for Planning and Economic Growth to this Department’s Secretary of State dated 14 October, seeking a further IROPI opinion to replace the recently withdrawn opinion as a matter of urgency. Please be assured that the letter will receive a ministerial reply in due course but in order to ensure timely progress, officials require some clarification arising from the content in the meantime.

The SPA Recreational Disturbance Mitigation Study (Oct 2025) enclosed with the letter is welcomed and the Council’s preparation of a Local Plan Addendum containing a variation of Policy PLP3 is noted, as is the intention to consult in November 2025. Given this progress and to enable full consideration of the matter before the Secretary of State please provide all available details of the alternative policy allocation proposed, preferably including a working draft Addendum and any updated HRA assessment. We would also welcome your view (with supporting evidence, if appropriate) on whether the alternative policy allocation constitutes an alternative solution to the currently proposed PLP3 allocation for the purposes of Art. 6(4) of Council Directive 92/43/EEC) and Regulation 107(1) of The Conservation of Habitats and Species Regulations 2017 and, if not, why not.

This information and any supporting view will enable the Secretary of State to properly understand the extent to which the PLP3 variation may be material to his reconsideration.

We will progress matters in the meantime, but consider this information essential to the IROPI opinion reconsideration to be provided by the Secretary of State and an indication of when we can expect a response would be appreciated.

Yours sincerely

MA Hale

Mike Hale
Head of Environmental Casework

Portsmouth City Council

Mr Mike Hale
Planning Casework Unit
Ministry of Housing, Communities and Local
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Our Ref: IROPI TCM:00601802
Your Ref: PCU/RARE/Z1775/3352981

By email only:

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mike.hale2@communities.gov.uk
andrew.lynch@communities.gov.uk

24 October 2025

Dear Mr Hale

**Portsmouth Pre-Submission Local Plan 2024 - Tipner West and Horsea Island
East proposed allocation policy PLP3
Regulation 107(3) of the Conservation of Habitats and Species Regulations
2017 - IROPI Opinion reconsideration**

Thank you for your letter of 17 October 2025. In that letter you invited Portsmouth City Council to indicate whether Policy PLP3 in the draft Local Plan Addendum 2025 is, for the purposes of regulation 107(1) of the Conservation of Habitats and Species Regulations 2017, an "alternative solution" to Policy PLP3 of the Pre-Submission Local Plan 2024.

A comparison of Policy PLP3 of the Local Plan Addendum 2025 and Policy PLP3 of the Pre-submission Local Plan 2024

The **Local Plan Addendum** has today been published for consideration at the Cabinet meeting scheduled for next Tuesday 28th October. It will then proceed to Full Council on 11 November. Documents accompanying the Addendum include a **Tipner West Topic Paper¹** and an **updated Habitats Regulations Assessment (HRA)**. The Addendum and updated HRA can be viewed in Cabinet papers [here](#)

For ease of reference, I also include with this letter a copy of the 2024 version of PLP3 (Appendix A) and the new Addendum 2025 version of PLP3 (Appendix B). As you will see, the two policies are very different in both their nature and scope.

Critically, the Addendum version no longer proposes the delivery of a marine employment hub, a key component of the previous policy. The City Council were advised by experts in the marine sector that a marine hub would not be feasible without deep water dredging or small-scale reclamation to create a working quayside. In addition, the quanta of development is reduced:

¹ <https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/Topic-Paper-TW-siteNov2025-vFINAL.pdf>

- The Addendum 2025 version of PLP3 proposes approximately 1,000 homes, compared to up to 1,250 homes in the 2024 version;
- The Addendum 2025 version of PLP3 proposes 25,000sqm of general employment floorspace, compared to 58,000sqm of marine-focused employment floorspace in the 2024 version;

In addition, the Addendum version of PLP3 no longer contains a requirement for delivery of a bridge to Horsea Island East, the latter site also now completely removed from the site allocation boundary, with potentially unfortunate consequences for the City Council's sustainable transport aspirations.

The trigger for producing the Local Plan Addendum

The City Council decided to produce a Local Plan Addendum in the context of your predecessor's delay in providing a lawful IROPI Opinion. It was decided, in light of your predecessor's first unlawful opinion, that the City Council needed to prepare a version of the Local Plan that did not have adverse effects on protected habitats to ensure it would be able to submit a plan for examination before the 12 June 2026 deadline. That approach mitigated the risk that i) there was substantial further delay in receiving a lawful IROPI opinion; and ii) any replacement IROPI opinion would also be negative.

The consequence of that decision was that the Local Plan Addendum would have to abandon the long-held ambition, reflected in the City Deal, to deliver a marine employment hub on Tipner West, with deep water access. The marine hub would have delivered 3,700 new jobs for the City. You will be aware that the need for such a hub, and the unique suitability of Tipner West for delivering such a hub, was fully set out in Appendix 6 of the Council's request to the Secretary of State for an IROPI Opinion dated 1 October 2024.

Policy PLP3 in the Local Plan Addendum is not an alternative solution to Policy PLP3 in the 2024 version of the Pre-Submission Local Plan

The new policy PLP3 in the Local Plan Addendum 2025 is not an alternative solution to PLP3 in the 2024 Pre-Submission Local Plan because it does not deliver a marine employment hub with access to deep water (see paragraphs 0.5, A24 and A38 of the Local Plan Addendum and paragraphs 3.5.20, 4.1-4.2 and 4.6 of the Topic Paper).

In the re-issued IROPI Opinion of 31 July 2025 (also since withdrawn as unlawful), the Secretary of State noted that: *"On a plain reading of the Project Objective, the Secretary of State has therefore interpreted the position as being that the delivery of the [marine] hub element of the overall package is the main element of the proposed plan allocation, in turn partially facilitating flood defence works, land remediation, and other public benefits (para.21)." The City Council agrees that the delivery of a marine employment hub with deep water access was a central component of the overall objective of the original proposal.*

To constitute an alternative solution for the purposes of reg 107(1) of the Habitats Regulations, government guidance is that the alternative must achieve the same overall objective as the original proposal². Draft Addendum Policy PLP3 does not achieve the same overall objective and will not deliver anywhere near the same economic benefits to Portsmouth or the Solent.

² <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site#derogation>

Further, the new policy is not an alternative solution to the 2024 version of PLP3 because the financial viability of development is now substantially less favourable, resulting in significantly increased risks of non-delivery of the policy (and consequent non-delivery of flood defences and site decontamination). Note that para.4.7 of the Topic Paper sets out the viability gaps for the three Addendum options:

- employment led = £174m shortfall
- residential led = £107m shortfall
- mixed = £126m shortfall

Compare with the significantly lower viability gaps for the Pre-Submission Local Plan 2024 version of PLP3 (see HRA para.8.12):

- Option A = £107m - £116m shortfall
- Option B = £50m - £74m shortfall.³

For all of these reasons, the Addendum version of Policy PLP3 is not an “alternative solution” for the purposes of reg 107(1) of the Habitats Regulations.

We therefore look forward to receipt of the re-considered IROPI Opinion of the Pre-Submission Plan 2024 version of PLP3 without further delay.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Maguire', with a stylized flourish at the end.

Ian Maguire
Assistant Director for Planning and Economic Growth

³ The 2024 viability figures were expressed as a range because draft policy proposed a range in deliverable dwelling numbers at that time.

APPENDIX A

Draft Policy PLP3 of the 2024 Pre-Submission Portsmouth Local Plan

Tipner West & Horsea Island East

Introduction

4.5 Tipner West & Horsea Island East is allocated as a strategic site, because its development as a new marine hub with a new bridge to the mainland is key to the regeneration of Portsmouth. Furthermore the new sea defences and land decontamination will benefit the northern part of Portsea Island. It is located immediately adjacent to the M275 motorway at the northwest part of Portsea Island and is bounded on three sides by Tipner Lake, which is part of Portsmouth Harbour. The site is allocated alongside the allocation for Tipner East (which forms Policy PLP4), and together they will form a new gateway to the City. A large area of open space is being created to the north of the site on Horsea Island, which will be available for the new residents and visitors to enjoy; this is allocated under Policy PLP9. As discussed in the Development Strategy chapter of this Local Plan, the wider Tipner-Horsea Island area, including Port Solent, is one of the two principal sites identified in the Southampton and Portsmouth City Deal. A map of Tipner West & Horsea Island East with the proposed bridge linking the two parts of the site is shown as figure 4.2.

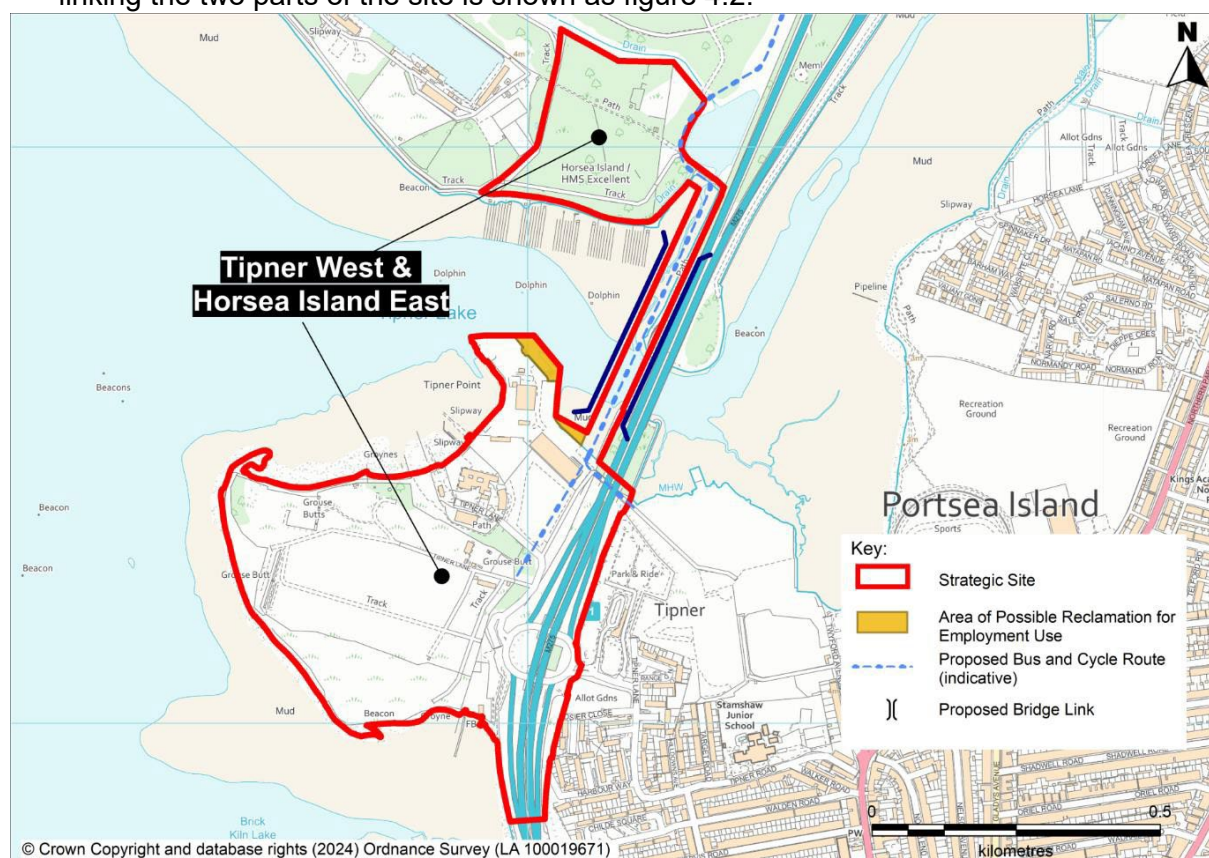


Figure 4.2: Map of Tipner West & Horsea Island East

4.6 There is deep water access at Tipner West and the principal driver behind this allocation is the creation of a new marine hub, which will create new jobs in this key sector of the City's economy. Supporting its development for marine

employment is the classification of Tipner West as a Tier 1 waterfront site in the Maritime Futures: Solent Waterfront Sites Report⁵¹ (2015) by the Solent Local Enterprise Partnership (now 'Solent Partners'). It was given this classification based on its attributes when assessed against three defined criteria namely marine access (water depth and access), presence of marine and maritime activities and development potential. The Solent is a prime location within the UK to deliver development to meet the pressing needs of the marine and maritime sector. This is recognised in its recent designation as a Freeport. A failure to meet the demands of the marine and maritime sector in the Solent could result in its growth potential not being attained with inward investment to the UK being compromised. New homes will be provided as a form of enabling development for the marine hub and the enhancement and re-use of the heritage assets on the site. There will be a new bridge linking not only the two halves of the site, but also linking the wider communities of Paulsgrove and Port Solent to the City Centre. The development will deliver urgently required sea defences for the northern part of Portsea Island and site de-contamination.

- 4.7 Tipner West is currently partly derelict and contains a number of unrelated land uses including a former Ministry of Defence firing range, boatyards, recycling, storage and a special educational needs school. The site is in need of significant remediation to address historic polluting uses. Its redevelopment, as recognised in the City Deal, presents an opportunity to vastly improve the quality of the environment in this part of the City, but critically to facilitate the delivery of necessary sea defences. These would together with site decontamination works, protect the integrity of the nearby nature conservation sites and associated habitats from harmful leachate contamination and inundation from flooding.
- 4.8 The site itself and the adjacent Portsmouth Harbour are important for nature conservation with the Harbour designated as a Special Protection Area (SPA) and Ramsar site, whilst also being recognised nationally as a Site of Special Scientific Interest (SSSI). In addition, the former firing range is recognised as a primary feeding site for Brent geese. These nature conservation issues will need to be addressed as part of any development on this site.
- 4.9 The coastline of Tipner West and a significant portion of Horsea Island East lies within Flood Zone 3. The north west corner of Horsea Island east lies within Flood Zone 1. Tipner West is covered by the North Solent Shoreline Management Plan (SMP) (section 5aPI01). The Portsea Island Coastal Strategy Study (PICSS) was developed to build on policies set out in the North Solent SMP. In addition to the North Solent SMP, Horsea Island East is also covered by the Porchester to Emsworth FCERM Strategy. These plans and strategies provide recommendations for flood management measures that should be implemented to protect residents from flooding. Further information can be found in the SFRA Level 2
- 4.10 The Local Plan is supported by a Habitats Regulations Assessment⁵² (HRA). The objective of this assessment is to identify any aspects of the Plan that is

⁵¹ https://solentlep.org.uk/media/1341/maritime_futures_-_solent_waterfront_sites_-_169_15_.pdf

⁵² https://www.portsmouth.gov.uk/wp-content/uploads/2024/05/PLP_HRA_FINAL.pdf

considered likely to have a significant effect on a protected habitats site⁵³ either individually or in combination with other plans or projects. The HRA concludes that the proposed development of Tipner West & Horsea Island East will have adverse effects upon the integrity of Portsmouth Harbour SPA and Portsmouth Harbour Ramsar site.

- 4.11 The Conservation of Habitats and Species Regulations 2017 do not allow competent authorities to consent plans or projects that may have an adverse effect on the integrity of a designated habitats site unless specific derogation tests are met. These tests relate to alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures. Government Guidance⁵⁴ on the derogation tests was followed in the HRA of this Local Plan. The full results of all three derogation tests are set out in the HRA and conclude the following:
- There are no feasible alternative solutions to the Plan's proposals for Tipner West and Horsea Island East as set out in Policy PLP3 that would be less damaging or avoid damage to the designated sites.
 - The benefits of the development enabled by Policy PLP3 amount to imperative reasons of public interest capable of overriding the adverse effects on the integrity of the Portsmouth Harbour SPA and Ramsar Site.
 - There is sufficient land identified for delivery of necessary compensatory measures to demonstrate a high likelihood that sufficient compensatory habitat is capable of being secured at the planning application level.
- 4.12 The planning history of the site is long and complex. Part of the site was allocated along with Tipner East in the 2012 Portsmouth Plan. As part of the preparation of the current Plan a consultation was carried out focusing solely on a Tipner Strategic Development Area⁵⁵ in order to establish the most appropriate site boundary and land uses for the area. The responses to that consultation fed into the three options proposed in the Regulation 18 version of the Local Plan published in 2021. The first option proposed was for an innovative sustainable community or 'super peninsula' involving significant areas of land reclamation. This option along with a do-nothing scenario were ruled out by the City Council in October 2022, which then adopted Guiding Principles⁵⁶ for the site; these were updated by the City Council in March 2024⁵⁷ and form a material consideration in the preparation of this Plan.
- 4.13 The consideration of options has formed an important element of the extensive work done on this strategic site and is explained in more detail in the

⁵³ Any site which would be included within the definition at <https://www.legislation.gov.uk/ukxi/2017/1012/regulation/8/made>, as amended by <https://www.legislation.gov.uk/ukxi/2019/579/contents/made>, for the purpose of those regulations, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA) (part of the National Site Network) and internationally designated Ramsar Sites."

⁵⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/82647/habitats-directive-iropi-draft-guidance-20120807.pdf ;

⁵⁵ <https://www.portsmouth.gov.uk/wp-content/uploads/2020/05/Tipner-Strategic-Development-Area.pdf>

⁵⁶ <https://democracy.portsmouth.gov.uk/documents/s41717/Tipner%20West%20Report.pdf>

⁵⁷ <https://democracy.portsmouth.gov.uk/documents/s50877/240223%20-%20Tipner%20Cab%20update%20FINAL.pdf>

Sustainability Appraisal and the HRA. The development proposed in Policy PLP3 is a hybrid of the various options put forward for the site. It aligns with the overarching Project Objective that was noted by the City Council in October 2023 and an updated version of which was agreed in March 2024.⁵⁸ as follows:

To create a marine employment hub in the Solent region with access to deep water, and of sufficient scale to enhance and expand the marine business cluster, along with critical infrastructure, and sufficient housing to help enable delivery of the development as well as support the growth in the marine workforce.

- 4.14 The development proposed in Policy PLP3 is also consistent with the Guiding Principles, which seek to deliver nature-focused placemaking, maximise job creation in the marine hub and avoid or minimise land reclamation at this gateway site.
- 4.15 The City Council has sought to work in partnership with all interested parties in the development of Tipner West & Horsea Island East. There is a Coastal Concordat Working Protocol between the City Council as the Local Planning Authority, Natural England, the Environment Agency, the Marine Management Organisation, Historic England, the Royal Society for the Protection of Birds and the Hampshire and Isle of Wight Wildlife Trust. They are all members of a Regulatory Panel the purpose of which is to align consultation processes and avoid duplication in relation to the HRA and Environmental Impact Assessment. The Working Protocol and the minutes of all the Panel's meetings are published in a background paper ⁵⁹.
- 4.16 The evidence base supporting this allocation is detailed and extensive. It is summarised in the Tipner West & Horsea Island East Topic Paper ⁶⁰ and all relevant documents are included in the core document library supporting this Plan.

Vision

- 4.17 In 2040, Tipner West & Horsea Island East will form a new gateway to the City along with Tipner East and will be home to a new healthy and happy community. There will be a thriving new marine business hub that provides both jobs and opportunities for lifelong learning. People will live in good quality homes that are carbon neutral and will enjoy the new open space on Horsea Island. They will make fewer journeys by car and instead will make use of new and improved public transport connections and infrastructure, including a bridge to the mainland. New climate change resilient sea defences will defend the community alongside the existing residents of north Portsea Island. Historic land contamination will have been prevented from leaching into the Harbour. The Harbour's nationally and internationally designated saltmarsh and mudflat supporting populations of Brent Geese and wading birds will be cherished and protected, whilst the site's naval heritage will be positively enhanced in the public interest. The whole Tipner peninsula will be home to a community where residents, workers and visitors co-exist in harmony with nature.

⁵⁹ <https://www.portsmouth.gov.uk/newlocalplanevidencedocw>

⁶⁰ <https://www.portsmouth.gov.uk/newlocalplanevidencedocj>

4.18 It should be noted that the objective of the allocation for HRA purposes is made up of the overarching Project Objective, the vision for the site and the following policy.



Strategic Site Allocation Policy PLP3: Tipner West & Horsea Island East

- 1. Tipner West & Horsea Island East, as shown on the Policies Map, is allocated for the mixed use development of the following uses and large scale infrastructure:**
 - a) A marine hub with a working quayside and up to 58,000 m² of marine employment floorspace (class E(g) offices, research and development, light industrial, B2 general industrial and B8 storage or distribution);**
 - b) A new community with between 814 and 1,250 residential dwellings (class C3);**
 - c) A bridge between Tipner West and Horsea Island East for the use of sustainable transport modes only;**
 - d) Flood defences along the peninsula edges of Tipner West and Horsea Island East in line with robust climate change scenarios;**
 - e) Shops selling essential goods, including food, where the shop's premises do not exceed 280 m² (class F2a); and**
 - f) Meeting places for the principal use of the local community (class F2b).**
- 2. Development proposals for the above named uses will be permitted provided that they meet all of the following site specific development requirements:**
 - a) Create a new landmark gateway to the City of Portsmouth to be demonstrated through a conceptual site-wide masterplan with an accompanying design code framework that delivers beautiful place-making and has regard to the National Model Design Code;**
 - b) Break down the barriers, both physical and perceived, created by the M275 motorway and Portsbridge Creek. This will be achieved through the design of both buildings and spaces to create excellent connections with new development at Tipner East and the wider area. The design, scale and massing of the scheme needs to respond sensitively to the significance of Portchester Castle including its setting, taking into account its dominance in Portsmouth Harbour and the contribution made by views to and from the Castle to its significance;**
 - c) Allow views to and from Tipner West and notable landmarks within the zone of visibility including Portchester Castle, the Spinnaker Tower and His Majesty's Naval Base;**

- d) Integrate green and blue infrastructure into the masterplanning and design of the development and seek to mitigate the urban heat island effect;**
- e) Submission of a site-wide Arboricultural Impact Assessment is required, which includes a proposed Tree Removal, Replacement and Retention Plan and Tree Protection Plan that protects the trees of highest value.**
- f) Identify and incorporate opportunities to conserve, restore and recreate priority habitats and ecological networks;**
- g) Except for the minimum dredging necessary to establish and maintain deep water access to the marine hub, avoid the loss of or damage to SPA/Ramsar habitats. If that is not viable or feasible, minimise such loss or damage to that required to enable the viable and feasible development of the site in line with the development quantum set out in this Policy whilst protecting the integrity of the international, national and local nature designations⁶¹;**
- h) Incorporate car-free streets wherever feasible, with 'Mobility as a Service' and sustainable transport modes prioritised;**
- i) Improve off-road pedestrian and cycle provision linking Port Solent and Tipner to the City Centre, nearby public open spaces including Horsea Island Open Space, recreational facilities including the Mountbatten Centre and other local shops and services;**
- j) Provide safe and efficient vehicular access to and from the M275 and the surrounding non-strategic road network;**
- k) Deliver or contribute proportionally to the relevant transport and highways mitigation measures identified within the Local Plan Strategic Transport Assessment⁶² and/or Infrastructure Delivery Plan⁶³;**
- l) Mitigate likely significant effects from recreational disturbance to protected bird populations through a bespoke developer-provided package of measures for the lifetime of the development as advised by Natural England;**
- m) Provide for public access for all along the waterfront where feasible and without causing unmitigated recreational disturbance to protected bird populations;**
- n) Deliver appropriate surface water and foul drainage infrastructure together with required nutrient neutrality and water usage mitigation measures to support the Environment Agency in achieving and/or maintaining at least 'Good' water quality status and to protect designated**

⁶¹ Notably the Portsmouth Harbour SPA and Ramsar site, Portsmouth Harbour SSSI and Solent and Dorset Coast SPA – as required by the Habitats Regulations (2017) (as amended) and related national habitats legislation.

⁶² <https://www.portsmouth.gov.uk/newlocalplanevidencedocu>

⁶³ <https://www.portsmouth.gov.uk/newlocalplanevidencedocg>

habitats within the Portsmouth Harbour Waterbody (pursuant to the Water Environment Regulations);

- o) Future development of the site will require land raising and construction of flood defences. Their implementation should be informed by the SFRA Level 1 and 2;**
 - p) Deliver surface water management measures to make provision for storage during high tide events, when the surface water drainage may be subject to tide locking;**
 - q) Mitigate and remediate contamination from current and historic uses; and**
 - r) Provide a skills & employability plan for both the construction and occupation stages of the development.**
- 3. The Listed Buildings located on Tipner West must be retained, restored and re-used. The Scheduled D-Day Slipways adjoining Horsea Island East must also be retained, and where feasible restored. Their fabric and setting must be conserved, and where desirable/possible enhanced. This will include the investigation, recording and safeguarding of known and potential finds of archaeological significance, including those as may be identified below mean high water springs.**
- 4. A segregated bus way, alongside a new pedestrian and cycle way between Tipner West and Horsea Island via a new bridge and on to Port Solent, will be established, operated and maintained.**
- 5. The deep water access to Tipner Point and the new marine hub quaysides will be maintained, with dredging as necessary, to support optimal boat access at all times whilst protecting the Scheduled D-Day Slipways and acceptable sediment transport conditions.**
- 6. A shadow, project level Habitat Regulations Assessment (HRA) will be required to be submitted along with the planning application, and as necessary for any phased applications, to the local planning authority as competent authority. On account of the fact that delivery of the Policy will inevitably result in the loss of some designated SPA/Ramsar habitat and will likely result in the loss of some functionally linked habitat, the HRA must among other things:**
- a) provide sufficient evidence for the local planning authority to conclude, in consultation with Natural England and Secretary of State, that all three derogation tests have been passed.**
 - b) demonstrate that any loss of functionally linked habitat, including that identified as a primary or secondary support area in the Solent Waders and Brent Goose Strategy⁶, will be mitigated through the provision of replacement functionally linked supporting habitat of equal or greater quality and quantity, which fulfils the same special contribution and**

particular function of the areas lost or damaged for the same species of birds.

- 7. An Environmental Impact Assessment (EIA) will also be required to be submitted along with the planning application, and as necessary for any phased applications, to the local planning authority.**
- 8. Whilst the City Council wishes to see a comprehensive development of the site, it recognises that planning applications may come forward separately or in phases. As well as complying with the development requirements set out above, all development proposals need to demonstrate consistency with other permissions granted and emerging proposals, including any Transport and Works Act Order, Harbour Revision Order, Marine Licence of other marine and environmental consents as may be required. All development proposals will be supported by appropriate site phasing and sequencing strategies to ensure a holistic approach is taken to the delivery of development. Planning applications will need to demonstrate potential landscaping or other solutions for land comprising later phases in the event that such phases do not come forward within an agreed timeframe.**

Supporting text

- 4.19 The purpose of this policy is to allocate Tipner West and Horsea Island East as part of a new gateway for Portsmouth with a new marine hub, homes, flood defences and a bridge.
- 4.20 The principal driver behind this allocation is the creation of a new marine hub. This will include a mixture of employment uses with the focus being on research and development and advanced manufacturing. Any offices provided on the site would be incidental to these uses and should be functionally linked to the marine hub.
- 4.21 The housing requirement is set as a range. The lower number provides the minimum number of homes required as part of the City Deal whilst the upper number provides certainty for the HRA in terms of impact on the integrity of the national and internationally designated sites.
- 4.22 The proposed bridge (and other works that might be deemed to affect navigation, such as dredging or reclamation) may be subject to separate consenting routes, including a Transport and Works Act Order (TWAo) or Harbour Revision Order application, alongside likely Marine Licence(s) and other environmental permits (unless incorporated within the TWAo). Applications for Orders are made by the developer(s) to the relevant Secretary of State rather than the City Council and in line with the relevant governing Rules⁶⁴.
- 4.23 A local shop selling convenience goods for the local community will be allowed on the site. Although this floorspace is more than the ceiling set in Policy PLP29 for such shops, it is considered acceptable in order to support a sustainable community and reduce the need to travel.

⁶⁴ <https://www.legislation.gov.uk/uksi/2006/1466/contents/made>

- 4.24 Tipner West has a range of assets that are of historic interest, including the nationally important Tipner magazine complex (listed at Grade II), which comprises late eighteenth and mid nineteenth century magazines, shifting house, cooperage and boundary wall. To ensure that their value and the positive contribution that they can make to character of any scheme is fully realised, any development proposals for the site should be based on a detailed assessment, of the significance of the assets and their setting. This assessment must then positively inform any detailed design proposals for the site. Opportunities to provide public access to the heritage assets and/or their surroundings on Tipner West along with interpretation/explanation of their significance should be explored and are encouraged where feasible.
- 4.25 Second World War landing craft slipways are located on the southern shore of Horsea Island. They are the largest surviving remains of infrastructure created to support D-Day on 6th June 1944 at the end of the Second World War; a Research Report on the slipways has been published by Historic England⁶⁵. They were designated as Scheduled Monuments in 2022 and all development proposals for the site should retain, conserve and where possible enhance the slipways and their setting. The Scheduled Portchester Castle is located approximately one mile to the north west of Tipner peninsula, across the open water of Portsmouth Harbour. Any development proposals for the site should also seek to understand the significance of the Castle and its setting, and where possible respond to the presence of the asset in terms of impact on views both from, and towards the Castle.
- 4.26 The policy set out in the North Solent Shoreline Management Plan⁶⁶ for this part of the coast is 'hold the line', which means maintaining or upgrading the level of protection provided by existing coastal defences. The Portsea Island Coastal Strategy Study⁶⁷ (2011) builds on the policies in the Shoreline Management Plan and sets out how the coastline surrounding Portsea Island will be managed for the next 100 years. The new flood defences that will protect both the site and the northern part of Portsea Island must be agreed in writing by the City Council as the Lead Local Flood Authority and the Environment Agency. It should be noted that any development proposed on land within 16 metres of a flood defence structure would require an Environment Agency defined Flood Risk Activity Permit FRAP. An adequate buffer should be maintained to allow management and maintenance works to the flood defence structure in the future. All applicants must therefore engage as early in the process as possible to deliver an appropriate buffer zone.
- 4.27 The site is flat and low-lying and a significant part of Tipner West lies in flood zones 2 and 3. It was assessed as part of the SFRA Level 2, which made a number of recommendations to avoid and control flood risk. Flood defences and ground raising will be required to enable development at this site. This should be informed by the SFRA level 1 and 2 and must incorporate detailed site specific wave overtopping calculations along with suitable calculations for freeboard.

⁶⁵

<https://historicengland.org.uk/research/results/reports/8244/HorseaIslandSecondWorldWarLandingCraftSlipways>

⁶⁶ <https://www.northsolentsmp.co.uk/>

⁶⁷ <https://coastalpartners.org.uk/project/portsea-island-coastal-strategy/>

- 4.28 Financial contributions may be sought where more vulnerable uses within the site will benefit from the development of future flood defence improvements.
- 4.29 New development should discharge runoff to the sea following suitable treatment. Storage of surface water should be managed when the sea level rises to a height that will not allow for drainage.
- 4.30 The site has a prominent location at the top of Portsmouth Harbour with views to and from prominent landmarks both within and beyond the City boundaries. A Landscape and Visual Impact Assessment prepared in accordance with the Landscape Institute's Guidelines⁶⁸ is required to identify the effects of the proposed development on views and on the landscape itself.
- 4.31 In addition to the range of international and national nature conservation designations relating to this strategic site, there are other forms of biodiversity, which form an important element of the collective nature conservation resource. These include the Elm Cultivar Trial on Horsea Island East managed by the Hampshire Wildlife Trust to protect White Letter Hairstreak Butterflies⁶⁹, which are identified as a species of principal importance under Section 41 the 2006 NERC Act. Development proposals should identify and incorporate opportunities to conserve, restore and recreate their priority habitats and ecological networks.
- 4.32 In delivering a viable and feasible development in line with the City Deal, applications should seek to avoid or otherwise minimise adverse impacts upon the integrity of international and national habitat designations in line with the Habitat Regulations and in consultation with Natural England.
- 4.33 The Appropriate Assessment of the HRA prepared for this Local Plan concluded that the delivery of this Policy would have an adverse effect on the integrity of the Portsmouth Harbour SPA/Ramsar site. The HRA therefore considered the statutory derogation tests. The sequential legal tests for a derogation to be granted are:
1. There are no feasible alternative solutions that would be less damaging or avoid damage to the site.
 2. The proposal needs to be carried out for imperative reasons of overriding public interest (IROPI).
 3. The necessary compensatory measures can be secured.
- 4.34 The HRA concluded that sufficient information exists at the Local Plan level to be able to conclude that these tests are met for the Tipner West and Horsea Island East (Policy PLP3).
- 4.35 A project level HRA, addressing all three derogation tests, will be required as part of any significant planning application for the site's development. As the details of development will be clear at the planning application stage, and there

⁶⁸ <https://www.landscapeinstitute.org/technical-resource/landscape-visual-impact-assessment/>

⁶⁹ <https://butterfly-conservation.org/butterflies/white-letter-hairstreak>

will be no further tier in the planning approval process, the project level HRA will be required to address the three derogation tests in substantially more detail than the Local Plan HRA. Engagement with the local planning authority and members of the Regulatory Panel including Natural England is encouraged from the beginning of this process.

4.36 The project level HRA should also address the impact of development on functionally linked habitats. It is likely that there will be a loss of habitat that is functionally linked to Solent's SPAs / Ramsars namely Primary Support Areas P60 and P76, as identified in the Solent Waders and Brent Goose Strategy. Furthermore, Core Area P75 lies within 100 metres of the allocation boundary. Core Areas and Primary Support Areas are functionally linked land that contribute to the integrity of SPA/Ramsar sites. All functionally linked habitat parcels lie in close proximity to the Portsmouth SPA/Ramsar, indicating that they are likely to be used by SPA/Ramsar waterfowl in order to minimise energy expenditure. Non-breeding bird surveys between October and March (typically two survey seasons) will be required to inform the detailed design of the offsetting mitigation habitat that will be provided to ensure no adverse effect on integrity.

4.37 All loss of this functionally linked land should be mitigated in line with Policy PLP42: Solent Waders and Brent Geese Sites and the Mitigation and Off-setting Requirements set out in the Solent Waders and Brent Goose Strategy and to the satisfaction of the local planning authority and Natural England. The planning application will need to be supported by a bespoke Habitats Regulations Assessment to ensure that the development does not result in adverse effects on site integrity.

Monitoring and Delivery Framework

4.38 A key component of the phasing relates to the compensatory habitats required under the derogation tests of the Habitat Regulations. The compensation measures including the legal, technical and financial arrangements must be secured before the harm occurs. National Guidance states that compensation measures should normally be delivered before the first adverse effect on the designated sites occurs, as this reduces the risk of the project undermining the integrity of the network of sites.

Types & amounts of development	Timescale	Delivery	Monitoring	Triggers & potential actions
Sea defences, land decontamination and land raising/servicing	2025-30		In line with site-wide approved phasing strategy and planning condition/legal agreement	To be completed prior to the commencement of development
58,000 m ² of marine employment floorspace (class E(g) offices, research and	58,000 m ² 2035-40 with some likely to come forward beyond the plan period	The marine hub will be delivered through a successful bid for Government funding	In line with Site-wide approved phasing strategy and planning condition/legal	If not delivered in line with approved Site Wide Phasing Strategy and condition/legal agreement secured via TWAO.

development, light industrial, B2 general industrial and B8 storage or distribution)			agreement secured through TWAO	
814 to 1,250 homes	400 2025-35; 414-850 homes 2035-2040 with some likely to come forward beyond the plan period	The new flood defences will be delivered prior to the commencement of development	In line with Site-wide approved phasing strategy and planning condition/legal agreement	If not delivered in line with approved Site Wide Phasing Strategy and condition/planning obligations via legal agreement.
A bridge between Tipner West and Horsea Island East	2025-40	PCC as landowner is actively seeking external partners and funding	In line with the terms of any site planning permission as may be granted.	Development is unlikely to be able to proceed without prior delivery of the compensatory habitat.
Local shop and community facilities	Open for business when the first homes and business premises are occupied	Through the development Management process; working in partnership with developers and land owners	Housing and employment monitoring in the AMR	They should be delivered before the occupation of the first home

Table 4.2: Monitoring and Delivery Framework for Tipner West & Horsea Island East

APPENDIX B

Draft Policy PLP3 of the Portsmouth Local Plan Addendum 2025

Tipner West

Introduction

A30 Tipner West is allocated as a strategic site because, alongside Tipner East, it will form a new gateway to the City. Tipner West will deliver new homes and jobs along with site-wide land decontamination and/or capping and new sea defences which will also benefit the northern part of Portsea Island. Tipner West is located immediately adjacent to the M275 motorway at the northwest part of Portsea Island and is bounded on three sides by Tipner Lake, which is part of Portsmouth Harbour. A large area of public open space is being created on Horsea Island to the north, which will be accessible via a new bridge from Tipner West, for the new residents and visitors to enjoy; the open space is allocated under Policy PLP9. As discussed in the Development Strategy chapter of this Local Plan, the wider Tipner-Horsea Island area, including Port Solent, is one of the two principal sites identified in the Southampton and Portsmouth City Deal. A map of Tipner West including the route of the proposed bridge, is shown as figure 4.2.

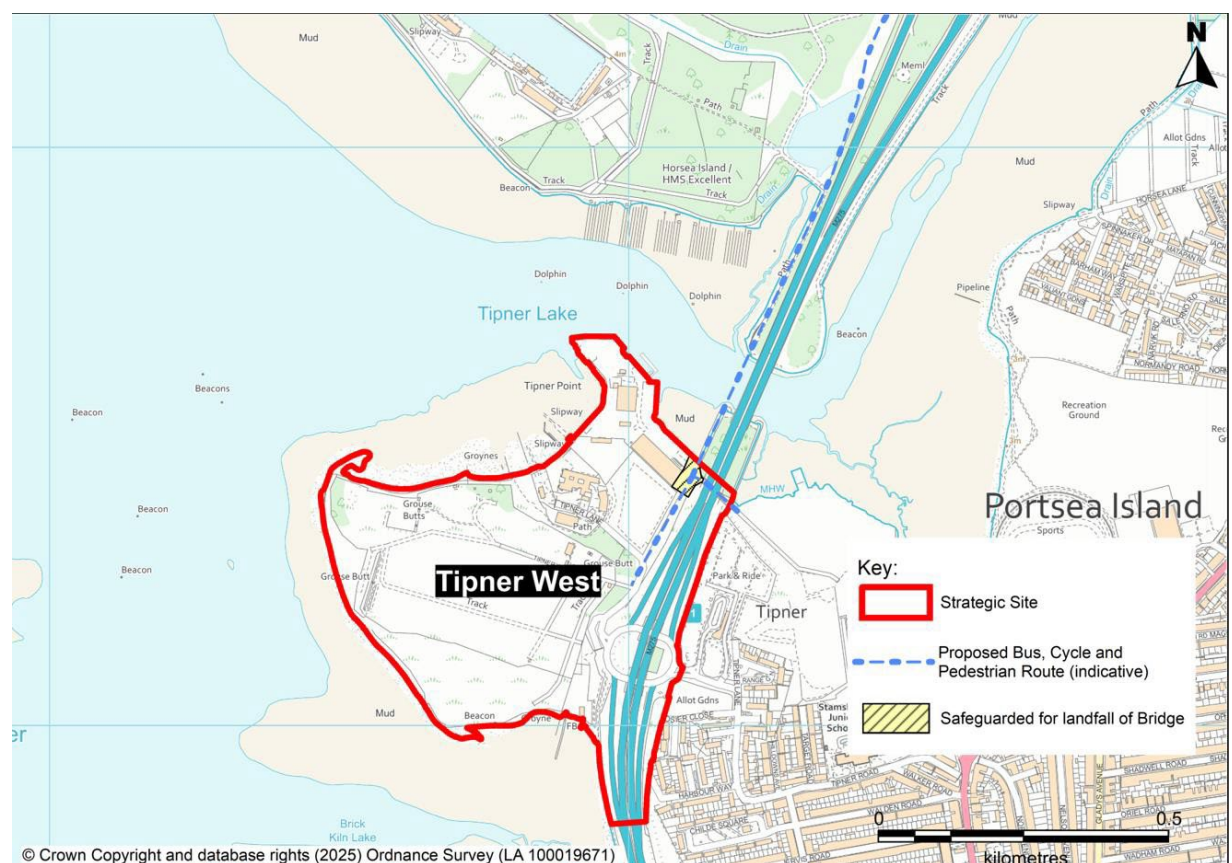


Figure 4.2: Map of Tipner West

A31 Tipner West is currently partly derelict and contains a number of unrelated land uses, including a former Ministry of Defence firing range, boatyards, recycling, special educational needs school, former ordnance magazine and

associated listed buildings. The site is in need of significant remediation to address historic polluting uses. Its redevelopment, as recognised in the City Deal, presents an opportunity to vastly improve the quality of the environment in this part of the City,

A32 The City Deal recognised that the site is a prime location within the UK for new employment development, with a particular focus upon the pressing needs of the marine and maritime sector. The policy will help to meet these needs, including some marine and maritime businesses, and much needed new homes. These homes will also help to fund critical sea defence infrastructure for the site as well as land decontamination to protect the integrity of the nearby nature conservation sites and associated habitats from harmful leachate contamination that would arise from un-defended inundation through flooding. Redevelopment offers the opportunity to deliver other enhancements including the restoration and re-use of the heritage assets on the site.

A33 A new bridge, connecting Tipner West with Horsea Island East, is an essential consideration for the site allocation and land is safeguarded for its landfall in this policy and Policy PLP9: Horsea Island Strategic Open Space; the safeguarded land is identified on both the Policies Map and figure 4.2. The bridge will be open to sustainable modes of transport only, with exceptional all-mode use for emergencies. The Portsmouth Transport Strategy⁴¹ identifies the bridge as a key part of the South East Hampshire Rapid Transit (SEHRT) network that aims to transform the way people travel between Portsmouth and the surrounding towns. It is identified as critical infrastructure in the Infrastructure Delivery Plan. A Feasibility Study⁴² has been prepared, which provides outline and high-level evidence demonstrating the potential for a bridge link between Horsea Island and Tipner in a civil engineering context. It also outlines the onward process of delivering a crossing. A Transport Position Paper⁴³ has been prepared by the City Council, which sets out the position of the Transport Department regarding the further development of the options for a bridge between Tipner and Horsea Island.

A34 Tipner West will alongside Tipner East form a new gateway to the City. Tipner East is well served by sustainable transport routes. The Pilgrims Trail and the King Charles III England Coast Path pass through the site along with National Cycle Route 22. There is a subway underneath the motorway linking the two sites. The subway is currently closed, and it is essential that it is opened up so that the new residents of Tipner West can access these routes along with nearby greenspaces such as Alexandra Park and the built leisure facilities in the Mountbatten Centre.

A35 The site itself and the adjacent Portsmouth Harbour are important for nature conservation with the Harbour and the land south of the firing range designated as a Special Protection Area (SPA) and Ramsar site, whilst also being recognised nationally as a Site of Special Scientific Interest (SSSI). In addition,

⁴¹ <https://travel.portsmouth.gov.uk/wp-content/uploads/2021/10/Local-Transport-Plan-2021.pdf>

⁴² <https://www.portsmouth.gov.uk/wp-content/uploads/2024/07/development-and-planning-tipner-port-solent-and-horsea-island-bridge-feasibility-study.pdf>

⁴³ <https://www.portsmouth.gov.uk/wp-content/uploads/2024/08/Tipner-Horsea-bridge-PCC-transport-position-paper-2024july22-accessible-FINAL.pdf>

the former firing range is recognised as a primary feeding site for Brent geese. The protection of these important nature conservation sites will need to be addressed as part of any development on this site.

- A36 Parts of Tipner West lie within Flood Zones 2 and 3. The site is covered by the North Solent Shoreline Management Plan (NSSMP) (section 5aPI01)⁴⁴. The Portsea Island Coastal Strategy Study (PICSS)⁴⁵ was developed to build on policies set out in the NSSMP. These plans and strategies together provide recommendations for flood management measures that should be implemented to protect the City from flooding. Further information can be found in the SFRA Level 2⁴⁶.
- A37 The Local Plan is supported by a Habitats Regulations Assessment⁴⁷ (HRA). The objective of this assessment is to identify any aspects of the Plan that are considered likely to have a significant effect on a protected habitats site⁴⁸ either individually or in combination with other plans or projects. The HRA concludes that the proposed development allocation for Tipner West would not result in harm to the integrity of Portsmouth Harbour SPA, Portsmouth Harbour Ramsar and Solent and Dorset Coast SPA that cannot be mitigated.
- A38 The planning history of the site is long and complex. Part of the site was allocated along with Tipner East in the 2012 Portsmouth Plan. As part of the preparation of the current Plan a consultation was carried out focusing solely on a Tipner Strategic Development Area⁴⁹ in order to establish the most appropriate site boundary and land uses for the area. The responses to that consultation fed into the three options proposed in the Regulation 18 version of the Local Plan published in 2021. The first option proposed was for an innovative sustainable community or 'super peninsula' involving significant areas of land reclamation. This option, along with a do-nothing scenario, was ruled out by the City Council in October 2022⁵⁰.
- A39 Policy PLP3 of the Pre-Submission Portsmouth Local Plan 2024 proposed the development of a regionally significant marine hub and contemplated the possibility of development on land south of the firing range, both of which would have had adverse impacts on the Portsmouth Harbour and Solent and Dorset Coast SPAs/Ramsar sites. Policy PLP3 of this Addendum does not include a regionally significant marine hub and excludes the possibility of building on land

⁴⁴ <https://www.northsolentsmp.co.uk/>

⁴⁵ <https://coastalpartners.org.uk/project/portsea-island-coastal-strategy/>

⁴⁶ https://www.portsmouth.gov.uk/wp-content/uploads/2024/06/PCC-Level-2-SFRA_Version-4-Final.pdf

⁴⁷ <https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/Local-Plan-HRA-for-LP-Addendum-v4.pdf>

⁴⁸ Any site which would be included within the definition at <https://www.legislation.gov.uk/ukxi/2017/1012/regulation/8/made>, as amended by <https://www.legislation.gov.uk/ukxi/2019/579/contents/made>, for the purpose of those regulations, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA) (part of the National Site Network) and internationally designated Ramsar Sites."

⁴⁹ <https://www.portsmouth.gov.uk/wp-content/uploads/2020/05/Tipner-Strategic-Development-Area.pdf>

⁵⁰ <https://democracy.portsmouth.gov.uk/documents/s41717/Tipner%20West%20Report.pdf>

south of the firing range thereby avoiding the direct habitat losses previously anticipated in the 2024 version of PLP3.

A40 The consideration of options has formed an important element of the extensive work done on this strategic site and is explained in more detail in the updated Sustainability Appraisal, the HRA and Tipner West Topic Paper⁵¹. The evidence base supporting this allocation is detailed and extensive. The Topic Paper has been updated iteratively during the Pre-Submission stage of plan making and earlier versions are available in the Core Document Library archive⁵².

A41 The City Council has sought to work in partnership with all interested parties in the development of Tipner West. There is a Coastal Concordat Working Protocol⁵³ between the City Council as the Local Planning Authority, Natural England, the Environment Agency, the Marine Management Organisation, Historic England, the Royal Society for the Protection of Birds (RSPB) and the Hampshire and Isle of Wight Wildlife Trust. They are regular attendees of the Tipner West Regulatory Panel, the purpose of which is to align consultation processes and avoid duplication in relation to the HRA and Environmental Impact Assessment. The minutes of all the Panel's meetings are published on the Core Document Library⁵⁴.

Vision

In 2040, Tipner West will form a new gateway to the City along with Tipner East and will be home to a new healthy and happy community. There will be thriving new businesses that provide both jobs and opportunities for lifelong learning. People will live in good quality homes and will enjoy the new open space on Horsea Island and other recreational opportunities across the City. They will make fewer journeys by car and instead will make use of new and improved public transport connections and infrastructure, including a bridge to the mainland. New climate change resilient sea defences will defend the community alongside the existing residents of north Portsea Island. Historic land contamination will have been prevented from leaching into the Harbour. The Harbour's nationally and internationally designated habitats supporting populations of Brent Geese and wading birds will be cherished and protected, whilst the site's naval heritage will be retained and positively enhanced in the public interest.

⁵¹ <https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/Topic-Paper-TW-siteNov2025-vFINAL.pdf>

⁵² <https://www.portsmouth.gov.uk/services/development-and-planning/planning-policy/portsmouth-local-plan-evidence/local-plan-archive/>

⁵³ <https://www.portsmouth.gov.uk/wp-content/uploads/2024/07/Tipner-West-Regulatory-Panel-working-protocol-vFINAL-2024.pdf>

⁵⁴ https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/Reg_Panel_Minutes_of_all_meetings_August_2025_v1.pdf



Strategic Site Allocation Policy PLP3: Tipner West

- 1. Tipner West, as shown on the Policies Map, is allocated for mixed use development of the following uses and infrastructure:**
 - a) Approximately 25,000m² of employment floorspace including marine uses (classes E(g)(ii) and (iii) research and development and light industrial, B2 general industrial and B8 storage or distribution) and ancillary office space;**
 - b) Approximately 1,000 residential dwellings (class C3);**
 - c) Flood defences along the peninsula edges of Tipner West in line with the North Solent Shoreline Management Plan;**
 - d) Shops selling convenience goods, including food, where the shop's premises do not exceed 280m² (class F2a); and**
 - e) Meeting places for the principal use of the local community (class F2b).**
- 2. Land is safeguarded for landfall of a new bridge, as shown on the Policies Map and figure 4.2, connecting Tipner West to Horsea Island for the use of sustainable transport modes only.**
- 3. Development proposals for the above named uses will be permitted provided that they meet all of the following site-specific development requirements:**
 - a) Create a new landmark gateway to the City of Portsmouth to be demonstrated through a conceptual site-wide masterplan with an accompanying design code framework that delivers high quality place-making and has regard to the National Model Design Code;**
 - b) Break down the barriers, both physical and perceived, created by the M275 motorway and Portsbridge Creek. This will be facilitated by enabling public access through the existing subway under the M275 and through the design of both buildings and spaces to create excellent connections with new development at Tipner East and the wider area.**
 - c) Deliver a design, scale and massing that responds sensitively to the significance of Portchester Castle including its setting, taking into account its dominance in Portsmouth Harbour and the contribution made by views to and from the Castle to its significance;**
 - d) Allow views to and from Tipner West and notable landmarks within the zone of visibility including Portchester Castle, the Spinnaker Tower and His Majesty's Naval Base;**

- e) **Integrate green and blue infrastructure into the masterplanning and design of the development and seek to mitigate the urban heat island effect;**
- f) **Submit a site-wide Arboricultural Impact Assessment, which includes a proposed Tree Removal, Replacement and Retention Plan and Tree Protection Plan that protects the trees of highest value.**
- g) **Identify and incorporate opportunities to conserve, restore and recreate priority habitats and ecological networks;**
- h) **Ensure new sea defence designs:**
 - i. **Avoid or minimise loss of, or damage to SPA/Ramsar habitats having regard to the North Solent Shoreline Management Plan (2010) 'Hold the Line' policy (as may be amended) and associated compensation strategies⁵⁵ and ensure protection of the integrity of the international, national and local nature designations⁵⁶;**
 - ii. **Provide public access along the waterfront that remains above the Mean High Water Springs (MHWS) level and precludes public access to the protected intertidal areas;**
 - iii. **Integrate bespoke public lookout/viewing areas over the Harbour with information boards on nature conservation, heritage and other points of interest;**
 - iv. **Incorporate measures set out in a Wayfinding Strategy, to be agreed in writing by the Local Planning Authority, that includes signage to connect with existing coastal pathways, including the England Coast Path.**
- i) **Incorporate on-site car parking for residents, workers and visitors, including wherever feasible car-free zones and/or pedestrian-priority streets, with clearly defined connections to 'Mobility as a Service' and other sustainable transport opportunities, including bus services at the Tipner Park and Ride facility;**
- j) **Provide enhanced pedestrian and cycle links connecting Tipner West to the City Centre, nearby public open spaces, recreational facilities including the Mountbatten Centre and other local shops and services;**
- k) **Provide safe and efficient vehicular access to and from the M275 and the surrounding non-strategic road network;**
- l) **Deliver or contribute proportionally to the relevant transport and highways mitigation measures identified within the Local Plan Strategic**

⁵⁵ The Habitat Compensation and Restoration Programme - <https://southerncoastalgroup-scopac.org.uk/hcrp/#:~:text=SOLENT%20AND%20SOUTH%20DOWNS&text=The%20HCRP%20is%20the%20Government%27s,to%20as%20the%20Habitats%20Regulations>).

⁵⁶ Notably the Portsmouth Harbour SPA and Ramsar site, Portsmouth Harbour SSSI and Solent and Dorset Coast SPA – as required by the Habitats Regulations (2017) (as amended) and related national habitats legislation.

Transport Assessment⁵⁷ and/or Infrastructure Delivery Plan⁵⁸, including the proposed bridge connecting Tipner West with Horsea Island;

- m) Mitigate likely significant effects from recreational disturbance to protected bird populations through a bespoke developer-provided package of measures for the lifetime of the development, which will proportionally rely upon the Bird Aware Solent Revised Strategy⁵⁹ together with site-specific and other measures, as advised by Natural England and identified through HRA;**
 - n. Deliver appropriate surface water and foul drainage infrastructure together with required nutrient neutrality and water usage mitigation measures to support the Environment Agency in achieving and/or maintaining at least 'Good' water quality status and to protect designated habitats within the Portsmouth Harbour Waterbody (pursuant to the Water Environment Regulations);**
 - o) Deliver land raising and construction of flood defences. Their implementation should be informed by the SFRA Level 1 and 2⁶⁰;**
 - p) Deliver surface water management measures to make provision for storage during high tide events, when the surface water drainage may be subject to tide locking;**
 - q) Mitigate and/or remediate contamination from current and historic uses; and**
 - r) Provide a skills and employability plan for both the construction and occupation stages of the development.**
- 4. Land south of the firing range is designated as terrestrial SPA and Ramsar and should be retained as such without any development built on it other than sea defences as necessary. Developers will need to demonstrate, as part of a Site Management and Maintenance Strategy, to be approved by the Local Planning Authority, how this land will be protected with particular regard to the control of public access.**
- 5. The Listed Buildings located on Tipner West must be retained, restored and re-used. Development proposals must fully assess the significance of these assets and give great weight to the conservation and where possible the enhancement of their fabric and/or setting. In addition, any proposals must demonstrate a full understanding of the contribution of views towards the site, to the setting and therefore the significance of both the Scheduled**

⁵⁷ <https://www.portsmouth.gov.uk/wp-content/uploads/2024/06/Portsmouth-Local-Plan-TA-Strategic-Transport-Assessment-Draft-23.05.2024-1SSUE-NO-TRACKS.pdf>

⁵⁸ <https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/FINAL-IDP-2025-version-November-2025-v1.pdf>

⁵⁹ <https://birdaware.org/solent/wp-content/uploads/sites/2/2025/02/BAS-five-year-strategy-proposals.pdf>

⁶⁰ <https://www.portsmouth.gov.uk/services/development-and-planning/planning-policy/portsmouth-local-plan-evidence/climate-emergency/>

Portchester Castle across the Harbour, and the D-Day Slipways adjoining Horsea Island East and should seek where possible to avoid or mitigate any unnecessary harm to their setting. The impact (or potential impact) of any proposals on non-designated archaeology either within, and/or if necessary, below mean high water springs around the site, shall also be assessed and recorded and where possible mitigated in proportion to the significance of any find(s).

- 6. A shadow, project-level Habitat Regulations Assessment (HRA) will be required to be submitted alongside project-level planning applications, and as necessary for any phased applications, for assessment by the local planning authority as competent authority, in consultation with Natural England. On account of the fact that delivery of the Policy will inevitably result in the loss of some functionally linked habitat, the HRA must among other things demonstrate that any loss of functionally linked habitat, including that identified as a primary or secondary support area in the Solent Waders and Brent Goose Strategy, will be mitigated through the provision of replacement functionally linked supporting habitat of equal or greater quality and quantity, which fulfils the same special contribution and particular function of the areas lost or damaged for the same species of birds.**
- 7. Whilst the City Council wishes to see a comprehensive development of the site, it recognises that planning applications may come forward separately or in phases. These applications, where considered necessary, will need to align with the site-wide conceptual masterplan and design code as well as complying with the other development requirements set out above. All development proposals will be supported by appropriate site phasing and sequencing strategies to ensure a holistic approach is taken to the delivery of development. Planning applications will need to demonstrate potential landscaping or other solutions for land comprising later phases in the event that such phases do not come forward within an agreed timeframe.**
- 8. A Safeguarded Infrastructure Assessment will be required to be submitted in support of a future planning application. This should have regard to the minerals and waste infrastructure, safeguarded under the currently adopted Hampshire Minerals and Waste Plan⁶¹ (2013) and its replacements.**

Supporting text

A42 The purpose of this policy is to allocate Tipner West as part of a new gateway to Portsmouth with the provision of new employment, homes, flood defences, decontamination and safeguarding of land for a new bridge to the mainland.

A43 The policy supports the delivery of new employment development, for a range of industrial, research and development, storage and distribution businesses, with a particular focus upon advanced manufacturing including marine or clean energy. Any offices provided on the site would be incidental to these uses.

⁶¹ <https://documents.hants.gov.uk/mineralsandwaste/HampshireMineralsWastePlanADOPTED.pdf>

Linked to its waterside location, albeit without deepwater access, marine businesses would be encouraged.

- A44 The policy safeguards part of the site for the landfall of a bridge linking Tipner West to Horsea Island East. The bridge will provide easy access for new residents to walk their dogs on Horsea Island Open Space and for other informal recreation, without disturbing the protected birds. In addition, it represents critical infrastructure for improved sustainable transport connections for residents travelling from north of Portsea Island to the City Centre, as well as emergency access not dependent upon the congested Portway junction, in particular for residents at Port Solent. All planning applications for the bridge will need to be supported by a shadow, project level HRA.
- A45 A local shop selling convenience goods for the local community will be allowed on the site. Although this floorspace is more than the 150sqm ceiling set in Policy PLP29 for such shops, it is considered acceptable in order to support a sustainable community and reduce the need to travel.
- A46 Planning applications for minor or temporary development could potentially be progressed in advance of the agreement of a conceptual site-wide masterplan and design code framework. For any Major planning application, a conceptual site-wide masterplan and design code framework will need to be submitted to the local planning authority for approval, and this is expected to be by way of an outline or hybrid planning application that addresses the policy criterion. Subsequent planning applications, including reserved matters submissions, will need to align with the parameters set out in any site-wide permission that may subsequently be granted.
- A47 Tipner West has a range of assets that are of historic interest, including the Grade II Listed Tipner magazine complex listed, which comprises late eighteenth and mid nineteenth century magazines, shifting house, cooperage and boundary wall. To ensure that their value and the positive contribution that they can make to character of any scheme is fully realised, any development proposals for the site should be based on a detailed assessment of the significance of the assets and their setting. This assessment must then positively inform any detailed design proposals for the site. Opportunities to provide public access to the heritage assets and/or their surroundings on Tipner West along with interpretation/explanation of their significance should be explored and are encouraged where feasible.
- A48 The policy set out in the NSSMP for this part of the coast is 'hold the line', which means maintaining or upgrading the level of protection provided by existing coastal defences. The NSSMP was adopted in 2010, having passed the HRA Derogation stage and the Secretary of State (DEFRA⁶²) confirming the Plan's demonstration of IROPI⁶³.

⁶² DEFRA - Department of Environment, Food and Rural Affairs

⁶³ https://www.northsolentsmp.co.uk/media/1572/North-Solent-SMP-IROPI-decision-confirmation/pdf/North_Solent_SMP_IROPI_decision_confirmation.pdf?m=1615893010913

- A49 The PICSS builds on the policies in the NSSMP and sets out how the coastline surrounding Portsea Island will be managed for the next 100 years. The new flood defences that will protect both the site and the northern part of Portsea Island must be agreed in writing by the City Council as the Lead Local Flood Authority and the Environment Agency. It should be noted that any development proposed on land within 16 metres of a flood defence structure would require an Environment Agency defined Flood Risk Activity Permit (FRAP). An adequate buffer should be maintained to allow management and maintenance works to the flood defence structure in the future. All applicants must therefore engage as early in the process as possible to deliver an appropriate buffer zone.
- A50 Where feasible, existing sea defences will be repaired and reinforced, if it can be shown that such works will mitigate robust climate change scenarios identified in the Strategic Flood Risk Assessment and bespoke flood risk assessment and modelling. Project-level schemes for managed realignment may also be considered in close consultation with Coastal Partners and statutory consultees, in particular Natural England and the Environment Agency.
- A51 The site is flat and low-lying and a significant part of Tipner West lies in flood zones 2 and 3. It was assessed as part of the SFRA Level 2, which made a number of recommendations to avoid and control flood risk. Flood defences and ground raising will be required to enable development at this site. This should be informed by the SFRA level 1 and 2 and must incorporate detailed site-specific wave overtopping calculations along with suitable calculations for freeboard.
- A52 New development should discharge surface water run-off to the sea following suitable treatment. Storage of surface water should be managed when the sea level rises to a height that will not allow for drainage.
- A53 The site has a prominent location at the top of Portsmouth Harbour with views to and from prominent landmarks both within and beyond the City boundaries. A Landscape and Visual Impact Assessment prepared in accordance with the Landscape Institute's Guidelines⁶⁴ is required to identify the effects of the proposed development on views and on the landscape itself.
- A54 In addition to the range of international and national nature conservation designations relating to this strategic site, there are other forms of biodiversity, which form an important element of the collective nature conservation resource. More detail of these designations are set out in the Tipner West Topic Paper. Development proposals should identify and incorporate opportunities to conserve, restore and re-create such priority habitats and ecological networks.
- A55 In delivering a viable and feasible development, applications should seek to avoid or otherwise minimise adverse impacts upon the integrity of international, national and local habitat designations in line with the Habitat Regulations and in consultation with Natural England.

⁶⁴ <https://www.landscapeinstitute.org/technical-resource/landscape-visual-impact-assessment/>

- A56 The Appropriate Assessment of the HRA prepared for this Local Plan has concluded that the delivery of this Policy would not have an adverse effect on the integrity of the Portsmouth Harbour SPA/Ramsar or the Solent and Dorset Coast SPA designated sites that could not be mitigated. A project-level HRA will be required as part of any significant planning application for the site's development. Engagement with the local planning authority and members of the Tipner West Regulatory Panel, including Natural England, is encouraged from the earliest possible opportunity
- A57 The project level HRA should also address the impact of development on functionally linked habitats. It is likely that there will be a loss of habitat that is functionally linked to Solent SPAs citation species, notably the Primary Support Area P60 as identified in the Solent Waders and Brent Goose Strategy. Primary Support Areas are functionally linked land that contribute to the integrity of SPA/Ramsar sites. All functionally linked habitat parcels lie in close proximity to the Portsmouth SPA/Ramsar designated habitats, indicating that they are likely to be used by SPA/Ramsar waterfowl in order to minimise energy expenditure. Non-breeding bird surveys between October and March (typically two survey seasons under suitable habitat management conditions) will be required to inform the detailed design of the offsetting mitigation habitat that will be provided to ensure no adverse effect on integrity.
- A58 All loss of this functionally linked land should be mitigated in line with Policy PLP42: Solent Waders and Brent Geese Sites and the Mitigation and Off-setting Requirements set out in the Solent Waders and Brent Goose Strategy⁶⁵ and to the satisfaction of the local planning authority and Natural England. The planning application will need to be supported by a bespoke HRA to ensure that the development does not result in adverse effects on site integrity.
- A59 Recreational disturbance of protected birds is an important matter that is considered in the HRA. It is addressed by several criteria of the Policy including not allowing public access to the terrestrial SPA at land south of the firing range and enabling public access through the existing subway under the M275 to facilitate access to Tipner East and the wider area. Development proposals at Tipner West will need to comply with Policy PLP43: Recreational Disturbance on International Designations and the Updated Solent Recreation Mitigation Strategy. The Tipner West Recreational Disturbance Study⁶⁶ has been prepared and sets out bespoke recommendations for mitigating recreational disturbance resulting from a net increase in dwellings at Tipner West. This looked at the net positive impact of Horsea Island Strategic Open Space on mitigating recreational disturbance across the City along with bespoke solutions including interpretation boards along the new walkway at Tipner West and signage to alternative recreational opportunities.

⁶⁵ <https://solentwbgs.wordpress.com/wp-content/uploads/2025/04/solent-waders-brent-goose-strategy-2024.pdf>

⁶⁶ <https://www.portsmouth.gov.uk/wp-content/uploads/2025/10/FINALTipnerWestRecreationalStudyOct2025.pdf>

A60 The allocation site is also the subject of minerals and waste safeguarding policies in the adopted Hampshire Minerals and Waste Plan (October 2013) which will need to be considered as part of any development proposals.

Monitoring and Delivery Framework

Types & amounts of development	Timescale	Delivery	Monitoring	Triggers & potential actions
Sea defences, land decontamination and land raising/servicing	2025-30		In line with site-wide approved phasing strategy and planning condition/legal agreement	To be completed prior to the commencement of development
25,000m ² of employment floorspace (class E(g), research and development, light industrial, B2 general industrial and B8 storage or distribution, including ancillary office space)	25,000m ² 2035-40 with some likely to come forward beyond the plan period	Through the development management process; working in partnership with the developer and landowner	In line with Site-wide approved phasing strategy and planning condition/legal agreement	If not delivered in line with approved Site Wide Phasing Strategy and condition/legal agreement
1,000 homes	500 homes 2030-35; 500 homes 2035-2040	The new flood defences will be delivered prior to the commencement of development	In line with Site-wide approved phasing strategy and planning condition/legal agreement	If not delivered in line with approved Site Wide Phasing Strategy and condition/planning obligations via legal agreement.
Local shop and community facilities (Class F2)	Local shops and community facilities are to be built and made available for use during the first phase of development at a trigger point to be agreed with the local	Through the development Management process; working in partnership with developers and land owners	Housing and employment monitoring in the AMR	They should be delivered in the first phase of the housing development

	planning authority.			
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Table 4.2: Monitoring and Delivery Framework for Tipner West



Ministry of Housing,
Communities &
Local Government

Matthew Pennycook MP

Minister of State for Housing and Planning
2 Marsham Street
London
SW1P 4DF

Your reference: IROPI TCM:00601802
Our reference: PCU/RARE/Z1775/3352981

Ian Maguire
Assistant Director for Planning and Economic
Growth
Portsmouth City Council

By email only

3 November 2025

Dear Ian,

Request for IROPI opinion from Portsmouth City Council

Thank you for your letter of 14 October to the Secretary of State. I am replying as the matter in questions falls under my ministerial area of responsibility.

The policy variation contained in the Addendum and the progress being made is welcomed.

To help ensure a timely progress towards providing the requested further opinion, my officials wrote to council officers on 17 October seeking clarification of some matters. I understand that prompt responses to that letter have been received including full details of the Addendum. The information is being studied by officials in my Department's Planning Casework Unit who will write again should any further clarification be needed to inform my consideration.

I look forward to being able to deliver an outcome that will enable the City Council to further progress its Local Plan as soon as it is practical to do so.

Yours sincerely,

MATTHEW PENNYCOOK MP
Minister of State for Housing and Planning

4.

Correspondence with Statutory Consultees

-

From: Jonathan Shavelar <Jonathan.Shavelar@naturalengland.org.uk>
Sent on: Tuesday, May 20, 2025 4:12:59 PM
To: Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>
CC: Marc Turner <Marc.Turner@naturalengland.org.uk>; Howard, Lucy <Lucy.Howard@portsmouthcc.gov.uk>; Bell, Tom <Tom.Bell@portsmouthcc.gov.uk>; Maguire, Ian <Ian.Maguire@portsmouthcc.gov.uk>
Subject: RE: IN CONFIDENCE - Options for Managed Realignment - Land south of the firing range at Tipner West

Hello all,

Thank you for your time in the meeting just now.

I said I would respond in writing on the matter of potential impacts from the bridge support structures. I was able to have a verbal chat with our marine specialist about this briefly and she indicated that for a small scale loss of sub-tidal habitat, you may be able to conclude no adverse effect on the integrity of the Portsmouth Harbour and Solent and Dorset Coast SPAs. The HRA would require bird survey which evidenced that the site was of no value to the qualifying features.

The conservation advice generally does list sub-tidal habitats as being of particular importance to merganser. However, during our recent condition assessment of the Portsmouth Harbour SPA, we did not identify that subtidal mixed sediment as a key supporting habitat for any of the listed qualifying features. This doesn't mean the habitat is not important, but hopefully it does provide you some steer on how you might approach the HRA.

These comments were only on potential impacts to the Portsmouth Harbour SPA and did not refer to the Solent and Dorset Coast SPA, but losses to the SDC SPA have been accepted elsewhere with evidence that the site is not used by birds. I would hope that Owen Peat has good data on the bird use in this area already.

Many thanks,
Jonathan Shavelar

From: Planning Policy
Subject: FW: Recreational Mitigation for Tipner West - notes from last Friday meeting

- Official Sensitive -

From: Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>
Sent: 07 August 2025 10:23
To: Jonathan Shavelar <jonathan.shavelar@naturalengland.org.uk>; Marc Turner <marc.turner@naturalengland.org.uk>; Riley, James (Basingstoke) <james.d.riley@aeom.com>; Nicola French <nicola.french@holburycs.co.uk>; Jeff Picksley <jeff.picksley@holburycs.co.uk>; Howard, Lucy <Lucy.Howard@portsmouthcc.gov.uk>
Cc: Maguire, Ian <ian.Maguire@portsmouthcc.gov.uk>
Subject: Recreational Mitigation for Tipner West - notes from last Friday meeting

Dear all

Further to our meeting held last Friday morning, I wanted to capture the key points covered. Could I draw Jonathan and Marc's attention to the action highlighted below too, as this would be very helpful for completion of the study next week!

NLD advised that the purpose of the meeting was to update NE on the on-going recreational mitigation study being undertaken by Holbury Consultancy. This study is exploring potential mitigation options for the proposed Tipner West allocation for 1,000 homes and 25,000sqm employment, as per draft policy PLP3 of the emerging Portsmouth Pre-Submission Local Plan (and Addendum). The meeting would also discuss the recently received updated IROPI Opinion from MHCLG (dated 31st July).

Recreational Mitigation

NLD agreed to provide an extract of the recreational study brief and this is provided here:

- *Review and refine the potential for recreational disturbance (as already identified in the HRA) from the proposed amended site allocation for Tipner West (policy PLP3), noting that Horsea Island East will now be excluded from the policy. The amended site allocation currently assumes the following development quantum:*
 1. *a) 1,000 dwellings (recommended housing mix being 1B 10%; 2B 35%; 3B 35%; 4+B 20%)*
 - b) 25,000sq m employment (use classes E(g)(ii)(iii), B2, B8)
- *The scope for reliance upon access by new occupiers to Horsea Island Open Space, where delivery timeframe for the bridge is at the back-end of the Plan period? For example, how much can we rely upon residents using their cars to reach HIOS via existing road network?*

1.

- *Advise on the trigger points for how many new homes at TW could be occupied, reliant upon the existing Bird Aware Solent Revised Strategy? Also, what would be the trigger point or threshold of occupancy at TW beyond which 'alone' or 'in-combination' recreational disturbance occurs that cannot be sufficiently mitigated by the Bird Aware Solent Revised Strategy?*

1.

- *What bespoke recreational disturbance mitigation could be provided for TW to support a conclusion that full occupation of the proposed development would not have adverse impacts on the SPA through recreational disturbance? For example, avoidance strategies, on-site pocket parks and other on-site recreational space as part of a phased development (including perimeter FRAP zones) and wayfinding strategies.*

- *The appropriateness (or not) of SANG as a form of mitigation for the proposed development of Tipner West.*

Nicola French (NF) advised that there were limited examples of coastal SANG as they cannot provide the 'coastal experience' that people wish to have, which is typically enjoying the adjacency with the openness of the shoreline, the sea views and natural habitats. A SANG, in seeking to divert public recreation away from areas of possible disturbance to SPA species, will struggle to provide that same coastal experience. NF and the Holbury team had recently walked the site and nearby green spaces, including the closest accessible spaces at Alexandra Park and Hilsea Lines beyond. Walking this route identified that:

- The route beneath the M275 and connecting through to the new sea wall and footway/cycleway beyond Tipner East site is not currently an attractive walking environment;
- Hilsea Lines is approximately 55 minute walk away and not therefore functionally attractive.

However, it was noted that the new sea wall and walk/cycle way (Hilsea Shore Path) is very well used and the concrete barrier provides a clear disincentive to users to seek access to the foreshore - it is wide enough, with good views, to successfully manage and control pedestrian movement.

NF therefore advised that a similar approach would be the most likely successful mitigation strategy for Tipner West, notwithstanding future delivery of the bridge connection to Horsea Island Open Space, which will provide further significant benefit.

James Riley (JR) noted that Horsea Island Open Space (HIOS), as recreational mitigation, will remain contextually relevant with other on-site and nearby green spaces and established sea-front walkways, and agreed with the interim findings from Holbury. It would be appropriate to ensure that the recreational mitigation, as referenced in the updated HRA, will adopt this 'contextual' approach, with HIOS forming one component of this. Based upon previously seen draft sea defence designs for Tipner West, it was evident that similar project level design to that used at the Hilsea Shore Path could be used at Tipner. NLD added that there would also be scope for additional on-site open space, including pocket parks and the FRAP zone. JR said that whilst HIOS could be accessible by future residents by car (prior to the proposed new bridge link being in place), this would undoubtedly prove less attractive than the immediacy of the shoreline of Tipner West, given the views and the choices made by residents opting to live in this coastal location. Nevertheless, HIOS would also act to deliver recreational mitigation for the wider City population, especially to the City populations north of Portsea Island.

Jonathan Shavelar (JS) considered that these interim findings were sensible and would be supported by NE. Marc Turner (MT) reiterated this position, noting that residents of coastal sites will typically recreate close to home, near or adjacent to the shore. The on-site detail of recreational mitigation would augment additional opportunities at the Mountbatten Centre (formal and informal recreation) and the coastal paths already referenced.

NLD added that the planning permission for new homes at Tipner East was in the process of being implemented with a direct connection which would link the existing Hilsea Shore Path with new pathways at Tipner West via the existing subway under the M275. In time, with the new bridge, residents would have an uninterrupted walking and cycling route from Port Solent/HIOS to Hilsea Lines and beyond. Lucy Howard (LH) noted that the draft policy for Tipner West and HIOS will include safeguarding requirements for the respective landfall for the new bridge and public access via the subway.

MT noted that there could be merit in there being a visitor cafe, or similar (eg. Visitor centre) to optimise public use of the recreational routes and appreciation of the protected bird species and Ramsar habitats. Control over dog movement will remain critical.

NLD asked if summer bird species, notably Terns (protected by the Solent and Dorset Coast SPA) are typically less affected by recreational disturbance. MT advised that this was typically the case, as they were much more mobile across the waters of the SPA and not ground nesting/foraging and less likely to be susceptible to sudden noise shocks.

MT said that much of coastal recreational pressure is experienced locally rather than via day-trips. There was also a useful Humberside study of this which he said he could share with PCC. **[Action - MT to share Humber bird noise disturbance study and other available evidence showing that coastal recreation pressures derive predominantly from the local community rather than day trips (As soon as possible please!)]**

IROPI Opinion

NLD referenced the recently received updated and clarified IROPI Opinion letter, noting that it contained a lot more clarification and justification than the previous February version (subsequently withdrawn by MHCLG). However, there were particular concerns around paragraphs 46 and 47 where the Secretary of State was appearing to suggest that significant weight should be attached to recreational harms caused by both construction AND operational disturbance - including road traffic, lighting, potentially affecting the whole of the Plan area. In addition, paragraph 47 suggests that the adverse effects of recreational pressure from new development at Tipner West, could not be ruled out - none of which making any reference to mitigation strategies, including the established Bird Aware strategy and scope for site specific and wider contextual mitigations - much of which has been discussed today in the context of the on-going Holbury Study.

MT agreed that these paragraphs were surprising. NE had received a copy of the Opinion just prior to the meeting and understood the LPA concerns on this point.

All parties agreed that more time was needed to digest the Opinion and to seek legal advice before next steps are determined.

LH was anxious that the Opinion could potentially prejudice the delivery of the whole Local Plan and this needed to be avoided at all costs - MT understood these concerns and why the LPA might need to secure further clarifications from Government.

Nick

Nick Lloyd-Davies BA(Hons) DipTP MRTPI

New Neighbourhoods Team Leader

From: Planning Policy
Subject: FW: Natural England - PCC Local Plan Addendum - catch up

- Official Sensitive -

From: Jonathan Shavelar <Jonathan.Shavelar@naturalengland.org.uk>
Sent: 15 September 2025 14:19
To: Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>; Marc Turner <Marc.Turner@naturalengland.org.uk>; Jess Taylor <Jessica.Taylor@naturalengland.org.uk>
Cc: Howard, Lucy <Lucy.Howard@portsmouthcc.gov.uk>; Bell, Tom <Tom.Bell@portsmouthcc.gov.uk>; Lavers, Martin <Martin.Lavers@portsmouthcc.gov.uk>; Oulasoglou, Eleni <Eleni.Oulasoglou@portsmouthcc.gov.uk>
Subject: RE: Natural England - PCC Local Plan Addendum - catch up

Hello all,

Very useful call just now, apologies that we ran out of time to discuss a significant portion of the Agenda. Thought I'd follow up with some written comments.

For the HRA and looking at impacts from the bridge footings, we recommend that any proposal with direct loss of a site attempting to conclude no adverse effect should set out:

- The exact area of SPA habitat that would be lost
- The proportion of SPA habitat and qualifying feature that would be lost
- **The formal conservation objectives of the European Site and an assessment of whether or not the proposal would hinder or prevent these objectives from being achieved.** One of the Conservation Objectives for Portsmouth Harbour SPA is to maintain or restore the extent and distribution of the habitats of the qualifying features. So, your assessment on why direct loss of habitat does not hinder or prevent this objective from being achieved must include a detailed examination of the available bird data and how this part of the site is used as well as an examination of its condition.
- The condition of the habitat that will be lost (is this of exceptional quality, does it support a specific rare species etc.?)
- Site context / prevailing environmental factors
- Consideration of alternatives

The above is a good guideline for either of the pier options.

Regarding the local plan addendum, both Marc and I have reviewed this and have no major comments to make. The only thing is that a number of points in there are contingent on the HRA conclusions, which in turn I think may rely on the Holbury report. Is this the case, or are you happy that you have enough information at this point to say alone impacts from recreation can be mitigated? Also PLP3 4 (pg26 / pdf pg 33) would benefit from an update to include

the requirement to maintain the habitat in good condition on land south of the firing range. It's implied but not explicit.

As discussed, @Marc Turner will be stepping in for me in terms of future engagement and attendance on the Reg Panels, while I will lead on the formal statutory engagement on the local plan at a later date. We will still work together closely and I'll be available for quick questions if necessary.

Many thanks,

Jonathan Shavelar

Senior Officer - Nationally Significant Infrastructure Projects

Thames Solent Team

Natural England

www.naturalengland.gov.uk

Eastleigh House

Upper Market Street

Eastleigh

SO50 9YN

From: Jonathan Shavelar <Jonathan.Shavelar@naturalengland.org.uk>

Sent: 19 September 2025 10:49

To: Carrie Marchbank <carrie.marchbank@rspb.org.uk>; Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>

Cc: Heather Richards <Heather.Richards@rspb.org.uk>; Marc Turner <Marc.Turner@naturalengland.org.uk>

Subject: RE: Tipner West Regulatory Panel 2025 - Meeting #3, August 2025

Hi all,

Thanks for cc'ing me Carrie, this review was still on my to do list.

Regarding Solent Wader and Brent Goose sites – Provided there is a good policy in the local plan which covers SWBGs, we are satisfied that the detail of this can be carried out at the project level. My comment in the meeting was a friendly reminder that it would be good for PCC and the promoter to be considering the location and details of any mitigation as soon as possible.

Agree with Carrie's points 2, 3 & 4. I would guess that #3 was meant to say they're within the zone of influence of the Solent SPAs.

I propose for #4 we avoid the use of the word SANG and simply state that we recognise that PCC is developing an access management approach which will avoid any alone impacts from recreational disturbance. We know that applying the SANGs guidelines is not an option here.

Could we include a section around the egress steps which says that 'JS stated the design of any egress steps are key to the function of the access management mitigation strategy' please? I think that's an accurate summary of how we concluded that discussion.

Thanks all,

Jonathan Shavelar

Senior Officer - Nationally Significant Infrastructure Projects

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Upper Market Street

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SO50 9YN

5.

Correspondence with Non-Statutory Consultees



This letter is sent by email only

Cllr Steve Pitt
Leader of Portsmouth City Council
c/o Members' Service
Floor 3, Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

23 April 2025

Dear Councillor Pitt,

A nature-positive future for Tipner West

Hampshire and Isle of Wight Wildlife Trust and the RSPB warmly welcomed the Government's recent advice to Portsmouth City Council that the previous development proposals for Tipner West did not outweigh the importance of protecting the Special Protection Area/Ramsar site. This now provides the Council with a clear direction for the creation of a new development proposal for the site.

We were encouraged by the Council's response statement, outlining its intention to explore a scaled-back employment hub and housing development, with a nature reserve on the designated land to the south of the site. However, we hope that the Council will take this opportunity to carefully rethink how Tipner West could be redeveloped to offer an exceptional place for people and wildlife to thrive together, while still realising its aim to create a gateway to the City that the local community can be proud of. This unique site offers a chance to go beyond basic compliance with the legal requirements and instead create an exemplar scheme that places the special wildlife of Portsmouth Harbour at its heart and supports the Council's commendable ambitions to be seen as a leading nature-positive local authority.

Developments that place nature's protection and enhancement at their centre have been shown to deliver multiple benefits – creating environments that are more resilient to our changing climate, supporting the health and wellbeing of residents and visitors, and ultimately leading to more desirable, nature-rich communities that people want to live and work in. The award-winning Kingsbrook development in Aylesbury, Buckinghamshire¹, designed in a partnership between Barratt Homes and the RSPB, is a great example of the tangible benefits that development in harmony with

¹ See here for more information about the Kingsbrook development:
<https://www.barrattdevelopments.co.uk/showcase/kingsbrook-aylesbury>

nature can deliver. The Berkeley Homes Kidbrooke Village housing development in Greenwich², designed with close involvement from London Wildlife Trust, is another inspiring example of a housing development that delivers for people and wildlife, and which has received widespread acclaim for that reason.

Whilst we very much hope that the Council will adopt a truly nature-positive vision for Tipner West that the Wildlife Trust and the RSPB are able to wholeheartedly support, it is essential the any new plans for the site follow all three of the fundamental principles that we outlined early on in our engagement with the Tipner West redevelopment process. We strongly believe that following these principles will provide the basis for a successful scheme that incorporates nature and biodiversity from the start and, critically, satisfies the legal tests protecting the internationally and nationally important wildlife in and around Tipner West:

1. **Avoid any direct damage to protected areas for nature.** Do not build over any part of Portsmouth Harbour's Special Protection Area, Site of Special Scientific Interest and Ramsar site, including the intertidal mudflats and coastal meadow.
2. **Mitigate indirect impacts to the protected areas.** Replace supporting habitat, including the Firing Range, for Brent Geese and wading birds in line with the Solent Wader and Brent Goose Strategy.
3. **Create space for wildlife within the Tipner West development.** Follow the principles of nature-positive design to create a community that people and wildlife can thrive in (see, for example, the [NHBC guide to Biodiversity in new developments: creating wildlife-friendly communities](#)).

We sincerely hope that the Council seizes this opportunity to take a new approach to Tipner West and demonstrate the strength of its commitment to being a leader in delivering a nature-positive future. We look forward to continuing to act as a critical friend to the Council through the next stages, and sincerely hope that a shared vision can be agreed for the future of this important site.

Yours sincerely,



Deborah Fraser
Operations Director, Southern England
Royal Society for the Protection of Birds
deborah.fraser@rspb.org.uk



Debbie Tann, MBE
Chief Executive
Hampshire & Isle of Wight Wildlife Trust
Debbie.Tann@hiwwt.org.uk

² See here for further information on the Kidbrooke Village development: [‘People love being here’: London development shows harmony between nature and housing | Wildlife | The Guardian](#)

From: Planning Policy
Subject: FW: Land South of the Firing Range, Tipner West - Local Green Space assessment

- Official -

From: Carrie Marchbank <carrie.marchbank@rspb.org.uk>
Sent: 26 June 2025 11:37
To: Murray, Polly <Polly.Murray@portsmouthcc.gov.uk>
Cc: Howard, Lucy <Lucy.Howard@portsmouthcc.gov.uk>; Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>; Hannah Terrey <Hannah.Terrey@hiwwt.org.uk>; Heather Richards <Heather.Richards@rspb.org.uk>
Subject: RE: Land South of the Firing Range, Tipner West - Local Green Space assessment

Thanks for the update Polly. All noted and interesting to see your LGS assessment process.

I know it will be a different department dealing with site management issues, but I would strongly encourage you to liaise with relevant colleagues to get the LSFR back into favourable condition without further delay, so that it can start properly fulfilling its existing designation purpose (and to ensure the Council fulfils its statutory obligations, as noted below).

Best wishes

Carrie

From: Murray, Polly <Polly.Murray@portsmouthcc.gov.uk>
Sent: 24 June 2025 12:28
To: Carrie Marchbank <carrie.marchbank@rspb.org.uk>; Hannah Terrey <Hannah.Terrey@hiwwt.org.uk>
Cc: Howard, Lucy <Lucy.Howard@portsmouthcc.gov.uk>; Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>
Subject: Land South of the Firing Range, Tipner West - Local Green Space assessment

- Official -

Dear Carrie & Hannah,

I lead on draft Policy PLP46: Local Green Spaces within the emerging Local Plan, and I understand my manager, Lucy Howard, has discussed with you the possibility of Land South of the Firing Range (LSFR) at Tipner West being considered for Local Green Space (LGS) designation through the Local Plan Addendum. My understanding is that, whilst you are seeking assurances as to the protection of the site from development, you also remain concerned by the possibility of the designation leading to

an increase in recreational disturbance but had nevertheless been re-assured by reading the Planning Practice Guidance on the matter.

In order to assess LSFR's potential to be a designated Local Green Space, I recently carried out a site visit. I assessed the site against the four criteria listed in paragraph 107 of the NPPF (historic significance, recreational value, beauty, tranquillity and richness of wildlife) to determine whether or not it is considered 'demonstrably special' for designation. Given its role as an important habitat for overwintering birds and as the site falls within the Portsmouth Harbour SPA and RAMSAR site and is also an SSSI, it of course scores high in terms of richness of wildlife. However, it did fall short in terms of the other criteria, please see my comments below:

Historic significance - despite the site being in close proximity to several historic assets, such as the Tipner magazine complex (Grade II Listed Building), the site itself has no heritage significance. The Council's Principal Conservation & Design Officer also attended, and agreed.

Recreational value - people go there for dog walks and fishing, but compared to other sites proposed for designation, the recreational value is limited. It is also not as popular amongst local residents compared to other green spaces and has a low footfall.

Beauty - for clarification, 'Beauty' in regards to this assessment is understood as 'the quality of being pleasing and attractive, especially to look at' (Cambridge Dictionary). This may also include views of the surrounding area from within the site. The site offers views of the Historic Dockyard, Harbour and Portchester Castle. However, the existing, un-improved overgrown nature of the site and littering has a negative impact on the site's beauty potential.

Tranquillity - The site's proximity to the M275 and the lack of noise abatement (such as trees or shrubbery) between the site and the road network does not create a peaceful atmosphere.

Based on the above, and whilst recognising the Council's statutory obligations to improve the site's condition, we have come to the conclusion that LSFR should not be designated as a Local Green Space at the current time.

It is important to highlight that although it will not be proposed for LGS designation, it will still be protected through its SPA and RAMSAR site designation. Paragraph 011 of the PPG regarding LGS states the following:

"Different types of designations are intended to achieve different purposes. If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space."

The Local Green Spaces Background Paper was published last year as part of the Local Plan Evidence Base. I will be updating it later this year to include LSFR in the assessment of potential sites.

If you have any queries, please do not hesitate to ask.

Kind regards

Polly Murray

Senior Planning Officer (Policy)

Portsmouth City Council

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From: Planning Policy
Subject: FW: Tipner West Regulatory Panel 2025 - Meeting #3, August 2025

From: Carrie Marchbank <carrie.marchbank@rspb.org.uk>
Sent: 19 September 2025 13:39
To: Jonathan Shavelar <Jonathan.Shavelar@naturalengland.org.uk>; Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>
Cc: Heather Richards <Heather.Richards@rspb.org.uk>; Marc Turner <Marc.Turner@naturalengland.org.uk>
Subject: Re: Tipner West Regulatory Panel 2025 - Meeting #3, August 2025

Thanks for confirming NE's comments Jonno. Sounds like there is a little difference then in our views about when alternative Brent Goose/wader habitat should be identified.

Re SANG, I did actually recommend in the meeting that the SANG guidelines should be considered wrt the green space within the development site in case there are some aspects that could be delivered (such as areas where dogs could be safely allowed off lead). But I totally agree that the options for green space that being suggested could never be considered to qualify as SANG.

Hope that helps clarify things for the minutes.

Best wishes
Carrie

From: Jonathan Shavelar <Jonathan.Shavelar@naturalengland.org.uk>
Sent: 19 September 2025 10:49
To: Carrie Marchbank <carrie.marchbank@rspb.org.uk>; Lloyd-Davies, Nick <Nick.Lloyd-Davies@portsmouthcc.gov.uk>
Cc: Heather Richards <Heather.Richards@rspb.org.uk>; Marc Turner <Marc.Turner@naturalengland.org.uk>
Subject: RE: Tipner West Regulatory Panel 2025 - Meeting #3, August 2025

Hi all,

Thanks for cc'ing me Carrie, this review was still on my to do list.

Regarding Solent Wader and Brent Goose sites – Provided there is a good policy in the local plan which covers SWBGs, we are satisfied that the detail of this can be carried out at the project level. My comment in the meeting was a friendly reminder that it would be good for PCC and the promoter to be considering the location and details of any mitigation as soon as possible.

Agree with Carrie's points 2, 3 & 4. I would guess that #3 was meant to say they're within the zone of influence of the Solent SPAs.

I propose for #4 we avoid the use of the word SANG and simply state that we recognise that PCC is developing an access management approach which will avoid any alone impacts from recreational disturbance. We know that applying the SANGs guidelines is not an option here.

Could we include a section around the egress steps which says that 'JS stated the design of any egress steps are key to the function of the access management mitigation strategy' please? I think that's an accurate summary of how we concluded that discussion.

Thanks all,

Jonathan Shavelar

Senior Officer - Nationally Significant Infrastructure Projects

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